

## EXPLANATORY STATEMENT

### Veterans' Entitlements (Defence, Veterans' and Families' Acute Support Package) Amendment (2023 Expansion of Acute Support Package) Instrument 2023

#### EMPOWERING PROVISIONS

Section 115S of the *Veterans' Entitlements Act 1986* (the *VEA*).

#### PURPOSE

The *Veterans' Entitlements (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 veteran for the purposes of the amendments to the VEA made by the *Veterans' Affairs Legislation Amendment (Miscellaneous Measures No.2) Act 2023* (the *Amendment Act*). In addition, the Instrument also makes it clear that related persons can apply for and be eligible for the benefits and assistance under the acute support package.

Section 115S of the VEA provides vulnerable veterans (in this case veterans and deceased veterans), 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 *Veterans' Entitlements (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 assistance and benefits that form part of the acute support package such as 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 Repatriation Commission (the **Commission**) 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 includes additional 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 135A of the VEA provides that Part 9 (Veterans' Review Board) of the VEA applies to decisions made by the Commission under the Instrument. In effect, this makes a decision of the Commission under the Instrument and the Principal Instrument reviewable, by the Veterans' Review Board. A decision of the Veterans' Review Board is, in turn, reviewable by the Administrative Appeals Tribunal.

### **FURTHER EXPLANATION OF PROVISIONS**

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

## Attachment A

### **Details of the *Veterans' Entitlements (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 *Veterans' Entitlements (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 115S of the *Veterans' Entitlements Act 1986* (the **Act**).

##### **Section 4 – Schedule**

This section provides that the Instrument that is specified in the Schedule 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 *Veterans' Entitlements (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

*Veterans' Entitlements (Defence, Veterans' and Families' Acute Support Package) Instrument 2022 (the **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 the following:

- (a) a related person of the veteran; and
- (b) a parent or step-parent of a deceased veteran, or a person who is the parent or step-parent of the war widow or war widower in relation to a deceased veteran, or the person is a parent or step-parent of another person who was the partner of a deceased veteran.

These persons would be eligible for the benefits and assistance under the acute support package if they meet certain eligibility criteria and the Commission 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 115S(9) of the *Veterans' Entitlements Act 1986*.

### **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 Commission 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 Commission 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 Commission 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 Item 4 specifies additional persons that can be granted assistance and benefits. In particular, it adds a related person of the veteran at subsection (5) and a parent or step-parent of a deceased veteran, or a person who is the parent or step-parent of a war widow or war widower in relation to a deceased veteran, or a parent or step-parent of another person who was the partner of a deceased veteran. at subsection (6). In effect this makes it clear that a related person of the veteran can apply for the grant of an acute support package of assistance and benefits, in their own right. The addition of subsection (6) reflects the extension to grand parents of children of deceased veterans as implemented in Schedule 4 to the *Veterans' Affairs Legislation Amendment (Miscellaneous Measures No.2) Act 2023* (the **Amendment Act**).

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

New subsection (6) provides for the eligibility of grandparents caring for the deceased veteran's children for the acute support package. New subsection (6) provides that the person is covered by section 6 if the following criteria are satisfied:

- (a) the parent or step-parent of a deceased veteran, or the parent or step-parent of a war widow or war widower in relation to a deceased veteran, or the parent or step-parent of another person who was the partner of a deceased veteran;
- (b) the death of the deceased veteran occurred no more than 2 years ago, at the time that the person's eligibility for acute support package is determined;
- (c) either:
  - (i) the deceased veteran's death was related to service rendered by the veteran; or
  - (ii) the Commission is satisfied that the deceased veteran's death was a suicide related to service rendered by the veteran;
- (d) the Commission is satisfied that the person is parenting a child of the deceased veteran;
- (e) at the time that the person's eligibility for acute support package is determined, the child is under 18 years;
- (f) the Commission 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 Commission 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 veteran to be granted an acute support package, paragraph (b) is no longer required. The related person of the veteran 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) provides for eligibility criteria of grandparents who are caring for children of deceased veterans to be included in a support plan for an acute support package assistance or benefits by the Commission.

New paragraph (7)(3)(e) provides that:

- (e) if the package has been granted to a person who is the parent or step-parent of a deceased veteran, or to a person who is the parent or step-parent of the war widow or war widower in relation to a deceased veteran, or a person who is the parent or step-parent of another person who was the partner of a deceased veteran; and
  - (i) the Commission is satisfied that the person is parenting a child of the deceased veteran who is under 18; and
  - (ii) the Commission is satisfied that the person, or the child, is experiencing, or is at risk of experiencing, crisis.

**Item 7 - Paragraph 8(3)(a)**

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 Commission may revoke a support plan in certain circumstances. New paragraph (a) reflects the addition of new subsections 6(5) and (6) specifying eligibility of related persons of a veteran and grandparents who are caring for the children of deceased veterans for assistance and benefits under the acute support package. These persons are persons in which a support plan can be prepared, if the Commission 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 Instrument to include a reference to a related person of a veteran.

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, the total value of assistance or benefits for a veteran or former partner of a veteran is a maximum of \$7,500 for one or more periods 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 veteran or former partner of a veteran 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).

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

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

Currently, the total value of assistance or benefits for a war widow or war widower 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 (refer to paragraph 9(1)(b)).

An additional paragraph 9(1)(c) is added by this item to make it clear that a support plan for a person who is an eligible grandparent taking care of children of deceased veterans 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. This total value of assistance that may be included in a support plan in relation to this person reflects the total value of assistance of a war widow or war widower under paragraph 9(1)(b).

**Item 10 - Paragraph 9(2)(a)**

This item amends the current paragraph 9(2)(a), which provides for the end of the period in which assistance or benefits can be provided under an acute support plan. The amendment adds a related person of a veteran to paragraph 9(2)(a).

**Item 11 - Paragraph 9(2)(b)**

Similar to the amendment to paragraph 9(2)(a), this item amends the current paragraph 9(2)(b) of the Principal Instrument, which also provides for the end of the period in which assistance or benefits can be provided under an acute support plan. The amendment adds the grandparent to the persons (ie war widows and war widowers) covered by paragraph 9(2)(b). The amendments made to paragraph 9(2)(b) makes it clear that a person who is the parent or step-parent of a deceased veteran, or a person who is the parent or step-parent of a war widow or war widower in relation to a deceased veteran, or a parent or step-parent of another person who was the partner of a deceased veteran, will be entitled to a total maximum value or benefits 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 provides for additional counselling assistance to be included in a support plan to a veteran or former partner of a veteran, 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 a veteran or former partner of a veteran 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 by Item 12 to include the related person of a veteran. 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*

### ***Veterans' Entitlements (Defence, Veterans' and Families' Acute Support Package) Amendment (2023 Expansion of Acute Support Package) Instrument 2023 (the Instrument)***

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 veterans 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 veterans and their families managing challenging life circumstances. In this particular case, it extends the acute support package assistance and benefits to grandparents caring for the children of deceased veterans. It provides intensive support to the veteran and their families, complementing other services provided by the DVA and other Government services.

#### *Conclusion*

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

REPATRIATION COMMISSION

Rule-Maker