EXPLANATORY STATEMENT

Veterans' Affairs Pharmaceutical Benefits Schemes (Updating Incorporated Documents) Amendment Instrument 2016

(Instrument 2016 No. R49/MRCC49)

EMPOWERING PROVISIONS

Subsection 91(3) of the *Veterans' Entitlements Act 1986* (VEA) and subsection 286(3) of the *Military Rehabilitation and Compensation Act 2004* (MRCA).

PURPOSE

The attached instrument (2016 No. R49/MRCC49) varies, respectively:

- the *Repatriation Pharmaceutical Benefits Scheme* under the VEA;
- the *MRCA Pharmaceutical Benefits Scheme* under the MRCA

(collectively referred to as "the Schemes").

The Schemes are legislative instruments that set out the circumstances in which the Repatriation Commission and the Military Rehabilitation and Compensation Commission (the Commissions) may arrange for pharmaceutical benefits to be provided to veterans, members (including former members) of the Defence Force, or their dependants at a concessional rate.

The *Repatriation Pharmaceutical Benefits Scheme* also applies, subject to modifications, to people entitled to treatment under the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* (see s.18 of that Act).

The purpose of the attached instrument is to update references in the Schemes to the "as-in-force" date for documents incorporated-by-reference into the Schemes.

The Schemes incorporate-by-reference a number of documents. These documents are set out in Schedule 1 of the Schemes. One particular document, the Repatriation Schedule of Pharmaceutical Benefits (or RPBS Schedule) will change on 1 January 2017 to include 4 new listings for generic brand medicine items and increase the price of 19 currently listed items.

The addition of the 4 new listings on the RPBS Schedule will ensure eligible Department of Veterans' Affairs (DVA) clients have the benefit of additional generic brand medications at a subsidised cost for the treatment of conditions including seasonal allergic rhinitis, candida infections, threadworm infestation, and a drug for use in patients pre- and post-angioplasty.

The price increases for the 19 currently listed items will not affect the veterans' contribution for these items. They will continue to pay the specified co-payment for

pharmaceuticals (currently $6.20). This co-payment may be discounted at the pharmacist's discretion in line with arrangements introduced since 1 January 2016.

The attached instrument amends the Schemes to ensure that the changed version of the RPBS Schedule as it exists on the relevant date (1 January 2017) is the version of the document that is incorporated into, and made part of, the Schemes.

Under current legislation, non-legislative material may only be incorporated by reference into the Schemes in the version in which it exists on a specific date, and not as it may exist "from time to time".

The RPBS Schedule is part of the Repatriation Pharmaceutical Benefits Scheme that enables eligible DVA clients to access pharmacy items at a concessional rate. The RPBS Schedule includes all items available to the general community under the Pharmaceutical Benefits Scheme (PBS) as well as separate listings that are exclusive to DVA beneficiaries at a concessional rate.

As the references in the Schemes to the RPBS Schedule are being updated, the opportunity has been taken to update the references to other incorporated documents (included in List A in the Schedules to the Schemes) so that any later version of these documents in existence on 1 January 2017 is the version that is recognised by the Schemes.

Further details of the attached instrument are set out in Attachment A.

CONSULTATION

Yes. The Department of Health, the Department of Finance and the Repatriation Pharmaceutical Reference Committee were consulted in respect of the new listings and price increases in the RPBS Schedule. The Repatriation Pharmaceutical Reference Committee (RPRC) operates under the auspices of DVA and is comprised of officials and members of various medical, pharmacy and ex-servicemen's organisations and clinical specialty members. The RPRC advises the Commissions on potential new listings for the RPBS Schedule and associated matters.

The nature of the consultation included written correspondence, telephone conversations and meetings with the interested parties in question.

RETROSPECTIVITY

None.

DOCUMENTS INCORPORATED BY REFERENCE

Yes. The documents in List A of the revised Schedule 1 are incorporated into the Schemes in the form in which they exist on 1 January 2017 and not in the form in which they may exist from time to time.

The documents in List B of the revised Schedule 1 (previous editions of the British Pharmacopoeia and other pharmaceutical reference materials) are incorporated into the Schemes in the form in which those editions exist on the date on which they were published.

The incorporated documents are available for inspection at: Department of Veterans' Affairs (ACT Office), Level 5, Gnabra Building, Corner Bunda and Genge Streets, Civic, Canberra. Phone: (02) 6289 6243 or any State or Territory Office of the Department of Veterans' Affairs: Phone: 133 254.

The RPBS Schedule (also known as the Repatriation Schedule of Pharmaceutical Benefits) is also accessible on the Department of Health website at: https://www.pbs.gov.au/browse/rpbs.

HUMAN RIGHTS STATEMENT

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The attached legislative instrument engages the Right to Health contained in article 12(1) of the International Covenant on Economic Social and Cultural Rights.

The Right to Health is the right to the enjoyment of the highest attainable standard of physical and mental health. The UN Committee on Economic Social and Cultural Rights has stated that health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity.

The legislative instrument engages the Right to Health by:

- making 4 new generic brands of medicines available to DVA clients at a concessionary price;
- ensuring certain medicines remain on the RPBS by increasing the subsidy DVA will pay on those medicines. But for that increase, the manufacturers of the medicines might have had their medicines de-listed thereby denying their availability to DVA clients at a concessionary price.

Conclusion

The attached legislative instrument is considered to be compatible with the right to health because it provides new medicines at a concessionary price to the veteran community and ensures certain medicines continue to be available to that section of the community.

Dan Tehan
Minister for Veterans' Affairs

Rule-Maker

FURTHER EXPLANATION OF PROVISIONS

See: Attachment A

Attachment A

Veterans' Affairs Pharmaceutical Benefits Schemes (Updating Incorporated Documents) Amendment Instrument 2016

Section 1
This section sets out the name of the instrument - *Veterans' Affairs Pharmaceutical Benefits Schemes (Updating Incorporated Documents) Amendment Instrument 2016.*

Section 2
This section provides that the instrument commences on 1 January 2017.

Section 3
This section sets out the primary legislation that authorises the making of the instrument, namely subsection 91(2) of the *Veterans' Entitlements Act 1986* in respect of the variations to the *Repatriation Pharmaceutical Benefits Scheme* in Schedule 1, and subsection 286(2) of the *Military Rehabilitation and Compensation Act 2004* in respect of the variations to the *MRCA Pharmaceutical Benefits Scheme* in Schedule 2.

Section 4
This section provides for the variations to the Schemes outlined in the Schedules to have effect.

Schedule 1 - Variations to the Repatriation Pharmaceutical Benefits Scheme (the RPBS or the Scheme)

Item 1
This item replaces Schedule 1 to the *Repatriation Pharmaceutical Benefits Scheme*. Schedule 1 lists the documents that are incorporated by reference into the Scheme. It comprises List A and List B.

This amendment changes Schedule 1 to revise the "as-in-force" date for the documents included in List A to 1 January 2017. The effect of this amendment is to ensure that the updated version of the RPBS Schedule as it exists on 1 January 2017 is the version that is incorporated into and forms part of the Scheme. The amendment will also ensure that any other documents mentioned in List A that have been updated since 1 January 2016 are incorporated into the Scheme in their more recent version.

In addition, the amendment changes Schedule 1 to clarify that the documents in List B (previous editions of the British Pharmacopoeia and other pharmaceutical reference materials) are incorporated-by-reference into the Scheme in the version in which they exist on the date of publication of each previous edition.

This latter change is in accordance with the Minister's response of 4 May 2016 to comments by the Senate Standing Committee on Regulations and Ordinances about the applicable "as-in-force" date for the documents included in List B of Schedule 1.

Schedule 2 - Variations to the MRCA Pharmaceutical Benefits Scheme (the MRCA PBS or the Scheme)

Item 1
This item replaces Schedule 1 to the *MRCA Pharmaceutical Benefits Scheme.* Schedule 1 lists the documents that are incorporated by reference into the Scheme. It comprises List A and List B.

This amendment changes Schedule 1 to revise the "as-in-force" date for the documents included in List A to 1 January 2017. The effect of this amendment is to ensure that the updated version of the RPBS Schedule as it exists on 1 January 2017 is the version that is incorporated into and forms part of the Scheme. The amendment will also ensure that any other documents mentioned in List A that have been updated since 1 January 2016 are incorporated into the Scheme in their more recent version.

In addition, the amendment changes Schedule 1 to clarify that the documents in List B (previous editions of the British Pharmacopoeia and other pharmaceutical reference materials) are incorporated-by-reference into the Scheme in the version in which they exist on the date of publication of each previous edition.

This latter change is in accordance with the Minister's response of 4 May 2016 to comments by the Senate Standing Committee on Regulations and Ordinances about the applicable "as-in-force" date for the documents included in List B of Schedule 1.