

## EXPLANATORY STATEMENT

### *Veterans' Entitlements Act 1986* *Military Rehabilitation and Compensation Act 2004*

#### **Veterans' Affairs Pharmaceutical Benefits Schemes (Continued Dispensing— Emergency Measure) Amendment Determination 2025 (No. 2)**

##### **Authority**

Subsection 286(5) of the *Military Rehabilitation and Compensation Act 2004* (the MRCA) and subsection 91(4) of the *Veterans' Entitlements Act 1986* (the VEA) provide that the Military Rehabilitation and Compensation Commission and the Repatriation Commission respectively may vary the *MRCA Pharmaceutical Benefits Scheme* (MRCA PBS) and the *Repatriation Pharmaceutical Benefits Scheme* (RPBS) (together, the Schemes).

The proposed variations to the MRCA PBS and the RPBS will put in place 'continued dispensing' arrangements as an emergency measure for eligible Department of Veterans' Affairs (DVA) clients affected by the flooding emergency in New South Wales. The variations to the Schemes made by the Determination determine the pharmaceutical benefits that can be supplied by a community pharmacist under the Schemes without a prescription, and the conditions for such a supply.

##### **Purpose**

This instrument, made under both subsections 286(5) of the MRCA and 91(4) of the VEA, determines both the conditions under which 'continued dispensing' can occur and the eligible pharmaceutical benefits that can be supplied in that way.

The *National Health (Continued Dispensing – Emergency Measure) Determination 2025 (No. 2)*, made under subsection 89A(3) of the *National Health Act 1953*, implemented temporary, emergency measures to ensure people affected by the New South Wales flooding emergency would be able to continue to receive Pharmaceutical Benefits Scheme (PBS) subsidised medicines without the presentation of a prescription, where specific conditions are met.

This instrument provides that DVA clients eligible for pharmaceutical benefits under the Schemes will also benefit from the *National Health (Continued Dispensing – Emergency Measure) Determination 2025 (No. 2)* by the incorporation (as modified by the amendments to the Schemes) of that instrument as in force from time to time.

The incorporation of the *National Health (Continued Dispensing – Emergency Measure) Determination 2025 (No. 2)* as in force from time to time is authorised under subparagraph 14(1)(a)(ii) of the *Legislation Act 2003*.

The amendments to the Schemes ensure that eligible DVA clients will be able to obtain pharmaceutical benefits under the MRCA PBS or the RPBS if they are unable to attend their doctor and obtain a replacement prescription during the flooding emergency. These amendments to the Schemes are intended to be temporary and will cease to have practical effect upon the repeal of the *National Health (Continued Dispensing – Emergency Measure) Determination 2025 (No. 2)* which will take effect from the end of 30 June 2025.

Continued dispensing will enable the supply of a MRCA PBS or RPBS pharmaceutical benefit which is listed in Schedule 2 of the RPBS (Pharmaceutical benefits not covered by the PBS—continued dispensing) under specific circumstances. The benefit is supplied at the maximum quantity or the same quantity that was previously supplied of an eligible medicine to an eligible DVA client by a community pharmacist on the basis of a previous prescription, where a valid prescription is unavailable.

The eligible pharmaceutical benefits that can be provided as a continued dispensing supply will be limited to those contained in Schedule 1 of the *National Health (Continued Dispensing—Emergency Measure) Determination 2025 (No. 2)* and those items listed in Schedule 2 to the RPBS. The MRCA PBS specifies pharmaceutical benefits by reference to Schedule 2 to the RPBS.

This instrument will allow people to obtain any of the listed MRCA PBS and RPBS medicines without a prescription from their doctor, for the MRCA PBS or RPBS price.

### **Consultation**

The instrument affects approved pharmacists who are supplying pharmaceutical benefits at or from premises in respect of which the pharmacist is for the time being approved.

The Explanatory Statement to the *National Health (Continued Dispensing—Emergency Measure) Determination 2025 (No. 2)* refers to consultation prior to commencement of the *National Health (Continued Dispensing) Determination 2022*. Consultation was undertaken by the Department of Health and Aged Care with relevant peak bodies including the Pharmaceutical Society of Australia and the Pharmacy Guild of Australia. The Department of Health and Aged Care has also undertaken consultation with Services Australia and consulted with state and territory departments of health about implementation. The Department of Health and Aged Care determined that further consultation was unnecessary due to the nature of the flooding emergency and the previous consultation.

As this instrument adopts the same emergency conditions for the continued dispensing of pharmaceutical benefits under the Schemes, DVA did not directly consult with these bodies. DVA has consulted with the Department of Health and Aged Care about implementation. It was considered that further consultation for this instrument was unnecessary due to the nature of the consultation that had already taken place and the nature and urgency of the flooding emergency in New South Wales.

### **Retrospectivity**

The determination will be taken to have commenced on 23 May 2025, which is also the day of commencement for the *National Health (Continued Dispensing—Emergency Measure) Determination 2025 (No. 2)* and will operate from that date.

The retrospective commencement is designed to support clients who have been impacted by the flood emergency and is intended to ensure that supplies of pharmaceutical benefits under the Schemes on or after that date are covered by the Determination.

The retrospective operation of the instrument will not be affected by section 12 of the *Legislation Act 2003* because the retrospective operation would not disadvantage any person or impose a liability on a person other than the Commonwealth.

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

**Approved by**

Andrew Kefford PSM  
A delegate of the Minister for Veterans' Affairs  
Rule-maker

## **NOTES TO PROVISIONS**

### **1 Name**

This section provides that this instrument is the *Veterans' Affairs Pharmaceutical Benefits Schemes (Continued Dispensing – Emergency Measure) Amendment Determination 2025 (No. 2)*.

### **2 Commencement**

This section states that this instrument is taken to have commenced at the same time as the commencement of Part 1 of the *National Health (Continued Dispensing – Emergency Measure) Determination 2025 (No. 2)*. Part 1 commenced immediately after registration. The instrument was registered on 23 May 2025.

### **3 Authority**

This section states that this instrument is made under section 286(5) of the *Military Rehabilitation and Compensation Act 2004* and section 91(4) of the *Veterans' Entitlements Act 1986*.

### **4 Schedules**

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

## **Schedule 1 – Amendments**

### **MRCA Pharmaceutical Benefits Scheme**

**Item 1** substitutes the text *National Health (Continued Dispensing – Emergency Measures) Determination 2025* with the text *National Health (Continued Dispensing – Emergency Measure) Determination 2025 (No. 2)*.

The amended reference ensures that paragraph 16A(1A)(b) refers to the *National Health (Continued Dispensing—Emergency Measure) Determination 2025 (No. 2)*. By this reference, the MRCA PBS will allow a community pharmacist to supply a pharmaceutical benefit at or from premises for which the pharmacist has approval under the National Health Act without prescription for that supply if:

- the pharmaceutical benefit is covered by the table in Schedule 2 to the RPBS; and
- the supply is in accordance with the conditions specified in the *National Health (Continued Dispensing—Emergency Measure) Determination 2025 (No. 2)* as if the supply under the MRCA PBS is a supply that was covered by that instrument; and
- the instrument has effect as modified by subsection 16A(1B) to the extent that those conditions are applicable to the supply; and
- the supply otherwise conforms with the requirements of section 16A.

## Repatriation Pharmaceutical Benefits Scheme

**Item 2** substitutes the text *National Health (Continued Dispensing – Emergency Measures) Determination 2025* with the text *National Health (Continued Dispensing – Emergency Measure) Determination 2025 (No. 2)*.

The amended reference ensures that paragraph 16A(1A)(b) refers to the *National Health (Continued Dispensing—Emergency Measure) Determination 2025 (No. 2)*. By this reference, a community pharmacist may supply a pharmaceutical benefit at or from premises for which the pharmacist has approval under the *National Health Act 1953* without prescription for that supply if:

- the pharmaceutical benefit is covered by the table in Schedule 2 to the RPBS; and
- the supply is in accordance with the conditions specified in the *National Health (Continued Dispensing—Emergency Measure) Determination 2025 (No. 2)* as if the supply under the RPBS is a supply that was covered by that instrument; and
- the instrument has effect as modified by subsection 16A(1B) to the extent that those conditions are applicable to the supply; and
- the supply otherwise conforms with the requirements of section 16A as amended.

## Statement of Compatibility with Human Rights

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

### ***Veterans' Affairs Pharmaceutical Benefits Schemes (Continued Dispensing—Emergency Measure) Amendment Determination 2025 (No. 2)***

This legislative 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*.

#### **Overview of the Legislative Instrument**

This instrument amends the *Repatriation Pharmaceutical Benefits Scheme* (RPBS) and the *MRCA Pharmaceutical Benefits Scheme* (MRCA PBS) by incorporating into both of those instruments a determination made under the *National Health Act 1953* that specifies the pharmaceutical benefits that may be supplied, and the conditions that must be satisfied when those pharmaceutical benefits are supplied, by an approved pharmacist without a current prescription, but on the basis of a previous prescription from a MRCA PBS or an RPBS prescriber.

This instrument adopts the conditions specified in the National Health Act instrument as part of the conditions that must be met in order to undertake a continued dispensing supply. This instrument also identifies the eligible medicines that can be supplied on the basis of a previous prescription, where a valid prescription is unavailable.

#### **Human rights implications**

This legislative instrument engages Articles 9 and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), specifically the rights to health and social security.

##### *The Right to Social Security*

The right to social security is contained in Article 9 of the International Covenant on Economic Social and Cultural Rights (ICESCR). It requires that a country must, within its maximum available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care. Countries are obliged to demonstrate that every effort has been made to use all resources that are at their disposal in an effort to satisfy, as a matter of priority, this minimum obligation.

The UN Committee on Economic Social and Cultural Rights (the Committee) reports that there is a strong presumption that retrogressive measures taken in relation to the right to social security are prohibited under ICESCR. In this context, a retrogressive measure would be one taken without adequate justification that had the effect of reducing existing levels of social security benefits, or of denying benefits to persons or groups previously entitled to them. However, it is legitimate for a Government to re-direct its limited resources in ways that it considers to be more effective at meeting the general health needs of all society, particularly the needs of the more disadvantaged members of society.

##### *The Right to Health*

The right to the enjoyment of the highest attainable standard of physical and mental health is contained in Article 12(1) of the ICESCR. The Committee has stated that the right to health is not a right for each individual to be healthy, but is a right to a system

of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health. The Committee reports that the 'highest attainable standard of health' takes into account the country's available resources. This right may be understood as a right of access to a variety of public health and health care facilities, goods, services, programs, and conditions necessary for the realisation of the highest attainable standard of health.

### **Analysis**

This instrument promotes the right to health and the right to social security by providing that veterans and their dependents can access subsidised medicines via the continued dispensing arrangements without a prescription, in response to the flooding emergency in New South Wales.

This is to ensure that patients affected by flooding who need a new prescription for their medicine and are practically unable to access a prescriber, or their prescriber cannot provide a prescription electronically, can obtain a one-off supply from an approved pharmacist, subsidised under the Schemes, even without a prescription.

The approved pharmacist may only make a continued dispensing supply where satisfied of a range of matters intended to maintain patient safety including that the patient has previously been prescribed the medicine, that the patient's therapy is stable and the PBS prescriber who previously prescribed the medicine had reviewed the patient's treatment and decided that ongoing therapy with the medicine was necessary.

The National Health Act instrument automatically ceases at the end of 30 June 2025. Consequently, the amendments made by this instrument will cease to have practical effect from that time. It is appropriate to limit the operation of the instrument because it is a temporary measure made in response to the flooding disaster in New South Wales.

### **Conclusion**

This legislative instrument is compatible with human rights because it advances the rights to health and social security.

Andrew Kefford PSM  
a delegate of the  
Minister for Veterans' Affairs  
**Rule-Maker**