

# EXPLANATORY STATEMENT

## **Veterans' Entitlements (Veteran Payment) Instrument 2018** (Instrument 2018 No.R40)

### **EMPOWERING PROVISION**

Section 45SB of the *Veterans' Entitlements Act 1986* (VEA).

### **PURPOSE**

The purpose of the attached instrument is to provide for the making of a new income support payment (known as the veteran payment) to certain members and former members of the Australian Defence Force (ADF) and their partners.

The *Veterans' Affairs Legislation Amendment (Veteran-centric Reforms No.1) Act 2018* inserted into the VEA a new Part IIIAA – Veteran payment. Part IIIAA establishes the legislative framework for the making of a veteran payment and provides for certain details of the scheme to be dealt with by way of a legislative instrument.

Veteran payment is a form of interim income support available to current and former members (primary persons) of the ADF to bridge the gap between lodging a claim for a mental health injury under the *Military Rehabilitation and Compensation Act 2004* (MRCA) or the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (DRCA) and the claim being determined. The payment is designed to provide immediate short-term financial assistance to vulnerable people who may be experiencing financial difficulty.

The attached instrument outlines the criteria for eligibility for veteran payment for both primary persons and their partner. It provides for the duration of the payment, including in the case of the death of the primary person or their partner. Further, it provides for the suspension of payment of the veteran payment where the primary person receiving the payment fails to participate in rehabilitation.

The partner of a person receiving veteran payment will also be eligible to receive a veteran payment themselves if they are an Australian resident and in Australia when the veteran's claim under the MRCA or the DRCA is made. Payment of a veteran payment to a partner can be cancelled if they cease to be the partner of a primary person.

All veteran payments are subject to the person and their partner satisfying the asset and income tests.

### **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.

On 24 October 2017, the Government announced its response to the Foreign Affairs, Defence and Trade Committee's Report on the Inquiry into suicide by veterans and ex-service personnel. The response included several measures to be put in place to reduce suicide and self-harm in the veteran community, with a package of new measures to deliver better support for veterans and their families, including veteran payment.

Consultation has taken place with the Department of Education, the Department of Employment, the Department of Human Services, Treasury and the Department of Social Services.

The measure implemented by this instrument is entirely beneficial in nature in terms of its impact on members.

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

## **RETROSPECTIVITY**

None, if the attached legislative instrument is made before 1 May 2018.

If made after that date, the instrument will be taken to have commenced on 1 May 2018 and will operate retrospectively from that date.

Any such retrospective commencement will not contravene subsection 12(2) of the *Legislation Act 2003* (a provision of a legislative instrument is of no effect if it takes effect before registration and disadvantages a person or imposes liabilities on a person other than the Commonwealth) because the changes implemented by the attached instrument are beneficial in nature; the changes do not disadvantage any person or impose a liability on a person other than the Commonwealth.

## **DOCUMENTS INCORPORATED-BY-REFERENCE**

None.

## **REGULATORY IMPACT**

None.

## **HUMAN RIGHTS STATEMENT**

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

## **Overview**

The attached instrument makes provision in relation to the veteran payment. The veteran payment provides a new form of income support payment for current and former members of the ADF who have mental injuries and are awaiting determination of their claims.

## **Human rights implications**

The instrument engages the Right to Social Security under Article 9, the Right to an Adequate Standard of Living under Article 11 and the Right to Health under Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

### *Right to Social Security*

Article 9 of the ICESCR states “States Parties ... recognize the right of everyone to social security, including social insurance”. General Comment 19 by the Committee on Economic, Social and Cultural Rights sets out the essential elements of the right to social security, including “States parties should ... ensure the protection of workers who are injured in the course of employment or other productive work”.

### *Right to an Adequate Standard of Living*

Article 11 of the ICESCR states “The States Parties... recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent”.

### *Right to Health*

Article 12 of the International Covenant on Economic, Cultural and Social Rights refers to the “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.

### *Overview*

An estimated 830 veterans and 690 partners are expected to benefit by receiving the veteran payment in the first full financial year. Partnered recipients of veteran payment will receive up to \$764.30 each per fortnight and single recipients \$981.30 per fortnight. In addition veteran payment recipients may also be eligible for rent assistance, remote area allowance and Family Tax Benefit Part A. The provision of an income support payment to vulnerable clients at an early stage will impact positively on the health and living standards of veterans.

### *Conclusion*

The attached instrument engages positively with the Right to Social Security, the Right to an Adequate Standard of Living and the Right to Health.

Accordingly, the attached instrument is considered to be “human rights compatible”.

Repatriation Commission  
Rule-Maker

**FURTHER EXPLANATION OF PROVISIONS** See: [Attachment A](#)

## **FURTHER EXPLANATION OF PROVISIONS**

### **Part 1 – Preliminary**

#### Section 1

This section provides that the name of the instrument is the *Veterans' Entitlements (Veteran Payment) Instrument 2018*.

#### Section 2

This is the commencement provision. It provides that the instrument is to commence, or is taken to have commenced, on 1 May 2018.

#### Section 3

This section sets out the empowering provision in the primary legislation that authorises the making of this instrument, namely section 45SB of the *Veterans' Entitlements Act 1986* (VEA).

At the time of making the instrument, that provision had not commenced. Schedule 2 of the *Veterans' Affairs Legislation Amendment (Veteran-centric Reforms No.1) Act 2018* inserted new section 45SB into the VEA. Schedule 2 commences on 1 May. Accordingly, the instrument is made in reliance on section 4 of the *Acts Interpretation Act 1901* which provides for the exercise of the instrument-making power as if the relevant empowering provision had occurred.

#### Section 4

Section 4 is a purpose provision. It outlines the policy intent behind the instrument, namely, to provide for the making of a veteran payment to certain current and former members of the Australian Defence Force and their partners. The veteran payment is an interim payment while the member's or former member's claim under the *Military Rehabilitation and Compensation Act 2004* (MRCA) or the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (DRCA) is being determined. That claim must be for a service injury or disease that is a mental injury or disease.

#### Section 5

This is the interpretation section. It defines terms that are used in the instrument.

A key definition is **primary** person. A primary person is defined as someone

- (a) who makes a claim under paragraph 319(1)(a) of the MRCA for an:
  - (i) injury (within the meaning of that Act) sustained by the primary person that is a mental injury, including the recurrence of a mental injury; or
  - (ii) disease (within the meaning of that Act) contracted by the primary person that is a mental ailment, disorder, defect or morbid condition (whether of sudden

onset or gradual development), including the recurrence of such an ailment, disorder, defect or morbid condition; or

- (b) who makes a claim under section 54 of the DRCA for an:
- (a) injury (within the meaning of that Act) sustained by the primary person that is a mental injury, including the recurrence of a mental injury; or
  - (b) injury that is a disease (within the meaning of that Act) suffered by the primary person that is a mental ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development), including the aggravation of such an ailment, disorder, defect or morbid condition.

Another important definition is *payment period* which is contained in section 6. The other definitions are technical in nature.

### Section 6

This section sets out the definition of payment period. A payment period refers to the duration of a veteran payment made to a primary person. It is defined as the period that:

- (a) starts on the day that is 14 days before the day on which the primary person makes their claim under the MRCA or the DRCA; and
- (b) ends on the day that is 42 days after the day on which that claim is determined.

However, if the claim relates to more than one mental health injury or disease, the 42 days starts on the date of the determination of the last mental health injury or disease.

## **Part 2 – Primary person**

### Section 7

This section is the opening section to Part 2 of the instrument and provides that Part 2 applies to making a veteran payment to a primary person.

### Section 8

This section establishes the criteria for eligibility for a veteran payment. It provides that a person is eligible for a veteran payment if the person meets the criteria in paragraphs 45SB(1)(a) to (g) of the VEA. The following are the criteria:

- a person has made a claim under either the MRCA or the DRCA for a mental health injury or disease (within the meaning of the relevant Act);
- the person is incapable of undertaking remunerative work for more than 8 hours per week;
- the person is an Australian resident and is in Australia on the day the claim under either the MRCA or the DRCA is made;
- the person has not reached pension age for persons other than veterans (see subsections 5QB(2) to (5) of the VEA);
- the Military Rehabilitation and Compensation Commission has not determined liability for the mental health injury or disease claim.

This section also contains notes, including to provisions in the VEA that may result in payment of a veteran payment not being made to a person even though he or she is eligible for a veteran payment.

#### Section 9

This section provides that if a primary person is capable of participating in rehabilitation, the payment of a veteran payment to the person is conditional upon him or her participating in rehabilitation. If a person does not participate, his or her veteran payment may be suspended (see section 18).

#### Section 10

This section provides that a veteran payment is payable to a primary person for his or her payment period. However, if the primary person dies, then section 11 applies and shortens the payment period.

#### Section 11

This section deals with the death of a primary person. Subsection (1) provides that a veteran payment ceases to be payable when the primary person dies. Subsection (2) provides that, if a primary person dies before his or her eligibility for a veteran payment is determined, then the veteran payment is to be paid to the person's personal legal representative or a person approved by the Commission for the period up to and including the primary person's death.

### **Part 3 – Partner of primary person**

#### Section 12

This section is the opening section to Part 3 of the instrument and provides that Part 3 applies to making a veteran payment to the partner of a primary person.

#### Section 13

This section provides that the partner of a primary person is eligible for a veteran payment if the circumstances in paragraphs 45SB(2)(a) and (b) of the VEA are satisfied. Those circumstances are:

- the primary person is receiving a veteran payment, and
- the primary person's partner is an Australian resident and in Australia on the day the primary person's MRCA or DRCA claim is made.

This section also contains notes, including to provisions in the VEA that may result in payment of a veteran payment not being made to a person even though he or she is eligible for a veteran payment.

#### Section 14

This section provides that a veteran payment is payable to the partner of a primary person for the same period that a veteran payment is payable to the primary person. However, the duration of a veteran payment to the partner of a primary person is also affected by the death of the partner and the primary person, see section 15.

### Section 15

This section deals with the effect on the veteran payment payable to the partner of a primary person if the primary person or the partner dies.

Subsection (1) provides that a veteran payment continues to be payable to the partner of a primary person for 42 days after the death of the primary person.

Subsection (2) provides that, if a primary person dies before his or her eligibility for a veteran payment is determined and, but for that death, a veteran payment would have been payable to the partner of the primary person, then a veteran payment is payable to the partner for the period that starts 14 days before the primary person makes a claim under the MRCA or the DRCA and ends 42 days after that death.

Subsection (3) provides that a veteran payment ceases to be payable to the partner when he or she dies. The primary person will continue to receive the veteran payment. From the date of death of their partner, the primary person will be eligible for the single rate.

## **Part 4 – Other matters**

### Section 16

This section provides that a person can receive only one veteran payment for the same period. This means that a veteran payment is payable to a person either as the primary person or the partner of the primary person, but not both.

### Section 17

This section provides that the Commission may extend the time for payment of a veteran payment to a person if the Commission is satisfied that there are special circumstances.

### Section 18

This section empowers the Commission to suspend the payment of a veteran payment if a person fails to participate in rehabilitation to the satisfaction of the Commission. The Commission can lift the suspension if it later becomes satisfied that the person is participating in rehabilitation to its satisfaction. The Commission's determination to suspend or to lift a suspension takes effect on the day the determination is made or a later or earlier day specified in the determination.

This section is in addition to the suspension powers in sections 56E, 56EA, 56J and 56K of the VEA.

### Section 19

This section requires the Commission to determine whether a person is eligible for a veteran payment. If the Commission determines that the person is eligible for a veteran payment, the Commission must work out the person's veteran payment rate and determine that a veteran payment is payable to the person at that rate. The amount of veteran payment a primary person and their partner will receive is provided for in section 45SB(6) of the VEA and is to be worked out in accordance with the Rate Calculator in Schedule 6 of that Act. The Commission must make a written record of its determination and provide reasons for its determination.

As soon as practicable after the Commission makes a determination, the Commission must give the person to whom the determination relates notice of it, including certain review rights. However, material that is of a confidential nature or that might, if communicated to the person to whom the determination relates, be prejudicial to his or her physical or mental health or well-being, is not to be disclosed.