

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2007 No. 126**

Issued by the Authority of the Minister for Veterans' Affairs

*Veterans' Entitlements Act 1986*

*Veterans' Entitlements Amendment Regulations 2007 (No. 1)*

Section 216 of the *Veterans' Entitlements Act 1986* (the Act) provides, in part, that 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.

Sections 110, 132, 170B and 196ZO of the Act provide for travel expenses, as prescribed in the regulations, to be paid to veterans or their dependants who travel for, respectively:

- treatment;
- hearings before the Repatriation Commission (the Commission) in relation to a claim/review; medical examinations/medical investigations in relation to a claim/review; giving evidence/producing documents in relation to a claim/review; reviews conducted by the Veterans' Review Board; hearings before the Administrative Appeals Tribunal;
- obtaining documentary medical evidence for a hearing of the Veterans' Review Board; or
- obtaining documentary medical evidence for a hearing of the Specialist Medical Review Council.

Those sections also provide that attendants to veterans or to veterans' dependants are also entitled to the reimbursement of their travel expenses where they are authorised by the Commission to accompany a veteran or dependant for the specified purposes.

The purpose of the Regulations is to:

- expand the range of travel expenses that may be reimbursed (eg payment of tolls, payment of all parking fees);
- clarify ambiguous provisions (eg that vehicular-ferry travel expenses are reimbursable);
- streamline provisions (eg 50 km or less travel for treatment does not need to be to the closest practical provider); and
- ensure provisions operate more fairly (eg if a person does not travel for treatment to the closest practical provider as he or she should but travels a longer distance than was necessary, then instead of only getting reimbursed

expenses for a fixed distance of 50 kms as is presently the case, the person will get expenses reimbursed for the distance to the closest practical provider.

In particular the Regulations revoke regulation 9 of the *Veterans' Entitlements Regulations 1986*, which prescribes the travel expenses for the purposes of sections 110, 132, 170B and 196ZO of the Act, and substitutes a new regulation 9 which would likewise prescribe the travel expenses for the purposes of the relevant sections albeit a wider range of travel expenses and, in some cases, a fairer basis for reimbursing those expenses.

Further details of the Regulations are contained in the Attachment.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

### **Retrospectivity**

The Regulations are retrospective and are taken to have commenced on 23 March 2007. On 23 March 2007 the veteran community was prematurely advised that the Regulations were operative and this may have encouraged some veterans and dependants to incur travel expenses they might not otherwise have incurred (eg travel on toll-roads) and therefore it is considered only fair that they should not be out-of-pocket in this regard.

The Office of Legislative Drafting and Publishing has advised that for the purposes of section 12 of the *Legislative Instruments Act 2003* (retrospective legislative instruments) the Regulations do not disadvantage any person nor impose any liabilities on any person (other than the Commonwealth).

## **Consultation**

Yes. Consultation occurred on most of the measures in the instrument. The consultation on the major parts of regulation 9 occurred in mid 2006 when the Department of Veterans' Affairs undertook a formal process of consultation in relation to Regulation 9 of the *Veterans' Entitlements Regulations 1986* by letter with the National Treatment Monitoring Committee (NATMOC) for the purposes of the *Legislative Instruments Act 2003 (LIA)*. This Committee is comprised of representatives from peak Ex Service Organisations and senior staff from the medical business areas of the Department. A small number of responses were received supporting the amendments, with some minor recommendations to consider additional reforms.

Initially it had only been proposed to amend parts of regulation 9 and consultation was conducted on that basis. However, in the course of drafting the drafter found it easier to redraft regulation 9 in toto but by that time the consultation process had been completed. In any event the parts of regulation 9 that had not been the subject of formal consultation do not involve any significant issues in practice. In these circumstances the rule-maker decided it was not necessary to consult a second time on all parts of the instrument.

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## ATTACHMENT

### **Details of the *Veterans' Entitlements Amendment Regulations 2007 (No. 1)***

- Regulation 1 sets out the name of the Regulations - *Veterans' Entitlements Amendment Regulations 2007 (No. 1)*.
- Regulation 2 specifies that the regulations are taken to have commenced on 23 March 2007.
- Regulation 3 provides that Schedule 1 amends the Principal Regulations – namely the *Veterans' Entitlements Regulations 1986*.

### Schedule 1 - Amendments

- Item [1] substituted former regulation 9 of the Principal Regulations with a revised regulation 9.
- subregulation 9(1) sets out definitions. These definitions are the same as the former definitions.
- subregulation 9(2) is in the same terms as the former subregulation 9(2) and defines “travel expenses”. Travel expenses are amounts required to reimburse in whole or part, expenditure on:
- transport
  - accommodation; or
  - meals.

The expenditure must have been “necessarily incurred” by an entitled person (veteran, veteran’s dependant or an attendant to a veteran or veteran’s dependant) and the travel in the course of which the expenditure was incurred must have been for a relevant purpose (see page 1 of this Explanatory Statement).

Subregulation 9(2) is subject to regulations 9AD and 9AE.

Regulations 9AD and 9AE specifically relate to travel for the purpose of obtaining documentary medical evidence for a hearing of the Veterans’ Review Board or the Specialist Medical Review Council. These regulations contain their own procedure for calculating travel expenses for the relevant purposes.

- subregulation 9(3) is in the same terms as the former subregulation 9(3) and provides that the amount of travelling expenses payable to an entitled person is not to exceed an amount calculated by the Repatriation Commission (Commission) as the cost of travel by

the most appropriate form of transport over the relevant distance.

Subregulation 9(3) is subject to regulations 9(4), 9(4A) and 9AD.

The reason for making subregulation 9(3) subject to subregulations 9(4) and 9(4A) is to ensure that whereas the amount of travel expenses payable to an entitled person is that calculated by the Commission under subregulation 9(3), nevertheless if the amount calculated by the Commission is more than an entitled person's expenditure on travel, the amount of travel expense payable is the amount equivalent to the amount of expenditure and not the (greater) amount calculated by the Commission.

Subregulation 9(3) is subject to regulation 9AD because regulation 9AD contains its own procedure for the calculation of travel expenses for travel in relation to obtaining documentary medical evidence for a hearing of the Veterans' Review Board or a hearing of the Specialist Medical Review Council.

subregulation 9(4) is in the same terms as the former subregulation 9(4) and provides that if the expenditure by an entitled person on travel is less than the amount calculated by the Commission then the person's travel expenses are to be an amount equal to the person's expenditure.

Subregulation 9(4) is subject to regulation 9AD because regulation 9AD contains its own procedure for the calculation of travel expenses in relation to travelling to obtain documentary medical evidence for a hearing of the Veterans' Review Board or a hearing of the Specialist Medical Review Council.

subregulation 9(4A) enables the parking fees of an entitled person to be paid if the fees were necessarily incurred at or near the place to which the person travelled for a relevant purpose.

Previously only parking fees above \$50 and incurred in the period of 6 months beginning on 1 January or 1 July were reimbursable . Now all parking fees are reimbursable.

subregulation 9(5) is in the same terms as the former subregulation 9(5) and provides the criteria by which the Commission is to determine the most appropriate form of transport over the relevant distance.

subregulation 9(6) sets out the means for calculating “relevant distance” for travel for treatment.

An entitled person is entitled to travel expenses for travel by the most appropriate form of transport over the relevant distance (Subregulation 9(3)).

If an entitled person travels for treatment over a distance of more than 50 kms from his or her residence and the person’s application for travel expenses has been endorsed with a statement by the treatment-provider at the relevant destination that he or she was the closest practical treatment-provider to the person’s residence then the relevant distance for the purpose of working out the travel expenses for transport is the distance from the entitled person’s residence to the treatment-provider.

If, however, an entitled person’s application is not endorsed by the treatment-provider then the relevant distance is a distance determined by the Commission - being a distance that is at least 50 kms from the person’s residence to the closest practical treatment-provider.

Previously a person in a similar situation would only have been entitled to the reimbursement of transport expenses for a distance of 50 kms.

The distance travelled is taken to have commenced at 50 kms even though the actual total distance between residence and treatment-provider could be actually less than 50 kms because under former regulation 9, in cases where an application was not endorsed for treatment, entitled persons were permitted travel expenses for a distance of 50 kms regardless of the actual distance travelled and it was decided that because this benefit was entrenched, it should be preserved.

If an entitled person travels for treatment over a distance not exceeding 50 kms the relevant distance is the distance from the person’s residence to the treatment-location (regardless of whether the treatment-location is the closest practical treatment-location).

Previously, in order for transport costs for 50 kms or less travel-for-treatment to be reimbursed, the travel must have been to the closest practical treatment-location.

subregulation 9(7) defines "endorsed for treatment" as the situation where:

- an entitled person has travelled for treatment and the person’s treatment-provider at the relevant destination has endorsed on the person’s application for travel expenses that the treatment met the health care needs of the entitled person

and the treatment-location was as close as practical to the entitled persons' residence; and

- the Commission has confirmed that the treatment-location was as close as practical to the entitled persons' residence.

If the Commission holds the opinion that an endorsement is incorrect as to the treatment-location being the closest practical treatment-location the Commission may nevertheless confirm that the treatment-location is the closest practical treatment-location because, for example, in the Commission's view it would not be cost-effective for the Commission to calculate the relevant distance under subparagraph 9(6)(b); or the Commission could decline to confirm that the treatment-location is the closest practical treatment-location in which case, under paragraph 9(6)(b), the entitled person's application for travel expenses will be regarded as not being "endorsed for treatment". In the latter circumstance the Commission would decide what the closest practical provider location is in this instance.

Previously the Commission was not required to confirm an endorsement and the provider's endorsement (which may, in the Commission's opinion, have been incorrect) would stand. Essentially, therefore, subregulation 9(7) invests the Commission with a discretion as to whether or not to accept a provider's endorsement.

[no subregulation 9(8) because subregulation 9(8) was rescinded but the numbering of the Regulations was not adjusted. It was intended that the numbering of the Regulations reflect the numbering of the former Regulations as far as practicable. This meant, among other things, that current references to provisions in official documents did not need to be changed]

subregulation 9(9) is in the same terms as the former subregulation 9(9) and defines "distance for travel" for travel for a purpose in section 132 of the Act. An entitled person is entitled to travel expenses for travel by the most appropriate form of transport over the relevant distance (Subregulation 9(3)).

See page 1 of this Explanatory Statement for details of the purposes of travel under section 132.

The relevant distance for travel for a purpose under section 132 is the distance that, in all the circumstances, is reasonable.

subregulation 9(10) is in the same terms as the former subregulation 9(10) and defines "distance for travel" for travel for a purpose in sections 170B or 196ZO of the Act. An entitled person is entitled to

travel expenses for travel by the most appropriate form of transport over the relevant distance (Subregulation 9(3)).

The purposes of travel under sections 170B and 196ZO are to obtain documentary medical evidence for, respectively, a hearing of the Veterans' Review Board or a hearing of the Specialist Medical Review Council.

The relevant distance for travel for a purpose under sections 170B or 196ZO is the most direct practicable route from the entitled person's residence to the place attended by that person to obtain relevant documentary evidence.

subregulation 9(11) provides that for the purposes of regulation 9, the cost of transport for travel between two places over the most direct route between the places is:

- for travel by private motor vehicle – 26.7 cents per kilometre and the costs necessarily incurred for road tolls.
- for travel by other means – the costs necessarily incurred by the entitled person.

Subregulation 9(11) changes the former situation by removing the fixed-rate basis for travel by a non-private motor vehicle (eg bus, train tram or ferry). Previously travel-expenses for travel by a bus, train tram or ferry was reimbursed at 26.7 cents per km. Now the actual costs of such travel will be reimbursed.

subregulation 9(12) is in the same terms as the former subregulation 9(12) and prescribes the amounts to be reimbursed for the costs of accommodation and meals in commercial, subsidised and private accommodation namely:

- for commercial accommodation not in a capital city (eg. motel, hotel) - \$110.10.
- for commercial accommodation in a capital city - \$130.80.
- for subsidised accommodation (eg hostel) - \$68.80.
- for private accommodation (eg private home) - \$34.40.

subregulation 9(13) is in the same terms as the former subregulation 9(13) and prescribes the amount of \$178.90 to be reimbursed for the costs of commercial accommodation (including meals) for a night where an entitled person shares the accommodation with his or her attendant.

subregulation 9(14) is in the same terms as the former subregulation 9(14) and requires proof of expenditure on the relevant accommodation before the costs of accommodation and meals can be reimbursed.

subregulation 9(15) is in the same terms as the former subregulation 9(15) and sets out the amounts that are to be reimbursed for the cost of meals



during the course of travel on a day on which overnight accommodation is not required, namely:

- where the distance from the entitled person's residence to the relevant destination exceeds 50 km but not 200 km - \$10.90 each day.
- where the distance from the entitled person's residence to the relevant destination exceeds 200 km - \$22.10 each day.

subregulation 9(16) is in the same terms as the former subregulation 9(16) and describes the travel expenses payable to an attendant in addition to those payable when the attendant travels with an entitled person. Additional travel expenses are payable for an attendant to return home after accompanying an entitled person to an institution (eg hospital) where the entitled person has been admitted for treatment. Travel expenses are also payable for an attendant to return to the institution to accompany the entitled person on their homeward journey after discharge.

subregulation 9(17) is in the same terms as the former subregulation 9(17) and provides that the travel expenses payable to an attendant under subregulation 9(16) are based on the same mode of transport as that used to accompany the veteran or dependant and include any applicable amounts for accommodation and meals.

subregulation 9(18) is in the same terms as the former subregulation 9(18) and sets out the method of calculating the payment (known in practice as the 'contributing allowance') for the accommodation costs of an attendant who remains near the hospital or other institution to which the entitled person has been admitted. This payment is the lesser of:

- the actual cost of the attendant's accommodation while the entitled person is in the institution; and
- the transport expenses (excluding accommodation and meal costs) that would have been payable to the attendant if the attendant had returned home and returned to the institution using a private motor vehicle.

Examples show how travel expenses are to be calculated in typical situations.

Item [2] amends regulation 9AA of the Principal Regulations and has the effect that a rate prescribed by subregulation 9(11) (transport by private motor vehicle), 9(12)(accommodation and meals), 9(13)(shared accommodation with attendant) and 9(15) (meals (no overnight accommodation)) is increased (indexed), as applicable, in accordance with regulation 9AB of the Principal Regulations, on each anniversary of 1 July 2006.

Previously the relevant rates were indexed on 1 July 1997. The amendment updates the former provision and provides that the relevant rates are to be indexed on each anniversary of 1 July 2006. The rates in regulation 9 (eg. 26.7 cents per km) are the former rates as indexed on 1 July 2006.

Item [3]

is a consequential amendment to that in Item [2] and amends subregulation 9AB(1) of the Principal Regulations to provide that the definition of “relevant financial year”, for the “indexing method” in subregulation 9AB(1), means a financial year beginning on or after 1 July 2006. Previously the “relevant financial year” was a financial year beginning on or after 1 July 1997.