

# EXPLANATORY STATEMENT

## Treatment Benefits (Special Access) Rules 2019

Instrument 2019 No. M20

### EMPOWERING PROVISIONS

Section 63 of the *Treatment Benefits (Special Access) Act 2019*

#### PURPOSE

The *Treatment Benefits (Special Access) Act 2019* (the Treatment Benefits Act) enables members of Australian Civilian Surgical Medical Teams (CSMTs) that provided medical aid, training and treatment to local Vietnamese people during the Vietnam War to receive additional health support through a Department of Veterans' Affairs (DVA) Health Card for all Conditions (Gold Card). Eligible CSMT members will have access to treatment for any injury or disease, including those unrelated to their CSMT work performed in South Vietnam.

Section 63 of the Treatment Benefits Act provides for the making of rules by the Minister by legislative instrument.

Subsection 63(1) provides that the rules may prescribe matters required or permitted by this Act to be prescribed by the rules, or matters necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subclause 63(2) provides that rules may not do any of the following:

- create an offence or civil penalty;
- provide powers of arrest or detention, or entry, search or seizure;
- impose a tax;
- set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
- directly amend the text of this Act.

This reflects the types of matters that, by way of policy, should not be prescribed in rules.

The purpose of the rules is to set out the conditions an eligible person and any attendant must satisfy in order to be paid travel expenses in respect of travel for treatment of the eligible person. The rules also set out the levels of payments that may be made and provide for associated matters (e.g. indexation of payments). Travel expenses are reimbursements of the costs of transport, accommodation and meals incurred by an eligible person and any attendant in the course of travelling for treatment.

CSMT members eligible for medical treatment under the Treatment Benefits Act will have access to all medical services available under the Gold Card. 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 *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Regulations 2007* (British Nuclear Test Regulations) provide for travel expenses in relation to persons eligible for treatment under the British Nuclear Test Act. The rules have been modelled on the British Nuclear Test regulations. This will ensure consistency for travel expenses related to treatment provided to Gold Card holders under the Treatment Benefits Act and the British Nuclear Test Act.

Details of the rules are included in Attachment A.

## **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 DVA 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 eligible persons under the Treatment Benefits Act.

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 conditions an eligible person under the Treatment Benefits Act and any attendant must satisfy in order to be paid travel expenses in respect of travel for treatment and the levels of payments of those travelling expenses. Travel expenses are reimbursements of the costs of transport, accommodation and meals incurred by an eligible person and any attendant in the course of travelling for treatment of an eligible person. The treatment for all conditions is provided to an eligible person 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”.

Darren Chester  
Minister for Veterans and Defence Personnel  
Rule-Maker

### **FURTHER EXPLANATION OF PROVISIONS**

See: [Attachment A](#)

## Attachment A

### **FURTHER EXPLANATION OF PROVISIONS**

#### Section 1 – Name

This section provides the name of the instrument is the *Treatment Benefits (Special Access) Rules 2019*.

#### Section 2 – Commencement

This section provides the instrument commences on 1 July 2019.

#### Section 3 – Authority

This section sets out section 63 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 rules.

#### Section 5 – Composition

Subsection 5(1) defines “travel expenses” as amounts required to reimburse in whole or part, expenditure on:

- transport
- accommodation; or
- meals.

The expenditure must have been “necessarily incurred” by or on behalf of an eligible person in connection with obtaining treatment, see section 22 of the Act.

Subsection 5(2) provides that the amount of travelling expenses payable to an eligible person is not to exceed an amount calculated by the Repatriation Commission (the Commission) as the cost of travel by the most appropriate form of transport over the relevant distance.

Subsection 5(2) is subject to subsections 5(3) and 5(4).

Subsection 5(3) provides that if the expenditure by an eligible person on travel is less than the amount calculated by the Commission then the person’s travel expenses are to be an amount equal to the person’s expenditure.

Subsection 5(4) enables the parking fees of an eligible person to be paid if the fees were necessarily incurred at or near the place to which the person travelled for treatment.

#### Section 6 – Forms of transport

Section 6 provides the criteria by which the Commission is to determine the most appropriate form of transport over the relevant distance.

## Section 7 – Relevant distance

Section 7 sets out the means for calculating “relevant distance” for travel for treatment.

An eligible person will be eligible to travel expenses for travel by the most appropriate form of transport over the relevant distance (subsection 5(2)).

Paragraph 7(a) applies to travel for treatment where the distance for the travel is more than 50 km. The effect of this paragraph is that the relevant distance for travel (in respect of which travel expenses are reimbursable) is, if the distance from the residence of the eligible person to a treatment location is more than 50 km, the greater of:

- the distance determined by the Commission to be the distance between the eligible person’s residence and the closest practical treatment location; and
- 50 km.

If an eligible person travels for treatment over a distance not exceeding 50 kms, the relevant distance is the distance from the person’s residence to the treatment-location (regardless of whether the treatment-location is the closest practical treatment-location).

## Section 8 – Cost of transport

Section 8 provides that the cost of transport for travel between two places over the most direct route between the places is:

- for travel by private motor vehicle – 36 cents per kilometre and the costs necessarily incurred for tolls; and
- for travel by other means – the costs necessarily incurred by the eligible person.

The note in section 8 refers the reader to subsection 22(4) of the Act which provides that travelling expenses incurred for travel outside Australia are not payable.

The example in section 8 illustrates the travelling expenses payable where an eligible person and their attendant drive by private motor vehicle to an appointment 100km from home and return on the same day.

## Section 9 – Accommodation and meals

Subsection 9(1) prescribes the amounts to be reimbursed for the costs of accommodation and meals in commercial, subsidised and private accommodation namely:

- for commercial accommodation not in a capital city (e.g. motel, hotel) - \$148.60.
- for commercial accommodation in a capital city - \$176.50.
- for subsidised accommodation (e.g. hostel) - \$92.80.
- for private accommodation (e.g. private home) - \$46.40.

Subsection 9(2) prescribes the amount of \$241.70 to be reimbursed for the costs of commercial accommodation (including meals) for a night where an eligible person shares the accommodation with his or her attendant.

Subsection 9(3) sets out the amounts that are to be reimbursed for the cost of meals during the course of travel on a day on which overnight accommodation is not required, namely:

- where the distance from the eligible person's residence to the relevant destination exceeds 50 km but not 200 km - \$14.80 each day.
- where the distance from the eligible person's residence to the relevant destination exceeds 200 km - \$30.00 each day.

The example in section 9 illustrates the travelling expenses payable where an eligible person and their attendant drive by private motor vehicle to an appointment 300 km from home, stay overnight in non-shared commercial accommodation and return the next day.

### Section 10 – Attendant entitlements

Subsection 10(1) describes the travel expenses payable to an attendant in addition to those payable when the attendant travels with an eligible person. Additional travel expenses are payable for an attendant to return home after accompanying an eligible person to an institution (e.g. hospital) where the eligible person has been admitted for treatment. Travel expenses are also payable for an attendant to return to the institution to accompany the eligible person on their homeward journey after discharge.

Subsection 10(2) provides that the travel expenses payable to an attendant under subsection 10(1) are based on the same mode of transport as that used to accompany the eligible person and include any applicable amounts for accommodation and meals.

Subsection 10(3) applies to the situation where an attendant stays in commercial, subsidised or private accommodation while the eligible person the attendant accompanies is in hospital or some other institution. In this situation the travelling expenses payable to the attendant are worked out in accordance with subsection 10(4).

Subsection 10(4) sets out the method of calculating the payment under subsection 10(3) (known in practice as the 'contributing allowance') for the accommodation costs of an attendant who remains near the hospital or other institution to which the eligible person has been admitted. This payment is the lesser of:

- the actual cost of the attendant's accommodation while the eligible person is in the institution; and
- the transport expenses (excluding accommodation and meal costs) that would have been payable to the attendant if the attendant had returned home and returned to the institution using a private motor vehicle.

The example in section 10 illustrates the travelling expenses payable where an eligible person and their attendant drive by private motor vehicle to an appointment in a capital city 300 km from home and stay overnight in non-shared commercial accommodation. The eligible person is admitted to a hospital the next morning. The attendant returns home and comes back to collect the eligible person, staying in commercial accommodation the night before the eligible person is discharged.

## Section 11 – Travelling expenses to more than one location within the same city or town

Section 11 provides for the situation where an eligible person travels to different treatment-locations in the same city or town (treatment city or town). In this situation, the travel expenses:

- subject to section 7 of this instrument, for the journey from the person’s residence (whether or not in the treatment city or town) to the first treatment location in the treatment city or town and from the last treatment location to the person’s residence, are to be the greatest amount payable under section 22 of the Act; and
- for the journey from one treatment location in the treatment city or town to the next are to be the greatest amount payable under section 22 of the Act.

The example in section 11 illustrates how travelling expenses are calculated when an eligible person travels to different treatment locations in the same city or town. The person will be paid for the travel from the person’s home (whether in that city or town or another city or town) to the first treatment location and for travel from the last treatment location to the person’s home, and for the travel between the different treatment locations.

Further, the example illustrates how section 7 applies where the distance travelled from the person’s home to a treatment location is more than 50km. In such a case, the Commission is required under section 7 to determine the distance between a person’s residence and the closest practical treatment location in determining the amount of travelling expenses.

In the example, the person travels 90 km from their residence in a country town to a medical practice in a capital city for treatment. They then travel 10 km to another medical practice in that capital city for a medical examination. The person then returns home later that day travelling another 100km. They claim travelling expenses for 200 km in total (90+10+100km). The Commission determines under section 7 that the distance between the person’s residence and the closest practical treatment location is 60km. In such a case, the Commission will seek additional information from the person about why they travelled to a treatment location that was not the closest practical treatment location.

## Section 12 – Annual increase in rates

Section 12 requires travel expense rates to be increased on the anniversary of 1 July 2019 in accordance with section 13. Those travel expense rates are the private motor vehicle rate (section 8) and the rates for accommodation and meals (section 9).

## Section 13 – Calculation of increase

Section 13 establishes the method for calculating increases for the various rates of travel expenses payable under the rules using the ‘All Groups Consumer Price Index’.

If for a relevant financial year, the latest CPI number is greater than the earlier CPI number, a rate is taken to increase, on 1 July of the next financial year, in accordance with the formula:

$$\frac{\text{Relevant rate} \times \text{Latest CPI number}}{\text{Earlier CPI number}}$$

where:

*CPI number* means the All Groups Consumer Price Index number (that is, the weighted average of the 8 Australian capital cities) published by the Australian Statistician.

*earlier CPI number*, for a financial year, means the CPI number for the last March quarter before the beginning of the financial year.

*latest CPI number*, for a financial year, means the CPI number for the last March quarter before the end of the financial year.

*rate* means a rate prescribed by section 8 or subsection 9(1), (2) or (3).

*relevant financial year* means a financial year beginning on or after 1 July 2019.

*relevant rate*, for a financial year, means the rate applying in the financial year.

The earliest a rate increase could take place is 1 July 2020.

The section contains provisions for rounding up amounts calculated using the formula.

The section provides that if the Australian Statistician publishes for a particular March quarter a CPI number in substitution for a CPI number previously published by the Australian Statistician for the quarter, the publication of the later CPI number is to be disregarded for the section. In addition, the section provides that if the Australian Statistician changes the reference base for the Consumer Price Index, then, in applying the section after the change is made, regard is to be had only to numbers published in terms of the new reference base.