

## EXPLANATORY STATEMENT

### *Veterans' Entitlements Act 1986* *Military Rehabilitation and Compensation Act 2004*

#### **Veterans' Affairs Pharmaceutical Benefits Schemes Amendment Determination 2021**

Instrument 2020 No. R43/MRCC43

#### **Authority**

Subsection 286(5) of the *Military Rehabilitation and Compensation Act 2004* (the MRCA) and subsection 91(4) provide that the Military Rehabilitation and Compensation Commission (MRCC) and the Repatriation Commission respectively may vary the *MRCA Pharmaceutical Benefits Scheme* (MRCA PBS) and the *Repatriation Pharmaceutical Benefits Scheme* (RPBS) (the Schemes).

The proposed variations to the Schemes are to correct a longstanding error which refers to a provision of the *Health Act 1953*.

#### **Purpose**

The proposed instrument will correct a minor but longstanding error in section 40A of the Schemes.

The error was made when section 40A was inserted into the Schemes as new Part 5B in amendments to earlier versions of the Schemes, the *Repatriation Pharmaceutical Benefits Scheme* (Instrument No.12 of 1995) and the *MRCA Pharmaceutical Benefits Scheme* (Instrument 2004 No. M22) by the *MRCA Pharmaceutical Benefits Scheme (Under Co-payment Data Collection) Determination 2012* (Instrument No. M20/2012) [F2012L00743] and the *Veterans' Entitlements (Repatriation Pharmaceutical Benefits Scheme – Under Co-payment Data Collection) Instrument 2012* (Instrument No. R19/2012) [F2012L00744].

The amendments were made as a consequence of a change in Commonwealth policy concerning the provision of data from pharmacists for those items dispensed by pharmacies where the dispensed price is less than or equal to the co-payment which would otherwise be payable for subsidised items.

Previously pharmacists had not been required to give information about un-subsidised supplies of pharmaceuticals where there is no charge against the Commonwealth.

Section 40A provides for the disclosure of the information to the Department of Health to be authorised by the Schemes where a number of conditions have been met:

- the pharmacist must not have claimed any part of the dispensing price of the pharmaceutical from the Commissions or the Department of Veterans' Affairs; and
- the dispensing price of the pharmaceutical must be less than or equal to the co-payment the *Eligible Person* would have otherwise needed to pay for the pharmaceutical if it had been sold at the subsidised, instead of discounted price; and
- the information is given in accordance with the requirements of section 98C of the *National Health Act 1958*, to the extent they can be applied, as if the

information being given under the Scheme to the Secretary of the Department of Health is being given to the Secretary under that provision.

The reference to “section 98C” was incorrect with “section 98AC” being the relevant provision. Subsection 98AC(4) empowers the Minister for Health, by legislative instrument, to make rules specifying the information to be given (paragraph 98AC(4)(a)) and the procedures for giving it (paragraph 98AC(4)(b)).

### **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.

External consultation was not required for this measure as there is no impact on pharmacists or those eligible to receive pharmaceutical benefits under the Schemes.

### **Regulatory Impact**

None.

### **Commencement**

The determination will commence the day after the instrument is registered.

This Instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

***VETERANS' AFFAIRS PHARMACEUTICAL BENEFITS SCHEMES  
AMENDMENT DETERMINATION 2021 (Instrument 2020 No. R43/MRCC43)***

**1 Name**

This section provides that this Instrument is the *Veterans' Affairs Pharmaceutical Benefits Schemes Amendment Determination 2021*.

**2 Commencement**

This section states that this instrument commences the day after it is registered.

**3 Authority**

This section states that this instrument is made under section 286 of the *Military Rehabilitation and Compensation Act 2004* and section 91 of the *Veterans' Entitlements Act 1986*.

**4 Schedules**

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## **Schedule – Amendments**

### **MRCA Pharmaceutical Benefits Scheme**

**Item 1** replaces the references (both occurring) to “section 98C” with references to “section 98AC”.

### **Repatriation Pharmaceutical Benefits Scheme**

**Item 2** replaces the references (both occurring) to “section 98C” with references to “section 98AC”.

## **Statement of Compatibility with Human Rights**

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

### ***Veterans' Affairs Pharmaceutical Benefits Schemes Amendment Determination 2021***

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*.

#### **Overview of the Legislative Instrument**

This instrument provides for amendments to the legislative instruments, the *Repatriation Pharmaceutical Benefits Scheme (RPBS)* and the *MRCA Pharmaceutical Benefits Scheme (MRCA PBS)*. The MRCA PBS and the RPBS are benefit schemes which provide for subsidised access for veterans and their dependants to medicines.

The amendments will correct an error in Schemes concerning the reference to section 98AC of the *National Health Act 1953*.

#### **Human rights implications**

This legislative instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

The legislative instrument is compatible with human rights as it does not raise any human rights issues.

**Natasha Cole**  
**Acting Deputy Secretary**  
**Delegate for the Minister for Veterans' Affairs**  
**Rule-Maker**