

EXPLANATORY STATEMENT

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

Veterans' Affairs Pharmaceutical Benefits Schemes Amendment (Continued Dispensing – Emergency Measures) Determination 2023

Authority

Subsection 286(5) of the *Military Rehabilitation and Compensation Act 2004* (the MRCA) and subsection 91(4) of the *Veterans' Entitlements Act 1986* (the VEA) provide that the Military Rehabilitation and Compensation Commission and the Repatriation Commission respectively may vary the *MRCA Pharmaceutical Benefits Scheme* (MRCA PBS) and the *Repatriation Pharmaceutical Benefits Scheme* (RPBS) (also referred to as the Schemes).

The proposed variations to the MRCA PBS and the RPBS implement the expansion of the existing 'continued dispensing' arrangements as an emergency measure for eligible Department of Veterans' Affairs (DVA) clients affected by the flooding emergency in Far North Queensland. The variations to the Schemes made by the Determination determine the pharmaceutical benefits that can be supplied by a community pharmacist under the Schemes without a prescription, and the conditions for such a supply.

Purpose

This instrument, made under both subsections 286(5) of the MRCA and 91(4) of the VEA, determines both the conditions under which 'continued dispensing' can occur and the eligible pharmaceutical benefits that can be supplied in that way.

The *National Health (Continued Dispensing – Emergency Measures) Determination 2023*, made under subsection 89A(3) of the *National Health Act 1953*, implemented temporary, emergency measures to ensure people affected by the flooding in Far North Queensland would be able to continue to receive Pharmaceutical Benefits Scheme (PBS) subsidised medicines without the presentation of prescription, where specific conditions are met.

This instrument provides that DVA clients eligible for pharmaceutical benefits under the Schemes will also benefit from the implementation of the emergency measures by the incorporation (as modified by the amendments to the Schemes) of the instrument, the *National Health (Continued Dispensing—Emergency Measures) Determination 2023* [F2023L01742] as in force from time to time.

The incorporation of the legislative instrument on that basis is provided for under paragraph 14(1)(a) of the *Legislation Act 2003*.

This instrument expands the list of eligible medicines that can currently be obtained on the basis of 'continued dispensing' under both Schemes to include all of the PBS medicines listed in Schedule 1 of the *National Health (Continued Dispensing—Emergency Measures) Determination 2023* and certain items which are only available for DVA clients eligible for pharmaceutical benefits under the Schemes.

The amendments to the Schemes ensure that eligible DVA clients will be able to obtain pharmaceutical benefits under the MRCA PBS or the RPBS if they are unable

to attend their doctor and obtain a replacement prescription during the flooding emergency. No end date is specified in the instrument, however it is intended to be temporary.

Continued dispensing will enable the provision of a MRCA PBS or RPBS pharmaceutical benefit which is listed in Schedule 2 of the RPBS (Pharmaceutical benefits not covered by the PBS—continued dispensing) at the maximum quantity or the same quantity that was previously supplied of an eligible medicine to an eligible DVA client by a community pharmacist, under specific circumstances, on the basis of a previous prescription, where a valid prescription is unavailable.

The eligible pharmaceutical benefits that can be provided as a continued dispensing supply will be limited to those contained in Schedule 1 of the *National Health (Continued Dispensing—Emergency Measures) Determination 2023* and those items listed in new Schedule 2 of the RPBS.

This instrument will allow people to obtain any of the listed MRCA PBS and RPBS medicines without a prescription from their doctor, for the MRCA PBS or RPBS price.

Consultation

The Instrument affects approved pharmacists who are supplying pharmaceutical benefits at or from premises in respect of which the pharmacist is for the time being approved. Prior to commencement of the *National Health (Continued Dispensing) Determination 2022*, consultation was undertaken by the Department of Health and Aged Care with relevant peak bodies including the Pharmaceutical Society of Australia and the Pharmacy Guild of Australia. The Department of Health and Aged Care has also undertaken consultation with Services Australia, and consulted with state and territory departments of health about implementation.

As this instrument provided for similar arrangements, DVA did not directly consult with these bodies. DVA has consulted with the Department of Health and Aged Care about implementation. It was considered that further consultation for this instrument was unnecessary due to the nature of the consultation that had already taken place and the nature and urgency of the flooding emergency in Far North Queensland.

Retrospectivity

The determination will be taken to have commenced on 21 December 2023 in line with the commencement of the *National Health (Continued Dispensing—Emergency Measures) Determination 2023* and will operate from that date.

The retrospective commencement is designed to support clients who have been impacted by the flood emergency and is intended to ensure that supplies of pharmaceutical benefits under the Schemes on or after that date are covered by the Determination.

The retrospective operation of the instrument will not infringe section 12 of the *Legislation Act 2003* because the retrospective operation would not disadvantage any person or impose a liability on a person other than the Commonwealth.

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

***VETERANS' AFFAIRS PHARMACEUTICAL BENEFITS SCHEMES
AMENDMENT (CONTINUED DISPENSING – EMERGENCY MEASURES)
DETERMINATION 2023***

1 Name

This section provides that this Instrument is the *Veterans' Affairs Pharmaceutical Benefits Schemes Amendment (Continued Dispensing – Emergency Measures) Determination 2023*.

2 Commencement

This section states that this instrument commences immediately after the commencement of the *National Health (Continued Dispensing – Emergency Measures) Determination 2023*, which commenced at 4:06pm on 21 December 2023.

A retrospective commencement is required to align the commencement of the amendments to the Schemes with the commencement of the *National Health (Continued Dispensing—Emergency Measures) Determination 2023*.

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 1 – Amendments

MRCA Pharmaceutical Benefits Scheme

Item 1 omits the *National Health (Continued Dispensing – Emergency Measures) Determination 2020* and substitutes with the *National Health (Continued Dispensing – Emergency Measures) Determination 2023*.

Paragraph 16A(1A)(b) is amended to include reference to *National Health (Continued Dispensing – Emergency Measures) Determination 2023*, such that a community pharmacist may supply a pharmaceutical benefit at or from premises for which the pharmacist has approval under the National Health Act without prescription for that supply if:

- the pharmaceutical benefit is covered by the table in Schedule 2 to the RPBS (inserted by Item 3 of this Schedule); and
- the supply is in accordance with the conditions specified in the *National Health (Continued Dispensing—Emergency Measures) Determination 2023* as if the supply under the MRCA PBS is a supply that was covered by that instrument; and

- the instrument has effect as amended by the provisions set out in subsection 16A(1B) to the extent that those conditions are applicable to the supply; and
- the supply otherwise conforms with the requirements of section 16A.

Repatriation Pharmaceutical Benefits Scheme

Item 2 omits the *National Health (Continued Dispensing – Emergency Measures) Determination 2020* and substitutes with the *National Health (Continued Dispensing – Emergency Measures) Determination 2023*.

The amended reference will ensure that paragraph 16A(1A)(b) will also be referring to the *National Health (Continued Dispensing—Emergency Measures) Determination 2023*, such that a community pharmacist may supply a pharmaceutical benefit at or from premises for which the pharmacist has approval under the National Health Act without prescription for that supply if:

- the pharmaceutical benefit is covered by the table in Schedule 2 to the RPBS (inserted by Item 3 of this Schedule); and
- the supply is in accordance with the conditions specified in the *National Health (Continued Dispensing—Emergency Measures) Determination 2023* as if the supply under the RPBS is a supply that was covered by that instrument; and
- the instrument has effect as amended by the provisions set out in subsection 16A(1B) to the extent that those conditions are applicable to the supply; and
- the supply otherwise conforms with the requirements of section 16A as amended.

Item 3 inserts new Schedule 2 into the RPBS. Schedule 2 lists all of the pharmaceutical benefits (not listed under the PBS) which are only available for DVA clients eligible for pharmaceutical benefits under the MRCA PBS and the RPBS.

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 (Continued Dispensing – Emergency Measures) Instrument 2023

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) and for the incorporation into both of those instruments of a determination made under the *National Health Act 1953* that specifies the pharmaceutical benefits that may be supplied, and the conditions that must be satisfied when those pharmaceutical benefits are supplied, by an approved pharmacist without a current prescription, but on the basis of a previous prescription from a MRCA PBS or an RPBS prescriber.

This instrument specifies the conditions that must be met in order to undertake a continued dispensing supply and the eligible medicines that can be supplied on the basis of a previous prescription, where a valid prescription is unavailable.

Human rights implications

This legislative instrument engages Articles 9 and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), specifically the rights to health and social security.

The Right to Social Security

The right to social security is contained in Article 9 of the International Covenant on Economic Social and Cultural Rights (ICESCR). It requires that a country must, within its maximum available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care. Countries are obliged to demonstrate that every effort has been made to use all resources that are at their disposal in an effort to satisfy, as a matter of priority, this minimum obligation.

The UN Committee on Economic Social and Cultural Rights (the Committee) reports that there is a strong presumption that retrogressive measures taken in relation to the right to social security are prohibited under ICESCR. In this context, a retrogressive measure would be one taken without adequate justification that had the effect of reducing existing levels of social security benefits, or of denying benefits to persons or groups previously entitled to them. However, it is legitimate for a Government to re-direct its limited resources in ways that it considers to be more effective at meeting the general health needs of all society, particularly the needs of the more disadvantaged members of society.

The Right to Health

The right to the enjoyment of the highest attainable standard of physical and mental health is contained in Article 12(1) of the ICESCR. The Committee has stated that the right to health is not a right for each individual to be healthy, but is a right to a system

of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health. The Committee reports that the ‘highest attainable standard of health’ takes into account the country’s available resources. This right may be understood as a right of access to a variety of public health and health care facilities, goods, services, programs, and conditions necessary for the realisation of the highest attainable standard of health.

Analysis

This Instrument advances the right to health and the right to social security by providing that veterans and their dependents can access subsidised medicines via the Continued Dispensing arrangements without a prescription, in response to the flooding emergency in Far North Queensland.

This is to ensure that patients affected by flooding who need a new prescription for their medicine and are practically unable to access a prescriber, or their prescriber cannot provide a prescription electronically, can obtain a one-off supply from an approved pharmacist, subsidised under the Schemes, even without a prescription.

The approved pharmacist may only make a Continued Dispensing supply where satisfied of a range of matters intended to maintain patient safety

Conclusion

This Legislative Instrument is compatible with human rights because it advances the rights to health and social security.

Matthew Keogh
Minister for Veterans’ Affairs
Rule-Maker