EXPLANATORY STATEMENT

Veterans’ Entitlements (Outreach Program Counselling – Extension of Eligibility) Determination 2012

EMPOWERING PROVISION

Section 88A of the Veterans’ Entitlements Act 1986 (the Act).

PURPOSE

The attached instrument (2012 No.R 42) specifies:

- classes of persons (veterans, veterans’ dependants and former dependants) and includes holders of a gold card or a white card
- the treatment a person within a specified class is eligible to receive.

The instrument will enable persons within a specified class to receive treatment for outreach program counselling even though the counselling is not for a service-related condition or for a clinically-accepted condition.

Outreach program counselling is established as a treatment by paragraph 7.7A.1 of the Treatment Principles (Instrument 2012 No. R39) and is comprised of mental health counselling under the Veterans and Veterans Families Counselling Service.

A gold card issued by the Department of Veterans’ Affairs signifies that the holder is eligible for the treatment of any injury or disease without the condition needing to be service related.

A white card issued by the Department of Veterans’ Affairs signifies that the holder is eligible for the treatment only of a service-related injury or disease.

The attached instrument makes a person within one of the specified classes eligible for the treatment of outreach program counselling. Without the instrument the person’s eligibility for this treatment generally would not be sufficient because under the Act that eligibility is confined to eligibility for treatment of an injury or disease (which may need to be service-related) and does not extend to whole of person treatment (i.e. counselling for a person with no clinically-accepted injury or disease).
Accordingly, the instrument makes a relevant person eligible for treatment without there needing to be a service-related injury or disease and without there needing to be an injury or disease to which the treatment must be applied.

The effect of this instrument is that

(a) a person in the specified class may receive outreach program counselling regardless of whether the counselling treats a service-related condition; and

(b) a person in the specified class may receive outreach program counselling regardless of whether the counselling is applied to any injury or disease i.e. the treatment of outreach program counselling may be applied to any clinical condition (whether service-related or not) or applied to a person as whole-of-person treatment i.e. no clinical condition.

CONSULTATION

Yes – outreach program counsellors, the Australian Psychological Society and the Australian Association of Social Workers. The nature of the consultation was meetings, written correspondence and e mails.

RETROSPECTIVITY

The attached instrument could commence before registration. If that occurs subsection 12(2) of the Legislative Instruments Act 2003 (legislative instrument of no effect if it takes effect before registration and disadvantages a person or imposes liabilities on a person) would not be contravened because the instrument does not disadvantage any person or impose a liability on any person (except the Commonwealth).

DOCUMENTS INCORPORATED-BY-REFERENCE

No

HUMAN RIGHTS STATEMENT


The attached legislative instrument does engage an applicable right or freedom. It relates to the Right to Health contained in article 12(1) of the International Covenant on Economic Social and Cultural Rights.
The Right to Health is the right to the enjoyment of the highest attainable standard of physical and mental health. The UN Committee on Economic Social and Cultural Rights has stated that health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity.

The attached legislative instrument engages with, and promotes, the Right to Health. It gives eligibility for counselling to people who would not otherwise have had that eligibility. The instrument promotes mental health in the Veteran Community.

The instrument does impose certain criteria that a person needs to satisfy in order to be eligible for the outreach program counselling treatment but these criteria are mere identifying criteria e.g. person is a veteran, and not restrictive criteria. Indeed the instrument widens the eligibility for treatment criteria for the people in question.

The UN Committee on Economic Social and Cultural Rights has stated that qualifying conditions for benefits must be reasonable, proportionate and transparent.

In this case the conditions for eligibility for the treatment are directed more at generally identifying the people who can legally receive the treatment rather than restricting the treatment to certain people within this class.

Conditions that restrict counselling to certain people within the classes of people specified by the attached determination are set out in another legislative instrument - Veterans’ Entitlements (Treatment Principles – Outreach Program Counsellors) Instrument 2012.

Conclusion

The attached legislative instrument is considered to be compatible with the human right to health because it promotes that right (expands eligibility for counselling-treatment) and the eligibility-conditions it imposes are reasonable in the circumstances.

Warren Snowdon
Minister for Veterans’ Affairs
Rule-Maker

FURTHER EXPLANATION
Attachment A.

Attachment A

<table>
<thead>
<tr>
<th>Items</th>
<th>Explanation</th>
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<tbody>
<tr>
<td>Part 1</td>
<td></td>
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<tr>
<td>1.1</td>
<td>sets out the name of the instrument.</td>
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<td>1.2</td>
<td>provides that the instrument commences or is taken to have commenced on 1 October 2012.</td>
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<td>1.3</td>
<td>is a definitions section.</td>
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<td>Part 2</td>
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<td>This Part specifies the classes of persons eligible for the relevant treatment, namely:</td>
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<td></td>
<td>• veterans, veterans’ dependants, veterans’ former dependants;</td>
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<td>Part 3</td>
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<td>This Part specifies the treatment a person in the relevant class is eligible to be provided with by the Repatriation Commission, namely outreach program counselling.</td>
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<td>The Note explains that outreach program counselling may be provided to a person eligible for it under the attached determination even though the person would not otherwise be eligible for such treatment under the Act.</td>
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