

EXPLANATORY STATEMENT
STATUTORY RULES 1986 NO. 97,
Veterans' Entitlements Regulations
Issued by authority of the Minister of State for Veterans' Affairs

Under section 216 of the Veterans' Entitlements Act 1986 the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which are by the Act required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act repeals and replaces the Repatriation Act 1920 and some associated legislation. These regulations are necessary to satisfy requirements in the Act that certain matters be prescribed in the regulations. These matters include prescription of certain classes of persons to whom particular provisions apply, prescription of conditions subject to which certain allowances and benefits are payable and prescription of the type of information to be provided so that eligibility for certain benefits and allowances can be determined.

The regulations rely on section 4 of the Acts Interpretation Act 1901 to enable the regulations to come into operation on the same date as the Act came into operation.

Details of the regulations are set out below.

Regulation 1 - Citation

Regulation 1 provides that the Regulations may be cited as the Veterans' Entitlements Regulations.

Regulation 2 - Interpretation

Regulation 2 provides definitions of certain terms used in the Regulations.

Regulation 3 - Summons under sub-section 32(1) of the Act

Sub-section 32(1) of the Act provides that the Repatriation Commission may, for the purposes of considering a claim for pension or a review of a decision in relation to a pension, summon a person to appear before the Commission to give evidence and produce such documents as are referred to in the summons.

Regulation 3 provides that the summons may be in accordance with Form 1 and specifies the manner by which the

summons may be served. The format of Form 1 is contained in Schedule 1 to the Regulations.

Regulation 4 - Summons under section 60(2) or (3) of the Act

Sub-sections 60(2) and (3) of the Act provide that the Repatriation Commission, or a person to whom the Commission has delegated its powers under section 59 of the Act to review a decision, may, for the purposes of reviewing a decision on a service pension, summon a person to appear at a hearing of the review to give evidence and to produce such documents as are referred to in the summons.

Regulation 4 provides that the summons may be in accordance with Form 2 and specifies the manner by which the summons may be served. The format of Form 2 is contained in Schedule 1 to the Regulations.

Regulation 5 - Exempt class of persons for purposes of
sub-section 84(7) of the Act

Sections 87 and 88 of the Act enable the Repatriation Commission to provide treatment, at Repatriation hospitals and institutions, to veterans who are not otherwise entitled to treatment under the Act or to members of the general community, subject to spare capacity in those hospitals or institutions.

Sub-section 84(6) of the Act provides that charges may be levied on a person, other than a person included in a prescribed class of persons, who is provided with treatment under section 87 or 88 of the Act.

Regulation 5 declares two classes of persons to be exempt from charges under sub-section 84(6) of the Act in respect of treatment received under section 87 or 88 of the Act. These include persons who are entitled to be treated without charge as inpatients in a recognised hospital as provided for under the Health Insurance Act 1973, that is, Medicare patients who are not eligible to receive compensation in respect of the treatment provided.

The second class of persons exempted are those members of the Defence Force serving on continuous full-time service who are provided with treatment for an injury or disease which has not been accepted as war-caused. In respect of treatment provided for an injury or disease which has been accepted as war-caused, the member would be eligible to be provided with treatment without charge under section 85 of the Act.

Regulation 6 - Application of State laws

Sub-section 89(1) of the Act enables the Repatriation Commission to establish, operate and maintain hospitals and other institutions and to enter into agreements with various authorities for the provision of treatment to eligible persons.

Sub-section 89(3) of the Act provides that the provisions of a relevant law of a State or Territory apply, with such modifications (if any) as are prescribed, to persons who are employed, or provide services, at a hospital or other institution established, operated or maintained by the Commission in that State or Territory.

Regulation 6 provides that the relevant laws for the purposes of sub-section 89(3) of the Act are those specified in an item in Column 2 of a table in Schedule 2 to the Regulations, with such modifications (if any) as are specified in Column 3 in that table in that item. The laws which will be required to be applied to persons employed, or providing services, at Repatriation hospitals or institutions are those which apply to similar hospitals and institutions in that State or Territory, for example, those relating to the conduct of post-mortems or coronial enquiries.

Regulation 7 - Information required for the purposes of
sub-section 107(7) of the Act

Section 107 of the Act provides for the payment of a temporary incapacity allowance to a veteran who has been treated as an inpatient at a hospital or institution for a war-caused injury or disease, provided that the treatment, or the treatment and convalescence, exceeds 4 continuous weeks during which the veteran is prevented from continuing to undertake remunerative work. Sub-section 107(7) of the Act provides that the allowance

is not payable unless the veteran supplies to the Repatriation Commission such information (including certificates of medical practitioners or other persons) as is required by the regulations to be furnished.

Regulation 7 requires the veteran to produce a certificate in an approved form, signed by a medical practitioner and certifying certain particulars in respect of the veteran. The information required will be necessary for the Commission to verify the reason for, and duration of, treatment and convalescence and to determine whether the veteran was prevented from continuing to undertake remunerative work for periods aggregating more than 8 hours per week.

Regulation 8 - Information required for purposes of sub-section 108(11) of the Act

Section 108 of the Act provides for the payment of a loss of earnings allowance to a veteran or other person who loses earnings as a result of certain specified events. The allowance may be paid to a veteran who loses earnings, salary or wages as a result of undergoing treatment for a war-caused injury or disease; waiting for the supply of, or repairs to, an artificial aid or appliance necessitated by a war-caused incapacity; the investigation of a claim or a pension granted under Part II or IV of the Act; or undergoing treatment associated with such an investigation. The allowance may also be paid to a person, other than a veteran, who is authorised by the

Repatriation Commission to accompany a veteran or dependant required to travel for certain purposes, or an authorised person who pursues a claim on behalf of a veteran or dependant and who loses earnings, wages or salary as a result.

Sub-section 108(11) provides that the allowance is not payable to a person unless the person furnishes to the Commission such information (including certificates of medical practitioners or other persons) as is required by the regulations to be so furnished.

Regulation 8 specifies the information required by the Commission to verify the duration of the period for which the allowance is claimed and the extent of the loss of earnings suffered by the person.

The regulation requires an applicant for loss of earnings allowance who is the employee of another person to provide a certificate from his or her employer certifying particulars in respect of employment that are relevant to the consideration of the application. The particulars to be certified include the period of employment; the number of hours the applicant would have been engaged in employment but for his absence for one of the purposes for which loss of earnings allowance is payable and; the rate at which and the amount of earnings that the applicant would have received during the absence.

Where an applicant is self-employed, the regulation requires the applicant to certify these matters.

Sub-regulation 8(4) provides that where the applicant is an employee and the Repatriation Commission is satisfied on reasonable grounds that it is impracticable for the employer to provide the certificate referred to above, the Commission may require the applicant to furnish such other evidence as the applicant can provide. This sub-regulation recognises that situations may arise where employment records are not available or have been destroyed.

Regulation 9 - Travelling expenses under section 110 and 132 of the Act

Sections 110 and 132 of the Act provide for the payment of such travelling expenses as are prescribed, subject to the provisions of those sections of the Act and such other conditions as are prescribed. These conditions will enable the Repatriation Commission to determine the appropriate amount of travelling expenses to be payable.

Sub-regulation 9(1) provides definitions of terms used in this regulation.

Sub-regulation 9(2) provides that travelling expenses comprise the amount required to reimburse in whole or in part, all or any of the costs of transportation, accommodation or

meals necessarily incurred by or on behalf of an entitled person in connection with travel.

Sub-regulation 9(3) provides that the amount of travelling expenses payable will not exceed the amount calculated by the Repatriation Commission as the cost of travel by the most appropriate form of transport over the relevant distance.

Sub-regulation 9(4) provides that the amount of travelling expenses payable in respect of transportation will not exceed the actual cost incurred by the person.

Sub-regulation 9(5) provides that the most appropriate form of transport will be determined by the Commission having regard to various criteria including the forms of transport reasonably available; the cost and the desirability of using the cheapest form as well as the medical condition of the person travelling.

Sub-regulation 9(6) provides that, for the purposes of sub-regulation 9(3), the relevant distance will be, in the case of a veteran travelling to obtain treatment, the distance from the veteran's residence to the closest place at which treatment is available or such other place as is approved by the Repatriation Commission, or, in any other case, the distance that is in all the circumstances reasonable.

Sub-regulation 9(7) provides that the cost of private motor vehicle transportation shall be 11.16 cents per kilometre.

Sub-regulation 9(8) and (10) provide the maximum amounts to be paid in respect of accommodation and meals while sub-regulation 9(9) requires proof of expenditure in respect of accommodation.

Sub-regulation 9(11) provides that an amount in respect of breakfast will not be payable unless the person was away from home during the course of that travel on the immediate previous night or if the person leaves his or her place of residence before 6 am on that day to begin that travel. In the case of lunch, paragraph 9(11)(b) provides that the person must be away from home between 12 noon and 2 pm during the course of that travel. Paragraph 9(11)(c) requires that, in the case of dinner, the person be away from home between 5:30 pm and 7:30 pm during the course of that travel.

Sub-regulation 9(12) contains special provisions in respect of breakfast if the person is required to fast before a treatment, examination or investigation to be given during a morning.

Regulation 10 - Summons under sub-section 151(2) of the Act

Sub-section 151(2) of the Act provides that the presiding member of the Veterans' Review Board may summon a

person to appear at a hearing of a review conducted by the Board to give evidence and to produce such documents (if any) as are referred to in the summons.

Regulation 10 provides that the summons may be in accordance with Form 3 and specifies the manner by which the summons may be served. The format of Form 3 is contained in Schedule 1 to the Regulations.

Regulation 11 - Allowances payable to members of the Veterans'
Review Board

Sub-section 160(2) of the Act provides that a member of the Veterans' Review Board will be paid such allowances as are prescribed.

Regulation 11 provides that the allowances will be those payable to an officer of the Australian Public Service. The allowances payable will be those payable to an officer of the Australian Public Service on an equivalent salary range to a member of the Veterans' Review Board.

Regulation 12 - Fees for witnesses

Section 171 of the Act provides that a person, other than the applicant, who is summoned to appear as a witness at a hearing before the Veterans' Review Board is entitled to be

paid, in respect of his or her attendance, fees and allowances for expenses fixed by or in accordance with the regulations.

Regulation 12 provides that the fees and allowances for expenses in respect of the attendance of a person, other than the applicant, summoned to appear as a witness at a hearing of the Board will be determined by the presiding member of the Board in accordance with the scale in Schedule 2 to the Administrative Appeals Tribunal Regulations as in force from time to time. No amount in respect of fees and allowances for expenses will be payable in respect of travel undertaken by a witness outside Australia.

Regulation 13 - Allowances payable to members of the
Repatriation Commission

Sub-section 185(2) of the Act provides that a commissioner on the Repatriation Commission will be paid such allowances as are prescribed. Regulation 13 provides that the allowances are those payable to an officer of the Australian Public Service. The allowances payable will be those payable to an officer of the Australian Public Service on an equivalent salary range to the commissioner.

Regulation 14 - Contributions

Section 200 of the Act enables the Commission to accept contributions of money and other property for a purpose

specified by the donor or for application by the Commission, as it deems fit, for or in connection with the performance of its functions and duties. Sub-section 200(3) of the Act provides that contributions accepted by the Commission shall be dealt with as prescribed and, subject to the regulations (if any) prescribing the manner in which those contributions are to be dealt with, as determined by the Commission.

Regulation 14 provides that all moneys accepted by the Commission in accordance with sub-section 200(1) of the Act will be credited to a bank account nominated by the Commission.

Regulation 15 - Investment of moneys held by Commission

Section 201 of the Act provides that the Commission may be appointed, and may in its corporate name, act as trustee under a will, settlement or other instrument creating a trust. Sub-section 201(4) of the Act provides that the regulations may make provision for and in relation to the investment of moneys vested in the Commission as trustee pending application in accordance with the trust or for the purpose of deriving income for application in accordance with the trust.

Regulation 15 provides that moneys vested in the Commission as trustee under section 201 of the Act may be invested by the Commission in securities of the Commonwealth or of the States, in loans to local governing bodies in Australia, upon mortgage of land in Australia of an estate in fee-simple or

upon mortgage of leasehold interests in such land, or in any other manner for the time being allowed by any Act or State Act for the investment of trust funds in Australia.

Regulation 16 - Approved forms

Regulation 16 provides that the Commission may approve forms for the purposes of these regulations.

Schedule 1

Schedule 1 specifies the form of summonses that may be issued in accordance with regulation 3, 4 and 10.

Schedule 2

Schedule 2 lists the provisions of a relevant State or Territory law, together with any modifications, that apply to persons who are employed or provide services at Repatriation Commission hospitals or institutions.

Authority: Section 216 of the
Veterans' Entitlements
Act 1986