EXPLANATORY STATEMENT


EMPOWERING PROVISION

Subsection 88A(2) of the Veterans' Entitlements Act 1986 (VEA).

PURPOSE

The attached instrument amends the Veterans' Entitlements (Expanded Access to Non-Liability Health Care for Mental Health Treatment) Determination 2017 (the determination) to streamline access to treatment for mental health conditions by allowing transitioning members of the Australian Defence Force (ADF) to access treatment without needing to make a request for treatment.

Under the current determination, eligibility for treatment for mental health conditions on a Non-Liability Health Care (NLHC) basis extends to all past and current members of the ADF with at least one day of continuous full-time service. Eligibility for treatment is triggered upon the member making a request to the Department of Veterans’ Affairs (DVA) for treatment.

The purpose of this amendment is to streamline access to NLHC treatment for mental health conditions by removing the requirement for a request for treatment by transitioning ADF members.

In response to a recommendation of the Defence and Trade References Committee’s Report, The Constant Battle: Suicide by Veterans, DVA has progressed a change to NLHC arrangements by automatically issuing a Repatriation Health Card – For Specific Conditions (White Card) for all mental health conditions to ADF members when they transition to civilian life.

For clients issued with a White Card after their transition from the ADF, a request for treatment will no longer be required and eligibility will be automatic upon the client’s first use of the White Card to access treatment for a mental health condition.

The attached instrument preserves the entitlement of transitioning ADF members issued with a White Card to have their treatment costs backdated to a date that is 3 months before the date on which they present for treatment using their White Card.

Eligible ADF members who transitioned prior to the commencement date of this instrument will still be eligible to receive treatment for all mental health conditions, and will not be impacted by these changes. For this client group, the existing methods for making a request...
for treatment will continue to apply, namely, a phone call, email, paper form, or online request to the Department.

The Veterans’ Entitlements (Expanded Access to Non-Liability Health Care for Mental Health Treatment) Determination 2017 commenced on 1 July 2017 and gave effect to the 2017–18 Budget measure to provide $33.5 million over 4 years to extend NLHC treatment for all mental health conditions for current and former members of the ADF with continuous full-time service.

The treatment is known as “Non-Liability Health Care” (NLHC) because it need not be linked to a condition arising from the service of the eligible person. NLHC enables eligible persons to access treatment at the expense of DVA for the specified conditions without needing to establish a link to service or lodge a claim for compensation.

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 “White Card on Transition” process is in response to Recommendation 16 of the Foreign Affairs, Defence and Trade References Committee’s Report, The Constant Battle: Suicide by Veterans, which states that the committee recommends the Australian Government issue all ADF members transitioning into civilian life with a DVA White Card.

Representatives from the Department of Defence have been involved throughout the planning and implementation process of this change of arrangements for NLHC.

The measure implemented by this instrument is entirely beneficial in nature in terms of its impact on members.

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 May 2018.

If made after that date, the instrument will be taken to have commenced on 1 May 2018 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


The attached legislative instrument engages 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 with dignity.

Overview

The attached instrument removes the requirement of a request for treatment for a mental health condition for transitioning members who are issued with a White Card upon transition from the ADF.

The attached instrument ensures the mental health needs of transitioning ADF members are met through a further streamlining of access to NLHC for treatment of mental health conditions.

The aim of the policy is to improve the timeliness of access to mental health treatment and to reduce impediments, real or perceived, from eligible clients accessing treatment.

The automatic issuing of White Cards on transition from the ADF is designed to remove barriers to treatment and ensure that eligible clients can easily access the mental health treatment to which they are entitled.

It is expected that DVA will issue White Cards for mental health care treatment to an estimated 5000 transitioning ADF members each year.

Eligibility for DVA funding of treatment will be automatic upon the client’s first use of the White Card issued under this initiative to access mental health treatment with their doctor or specialist.

The instrument preserves earlier measures that remove administrative and financial barriers to accessing mental health care, thus allowing clients to seek treatment as quickly as possible. Further, the determination retains the 3 months backdating of treatment costs for those issued with a White Card upon transition from the ADF.
Accessing treatment at an early stage is an important part of achieving good long term outcomes and increases the likelihood of an individual returning to a healthy and productive life.

**Conclusion**

The attached instrument promotes the Right to Health by streamlining access to DVA-funded treatment for mental health conditions for transitioning members of the ADF. Accordingly, the attached instrument is considered to be “human rights compatible”.

Repatriation Commission
Rule-Maker

**FURTHER EXPLANATION OF PROVISIONS**  
See: Attachment A
FURTHER EXPLANATION OF PROVISIONS

Section 1
This section provides that the name of the instrument is the *Veterans' Entitlements (Expanded Access to Non-Liability Health Care for Mental Health Treatment) Amendment Determination 2018*.

Section 2
This section provides that the instrument commences, or is taken to have commenced, on 1 May 2018.

Section 3
This section sets out the empowering provision in the primary legislation that authorises the making of this instrument – namely subsection 88A(2) of the VEA.

Subsection 88A(2) of the VEA empowers the Commission to vary a determination made under subsection 88A(1).

Section 4
This section provides that the *Veterans’ Entitlements (Extension of Non-Liability Health Care for Mental Health Treatment) Determination 2017* is amended in accordance with the items in the Schedule to the instrument.

Schedule

Item 1
Item 1 inserts a definition of White Card into section 7 of the instrument.

“White Card” is defined to mean the Health Card known as the Repatriation Health Card – For Specific Conditions issued by the Department to indicate eligibility for funding of, amongst other things, treatment for a mental health condition on a non-liability health care basis.

Item 2
Item 2 inserts new section 10A into Part 2 of the instrument. Part 2 of the instrument specifies the classes of persons under paragraphs 88A(1)(a) and (d) of the Act who are to be eligible for the treatment specified in Part 3 of the instrument.

New section 10A deals with transitioning members of the Defence Force and specifies, as a class of person, a person who:

- is or was a member of the Defence Force rendering *continuous full-time service*; and

- has been issued with a *White Card* on transition from the Defence Force; and
uses the *White Card* to access treatment for a mental health condition.

Subsection 10A(2) preserves the 3 month backdating of treatment for this new class of person. It provides that they are eligible for the treatment specified in Part 3 for a period of 3 months before the date when the treatment for a mental health condition is first accessed.

**Item 3**
Item 3 amends section 11 of the instrument (Making a request for treatment) by omitting the words “this Part” and substituting “section 9 or 10” in subsection 11(1). The effect of this amendment is to limit the operation of section 11 (the requirement to make a request for treatment) to the classes of persons set out in sections 9 and 10.

**Item 4**
Item 4 amends section 12 of the instrument (Backdating of treatment) by omitting the words “Part 2” and substituting “section 9 or 10” in subsection 12(1). The effect of this amendment is to limit the operation of section 12 (backdating of treatment) to the classes of persons set out in sections 9 and 10.

The 3 month backdating of treatment for persons within the class specified in new section 10A (members issued with a White Card on transition from the Defence Force) is provided for in subsection 10A(2).