

EXPLANATORY STATEMENT

Treatment Benefits (Special Access) (Modifications of the Repatriation Pharmaceutical Benefits Scheme) Instrument 2019

(Instrument 2019 No. R18)

EMPOWERING PROVISION

Section 20 of the *Treatment Benefits (Special Access) Act 2019*.

PURPOSE

The attached instrument (Instrument 2019 No. RC18) modifies the Repatriation Pharmaceutical Benefits Scheme (RPBS) for the purposes of the *Treatment Benefits (Special Access) Act 2019* (Treatment Benefits Act). The RPBS, in force under section 91 of the *Veterans' Entitlements Act 1986* (VEA), sets out the circumstances in which the Repatriation Commission (Commission) may arrange for pharmaceutical benefits to be provided to veterans or their dependants at a concessional rate. The RPBS is a disallowable instrument for the purposes of the *Legislative Instruments Act 2003*.

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.

Under section 20 of the Treatment Benefits Act, the RPBS applies to the provision of pharmaceutical benefits in connection with the treatment of eligible persons under that Act. Subsection 20(2) of the Treatment Benefits Act enables the Commission to prepare written modifications of the RPBS which will then apply for the purposes of that Act. A modification is an alteration to the text of a law that is not permanent or only applies to particular locations or cases. Modifications have effect as if they were amendments, but do not actually amend the principal legislation. Modification of the RPBS is necessary for the application of that Scheme to the Treatment Benefits Act as treatment under that Act is restricted to treatment for a different class of persons than those eligible under the VEA. Subsection 20(5) of the Treatment Benefits Act provides that a modification has no effect unless the Minister has, in writing, approved the instrument making the modification.

The RPBS, as modified by the attached instrument, sets out the circumstances in which the Commission may arrange for pharmaceutical benefits to be provided to eligible persons under the Treatment Benefits Act at a concessional rate. Members of CSMTs who are Australian residents are eligible persons under section 7 of the Treatment Benefits Act.

Eligible persons under the Treatment Benefits Act and the VEA simply show their pharmacist their Gold Card to receive medicines at the concessional patient contribution rate. Under the RPBS, an eligible person pays a patient contribution charge (co-payment) for each prescription. This is adjusted at the beginning of each year in line with inflation. The

maximum co-payment for 2019 is \$6.50 per prescription, until a person's combined family total reaches the Safety Net Limit/Threshold under the Safety Net Scheme.

The Safety Net Scheme is designed to protect a person if they require a large number of RPBS items. It ensures that a person does not pay concessional co-payments for more than the Safety Net Threshold in a calendar year, after which the prescriptions are free. The scheme is available to all Australians including Gold Card holders and their families.

The Safety Net Threshold is the total amount of money a person and their dependent family members pay for RPBS prescriptions and hospital medicines in a calendar year. The concessional Safety Net Limit for 2019 is \$390.00. After a person reaches this limit, their prescription-based medicines are free for the rest of the calendar year.

The provision of treatment for eligible CSMT members under the Treatment Benefits Act has been modelled on the provision of treatment available to persons eligible under the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006* (British Nuclear Test Act). The RPBS under the VEA was modified by the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) (Modifications of the Repatriation Pharmaceutical Benefits Scheme) 2017* (British Nuclear Test instrument) to apply to persons eligible for treatment under the British Nuclear Test Act.

The modifications of the RPBS, made by the attached instrument, are modelled on the modified RPBS made by the British Nuclear Test instrument. This will ensure consistency in providing the full range of pharmaceutical benefits available under the RPBS at a concessional rate to Gold Card holders under the Treatment Benefits Act and the British Nuclear Test Act.

The modifications of the RPBS are a legislative instrument. They will be effective upon registration on the Federal Register of Legislation and subject to the usual disallowance period of 15 sitting days for each House of Parliament.

CONSULTATION

Section 17 of the *Legislation Act 2003* requires a rule-maker to be satisfied, before making a legislative instrument that any consultation the rule-maker considered appropriate and reasonably practicable, has been undertaken.

Consultation was undertaken within the Department of Veterans' Affairs across 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 changes are beneficial in nature in terms of their impact on clients.

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 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 attached instrument modifies the RPBS so as to provide access to eligible persons under the Treatment Benefits Act to the full range of pharmaceuticals and dressings available under the RPBS at a concessional rate.

Conclusion

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

Darren Chester
Minister for Veterans and Defence Personnel
Rule-Maker

FURTHER EXPLANATION OF PROVISIONS

See [Attachment A](#).

FURTHER EXPLANATION OF PROVISIONS

The attached instrument modifies the application of the Repatriation Pharmaceutical Benefits Scheme (RPBS) to eligible persons under the Treatment Benefits Act. In preparing the modifications, the language of making amendments has been used because modifications have effect as if they were amendments. Accordingly, in the attached instrument:

- a reference to a provision in the RPBS being substituted, means the provision no longer applies to an eligible person under the Treatment Benefits Act but the substituted provision does;
- a reference to a provision in the RPBS being amended means the provision applies to an eligible person under the Treatment Benefits Act as specified by the amendment;
- a reference to a provision in the RPBS being omitted means the provision no longer applies to an eligible person under the Treatment Benefits Act.

The attached instrument does not amend the RPBS and is intended to be read alongside the RPBS. The same drafting approach was used for the modifications made to the RPBS by the British Nuclear Test instrument to apply the RPBS to persons eligible for treatment under the British Nuclear Test Act.

Section 1

This section provides the name of the instrument is the *Treatment Benefits (Special Access) (Modifications of the Repatriation Pharmaceutical Benefits Scheme) Instrument 2019*.

Section 2

This section provides the instrument commences on 1 July 2019.

Section 3

This section provides the authority for making the instrument is section 20 of the *Treatment Benefits (Special Access) Act 2019*.

Section 4

This section provides that the modifications to the RPBS made by the Schedule will take effect according to the terms of the items in the Schedule.

Schedule—Modifications of the Repatriation Pharmaceutical Benefits Scheme

Item 1 substitutes sections 1A to 2 of the *Repatriation Pharmaceutical Benefits Scheme* for new sections 1, 2 and 2A of the modified Repatriation Pharmaceutical Benefits Scheme.

New section 1 provides that the instrument, the *Treatment Benefits (Special Access) (Modifications of the Repatriation Pharmaceutical Benefits Scheme) Instrument 2019*, is the *Scheme*.

The *Scheme* is defined at **Item 8** as being the *Repatriation Pharmaceutical Benefits Scheme* as modified by the *Treatment Benefits (Special Access) (Modifications of the Repatriation Pharmaceutical Benefits Scheme) Instrument 2019*.

New section 2 provides that the *Scheme* is authorised by section 20 of the *Treatment Benefits (Special Access) Act 2019*.

New section 2A states that the purpose of the *Scheme* is to enable *Community Pharmacists* to supply *Pharmaceutical benefits* to *Eligible Persons*. This means that eligible persons are able to access pharmaceuticals and dressings available under the RPBS at a concessional rate.

Item 2 substitutes the section 3 definition of *Act* for the modified RPBS. The reference to the *Veterans' Entitlements Act 1986* is replaced with the *Treatment Benefits (Special Access) Act 2019*.

Item 3 omits the definition of *accepted disability* from section 3 of the modified RPBS. As the Treatment Benefits Act provides an *Eligible Person* with full non-liability health care, it is not appropriate to refer to a liability based definition.

Item 4 substitutes the section 3 definition of *Eligible Person* for the modified RPBS. The new definition of an *Eligible Person* means an eligible person within the meaning of the Treatment Benefits Act. Treatment for eligible persons under the Treatment Benefits Act is treatment for all conditions and diseases.

Item 5 omits the following section 3 definitions for the purposes of the modified RPBS:

- *income support payment*
- *income support payment under the Social Security Act 1991*
- *MRCA supplement*
- *pension supplement*
- *pharmaceutical allowance*
- *pharmaceutical reimbursement*.

These definitions are not required because they all relate to Part 5A (Pharmaceutical Reimbursement) of the *Repatriation Pharmaceutical Benefits Scheme*, which is not applicable for the purposes of the modified RPBS. Part 5A is omitted by Item 26.

Item 6 substitutes the definition of *Repatriation Health Card – For All Conditions* at section 3 of the modified RPBS.

The definition provides that a *Repatriation Health Card – For All Conditions* means an identification card, or written authorisation, provided by the Department of Veterans' Affairs to an *Eligible Person* in relation to treatment for all injuries or diseases.

Item 7 omits the following section 3 definitions for the purposes of the modified RPBS:

- *Repatriation Health Card – For Specific Conditions*
- *Repatriation Pharmaceutical Benefits Card*
- *revoked scheme*
- *RPBS*.

A definition of *Repatriation Health Card – For Specific Conditions* is not required as eligible persons under the Treatment Benefits Act will be issued with a *Repatriation Health Card – For All Conditions* from 1 July 2019.

The *Repatriation Pharmaceutical Benefits Card* (Orange Card) is not required under the *Scheme* because *Eligible Persons* will be entitled to a *Repatriation Health Card – For All Conditions* (Gold Card).

The definition of *revoked scheme* is no longer required because the modified RPBS does not use this term.

The definition of *RPBS* is not required. For the purposes of the modified RPBS, the term “Scheme” is used instead of “RPBS”.

Item 8 substitutes the section 3 definition of *Scheme* for the purposes of the modified RPBS. The new definition of “Scheme” means the *Repatriation Pharmaceutical Benefits Scheme* as modified by the *Treatment Benefits (Special Access) (Modifications of the Repatriation Pharmaceutical Benefits Scheme) Instrument 2019*.

Item 9 omits the section 3 definitions of *social security pension supplement* and *SRCA disability* for the purposes of the modified RPBS.

The definition of *social security pension supplement* is not relevant under the *Scheme* because Part 5A, where the term appears, is omitted at **Item 26** of the modified RPBS.

The definition of *SRCA disability* is not relevant under the *Scheme* because it is used within the definitions of “accepted disability” and “war-caused or defence-caused injuries or diseases”, both of which are omitted from this instrument.

Item 10 substitutes the section 3 definition of *Treatment Principles*. This is necessary because under the *Repatriation Pharmaceutical Benefits Scheme*, “*Treatment Principles*” means the written document prepared by the Repatriation Commission, approved by the Minister under section 90 of the *Veterans’ Entitlements Act 1986*.

The new definition of *Treatment Principles* means the *Treatment Principles* as modified by the *Treatment Benefits (Special Access) (Modifications of the Treatment Principles) Instrument 2019*.

Item 11 omits the following section 3 definitions for the purposes of the modified RPBS:

- *veterans supplement*
- *war widow/war widower pension*
- *war-caused or defence caused injuries or diseases*.

The definition of *veterans supplement* is not required under the modified RPBS because the payment is only payable to certain people under paragraph 118A(1)(c) the *Veterans’ Entitlements Act 1986*.

Under section 28 of the Treatment Benefits Act, eligible persons will be entitled to pharmaceutical supplement instead.

The definitions of *war widow/war widower* pension and *war-caused or defence-caused injuries or diseases* are not required under the modified RPBS because they only appear in definitions that are omitted by **Item 3** and **Item 5** of the modified RPBS.

Item 12 omits the words, “the RPBS” (wherever occurring) in the Note to section 16 of the modified RPBS and substitutes the words, “the *Scheme*”. This is consequential to the change made by **Item 7** where the RPBS definition was omitted.

Item 13 omits the words, “the Act” in subsection 16A(9) of the modified RPBS and substitutes it with “the *National Health Act 1953*.” Under the modified RPBS, “the Act” means the Treatment Benefits Act (see **Item 2**). However, the reference should be to the *National Health Act 1953* instead.

Item 14 omits the words, “*RPBS* listed” in section 17 of the modified RPBS and substitutes the words, “*RPBS Schedule* listed.” This is necessary because drugs are listed in the RPBS Schedule to the *Repatriation Pharmaceutical Benefits Scheme*, not in the *Repatriation Pharmaceutical Benefits Scheme*.

Item 15 omits the words “a *Repatriation Health Card – For Specific Conditions* or a *Repatriation Pharmaceutical Benefits Card*,” from paragraph 18(a) of the modified RPBS.

As treatment is available to eligible persons for all conditions, it is appropriate to modify paragraph 18(a) so that it refers to a *Repatriation Health Card – For All Conditions* (Gold Card) and removes references to the *Repatriation Health Card – For Specific Conditions* (White Card) and a *Repatriation Pharmaceutical Benefits Card*.

Item 16 makes similar changes as made at **Item 15**, in relation to paragraph 18(b) of the modified RPBS.

Item 17 is a consequential change that flows from **Item 18**. As Note 2 is omitted, there is no longer a need to refer to “Note 1.” Instead, Note 1 will now read, “Note.”

Item 18 omits Note 2 after section 21 of the modified RPBS. The Note is not relevant for the modified RPBS

Items 19 – 25 modifies the operation of section 23 of the modified RPBS, which relates to expenses incurred in obtaining Pharmaceutical Benefits while not in receipt of a pharmaceutical supplement.

Section 23 of the RPBS enables the Repatriation Commission to reimburse a person’s pharmaceutical expenses under certain circumstances, up to the amount that the person would have been entitled to receive, had they received the pharmaceutical supplement under section 28 of the Treatment Benefits Act.

This instrument makes some necessary modifications to section 23 of the RPBS, to ensure that it will work in the context of the Treatment Benefits Act.

Item 19 substitutes the heading to section 23. The words, “pharmaceutical allowance” at the end of the heading are replaced with “pharmaceutical supplement.” This is necessary because eligible persons will be entitled to the pharmaceutical supplement instead of the pharmaceutical allowance under the Treatment Benefits Act.

Item 20 omits the words, “allowance under paragraph 118A(1)(c) of the *Veterans’ Entitlements Act 1986*,” and substitutes the words, “supplement under section 28 of the Act” in subsection 23(1). As outlined above, eligible persons will be entitled to a pharmaceutical supplement under section 28 of the Treatment Benefits Act.

Item 21 omits the word, “allowance,” in paragraph 23(1)(a) and substitutes the word, “supplement”. This reflects the fact that eligible persons under the Treatment Benefits Act will be entitled to a pharmaceutical supplement.

Item 22 omits the words “and after 30 June 1992” from paragraph 23(1)(b) of the RPBS. This date is not required for the purposes of the modified RPBS.

Item 23 omits the word “allowance” in paragraph 23(1)(c) and substitutes the word “supplement”. As noted above, this reflects the fact that eligible persons under the Treatment Benefits Act will be entitled to a pharmaceutical supplement, rather than the pharmaceutical allowance.

Item 24 omits the words, “of pharmaceutical allowance,” in subsection 23(1) and substitutes the words, “of pharmaceutical supplement”. As outlined above, eligible persons will be entitled to a pharmaceutical supplement under the Treatment Benefits Act.

Item 25 omits the words, “of the allowance,” in subsection 23(1) and substitutes the words, “of the supplement”. Eligible persons will be entitled to a pharmaceutical supplement under the Treatment Benefits Act.

Item 26 omits all of Part 5A of the RPBS for the purposes of the modified RPBS. Part 5A relates to Pharmaceutical Reimbursement and is not applicable for the purposes of persons eligible for treatment under the Treatment Benefits Act.