

EXPLANATORY STATEMENT

Safety, Rehabilitation and Compensation Legislation (Defence Force) Consequential Amendment Regulations 2018

EMPOWERING PROVISIONS

Section 122 of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*

Section 70 of the *Administrative Appeals Tribunal Act 1975*

Section 177-15 of the *A New Tax System (Goods and Services Tax) Act 1999*

Section 44 of the *Human Services (Medicare) Act 1973*

Section 24 of the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004*

Section 122 of the *Safety, Rehabilitation and Compensation Act 1988*

PURPOSE

The *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (the DRCA), which is a re-enacted version of the *Safety, Rehabilitation and Compensation Act 1988* (the SRCA), was created by the *Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 2017* (the Amendment Act). The DRCA commenced on 12 October 2017 and is modified to apply only to members of the Defence Force and their dependants in relation to rehabilitation, treatment and compensation matters. The Amendment Act also amended the SRCA to remove cover for members of the Defence Force and their dependants from that Act.

As a result of the enactment of the DRCA, there is a need to consequentially amend various Commonwealth regulations to include a reference to the DRCA. This will ensure that the relevant provisions of the various Regulations will apply to the DRCA.

The primary purpose of the *Safety, Rehabilitation and Compensation Legislation (Defence Force) Consequential Amendment Regulations 2018* (the proposed Regulations) is to include references to the DRCA (or omit a redundant reference to SRCA) in the following Commonwealth Regulations made under the Acts above:

- *Administrative Appeals Tribunal Regulations 2015*;
- *A New Tax System (Goods and Services Tax) Regulations 1999*;
- *Human Services (Medicare) Regulations 2017*;
- *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Regulations 2004*; and
- *Safety, Rehabilitation and Compensation Regulations 2002*.

Specifically, the proposed Regulations will:

- exempt an application for review of a decision made under the DRCA to the Administrative Appeals Tribunal, from an application fee;

- include rehabilitation and compensation schemes made under the DRCA as a statutory compensation scheme for the purposes of the *A New Tax System (Goods and Services Tax) Regulations 1999*;
- prescribe the Chief Executive Medicare as the person to process claims for payments made under the DRCA in relation to pharmaceutical and treatment matters; and
- prescribe the method of converting certain lump sum payments made under the DRCA into weekly amounts.

The proposed Regulations also delete references to the SRCA in the Commonwealth Regulations listed above, where reference to it is no longer applicable.

The proposed Regulations commence the day after they are registered on the Federal Register of Legislation, with the exception of item 2 in Schedule 1. This item operates retrospectively and will be taken to have commenced on 12 October 2017 (the date the DRCA commenced).

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 each of the Commonwealth Agencies and Departments that have portfolio responsibility for the Regulations to be amended by the attached instrument. This included the Attorney-General's Department, the Administrative Appeals Tribunal, the Department of Human Services, the Department of Jobs and Small Business, and Treasury.

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

Consultation was primarily by way of email correspondence.

Consultation with the veteran community occurred at the Ex-Service Organisation Round Table (ESORT) meeting on 9 March 2018. ESORT members were advised, in general terms, about the nature of the amendments in the proposed Regulations.

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

RETROSPECTIVITY

There is one amendment (item 2 of Schedule 1) that will apply retrospectively.

Item 2 of Schedule 1 is taken to have commenced on 12 October 2017 (the date the *Safety, Rehabilitation and Compensation (Defence-Related Claims) Act 1988* commenced) and will operate retrospectively from that date.

The Australian Government Solicitor has advised that subsection 12(2) of the *Legislation Act 2003* would not operate to prevent item 2 from having its intended retrospective effect. The amendment at item 2 relates to the *Administrative Appeals Tribunal Regulations 2015* and will have a beneficial operation for eligible Australian Defence Force members and ex-members by waiving the fee payable by them for review of a decision under the DRCA.

DOCUMENTS INCORPORATED-BY-REFERENCE

None.

HUMAN RIGHTS STATEMENT

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

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The purpose of the Regulations is to include references to the *Safety, Rehabilitation and Compensation (Defence-Related Claims) Act 1988* (the DRCA) in various Commonwealth Regulations as a result of the enactment of the DRCA.

The amendment relating to the *Administrative Appeals Tribunal Regulations 2015* could be said to engage the human right relating to a fair hearing in Article 14 of the International Covenant on Civil and Political Rights (ICCPR.)

Article 14(1) of the ICCPR requires all persons to be equal before the courts and tribunals. It further provides that everyone is entitled, in the determination of ‘rights and obligations in a suit at law’, to a ‘fair and public hearing by a competent, independent and impartial tribunal established by law’.

The amendment at item 2 of the Schedule to the Regulations will ensure that applications for review of decisions made under the DRCA to the Administrative Appeals Tribunal will not be subject to an application fee. This measure ensures that review by the Tribunal of such decisions will be as accessible as possible. The exemption from the payment of a fee is also consistent with government policy that veterans and members of the Defence Force need not pay fees to seek review of decisions in relation to their benefits.

Conclusion

The attached legislative instrument, insofar as it raises human rights issues, engages positively and is compatible with human rights.

Darren Chester
Minister for Veterans’ Affairs
Rule-Maker

FURTHER EXPLANATION OF ROVISIONS *See: Attachment A*

FURTHER EXPLANATION OF PROVISIONS

Section 1 – Name

This section would provide that the name of the proposed Regulations is the *Safety, Rehabilitation and Compensation Legislation (Defence Force) Consequential Amendment Regulations 2018*.

Section 2 – Commencement

This section would provide that the proposed Regulations commence on the day after registration on the Federal Register of Legislation, with the exception of item 2 in Schedule 1 of the proposed Regulations. This item would operate retrospectively and would be taken to have commenced on 12 October 2017 (the date the DRCA commenced).

Section 3 – Authority

This section would provide that the *Safety, Rehabilitation and Compensation Legislation (Defence Force) Consequential Amendment Regulations 2018* are made under the:

- *Administrative Appeals Tribunal Act 1975*;
- *A New Tax System (Goods and Services Tax) Act 1999*;
- *Human Services (Medicare) Act 1973*;
- *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004*;
- *Safety, Rehabilitation and Compensation Act 1988*.

Section 4 – Schedules

This section would provide 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 would amend section 22 of the *Administrative Appeals Tribunal Regulations 2015* (AAT Regulations).

Section 22 prescribes decisions for which a fee is not payable for an application for a review of a decision to the Administrative Appeals Tribunal (AAT).

Item 1 of the proposed Regulations is a minor and technical amendment and would update the reference in table item 9 to refer to ‘items 2 to 21’ to correct the reference.

Item 9 prescribes that applications for review of decisions under the *Freedom of Information Act 1982* are exempt from a fee if the documents in question relate to a type of decision that

is exempt from application fees and specified in items 2 to 20 of the table. Item 9 currently refers to 'items 2 to 20' whereas it should refer to 'items 2 to 21'.

Item 2 would amend section 22 of the AAT Regulations by inserting a new item 14A to include a reference to a decision made under the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*.

The inclusion of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* in section 22 would mean that applicants seeking a review of a decision to the AAT under this Act, would not need to pay an application fee.

The inclusion of DRCA decisions in section 22 of the AAT Regulations would consistently apply the policy that veterans and members of the Defence Force need not pay fees for review of decisions made under veterans' affairs portfolio legislation.

Item 3

Item 3 would amend the *A New Tax System (Goods and Services Tax) Regulations 1999* (GST Regulations).

Item 3 would amend Schedule 10 and insert a new item 2AA into Schedule 10 of the GST Regulations.

Schedule 10 specifies the schemes or arrangements for the purposes of the definition of a statutory compensation scheme in section 78-105 of the *A New Tax System (Goods and Services Tax) Act 1999*.

Schedule 10 of the GST Regulations would be amended to include rehabilitation and compensation schemes made under the DRCA to the list of statutory compensation schemes. This would ensure these schemes are subject to the special rules that apply to statutory compensation schemes under the *A New Tax System (Goods and Services Tax) Act 1999*.

The inclusion of rehabilitation and compensation schemes made under the DRCA in Schedule 10 would ensure consistency with the treatment of schemes under the *Safety, Rehabilitation and Compensation Act 1988* and the *Military Rehabilitation and Compensation Act 2004*, which are also included in Schedule 10.

Items 4, 5 and 6

Items 4, 5 and 6 would amend the *Human Services (Medicare) Regulations 2017*.

Item 4 would amend section 28 of the *Human Services (Medicare) Regulations 2017*.

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

Item 4 would insert a new subsection 28(4) to refer to the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* and enable the Chief Executive Medicare to process claims for payments and make payments of those claims on behalf of the Military

Rehabilitation and Compensation Commission, concerning the provision of pharmaceutical benefits under that Act.

Item 5 would amend paragraph 30(a) of the *Human Services (Medicare) Regulations 2017*.

Section 30 sets out the functions of the Military Rehabilitation and Compensation Commission that are prescribed functions of the Chief Executive Medicare.

Item 5 would amend paragraph 30(a) by including a reference to the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* in that paragraph, to include the function of processing claims for compensation under that Act and making payments for those claims by the Military Rehabilitation and Compensation Commission a function of the Chief Executive Medicare.

Item 6 would amend subsection 31(2) of the *Human Services (Medicare) Regulations 2017*.

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

Subsection 31(2) specifies the *Safety, Rehabilitation and Compensation Act 1988* (SRCA) and various Acts under the veterans' affairs portfolio to enable the Chief Executive Medicare to process claims for payments and make payments for those claims on behalf of the Repatriation Commission or the Military Rehabilitation Compensation Commission in relation to the provision of treatment.

Item 6 would insert a new paragraph 31(2)(ca) to include the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* as an Act specified under subsection 31(2).

The amendments to items 4, 5 and 6 would ensure consistency under the various Acts under the veterans' affairs portfolio.

Items 7 to 13

Items 7 to 13 would amend the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Regulations 2004* (the MRCA Transitional Regulations).

Section 14 of the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004* deals with the offsetting of the Special Rate Disability Pension (SRDP) and ensures that a person will not be entitled to dual compensation by receiving the full rate of this pension payable under the *Military Rehabilitation and Compensation Act 2004* (the MRCA) and a disability pension under the *Veterans' Entitlements Act 1986* (VEA) or compensation payable under the DRCA.

The amount of SRDP is reduced under section 14 of the MRCA by offsetting disability pension payments made under the VEA and compensation payments made under the DRCA.

The MRCA Transitional Regulations currently deal with the offsetting of SRDP payments made under the *Military Rehabilitation and Compensation Act 2004* by lump sum compensation payments made under sections 24, 25 and 27 of the *Safety, Rehabilitation and Compensation Act 1988* (the SRCA).

Items 7 to 13 would update the MRCA Transitional Regulations by substituting the reference to SRCA to the DRCA in various sections.

Item 7 would amend Note 1 to Regulation 3 of the MRCA Transitional Regulations (definition of Act) to delete the reference to SRCA and substitute DRCA (the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*).

Items 8 to 13 would amend Regulation 4 of the MRCA Transitional Regulations. Regulation 4 applies to the method of converting lump sum amounts paid under sections 24, 25 and 27 of the SRCA.

The references to the SRCA in Regulation 4 would be substituted to refer to the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* to ensure that lump sum payments paid under the DRCA (for compensation for injuries resulting in permanent impairment (section 24); interim payment of compensation (section 25) and compensation for non-economic loss (section 27)) can be converted to a weekly amount.

Item 14

Item 14 would repeal regulation 20 of the *Safety, Rehabilitation and Compensation Regulations 2002*.

Regulation 20 of the *Safety, Rehabilitation and Compensation Regulations 2002* prescribes the Chief of the Defence Force as an appropriate officer for the purposes of giving written notice to Comcare pursuant to section 114A of the SRCA stating amongst other matters, that a member of the Defence Force has retired and the date of the retirement.

As the SRCA no longer covers Defence personnel, this Regulation is no longer needed.