

EXPLANATORY STATEMENT

Veterans' Affairs Pharmaceutical Benefits Schemes Amendment Instrument 2018 (Instrument 2018 No. R34/MRCC34)

EMPOWERING PROVISIONS

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

PURPOSE

The attached instrument (2018 No. R34/MRCC34) varies, respectively:

- the *Repatriation Pharmaceutical Benefits Scheme* under the VEA; and
- 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 and 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 and British Commonwealth Occupation Force (Treatment) Act 2006* (see s.18 of that Act).

The purpose of these variations to the Schemes is to:

- provide for the incorporation of non-legislative material into the Schemes in the form in which that material exists, or is in force, from time to time; and
- update the definition of *Repatriation Health Card – For Specific Conditions* in the Repatriation Pharmaceutical Benefits Scheme.

Under section 14 of the *Legislation Act 2003*, non-legislative material may only be incorporated by reference into legislative instruments in the form in which it exists on a specific date. “Ambulatory” or “open” incorporation by reference is not permitted unless the empowering Act expressly provides for it.

The Schemes incorporate by reference a number of external non-legislative documents which are legally regarded as being part of the Schemes. Historically, these non-legislative documents have been incorporated in the form in which they exist on a specific date. This is because the relevant empowering provisions of the VEA and MRCA have not previously

expressly provided otherwise. This approach required a legislative instrument to change the “as-in-force” date for incorporated documents to accommodate updates to the content of those documents, often resulting in delay in implementation of new policy.

The position changed with the enactment of the *Veterans’ Affairs Legislation Amendment (Omnibus) Act 2017*. Schedule 7 to that Act amended various instrument-making provisions in Veterans’ Affairs portfolio legislation to provide for incorporation by reference of non - legislative documents into those instruments in the form in which they exist “from time to time”. Specifically, section 91 of the VEA and section 286 of the MRCA were amended to allow for the incorporation of non-legislative material into the Schemes in the form in which that material exists from time to time.

These amendments provide the necessary “contrary intention” in the empowering Acts for the purposes of subsection 14(2) of the *Legislation Act 2003*, thus enabling the incorporation, application or adoption of non-legislative material into the relevant legislative instruments, including the Schemes, in the form in which the non-legislative material exists, or is updated “from time to time”.

This variation to the Schemes will have the effect of incorporating into the Schemes, the latest version of each of the documents listed at Schedule 1 to the Schemes. Notably, this will bring into force the most recent version of the Repatriation Pharmaceutical Benefits Scheme Schedule (or RPBS Schedule).

The RPBS Schedule is part of the Schemes and enables eligible clients of the Department of Veterans’ Affairs (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 as well as separate listings that are exclusive to DVA clients at a concessional rate.

Specifically, from 1 July 2018, the RPBS Schedule will be updated to include:

- 12 new additional generic brand listings
- 33 price variations
- 9 additional generic brands.

The price increases for the currently listed items will not affect the amount DVA clients pay for these items. DVA clients will continue to pay the specified co-payment for pharmaceuticals (currently \$6.40). This co-payment may be discounted at the pharmacist’s discretion by up to \$1.00 for each dispensed medicine in line with arrangements in place since 1 January 2016.

On commencement of the attached instrument, these changes to the RPBS Schedule will have the force of law. In addition, further changes to the RPBS and other documents listed in Schedule 1 that are made after the commencement date of the attached instrument may proceed administratively without the need for a legislative instrument to amend the Schemes.

Further details of the attached instrument are set out in [Attachment A](#).

CONSULTATION

Section 17 of the *Legislation Act 2003* requires a rule-maker to be satisfied, before making a legislative instrument, that any consultation the rule-maker considered appropriate and reasonably practicable, has been undertaken.

Consultation was undertaken at the time of developing the *Veterans' Affairs Legislation Amendment (Omnibus) Bill 2017* to amend the primary legislation that would facilitate the making of this instrument. Specifically, the development and passage of Schedule 7 to the *Veterans' Affairs Legislation Amendment (Omnibus) Act 2017* included consultation with veteran community stakeholders, including Ex-Service Organisation Roundtable Organisation (ESORT) members, via email on 6 April 2017 and at an ESORT meeting on 9 May 2017.

Further, the recent changes to the RPBS Schedule, in respect of the new listings and price variations, involved consultation with the Department of Health, the Department of Finance and the Repatriation Pharmaceutical Reference Committee (RPRC).

The RPRC is an expert committee operating under the governance of the Department of Veterans' Affairs and comprised of members of various medical, pharmacy and ex - service persons' organisations, and clinical specialty members. The RPRC advises the Commissions and the Minister on potential new listings for the RPBS Schedule and associated matters.

The nature of the consultation included meetings and correspondence with the Department of Health and Department of Finance to identify any potential issues or concerns with the listings and agree the financial implications. The changes to the RPBS Schedule were endorsed by the Commissions on the recommendation of the RPRC.

Accordingly, it is considered the requirements of section 17 of the *Legislation Act 2003* have been met.

RETROSPECTIVITY

Nil.

REGULATORY IMPACT

Regulatory Impact Statement not required.

DOCUMENTS INCORPORATED BY REFERENCE

Yes. Following the amendments made by the attached instrument, the documents listed in Schedule 1 to the Schemes will be incorporated into the Schemes in the form in which they exist or are "in force" from time to time.

Schedule 1 to the Schemes refers to a number of external non-legislative documents which are incorporated-by-reference into the Schemes.

The documents listed in Schedule 1 to the Schemes are available for inspection at:

Department of Veterans' Affairs, Level 5 Gnabra Building, Genge Street, Civic, Canberra.
Tel.no: (02) 6289 6076.

In addition, the attached instrument adds hyperlinks for each of the documents listed in Schedule 1 to the Schemes, including the link to the RPBS Schedule (also known as the Repatriation Schedule of Pharmaceutical Benefits) accessible on the following website at:

<https://www.pbs.gov.au/browse/rpbs>

The links to the Schedule 1 documents will also be available on the DVA's Web Page at:

<http://clik.dva.gov.au/legislation-library>

HUMAN RIGHTS STATEMENT

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

The attached legislative instrument, insofar as it updates the Repatriation Pharmaceutical Benefits Scheme, engages an applicable right of freedom – specifically, 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.

Overview

The legislative instrument updates the Schemes to provide that the documents listed in Schedule 1 to the Schemes are incorporated by reference into the Schemes in the form in which they exist from time to time. This will give force of law to the latest version of the RPBS Schedule. From 1 July 2018, the RPBS Schedule will be updated to include additional listings for new medications and additional generic brand medications. This will ensure eligible DVA clients have access to these further medications at concessional prices.

The amendments will enable the Schemes to incorporate-by-reference, the documents referenced in Schedule 1 in the form in which they exist from time to time. This will improve the administration of the Schemes by speeding the implementation of policy measures, but will not have any impact on the provision of benefits under those Schemes.

Conclusion

The attached legislative instrument is considered to be compatible with the right to health because it gives force of law to the latest version of the RPBS Schedule which 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.

Mark Cormack
Chief Operating Officer
Delegate for the Minister for Veterans' Affairs

Rule-Maker

FURTHER EXPLANATION OF PROVISIONS

See: Attachment A

Veterans' Affairs Pharmaceutical Benefits Schemes Amendment Instrument 2018

Section 1

This section sets out the name of the instrument – the *Veterans' Affairs Pharmaceutical Benefits Schemes Amendment Instrument 2018*.

Section 2

This section provides that the instrument commences on 1 July 2018.

Section 3

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

Section 4

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

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

Items 1, 2, 4, 5 and 6

These items update certain definitions in section 3 of the Scheme. The definitions are of the non-legislative documents listed in Schedule 1 that are incorporated by reference into the Schemes. The definitions are updated to refer to the documents in the form in which they exist “from time to time”. Previously, the definitions referred to the documents in the form in which they existed at the date mentioned in Schedule 1.

Item 3

This item updates the definition of “Repatriation Health card – For Specific Conditions” (also known as White Cards) to include, at para (b), White Cards issued to indicate eligibility “for treatment under a determination made under section 88A of the *Veterans' Entitlements Act 1986*”.

The amendment brings the Scheme up to date by ensuring the full range of White Card holders are covered by the definition and thus entitled to the benefits that flow to eligible persons under the Scheme.

Item 7

This item replaces Schedule 1 of the *RPBS* which sets out the list of documents that are incorporated-by-reference into the Schemes and the relevant date of effect for those incorporated documents.

The new (substituted) Schedule updates the introductory wording to Schedule 1 to remove the reference to the date “1 January 2018” and provide that the documents listed in Schedule 1 are incorporated by reference into the *RPBS* in the form in which they exist “from time to time”.

In addition, the list of incorporated documents in Schedule 1 has been updated to include a hyperlink for each document. This will enable users of the legislation to electronically access the latest version of each of the incorporated documents.

The list of incorporated documents in Schedule 1 remains unchanged.

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

Items 1, 2, 3, 4 and 5

These items update certain definitions in section 3 of the Scheme. The definitions are of the documents listed in Schedule 1 that are incorporated by reference into the Schemes. The definitions are updated to refer to the documents in the form in which they exist “from time to time”. Previously, the definitions referred to the documents in the form in which they existed at the date mentioned in Schedule 1.

Item 6

This item replaces Schedule 1 to the *MRCA PBS* which sets out the list of documents that are incorporated by reference into the Schemes and the relevant date of effect for those incorporated documents.

The new (substituted) Schedule updates the introductory wording to Schedule 1 to remove the reference to the date of 1 January 2018 and provide that the documents listed in Schedule 1 are incorporated by reference into the *MRCA PBS* in the form in which they exist “from time to time”.

In addition, the list of incorporated documents in Schedule 1 has been updated to include a hyperlink for each document. This will enable users of the legislation to electronically access the latest version of each of the incorporated documents.

The list of incorporated documents in Schedule 1 remains unchanged.