

# *Legislation (Treatment-Related Instruments) Sunset-altering Declaration 2024*

## EXPLANATORY STATEMENT

Issued by the Attorney-General in compliance with  
section 15G of the *Legislation Act 2003*

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### INTRODUCTION

The *Legislation (Treatment-Related Instruments) Sunset-altering Declaration 2024* (the Declaration) is made under subsection 51A(1) of the *Legislation Act 2003* (Cth) (the Legislation Act). It is a legislative instrument for the purposes of the Legislation Act and must be registered on the Federal Register of Legislation. The Declaration is subject to the disallowance provisions of the Legislation Act.

### OUTLINE

Sunsetting is the automatic repeal of legislative instruments after a fixed period. The Australian Government's sunsetting framework is established under Part 4 of Chapter 3 of the Legislation Act. The purpose of the sunsetting framework is to ensure that legislative instruments are kept up to date and only remain in force for so long as they are needed.

Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on the 1 April or 1 October immediately on or following the tenth anniversary of its registration.

Under subsection 51A(1) of the Legislation Act, the Attorney-General may issue a declaration aligning the sunsetting days of two or more instruments, if satisfied on application by the rule-maker/s of the relevant instruments that:

- a) all the instruments to be reviewed:
  - i. would (in the absence of a declaration made under section 51A of the Legislation Act) be repealed by section 50 or 51 of the Legislation Act; and
  - ii. are or will be the subject of a single review; and
- b) the making of the declaration will facilitate the undertaking of the review or the implementation of its findings.

The objective of issuing a sunset-altering declaration is to facilitate either:

- the undertaking of a single review into the fitness-for-purpose of two or more thematically related legislative instruments, or
- the implementation of such a review's findings.

The instruments will then be repealed on the day specified in the Declaration instead of the previously scheduled sunseting days. This allows instruments to continue to be in force for a further but limited period of time when they would otherwise sunset. This reduces administrative burden as well as the possibility of legislative inconsistencies arising from reviewing and replacing related legislation at different times.

The Declaration aligns the sunseting dates of the following 13 instruments to 1 October 2026 (together, 'the DVA Treatment Instruments'):

- a) *MRCA Pharmaceutical Benefits Scheme (No. MRCC 44/2013)*
- b) *MRCA Private Patient Principles 2004*
- c) *MRCA Treatment Principles (No. MRCC 53/2013)*
- d) *Repatriation Pharmaceutical Benefits Scheme*
- e) *Repatriation Private Patient Principles*
- f) *Treatment Benefits (Special Access) (Modifications of the Repatriation Private Patient Principles) Instrument 2019*
- g) *Treatment Benefits (Special Access) (Modifications of the Repatriation Pharmaceutical Benefits Scheme) Instrument 2019*
- h) *Treatment Benefits (Special Access) (Modifications of the Treatment Principles) Instrument 2019;*
- i) *Treatment Principles (No. R52/2013)*
- j) *Veterans' Entitlements (Psychiatric Assessment - Dependants of Vietnam Veterans) Determination 2000*
- k) *Veterans' Affairs (Extended Eligibility for Treatment) Instrument 2015*
- l) *Veterans' Affairs (Extending Medication Chart Prescribing to Hospitals and Other Measures) Instrument 2015*
- m) *Veterans' Affairs (TRCP Treatment – Eligibility) Determination 2015.*

Without the Declaration, the DVA Treatment Instruments would sunset on various days between 1 April 2024 and 1 October 2029:

- On 1 April 2024:

- the *Repatriation Pharmaceutical Benefits Scheme*
- the *Treatment Principles (No. R52/2013)*
- the *MRCAs Pharmaceutical Benefits Scheme (No. MRCC 44/2013)* and
- the *MRCAs Treatment Principles (No. MRCC 53/2013)*.
- On 1 April 2025, the *Veterans' Affairs (Extending Medication Chart Prescribing to Hospitals and Other Measures) Instrument 2015*.
- On 1 October 2025:
  - the *Repatriation Private Patient Principles*
  - the *MRCAs Private Patient Principles 2004*
  - the *Veterans' Entitlements (Psychiatric Assessment - Dependents of Vietnam Veterans) Determination 2000*
  - the *Veterans' Affairs (Extended Eligibility for Treatment) Instrument 2015* and
  - the *Veterans' Affairs (TRCP Treatment – Eligibility) Determination 2015*.
- On 1 October 2029:
  - the *Treatment Benefits (Special Access) (Modifications of the Repatriation Pharmaceutical Benefits Scheme) Instrument 2019*
  - the *Treatment Benefits (Special Access) (Modifications of the Repatriation Private Patient Principles) Instrument 2019* and
  - the *Treatment Benefits (Special Access) (Modifications of the Treatment Principles) Instrument 2019*.

The ability to align sunseting dates is an integral part of the sunseting framework. It provides the necessary flexibility to ensure the standard 10-year sunseting period does not result in unintended consequences or impose an unreasonable administrative burden on Commonwealth agencies or the Parliament. Aligning the sunseting dates of the DVA Treatment Instruments will enable the Department of Veterans' Affairs (DVA) to conduct a thematic review of the instruments. The alignment of these sunseting dates will provide an opportunity to, for the first time, comprehensively review veteran treatment legislative instruments, as part of a number of significant reform activities being undertaken that are likely to have impacts on the DVA's treatment arrangements.

The thematic review will concern the aforementioned 13 instruments in addition to the *Veterans' Entitlements (Counselling and Psychiatric Assessment – Former Dependants of Vietnam Veterans) Determination 2016*, which is already due to sunset on 1 October 2026, and the following instruments that are already exempt from sunsetting under item 9A of section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (LEOMR):

- *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) (Modifications of the Treatment Principles) Instrument 2013*
- *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) (Modifications of the Repatriation Pharmaceutical Benefits Scheme) Instrument 2017*
- *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) (Modifications of the Repatriation Private Patient Principles) Instrument 2017.*

These instruments are made under the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006* (the Australian Participants in British Nuclear Tests Act).

## **PROCESS BEFORE DECLARATION WAS MADE**

### **Regulatory impact analysis**

Sunset-altering declarations are machinery of government instruments, and are therefore not subject to the regulatory impact assessment requirements set out by the Office of Impact Analysis (OIA). The OIA reference for this standing exemption is ID19633.

### **Consultation before making**

Before the Declaration was issued, the Attorney-General considered the general obligation to consult imposed by section 17 of the Legislation Act.

The instruments made under the *Veterans' Entitlements Act 1986* (the VEA) are:

- the *Repatriation Pharmaceutical Benefits Scheme*
- the *Treatment Principles (No. R52/2013)*
- the *Veterans' Affairs (Extending Medication Chart Prescribing to Hospitals and Other Measures) Instrument 2015*
- the *Repatriation Private Patient Principles*

- the *Veterans' Entitlements (Psychiatric Assessment - Dependants of Vietnam Veterans) Determination 2000*
- the *Veterans' Affairs (Extended Eligibility for Treatment) Instrument 2015*
- the *Veterans' Affairs (TRCP Treatment – Eligibility) Determination 2015*.

The instruments made under the *Military Rehabilitation and Compensation Act 2004* (the MRCA) are:

- the *MRCA Pharmaceutical Benefits Scheme (No. MRCC 44/2013)*
- the *MRCA Treatment Principles (No. MRCC 53/2013)*
- the *MRCA Private Patient Principles 2004*.

The instruments made under the *Treatment Benefits (Special Access) Act 2019* (the Special Access Act) are:

- the *Treatment Benefits (Special Access) (Modifications of the Repatriation Pharmaceutical Benefits Scheme) Instrument 2019*
- the *Treatment Benefits (Special Access) (Modifications of the Repatriation Private Patient Principles) Instrument 2019*
- the *Treatment Benefits (Special Access) (Modifications of the Treatment Principles) Instrument 2019*.

DVA consulted the Attorney-General's Department in relation to seeking this alignment of sunset dates. DVA has also recently concluded a public consultation process to seek views on the proposed approach on bringing the veterans compensation system under a single Act. The DVA Treatment Instruments will be remade to align with strategic policy outcomes that will arise from this public consultation process. The thematic review of the DVA Treatment Instruments will incorporate stakeholder consultation, including extensive internal consultation with program and service delivery teams. The two key external stakeholder groups that the DVA have identified are veterans and Ex-Service Organisations (ESOs), and health, aged and community care providers. The Department of Health and Aged Care and Services Australia will also be consulted as part of the review.

Alignment declarations are machinery in nature, and enable legislative instruments that would otherwise sunset to remain in force for a further, but strictly limited, period of time. This will minimise the administrative burden on stakeholders associated with consultation on an alignment that will only have effect for a limited amount of time. Any replacement instruments will be subject to further consultation and parliamentary oversight, including oversight of whether adequate consultation occurred with persons likely to be affected by the replacement instruments. As such, given that aligning the sunset dates of the DVA Treatment Instruments is consistent with the

policy intent of the sunseting regime and does not significantly alter existing arrangements, appropriate consultation has occurred for the purposes of section 17 of the Legislation Act.

### **Statutory preconditions relevant to the certificate**

In order to align the sunseting day of two or more instruments, the Attorney-General must be satisfied on written application from the relevant rule-maker/s that the statutory conditions in paragraphs 51A(1)(a) and (b) of the Legislation Act are met. The statutory conditions are that:

- (a) all the instruments to be reviewed:
  - i) would (in the absence of a declaration made under section 51A of the Legislation Act) be repealed by section 50 or 51 of the Legislation Act; and
  - ii) are or will be the subject of a single review; and
- (b) the making of the declaration will facilitate the undertaking of the review or the implementation of its findings.

In terms of process, the Legislation Act requires:

- (a) the responsible rule-maker/s to apply to the Attorney-General
- (b) the Attorney-General to be satisfied of the statutory conditions, and
- (c) the Attorney-General to make a declaration, which is a legislative instrument and subject to disallowance.

The rule-makers for the DVA Treatment Instruments, the Minister for Veterans' Affairs, and the Repatriation Commission, provided written applications to the Attorney-General seeking a declaration of alignment of the sunseting days for the Instruments. On the basis of the information contained in the statement of reasons below, the Attorney-General is satisfied that the criteria in paragraphs 51A(1)(a) and (b) of the Legislation Act are met.

The Repatriation Commission is the rule-maker for the following 3 instruments:

- the *Veterans' Entitlements (Psychiatric Assessment - Dependants of Vietnam Veterans) Determination 2000*
- the *Veterans' Affairs (Extended Eligibility for Treatment) Instrument 2015*
- the *Veterans' Affairs (TRCP Treatment – Eligibility) Determination 2015*.

The Minister for Veterans' Affairs is the rule-maker for the remaining 10 instruments that make up the DVA Treatment Instruments.

## Statement of Reasons for issuing of the Certificate

For the purposes of subsection 51A(4) of the Legislation Act, this section sets out the statement of reasons for the issue of the Certificate.

The Declaration aligns the sunseting dates of the DVA Treatment Instruments to enable the DVA to conduct a thematic review of veteran treatment arrangements.

This review will cover 17 legislative instruments made under the VEA, MRCA, Australian Participants in British Nuclear Tests Act and Special Access Act. Of those 17 legislative instruments to be reviewed, 14 legislative instruments are subject to sunseting and 13 are proposed to have their sunseting day altered.

Four of the DVA Treatment Instruments are due to sunset on 1 April 2024:

- the *Treatment Principles (No. R52/2013)* and the *MRCA Treatment Principles (No. MRCC 53/2013)* (together, known as the Treatment Principles)
- the *Repatriation Pharmaceutical Benefits Scheme* and
- the *MRCA Pharmaceutical Benefits Scheme (No. MRCC 44/2013)* (collectively known as the RPBS Instruments).

The DVA treatment arrangements are managed through a number of legislative instruments and the department considers it beneficial to consider all instruments together through a thematic review, particularly in the context of the significant reforms expected in coming years to both DVA's legislative framework and to the broader Australian health and aged care system.

As well as the treatment provisions under the VEA and MRCA, treatment is also provided for certain civilians under the Australian Participants in British Nuclear Tests Act and Special Access Act. These Acts enable modified Treatment Principles and modified RPBS Instruments, which will need to be amended and remade in line with the remaking of the primary Treatment Principles and RPBS Instruments and, as such, it would be appropriate to consider all these instruments through a single thematic review.

Many of the DVA's health arrangements are administered under both the Treatment Principles and another legislative instrument. There are a number of significant reform activities being undertaken by the Government which are likely to have impacts on DVA's treatment arrangements, in particular the Treatment Principles, which may require significant amendments shortly after the current sunseting date of 1 April 2024.

The proposed thematic review of veteran treatment legislative instruments will:

- enable a thorough review to be undertaken, resulting in a more efficient review process and more streamlined legislative arrangements, including consistent alignment of language, drafting and policy across instruments
- enable a complete review of specific health arrangements which are governed under multiple legislative instruments, and create efficiencies by reviewing the instruments together
- create opportunities to align these instruments and/or reduce the number of instruments to provide a clearer legislative framework and reduce regulatory burden for veterans, eligible dependents and treating providers
- allow DVA's Treatment Principles to be remade to align with the Government's strategic policy outcomes arising from the public process currently underway as outlined above. This will reduce the need for multiple amendments, enable better alignment with future reforms and deliver meaningful improvements to the veteran health care system, and
- provide enough time, and coverage of legislation governing all health arrangements, to undertake a meaningful review incorporating stakeholder consultation.

Due to the size and complexity of the review, DVA sought a new sunset date of 1 October 2026, an additional two and a half years on top of the current sunset date for the Treatment Principles and RPBS Instruments, to facilitate the thematic review. This recognises the substantial work involved in reviewing the large number of legislative instruments that administer DVA's treatment arrangements, as well as providing an opportunity to implement new policies arising from the substantial reform activities being undertaken within DVA and the broader Australian health system over the coming years.

A thematic review will facilitate an efficient and effective review process and enable consistent implementation of review findings. As such, the Declaration is consistent with the policy intent of the sunset regime that legislative instruments should be kept up to date and only remain in force so long as they are needed.

### **More information**

Further details on the provisions of the Declaration are provided in [Attachment A](#).

The DVA Treatment Instruments, which will now sunset on 1 October 2026 as specified in the Declaration, are available on the Federal Register of Legislation.

Further information may be requested from the Attorney-General's Department about the operation of the Declaration, and from the Department of Veteran's Affairs about the instruments to which the



Declaration applies.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The *Legislation (Treatment-Related Principles) Sunset-altering Declaration 2024* (the Declaration) is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (the Human Rights Act).

### Overview of the Declaration

The Declaration is made under subsection 51A(1) of the *Legislation Act 2003* (the Legislation Act). Under that subsection, the Attorney-General can align the sunseting days of two or more legislative instruments to 1 April or 1 October of a year that is up to five years later than the earliest sunseting day. The instruments specified in the declaration will then be repealed on the day specified in the declaration instead of the previously scheduled sunseting day. The instruments specified in the Declaration are (together, ‘the DVA Treatment Instruments’):

- a) *MRCA Pharmaceutical Benefits Scheme (No. MRCC 44/2013)*
- b) *MRCA Private Patient Principles 2004*
- c) *MRCA Treatment Principles (No. MRCC 53/2013)*
- d) *Repatriation Pharmaceutical Benefits Scheme*
- e) *Repatriation Private Patient Principles*
- f) *Treatment Benefits (Special Access) (Modifications of the Repatriation Private Patient Principles) Instrument 2019*
- g) *Treatment Benefits (Special Access) (Modifications of the Repatriation Pharmaceutical Benefits Scheme) Instrument 2019*
- h) *Treatment Benefits (Special Access) (Modifications of the Treatment Principles) Instrument 2019*
- i) *Treatment Principles (No. R52/2013)*
- j) *Veterans' Entitlements (Psychiatric Assessment - Dependants of Vietnam Veterans) Determination 2000*
- k) *Veterans' Affairs (Extended Eligibility for Treatment) Instrument 2015*
- l) *Veterans' Affairs (Extending Medication Chart Prescribing to Hospitals and Other Measures) Instrument 2015*
- m) *Veterans' Affairs (TRCP Treatment – Eligibility) Determination 2015.*

The Declaration aligns the sunseting dates of the DVA Treatment Instruments to 1 October 2026. Prior to the making of the Declaration, the Instruments had various sunseting dates between

1 April 2024 to 1 October 2029. The objective of issuing the Declaration is to facilitate the undertaking of a thematic review of veterans treatment arrangements.

### **Human Rights Implications**

The DVA Treatment Instruments engage certain rights and freedoms declared by the international instruments set out in section 3 of the Human Rights Act.

The Instruments engage Articles 9 and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), specifically the rights to social security and health.

#### *The Right to Social Security*

The right to social security is contained in Article 9 of the 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 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 a right to a system of health protection that 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.

DVA's treatment arrangements advance the right to health and the right to social security by

providing access to a benefit scheme that assists with advancement of these human rights by providing patients with access to health and aged care services as well as medicines and rehabilitation aids and appliances at no or low cost to the patient.

Before issuing the Declaration, the Attorney-General was satisfied that all Instruments specified in the Declaration would be subject to a single thematic review. A thematic review is an effective mechanism for determining whether the Instruments are fit for purpose, identifying opportunities to update, streamline and clarify the operation of the instruments and, where appropriate, reducing unnecessary regulation. Instruments that are replaced will be subject to parliamentary scrutiny and oversight through the disallowance processes unless otherwise exempt. The human rights impact of the DVA Treatment Instruments will be assessed at the time any replacement instruments are made, including through the requirement to prepare a further Statement of Compatibility with Human Rights.

### **Conclusion**

The Instruments that are subject to the Declaration are compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights Act. The Declaration itself is compatible with human rights and freedoms as it does not raise any human rights issues, and ensures that any proposal to make a replacement instrument will be subject to parliamentary oversight and scrutiny

## NOTES ON THE DECLARATION

### Section 1 Name

This section provides for the declaration to be named the *Legislation (Treatment-Related Instruments) Sunset-altering Declaration 2024*. The declaration may be cited by that name.

### Section 2 Commencement

This section provides for the declaration to commence on the day after it is registered.

### Section 3 Authority

This section provides that the declaration is made under subsection 51A(1) of the *Legislation Act 2003*.

### Section 4 Aligning of sunseting

This section provides that the following instruments are repealed by section 51A of the *Legislation Act 2003* on 1 October 2026:

- n) the *MRCA Pharmaceutical Benefits Scheme (No. MRCC 44/2013)*
- o) the *MRCA Private Patient Principles 2004*
- p) the *MRCA Treatment Principles (No. MRCC 53/2013)*
- q) the *Repatriation Pharmaceutical Benefits Scheme*
- r) the *Repatriation Private Patient Principles*
- s) the *Treatment Benefits (Special Access) (Modifications of the Repatriation Private Patient Principles) Instrument 2019*
- t) the *Treatment Benefits (Special Access) (Modifications of the Repatriation Pharmaceutical Benefits Scheme) Instrument 2019*
- u) the *Treatment Benefits (Special Access) (Modifications of the Treatment Principles) Instrument 2019*
- v) the *Treatment Principles (No. R52/2013)*
- w) the *Veterans' Entitlements (Psychiatric Assessment - Dependants of Vietnam Veterans) Determination 2000*
- x) the *Veterans' Affairs (Extended Eligibility for Treatment) Instrument 2015*

- y) the *Veterans' Affairs (Extending Medication Chart Prescribing to Hospitals and Other Measures) Instrument 2015* and
- z) the *Veterans' Affairs (TRCP Treatment – Eligibility) Determination 2015*.

1 October 2026 is the aligned sunseting day for those instruments, which would otherwise have sunset on various days between 1 April 2024 and 1 October 2029.

## **Section 5      Repeal of this instrument**

This section provides that the certificate is repealed at the start of 2 October 2026.