

EXPLANATORY STATEMENT

MRCA and DRCA (Defence, Veterans' and Families' Acute Support Package) Amendment Instrument 2024

EMPOWERING PROVISIONS

The Military Rehabilitation and Compensation Commission makes this instrument under:

- section 268B of the *Military Rehabilitation and Compensation Act 2004* (the **MRCA**); and
- section 41B of the *Safety, Rehabilitation and Compensation (Defence related Claims) Act 1988* (the **DRCA**).

PURPOSE

This instrument amends the:

- *Military Rehabilitation and Compensation (Defence, Veterans' and Families' Acute Support Package) Instrument 2022* (the **MRCA ASP Instrument**); and
- *Safety, Rehabilitation and Compensation (Defence-related Claims) (Defence, Veterans' and Families' Acute Support Package) Instrument 2022* (the **DRCA ASP Instrument**):

(together, the **ASP Instruments**).

OVERVIEW

The Defence, Veterans' and Families' Acute Support Package (**Acute Support Package**) provides short-term flexible support to eligible veterans and veteran families who are experiencing new and challenging life circumstances that may result in the family being at risk of, or experiencing, crisis. A person may be eligible for the Acute Support Package if they meet certain eligibility criteria, and it is appropriate to grant a package to assist them to adjust to the new and challenging life circumstances that are impacting the veteran or veteran family.

The ASP Instruments provide that for the purposes of the Acute Support Package, the Military Rehabilitation and Compensation Commission (**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.

A person granted a package may include other eligible persons in a support plan, including children under 18 years of age, if they meet certain eligibility criteria and are experiencing, or are at risk of experiencing, crisis.

The amendments made by this instrument consist of technical amendments, corrections to typographic errors, and corrections to unintentional errors which resulted from the commencement of the *Military Rehabilitation and Compensation (Defence, Veterans' and*

Families' Acute Support Package) Amendment (2023 Expansion of Acute Support Package) Instrument 2023 (2023 Instrument) on 1 July 2023.

EXPLANATION OF PROVISIONS

Section 1 states the name of the instrument.

Section 2 provides that the instrument commences at the start of the day after it is registered.

Section 3 states the provisions in the MRCA and the DRCA that authorise the MRRC to make the instrument i.e. section 268B of the MRCA and section 41B of the DRCA.

Section 4 is a standard provision used in instruments that amend or repeal other instruments. It gives effect to Schedule 1 and Schedule 2.

Schedule 1—Military Rehabilitation and Compensation (Defence, Veterans' and Families' Acute Support Package) Instrument 2022

Item 1—Paragraph 7(1)(a)

This item substitutes paragraph 7(1)(a) to clarify that a person must satisfy one of the sets of criteria for an acute support package at the time their eligibility for the package is determined.

Items 2, 3, 4, 6 and 10—Paragraphs 7(2), 7(3), 7(4), 7(5) and 7(6)

These items make technical amendments to paragraphs 7(2), 7(3), 7(4), 7(5) and 7(6) as a consequence of the amendments to paragraph 7(1)(a) made by item 1.

Items 5, 11, 12 and 13—Paragraph 7(5) (heading), paragraphs 8(2)(a), 8(2)(b) and paragraph 8(3) (heading)

These items replace the archaic plural “persons” with the plainer “people”. The amendments do not change the operation of the provisions.

Items 7, 9, 16, 18 and 20—Paragraphs 7(5)(a), 7(5)(e), 8(3)(d)(iii), 10(1)(b) and 10(2)(a)(ii)

These items correct typographical errors. The amendments do not change the operation of the provisions.

Item 8—Paragraph 7(5)(b)

This item substitutes paragraph 7(5)(b). That paragraph sets a criterion, for a support package for a related person of a member or former member, that the related person is under 65 years old.

The 2023 Instrument added a related person of a veteran at subsection 7(5), to make clear that a related person of the veteran can be granted an Acute Support Package of assistance and benefits individually.

This item corrects an error made by the 2023 Instrument and restores paragraph 7(5)(b) to the form it was in before the 2023 Instrument commenced on 1 July 2023. This item will change

that criterion so that it does not matter how old the *related person* is, so long as the *member or former member* is under 65.

The substituted paragraph 7(5)(b) will apply to determinations of eligibility made on or after 1 July 2023, but only to the extent that the substituted provision would not disadvantage a person (see new section 14, inserted by item 22 of Schedule 1).

Item 14—Paragraph 8(3)

This item amends paragraph 8(3) so it more clearly sets out when a person can be included in a support plan. It does not change the operation of the provision.

Item 15—After paragraph 8(3)(a)

This item adds paragraph 8(3)(b).

The 2023 Instrument inadvertently omitted paragraph 8(3)(b), that allowed a related person experiencing, or at risk of experiencing, crisis to be included in a support plan for an Acute Support Package granted to a member or former member under paragraph 7(2)(d).

This item corrects that unintentional error and restores paragraph 8(3)(b) to the MRCA ASP Instrument in the form it existed in that instrument before the 2023 Instrument commenced on 1 July 2023. Paragraph 8(3)(b) gives effect to paragraph 7(2)(d) by allowing the Commission to include a related person of a member or former member in a member or former member’s support plan if the related person is experiencing, or is at risk of experiencing, crisis. This amendment ensures that assistance and benefits are provided to both veterans and veteran families, either collectively or individually, as appropriate to the veteran or veteran family’s circumstances.

The new paragraph 8(3)(b) will apply to determinations of eligibility made on or after 1 July 2023, but only to the extent that the substituted provision would not disadvantage a person (see new section 14, inserted by item 22 of Schedule 1).

Item 17—Paragraph 8(3)(e)

This item substitutes paragraph 8(3)(e) with new paragraphs 8(3)(e), (f) and (g). The new provisions more clearly set out when a person can be included in a support plan for an acute support package granted to a parent or step-parent of certain people. The new provisions operate in the same way as the current provision.

Item 19—Paragraph 10(1)(c)

This item substitutes paragraph 10(1)(c). The new provision sets out more clearly the total value of assistance or benefits that may be included in a support plan prepared for a parent or step-parent of certain people. The amendment does not change the operation of the provision.

Item 21—Paragraph 10(2)(b)

This item substitutes paragraph 10(2)(b) with new paragraphs 10(2)(b) and (c). The new provisions more clearly specify the end of the period during which assistance or benefits

included in certain support plans may be provided. The new provisions operate in the same way as the current provision.

Item 22—After section 13

This item inserts new Division 5 into Part 2 of the MRCA ASP Instrument.

Division 5 consists of new section 14. New section 14 ensures that the retrospective operation of new paragraphs 7(5)(b) and 8(3)(b) (inserted by items 8 and 15 of Schedule 1) cannot disadvantage any person. Section 14 confirms the effect of subsection 12(2) of the *Legislation Act 2003* in relation to the amendments mentioned in section 14.

Schedule 2—Safety, Rehabilitation and Compensation (Defence-related Claims) (Defence, Veterans’ and Families’ Acute Support Package) Instrument 2022

Item 1—Paragraph 6(1)(a)

This item substitutes paragraph 6(1)(a) to clarify that a person must satisfy one of the sets of criteria for an acute support package at the time their eligibility for the package is determined.

Items 2, 3, 4, 6, 8 and 10—Paragraphs 6(2), 6(3), 6(4), 6(5) and 6(6)

These items make technical amendments to paragraphs 6(2), 6(3), 6(4), 6(5) and 6(6) as a consequence of the amendments to paragraph 6(1)(a) made by item 1.

Items 5, 11, 12 and 13—Paragraph 6(5) (heading), paragraphs 7(2)(a), 7(2)(b) and paragraph 7(3) (heading)

These items replace the archaic plural “persons” with the plainer “people”. The amendments do not change the operation of the provisions.

Items 7, 9, 16, 18 and 19—Paragraphs 6(5)(a), 6(5)(e), 7(3)(d)(iii), 9(1)(a)(ii) and 9(1)(b)

These items correct typographical errors. The amendments do not change the operation of the provisions.

Item 14—Paragraph 7(3)

This item amends paragraph 7(3) so it more clearly sets out when a person can be included in a support plan. It does not change the operation of the provision.

Item 15—After paragraph 7(3)(a)

This item adds paragraph 7(3)(b).

The 2023 Instrument inadvertently omitted paragraph 7(3)(b), that allowed a related person experiencing, or at risk of experiencing, crisis to be included in a support plan for an Acute Support Package granted to an employee under paragraph 6(2)(d).

This item corrects that unintentional error and restores paragraph 7(3)(b) to the MRCA ASP Instrument in the form it existed in that instrument before the 2023 Instrument commenced on 1 July 2023. Paragraph 7(3)(b) gives effect to paragraph 6(2)(d) by allowing the Commission to include a related person of an employee in an employees’ support plan if the

related person is experiencing, or is at risk of experiencing, crisis. This amendment ensures that assistance and benefits are provided to both veterans and veteran families, either collectively or individually, as appropriate to the veteran or veteran family's circumstances.

The new paragraph 7(3)(b) will apply to determinations of eligibility made on or after 1 July 2023, but only to the extent that the substituted provision would not disadvantage a person (see new section 13, inserted by item 22 of Schedule 2).

Item 17—Paragraph 7(3)(e)

This item substitutes paragraph 7(3)(e) with new paragraphs 7(3)(e) and (f). The new provisions more clearly set out when a person can be included in a support plan for an acute support package granted to a parent or step-parent of certain people. The new provisions operate in the same way as the current provision.

Item 20—Paragraph 9(1)(c)

This item substitutes paragraph 9(1)(c). The new provision sets out more clearly the total value of assistance or benefits that may be included in a support plan prepared for a parent or step-parent of certain people. The amendment does not change the operation of the provision.

Item 21—Paragraph 9(2)(b)

This item substitutes paragraph 9(2)(b) with new paragraphs 9(2)(b) and (c). The new provisions more clearly specify the end of the period during which assistance or benefits included in certain support plans may be provided. The new provisions operate in the same way as the current provision.

Item 22—After section 12

This item inserts new Division 5 into Part 2 of the DRCA ASP Instrument.

Division 5 consists of new section 13. New section 13 ensures that the retrospective operation of new paragraph 7(3)(b) (inserted by item 15 of Schedule 2) cannot disadvantage any person. Section 13 confirms the effect of subsection 12(2) of the *Legislation Act 2003* in relation to the amendments mentioned in section 13.

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 addresses feedback received through the Female Veterans' and Veterans' Families Policy Forums.

The amendments made by the instrument include technical amendments, corrections to typographic errors, and corrections to unintentional errors which resulted from the commencement of the 2023 Instrument on 1 July 2023. Therefore, no further additional consultation was undertaken in relation to this Instrument.

HUMAN RIGHTS IMPLICATIONS

This 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 A**.

MAKING THE INSTRUMENT

The instrument is made by the Military and Rehabilitation Compensation Commission.

Attachment A

Statement of Compatibility with Human Rights

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

MRCA and DRCA (Defence, Veterans' and Families' Acute Support Package) Amendment Instrument 2024

This Disallowable 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* (the **recognised rights**).

Overview of the Disallowable Legislative Instrument

The MRCA and DRCA (Defence, Veterans' and Families' Acute Support Package) Amendment Instrument 2024 (the **Instrument**) amends the *Military Rehabilitation and Compensation (Defence, Veterans' and Families' Acute Support Package) Instrument 2022* and the *Safety, Rehabilitation and Compensation (Defence-related Claims) (Defence, Veterans' and Families' Acute Support Package) Instrument 2022* (the **Acute Support Package Instruments**) to make technical amendments, corrections to typographic errors, and corrections to unintentional errors which resulted from the commencement of the *Military Rehabilitation and Compensation (Defence, Veterans' and Families' Acute Support Package) Amendment (2023 Expansion of Acute Support Package) Instrument 2023* on 1 July 2023.

Human rights implications

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

The amended Acute Support Package Instruments will better enable the provision of targeted, flexible support to veterans and families experiencing new and challenging life circumstances. This support to veterans and their families complements other services provided by DVA and other Government services.

Right to social security

The right to social security in article 9 of the ICESCR 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 amending the Acute Support Package Instruments so that they better facilitate the provision of additional support and services to veterans and their families when faced with challenging circumstances.

Right to health

The right to health in article 12(1) of the ICESCR 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 promotes the right to health by amending the Acute Support Package Instruments so that they better facilitate the provision of counselling to veterans and their families, for critical mental health and wellbeing support when experiencing challenging life situations.

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