

REPLACEMENT EXPLANATORY STATEMENT

Treatment Benefits (Special Access) (Claims, Applications and Lodgements Procedures) Determination 2019

(Instrument 2019 No. S25)

EMPOWERING PROVISION

Subsection 8(2) of the *Treatment Benefits (Special Access) Act 2019*.

PURPOSE

The purpose of the attached instrument (Instrument 2018 No. S25) is to set out the procedures for making claims and applications, and lodging documents, under the *Treatment Benefits (Special Access) Act 2019* (the Treatment Benefits Act) where that Act specifies that such claims, applications or documents are to be made or given in accordance with section 8 of that Act.

The Treatment Benefits Act gives effect to a Government decision to provide medical treatment through a Department of Veterans' Affairs (DVA) Health Card for All Conditions (Gold Card) to those persons who served in the Australian Civilian Surgical Medical Teams (CSMTs) that gave medical aid, training and treatment to local Vietnamese people during the Vietnam War. Eligible CSMT members will have access to treatment for any injury or disease, including those unrelated to their CSMT work performed in South Vietnam.

Subsection 8(1) of the Treatment Benefits Act provides that a claim or application is taken to have been made, or a document is taken to have been given, if it is made, or given, in accordance with the procedures determined by the Secretary of the Department of Veterans' Affairs (the Secretary) under subsection 8(2). Subsection 8(2) of the Treatment Benefits Act allows the Secretary to determine the procedures for making claims and applications, and lodging documents. Section 8 prescribes the way that a claim for treatment is to be made, namely in accordance with the procedures determined by the Secretary.

The attached instrument determines that a claim, application or other document under the Treatment Benefits Act is to be in writing and is to be made or given by lodging it at an office of DVA in Australia. For the purpose of lodging a claim, application or other document under the Treatment Benefits Act at an office of DVA in Australia, section 5T of the *Veterans' Entitlements Act 1986* (VEA) is taken to apply to the claim, application or document as if it were a claim, application or document that could be made or given under the VEA. Section 5T of the VEA regulates the lodgement of claims, applications and other documents under that Act. Subsection 5T(2) of the VEA applies to the physical lodgment of documents under that Act with DVA and subsection 5T(3) of the VEA applies to the electronic lodgment of documents under that Act for which approval has been given by the Commission for electronic transmission to DVA.

The effect of this provision is to specify the processes related to a claim, application or other document that is lodged physically (in person or by post) or electronically (transmission by facsimile machine, via the internet or via email). For example: section 5T allows the Commission to specify, in relation to a claim, application and lodgement of documents, the

addresses in and outside Australia, when a lodgement occurs and when a claim, application or request is taken to be made.

The attached instrument also determines additional procedures that apply to making or giving certain claims, applications and other documents under the Treatment Benefits Act.

The provision of treatment for eligible CSMT members under the Treatment Benefits Act has been modelled on the provision of treatment available for persons eligible under the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006* (British Nuclear Treatment Act).

The *Veterans' Affairs (Australian Participants in British Nuclear Tests (Treatment) – Claims, Applications and Lodgements Procedures) Determination 2006* (British Nuclear Treatment determination) sets out the procedures for making claims and applications, and lodging documents under the British Nuclear Treatment Act. The attached instrument has been modelled on the British Nuclear Treatment determination. This will ensure consistency for making claims and applications, and giving other documents, in connection with treatment provided to Gold Card holders under the Treatment Benefits Act and the British Nuclear Treatment Act.

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.

Consultation was undertaken within the Department of Veterans' Affairs with the Veterans' Services Design Division.

Consultation was by way of phone calls, email correspondence and meetings.

External stakeholders will be notified of the changes in accordance with a communication plan to be implemented prior to the commencement date.

The measure is beneficial in nature in terms of the impact on the eligible persons.

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

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*.

Human rights implications

The attached legislative instrument engages and promotes the Right to Health. The Right to Health is contained in article 12(1) of the International Covenant on Economic Social and Cultural Rights (ICESCR). Article 12 of the ICESCR refers to the “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.

Overview

The instrument sets out the procedures for making claims and applications, and lodging documents, under the Treatment Benefits Act. Claims and applications can be lodged at an office of the Department of Veterans’ Affairs in Australia or electronically. These lodgement options allow eligible persons under the Treatment Benefits Act to quickly and easily make claims and applications relating to medical treatment. Treatment for all conditions is provided to an eligible person without cost via a Gold Card.

Conclusion

The attached instrument engages with and promotes the right to health. Accordingly, the attached instrument is considered to be “human rights compatible”.

Secretary of the Department of Veterans’ Affairs
Rule-maker

FURTHER EXPLANATION OF PROVISIONS

See: [Attachment A](#)

FURTHER EXPLANATION OF PROVISIONS

Section 1 – Name

This section provides that the name of the instrument is the *Treatment Benefits (Special Access) (Claims, Applications and Lodgements Procedures) Determination 2019*.

Section 2 – Commencement

This section provides that the instrument commences on the day on which it is made.

Section 3 – Authority

This section sets out that subsection 8(2) of the *Treatment Benefits (Special Access) Act 2019* authorises the making of the instrument.

Section 4 – Definitions

This section sets out the definitions used in the instrument.

Section 5 – Procedures for making claims or applications or giving other documents

This section sets out the procedures for making claims and applications, and lodging documents, under the Treatment Benefits Act.

Subsection 5(1) provides that a claim, application or other document under the Treatment Benefits Act is to be in writing and is to be made or given, as the case requires, by lodging it an office of the Department of Veteran's Affairs (DVA) in Australia. The lodgement at an office of DVA includes electronic lodgement of a claim, application or other document and the physical lodgement of a hardcopy claim, application or other document.

Subsection 5(2) provides that section 5T of the *Veterans' Entitlements Act 1986* (VEA) is deemed to apply to the lodgement of a claim, application or other document under the Treatment Benefit Act as if it were a claim, application or document that could be made or given under the VEA.

Section 5T of the VEA regulates the lodgement of claims, applications and other documents under the VEA. Subsection 5T(2) is applicable to the physical lodgment of documents with DVA. Subsection 5T(2) provides that a claim, application or other document will be taken to have been lodged at an office of DVA if it is lodged at a place, or delivered to a person approved, by the Commission. The document received at that place or by that person will be taken to have been lodged on the day that it has been received.

Subsection 5T(3) of the VEA is applicable to the electronic lodgment of documents for which approval has been given by the Commission for electronic transmission to DVA. Subsection 5T(3) provides that a claim, application, request or other document that has been approved for electronic lodgment will be taken to have been lodged at an office of DVA if it transmitted electronically in a manner approved by the Commission to an electronic address

approved by the Commission. The document received at that electronic address will be taken to have been lodged on the day that it has been received.

Note 1 to subsection 5(2) signposts section 5T of VEA and specifies that section 5T regulates the lodgement of claims, applications and other documents under the VEA, and provides for physical and electronic lodgements.

Note 2 to subsection 5(2) signposts the *Veterans' Entitlements (Electronic Lodgement Approval) Instrument 2018* which is made under section 5T of the VEA. The instrument sets out:

- the claims, applications, requests and other documents under the VEA approved for electronic lodgement;
- the manner for making electronic lodgements (facsimilie, internet or email); and
- the electronic addresses that can be used (facsimilie numbers, uniform resource locator (URL) and email addresses) for making electronic lodgements.

The *Veterans' Entitlements (Electronic Lodgement Approval) Instrument 2018* is not a legislative instrument within the meaning of the *Legislation Act 2003*, and is not subject to disallowance. It is available at: <http://clik.dva.gov.au/legislation-library>.

Section 6 Additional procedures – sections 9, 10, 24, 25, 33 and 37 of the Act

Section 6 sets out additional procedures for, or in respect of, a claim, application or other document under the Act. This section sets out the information to be included when a request to withdraw or an application for review of a claim is made.

Subsection 6(1) provides that a claim under section 9 of the Act (claims for eligibility) is to be in the form approved by the Secretary of the Department.

The forms are available on the DVA website:

<https://www.dva.gov.au/sites/default/files/dvaforms/D9354.pdf>

The Secretary's approval is available on the Federal Register of Legislation:

<https://www.legislation.gov.au/Details/F2019L00825>.

Section 9 of the Act requires that a person who wants to establish they are an eligible person must make a claim in accordance with section 8 for a determination that the person is an eligible person.

Section 8 of the Act (procedures for making claims etc) requires that a claim or application is made in accordance with the procedures determined by the Secretary.

Subsection 6(2) provides that a notice under section 10 of the Act (withdrawal of claims) is to contain the name and address of the person withdrawing the claim including, if appropriate, the name and address of the person on whose behalf the claim is being withdrawn.

Section 10 of the Act allows a claimant to withdraw their claim at any time before the Commission has determined the claim. A withdrawal must be made in writing in accordance

with section 8 of the Act. However, where a person withdraws their claim they are not prohibited from lodging a subsequent claim.

Subsection 6(3) provides that a claim under section 24 of the Act (claims for travelling expenses) is to be in the form approved by the Secretary of the Department.

Section 24 of the Act requires a claim for travelling expenses to be made within twelve months after the completion of the related travel unless the Commission thinks there are exceptional circumstances that justify an extension. Where the Commission justifies extending the period of time a claim is to be made, it must be made within that extended period.

Subsection 6(4) requires a notice to withdraw a claim, under section 25, to contain the name and address of the person withdrawing the claim and the details of the claim. Where the claim is being withdrawn by another person, the notice is to contain the name and address of the person on whose behalf the claim is withdrawn and the details of the claim.

Section 25 of the Act allows a claimant to withdraw their claim at any time before the Commission has determined the claim. A withdrawal must be made in writing in accordance with section 8 of the Act. However, where a person withdraws a claim they are not prohibited from lodging a subsequent claim.

Subsection 6(5) provides that a request for review of a decision, under section 33 of the Act, must contain the name and address of the person requesting the review, the details of the decision being reviewed and the grounds for the review. Where the request for review of a decision is made on behalf of another person, the request is to include the name and address of the person on whose behalf the request is made, the details of the decision being reviewed and the grounds for the review.

Section 33 of the Act provides that a claimant who is dissatisfied with any of the following decisions of the Commission may request the Commission to review the decision:

- a decision of the Commission in relation to a claim under section 9 for a determination that the claimant is an eligible person;
- a decision of the Commission under section 12 revoking a determination that the claimant is an eligible person;
- a decision of the Commission in relation to a claim under section 24 for a determination that the claimant is entitled to be paid travelling expenses under Part 3 of the Act.

The request must be made within 3 months after the claimant was notified of the decision and must be made in accordance with section 8 of the Act.

Subsection 6(6) provides that a notice to withdraw a request for review of a decision, under section 37 of the Act, must contain the name and address of the person withdrawing the request and the details of the original decision for review. Where the notice to withdraw a request for review of a decision is made on behalf of another person, the notice is to include the name and address of the person on whose behalf the request to withdraw a review is made and the details of the original decision.

Section 37 of the Act provides that the person who requested a review under section 33 may, at any time before the Commission determines the request, withdraw the request for review in writing. However, where a person withdraws their request for review of a decision, they are not prohibited from lodging a subsequent review of the decision.

For clarity, the additional procedures must also adhere to the requirements of section 5T of the VEA as provided for under subsection 5(2) of this instrument.

Section 7 – Other procedures

Subsection 7(1) provides that a claim, application, request or notice under the Act (claim) may be made or given by the person eligible to be granted the benefit under the Act to which the claim relates. A claim, application, request or notice may also be made or given by another person on behalf of the person eligible to be granted the benefit with the approval of that person or the Commission.

Subsection 7(2) provides that if a person is eligible to be granted a benefit under the Act and is unable, by reason of physical or mental ailment, to approve a person to make a claim for that benefit on his or her behalf, the Commission may approve a person to make the claim on his or her behalf. This provision ensures that eligible persons are not disadvantaged in having a claim made on their behalf where they are unable to approve another person to act on their behalf due to an ailment (including a disability).

Subsection 7(3) provides that if a claim for a benefit under the Act is made by a person on behalf of another person, the other person on whose behalf the claim is made, and not the person making the claim on behalf of that other person, is to be treated as the claimant. This provision ensures that the eligible person is the claimant even where a claim was made by another on their behalf.

Subsection 7(4) provides that where a person makes a claim for a benefit under the Act, but it was not made in accordance with the appropriate form and they subsequently make another claim in accordance with the appropriate form - before they are notified by the Department to make a subsequent claim or within three months of being notified – the Commission may accept the subsequent claim as if it were made on the day the claim was received by the Department.

This subsection enables the Commission to treat a subsequent claim where the first claim did not meet the requirements for making a claim as having been made on the date when the first claim was received by the Department.

For clarity, the other procedures must also adhere to the requirements of section 5T of the VEA as provided for under subsection 5(2) of this instrument.