



Repatriation Commission

## Veterans' Entitlements (Veteran Payment) Instrument 2018

Instrument 2018 No. R40

The Repatriation Commission, under subsection 45SB (1) of the *Veterans' Entitlements Act 1986*, makes the following instrument.

Dated this 5<sup>th</sup> of April 2018

The Seal of the  
Repatriation Commission  
was affixed hereto in the  
presence of: )  
)  
)SEAL  
)

Simon Lewis  
**SIMON LEWIS**  
PSM  
PRESIDENT

C Orme  
**CRAIG ORME**  
DSC AM CSC  
DEPUTY PRESIDENT

M A Kelly  
**MAJOR GENERAL MARK KELLY**  
AO DSC  
COMMISSIONER

## **Part 1 — Preliminary**

### **1 Name**

This instrument is the *Veterans' Entitlements (Veteran Payment) Instrument 2018*.

### **2 Commencement**

This instrument commences, or is taken to have commenced, on 1 May 2018.

### **3 Authority**

This instrument is made under section 45SB of the *Act*.

### **4 Purpose**

The purpose of this instrument is to provide for the making of an interim payment (known as the “veteran payment”) to certain members and former members of the Australian Defence Force and their partners where the member or former member has made a claim for a service injury or disease that is a mental injury or disease under the MRCA or the DRCA.

### **5 Definitions**

In this instrument:

*Act* means the *Veterans' Entitlements Act 1986*.

*DRCA* means the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*.

*MRCA* means the *Military Rehabilitation and Compensation Act 2004*.

*payment period* – see section 6.

*primary person* means a person who has made a claim referred to in paragraph 45SB(1)(a) of the *Act*.

*Note:* The following terms used in this instrument are defined in the *Act*:  
Commission (s5A)  
Partner (s5E(1))

### **6 Meaning of payment period**

(1) Subject to subsections (2) and (3), the payment period for a primary person is the period that:

(a) starts on the day that is 14 days before the day on which he or she makes:

- (i) a claim under section 319 of the *MRC A* of a kind covered by paragraph 319(1)(a) of that Act; or
    - (ii) a claim under section 54 of the *DRCA*; and
  - (b) ends on the day that is 42 days after the day on which that claim is determined.
- (2) If the person's claim under paragraph 319(1)(a) of the *MRC A* is for more than one:
- (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) 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;

the payment period ends on the day that is 42 days after the day of the determination of the last mental injury, or the mental ailment, disorder, defect or morbid condition, as the case requires.

- (3) If the person's claim under section 54 of the *DRCA* is for more than one:
- (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;

the payment period ends on the day that is 42 days after the day of the determination of the last mental injury, or the mental ailment, disorder, defect or morbid condition, as the case requires.

## **Part 2 — Primary person**

### **7 Application of Part**

This Part applies to the making of a veteran payment to a primary person.

### **8 Eligibility of primary person for veteran payment**

A primary person is eligible for a veteran payment if he or she meets the criteria in paragraphs 45SB(1)(a) to (g) of the *Act*.

*Note 1:* Even though a primary person is eligible for a veteran payment, the veteran payment may not be payable to the primary person in certain circumstances including:

- (a) the payment period for the veteran payment has ended (see section 10 of this instrument);

- (b) the person is in gaol or in psychiatric confinement (see sections 55 and 55A of the Act);
- (c) the person is receiving another pension or compensation (see section 45SB(7) of the Act);
- (d) the person is receiving a payment under ABSTUDY (see section 45SB(9) of the Act);
- (e) the veteran payment is cancelled or suspended (see sections 56E, 56EA, 56J and 56K of the Act and section 18 of this instrument); and
- (f) the person has not provided a tax file number (see section 128A of the Act).

*Note 2:* A failure to provide income and assets information may result in a veteran payment being suspended or cancelled (see sections 54A, 54AA and 56EA of the Act.)

## **9 Conditions for payment of veteran payment to primary person**

If a primary person is capable of participating in rehabilitation, payment of a veteran payment to the person is subject to the condition that he or she participates in rehabilitation.

*Note:* A failure to participate in rehabilitation may result in a veteran payment being suspended (see section 18 of this instrument)

## **10 Duration of veteran payment to primary person**

Subject to section 11, a veteran payment is payable to a primary person for the person's payment period.

## **11 Death of primary person – effect on veteran payment payable to primary person**

(1) If:

- (a) the primary person dies; and
- (b) the primary person is receiving a veteran payment immediately before his or her death;

the veteran payment ceases to be payable to the primary person on the date of his or her death.

(2) If:

- (a) the primary person dies; and
- (b) the death of the primary person is before the Commission decides whether the primary person is eligible for a veteran payment; and
- (c) but for the death of the primary person, a veteran payment would have been payable to him or her;

a veteran payment is payable to the legal personal representative of the primary person, or a person approved by the Commission, up to and including the date of his or her death.

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

### **12 Application of Part**

This Part applies to the making of a veteran payment to the partner of a primary person.

### **13 Eligibility of partner of primary person for veteran payment**

The partner of a primary person is eligible for a veteran payment if the circumstances in paragraphs 45SB(2)(a) and (b) of the *Act* are satisfied.

*Note 1:* Even though the partner of a primary person is eligible for a veteran payment, the veteran payment may not be payable to the partner in certain circumstances including:

- (a) the partner is in gaol or in psychiatric confinement (see sections 55 and 55A of the Act);
- (b) the partner is receiving another pension or compensation (see section 45SB(7) of the Act);
- (c) he or she is a wholly dependent partner of a deceased member (see section 45SB(8) of the Act);
- (d) the partner is receiving a payment under ABSTUDY (see section 45SB(9) of the Act);
- (e) the veteran payment is cancelled or suspended (see sections 56E, 56EA, 56J and 56K of the Act and section 18 of this instrument); and
- (f) the partner has not provided a tax file number (see section 128A of the Act).

*Note 2:* A failure to provide income and assets information may result in a veteran payment being suspended or cancelled (see sections 54A, 54AA and 56EA of the Act.)

### **14 Duration of veteran payment to partner of primary person**

Subject to section 15, a veteran payment is payable to the partner of a primary person for the period that the primary person is receiving a veteran payment.

### **15 Death of primary person or partner – effect on veteran payment payable to partner**

- (1) If:
  - (a) a primary person dies; and
  - (b) the primary person is receiving a veteran payment immediately before his or her death; and
  - (c) the primary person's partner is receiving a veteran payment immediately before that death;

the veteran payment continues to be payable to the partner for a period of 42 days starting on the date of that death.

(2) If:

- (a) a primary person dies; and
- (b) the death of the primary person is before the Commission decides whether the primary person is eligible for a veteran payment; and
- (c) but for the death of the primary person, a veteran payment would have been payable to the partner of the primary person;

a veteran payment is payable to the partner for the period starting 14 days before the day on which the primary person makes his or her claim under the *MRCA* or the *DRCA* and ending 42 days after the date of the primary person's death.

(3) If:

- (a) the partner of a primary person dies; and
- (b) the partner is receiving a veteran payment immediately before his or her death;

the veteran payment ceases to be payable to the partner on the date of his or her death.

## **Part 4 — Other matters**

### **16 Person can receive only one veteran payment for a period**

If a person receives a veteran payment for a period (whether as a primary person or as the partner of a primary person), he or she cannot receive another veteran payment for the same period.

### **17 Extension of veteran payment in special circumstances**

The Commission may extend the period of payment for a veteran payment to a person if the Commission is satisfied that there are special circumstances.

### **18 Suspension of veteran payment**

- (1) If a person who is receiving a veteran payment fails to participate in rehabilitation to the satisfaction of the Commission, the Commission may determine in writing that the veteran payment payable to the person or the partner of the person (if any), or both, is to be suspended.

- (2) A determination made under subsection (1) takes effect on the day that the determination is made or on such later day or earlier day as is specified in the determination.
- (3) If the Commission later becomes satisfied that the person is participating in the rehabilitation to the satisfaction of the Commission, the Commission may end the suspension by determination in writing.
- (4) A determination made under subsection (3) takes effect on the day that the determination is made or on such later day or earlier day as is specified in the determination.

*Note:* This section is in addition to the suspension powers in sections 56E, 56EA, 56J and 56K of the Act.

## **19 Duties of Commission in relation to veteran payment**

- (1) The Commission must determine eligibility for a veteran payment as follows:
  - (a) first, the Commission must determine whether a person is eligible for a veteran payment; and
  - (b) if the Commission determines that the person is eligible for a veteran payment, the Commission must then:
    - (i) work out the person's veteran payment rate under subsection 45SB(6) of the *Act*; and
    - (ii) determine that a veteran payment is payable to the person at that rate.
- (2) The Commission must make a written record of its determination.
- (3) The Commission must also make a statement in writing that provides reasons for the Commission's determination.
- (4) As soon as practicable after the Commission makes a determination, the Commission must give the person to whom the determination relates:
  - (a) a copy of the record of the Commission's determination; and
  - (b) subject to subsection (5), a copy of the statement referred to in subsection (3); and
  - (c) particulars of the right of the person to have the determination reviewed by the Commission.
- (5) If the statement referred to in paragraph (4)(b) contains any matter that in the opinion of the Commission:
  - (a) is of a confidential nature; or

- (b) might, if communicated to the person to whom the determination relates, be prejudicial to his or her physical or mental health or well-being;

the copy given to the person is not to contain the matter.