

EXPLANATORY STATEMENT

Safety, Rehabilitation and Compensation (Defence-related Claims) (Defence, Veterans' and Families' Acute Support Package) Amendment (2023 Expansion of Acute Support Package) Instrument 2023

EMPOWERING PROVISIONS

Section 41B of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (the **DRCA**).

PURPOSE

The *Safety, Rehabilitation and Compensation (Defence-related Claims) (Defence, Veterans' and Families' Acute Support Package) Amendment (2023 Expansion of Acute Support Package) Instrument 2023* (the **Instrument**) sets out provisions for, and in relation to, the extension of the granting of an acute support package of assistance or benefits to grandparents who are caring for the children of a deceased employee for the purposes of the amendments to the DRCA made by the *Veterans' Affairs Legislation Amendment (Miscellaneous Measures No.2) Act 2023* (the **Amendment Act**). In addition, the Instrument also provides clarification that related persons can apply for and be eligible for the benefits and assistance under the acute support package.

Section 41B of the DRCA provides vulnerable veterans (in this case employees and deceased employees), their families and related persons with more flexible support through the acute support package of benefits and assistance. The acute support package provides choice and flexibility for families to access the help that will be most beneficial to them. A support plan, developed between the family or the specified person and a Department of Veterans' Affairs (**DVA**) case manager, will set out the services on which the capped amount may be spent, based on individual family needs. A support plan must then be approved by a delegate.

The *Safety, Rehabilitation and Compensation (Defence related Claims) (Defence, Veterans' and Families' Acute Support Package) Instrument 2022* (the **Principal Instrument**) implemented and provided details of the acute support package. The Principal Instrument sets out the the assistance and benefits that form part of the acute support package including the provision of child care services, counselling, household assistance, education, transport and equipment services to veterans and their families. It also provides for additional criteria for eligibility to be granted assistance and benefits under the acute support package.

The Principal Instrument also provides that for the purposes of the acute support package, the Military Rehabilitation and Compensation Commission (the **MRCC**) must prepare a support plan for the eligible person which outlines among other things, the persons who will be provided with assistance or benefits under the support plan, the kinds of assistance or benefits that will be provided, and the periods during which the assistance or benefits will be provided. The support plan can be varied and revoked.

CONSULTATION

The acute support package was implemented in response to the Senate Foreign Affairs, Defence and Trade References Committee's report *The Constant Battle: Suicide by Veterans*. It also responds to Recommendation 19.2 of the Productivity Commission's inquiry report *A Better Way to Support Veterans*. The Principal

Instrument also addressed feedback received through the Female Veterans and Veterans' Families Forum. In addition, the amendments made by the Instrument clarifies the entitlement of related persons and the amendments consequential on the amendments made by the Amendment Act. Therefore, no further additional consultation was required in relation to this Instrument.

DETAILS/OPERATION

The Instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment B**.

The Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

MERITS REVIEW

Section 60A of the DRCA provides that Part 6 (Reconsideration and review of determinations) of the DRCA applies to decisions made by the MRCC under the Instrument. This section applies to decisions to be made by the MRCC under this Instrument. In effect, this makes a decision of the MRCC under the Instrument and the Principal Instrument reviewable, either by reconsideration of the MRCC or on application, by review of the Administrative Appeals Tribunal.

FURTHER EXPLANATION OF PROVISIONS

Details of the amendments made by Instrument including commencement details are set out in **Attachment A**.

Attachment A

Details of the *Safety, Rehabilitation and Compensation (Defence-related Claims) (Defence, Veterans' and Families' Acute Support Package) Amendment (2023 Expansion of Acute Support Package) Instrument 2023*

Part 1 - Preliminary

Section 1 - Name

This section provides that the name of the Instrument is the *Safety, Rehabilitation and Compensation (Defence-related Claims) (Defence, Veterans' and Families' Acute Support Package) Amendment (2023 Expansion of Acute Support Package) Instrument 2023* (the **Instrument**).

Section 2 - Commencement

This section sets out the date on which the Instrument commences operation. Section 2 provides that the Instrument commences on 1 July 2023.

Section 3 - Authority

This section provides that the legislative authority for the Instrument is section 41B of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (the **Act**).

Section 4 – Schedule

This section provides that the instrument that is specified in the Schedule to this Instrument is amended as set out in the applicable items in the Schedule, and any item has effect according to its terms. In essence, Section 4 provides that the *Safety, Rehabilitation and Compensation (Defence related Claims) (Defence, Veterans' and Families' Acute Support Package) Instrument 2022* (the **Principal Instrument**) is amended as set out in the applicable items in Schedule 1.

Schedule 1—Amendments

Safety, Rehabilitation and Compensation (Defence related Claims) (Defence, Veterans' and Families' Acute Support Package) Instrument 2022 (Principal Instrument)

These amendments amend the Principal Instrument.

Item 1 – Section 4

This item repeals section 4 and substitutes an amended section 4.

Section 4 is a simplified outline of the Principal Instrument. The simplified outline is included to assist the reader to understand the substantive provisions of this Instrument; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive provisions of this Instrument to which the outline relates.

New section 4 now includes a reference to a related person of the employee and a parent or step-parent of a deceased employee, or a parent or step-parent of another person who was the spouse of an employee at any time before the employee's death. These persons would be eligible for the benefits and assistance under the acute support package if they meet certain eligibility criteria and the MRCC is satisfied that it is appropriate to grant the package to assist the person to adjust to new and challenging life circumstances (refer to section 6 of the Principal Instrument).

Item 2 -after definition of *acute support package* in section 5 of the Principal Instrument

This item inserts a reference to the definition of related person under subsection 4(1) of the DRCA.

Item 3 – Amendment to subsection 6(1)

This item amends subsection 6(1) consequential to the amendments made by Item 4 which inserts new subsections (5) and (6).

Item 4 – At the end of subsection 6(4), addition of new subsections (5) and (6)

Section 6 provides that the MRCC may decide to grant an acute support package to a person provided that they meet certain eligibility requirements and if satisfied that it is appropriate to grant assistance or benefits under the acute support package to assist the person to adjust to new and challenging life circumstances.

Subsection 6(1) currently provides that the MRCC may decide to grant a package, otherwise known as an acute support package, of assistance or benefits to a person provided that:

- (a) the person is a person covered by subsections (2), (3) or (4); and
- (b) if the person has previously been granted an acute support package, either the period during which the assistance or benefits for that acute support package has ended or the support plan has been revoked; and
- (c) the MRCC is satisfied that it is appropriate to grant an acute support package to the person to assist the person to adjust to new and challenging life circumstances.

The amendment to section 6 made by this Item specifies additional persons that can be granted assistance and benefits. In particular, it adds a related person of the

employee at subsection (5) and a parent or step-parent of a deceased employee, or the parent or step-parent of another person who was the spouse of an employee at any time before the employee's death at subsection 6(6). In effect this makes it clear that a related person of the employee can apply for the grant of an acute support package of assistance and benefits, on their own. The addition of subsection (6) reflects the extension to grand parents of children of deceased employees as implemented in Schedule 4 to the *Veterans' Affairs Legislation Amendment (Miscellaneous Measures No.2) Act 2023* (the **Amendment Act**).

Paragraph 6(5)(e) adds additional eligibility criteria in relation to a related person. Paragraph (e) provides that the MRCC must be satisfied that the crisis, or the risk of experiencing, crisis, is impacting or involving the employee or is connected to the employee's wellbeing. The additional criteria support the objective of the acute support package that assistance and benefits are provided to veterans and their families, and that the eligibility of the related person is linked to the specified eligibility criteria being met by the employee.

New subsection (6) provides for the eligibility of grandparents caring for the deceased employee's children. New subsection (6) provides that the grandparent must be:

- (a) a parent or step-parent of:
 - (i) a deceased employee; or
 - (ii) another person who was the spouse of an employee at any time before the employee's death;
- (b) the deceased employee's death occurred no more than 2 years before the day the person's eligibility for an acute support package is determined;
- (c) the deceased employee's death resulted from injury;
- (d) either:
 - (i) the injury arose out of or occurred in the course of the employee's employment; or
 - (ii) the MRCC is satisfied that the deceased employee's death was a suicide that arose out of or occurred in the course of the employee's employment;
- (e) the MRCC is satisfied that the person is parenting a child of the deceased employee;
- (f) at the time the person's eligibility for the package is determined, the child is under 18 years;
- (g) the MRCC is satisfied that the person, or the child, is experiencing, or is at risk of experiencing, crisis.

Item 5 – Paragraph 7(3)(b)

Section 7 provides that the MRCC must develop a support plan. Subsection 7(3) provides that a person must not be included in a support plan for an acute support package for the purposes of paragraph 7(2)(a) unless certain circumstances exist. The effect of this provision is to set out who can be included in the support plan for the acute support package.

This item repeals the current paragraph 7(3)(b) of the Instrument. As the related person can apply for the grant of assistance and benefits under the acute support package without the need for the employee to be granted an acute support package, paragraph (b) is no longer required. The related person of the employee is covered by

paragraph 7(3)(a) as a person who, if granted a package can be included in the support plan for an acute support package.

Item 6 - At the end of paragraph 7(3)(d) a new paragraph (e) is added.

New paragraph 7(3)(e) relates to grandparents who are caring for children of deceased employees and is consequential on the addition of these persons as being able to be eligible for the grant of an acute support package assistance or benefits by the MRCC. New paragraph (7)(3)(e) provides that:

- (e) if the package has been granted to a person who is a parent or step-parent of a deceased employee, or a parent or step-parent of another person who was the spouse of an employee at any time before the employee's death; and
 - (i) the MRCC is satisfied that the person is parenting a child of the deceased employee who is under 18; and
 - (ii) the MRCC is satisfied that the person, or the child, is experiencing, or is at risk of experiencing, crisis.

Item 7 - Paragraph 8(3)(a)

Section 8 provides for the variation and revocation of a support plan.

This item repeals current paragraph 8(3)(a) and substitutes a new paragraph 8(3)(a).

Section 8 provides for the variation and revocation of a support plan. Subsection 8(3) provides that the MRCC may revoke a support plan in certain circumstances. New paragraph (a) reflects the addition of new subsections 6(5) and (6) specifying related persons of an employee and grandparents who are caring for the children of deceased employees for their eligibility, and assuming eligibility criteria are satisfied, for assistance and benefits under the acute support package. These persons are persons in which a support plan can be prepared, if the MRCC is satisfied that it is appropriate to do so, and in which a support plan can also be revoked in specified circumstances in relation to the person.

Item 8- Paragraph 9(1)(a)

This item amends paragraph 9(1)(a) of the Principal Instrument to include a reference to a related person of an employee.

Section 9 provides for the total financial value of assistance or benefits that may be included in the support plan. The total value and total annual cap can be used for any of the services or assistance listed in subsection 7(4). Additional benefits are provided under sections 10 (additional counselling) and 11 (additional assistance or benefits in relation to children).

Currently, paragraph 9(1)(a) of the Principal Instrument provides that the total value of assistance or benefits for an employee or former spouse of an employee is a maximum of \$7,500 for one or more period during which the assistance or benefits add up to 12 months (the first year) and a maximum of \$5,000 for one or more periods during which the assistance or benefits add up to a further 12 months (the second year). That is, the assistance provided in subsection 9(1) does not have to be accessed during one continuous period of time, the employee or former spouse of an employee can access support included in a support plan to cover multiple periods of crisis. However, limitations and the ending of support in relation to the overall period covering the assistance or benefits are set out in subsection 9(2).

The amendment makes it clear that an eligible related person of an employee is entitled to the total value of assistance specified in paragraph 9(1)(a).

Item 9 - At the end of paragraph 9(1)(b)

An additional paragraph 9(1)(c) is added to make it clear that a support plan for a person who is an eligible grandparent taking care of children of deceased employees must be a maximum of \$27,835 every 12 months for a continuous 24 month period starting on the day the support plan comes into effect.

Item 10 - Paragraph 9(2)(a)

This item repeals the current paragraph 9(2)(a) and substitutes it with a new paragraph (a). Subsection 9(2) provides for the ending of the period during which assistance or benefits is provided under section 9. Although the financial assistance provided under paragraph 9(1)(a) does not need to be accessed continuously for 24 months, the support plan prepared for the person and access to benefits ends immediately after the earlier of the end of the further 12 month period referred to in subparagraph (1)(a)(ii) or the end of the 48 month period starting on the day the support plan comes into effect. This means that persons who have been granted assistance under the acute support package generally have a maximum period of 4 years to use the assistance or benefits.

New paragraph 9(2)(a) takes into consideration the changes made under section 6 in relation to the specific inclusion of a related person of an employee. This new paragraph makes it clear that a related person's (who is specified in a support plan) access to benefits ends immediately after the earlier of the end of the further 12 month period referred to in subparagraph (1)(a)(ii) or the end of the 48 month period starting on the day the support plan comes into effect.

Item 11 - Paragraph 9(2)(b)

Amendments are made in paragraph 9(2)(b) by this Item to include the grandparents taking care of the deceased employee's children. Under current paragraph (b), a spouse of a deceased employee, an eligible recipient, will receive the assistance over a continuous 24 month period. The total value of assistance or benefits for a spouse of a deceased employee is a maximum of \$27,835 for every 12 months for a continuous period of 24 months starting on the day the support plan comes into effect.

The amendment to paragraph (b) makes it clear that a person who is the parent or step-parent of a deceased employee, or a person who is a parent or step-parent of another person who was the spouse of an employee at any time before the employee's death, if eligible and a support plan is made for that person, will be entitled to a total maximum value or of \$27,835 for every 12 months for a continuous period of 24 months starting on the day the support plan comes into effect.

Item 12 -Subsection 10 (1)

Section 10 currently provides for additional counselling assistance to be included in a support plan to an employee or former spouse of an employee, in addition to those provided under section 9. The maximum amount of additional counselling that may be included in a support plan is 4 courses of counselling every 12 months for a continuous period of 36 months.

The 36 month period starts on the day after the relevant period referred to in paragraph 9(2)(a) ends. Currently, the counselling is available only after an employee or former spouse of an employee has received the total amount of assistance or

benefits for which they are eligible for the total period referred to in paragraph 9(2)(a). Amendment is made to include the related person of an employee. This means that additional counselling assistance can be included in a support plan for a related person.

Statement of Compatibility with Human Rights

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

Safety, Rehabilitation and Compensation (Defence-related Claims) (Defence, Veterans' and Families' Acute Support Package) Amendment (2023 Expansion of Acute Support Package) Instrument 2023

The 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*.

The Instrument engages and promotes the right to social security under article 9, and the right to health under article 12(1) of the *International Covenant on Economic Social and Cultural Rights* (ICESCR).

Right to social security

The right to social security is contained in article 9 of the ICESCR. The right to social security requires that a system be established under domestic law, and that public authorities must take responsibility for the effective administration of the system. The social security scheme must provide a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

The Instrument promotes the right to social security by providing employees and their families with additional support and services when faced with challenging circumstances.

Right to health

The right to health is contained in article 12(1) of the ICESCR. The right to health is the right to the enjoyment of the highest attainable standard of physical and mental health. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity.

The Instrument provides for counselling to veterans and their families. It will ensure that critical mental health support is provided to veteran and their families when experiencing challenging life situations.

Overview

The Instrument will enable the provision of targeted, flexible support to employees and their families managing challenging life circumstances. It provides intensive support to the employee and their families, complementing other services provided by the DVA and other Government services.

Conclusion

The attached Instrument is compatible with human rights because it promotes the right to social security and right to health.

MILITARY REHABILITATION AND COMPENSATION COMMISSION

Rule-Maker