EXPLANATORY STATEMENT

Veterans’ Entitlements (Counselling) Extended Eligibility Determination (No. 2) 2017 (Instrument 2017 No.R19)

EMPOWERING PROVISION

Subsection 92(2) of the Veterans’ Entitlements Act 1986 (the Act).

PURPOSE

The attached instrument (2017 No. R19) revokes the legislative instrument known as the Veterans’ Entitlements (Counselling) Extended Eligibility Determination 2017 (2017 No.R5) and remakes it to include additional classes of persons who are eligible for counselling services from 1 July 2017.

The 2017-18 Budget provided $8.5 million over 4 years to extend Veterans and Veterans Families Counselling Service (VVCS) eligibility for counselling services to the following additional Australian Defence Force (ADF) community groups:

- partners and children of current or former ADF members where the member holds a Repatriation Health Card – White Card (for mental health conditions) or Gold Card.

- former partners of current or former ADF members where the member is currently eligible for counselling, for up to five years after the couple separates or while co-parenting a child who has not attained the age of 18.

The instrument is made under subsection 92(2) of the Act which enables the Repatriation Commission, by legislative instrument, to specify a class of persons who will be eligible for counselling services under subsection 92(1) of the Act.

The attached instrument consolidates those classes of persons already eligible for counselling under the revoked instrument and adds the new classes of persons who will become eligible from the commencement date of 1 July 2017.

This instrument should be read in conjunction with subparagraph 92(1)(a)(i) of the Act, which provides that veterans and dependants of veterans are eligible for counselling.

Counselling services for eligible persons are provided by the Veterans and Veterans Families Counselling Service (“VVCS”). The VVCS is funded by the Department of Veterans’ Affairs and provides free and confidential, Australia-wide counselling and mental health support services to persons who are eligible, in accordance with the attached instrument.

It is expected this further expansion will extend counselling services to an estimated additional 930 ADF community members each year.
The authority to revoke the earlier determination is found in subsection 33(3) of the Acts Interpretation Act 1901 which provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Further details of the attached instrument are set out in Attachment A.

CONSULTATION

Section 17 of the Legislation Act 2003 requires the rule-maker to be satisfied that any consultation that is considered appropriate and reasonably practicable to undertake, has been undertaken.

The Department sought the views of a wide range of ex-service organisations through the Veterans and Veterans Families Counselling Service Delivery Review (the Review) carried out in 2014. The Review included focus groups and individual interviews across Australia on the service delivery model of VVCS including discussion on the issue of eligibility.

Since the Review, the Government has continued to monitor community need for further expansion of access to counselling services and has received representations from community cohorts in this regard.

This current expansion of access formed part of the Federal Government’s 2017-18 Budget. The initiative expands VVCS eligibility in recognition that partners, children and former partners of current and former ADF members are an important part of the ex-service community and are also affected by military service.

The Department of Finance was consulted as part of the Budget approval process.

The measure implemented by this instrument is entirely beneficial in nature in terms of its impact on members and the ex-service community.

In these circumstances it is considered that the requirements of section 17 of the Legislation Act 2003 have been met.

RETROSPECTIVITY

None, if the attached legislative instrument is made before 1 July 2017.

If made after that date, the instrument will be taken to have commenced on 1 July 2017 and will operate retrospectively from that date.

Any such retrospective commencement will not contravene subsection 12(2) of the Legislation Act 2003 (a provision of a legislative instrument is of no effect if it takes effect before registration and disadvantages a person or imposes liabilities on a person...
other than the Commonwealth) because the changes implemented by the attached instrument are beneficial in nature; the changes do not disadvantage any person or impose a liability on a person other than the Commonwealth.

**DOCUMENTS INCORPORATED BY REFERENCE**

None.

**REGULATORY IMPACT**

None.

**HUMAN RIGHTS STATEMENT**

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

The attached legislative instrument engages an applicable right or freedom, namely, 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 (including mental health) conducive to living a life in dignity.

*Overview*

The attached legislative instrument engages with, and advances, the Right to Health by extending free counselling services to certain sectors of the Australian Defence Force (ADF) community and their family members.

Counselling services from VVCS, delivered with an awareness of the military experience and culture, are already available for veterans, peacekeepers and their dependants, along with a range of other cohorts in the veteran and ex-service community. The attached instrument extends that eligibility to encompass additional classes.

Extending eligibility to the partners and children of Repatriation Health card holders, including those current and former ADF members who have an accepted mental health condition or non–liability health care coverage for a mental health condition, may improve early invention outcomes by ensuring greater access to counselling.

Further, enabling access to VVCS during, and following, family breakdown of current and former ADF members aligns with the Government’s commitment to support
former partners of ADF members. The proposal seeks to minimise the ongoing adverse effects of family breakdown on all parties and generally improve long-term health outcomes for all involved.

**Conclusion**

The attached legislative instrument is considered to be compatible with the right to health because it enables additional sectors of the ex-service community to access free, specialised counselling services and is provided where it is likely to be of greatest benefit.

Repatriation Commission
Rule-Maker

**FURTHER EXPLANATION OF PROVISIONS**

See Attachment A.
FURTHER EXPLANATION OF PROVISIONS

Part 1 Introduction

Section 1
This section sets out the name of the instrument – the Veterans’ Entitlements (Counselling) Extended Eligibility Determination (No. 2) 2017.

Section 2
This section provides that the instrument commences, or is taken to have commenced, on 1 July 2017.

Section 3
This section sets out the empowering provision in the primary legislation that authorises the making of this instrument – subsection 92(2) of the Veterans’ Entitlements Act 1986.

Section 4
This section revokes the earlier determination – the Veterans’ Entitlements (Counselling) Extended Eligibility Determination 2017.

The classes of persons specified in that instrument are retained in the attached instrument with the effect that all persons currently eligible for counselling services under the revoked instrument will retain that eligibility. In addition, the attached instrument will expand eligibility to accommodate the new classes announced in the 2017–18 Budget measure.

Section 5
This is the interpretation provision. It defines the terms used in the instrument.

The definitions give meaning to the various terms used in the provisions of Part 2 of the instrument to specify the classes of persons eligible for counselling services.

New definitions have been added to support the inclusion of the new classes of persons specified in paragraphs (k), (l), (m), (n) and (o) of section 6 of the instrument. New definitions have been added for the terms “Gold Card holder”, “White Card holder (mental health condition)”, “former child”, “former partner” and “break-up date”.

Part 2  Specified Class of Person

Section 6
This section determines (for the purposes of subparagraph 92(1)(a)(iii) of the Act), the following classes of persons who are eligible for counselling services. The italicised terms are defined in section 5 of the instrument:

(a)  a service member.

(b)  a NLHC service member.

(c)  a registered DART complainant.

(d)  a SHOAMP participant.
(e) a child of a service member who is dependent on the service member.

(f) a parent or sibling of a service member killed in a service-related incident.

(g) a parent or sibling of a veteran killed in a service-related incident.

(h) a family member of a current or former member of the Australian Defence Force where the member has died by suicide or suspected suicide.

(i) a family member of a registered DART complainant.

(j) a former child of a post-Vietnam War member or a former child of a deceased post-Vietnam War member.

(k) a partner of a Gold Card holder.

(l) a child or former child of a Gold Card holder.

(m) a partner of a White Card holder (mental health condition).

(n) child or former child of a White Card holder (mental health condition).

(o) former partner of a veteran or a person within a class specified in paragraph (a), (b) or (c).

The addition of the new classes in paragraphs (k), (l), (m) and (n) expands access to VVCS counselling services to the partners and children (including adult children) of Gold Card holders and White Card holders (mental health condition).

The terms “Gold Card holder” and “White Card holder (mental health condition)” are defined in section 5 of the instrument.

The term “partner” has the meaning given in subsection 5E(1) of the Act.

The term “child” has the meaning given in subsection 5F(1) of the Act.

The term “former child” is defined in section 5 of the instrument and intended to cover a person who was once a child within the meaning of subsection 5F(1) of the Act, or in other words an adult child.

The addition of the new class in paragraph (o) of section 6 has the effect of extending VVCS counselling services to the former partners of veterans or persons within the classes specified in paragraphs (a), (b) and (c) of section 6. This would encompass former partners of service members, NLHC service members and registered DART complainants as those terms are defined in section 5 of the instrument, as well as former partners of veterans within the expanded meaning of the term “veteran” given by section 81 of the Act.

A definition of “former partner” is included in section 5 of the instrument and is defined to mean a person who was once a partner (within the meaning of subsection
5E(1) of the Act) of the person. The note to that definition explains the meaning of the term by reference to the definitions of “partner” and “member of a couple” as defined in subsection 5E(1) of the Act.

Section 7
Finally, section 7 places a limit on the time that former partners will be entitled to access VVCS counselling services. Counselling services for this class will be available for a period of up to five years after the couple separates or while the former partner has co-parenting responsibility for a child who has not attained the age of 18.

The section provides that a former partner within the class specified in paragraph (o) is eligible for counselling services:

- for a period of 5 years commencing on the “break-up date”; or
- if the former partner has co-parenting responsibility in respect of a child who has not attained the age of 18 years, for the period of the duration of that co-parenting responsibility.

“Break-up date” is defined in section 5 of the instrument to mean the date on which a divorce-order takes effect in respect of the marriage between the former partner and the person, or as the case may be, the date on which the marriage-like relationship between the former partner and the person ceased to exist.