THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

VETERANS’ AFFAIRS LEGISLATION AMENDMENT (OMNIBUS) BILL 2017

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Veterans’ Affairs, The Honourable Dan Tehan MP)
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VETERANS’ AFFAIRS LEGISLATION AMENDMENT (OMNIBUS) BILL 2017

OUTLINE AND FINANCIAL IMPACT

Outline

The Bill comprises eight Schedules that will implement several small, but necessary amendments to veterans’ affairs legislation to clarify, improve or streamline the operation of the law.

Schedule 1 – Veterans’ Review Board

Schedule 1 of the Bill amends the provisions of the Veterans’ Entitlements Act 1986 under which the Veterans’ Review Board operates. The amendments made by Schedule 1 will modernise and improve those operations by aligning certain provisions with similar provisions of the Administrative Appeals Tribunal Act 1975.

Schedule 2 – Specialist Medical Review Council

Schedule 2 amends the Veterans’ Entitlements Act 1986 to modernise Part XIB, which establishes the Specialist Medical Review Council (the SMRC). The amendments proposed would improve the SMRC’s operation by: simplifying the appointment process for councillors; progressing whole-of-government requirements for digital transformation; removing red tape in commencing reviews; and providing for reimbursement of certain travel expenses. Related miscellaneous amendments are also proposed.

Schedule 3 – International agreements

Schedule 3 of the Bill repeals and replaces section 203 of the Veterans’ Entitlements Act 1986 to provide the Minister for Veterans’ Affairs with the power to make agreements with foreign governments to cover the provision of benefits and payments including rehabilitation that are comparable to those provided by the Repatriation Commission or the Military Rehabilitation and Compensation Commission under the:

- Veterans’ Entitlements Act 1986,
- Military Rehabilitation and Compensation Act 2004
- Australian Participants in British Nuclear Tests (Treatment) Act 2006; and
- proposed Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988

Schedule 4 – Employer Incentive Scheme payments

The purpose of Schedule 4 is to amend the Veterans’ Entitlements Act 1986, the Military Rehabilitation and Compensation Act 2004 and the Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 (if enacted) to strengthen the legislative foundation for providing certain rehabilitation assistance to eligible serving and former Defence Force members, reservists and cadets.
The assistance essentially involves payments to employers under the Employer Incentive Scheme in the form of wage subsidies to encourage them to engage injured veterans who have found it difficult to compete in a tight labour market.

**Schedule 5 – Disclosure of information**

The purpose of this Schedule is to amend the *Military Rehabilitation and Compensation Act 2004* and make contingent amendments to the proposed *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* to facilitate information sharing between the Military Rehabilitation and Compensation Commission and the Commonwealth Superannuation Corporation (CS) with respect to certain service related compensation claims.

The proposed amendments would implement a recommendation by the Review of Military Compensation Arrangements (2011) (the MRCA Review) intended to improve the information sharing framework for incapacity and superannuation benefits between the Military Rehabilitation and Compensation Commission and the CSC.

While the Department is authorised to request information from the CSC to assist with the calculation of incapacity payments, there is no express provision to allow the Military Rehabilitation and Compensation Commission to provide information to CSC to assist with the CSC’s assessment of superannuation benefits. At present, all requests to the Military Rehabilitation and Compensation Commission for information from CSC are undertaken in accordance with the *Freedom of Information Act 1982*. This process is cumbersome and time consuming, and accounts for approximately 20 per cent of all Freedom of Information requests received by the Department.

**Schedule 6 – Delegation**

Schedule 6 of the Bill would amend the *Military Rehabilitation and Compensation Act 2004* to provide for the delegation of the Minister for Veterans’ Affairs powers and functions.

**Schedule 7 – Legislative instruments**

Schedule 7 of the Bill would amend Veterans’ Affairs portfolio legislation to exempt certain legislative instruments from subsection 14(2) of the *Legislation Act 2003*. The amendments would enable these legislative instruments to incorporate material contained in another non disallowable legislative instrument or other non-legislative writings as in force from time to time.

**Schedule 8 – Minor amendments**

Schedule 8 of the Bill would repeal redundant and spent provisions administered in the Veterans’ Affairs portfolio concerning benefits that are no longer payable under the portfolio Acts, and make amendments consequential to those repeals. The Schedule will also make some minor corrections to clarify existing provisions of the *Veterans’ Entitlements Act 1986*.

The Schedule also includes the consequential amendments to other Acts which result from the amendments that repeal the redundant and spent provisions of the *Veterans’ Entitlements Act 1986* and the *Military Rehabilitation and Compensation Act 2004*. 


The removal of these redundant provisions and the clarification of other provisions will simplify veterans’ affairs legislation and make it more accessible for individuals wishing to interpret the current provisions.

**Financial Impact**

The Bill has no financial impact.
Statement of Compatibility with Human Rights

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

VETERANS’ AFFAIRS LEGISLATION AMENDMENT (OMNIBUS) BILL 2017

Schedule 1 – Veterans’ Review Board

This Schedule 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 amendments

Schedule 1 contains amendments to the Veterans’ Entitlements Act 1986 (the Veterans’ Entitlements Act) relevant to the operation of the Veterans Review Board.

The Veterans’ Review Board (the Board) is a statutory authority whose role is to provide independent merits review of decisions about:

- disability pension, war widow and widower pensions and attendant allowance under the Veterans' Entitlements Act; and
- rehabilitation, compensation and other benefits under the Military Rehabilitation and Compensation Act 2004 (the Military Rehabilitation and Compensation Act).

The Board exercises all of the powers and discretions that are conferred on the Repatriation Commission under the Veterans' Entitlements Act, or the Military Rehabilitation and Compensation Commission (MRCC) or a service chief under the Military Rehabilitation and Compensation Act.

The Principal Member is responsible for the overall operations of the Board. In making its decision the Board must apply the law as set out in the Veterans' Entitlements Act or the Military Rehabilitation and Compensation Act and other related legislation. A National Registrar, Registrars, Deputy Registrars and other staff provide administrative assistance to the Board.

The amendments included in Schedule 1 will modernise and improve the operations of the Board to:

- ensure that in carrying out its functions, the Board will pursue the objective of providing a mechanism of review that:
  - is accessible;
  - fair, just, economical, informal and quick;
  - is proportionate to the importance and complexity of the matter; and
  - promotes public trust and confidence in the decision-making of the Board;

- impose an ongoing obligation on both the claimant and the Department of Veterans’ Affairs (the Department) during the period until the Board has determined the matter, to lodge with the Board a copy of any document that is in their possession that is relevant to the review that has not been lodged previously;
provide the Board with the power to vary or revoke a decision made under the alternative dispute resolution processes, with the consent of the parties, and where the Board is satisfied that it is within its powers, and otherwise appropriate to do so;

- require the Repatriation Commission and any person representing the Commission in a review to use their best endeavours, to assist the Board in fulfilling their legislated objectives; and
- provide the Principal Member with the power to dismiss an application for the review of a decision if he or she is satisfied that the application is frivolous, vexatious, misconceived or lacking in substance has no reasonable prospect of success, or is otherwise an abuse of process.

**Human rights implications**

The Bill engages the following human right:

*Right to a fair hearing*

Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR) provides that: ‘All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law’.

The extent to which Article 14(1) applies to administrative review proceedings (whether such proceedings constitute a ‘suit at law’) is not fully settled. To the extent that it may apply, the Schedule would promote the right to a fair hearing.

The Board would be required by its statutory objective to pursue a fair and just mechanism of review (*Item 1* of the Schedule).

All of the other proposed amendments are intended to allow the Board to operate more efficiently and effectively as a merits review tribunal and are consistent with the aims stated in Article 14(1) of the ICCPR.44.

The amendments also align the operations of the Board to be more consistent with the Administrative Appeals Tribunal’s legislative framework.

None of the proposed amendments will have an adverse impact on access to justice by applicants for a review of a decision.

**Conclusion**

Schedule 1 is compatible with human rights. It advances the protection of human rights, specifically the right to a fair hearing.
Schedule 2 – Specialist Medical Review Council

This Schedule 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 amendments

The amendments in Schedule 2 modernise Part XIB of the Veterans' Entitlements Act, which establishes the Specialist Medical Review Council (the SMRC). The amendments proposed would improve the SMRC’s operation by: simplifying the appointment process for councillors; progressing whole-of-government requirements for digital transformation; removing red tape in commencing reviews; and providing for reimbursement of certain travel expenses. Related miscellaneous amendments are also proposed.

Human rights implications

Schedule 2 engages the following human right:

Right to health

The right to health is contained in article 12 of the International Covenant on Economic, Social and Cultural Rights.

Item 28 of Schedule 2 affirms this right, as it provides financial assistance for individuals, representatives of organisations and any necessary attendants accompanying those individuals or representatives of organisations, to travel and attend a SMRC hearing to make an oral submission.

The SMRC reviews Repatriation Medical Authority (the RMA) decisions in respect to the contents of a Statement of Principles (SOPs), or a decision of the RMA not to issue a SOPs, or a decision of the RMA not to amend a SOPs, or a decision by the RMA not to carry out an investigation under subsection 196C(4) of the Veterans’ Entitlements Act.

The SOPs are legislative instruments that set out the factors used to connect an injury, disease or death with a person’s Australian Defence Force service. SOPs are determined and/or amended by the RMA and apply to claims lodged under the Military Rehabilitation and Compensation Act and the Veterans' Entitlements Act. In order for a claim to succeed, at least one of the SOP factors must be related to a person’s service. Once liability is established, treatment for that condition will be made available to the veterans under the relevant provision of either the Veterans' Entitlements Act or Military Rehabilitation and Compensation Act. By facilitating a person’s attendance to make an oral submission at a SMRC hearing, the Bill enables veterans to present evidence about what factors should be included in the SOP under review.

Conclusion

Schedule 2 is compatible with human rights because it promotes access to the right to health.
Schedule 3 – International agreements

This Schedule 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 amendments

The substantial amendment made by Schedule 3 repeals and replaces section 203 of the Veterans’ Entitlements Act.

Section 203 currently provided the Minister for Veterans’ Affairs with the power to enter into arrangements with the governments of countries that are or have been Dominions of the Crown. The agreements allowed for each of the governments as a party to the agreement, to act as an agent of the other country for the payment of pensions and the provision of assistance and benefits to eligible veterans or dependents who were resident in that country.

The existing agreements concern only those payments and benefits which are payable under the Veterans’ Entitlements Act.

Section 203 of the Veterans’ Entitlements Act has been repealed and replaced so that it may now cover allied veterans and defence force members with service of the type for which benefits and payments including rehabilitation can be provided by the Repatriation Commission or the MRCC under the Veterans’ Entitlements Act, Military Rehabilitation and Compensation Act, the proposed *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Safety, Rehabilitation and Compensation (Defence-related Claims) Act) or the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* (Australian Participants in British Nuclear Tests (Treatment Act)).

Human rights implications

Schedule 3 does not engage any of the applicable rights or freedoms.

Conclusion

Schedule 3 is compatible with human rights as it does not raise any human rights issues.

Schedule 4 – Employer Incentive Scheme payments

This Schedule 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 amendments

The amendments made by Schedule 4 will strengthen the legislative foundation for providing certain rehabilitation assistance to eligible serving and former Defence Force members, reservists and cadets under the Veterans’ Entitlements Act, the Military Rehabilitation and
Compensation Act and the Safety, Rehabilitation and Compensation (Defence-related Claims) Act if it is enacted.

The amendments engage the applicable human rights and freedoms as the assistance essentially involves payments to employers under the Employer Incentive Scheme in the form of incentive payments to encourage them to engage injured veterans who have found it difficult to compete in a tight labour market.

**Human rights implications**

Schedule 4 engages the following human rights:

**Right to health**

Article 12 of the International Covenant on Economic, Cultural and Social Rights refers to the “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.

The amendments to enhance the assistance provided under the vocational rehabilitation schemes will provide for a more effective delivery of services to injured and former Defence Force members seeking employment.

**Rights of people with a disability**

The rights of people with a disability are set out in the Convention on the Rights of Persons with Disabilities.

Article 26 requires countries to organise and strengthen rehabilitation programs for people with disability, particularly in health, employment, education and social services.

The amendments to the vocational rehabilitation arrangements will provide for a more effective delivery of services to injured and former Defence Force members.

**The Right to Work and Rights at Work**

Article 6 of the ICESCR provides for the right to work, which ‘includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts’. Article 7 provides ‘the right of everyone to the enjoyment of just and favourable conditions of work’.

The Committee provides that ‘States parties must take measures enabling persons with disabilities to secure and retain appropriate employment and to progress in their occupational field, thus facilitating their integration or reintegration into society’.

The right to work is engaged by Schedule 4 which improves the arrangements in place for the vocational rehabilitation of injured and former Defence Force members and will make it easier for injured employees to remain in or return to employment.

**Conclusion**
The Bill is compatible with human rights as the measures which engage human rights do so on the basis that the rights are advanced.
Schedule 5 – Disclosure of information

This Schedule 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 amendments

The amendments in Schedule 5 insert an information sharing power into each of the Military Rehabilitation and Compensation Act and Safety, Rehabilitation and Compensation (Defence-related Claims) Act to facilitate information sharing between the MRCC and the Commonwealth Superannuation Corporation (the CSC) with respect to certain service related compensation claims.

Human rights implications

Schedule 5 engages the following human right:

Privacy

The right to privacy and reputation is contained in article 17 of the International Covenant on Civil and Political Rights (ICCPR.)

The amendments are designed to enable the CSC to access relevant claims information held by the Department, where that access would assist the CSC in the performance of its functions and powers under the Governance of Australian Government Superannuation Schemes Act 2011, or an instrument under that Act. Most relevantly, in assessing Defence Force members’ superannuation benefits.

Access to the Department’s claims information, particularly relevant medical and rehabilitation information, would assist CSC to make speedier superannuation benefits assessments which, in turn, assists the Department to determine a person’s entitlement to incapacity payments. The earlier a Defence Force member’s Commonwealth funded superannuation benefits are determined, the earlier the Department can accurately calculate incapacity payments.

Importantly, in both of the proposed information sharing provisions, the purposes for which, and the persons to whom, information may be disclosed are appropriately prescribed and limited, consistent with existing subsection 409(2) of the MRCA and subsection 151A(1) of the Safety, Rehabilitation and Compensation Act 1988 and proposed Safety, Rehabilitation and Compensation (Defence-related Claims) Act. The information may only be provided to the CSC for the purpose of exercising a function or power under the Governance of Australian Government Superannuation Schemes Act 2011, or an instrument under that Act.

The interference with privacy is reasonable in the circumstances because it would ultimately benefit the person through a quicker determination of their CSC superannuation benefit and incapacity payments payable by the Department, and may also prevent them from having to attend further unnecessary medical examinations.
Conclusion

Schedule 5 is compatible with human rights as, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Schedule 6 – Delegation

This Schedule 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 amendments

The amendments made by Schedule 6 provide the Minister for Veterans’ Affairs with the power to delegate his or her powers and functions under the Military Rehabilitation and Compensation Act to members of the Military Rehabilitation and Compensation Commission, employees of the Department or persons appointed or engaged under the Public Service Act 1999.

The amendments will align the powers of the Minister under the Military Rehabilitation and Compensation Act with the powers the Minister has under the Veterans’ Entitlements Act and will enable the implementation of administrative reforms that are part of the organisational reforms to achieve efficiencies across the Department.

Human rights implications

The Bill does not engage any of the applicable rights or freedoms.

Conclusion

The Bill is compatible with human rights.

Schedule 7 – Legislative instruments

This Schedule 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 amendments

The amendments made by Schedule 7 are technical amendments to the Australian Participants in British Nuclear Tests (Treatment) Act 2006, the Military Rehabilitation and Compensation Act and the Veterans’ Entitlements Act and to provide exemptions from the rule applicable under subsection 14(2) of the Legislation Act 2003.

The Schedule includes amendments to some of the provisions of those Acts under which legislative instruments are made in order to bring the construction of the section into line with current drafting practice.
The remaining amendments are to those provisions under which legislative instruments are made in order to provide benefits under the three Acts to veterans and their families.

The proposed amendments will enable certain legislative instruments made under the Acts to incorporate matters contained in another non-disallowable legislative instrument or other non-legislative writings as in force from time to time.

The requirement to amend Veterans’ Affairs portfolio legislative instruments to incorporate changes in non-disallowable instruments causes significant administrative issues for the Department.

The amendments will improve the administration of the Acts but will not have any impact on the provision of benefits under the Acts.

**Human rights implications**

Schedule 8 does not engage any of the applicable rights or freedoms.

**Conclusion**

The Bill is compatible with human rights.

**Schedule 8 – Minor Amendments**

Schedule 8 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 amendments**

**Schedule 8 - Part 1**

Part 1 of Schedule 8 engages the following human rights:

**Right to social security**

Article 9 of the *International Covenant on Economic, Social and Cultural Rights* (the ICESCR) recognises the right of everyone to social security.

The proposed amendments to the Veterans’ Entitlements Act engage the right to social security by repealing:

- Division 1 of Part IIIE providing for the payment of a “clean energy advance” during a period before 1 July 2012;
- Parts VIID, VIIE and VIIF providing for one-off payments to older Australians in 2006, 2007 and 2008 respectively; and
- Part VIIG providing for the payment of an economic security strategy payment in 2008.
- Part VIIH providing for the payment of the Educational Tax Refund (ETR) payment in 2012.
The proposed repeal of these provisions will have no impact on the right to social security. The provisions are spent and redundant as they relate to one-off payments that are no longer payable.

In some circumstances a person may be found to have been eligible for one of the payments because of a retrospective assessment of pension. Following the repeal, such a person will retain eligibility to receive the payment on the basis that they were eligible for the underlying payment during the relevant period the repealed legislation was still in force.

**Right to education**

Article 13 of the ICESCR recognises the right of everyone to education.

The amendments to the Veterans’ Entitlements Act engage the right to education by repealing Part VIIH, which provided for the payment of an ETR payment on the basis that a person was in receipt of an education allowance in 2012.

The proposed repeal of these provisions will have no impact on the right to education. Following the repeal, such a person who is found to be eligible for the ETR payment will retain eligibility on the basis that they were eligible during the relevant period the repealed legislation was still in force.

**Schedule 8 - Part 2**

Part 2 of Schedule 8 engages the following human rights:

**Right to social security**

Article 9 of the ICESCR recognises the right of everyone to social security.

The amendments to the Military Rehabilitation and Compensation Act will engage the right to social security by repealing Divisions 1 to 5 of Part 5A of chapter 11 providing for the payment of a “clean energy advance” during a period before 1 July 2012.

The repeal of the clean energy advance provisions will have no impact on the right to social security. The provisions are spent and redundant as they relate to a payment during a period which finished more than four years ago.

In some circumstances a person may be found to have been eligible for the payment because of a retrospective assessment of compensation. Following the repeal, such a person will retain eligibility on the basis that they were eligible during the relevant period the repealed legislation was still in force.

**Schedule 8 - Part 3**

The amendments made by Part 3 of Schedule 8 are technical corrections and technical improvements to legislation. The amendments improve the ease of administration of legislation by making it more efficient to use. They do not engage any human rights issues.
Conclusion

Schedule 8 Part 1 does not adversely affect the right of people to social security or education.

Schedule 8 Part 2 does not adversely affect the right of people to social security.

Schedule 8 Part 3 does not engage any human rights issues.

Schedule 8 is therefore compatible with human rights.
Short Title
 Clause 1 provides that the Act is the Veterans’ Affairs Legislation Amendment (Omnibus) Act 2017.

Commencement
 Clause 2 sets out the commencement date of the provisions of the Act.

Schedules
 Clause 3 provides that legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

This explanatory memorandum uses the following abbreviations:

“Administrative Appeals Tribunal Act” means the Administrative Appeals Tribunal Act 1975;

“Australian Participants in British Nuclear Tests (Treatment Act)” means the Australian Participants in British Nuclear Tests (Treatment Act) 2006;

“CSC” means the Commonwealth Superannuation Corporation;

“Legislation Act” means the Legislation Act 2003;

“Military Rehabilitation and Compensation Act” means the Military Rehabilitation and Compensation Act 2004;


“MRCC” means the Military Rehabilitation and Compensation Commission;

“Safety, Rehabilitation and Compensation (Defence-related Claims) Act” means the Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988; and

Schedule 1 – Veterans’ Review Board

Overview

Schedule 1 of the Bill amends the provisions of the Veterans’ Entitlements Act under which the Veterans’ Review Board operates. The amendments will modernise and improve those operations by aligning certain provisions with similar provisions of the Administrative Appeals Tribunal Act.

Background

The Veterans’ Review Board (the Board) is a statutory authority whose role is to provide independent merits review of decisions about:

- disability pension, war widow and widower pensions and attendant allowance under the Veterans’ Entitlements Act; and
- rehabilitation, compensation and other benefits under the Military Rehabilitation and Compensation Act.

Merits review means the Board makes a fresh decision that it considers is the correct or preferable decision in all the circumstances. In doing so, the Board exercises the same statutory powers, and is subject to the same limitations that are conferred on the Repatriation Commission under the Veterans’ Entitlements Act, or the MRCC or a service chief under the Military Rehabilitation and Compensation Act.

In conferring additional jurisdiction on the Board, the Military Rehabilitation and Compensation Act applies provisions of the Veterans’ Entitlements Act with some modifications. This means that the Board operates under the Veterans’ Entitlements Act, as modified, when deciding matters under the Military Rehabilitation and Compensation Act or the Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act.

The Board does not have a general power to review decisions made under the Veterans’ Entitlements Act or the Military Rehabilitation and Compensation Act. As a statutory tribunal it has only those powers given to it by legislation. The Board must be able to identify a specific provision that authorises it to make a particular decision or take a particular action. Each decision must relate to a prior decision – the decision under review.

The Principal Member is responsible for the overall operations of the Board. The Board comprises a Principal Member, Senior Members, Services members and other members. A National Registrar, Registrars, Deputy Registrars and other staff provide administrative assistance to the Board.

Explanation of the changes

In 2014 amendments were made to the Veterans’ Review Board provisions of the Veterans’ Entitlements Act to modernise its operations and to more closely align it with other merits review bodies such as the Administrative Appeals Tribunal.
Subsequently, the Tribunals Amalgamation Act 2015 (the Amalgamation Act) provided for the merger of the Administrative Appeals Tribunal, the Social Security Appeals Tribunal and Migration Review Tribunal and Refugee Review Tribunal. There were no consequential amendments to the Veterans’ Entitlements Act or the Military Rehabilitation and Compensation Act as a result of the merger and the operations of the Board were not impacted upon.

In addition to the merger of the various tribunals, the Amalgamation Act made amendments to the powers of the Administrative Appeals Tribunal under the Administrative Appeals Tribunal Act to modernise and improve its operations.

The proposed amendments to the Veterans’ Entitlements Act will amend the relevant provisions of the Veterans’ Entitlements Act to further modernise and align the operations of the Board with those of the Administrative Appeals Tribunal following the amendments made by the Amalgamation Act.

The amendments also support the alternative dispute resolution (the ADR) processes and the recent amendments to the Military Rehabilitation and Compensation Act which provide for a single appeal path for the reconsideration of decisions.

**Explanation of the items**

**Part 1 – Main amendments**

**Veterans’ Entitlements Act 1986**

**Item 1** repeals and substitutes section 133A.

Repealed section 133A stated the objectives of the Board. The objectives were set out in terms similar to the objectives of the Administrative Appeal Tribunal as set out in section 2A of the Administrative Appeals Tribunal Act. That section was repealed and substituted by the Amalgamation Act.

New section 133A provides that, in carrying out its functions, the Board must pursue the objective of providing a mechanism of review that:

- is accessible;
- fair, just, economical, informal and quick;
- is proportionate to the importance and complexity of the matter; and
- promotes public trust and confidence in the decision-making of the Board.

**Item 2** inserts new section 137A.

The amendment to insert new section 137A will align the provisions applicable to the Board with those that apply under the Administrative Appeals Tribunal Act. The Amalgamation Act inserted new subsection 38AA(1) which imposed an ongoing obligation on persons who have made a decision that is subject to first or second review—to lodge with the Administrative Appeals Tribunal a copy of any document that comes into their possession that is relevant to the review and has not been lodged previously, until such time as the Administrative Appeals Tribunal determines the review.
New section 137A imposes an ongoing obligation on both claimant and the Department during the period of time until the Board has determined the matter, to lodge with the Board a copy of any document that is in their possession that is relevant to the review under section 135 which has not been lodged previously.

New section 137A requires the Department and the claimant, subject to any directions from the Principal Member under subsection 142(2) (as amended by Item 3 of this Part) to lodge such documents as soon as practicable after it has obtained possession of them.

Item 3 amends subsection 142(2) by inserting new paragraph (h).

Section 142 imposes on the Principal Member the responsibility for the expeditious and efficient discharge of the business of the Board.

Subsection 142(2) provides the Principal Member of the Board with the power to give written directions concerning:

- the operations of the Board, both generally and at a particular place;
- the procedure of the Board, both generally and at a particular place;
- the conduct of reviews by the Board;
- the arrangement of the business of the Board; and
- the places in Australia at which the Board may sit.

New paragraph 142(2)(h) will provide the Principal Member with the power to issue written directions concerning the requirement to provide or not to provide documents under section 137A.

Existing subsection 151(2) of the Veterans’ Entitlement Act provides the VRB with summons power which would cover the consequences of a person not producing documents. No changes are proposed to this subsection.

Item 4 amends section 145C by inserting new subsection (4).

Section 145C provides that if the parties to a proceeding reach agreement during the course of an alternative dispute resolution (ADR) process as to the decision the Board should make in respect of the whole proceeding (existing subsection 145C(2)) or part of the proceeding (existing subsection 145C(3)), the Board may act in accordance with the parties’ agreement, if it is satisfied that the terms of the agreement are within its powers.

The equivalent provision of the Administrative Appeals Tribunal Act is section 34D.

Section 34D was amended by the Amalgamation Act to include new subsection 34D(4) which permits the Administrative Appeals Tribunal to vary or revoke a decision made under section 34D, with the consent of the parties and where it is satisfied that it is within its powers and otherwise appropriate to do so.

That amendment rectifies the omission that at present the Administrative Appeals Tribunal does not have an explicit legislative power to vary or revoke such decisions in appropriate circumstances. Subsection 34D(4) enables the Administrative Appeals Tribunal to
implement outcomes satisfactory to the parties where it is within the scope of its powers to do so.

The insertion of new subsection 145C(4) would permit the Board to vary or revoke a decision made under the ADR processes, with the consent of the parties, and where the Board is satisfied that it is within its powers, and otherwise appropriate to do so.

**Item 5** repeals and substitutes subsection 148(9). Section 148 sets out the procedures of the Board in the conduct of a review of a decision of the Repatriation Commission.

The amendment to section 148 aligns the provisions of that section with the equivalent in the Administrative Appeals Tribunal Act by adopting the Amalgamation Act amendment which inserted new subsection 33(1AB) into the Administrative Appeals Tribunal Act, requiring the parties and their representatives to use their best endeavours to assist the Administrative Appeals Tribunal to fulfil its statutory objective as set out in section 2A of that Act.

The purpose of the amendment was to assist the Administrative Appeals Tribunal in managing the conduct of reviews, by encouraging parties and their representatives to conduct themselves in a manner that would facilitate the fair, just, economical, informal and quick resolution of the matter at hand (amongst the other aspects of the Administrative Appeals Tribunal’s objective).

The Repatriation Commission has an equivalent obligation under subsection 148(9). That subsection has been repealed and paragraph (a) restates the obligations of the Repatriation Commission in a review of a decision to use its best endeavours, and any person representing the Repatriation Commission must use his or her best endeavours to assist the Board in fulfilling the objectives set out in new section 133A (inserted by **Item 1** of this Part).

New subsection 148(9) also requires under paragraph (b) that applicants and persons representing the applicant to use to use their best endeavours in assisting the Board to fulfil the objectives set out in new section 133A.

**Item 6** amends section 155 to insert new subsection (8A).

Section 155 sets out the circumstances in which an application for review may be dismissed.

The proposed amendment to section 155 will align the grounds for a dismissal by the Board with those that apply to the Administrative Appeals Tribunal.

The Amalgamation Act repealed existing section 42B of the Administrative Appeals Tribunal Act and substituted a new section 42B.

Section 42B had previously empowered the Administrative Appeals Tribunal to take action at any stage of a proceeding where it determines that an application is frivolous or vexatious to:

- dismiss the application, and
- if appropriate, on the application of a party to the proceeding, direct that the person who made the application must not make another application to the Administrative Appeals Tribunal of a kind specified in the direction without leave.
New section 42B of the AATA maintained that policy and provided for additional circumstances in which the Administrative Appeals Tribunal may dismiss an application for review. The Administrative Appeals Tribunal may dismiss an application for review of a decision at any stage of a proceeding, if the Administrative Appeals Tribunal is satisfied that the application is:

- frivolous, vexatious, misconceived or lacking in substance
- has no reasonable prospect of success, or
- is otherwise an abuse of process of the Administrative Appeals Tribunal.

New subsection 155(8A) will similarly provide the Principal Member with the power to dismiss an application for the review of decisions if he or she is satisfied that the application is:

- frivolous, vexatious, misconceived or lacking in substance
- has no reasonable prospect of success, or
- is otherwise an abuse of process of the Board.

Subsection 155(8A) requires the Principal Member to notify the parties in the event that an application has been dismissed on the grounds set out in it.

**Item 7** makes a consequential amendment to subsection 155A(1) to include a reference to new subsection 155(8A).

**Item 8** is an application provision which provides the general rule that the new law (the amendments made by this Schedule) would apply (with exceptions as set out in the item) from commencement day onwards, including in relation to proceedings commenced before commencement day and decisions made before commencement day.

Subitem 8(1) provides that new section 137A (inserted by **Item 2** of this Schedule) will apply in relation to documents obtained by a person on or after commencement day. Section 137A imposes an obligation to lodge with the Board a copy of any document that comes into their possession that is relevant to the review and has not been lodged previously. The obligation is ongoing until the Board determines the review.

Subitem 8(2) provides that subsection 145C(4) (inserted by **Item 4** of this Schedule) does not apply to decisions made by the Board before commencement day. Subsection 145C(4) would provide new powers to the Board to vary or revoke a decision that reflects the agreement of the parties, whether reached through an alternative dispute resolution process or at any other stage of the proceeding, provided that the parties consent to the variation or revocation.

Subitem 8(3) provides that subsection 148(9) (inserted by **Item 5** of this Schedule) will apply in relation to an application for review that is made on or after commencement day.

Subsection 148(9) requires the parties to a review to use their best endeavours to assist the Board in fulfilling the objectives set out in new section 133A.

Subitem 8(4) provides that subsection 155(8A) (inserted by **Item 6** of this Schedule) will apply in relation to an application for review that is made on or after commencement day. Subsection 155(8A) provides the Principal Member with the power to dismiss an application for the review of decisions if he or she is satisfied that the application is frivolous, vexatious,
misconceived or lacking in substance, has no reasonable prospect of success, or is otherwise an abuse of process.

Part 2 – Consequential amendments

Military Rehabilitation and Compensation Act 2004

Item 9 makes a consequential amendment to subsection 353(1) of the Military Rehabilitation and Compensation Act to include a reference to new section 137A of the Veterans’ Entitlements Act (inserted by Item 2 of this Schedule).

Item 10 inserts new table item 8A into the table in subsection 353(2) of the Military Rehabilitation and Compensation Act. The item refers to the application and modification of section 137A of the Veterans’ Entitlements Act for the purposes of a review by the Board of an original determination under the Military Rehabilitation and Compensation Act.

Commencement

Clause 2 provides that the amendments made by Schedule 1 commence on the day after the Act receives Royal Assent.
Schedule 2 – Specialist Medical Review Council

Overview

The purpose of Schedule 2 is to amend the Veterans’ Entitlements Act to modernise Part XIB, which establishes the Specialist Medical Review Council (the SMRC). The amendments proposed would improve the SMRC’s operation by: simplifying the appointment process for councillors; progressing whole-of-government requirements for digital transformation; removing red tape in commencing reviews; and providing for reimbursement of certain travel expenses. Related miscellaneous amendments are also proposed.

Background

The SMRC is an independent statutory body established under Part XIB of the Veterans’ Entitlements Act. The SMRC is constituted by such numbers of members (councillors) as the Minister determines from time-to-time to be necessary for the proper exercise of its functions.

These functions are set out in section 196W of the Veterans’ Entitlements Act and include conducting reviews into: some or all of the contents of a Statement of Principles made by the Repatriation Medical Authority (the RMA) in respect of a particular kind of injury, disease or death; and certain decisions of the RMA to not determine or amend Statements of Principles.

The SMRC was created 1994. Legislative amendment is required to improve the operation of the SMRC and to better reflect the manner in which its functions and processes have evolved over time. These amendments would streamline some of the SMRC’s administrative arrangements. Further, many of the amendments are designed to assist the SMRC to modernise by allowing electronic lodgement of requests for review.

The Minister for Veterans’ Affairs (the Minister) appoints SMRC councillors on a part-time basis under subsection 196ZE(2) of the Veterans’ Entitlements Act. Councillors are taken to be officials of the Department of Veterans’ Affairs (the Department) for the purposes of the Public Governance, Performance and Accountability Act 2013 (per section 196VA.) The statutory appointment process is in need of change as it has proven to be overly prescriptive and time-consuming.

Under current arrangements, the Minister must select members from a list or lists of nominations submitted by colleges or other bodies of medical practitioners or medical scientists (subsection 196ZE(4).) In practice, colleges forward the names of candidates who have responded to advertisements without assessing or recommending candidates. In making appointments, the Minister must have regard to the branches of science where expertise is necessary to decide review matters and must appoint not less than two councillors with experience in each branch (subsection 196ZE(3).) The process of appointing members takes around three months or longer. This can affect the SMRC’s ability to perform its functions in a timely manner.

The SMRC’s operations have been evolving since its establishment. The review process commences with an application for review lodged with the SMRC after which the SMRC may carry out an investigation, which includes inviting submissions.
The review process requires the SMRC to advertise the date of its first meeting with respect to a particular review. This requirement is unnecessarily prescriptive given the practicalities of arranging a meeting of specialists with busy schedules outside their SMRC commitments. For individuals and organisations, the essential information is the date by which submissions for the review must be lodged. This information will still to be required to be published by notice in the Gazette at least 28 days’ before the first meeting of councillors convened for the particular review.

Individuals seeking a review of Statements of Principles under Part XIB of the Veterans’ Entitlements Act may make oral submissions to the SMRC at hearings. Without financial assistance for travel expenses, this can give rise to significant costs to those assisting the SMRC. The amendments would ensure that individuals who make such submissions and, where reasonable, their attendants (if any) can apply to have prescribed travel costs reimbursed.

Finally, consistent with the practice of the RMA, several of the amendments would empower the Convenor of the SMRC to give written directions about the manner for lodging requests or applications, enabling the SMRC to adopt electronic lodgement of requests for reviews, rather than the current practice of people having to lodge a hard copy form as required by the Veterans’ Entitlements Act.

Explanation of the items

Item 1 inserts a note at the end of subsection 196V(1) to include a reference to definition section 5AB, which contains definitions relevant to the SMRC and the RMA (established under Part XIA.) Specifically, this note will make it clear to the reader that all references in Part XIB to the ‘Review Council’ are references to the Specialist Medical Review Council.

The note will assist the reader to navigate concepts in Part XIB. In some instances, Part XIB refers to the ‘Council’ which, as a matter of grammatical construction, is also a reference to the Review Council.

Items 2, 5, 14 and 21 propose amendments to remove the requirement that either a request for review under sections 196Y or 196Z, or an application for payment under sections 196ZN or 196ZO, be lodged in a form approved by the Review Council. Currently, the Review Council does not require such requests or applications to be lodged in a form approved by it.

Electronic lodgement of documents, notifications and related issues

Items 3, 6, 16, 17 and 24 propose amendments to facilitate electronic lodgement of documents under Part XIB. Presently, certain applications made under sections 196Y, 196Z, 196ZN and 196ZO must be lodged at an office of the Department in accordance with section 5T. Section 5T requires that the manner of lodgement of applications and documents be approved by the Repatriation Commission. In light of the Australian Government’s digital transformation agenda, it is appropriate that the SMRC should have the capacity to develop its own online forms and lodgement method.

Accordingly, items 3, 6, 16 and 24 would, respectively, repeal paragraphs 196Y(3)(c), 196Z(2)(d), 196ZN(4)(d) and 196ZO(5)(d) and substitute paragraphs that currently refer to the Repatriation Commission and section 5T with new paragraphs that would require
lodgement with the SMRC under proposed new section 196ZR (as described in Item 29 below.)

Items 18 and 25 would, respectively, repeal subsections 196ZN(4A) and 196ZO(5A) dealing with requests for payment of medical and travelling expenses. These subsections will be redundant because requests and applications will instead be lodged with the SMRC, and the time of these communications will be determined, in accordance with written directions given by the Convenor made under section 196ZR. Item 17 also makes a consequential change (discussed below under the heading ‘Medical and travel expenses.’).

Item 4 would repeal existing subsections 196Y(3A) and (4) and replace these with a single subsection that requires the SMRC to notify the Secretary of the Department and the RMA of a request from the Repatriation Commission, the MRCC, an individual or a specified organisation for review of Statements of Principles or certain decisions made by the RMA with respect to such Principles. Subsection 196Y(3A) will be redundant as a result of changes made by Item 2.

Proposed new subsection 196Y(4) will require the SMRC to notify the Secretary of the Department and the RMA of any requests for review under that section within 28 days of the request being lodged. This is necessary because the RMA must provide the SMRC with the information required under section 196K and the Department must provide secretariat service to support the SMRC review and may wish to make a submission.

Item 7 makes similar changes to those made by Item 4, but in respect of requests by a person or organisation to review an RMA decision under section 196Z to not carry out an investigation in respect of a particular kind of injury, disease or death. That is, this item will repeal subsections 196Z(2A) and (3) and replace them with a single new subsection 196Z(3), which requires the SMRC to notify the Secretary of the Department and the RMA of any request for review within 28 days of the request being lodged. Subsection 196Z(2A) is repealed for redundancy.

Investigations – notice of investigation

Item 8 repeals current subsection 196ZB(2), which relates to the content of a notice of investigation that must be published in the Gazette under subsection 196ZB(1), stating the SMRC’s intention to carry out a review under section 196Y and inviting persons or authorised organisations to make written submissions. The requirement that a Gazette notice published under section 196ZB must specify the date by which all written submissions must be received by the Review Council will be re-enacted by new subsection 196ZB(2).

The change to subsection 196ZB(2) is that the notice will no longer need to specify the date on which the SMRC will hold its first meeting for the purposes of that review. Instead, only the date by which all submissions must have been received by the SMRC will be required to be specified in the notice. The requirement to specify the first meeting date of a review is unnecessarily prescriptive, given the practicalities of arranging a meeting of specialists with busy schedules outside of the SMRC commitments.
Constitution of the Review Council

**Items 9 and 10** implement changes to improve the process for appointing councillors and help ensure that candidates have the expertise required to perform the SMRC’s functions as described in the background above.

**Item 9** repeals the requirement that fixes the number of councillors with experience in each branch of medical science required to ensure the SMRC can perform its functions to not less than two. In selecting councillors, the Minister would still be required to have regard to the branches for expertise needed to decide matters referred to the SMRC for review but, subject to the changes made by **Item 10**, would have greater discretion as to the number of experienced councillors needed. While it makes sense to have a standing membership from which to draw councillors, there are not necessarily at least two members from each branch. For example, a particular review may require a councillor from an uncommon speciality, such as an infectious diseases expert. Under the current prescriptive provisions, the Minister is required to appoint two infectious disease experts, whereas only one may be required.

**Item 10** introduces a new requirement that at least one councillor must have at least 5 years’ experience in the field of epidemiology, which is a branch of medicine dealing with the study of the distribution and determinants of disease in populations and with investigations into the source and causes of infectious diseases. This is considered essential in assisting the SMRC to perform its functions under Part XIB of the Veterans’ Entitlements Act.

**Medical and travel expenses**

Several amendments are proposed with respect to medical and travel expenses, some of which relate to electronic lodgement of claims and are discussed above (specifically, **Items 16, 17, 24 and 25**.) Other amendments, which are discussed below, involve drafting simplifications. Additionally, this Schedule will expressly create an entitlement to certain travelling expenses with respect to attendance at hearings of the SMRC.

**Item 17** (also discussed above in regard to electronic lodgement) makes a further change by repealing subsection 196ZN(5), which contains a definition of ‘relevant documentary medical evidence,’ linking it to the definition in section 133 of the VEA. Section 133 is found in Part IX, which is the Part to do with the Veterans’ Review Board. The purpose of medical evidence for a review at the Veterans’ Review Board is quite different to the purpose of submitting medical evidence to the SMRC. It is therefore necessary to ensure that, for each relevant Part, the purpose or which the medical evidence is obtained is clear.

**Items 11, 15 and 18** flow from **Item 17** and make changes to subsection 196ZN(1), paragraph 196ZN(4)(b) and subsection 196ZO(1) with regard to the nature of medical evidence for which a person may request reimbursement under Part XIB. **Item 11** amends section 196ZN(1) to omit the reference to the submission of ‘relevant documentary medical evidence for the purpose of the review’ and substitutes this with a new form of words that is independent of the definition in section 133. **Item 15** makes a consequential change to paragraph 196ZN(4)(b), while **item 18** to section 196ZO(1).

**Item 12** repeals subsection 196ZN(2), which limits the amount of medical expenses that can be paid to a person who requests reimbursement and includes a new provision which ensures that a person cannot be paid more than the amount prescribed by, or worked out in
accordance with, the regulations. This amendment is necessary because it ensures consistency with other travel payments made by the Department under the regulations.

**Items 13, 19, 20, 23 and 27** will omit references to ‘the Commission’ (that is, the Repatriation Commission) wherever they occur in sections 196ZN(3), 196ZO(2)(b), 196ZO(4), 196ZO(5)(b)(ii) and 196ZP(1) and replace them with references to ‘the Review Council’. The purpose of these amendments is to make the SMRC responsible for approving its own forms and to make its own decisions with respect to medical and travel expenses rather than relying on the Repatriation Commission. This is to reflect the fact that it is the SMRC that makes the decisions under section 196ZN – ZP, not the Repatriation Commission.

**Item 22** amends subparagraph 196ZO(5)(b)(i) to require that applications for travelling expenses must be submitted within 3 months of the completion of the travel in respect of which the claim is made. Presently, applicants have a 12-month period. This amendment is designed to make the time in which a claim for reimbursement is to be made for travelling expenses under subsection 196ZO, consistent with the timeframe proposed in section 196ZN and new section 196ZQ (see **Item 28**.)

In practice, an application for travel expenses under section 196ZO is usually made to the SMRC in advance of the travel, and the SMRC arranges the person’s travel for them. Reducing the timeframe for submitting the application for reimbursement of travelling expenses from 12 to 3 months after completion of the travel should not cause any problems, given the practice of submitting the application in advance and the SMRC arranging the person’s travel.

**Item 26** amends the heading of section 196ZP to ensure that the heading better reflects the content of the section. Paragraph 196ZP(1)(a) refers to section 196ZO (travelling expenses for obtaining medical information) and this amendment ensures that the heading to section 196ZP more accurately reflects the content of section 196ZP.

**Item 28** adds a new section 196ZQ, which would create entitlements to be paid travel expenses to an individual or an organisation referred to in paragraph 196Y(1)(c) who appears before the Review Council to make oral submissions in respect of a review conducted under subsection 196W(2) or (6) and, where reasonable, a person who accompanies that individual (that is, their ‘attendant.’) These entitlements for the individual and their attendant are created by subsections 196ZQ(1) and (2) respectively. The entitlement to travel expenses only extends to those expenses that are prescribed by Regulation.

New subsections 196ZQ(3) to (6) set out the conditions under which travel expenses must or must not be paid. Essentially, travelling expenses:

- are not payable in respect of travel outside Australia (see subsection 196ZQ(3));
- are not payable unless a written application for payment has been made to, and approved by, the SMRC (see subsection 196ZQ(4));
- the written application must be:
  - made within 3 months after the completion of the travel;
  - accompanied by relevant documents; and
  - lodged with the SRMC in accordance with the directions of the Convener under section 196ZR (see subsection 196ZQ(5).)
Paragraphs 4.56 and 4.57 of the Administrative Review Council’s Guidelines about what decisions should be subject to merits review state that, where the cost of merits review is disproportionate to the significance of the decision under review, merits review may not be appropriate. A reimbursement amount sought under proposed section 196ZQ could be as little as a train or bus fare, if the person is located in the same city as where the SMRC is undertaking the review. For this reason, merits review has not been included for section 196ZQ.

Item 29 adds a new Division 5 to Part XIB, which comprises only one section: new section 196ZR. This section would enable the Convener to give written directions about the manner of lodging requests or applications, including in electronic form, to the SMRC, and the time at which such requests or applications are taken to have been communicated. In order to assist the reader, proposed subsection 196ZR(2) has been included to make it clear that any directions made by the Convener are not legislative instruments within the meaning of subsection 8(1) of the Legislation Act 2003. That is, proposed subsection 196ZR(2) is merely declaratory of the law.

Item 30 sets out the application provisions for this Schedule. Generally amendments to sections 196Y, 196Z, 196ZB, 196ZN, 196ZO, 196ZP and 196ZQ apply to things (such as requests made or notices published) done or given on or after the commencement of the relevant items.

Commencement

Clause 2 provides that the amendments made by Schedule 2 commence 28 days after the Act receives Royal Assent.
Schedule 3 – International agreements

Overview

Schedule 3 of the Bill repeals and replaces section 203 of the Veterans’ Entitlements Act to provide the Minister for Veterans’ Affairs with the power to enter into agreements with foreign governments to cover the provision of benefits and payments including rehabilitation that are comparable to those provided by the Repatriation Commission or the Military Rehabilitation and Compensation Commission under the Veterans’ Entitlements Act, Military Rehabilitation and Compensation Act, the proposed Safety, Rehabilitation and Compensation (Defence-related Claims) Act or the Australian Participants in British Nuclear Tests (Treatment) Act.

Background

The power to enter into international agreements is currently provided under section 203 of the Veterans’ Entitlements Act. That section provides that the Minister is able to enter into arrangements with the governments of countries that are or have been Dominions of the Crown, for each government or government agency to act as an agent of the other country for the payment of pensions and the provision of assistance and benefits to eligible veterans or dependents from those countries who are resident in that country.

Formal agreements have been made under the equivalent provisions of the redundant Repatriation Act 1920 with the United Kingdom and New Zealand. Those agreements continue to operate under the provisions of section 56 of the Veterans’ Entitlements (Transitional Provisions and Consequential Amendments) Act 1986.

The need for the proposed amendments has arisen because the current arrangements can only concern the provision of benefits and treatment (including rehabilitation) that are comparable to those provided under Veterans’ Entitlements Act. Under those agreements the provision of benefits and treatment is therefore restricted to veterans with service of a type that is the equivalent to that covered by that Act.

Current and former Defence Force members now have coverage for their service under other Veterans’ Affairs portfolio Acts in addition to those who are covered under the Veterans’ Entitlements Act.

There is a need for agreements with foreign countries which also refer to the benefits and payments including rehabilitation that are provided by the Repatriation Commission or the MRCC under the Veterans’ Entitlements Act, Military Rehabilitation and Compensation Act, the proposed Safety, Rehabilitation and Compensation (Defence-related Claims) Act or the Australian Participants in British Nuclear Tests (Treatment) Act.

Explanation of the changes

Section 203 currently provides the Minister for Veterans’ Affairs with the power to enter into arrangements with the governments of countries that are or have been Dominions of the Crown. The existing agreements with the governments of the United Kingdom and New Zealand allow for each of the governments as a party to the agreement, to act as an agent of
the other country for the payment of pensions and the provision of assistance and benefits to eligible veterans or dependents who are resident in that country.

The existing agreements concern only those payments and benefits which are payable under the Veterans’ Entitlements Act.

Section 203 has been repealed and replaced so that an agreement which has been made under the section will now cover current and former members of the defence forces of the countries who are a party to the agreement with service of the type for which benefits and payments including rehabilitation can be provided by the Repatriation Commission or the MRCC under the:

- Veterans’ Entitlements Act,
- Military Rehabilitation and Compensation Act; and
- proposed Safety, Rehabilitation and Compensation (Defence-related Claims) Act, or
- Australian Participants in British Nuclear Tests (Treatment) Act.

The amendments also include a transitional provision to ensure the continuation of the existing agreements with the United Kingdom and New Zealand until they are revoked or replaced under the new section.

*Explanation of the items*

**Part 1 – Main amendments**

*Veterans’ Entitlements Act 1986*

**Item 4** repeals and replaces section 203.

New section 203 provides that the Minister for Veterans’ Affairs may under subsection (1) enter into an agreement with a foreign country concerning matters that:

- relate to reciprocal arrangements between the countries; and
- make provision for the making of payments, treatment and rehabilitation for or in relation to the classes of persons set out in the agreement.

New subsection 203(2) provides that an agreement made under subsection 203(1) may make payments, provide treatment of rehabilitation that is comparable to the payments, treatment or rehabilitation that is provided under the:

- Veterans’ Entitlements Act;
- Military Rehabilitation and Compensation Act; and
- Australian Participants in British Nuclear Tests (Treatment) Act.

New subsection 203(3) provides that an agreement that is in force under the provisions of section 203 will have effect despite “anything in any of the Acts referred to in subsection 203(2)”.

New subsection 203(4) provides for the administration of the agreements made under section 203 by either the Repatriation Commission or the MRCC.
New subsection 203(5) provides the Minister for Veterans’ Affairs with the power to revoke or vary an agreement that is in force under section 203.

New subsection 203(6) requires the Minister for Veterans’ Affairs to arrange for a copy of an agreement entered into under subsection 203(1) or that has been varied or revoked under subsection 203(5) to be published on the Department of Veterans’ Affairs website.

Agreements entered into or in existence under the provisions of section 203 are not legislative instruments for the purposes of the Legislation Act in the circumstances in which they are in a class of instrument for which an exception is provided subsection 6(1) of the Legislation (Exemptions and Other Matters) Regulation 2016. Item 20 of the table in that subsection refers in paragraph (a) to “an agreement, contract or undertaking authorised to be made or given under legislation”.

**Items 1 and 2** are consequential amendments to insert a Note to subsection 7(1) of the Australian Participants in British Nuclear Tests (Treatment) Act and section 3 of the Military Rehabilitation and Compensation Act respectively.

The Notes are to alert readers to the agreements which may be entered into under section 203 of the Veterans’ Entitlements Act to provide payments, treatment and rehabilitation that is comparable to the provision of those items under each of those Acts.

**Item 3** is a minor consequential amendment to section 199 of the Veterans’ Entitlements Act that concerns the appropriation of the Consolidated Revenue Fund. The reference in paragraph (f) to “Arrangements with Governments of other countries” is replaced with a reference to “international agreements”.

**Item 5** is a transitional provision that is applicable to the existing agreements. Subitem 5(1) provides for the continuation of an agreement that had been entered into under section 203 (including the agreements that had been made under the equivalent provisions of the redundant Repatriation Act 1920 that had continued to operate under the provisions of section 56 of the Veterans’ Entitlements (Transitional Provisions and Consequential Amendments) Act 1986).

Subitem 5(2) provides that subitem 5(1) will not prevent the variation or the revocation after the commencement of the item of an arrangement which had been continued under that subitem.

**Part 2 – Contingent amendments**

**Item 6** inserts a Note to subsection 4AA(5) of the Safety, Rehabilitation and Compensation (Defence-related Claims) Act.

The Note is to alert readers to the agreements which may be entered into under section 203 of the Veterans’ Entitlements Act to provide payments, treatment and rehabilitation that is comparable to the provision of those items under the Act.

The amendment to that Act is contingent on the Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Bill 2016 being passed.
**Item 7** is a contingent amendment to insert a new paragraph (d) into subsection 203(2).

The amendment adds the Safety, Rehabilitation and Compensation (Defence-related Claims) Act to the list of Acts in that subsection. Subsection 203(2) provides that an agreement made under subsection 203(1) may make payments, provide treatment of rehabilitation that is comparable to the payments, treatment or rehabilitation that is provided under the Acts that it lists.

**Commencement**

Clause 2 provides that the amendments made by Part 1 of Schedule 3 commence on the day after the Act receives Royal Assent.

Clause 2 provides that the amendments made by Part 2 of Schedule 3 commence on the later of:

- day after the Act receives Royal Assent; or
- immediately after the commencement of Part 2 of Schedule 1 of the *Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 2017*.

The provisions of Part 2 of Schedule 3 will not commence if that Act does not commence.
Schedule 4 – Employer Incentive Scheme payments

**Overview**

The purpose of this Schedule 4 is to amend the Veterans’ Affairs portfolio Acts, the Veterans’ Entitlements Act, the Military Rehabilitation and Compensation Act and the Safety, Rehabilitation and Compensation (Defence-related Claims) Act (if enacted) to strengthen the legislative foundation for providing certain rehabilitation assistance to eligible serving and former Defence Force members, reservists and cadets.

The assistance essentially involves payments to employers under the Employer Incentive Scheme in the form of incentive payments to encourage them to engage injured veterans who have found it difficult to compete in a tight labour market.

**Background**

The Department of Veterans’ Affairs (the Department) provides rehabilitation assistance, including vocational rehabilitation, to eligible serving and former Defence Force members, reservists and cadets following service-related injury or disease. Vocational rehabilitation delivers practical assistance to eligible current and former Defence Force members to help them achieve sustainable employment outcomes and, wherever possible, return them to the workforce to at least the level of their pre-injury employment.

The types of services included in a vocational rehabilitation program can include vocational assessment, guidance or counselling, functional capacity assessments, work experience, vocational training and job seeking assistance. This may also involve incentive payments to employers to facilitate civilian employment of veterans.

Presently, vocational rehabilitation is provided to eligible serving and former Defence Force members under the Military Rehabilitation and Compensation Act, Veterans’ Entitlements Act and the Safety, Rehabilitation and Compensation Act 1988. However, if the Safety, Rehabilitation and Compensation (Defence-related Claims) Act is enacted, the Department will provide vocational rehabilitation to eligible current and former Defence Force members under that Act instead of the Safety, Rehabilitation and Compensation Act 1988.

Chapter 3, Part 4 of the Military Rehabilitation and Compensation Act provides the foundation for the Department to offer rehabilitation assistance to members and former members whose accepted conditions impact on their ability to undertake or sustain employment. Specifically, under sections 61 and 62 of the Military Rehabilitation and Compensation Act, either the Chief of the Defence Force or the Military Rehabilitation and Compensation Commission must assist the person to find suitable civilian work in the event of certain service-related incapacity.

**Explanation of the changes**

Under the Veterans’ Entitlements Act, the Department makes vocational rehabilitation assistance available through the Veterans’ Vocational Rehabilitation Scheme (the VVRS). The VVRS is a free and voluntary rehabilitation program that assists eligible veterans to find or retain employment. The VVRS also provides assistance in the process of making the
transition from military to civilian employment for Defence Force members who may experience difficulty in obtaining and/or holding civilian employment.

The Veterans’ Entitlements Act already contains a power for the Repatriation Commission to make a rehabilitation scheme by way of legislative instrument (section 115B) and the VVRS instrument is in force under that power. The proposed amendments to the Veterans’ Entitlements Act are intended to further clarify that vocational rehabilitation assistance under an Employer Incentive Scheme in the form of incentive payments are squarely within the scope of the enabling provisions.

The purpose of the amendments to the Military Rehabilitation and Compensation Act is to make it clear that the vocational assistance provided to former Defence Force members will encompass payments under a scheme determined by the MRCC.

Under the Safety, Rehabilitation and Compensation (Defence-related Claims) Act, rehabilitation assistance is proposed to be provided under section 40 of that Act (if and when enacted). That provision puts an obligation on the Commonwealth to take all reasonable steps to provide the employee with suitable employment or to assist the employee to find such employment.

The amendments to the Safety, Rehabilitation and Compensation (Defence-related Claims) Act will provide a clear statutory basis for the MRCC to determine a scheme, to be approved by the Minister, to ensure that certain rehabilitation assistance, including payments to employers under an Employer Incentive Scheme in respect of suitable employment, can be provided similarly to how they are provided under the Military Rehabilitation and Compensation Act.

Explanation of the items

Part 1 – Main amendments

Military Rehabilitation and Compensation Act 2004

Item 1 is a consequential amendment to modify the simplified outline for Part 4 of Chapter 3 of the Military Rehabilitation and Compensation Act to expressly provide that employers providing civilian work may be entitled to payments under a scheme determined by the MRCC under the Part. The amendment refers the amendments (by Item 2 of this Part) which provide a more founded legislative basis for the rehabilitation payment scheme (presently known as the Employer Incentives Payment) under the Military Rehabilitation and Compensation Act.

Item 2 will add a new section 62A at the end of Part 4. Essentially, new section 62A will give the MRCC the power to determine a scheme for rehabilitation assistance, although the scheme must be approved by the Minister for Veterans’ Affairs and, as a legislative instrument, will be subject to the Legislation Act.

Under proposed new subsection 62A(1) the MRCC will be empowered to determine a scheme under which employers may receive incentive payments for providing suitable civilian work.
Under proposed subsection 62A(3), the MRCC will also have the power to vary or revoke the scheme by written determination.

It is proposed that the operation of the scheme will be subject to ministerial approval. That is, the scheme will have no effect unless the Minister for Veterans’ Affairs (the Minister) has approved the scheme in writing (as per new subsection 62A(2)) and, similarly, the MRCC will not be able to vary or revoke the scheme unless the MRCC makes such a written determination and it has been approved by the Minister (as per proposed subsection 62A(4)).

Proposed subsection 62A(5) makes it clear that determinations made under section 62A by the MRCC and approved by the Minister are legislative instruments. The legislative instrument is taken to be one made by the Minister on the day on which the Minister approves the determination made by the MRCC. As such, the normal rules for instruments set out in the Legislation Act are applicable.

**Item 3** inserts a new paragraph 423(ba) into section 423 of the Military Rehabilitation and Compensation Act. Section 423 provides that the Consolidated Revenue Fund (CRF) is appropriated to the extent necessary for the payment of the items listed in that section. As a result of the insertion of new paragraph 423(ba) by the proposed amendment, the CRF will be appropriated for payments under the scheme referred to in section 62A of the Military Rehabilitation and Compensation Act.

**Veterans’ Entitlements Act 1986**

**Item 4** adds new paragraph (h) to subsection 115B(5), which contains the power that allows the Repatriation Commission, from time to time, to make a scheme by instrument in writing to be known as the Veterans’ Vocational Rehabilitation Scheme (the VVRS). That scheme is made, and may be varied or revoked, in a similar way as is proposed with respect to proposed section 62A of the Military Rehabilitation and Compensation Act.

Specifically, the Repatriation Commission has the power to make, vary or revoke the VVRS, but these actions only have force and effect where they are approved by the Minister.

New paragraph 115B(5)(h) clarifies that the payment of financial assistance under the VVRS scheme to specified employers in respect of the employment of certain veterans by those employers is within the scope of the existing scheme.

**Item 5** inserts a new paragraph 199(da) into section 199 of the Veterans’ Entitlements Act, which provides that the CRF is appropriated to the extent necessary for the payment of the items listed in that section. As a result of the insertion of new paragraph 199(da), the CRF will be appropriated for payments under the VVRS.

**Part 2 – Contingent amendments**

**Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988**

This Part amends the Safety, Rehabilitation and Compensation (Defence related Claims) Act, but is contingent upon the enactment of that Act. If the Safety, Rehabilitation and Compensation (Defence related Claims) Act is not enacted, the amendments proposed in this Part will not commence.
Explanation of the items

Item 6 will add a new section 40A to Part III of the Act. Essentially, proposed section 40A will give the MRCC power to determine a scheme for rehabilitation assistance, although the scheme must be approved by the Minister and, as a legislative instrument, will be subject to the Legislation Act.

Under proposed new subsection 40A(1) the MRCC will be empowered to determine a scheme under which employers may receive payments in respect of providing suitable employment. Under proposed subsection 40A(3), the MRCC will also have the power to vary or revoke the scheme by written determination.

It is proposed that the operation of the scheme will be subject to ministerial approval. That is, the scheme will have no effect unless the Minister has approved the scheme in writing (as per new subsection 40A(2)) and, similarly, the MRCC will not be able to vary or revoke the scheme unless the MRCC makes such a written determination and it has been approved by the Minister (as per proposed subsection 40A(4)).

New subsection 40A(5) makes it clear that determinations made under section 40A by the MRCC and approved by the Minister are legislative instruments. The legislative instrument is taken to be one made by the Minister on the day on which the Minister approves the determination made by the MRCC. The normal rules for legislative instruments set out in the Legislation Act will apply to the instrument.

Item 7 inserts a new subsection 160(1A), which ensures that funds for the scheme referred to in section 40A are appropriated from the CRF.

Commencement

Clause 2 provides that the amendments made by Part 1 of Schedule 4 commence on the day after the Act receives Royal Assent.

Clause 2 provides that the amendments made by Part 2 of Schedule 4 commence on the later of:

- day after the Act receives Royal Assent; or

The provisions of Part 2 of Schedule 4 will not commence if that Act does not commence.
Schedule 5 – Disclosure of information

Overview

The purpose of this Schedule is to amend the Military Rehabilitation and Compensation Act and make contingent amendments to the proposed Safety, Rehabilitation and Compensation (Defence-related Claims) Act to facilitate information sharing between the MRCC and the Commonwealth Superannuation Corporation (CSC) with respect to certain service related compensation claims.

The proposed amendments would implement a recommendation by the Review of Military Compensation Arrangements (the 2011 MRCA Review) intended to improve the information sharing framework for incapacity and superannuation benefits between the MRCC and CSC.

While the MRCC is authorised to request information from the CSC to assist with the calculation of incapacity payments, there is no express provision to allow the MRCC to provide information to CSC to assist with the CSC’s assessment of superannuation benefits. At present, all requests to the MRCC for information from CSC are undertaken in accordance with the Freedom of Information Act 1982. This process is cumbersome and time consuming, and accounts for approximately 20 per cent of all Freedom of Information requests received by the Department (on behalf of the MRCC.)

Background

Under the Military Rehabilitation and Compensation Act and the Safety, Rehabilitation and Compensation Act 1988 (and the proposed Safety, Rehabilitation and Compensation (Defence-related Claims) Act), weekly incapacity payments are calculated taking into account superannuation entitlements.

To ensure that the calculations are correct, decision-makers need accurate information from the CSC about: the type of superannuation benefit paid to the claimant; the effective date from which benefits were granted; details of any lump sum payments and productivity benefits; and information about any subsequent variations.

The 2011 MRCA Review considered issues relating to the interaction and information sharing processes between the Department (on behalf of the MRCC) and CSC. Recommendation 12.5 of the report was to consider the operation of superannuation and compensation arrangements across Government, with a view to streamlining these arrangements wherever possible. The Military Superannuation- Compensation Scoping Working Group (comprised of representatives from the Department, CSC, the Department of Defence and the Department of Finance) was established to comprehensively review the superannuation and compensation arrangements.

The Military Superannuation- Compensation Scoping Working Group recommended that options be explored to improve information sharing processes for incapacity and superannuation benefits between the Department and CSC. These amendments seek to implement that recommendation.

While the Military Rehabilitation and Compensation Act and the Safety, Rehabilitation and Compensation Act 1988 contain information gathering powers that allow the MRCC to
request information from CSC, these amendments would provide a stronger foundation for the MRCC to provide CSC with the information needed to make an assessment of superannuation benefits. Requests by CSC for claims information from the MRCC are increasingly being received for the purpose of conducting superannuation investigations. This is because the MRCC’s records contain useful and relevant medical and rehabilitation information that assists CSC to make speedier superannuation benefits assessments.

Enabling the CSC to use medical information and reports held by the MRCC to determine superannuation claims would also avoid the need to send Defence Force members for further medical assessment, where the MRCC already holds relevant medical evidence that could be used by the CSC to determine superannuation benefits. In turn, Defence Force members would be spared from any re-traumatisation from having to retell their stories. This is particularly significant for Defence Force members who suffer psychological conditions, including those that have arisen as a result of physical or psychological abuse.

Obstacles to information sharing also delay compensation payments to veterans. While the Australian Government has recently amended the Military Rehabilitation and Compensation Act and the Safety, Rehabilitation and Compensation Act 1988 to ensure that Defence Force members can receive interim compensation payments at 100% of their Normal Weekly Earnings while their claims are being investigated, the measures proposed in this Schedule will prioritise providing Defence Force members with greater certainty at an earlier time. The earlier a Defence Force member’s superannuation benefits are determined, the earlier the Department can accurately calculate incapacity payments.

As the Safety, Rehabilitation and Compensation (Defence-related Claims) Act is proposed to take the place of the Safety, Rehabilitation and Compensation Act 1988 with respect to defence-related claims, no amendments to the Safety, Rehabilitation and Compensation Act 1988 are proposed. Subject to the enactment of the Safety, Rehabilitation and Compensation (Defence-related Claims) Act, all of the amendments proposed by this Schedule would commence on the day after this Bill, if enacted, receives the Royal Assent.

**Explanation of the Items**

**Part 1 – Main amendments**

**Military Rehabilitation and Compensation Act 2004**

This Part gives effect to amendments to the Military Rehabilitation and Compensation Act with respect to information sharing powers.

**Item 1** inserts new table item 2A in the table in subsection 409(2). This table lists the people to whom the MRCC or a staff member assisting the MRCC may provide information and the purposes for which such disclosures may be made. In the normal course, staff members assisting the MRCC will be staff of the Department who the Secretary has made available for this purpose under section 196 of the Veterans’ Entitlements Act.

New table item 2A will empower the MRCC or a staff member assisting the MRCC to provide information to the CSC for a purpose relating to the performance of a function, or the exercise of a power, by the CSC under an Act administered by the CSC or an instrument made under an Act administered by the CSC. This will provide clear authority for MRCC
and assisting staff members to provide information to, and respond to requests from, the CSC.

As outlined in the Background section, this amendment is highly significant to Defence Force members who will be saved the imposition of having to attend unnecessary further medical assessments and retelling their stories. Currently, if the CSC wants to access the Department’s records, they must ask the client for the information or make a request under the Freedom of Information Act 1982, which is administratively cumbersome.

Importantly, the purposes for which, and the persons to whom, information may be disclosed are appropriately prescribed and limited, consistent with existing subsection 409(2). The information may only be provided to the CSC for the purpose of exercising a function or power under the Governance of Australian Government Superannuation Schemes Act 2011, or an instrument under that Act.

Item 2 adds a definition section to define the term ‘Act administered by CSC’ as having the same meaning as given by the Governance of Australian Government Superannuation Schemes Act 2011 (GAGSS Act). Presently, the GAGSS Act defines this term by reference to a list of eleven Acts, namely:

(a) the Defence Act 1903, to the extent that the Act deals with superannuation benefit in Part IIIAA; or
(b) the Defence Force Retirement and Death Benefits Act 1973; or
(c) the Defence Forces Retirement Benefits Act 1948; or
(d) the Military Superannuation and Benefits Act 1991; or
(da) the Australian Defence Force Superannuation Act 2015; or
(db) the Australian Defence Force Cover Act 2015; or
(e) the Papua New Guinea (Staffing Assistance) Act 1973, to the extent that the Act deals with superannuation; or
(f) the Superannuation Act 1922; or
(g) the Superannuation Act 1976; or
(h) the Superannuation Act 1990; or
(i) the Superannuation Act 2005.

Item 3 provides that Items 1 and 2 will apply in respect of information provided on or after the commencement of Item 3 regardless of when the information was obtained. That is, once Part 1 of Schedule 5 commences, the CSC may ask the MRCC to provide information that the MRCC had obtained before the new arrangements commenced.

Part 2 – Contingent amendments

Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988

This Part gives effect to amendments to the information sharing powers in the Safety, Rehabilitation and Compensation (Defence-related Claims) Act, but is contingent upon the enactment of that Act. If the Safety, Rehabilitation and Compensation (Defence-related Claims) Act is not enacted, the amendments proposed in this Part will not commence.

Item 4 will repeal existing subsection 151A(1) and substitute it with a new subsection which enables the MRCC or a staff member assigned to assist the MRCC to provide information obtained in the performance of their duties under the Safety, Rehabilitation and
Compensation (Defence-related Claims) Act to a person, and for a purpose, specified in the table.

The specified people and the specified purposes are the same as those currently stipulated in subsection 151A(1) of the *Safety, Rehabilitation and Compensation Act 1988*, but with the addition of the CSC through table item 6 (discussed below.) Item 4 restructures subsection 151A(1) into tabular form to aid readability and improve clarity.

Consistent with the amendments made by Items 1 and 2 (described above), table item 6 will enable the MRCC or a staff member assisting the MRCC to provide information to the CSC. This information can only be provided for a purpose relating to the performance of a function, or the exercise of a power, by the CSC under an Act administered by the CSC or an instrument made under an Act administered by the CSC.

Again, for the same reasons as outlined in the Background and with respect to Item 1, this amendment is highly significant to veterans who will be saved the imposition of having to attend unnecessary further medical assessments and retelling their stories.

As noted above, the purposes for which, and the persons to whom, information may be disclosed are appropriately prescribed and limited, consistent with existing subsection 151A(1) of the *Safety, Rehabilitation and Compensation Act 1988*. The information may only be provided to the CSC for the purpose of exercising a function or power under the *Governance of Australian Government Superannuation Schemes Act 2011*, or an instrument under that Act.

Item 5 makes a minor amendment to subsection 151A(2) to reflect the expansion of the information sharing powers to the CSC. Instead of referring to the ‘Secretary or Chief Executive’, amended section 151A(2) will refer to ‘the person’, reflecting the legal status of each of the named entities as well as the wording of proposed new subsection 151A(1).

Item 6 defines ‘Act administered by CSC’ in the same way as Item 2 above, that is by reference to a definition in the GGAGS Act.

Item 7 provides that the changes made to subsection 151A(1) will apply to information provided on or after the commencement of Item 7 regardless of when the information was obtained. That is, once Part 2 of Schedule 5 commences, the CSC may ask the MRCC to provide information that the MRCC had obtained before the new arrangements commenced.

**Commencement**

Clause 2 provides that the amendments made by Part 1 of Schedule 5 commence on the day after the Act receives Royal Assent.

Clause 2 provides that the amendments made by Part 2 of Schedule 5 commence on the later of:

- day after the Act receives Royal Assent; or
- immediately after the commencement of Part 2 of Schedule 1 of the *Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 2017*.

The provisions of Part 2 of Schedule 5 will not commence if that Act does not commence.
Schedule 6 - Delegation

Overview

Schedule 6 of the Bill amends the Military Rehabilitation and Compensation Act to provide for the delegation of the Minister’s powers and functions.

Background

Section 384 of the Military Rehabilitation and Compensation Act provides for the delegation of the powers and functions of the MRCC to an individual commissioner, persons who assist the MRCC, persons in the Department appointed or engaged under the Public Service Act 1999 or a member of the Defence Force.

Unlike section 212 of the Veterans’ Entitlements Act the Military Rehabilitation and Compensation Act makes no provision for the delegation of the Minister’s powers and functions.

That omission has prevented the implementation of some of the administrative reforms being implemented to achieve efficiencies across the Department as part of the Government’s commitment to reduce red tape.

As part of the reform process the Department appointed a Chief Operating Officer (COO) in 2014. The reforms had also identified that there were certain functions where it would be advantageous for the COO to act on behalf on behalf of the Commissions.

Explanation of the changes

After the appointment of the COO some of the powers and functions of the Repatriation Commission and the MRCC were delegated to the COO.

The other areas for reform concerned the need for the Minister to approve some of the instruments that are made by the Commissions, these include minor variations to the “Treatment Principles” and the “Pharmaceutical Benefits” schemes (as made under sections 90 and 91 of the Veterans’ Entitlements Act and section 286 of the Military Rehabilitation and Compensation Act respectively).

The powers and functions of the Minister to approve those variations under the Veterans’ Entitlements Act was delegated to the COO in 2014.

The powers and functions of the Minister under the Military Rehabilitation and Compensation Act which may be delegated are:

- section 79 – the determination of the interest rate payable on lump sum payments of permanent impairment compensation;
- section 258 – approval of determinations by the MRCC concerning variations to and the revocation of the MRCA Education and Training Scheme;
- section 286 - approval of determinations by the MRCC concerning variations to and the revocation of the Treatment Principles and the MRCA Pharmaceutical Benefits Scheme; and
sections 293, 328 and 431 – minor determinations concerning reimbursement of travel expenses, requirements for medical examinations and the type of payments that may be deducted from payments of weekly compensation.

It is proposed that the powers and functions of the Minister under sections 258 and 286 will be the only powers and functions which will form part of the initial delegation. The delegation is to be provided on the basis that the COO can only the approve instruments made by the MRCC which concern minor variations.

The other powers and functions of the minister which may be delegated concern sections 79, 293, 328 and 431. All of the powers and functions of the Minister in those sections concern relatively minor matters which can be delegated to officers of the Department at a lower level than the COO. Some of those minor matters may also require delegations that will need to be exercised by the employees of other Departments who are carrying out duties on the behalf of the Department such as the Departments of Defence and Human Services.

Military Rehabilitation and Compensation Act 2004

Item 1 inserts new section 437A.

New section 437A provides that the Minister may delegate his or her powers and functions under the Military Rehabilitation and Compensation Act, the regulations or any other legislative instrument made under the Military Rehabilitation and Compensation Act, in writing, to a commissioner of the MRCC, or to a person appointed or engaged under the Public Service Act 1999.

The inclusion of the reference to persons appointed or engaged under the Public Service Act 1999 will provide, where it is appropriate for the delegation of the powers and functions of the Minister to employees of the Department and to the employees of other government Departments who are carrying out duties on behalf of the Department.

Commencement

Clause 2 provides that the amendments made by Schedule 6 commence on the day after the Act receives Royal Assent.
Schedule 7 – Legislative instruments

Overview

Schedule 7 of the Bill amends Veterans’ Affairs portfolio legislation to exempt certain legislative instruments from subsection 14(2) of the Legislation Act. The amendments will enable these legislative instruments to incorporate matters contained in another non-disallowable legislative instrument or other non-legislative writings as in force from time to time.

The Schedule also amends some of the other provisions of Veterans’ Affairs portfolio legislation that provide for benefits to be provided under schemes which are made under legislative instruments. The amendments will bring the provisions under which the instruments are made into line with current drafting practice.

Background

Veterans’ Affairs portfolio legislation includes a number of provisions for making legislative instruments.

Many of the legislative instruments include references to external documents which are incorporated by-reference into the instruments and are legally regarded as being part of the instruments.

The legal basis for including external documents is section 14 of Legislation Act, which enables a legislative instrument to incorporate provisions as in force from time to time if they are from external sources which can be scrutinised by the Parliament such as the provisions of Commonwealth Acts or disallowable legislative instruments.

In practice the effect of the restriction is that any change to such a document cannot be recognised unless the changed version is incorporated in the legislative instrument by an amendment or a replacement instrument.

An example of the restriction imposed under section 14(2) of the Legislation Act which causes significant administrative issues for the Department is a change in one of the documents that is incorporated as a result of a policy imperative. The policy change that arises because of the availability of a new rehabilitation appliance will delay the availability of the appliance because the legislative instrument (the “Treatment Principles”) that incorporates the document under which the appliance may be provided will need to be amended to refer to the changed date of that document.

However, an exception is also provided for the incorporation of non-disallowable instruments or other writings as in force from time-to-time by subsection 14(2) of the Legislation Act. The exception is provided if the enabling legislation under which the legislative instrument is made, authorises the incorporation of provisions of non-disallowable legislative instruments or other non-legislative writings as in force from time to time.

The Department administers the following four substantial legislative instruments, which incorporate the provisions of numerous non-legislative written documents:
• the Treatment Principles made under section 90 of the Veterans’ Entitlements Act;
• the Treatment Principles made under section 286 of the Military Rehabilitation and Compensation Act;
• the Repatriation Pharmaceutical Benefits Scheme made under section 91 of the Veterans’ Entitlements Act; and
• the Military Rehabilitation and Compensation Act Pharmaceutical Benefits Scheme made under section 286 of the Military Rehabilitation and Compensation Act.

The listed instruments contain references to a number of non-legislative documents. The two sets of Treatment Principles incorporate by reference approximately thirty non-legislative documents and the Repatriation Pharmaceutical Benefits Scheme and the Military Rehabilitation and Compensation Act Pharmaceutical Benefits Scheme each incorporate by reference eleven non-legislative documents.

Most of the documents are non-legislative documents prepared by the Department such as the various Fee Schedules and the Rehabilitation Appliance Program National Schedule of Equipment (RAP Schedule) that apply to treatment provided under the Treatment Principles. Included in the other documents that are incorporated are documents prepared by the Department of Health. All of the non-legislative instruments that are to be incorporated that are prepared by the Department and the Department of Health can be easily accessed on-line via the Department’s website or via links on the Department’s website.

The remaining documents that are incorporated in the legislative instruments are well known publications such as the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) made by the American Psychiatric Association and the Pharmacopoeia published by the UK and US governments and the European Union. These are reference documents that are widely available.

Explanation of the Items

Part 1 – Main Amendments

Australian Participants in British Nuclear Tests (Treatment Act) 2006

Items 1 to 5 are consequential amendments made to revise the terms used to describe the scheme made under the Veterans’ Entitlements Act to provide pharmaceutical benefits under the Australian Participants in British Nuclear Tests (Treatment Act) to veterans and other eligible persons.

Subsection 4(1) is amended by repealing the existing definition of approved pharmaceutical scheme and inserting a definition of the term Repatriation Pharmaceutical Benefits Scheme.

The Repatriation Pharmaceutical Benefits Scheme is defined as being the Repatriation Pharmaceutical Benefits Scheme in force under section 91 of the Veterans’ Entitlements Act.

Section 18 is the mechanism used to adopt and modify, for the purposes of the Australian Participants in British Nuclear Tests (Treatment Act), the pharmaceutical benefits scheme created under section 91 of the Veterans’ Entitlements Act.
The heading to section 18 is amended by the repeal of the existing heading “Application and modification of an approved pharmaceutical scheme” and substitution of the new heading “Application and modification of Repatriation Pharmaceutical Benefits Scheme”.

Subsection 18(1) provides that an “approved pharmaceutical benefits scheme” may be modified under section 18 for the purpose of providing the pharmaceutical benefits that are required for the treatment of eligible persons under the Australian Participants in British Nuclear Tests (Treatment) Act.

Subsection 18(1) is amended by replacing the reference to an “approved pharmaceutical scheme” with a reference to the “Repatriation Pharmaceutical Benefits Scheme”.

Subsection 18(2) enables the Repatriation Commission to prepare written modifications of an “approved pharmaceutical scheme” which will apply for the purposes of the Australian Participants in British Nuclear Tests (Treatment) Act.

Subsection 18(2) is amended by replacing the reference to an “approved pharmaceutical scheme” with a reference to the “Repatriation Pharmaceutical Benefits Scheme”.

**Item 6** is a transitional provision which provides in subitem 6(1) for the continuation of the existing “approved pharmaceutical scheme” as modified and applied under section 18 of the Australian Participants in British Nuclear Tests (Treatment) Act prior to the commencement of the amendments made by this Schedule.

Subitem 6(2) provides that, following the commencement of the amendments, subitem 6(1) will not prevent the Repatriation Commission from exercising its powers under section 18 to vary or revoke the modifications to the Repatriation Pharmaceutical Benefits Scheme.

**Military Rehabilitation and Compensation Act 2004**

**Item 7** is a consequential amendment to subsection 5(1) of the Military Rehabilitation and Compensation Act to insert definitions of the terms *pharmaceutical benefits determination* and *treatment determination*. The terms are relevant to the proposed amendments to section 286 that are to be made by this schedule.

*A pharmaceutical benefits determination* is defined with a reference to the meaning given by subsection 286(3) (as inserted by **Item 10** of this Schedule).

*A treatment determination* is defined with a reference to the meaning given by subsection 286(4) (as inserted by **Item 10** of this Schedule).

**Item 8** inserts new subsection 67(5). Under section 67, the MRCC may prepare a written guide for assessing the degree of impairment from a service injury or service disease, or adopt an existing guide. The guide is a legislative instrument and provides the criteria for assessing the effect of impairment on a person’s lifestyle. The impairment points determined under the guide are used as thresholds for the provision of certain benefits under the Military Rehabilitation and Compensation Act.

New subsection 67(5) provides that a determination made under subsection 67(1) or a revocation or a variation to the guide that is made under subsection 67(3) will be exempt
from the application of subsection 14(2) of the Legislation Act. The exemption applies to any legislative instrument that may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force at a particular time; or as in force or existing from time to time.

**Items 9 and 10** amend section 286.

The heading to section 286 “Determination for providing treatment” is replaced with a new heading “Determination for providing treatment or pharmaceutical benefits”.

Section 286 provides that the MRCC may make a written determination covering the provision of treatment other than the arrangements for treatment at hospitals and other institutions that are made under section 259.

Under section 286, the MRCC may also make determinations on where treatment will not be provided, situations under which treatment will not be provided and treatment for which prior approval will be required, and the requirements to be met before prior approval can be provided.

The legislative instruments made by the MRCC under the provisions of section 286 are referred to as the “Treatment Principles” and the “MRCA Pharmaceutical Benefits Scheme”.

Subsection 286(1) provides that the MRCC may make a written determination covering the provision of treatment other than arrangements under section 259. Paragraph 286(1)(c) specifically refers to the provision of pharmaceutical benefits.

Under subsection 286(1) the MRCC may also determine treatment that will not be provided, situations under which treatment will not be provided and treatment for which prior approval, and the requirements for giving prior approval, is needed.

Subsections 286(2) to (6) are repealed and replaced with new subsections 286(2) to (6B).

New subsection 286(2) provides that a determination by the MRCC under subsection 286(1) will have no effect unless the Minister for Veterans’ Affairs has provided approval in writing.

New subsection 286(3) provides that a determination under subsection 286(1) that relates to paragraph 286(1)(c) that has been approved by the Minister is a **pharmaceutical benefits determination**.

New subsection 286(4) provides that any other determination under subsection 286(1) that has been approved by the Minister is a **treatment determination**.

New subsection 286(5) provides the MRCC with the power to revoke or vary a pharmaceutical benefits determination or a treatment determination.

New subsection 286(6) provides that a determination made by the MRCC under subsection 286(5) will have no effect unless it has been approved by the Minister in writing.
New subsection 286(6A) provides that a determination made under subsection 286(1) or (5) by the MRCC and approved by the Minister is a legislative instrument that is to be regarded as having been made on the day on which the Minister has provided approval.

New subsection 286(6B) provides that a determination made under subsections 286(1) or (5) will be exempt from the application of subsection 14(2) of the Legislation Act and that a determination made under subsection 286(1) and (5) may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force at a particular time; or as in force or existing from time to time.

The exemption provided under subsection 286(6B) is necessary because it is intended that the “Treatment Principles” and the “MRCA Pharmaceutical Benefits Scheme” will include references to certain non-legislative instruments of a regulatory nature.

The incorporation of non-legislative documents in the “Treatment Principles” and the “MRCA Pharmaceutical Benefits Scheme” as in force from time to time, will ensure that the instruments do not become out of date with changes to the Department’s Fee Schedules and the other non-legislative documents that are referenced.

The instruments made under section 286 will be subject to Parliamentary scrutiny as disallowable instruments.

**Item 11** is a transitional provision which provides, in subitem 11(1) for the continuation of the existing “pharmaceutical benefits determination” and “treatment determination” as in force prior to the commencement of the amendments to section 286 made by this Schedule.

Subitem 11(2) provides that following the commencement of the amendments, subitem 11(1) will not prevent the MRCC from exercising its powers under section 286 to vary or revoke the modifications to the “pharmaceutical benefits determination” or a “treatment determination”.

**Items 12 to 14** are consequential amendments to subsections 287(1) and (2A) respectively to replace the general references to a “determination under section 286” with specific references to “a treatment determination” under that section.

A minor consequential amendment is also made to subsection 287(2A) to include a reference to a “treatment determination”.

Subsections 287(1) and (2A) provide that where the MRCC has determined that a person should receive treatment under Part 3 of Chapter 6 of the Military Rehabilitation and Compensation Act, it is expected that treatment will usually be provided under the Part in accordance with the arrangements made under section 285 or the determinations made under section 286.

**Veterans’ Entitlements Act 1986**

**Items 15 to 20** are consequential amendments to subsection 5Q(1) of the Veterans’ Entitlements Act to insert, replace or repeal definitions relevant to the amendments to sections 29, 90 90A, 91, 105, 115B and 117 that are to be made by this Schedule.
The definition of the *approved Guide to the Assessment of Rates of Veterans’ Pensions* is repealed and replaced with the *Approved Guide to the Assessment of Rates of Veterans’ Pensions* defined by reference to the meaning given by subsection 29(3) (as inserted by **Item 26** of this Schedule).

The definition of the *approved Treatment Principles* is repealed and replaced with *Treatment Principles* defined by reference to the meaning given by subsection 90(4) (as inserted by **Item 43** of this Schedule).

The definition of the *Repatriation Pharmaceutical Benefits Scheme* is inserted and defined by reference to the meaning given by subsection 91(3) (as inserted by **Item 60** of this Schedule).

The definition of the *Repatriation Private Patient Principles* is repealed and replaced with the *Repatriation Private Patient Principles* defined by reference to the meaning given by subsection 90A(4) (as inserted by **Item 48** of this Schedule).

The definition of the *Vehicle Assistance Scheme* is inserted and defined by reference to the meaning given by subsection 105(9) (as inserted by **Item 77** of this Schedule).

The definition of the *Veterans’ Children Education Scheme* is inserted and defined by reference to the meaning given by subsection 117(7) (as inserted by **Item 91** of this Schedule).

The definition of the *Veterans’ Vocational Rehabilitation Scheme* is inserted and defined by reference to the meaning given by subsection 115B(7) (as inserted by **Item 84** of this Schedule).

**Item 21** is a consequential amendment to the paragraph 13(7)(h) reference to the Veterans’ Children Education Scheme to remove the redundant preceding reference to the “scheme known as the”.

**Items 22 and 23** are consequential formatting amendments to correct the references in subsection 21A(1) and paragraph 22(4)(c) from the “approved” to the “Approved” Guide to the Assessment of Rates of Veterans’ Pensions.

**Items 24 to 31** amend section 29. Under section 29 the Repatriation Commission may prepare a written guide for assessing the extent of the incapacity of a veteran from a war-caused injury or war-caused disease. The guide is a legislative instrument and provides the criteria for assessing the extent of the incapacity. The incapacity percentage determined under the guide is used to determine the rate of the veterans’ disability pension under the Veterans’ Entitlements Act.

Subsection 29(1) is amended by replacing the reference to the requirement of the Repatriation Commission to “from time to time, prepare a document to be known as the “Guide to the Assessment of Rates of Veterans’ Pensions”. The amendment to subsection 29(1) requires the Repatriation Commission to “in writing, determine a guide setting out” what will become known under new subsection 29(3) as the Approved Guide to the Assessment of Rates of Veterans’ Pensions”.

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Subsections 29(2) and (3) are repealed and replaced with new subsections 29(2), (3), (3A) and (3B).

Subsection 29(2) provides that a determination made by the Repatriation Commission under subsection 29(1) will have no effect unless it has been approved by the Minister in writing.

New subsection 29(3) provides that a determination under subsection 29(1) that has been approved by the Minister as in force from time to time is the Approved Guide to the Assessment of Rates of Veterans’ Pensions.

New subsection 29(3A) provides the Repatriation Commission with the power to revoke or vary an Approved Guide to the Assessment of Rates of Veterans’ Pensions.

New subsection 29(3B) provides that a determination made by the Repatriation Commission under subsection 29(3A) will have no effect unless it has been approved by the Minister in writing.

A consequential formatting amendment is made to subsection 29(4) to correct the references of the “approved” to the “Approved” Guide to the Assessment of Rates of Veterans’ Pensions.

A heading to subsection 29(5) is inserted that references that subsection as being concerned with the “Extent of Incapacity”.

Subsections 29(8), (9) and (10) are repealed and a new subsection 29(10) is inserted. New subsection 29(10) provides that a determination made under subsections 29(1) or (3A) by the Repatriation Commission and approved by the Minister is a legislative instrument that is to be regarded as having been made on the day on which the Minister has provided approval.

Subsection 29(11) is amended to clarify the reference to “the document or instrument” by replacing it with a reference to “the legislative instrument”.

New subsection 29(12) provides that a determination made under subsection 29(1) or a revocation or a variation made under subsection 29(3A) will be exempt from the application of subsection 14(2) of the Legislation Act. The exemption applies to any legislative instrument that may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force at a particular time; or as in force or existing from time to time.

Item 32 is a transitional provision which provides, in subitem 32(1) for the continuation of the existing “Guide to the Assessment of Rates of Veterans’ Pensions” as in force prior to the commencement of the amendments to section 29 made by this Schedule.

Subitem 32(2) provides that, following the commencement of the amendments, subitem 32(1) will not prevent the Repatriation Commission from exercising its powers under section 29 to vary or revoke the “Guide to the Assessment of Rates of Veterans’ Pensions”.

Item 33 is a consequential amendment to the paragraph 52(1)(m) reference to the Vehicle Assistance Scheme to remove the redundant preceding reference to “the scheme administered by the Commonwealth known as”.

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**Item 34** is a consequential amendment to the paragraph 70(10A)(e) reference to the Veterans’ Children Education Scheme to remove the redundant preceding reference to the “scheme known as the”.

**Items 35 and 36** are consequential amendments to subsection 84(3A) to clarify references to the “Treatment Principles” in section 90 as made by this Schedule.

**Items 37 to 41** amend section 90. Under section 90 the Repatriation Commission may make a written determination covering the provision of treatment to persons eligible for treatment under Part V of the Veterans’ Entitlements Act.

The heading to section 90, the “Guide to the provision of treatment” is replaced with the heading “Treatment Principles”.

Subsection 90(1) is amended by replacing the reference to the requirement of the Repatriation Commission to “from time to time, prepare a document to be known as the “Treatment Principles”. The amendment to subsection 90(1) requires the Repatriation Commission to “in writing, determine principles setting out” what will become known under new subsection 90(4) as the “Treatment Principles”.

A Note to subsection 90(1) is inserted referring the reader to subsection 90(8) for the definition of an “eligible person”.

Subsections 90(1A) and (1B) are amended to replace the references to “Treatment Principles” with a reference to the “principles”.

Minor amendments are made to clarify subsection 90(2) to replace references to “the document” with a reference to “the principles”.

Subsections 90(3) to (7) are repealed and replaced with new subsections 90(3), (4), (5), (6), (7), (7A) and (7B).

Subsection 90(3) provides that the Treatment Principles made by the Repatriation Commission under subsection 90(1) will have no effect unless it has been approved by the Minister in writing.

New subsection 90(4) provides that the principles made under subsection 90(1) that has been approved by the Minister as in force from time to time are the Treatment Principles.

New subsection 90(5) provides the Repatriation Commission with the power to revoke or vary the Treatment Principles.

New subsection 90(6) provides that a determination made by the Repatriation Commission under subsection 90(5) will have no effect unless it has been approved by the Minister in writing.

New subsection 90(7) provides that a determination made under subsections 90(1) or (5) by the Repatriation Commission and approved by the Minister is a legislative instrument that is to be regarded as having been made on the day on which the Minister has provided approval.
New subsection 90(7A) provides that a determination made under subsection 90(1) or a variation made under subsection 90(5) will be exempt from the application of subsection 14(2) of the Legislation Act. The exemption applies to any legislative instrument that may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force at a particular time; or as in force or existing from time to time.

New subsection 90(7B) replicates the provisions of repealed subsection 90(3) and refers to the Repatriation Commission being bound by the Treatment Principles in the exercise of its powers and discretions under Part V of the Veterans’ Entitlements Act.

A heading to subsection 90(8) is inserted referring to the provision defining an “eligible person” for the purposes of the section.

**Item 44** is a transitional provision which provides, in subitem 44(1) for the continuation of the existing “Treatment Principles” as in force prior to the commencement of the amendments to section 90 made by this Schedule.

Subitem 44(2) provides that, following the commencement of the amendments, subitem 44(1) will not prevent the Repatriation Commission from exercising its powers under section 90 to vary or revoke the “Treatment Principles”.

Subitem 44(3) refers to the modification of the Treatment Principles for the purposes of the Australian Participants in British Nuclear Tests (Treatment) Act and provides for the continuation under that Act of those modified “Treatment Principles” as in force prior to the commencement of the amendments to section 90 made by this Schedule.

**Items 45 to 53** amend section 90A. Under section 90A the Repatriation Commission may make a written determination covering the provision of treatment to eligible persons as private patients.

Section 90A is amended by replacing the heading, “Determination etc. of Repatriation Private Patient Principles” with “Repatriation Private Patient Principles”.

A Note to subsection 90A(1) is inserted referring the reader to subsection 90A(9) for the definition of an “eligible person”.

Subsections 90A(3) to (5) are repealed and replaced with new subsections 90A(3), (4), (5), (5A), (5B), and (5C).

Subsection 90A(3) provides that the Repatriation Private Patient Principles made by the Repatriation Commission under subsection 90A(1) will have no effect unless it has been approved by the Minister in writing.

New subsection 90A(4) provides that the principles made under subsection 90A(1) that have been approved by the Minister as in force from time to time are the **Repatriation Private Patient Principles**.

New subsection 90A(5) provides the Repatriation Commission with the power to revoke or vary the Repatriation Private Patient Principles.
New subsection 90A(5A) provides that a determination made by the Repatriation Commission under subsection 90A(5) will have no effect unless it has been approved by the Minister in writing.

New subsection 90A(5B) provides that a determination made under subsections 90A(1) or (5) by the Repatriation Commission and approved by the Minister is a legislative instrument that is to be regarded as having been made on the day on which the Minister has provided approval.

New subsection 90A(5C) provides that a determination made under subsection 90A(1) or a variation made under subsection 90A(5) will be exempt from the application of subsection 14(2) of the Legislation Act. The exemption applies to any legislative instrument that may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force at a particular time; or as in force or existing from time to time.

Minor amendments to subsection 90A(6) have been made to correct the reference to a determination having been made under subsection 90A(5B) in place of subsection 90A(5).

The redundant provision subsection 90A(7) is repealed. Subsection 90A(7) required the Repatriation Commission to provide copies of the Repatriation Private Patient Principles or amendments to the principles when requested.

A heading to subsection 90A(8) is inserted referring to the provision setting out the circumstances in which “treatment is provide as a private patient” for the purposes of the section.

A heading to subsection 90A(9) is inserted referring to the provision defining an “eligible person” for the purposes of the section.

**Item 54** is a transitional provision which provides, in subitem 54(1) for the continuation of the existing “Repatriation Private Patient Principles” as in force prior to the commencement of the amendments to section 90A made by this Schedule.

Subitem 54(2) provides that following the commencement of the amendments, subitem 54(1) will not prevent the Repatriation Commission from exercising its powers under section 90A to vary or revoke the “Repatriation Private Patient Principles”.

Subitem 54(3) provides for the continuation of a notice under subsection 90B(1) concerning the application of the Repatriation Private Patient Principles in force prior to the commencement of the amendments to section 90A made by this Schedule.

Subitem 54(4) refers to the modification of the Repatriation Private Patient Principles for the purposes of the APBNT (Treatment) Act and provides for the continuation under that Act of those modified “Repatriation Private Patient Principles” as in force prior to the commencement of the amendments to section 90A made by this Schedule.
Items 55 to 65 amend section 91. Under section 91 the Repatriation Commission may make a written determination concerning the provision of pharmaceutical benefits to persons eligible for treatment under Part V of the Veterans’ Entitlements Act.

Subsection 9(1) is amended by replacing the reference to the requirement of the Repatriation Commission to “from time to time, prepare a scheme for the provision of pharmaceutical benefits”. The amendment to subsection 91(1) requires the Repatriation Commission to “in writing, determine a scheme for the provision of pharmaceutical benefits” that will become known under new subsection 91(3) as the “Repatriation Pharmaceutical Benefits Scheme”.

A Note to subsection 91(1) is inserted referring the reader to subsection 91(9) for the definition of “pharmaceutical benefits”.

Minor amendments are made to clarify subsection 91(1A) which is amended to replace the references to “the instrument” with a reference to “the scheme”.

Subsections 91(2) to (5) are repealed and replaced with new subsections 91(2), (3), (4), (5), (5A) and (5B).

Subsection 91(2) provides that the Repatriation Pharmaceutical Benefits Scheme made by the Repatriation Commission under subsection 91(1) will have no effect unless it has been approved by the Minister in writing.

New subsection 91(3) provides that the scheme made under subsection 91(1) that has been approved by the Minister as in force from time to time is the Repatriation Pharmaceutical Benefits Scheme.

New subsection 91(4) provides the Repatriation Commission with the power to revoke or vary the Repatriation Pharmaceutical Benefits Scheme.

New subsection 91(5) provides that a determination made by the Repatriation Commission under subsection 91(4) will have no effect unless it has been approved by the Minister in writing.

New subsection 91(5A) provides that a determination made under subsections 91(1) or (4) by the Repatriation Commission and approved by the Minister is a legislative instrument that is to be regarded as having been made on the day on which the Minister has provided approval.

New subsection 91(5B) provides that a determination made under subsection 91(1) or a variation made under subsection 91(4) will be exempt from the application of subsection 14(2) of the Legislation Act. The exemption applies to any legislative instrument that may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force at a particular time; or as in force or existing from time to time.

A heading to subsection 91(6) is inserted as a reference in the provision to an inquiry by the Pharmaceutical Benefits Remuneration Tribunal”.

Consequential amendment have been made to subsection 91(6) and paragraph 91(8)(b) to the replace the references to the determination under which the scheme for pharmaceutical benefits scheme is made “under paragraph 286(1)(c) of the MRCA” with references to the “pharmaceutical benefits determination under section 286 of the MRCA”.

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Minor amendments to paragraph 91(8)(a) have been made to replace the redundant reference to an instrument which varied the ‘approved scheme” having been prepared by the Repatriation Commission under repealed subsection 91(2) with a reference to an instrument being prepared to “vary the Repatriation Pharmaceutical Benefits Scheme”.

A heading to subsection 91(9) is inserted as a reference to the location in the provision of a definition of “pharmaceutical benefits”.

The redundant definition of “approved scheme” in subsection 91(9) is repealed.

**Item 66** is a transitional provision which provides, in subitem 66(1) for the continuation of the existing “Repatriation Pharmaceutical Benefits Scheme” as in force prior to the commencement of the amendments to section 91 made by this Schedule.

Subitem 66(2) provides that following the commencement of the amendments, subitem 66(1) will not prevent the Repatriation Commission from exercising its powers under section 91 to vary or revoke the “Repatriation Pharmaceutical Benefits Scheme”.

**Item 67** repeals the redundant definition of “pharmaceutical benefits scheme” in subsection 93K(1).

**Items 68 and 69** are minor consequential amendment to subsection 93L(1) and section 93N to replace the references to “pharmaceutical benefits scheme” with references to the Repatriation Pharmaceutical Benefits Scheme”.

**Items 70 to 77** amend section 105. Under section 105 the Repatriation Commission may by instrument in writing prepare a scheme to be known as the Vehicle Assistance Scheme. The Vehicle Assistance Scheme concerns the provision of motor vehicles to eligible veterans.

The amendments to section 105 are to bring the construction of the section into line with current drafting practice.

Section 105 is amended by replacing the heading, “Vehicle assistance scheme” with “Vehicle Assistance Scheme”.

Subsection 105(1) is amended by replacing the reference to the requirement of the Repatriation Commission to “by instrument in writing, prepare a scheme called the Vehicle Assistance Scheme” with a reference to “in writing, determine a scheme”.

Subsections 105(2) to (4) are repealed and replaced with new subsections 105(8) to (12).

Subsection 105(2) provided the Repatriation Commission with the power to revoke or vary the Vehicle Assistance Scheme.

Subsection 105(3) provided that a scheme made by the Repatriation Commission under subsection 105(1) will have no effect unless it has been approved by the Minister in writing.

Subsection 105(4) had required the Repatriation Commission through the Minister to provide copies of a scheme prepared under subsection 105(1) or a variation or revocation prepared
under repealed subsection 105(2) to the Parliament within 15 sitting days of receipt of the documents of the Minister.

Subsection 105(5) is amended by replacing the reference to “Vehicle Assistance Scheme” with a reference to the “Scheme”.

Subsection 105(6) is repealed and is replaced with new section 105(13).

Subsection 105(6) had provided that the Repatriation Commission could provide benefits to eligible veterans “under and in accordance with the provisions” of the Vehicle Assistance Scheme.

Subsection 105(7) is amended by the repeal of paragraph (c) which included references to the Vehicle Assistance Scheme.

New subsection 105(8) that a scheme prepared by the Repatriation Commission under subsection 105(1) will have no effect unless the Minister has approved it in writing.

New subsection 105(9) provides that a scheme determined under subsection 105(1) that has been approved by the Minister as in force from time to time is the Vehicle Assistance Scheme.

New subsection 105(10) provides the Repatriation Commission with the power to revoke or vary the Vehicle Assistance Scheme.

New subsection 105(11) provides that a determination made by the Repatriation Commission under subsection 105(10) will have no effect unless it has been approved by the Minister in writing.

New subsection 105(12) provides that a determination made under subsections 105(1) or (10) by the Repatriation Commission and approved by the Minister is a legislative instrument that is to be regarded as having been made on the day on which the Minister has provided approval.

New subsection 105(13) provides that the Repatriation Commission may provide benefits to the veterans referred to in subsection 105(5) “under and in accordance with the provisions of the Vehicle Assistance Scheme”.

**Item 78** is a transitional provision which provides, in subitem 78(1) for the continuation of the existing “Vehicle Assistance Scheme” as in force prior to the commencement of the amendments to section 105 made by this Schedule.

Subitem 78(2) provides that following the commencement of the amendments, subitem 78(1) will not prevent the Repatriation Commission from exercising its powers under section 105 to vary or revoke the “Vehicle Assistance Scheme”.

**Item 79** repeals the subsection 115A(1) definition of “Veterans’ Vocational Rehabilitation Scheme” which is now defined in new subsection 115B(7).
**Items 80 to 84** amend section 115B. Under section 115B the Repatriation Commission may by instrument in writing prepare a scheme to be known as the Veterans’ Vocational Rehabilitation Scheme. The Veterans’ Vocational Rehabilitation Scheme concerns the provision of assistance to find and to continue in employment. The amendments to section 115B are to bring the construction of the section into line with current drafting practice.

Section 115B is amended by replacing the heading, “Making of the Scheme” with “Veterans’ Vocational Rehabilitation Scheme”.

Subsection 115B(1) is amended by replacing the reference to the requirement of the Repatriation Commission to “from time to time, by instrument in writing, make a scheme to be called the Veterans’ Vocational Rehabilitation Scheme” with a reference to “in writing, determine a scheme”.

Subsections 115B(2) to (4) are repealed and replaced with new subsections 115B(6) to (10).

Subsection 115B(2) provided the Repatriation Commission with the power to revoke or vary the Veterans’ Vocational Rehabilitation Scheme.

Subsection 115B(3) provided that a scheme made by the Repatriation Commission under subsection 115B(1) will have no effect unless it has been approved by the Minister in writing.

New subsection 115B(4) had provided that a scheme made under subsections 115B(1) or a variation or revocation made under subsection 115B(3) by the Repatriation Commission and approved by the Minister is a legislative instrument that is to be regarded as having been made on the day on which the Minister has provided approval.

Subsection 115B(5) is amended by replacing the references to the “Scheme” with references to the “scheme”.

Subsection 115B(6) is repealed and is replaced with new section 115B(11).

Subsection 115B(6) had required the Repatriation Commission to consult with “organisations and associations, representing the interests of the veteran community” before it could make, vary or revoke the Veterans’ Vocational Rehabilitation Scheme.

New subsection 115B(6) provides that a scheme prepared by the Repatriation Commission under subsection 115B(1) will have no effect unless the Minister has approved it in writing.

New subsection 115B(7) provides that a scheme determined under subsection 115B(1) that has been approved by the Minister as in force from time to time is the Veterans’ Vocational Rehabilitation Scheme.

New subsection 115B(8) provides the Repatriation Commission with the power to revoke or vary the Veterans’ Vocational Rehabilitation Scheme.

New subsection 115B(9) provides that a determination made by the Repatriation Commission under subsection 115B(8) will have no effect unless it has been approved by the Minister in writing.
New subsection 115B(10) provides that a determination made under subsections 115B(1) or (8) by the Repatriation Commission and approved by the Minister is a legislative instrument that is to be regarded as having been made on the day on which the Minister has provided approval.

New subsection 115B(11) requires the Repatriation Commission to consult with “organisations and associations, representing the interests of the veteran community” before it can make a determination to, vary or revoke the Veterans’ Vocational Rehabilitation Scheme.

**Item 85** is a transitional provision which provides, in subitem 85(1) for the continuation of the existing “Veterans’ Vocational Rehabilitation Scheme” as in force prior to the commencement of the amendments to section 115B made by this Schedule.

Subitem 85(2) provides that following the commencement of the amendments, subitem 85(1) will not prevent the Repatriation Commission from exercising its powers under section 115B to vary or revoke the “Veterans’ Vocational Rehabilitation Scheme”.

**Item 86** repeals the subsection 116(1) definition of “Scheme” which is now defined in new subsection 117(7) as the “Veterans’ Children Education Scheme”.

**Items 87 to 91** amend section 117. Under section 117 the Repatriation Commission may by instrument in writing prepare a scheme to be known as the Veterans’ Children Education Scheme. The Veterans’ Children Education Scheme concerns the provision of education and training for eligible children.

The amendments to section 117 are to bring the construction of the section into line with current drafting practice.

Section 117 is amended by replacing the heading, “Preparation of the Scheme” with “Veterans’ Children Education Scheme”.

Subsection 117(1) is amended by replacing the reference to the requirement of the Repatriation Commission to “from time to time, by instrument in writing, make a scheme to be called the Veterans’ Children Education Scheme” with a reference to “in writing, determine a scheme”.

Subsections 117(2) to (4) are repealed and replaced with new subsections 117(6) to (10).

Subsection 117(2) provided the Repatriation Commission with the power to revoke or vary the Veterans’ Children Education Scheme.

Subsection 117(3) provided that a scheme made by the Repatriation Commission under subsection 117(1) will have no force or effect unless it has been approved by the Minister in writing.

Subsection 117(4) had required the Repatriation Commission through the Minister to provide copies of a scheme prepared under subsection 117(1) or a variation or revocation prepared
under repealed subsection 117(2) to the Parliament within 15 sitting days of receipt of the
documents of the Minister.

Subsection 117(5) is amended by replacing the references to the “Scheme” with references to
the “scheme”.

New subsection 117(6) provides that a scheme prepared by the Repatriation Commission
under subsection 117(1) will have no effect unless the Minister has approved it in writing.

New subsection 117(7) provides that a scheme determined under subsection 117(1) that has
been approved by the Minister as in force from time to time is the Veterans’ Children
Education Scheme.

New subsection 117(8) provides the Repatriation Commission with the power to revoke or
vary the Veterans’ Children Education Scheme.

New subsection 117(9) provides that a determination made by the Repatriation Commission
under subsection 117(8) will have no effect unless it has been approved by the Minister in
writing.

New subsection 117(10) provides that a determination made under subsections 117(1) or (8)
by the Repatriation Commission and approved by the Minister is a legislative instrument that
is to be regarded as having been made on the day on which the Minister has provided
approval.

Item 92 is a transitional provision which provides, in subitem 92(1) for the continuation of
the existing “Veterans’ Children Education Scheme” as in force prior to the commencement
of the amendments to section 117 made by this Schedule.

Subitem 92(2) provides that following the commencement of the amendments, subitem 92(1)
will not prevent the Repatriation Commission from exercising its powers under section 117 to
vary or revoke the “Veterans’ Children Education Scheme”.

Item 93 replaces the heading, “Commission may provide benefits under Scheme” with the
heading “Commission may provide benefits under Veterans’ Children Scheme”.

Items 94 and 95 are minor consequential amendments to replace references in subsections
118(1) and (2) to “Scheme” and “scheme” respectively with references to the “Veterans’
Children Education Scheme.

Item 96 is a minor consequential amendment to paragraph 118A(1)(c) to remove the words
“scheme known as” that precede the reference to the Repatriation Pharmaceutical Benefits
Scheme.

Commencement

Clause 2 provides that the amendments made by Schedule 7 commence on the day after the
Act receives Royal Assent.
Schedule 8 – Minor amendments

Overview

Schedule 8 of the Bill will repeal redundant and spent provisions administered in the Veterans’ Affairs portfolio concerning benefits that are no longer payable under the portfolio Acts, and make amendments consequential to those repeals. The Schedule will also make some minor corrections to clarify existing provisions of the Veterans’ Entitlements Act.

The Schedule also includes the consequential amendments to other Acts which result from the amendments that repeal the redundant and spent provisions of the Veterans’ Entitlements Act and the Military Rehabilitation and Compensation Act.

The removal of these redundant provisions and the clarification of other provisions will simplify veterans’ affairs legislation and make it more accessible for individuals wishing to interpret the current provisions.

Background

The amendments made by Schedule 8 were originally included in the Omnibus Repeal Day (Spring 2015) Bill 2015.

That Bill lapsed with the prorogation of the Parliament on 17 April 2016.

Explanation of the items

Part 1 – Removal of spent veterans’ affairs payments

Division 1 – Main amendments

Veterans’ Entitlements Act 1986

Items 1, 2, 4 and 5 repeal paragraphs 5H(8)(zzaa) to (zzag), (zzai), (zzc) to (zzg) and (zzh). Those paragraphs refer to various one-off payments that were made during the years from 2006 to 2012. The payments were those payable under the provisions of the Veterans’ Entitlements Act (repealed by this Part) and the equivalent payments that had been payable under schemes made under the provisions of other Acts.

Item 3 is a formatting amendment to paragraph 5H(zzb) as a consequence of the amendments which repeal the subsequent paragraphs.

Items 6 to 8 repeal the subsection 5Q(1) definitions of “clean energy advance”, and “clean energy bonus” and make a consequential amendment to the definition of “clean energy payment”. The clean energy advance will no longer be payable as a result of the repeal of Division 1 of Part IIIIE by Item 9 of this Part.

Item 9 repeals the redundant and spent Division 1 of Part IIIE. Division 1 of Part IIIE had provided for the payment of a clean energy advance to persons who were in receipt of a payment under the Veterans’ Entitlements Act during the period from 14 May 2012 to 19 March 2013.
**Item 10** repeals Parts VIID to VIIH, which provided for the payment of the 2006, 2007 and 2008 one-off payments to older Australians, the economic security strategy payment and the Educational Tax Refund (ETR) payment.

Those Parts are redundant as the spent payments were all payable on a one-off basis by being linked to eligibility for a payment under the Veterans’ Entitlements Act on particular days during the years 2006 to 2013.

**Division 2 – Other amendments**

**Income Tax Assessment Act 1997**

**Items 11 to 15** are consequential amendments to the *Income Tax Assessment Act 1997* to remove those provisions which refer to economic security strategy and ETR payments made under Parts VIIG and VIIH of the Veterans Entitlements Act (repealed by **Item 10** of this Part) as those payments are no longer payable.

Section 11-15 is amended by the repeal of the item included in the table “social security or like payments” which refers to the “economic security payment”.

Paragraphs 52-65(1)(d) and (da), subsections 52-65(1D) and (1H) and table items 5B and 5C of section 52-75 are repealed to remove the references to the economic security strategy payment and ETR payments under the Veterans' Entitlements Act which are no longer payable.

**Social Security Act 1991**

**Items 16 and 17** are consequential amendments to repeal subparagraph 8(8)(y)(ia) and paragraphs 8(8)(yb), (yd), (yf), (yh) and (yhb) of the *Social Security Act 1991*. Those provisions had provided that certain payments made under the Veterans’ Entitlements Act which are being repealed by **Item 10** of this Part are exempt income for the purposes of the *Social Security Act 1991*.

**Social Security (Administration) Act 1999**

**Item 18** is a consequential amendment to repeal paragraph (b) of the definition of “clean energy income-managed payment” in section 123TC of the *Social Security (Administration) Act 1999*.

The paragraph had referred to the “clean energy advance” that was payable under the Veterans’ Entitlements Act which is no longer payable as a result of the repeal of Division 1 of Part IIIE of the Veterans’ Entitlements Act (repealed by **Item 9** of this Part).

**Division 3 – Saving provisions**

**Item 19** is a saving provision which provides that, despite the repeal of the provisions under which the one-off and other payments were payable and the amendments made by this Part, the provisions will continue to apply on and after the commencement of this Item in relation to payments of the clean energy advance, the various one-off payments, economic security strategy payments or an ETR payment for the following purposes:
• payments of clean energy advance made under Subdivision D of Division 1 of Part IIIE of the Veterans’ Entitlements Act;
• recovery of debts concerning clean energy advances determined under Subdivision E of Division 1 of Part IIIE of the Veterans’ Entitlements Act;
• payments of the ETR payment under section 118ZZVH of the Veterans’ Entitlements Act;
• recovery of debts concerning payments under Parts VIID to VIIH under sections 205 and 206 of the Veterans’ Entitlements Act;
• tax exemption for the purposes of the Income Tax Assessment Act 1997 under subsections 52-65(1G) and (1H) for clean energy advances and ETR payments;
• income test exemption for ETR payments for the purposes of the Veterans’ Entitlements Act under paragraph 5H(8)(zzai);
• income test exemption for ETR payments for the purposes of the Social Security Act 1991 under paragraph 8(8)(yhb); and
• classification of a clean energy advance under Division 1 of Part IIIE of the Veterans’ Entitlements Act as a “clean energy income-managed payment” for the purposes of Subdivision DE of Division 5 of part 3B of the Social Security Act.

The savings provision will ensure that subsequent to the commencement of the amendments made by this Part, a person will retain eligibility for one or more of the payments listed in the provision in the following circumstances:

• the person becomes eligible for the payment of an underlying payment which made the person eligible for one of the payments; and
• the payment of the underlying payment concerned a period during which the person would have been eligible for the payment.

In the circumstances where a person receives one or more of the listed payments as a consequence of the saving provision, the debt recovery provisions, the tax exemption under the Income Tax Assessment Act 1997, the income test exemption and classification of the payment for the purposes of the Social Security Act 1991 will also be applicable where it will be appropriate.

Part 2 – Removal of spent military rehabilitation and compensation payments

Division 1 – Main amendments

Military Rehabilitation and Compensation Act 2004

Items 20 to 22 repeal the subsection 5(1) definitions of “clean energy advance”, and “clean energy bonus” and make a consequential amendment to the definition of “clean energy payment”. The clean energy advance will no longer be payable as a result of the repeal of Divisions 1 to 5 of Part 5A of Chapter 11 by Item 25 of this Part.

Items 23 and 24 are consequential amendments to subsection 415(2) and the Note to that subsection which remove references to “section 424K” which is located in Division 5 of Part 5A of Chapter 11 (repealed by Item 25 of this Part).

Item 25 repeals the redundant and spent Divisions 1 to 5 of Part 5A of Chapter 11 which provides for the payment of a clean energy advance to persons who were eligible for
compensation under Part 2 of Chapter 4 of the Military Rehabilitation and Compensation Act during the period from 14 May 2012 to 30 June 2013.

Division 2 – Other amendments

Income Tax Assessment Act 1997

Item 26 amends section 52-114 of the Income Tax Assessment Act 1997. Table item 22 is amended to repeal a reference to a clean energy payment made under Part 5A of Chapter 11 of the Military Rehabilitation and Compensation Act (repealed by Item 25 of this Part).

Division 3 – Saving provisions

Item 27 is a saving provision which provides that, despite the repeal of the provisions under which the clean energy payments were payable and the amendments made by this Part, the provisions will continue to apply, on and after the commencement of this Item, in relation to payments of clean energy advance for the following purposes:

- payments of clean energy advance under Division 4 of Part 5A of Chapter 11 of the Military Rehabilitation and Compensation Act;
- recovery of debts concerning clean energy advances determined under Division 5 of Part 5A of Chapter 11; and
- tax exemption for the purposes of the Income Tax Assessment Act 1997 under table item 22 in sections 52-114 for clean energy advances.

The savings provision will ensure that subsequent to the commencement of the amendments made by this Part, a person will retain eligibility for the clean energy advance in the following circumstances:

- the person becomes eligible for the payment of the underlying payment which made the person eligible for payments of the clean energy advance; and
- the payment of the underlying payment concerned a period during which the person would have been eligible for the clean energy advance.

In the circumstances where a person receives payments of the clean energy advance as a consequence of the saving provision, the debt recovery provisions and the tax exemption under the Income Tax Assessment Act 1997, will also be applicable where it will be appropriate.

Part 3 – Other amendments

Veterans’ Entitlements Act 1986

Item 28 is a minor correction to subsection 52B(4) to replace a reference to the “Commission” with a reference to the “Minister”. Subsection 52B(3) refers to a valuation being determined by the “Minister” under subsection 52B(4). A consequential amendment to subsection 52B(4) (by the Veterans’ Affairs Legislation Amendment (International Agreements and Other Measures) Act 2008) incorrectly replaced the reference to the “Minister” with a reference to the “Commission”.

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**Item 29** is a transitional provision which provides for the continuation of an existing determination made under subsection 52(4) that was in force in immediately before the commencement of the item.

It provides that, subsequent to the 2008 amendment to subsection 52B(4), that any determination that has been made, if any, will continue to be applicable until it is revoked or replaced.

**Items 30 and 31** amend subsections 213(2) and (4). Section 213 had originally provided for the delegation by the Repatriation Commission of its powers and functions under the Veterans’ Entitlements Act, the Regulations and other specified Acts.

Subsection 213(1) was subsequently amended to also provide for the delegation of the powers and functions of the Repatriation Commission under a legislative instrument made under the Veterans’ Entitlements Act.

The amendments to subsections 213(2) and (4) make it clear that the legislation under which a delegation can be made will also include a legislative instrument made under the Veterans’ Entitlements Act.

**Items 32 and 33** amend subsections 214(2) and (4). Section 214 had originally provided for the delegation by the Secretary of his or her powers and functions under the Veterans’ Entitlements Act or the Regulations.

Subsection 214(1) was subsequently amended to also provide for the delegation of the powers and functions of the Secretary under a legislative instrument made under the Veterans’ Entitlements Act.

The amendments to subsections 214(2) and (4) make it clear that the legislation under which a delegation can be made will also include a legislative instrument made under the Veterans’ Entitlements Act.

**Commencement**

Clause 2 provides that the amendments made by Schedule 8 commence on the day after the Act receives Royal Assent.