##### EXPLANATORY STATEMENT

**Veterans’ Entitlements (Defence, Veterans’ and Families’ Acute Support Package) Instrument 2022**

**EMPOWERING PROVISIONS**

Section 115S of the *Veterans’ Entitlements Act 1986* (the ***VEA***).

**PURPOSE**

The *Veterans’ Entitlements (Defence, Veterans’ and Families’ Acute Support Package) Instrument 2022* (the ***Instrument***) sets out provisions for, and in relation to, the granting of an acute support package of assistance or benefits to specified kinds of persons for the purposes of the amendments to the *Veterans’ Entitlements Act 1986* made by the *Defence Veterans’ and Families Acute Support Package Act 2022* (the ***Amendment Act***).

The Amendment Act extends and consolidates the initial response to Recommendation 19 of 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 Act provides more vulnerable veterans and their families with more flexible support through the Acute Support Package (***ASP***). The ASP seeks to provide choice and flexibility for families to access the help that will be most beneficial to them. A support plan, developed between the family and a DVA service coordinator, will set out the services on which the capped amount may be spent, based on individual family need.

The purpose of the Instrument is to implement the ASP introduced by the Amendment Act and provide for targeted and intensive assistance and benefits to veterans and their families. The assistance and benefits that form part of the ASP include the provision of child care services, counselling, household assistance, education, transport and equipment services to veterans and their families.

To be eligible for the acute support package, the person must be at a minimum, a veteran, a war widow or war widower, or a former partner of a veteran, and satisfy the other prescribed eligibility criteria set out in the instrument. Assuming the prescribed eligibility criteria are satisfied, the Repatriation Commission (the ***Commission***) may decide to grant a package of assistance or benefits to a person, if the Commission is satisfied that it is appropriate to grant an acute support package to assist the person to adjust to new and challenging life circumstances.

Some support and assistance provided can be accessed by veterans and their families up to an annual financial cap, for one or more periods, that add up to a total of 24 months. The financial assistance can be spent on a variety of services that include childcare, household assistance and services to build capacity. Generally, for a veteran or former partner of a veteran, the annual cap in relation to one or more periods during which assistance or benefits are to be provided that add up to 12 months (the first accumulated 12 months period) is $7,500, and $5,000 in relation to one or more periods during which assistance or benefits are to be provided that add for a further accumulated 12 months period. Where a person who is included in a support plan is a child who is attending, or not yet attending, primary school, additional financial benefits or assistance may be included in the support plan and be made available to the veteran or former partner of a veteran, ending on the first anniversary of the start of the period for which the child has completed primary school.

For a war widow or war widower, the maximum value of support is $27,835 every 12 months for a continuous 24 month period starting on the day the support plan comes into effect.

In addition, there are further support and benefits in relation to counselling which are not limited by the prescribed 12-month cap.

For the purposes of the acute support package, the Commission 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.

**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*. This instrument also addresses feedback received through the Female Veterans and Veterans’ Families Forum. Therefore no further additional consultation was required in relation to this Instrument.

**DETAILS/OPERATION**

The 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 B**.

The Instrument is a legislative instrument for the purposes of the *Legislation Act 2003.*

**MERITS REVIEW**

The Amendment Act inserts a new section 135A into the VEA, and provides that Part 9 (Veterans’ Review Board) and Part 10 (Review of Decisions by Administrative Appeals Tribunal) of the VEA applies to decisions made by the Commission under the Instrument. In effect, this makes a decision of the Commission under the Instrument reviewable by Veterans Review Board and the Administrative Appeals Tribunal.

**FURTHER EXPLANATION OF PROVISIONS**

Details of the Instrument including commencement details are set out in **Attachment A**.

Attachment A

**Details of Veterans’ Entitlements (Defence, Veterans’ and Families’ Acute Support Package) Instrument 2022**

**Part 1 - Preliminary**

**Section 1 - Name**

This section provides that the name of the Instrument is the *Veterans’ Entitlements (Defence, Veterans’ and Families’ Acute Support Package) Instrument 2022* (the ***Instrument***).

**Section 2 - Commencement**

This section sets out the date on which the Instrument commences operation.

Subsection 2(1) provides that each provision of the Instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Table item 1 provides that the whole of the Instrument commences on the later of the day after it is registered on the Federal Register of Legislation and the day on which the *Defence, Veterans’ and Families’ Acute Support Package Act 2022* (the ***Amendment Act***) commences.

The effect of this section is that the Instrument will commence on the later of the day after it is registered and the date the Amendment Act commences.

**Section 3 - Authority**

This section provides that the legislative authority for the Instrument is section 115S of the *Veterans’ Entitlements Act 1986* (the ***Act***).

**Section 4 - Schedules**

This section provides that each Instrument that is specified in the Schedule to this Instrument will be amended or repealed as set out in the applicable items in the Schedule, and any other item in the Schedule to this Instrument has effect according to its terms.

**Section 5 – Simplified outline of this instrument**

This section provides a simplified outline of the Instrument.

The simplified outline is included to assist the reader to understand the substantive provisions of this Instrument; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive provisions of this Instrument to which the outline relates.

**Section 6 - Definitions**

This section provides for definitions and terms used in the Instrument.

Subsection 6(1) defines the following:

“***Act***” means the *Veterans’ Entitlements Act 1986.*

*“****acute support package****”* is a signpost definition to draw the reader’s attention to subsection 7(1) for its meaning.

*“****support plan****”* is a signpost definition to draw the reader’s attention to section 8 which is the section that provides details about the support plan. The term being tagged in that section indicates that a support plan is a plan prepared in accordance with that section.

Subsection 6(2) provides that in this instrument, a reference to a “***child***” of a veteran, includes a reference to a stepchild of the veteran and a person in respect of whom the veteran stands or stood in the position of a parent. This expands on the meaning of the “***child***” as defined in section 5F of the Act to include stepchild and a person in respect of whom the veteran stands or stood in the position of a parent to the child.

Subsection 6(3) provides that in this Instrument, a reference to a “***deceased partner***” of a war widow or war widower means a reference to a deceased person who was a veteran, member of the Forces for the purposes of Part II or IV of the Act or a member within the meaning of the *Military Rehabilitation and Compensation Act 2004* and whom the war widow or war widower was a partner of, was legally married to, or was the wholly dependent partner of immediately before the person’s death.

**Part 2 – Commission may grant acute support package**

**Division 1—Eligibility for acute support package**

**Section 7 Commission may grant acute support package**

This section provides that the Commission may decide to grant an acute support package to a person provided that they meet certain eligibility requirements and if satisfied that it is appropriate to grant assistance or benefits under the acute support package to assist the person to adjust to new and challenging life circumstances.

Subsection 7(1) provides that the Commission may decide to grant a package, otherwise known as an acute support package, of assistance or benefits to a person provided that:

1. the person is a person covered by subsections (2), (3) or (4); and
2. if the person has previously been granted an acute support package, either the period during which the assistance or benefits for that acute support package has ended or the support plan has been revoked; and
3. the Commission is satisfied that it is appropriate to grant an acute support package to the person to assist the person to adjust to new and challenging life circumstances.

Paragraph 7(1)(c) provides the Commission with discretion to make a decision to grant assistance or benefits to a particular eligible person so as to assist the person who is experiencing or is at risk of experiencing crisis, to cope with the new and challenging life circumstances being experienced by that person. Without limiting application of subsection 7(1), the crisis being experienced by the specified person could be those relating to serious condition or illness that significantly affects the physical and mental health of the person or a dependant of the person.

*Veterans*

Subsection 7(2) sets out the eligibility criteria for veterans to receive an acute support package. The following criteria must be satisfied:

* the person is a veteran;
* the person is under 65 years of age;
* the person is receiving, or is eligible to receive, compensation for a pension at a rate provided for by section 23, 24 or 25 of the Act or a veteran payment;
* the Commission is satisfied that the person, or a related person of the person, is experiencing, or is at risk of experiencing, crisis.

*War widows and war widowers*

Subsection 7(3) sets out the eligibility criteria for war widows or war widowers to receive an acute support package. The following criteria must be satisfied:

* the person is a war widow or war widower;
* the person is under 65 years of age;
* the death of the deceased partner of the war widow or war widower occurred no more than 2 years ago;
* either:
  + the deceased partner’s death was related to service rendered by the deceased partner; or
  + the Commission is satisfied that the deceased partner’s death was a suicide related to service rendered by the deceased partner.

*Former partners of veterans*

Subsection 7(4) sets out the eligibility criteria for former partners of veterans. This allows for assistance or benefits to a former partner of a veteran where the separation has occurred or the relationship has broken down within the previous 12 months. A former partner is also eligible for assistance if a child of the veteran who is under 18 years of age lives with the person, even if the relationship has broken down for more than 12 months.

For a person to be eligible under this subsection the following criteria must be satisfied:

* the person is a former partner of a veteran;
* the person is under 65 years of age;
* the veteran is receiving, or is eligible to receive, a pension at a rate provided for by section 23, 24 or 25 of the Act or a veteran payment;
* either or both of the following apply:
  + the person ceased being the veteran’s partner within the previous 12 months;
  + a child of the veteran who is under 18 years of age lives with the person;
* the Commission is satisfied that the person is experiencing, or is at risk of experiencing, crisis.

**Division 2—Support plan for acute support package**

Division 2 of Part 2 requires that if an acute support package has been granted by the Commission to a person, the Commission must prepare a support plan for the person.

Division 2 of Part 2 also sets out that a support plan must include specified details such as the persons who are to be provided with the assistance or benefits, the kinds of assistance or benefits, the period or periods during which those assistance or benefits are to be provided, a list of providers, payment arrangements and commencement date of the support plan. The Commission may vary a support plan and revoke a support plan in specified circumstances.

**Section 8 Commission must develop support plan**

This section provides that the Commission must develop a support plan.

Subsection 8(1) provides that, where the Commission has decided to grant an acute support package to a person, the Commission must prepare a support plan for the person.

*Contents of support plan*

Subsection 8(2) requires that a support plan must specify details set out in paragraphs (a) to (f) in relation to the provision of assistance or benefits to the person. The support plan must include the following:

* the persons who are to be provided with assistance or benefits under the support plan;
* the kinds of assistance or benefits that the Commission is satisfied are appropriate to be provided to those persons;
* the period or periods during which those assistance or benefits are to be provided;
* the providers that are to provide the assistance or benefits;
* the payment arrangements relating to the provision of the assistance or benefits; and
* the day on which the support plan comes into effect.

*Persons included in support plan*

Subsection 8(3) provides that a person must not be included in a support plan for an acute support package for the purposes of paragraph 8(2)(a) unless certain circumstances exist. The effect of this provision is to set out who can be included in the support plan for the acute support package.

If a person has been granted the package the person may be included in a support plan.

If the package has been granted to veteran, the support plan can include a person who is related to the veteran. However, the Commission must be satisfied that the person is experiencing, or is at risk of experiencing, crisis.

If the package has been granted to a war widow or war widower, the package can include a person who is a child under 18 years of age of the deceased partner. However the war widow or war widower must be parenting the child and the Commission must be satisfied that the child is experiencing, or is at risk of experiencing, crisis.

If the package has been granted to a former partner of a veteran, the package can include a person who is a child under 18 years of age of the veteran. However, the former partner must be parenting the child and the Commission must be satisfied that the child is experiencing, or is at risk of experiencing, crisis.

*Kinds of assistance or benefits included in support plan*

Subsection 8(4) lists the kinds of assistance or benefits that may be included in the support plan for the purposes of paragraph 8(2)(b). The kind of assistance or benefits that may be included in a support plan include:

* child care services for children attending or not yet attending primary school;
* counselling;
* household assistance;
* services to build capacity;
* academic and extra‑curricular support services for a child who is under 18 years of age;
* transport services in relation to assistance or benefits being provided under the support plan;
* equipment and other goods; and
* any other kind of assistance or benefits that the Commission is satisfied will assist the person being provided with the assistance or benefits to adjust to new and challenging life circumstances.

Paragraph 8(4)(h) allows the Commission to provide additional assistance or benefits, to those listed in paragraphs 8(4)(a) to (g) if the Commission is satisfied it is appropriate.

*Child care service providers*

Subsection 8(5) limits the providers that can, for the purpose of paragraph 8(2)(d), provide child care services under an acute support package. A provider of child care services must not be included in a support plan unless the provider is an approved child care service (within the meaning of the *A New Tax System (Family Assistance) (Administration) Act 1999*) or a person registered under section 73E of the *National Disability Insurance Scheme Act 2013* in relation to the provision of child care services.

**Section 9 Varying and revoking support plan**

This section provides for the variation and revocation of a support plan.

*Varying support plan*

Subsection 9(1) provides that the Commission may vary a support plan either on request by the person for whom the support plan was prepared or a person who is included in the support plan, or on the Commission’s own initiative. The Commission may only vary a support plan if satisfied that is it appropriate to do so.

*Revoking support plan*

Subsection 9(2) requires the Commission to revoke a support plan that was prepared for a veteran or former partner of a veteran, if the relevant veteran, is no longer receiving, or is no longer eligible to receive, a pension at a rate provided for by section 23, 24, or 25 of the Act or a veteran payment.

Subsection 9(3) provides that the Commission may revoke a support plan in certain circumstances.

A support plan may be revoked in any of the following circumstances:

* if prepared for the veteran, the Commission is satisfied that the veteran, or a related person of the veteran, is no longer experiencing, or is no longer at risk of experiencing, crisis;
* if prepared for a former partner of a veteran, the Commission is satisfied that the former partner of a veteran is no longer experiencing, or is no longer at risk of experiencing, crisis;
* a person who is included in the support plan does not comply with a request made to the person under section 13 to provide information;
* the Commission is satisfied that it is appropriate to revoke the support plan in order to grant a further acute support package to the person due to new and challenging life circumstances.

*Effect of revocation*

Subsection 9(4) sets out the effect of revocation. If a support plan is revoked, the assistance and benefits will no longer be provided to the person.

**Division 3—Conditions and limits on assistance and benefits**

**Section 10 Assistance or benefits generally**

This section provides for the total financial value of assistance or benefits that may be included in a support plan. The total value and total annual cap can be used for any of the services or assistance listed in subsection 8(4). Additional benefits are provided under sections 11 (additional counselling) and 12 (additional assistance or benefits in relation to children).

The total value of assistance or benefits for a veteran or former partner of a veteran is a maximum of $7,500 for one or more periods during which the assistance or benefits add up to 12 months (the first year) and a maximum of $5,000 for one or more periods during which the assistance or benefits add up to a further 12 months (the second year). That is, the assistance provided in subsection 10(1) does not have to be accessed during one continuous period of time, the veteran or former partner of a veteran can access support included in a support plan to cover multiple periods of crisis. However, limitations and the ending of support in relation to the overall period covering the assistance or benefits are set out in subsection 10(2).

The maximum period during which assistance or benefits included in a support plan can be accessed for a veteran or former partner of a veteran is either:

1. the end of the further 12 month period referred to in subparagraph (1)(a)(ii); or
2. if that latter 12 month period has not been accrued, the end of a 48 month period starting on the day the support plan comes into effect.

In the case of a war widow or war widower, an eligible recipient will receive the assistance over a continuous 24 month period.

The total value of assistance or benefits for a war widow or war widower is a maximum of $27,835 for every 12 months for a continuous period of 24 months starting on the day the support plan comes into effect.

Subsection 10(2) provides for the ending of the period during which assistance or benefits is provided under section 10. Although the financial assistance provided under paragraph 10(1)(a) does not need to be accessed continuously for 24 months, the support plan prepared for the person and access to benefits ends immediately after the earlier of the end of the further 12 month period referred to in subparagraph (1)(a)(ii) or the end of the 48 month period starting on the day the support plan comes into effect. This means that persons who have been granted assistance under the acute support package generally have a maximum period of 4 years to use the assistance or benefits.

Further assistance or benefits included in a support plan that is not subject to the limitations imposed under section 10 are available if children who are under, or of, primary school age are included in the support plan.

**Section 11 Additional counselling**

This section provides for additional counselling assistance to be included in a support plan to a veteran or former partner of a veteran. The maximum amount of additional counselling that may be included in a support plan is 4 courses of counselling every 12 months for a continuous period of 36 months.

The 36 month period starts on the day after the relevant period referred to in paragraph 10(2)(a) ends. The counselling is available only after a veteran or former partner of a veteran has received the total amount of assistance or benefits for which they are eligible for the total period referred to in paragraph 10(2)(a).

**Section 12 Additional assistance or benefits in relation to children**

This section provides additional assistance or benefits in respect of children who are under, or of, primary school age and are included in the support plan.

Subsection 12(1) provides that this section applies if a person who is included in a support plan for the purposes of paragraph (8)(2)(a) is a child who is either attending or not yet attending primary school.

Subsection 12(2) provides that in addition to section 10, assistance or benefits may be included for a continuous period starting on the later of the day the support plan comes into effect or the day the child is included in the support plan and ending on the first-occurring anniversary of the start of the period for which the child has completed primary school. The effect of this subsection is that assistance or benefits would be available for a child who is not yet in primary school and during the period that the child is attending primary school.

Subsection 12(3) sets out the maximum value of financial assistance or benefits that may be provided in relation to the eligible child. The value of the additional assistance or benefits included in the support plan is $10,000 every 12 months until the first-occurring anniversary for which the child attends primary school (that is the 1-year anniversary of their starting primary school) and $5,000 every 12 months thereafter until the first occurring anniversary of the start of the period for which the child has completed primary school. As the financial assistance relates to a particular child, a particular veteran or former partner of a veteran who has several young or primary school age children would be able to access financial benefits for each of the children should they be included in a support package.

Subsection 12(4) clarifies that assistance or benefits provided under section 12 do not count towards the maximum amounts or periods referred to in section 10 (assistance or benefits generally available). It is possible that the benefits or assistance under section 12 in relation to a child can occur continuously for over four years.

**Division 4—Other matters**

**Section 13 Commission may request information**

This section provides that the Commission may request information from a person who is included in the support plan in relation to the provision of assistance or benefits included in that support plan. There is a note that failure to comply with the request may result in the revocation of the support plan.

**Statement of Compatibility with Human Rights**

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

**Veterans’ Entitlements (Defence, Veterans’ and Families’ Acute Support Package) Instrument 2022**

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

*Right to social security*

The right to social security is contained in article 9 of the ICESCR. The right to social security 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 providing veterans and their families with additional support and services when faced with challenging circumstances.

*Right to health*

The right to health is contained in article 12(1) of the ICESCR. The right to health 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 provides for counselling to veterans and their families. It will ensure that critical mental health support is provided to veteran and their families when experiencing challenging life situations.

*Overview*The Instrument will enable the provision of targeted, flexible support to veteran families managing challenging life circumstances. It provides intensive support to families, complementing other services provided by the DVA and other Government services.

*Conclusion*The attached Instrument is compatible with human rights because it promotes the right to social security and right to health.

Repatriation Commission

Rule-Maker