##### EXPLANATORY STATEMENT

**Safety, Rehabilitation and Compensation (Defence-related Claims) (Specified Rate per Kilometre) Notice 2019** (Instrument 2019 No. M15)

**EMPOWERING PROVISION**

Subsection 16(6) of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (the DRCA)*.*

**PURPOSE**

The attached instrument (Instrument 2019 No. M15) specifies the rate per kilometre to be used for calculating the amount of compensation payable for travel to obtain medical treatment under subsection 16(6) of theDRCA.

The rate per kilometre specified by the attached instrument is 60 cents.

This instrument replaces the *Safety, Rehabilitation and Compensation (Specified Rate per Kilometre) Notice 2008 (3)* (F2008L02335) in force for the purposes of the DRCA (the DRCA notice) which is due to sunset (expire) on 1 October 2019.

The *Safety, Rehabilitation and Compensation (Specified Rate per Kilometre) Notice 2008 (3)* (F2008L02335) was in force for the purposes of the DRCA because of item 63 of Schedule 1 to the *Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 2017.*

The *Safety, Rehabilitation and Compensation (Specified Rate per Kilometre) Notice 2008 (3)* (and the DRCA notice) were originally due to sunset on 1 October 2018. The sunset date was deferred for 12 months via the *Legislation (Deferral of Sunsetting—Safety, Rehabilitation and Compensation (Specified Rate per Kilometre) Notice) Certificate 2018.*

The Department of Veterans’ Affairs has reviewed the DRCA instrument and found it is required to allow DVA clients to continue to claim compensation when accessing medical treatment. Accordingly, the attached instrument repeals DRCA notice and remakes it under the DRCA, retaining the current rate of 60 cents per kilometre.

Paragraph 16(6)(c) of the DRCA allows the Minister to specify, by legislative instrument, the rate per kilometre that will apply in respect of journeys to which subsection 16(6) applies.

Subsection 16(6) of the DRCA provides compensation for reasonably incurred expenditure for a necessary journey to obtain medical treatment. In determining the amount of compensation payable for a necessary journey, the Commission is to use the formula set out in paragraph 16(6)(c) *—* the length of the journey in kilometres multiplied by the rate specified by the Minister in this instrument.

The instrument will commence on 1 April 2019 to coincide with the commencement of the *Military Rehabilitation and Compensation (Specified Rate per Kilometre) Determination 2019.* This will ensure alignment of future sunset dates for this instrument and theequivalent instrument under the *Military Rehabilitation and Compensation Act 2004.*

**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 Jobs and Small Business was consulted as that Department administers the *Safety, Rehabilitation and Compensation (Specified Rate per Kilometre) Notice 2008 (3)* in force under subsection 16(6) of the *Safety, Rehabilitation and Compensation Act 1988* (the SRCA notice). The SRCA notice will continue in force until the sunset date of 1 October 2019 or until repealed earlier by the responsible Minister.

No further external consultation was considered necessary as the attached instrument maintains the status quo. It retains the existing rate per kilometre of 60 cents to ensure alignment with the rate of reimbursement for travel for treatment specified in the equivalent instrument under the *Military Rehabilitation and Compensation Act 2004*.

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**

None.

**REGULATORY IMPACT**

None.

**HUMAN RIGHTS STATEMENT**

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

The attached legislative instrument is consistent with human rights, in particular the Rights of Persons with a Disability and the Right to Health.

The Rights of Persons with a Disability are set out in the Convention on the Rights of Persons with Disabilities. Article 26 requires countries to organise and strengthen rehabilitation programs for people with disability, particularly in health, employment, education and social services.

The Right to Health (contained in article 12(1) of the International Covenant on Economic Social and Cultural Rights) is the right to the enjoyment of the highest attainable standard of physical and mental health. The UN Committee on Economic Social and Cultural Rights has stated that health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity.

*Overview*

The purpose of this legislative instrument is to specify the rate per kilometre to be used for calculating the amount of travel expenses payable to members or former members of the Defence Force entitled to medical treatment under the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* for making a journey to obtain that treatment.

*Conclusion*

The attached instrument supports provisions in the DRCA that are used for calculating compensation for reasonable travel to obtain treatment. This compensation is in addition to the compensation for the costs of treatment.

The instrument ensures an equitable amount of compensation is payable for travel expenses where a member or former member of the Defence Force who has coverage under the DRCA is required to travel to obtain treatment. In this way, it can be said to be compatible with the Rights of Persons with Disabilities and the Right to Health.

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

Darren Chester

Minister for Veterans’ Affairs

Rule-Maker

**FURTHER EXPLANATION OF PROVISIONS**

*See:* Attachment A

Attachment A

**FURTHER EXPLANATION OF PROVISIONS**

Section 1

This section provides that the name of the instrument is the *Safety, Rehabilitation and Compensation (Defence-related Claims) (Specified Rate per Kilometre) Notice 2019.*

Section 2

This section provides that the instrument is to commence on 1 April 2019.

Section 3

This section sets out the primary legislation that authorises the making of the instrument, namely, subsection 16(6) of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (the DRCA)*.*

Section 4

This section repeals the *Safety, Rehabilitation and Compensation (Specified Rate per Kilometre) Notice 2008 (3)* in force for the purposes of the DRCA.

The note to the section advises that the *Safety, Rehabilitation and Compensation (Specified Rate per Kilometre) Notice 2008 (3)* was in force for the purposes of the DRCA because of item 63 of Schedule 1 to the *Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 2017.*

This instrument will have no impact on the *Safety, Rehabilitation and Compensation (Specified Rate per Kilometre) Notice 2008 (3)* in force under the *Safety, Rehabilitation and Compensation Act 1988* (the SRCA Notice)*.* The SRCA notice will continue in force until its sunset date of 1 October 2019 or until earlier repealed.

The authority for this repeal provision is subsection 33(3) of the *Acts Interpretation Act 1901*.

Section 5

This section specifies the rate per kilometre for the purposes of the definition of *specified rate per kilometre* in paragraph 16(6)(c) of the DRCA. The specified rate is 60 cents.