

EXPLANATORY STATEMENT

Veterans' Affairs (Extended Eligibility for Treatment) Instrument 2015

PURPOSE

The attached instrument is a combination of several legislative instruments that were due to “sunset” (be automatically repealed) on 1 October 2015 (see Schedule 1 of the instrument for a list of the relevant sunseting instruments).

The sunseting instruments were reviewed by the Department of Veterans' Affairs (DVA) and 5 (of the 8) instruments were found to be still needed and have essentially been reproduced in the attached instrument.

The attached instrument extends eligibility for certain treatments to certain classes of DVA clients.

Under the *Veterans' Entitlements Act 1986* (VEA) and the *Military Rehabilitation and Compensation Act 2004* (MRCA) eligibility for treatment is confined within certain parameters.

For example, and generally speaking, under the main treatment eligibility provisions of the VEA and MRCA a condition must be service-related before the condition may be treated under DVA-arrangements. Further, the condition to be treated must be an injury or disease, which would not allow for whole-of-person treatment for frailty due to the effects of ageing. Also, for a person to be a dependant of a veteran or member (or former member), the veteran etc must have died.

The VEA contains a provision that enables these treatment-eligibility parameters to be extended – section 88A. Section 88A is not confined to the traditional treatment beneficiaries under the VEA i.e. veterans and their dependants, but may be used to grant eligibility for treatment under the VEA to any person e.g. people traditionally covered by the MRCA

The main purpose of the attached instrument is to:

- remove the nexus with service as an eligibility requirement for certain treatments;
- remove the need for conditions to be injuries or diseases as an eligibility requirement for certain treatments (to enable frailty to be treated); and
- provide eligibility for certain treatments under the VEA to new classes of people (MRCA clients).

Subsection 26(1B) of the *Legislative Instruments Act 2003* provides that the requirement for an explanatory statement to explain the purpose and operation of an instrument may be met by an explanation that the instrument replaces a specified earlier legislative instrument or a specified provision of an earlier legislative instrument and is the same in substance as the specified instrument or provision.

The attached instrument is essentially the same in substance as the following legislative instruments which were revoked by the attached instrument:

Veterans' Entitlements Treatment (Residential Care) Determination 20/2000

The matters addressed by this instrument appear in section 6 of the attached instrument.

Veterans' Entitlements Treatment (Residential and Respite Care) Determination 4/2001

The matters addressed by this instrument appear in section 6 of the attached instrument.

Veterans' Entitlements Treatment (Veterans' Home Care) Determination 13/2000

The matters addressed by this instrument appear in section 7 of the attached instrument.

Veterans' Entitlements Treatment (Veterans' Home Care - Veterans' Dependants) Determination 7/2001

The matters addressed by this instrument appear in section 8 of the attached instrument.

Veterans' Entitlements Treatment (Unidentifiable Condition) Determination 19/2000

The matters addressed by this instrument appear in section 9 of the attached instrument.

Three instruments revoked by the attached instrument are no longer needed. Accordingly the subject matter of those instruments has not been included in the attached instrument. Those instruments are:

Veterans' Entitlements Treatment (Gulf War Health Study) Determination 22/2000

Veterans' Entitlements Treatment (Accident and Personal Safety) Determination 18/2000

Veterans' Entitlements Treatment (Centre for Military and Veterans' Health) Determination 6/2003

The *Veterans' Entitlements Treatment (Gulf War Health Study) Determination 22/2000* provided the legal authority to the Repatriation Commission to accept financial liability for the cost of treating veterans who took part in the Gulf War Health Study.

As the Study has been completed and was released by the Minister on 25 March 2003 there was no need for the instrument to continue.

The *Veterans' Entitlements Treatment (Accident and Personal Safety) Determination 18/2000* provided legal authority to ensure that veterans who held white cards would be eligible for treatment of all conditions, not just war-caused conditions, under the HomeFront program - a program for entitled veterans and their entitled dependants designed to prevent accidents and maintain personal safety, in or about the home.

The Treatment Principles were recently amended to repeal the provisions under which the HomeFront program was provided as the funding for that program was discontinued under the 2013-14 Budget.

The amendments amalgamated the assistance provided under the HomeFront program into the Rehabilitation and Appliance Program.

As the HomeFront program no longer operates there is no need for the instrument determining eligibility to continue to operate.

The *Veterans' Entitlements Treatment (Centre for Military and Veterans' Health) Determination 6/2003* determined that certain veterans were eligible for the services provided by the Centre for Military and Veterans' Health (CMVH).

The treatment included research into the health needs of members of the Australian Defence Force and was provided by the CMVH at the University of Queensland from 2003 until the arrangement ended on 31 Dec 2013.

In future such treatment will be provided under what is referred to as TRCP treatment and a new instrument for determining eligibility (*Veterans' Affairs (TRCP Treatment – Eligibility) Determination 2015 (Instrument 2015 No.R20)*) has been prepared.

CONSULTATION

There has been no consultation in respect of the attached instrument because it essentially re-makes legislative instruments in the same form and benefits are not being affected. Accordingly consultation was considered unnecessary.

RETROSPECTIVITY

None.

DOCUMENTS INCORPORATED-BY-REFERENCE

No.

HUMAN RIGHTS STATEMENT

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

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 by extending eligibility for certain types of treatment to a section of the Community

(the Defence and Veteran Community). Such treatment could help maintain and improve the health of the people concerned.

Apart from eligibility criteria there are no limitations imposed on the provision of the treatment.

Conclusion

The attached legislative instrument is considered to be compatible with the human right to health because it grants eligibility for certain types of treatment to a section of the Community.

Repatriation Commission
Rule-Maker

Attachment A

Section 1

This section states the name of the instrument, namely the *Veterans' Affairs (Extended Eligibility for Treatment) Instrument 2015*

Section 2

This section provides that the instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3

This section provides that the legislative authority for making the instrument is the *Veterans' Entitlements Act 1986*.

Section 4

This section provides that an instrument specified in a Schedule to the instrument is amended or repealed in the terms set out in the Schedule.

Section 5

This section is a definitions section.

Section 6

This section extends eligibility for residential care (including residential care provided as respite care), Respite Care (respite that may be provided in a person's home and which, to a limited degree, may be provided in a residential care facility) and non-subsidised residential care (respite) (residential care that is not subsidised under the *Aged Care Act 1997*) to veterans, members or former members who are former dependants of veterans, members or former members who are not veterans or former dependants of veterans and to dependants of veterans, members or former members, for, in the case of veterans, members or former members:

- any condition of the person and not just a service-related condition, provided the person is eligible for treatment of a condition (not necessarily a condition that requires residential-type care) under the VEA or MRCA; and
- any condition that is not an injury or disease e.g. frailty;

and in the case of dependants of veterans, members or former members:

- any condition that is not an injury or disease e.g. frailty.

Section 7

This section extends eligibility for "home care treatment" (defined in the instrument) to a person for:

- any condition of the person and not just a service-related condition, provided the person is already eligible for certain home care treatment under the VEA or MRCA; and
- any condition of the person that is not an injury or disease e.g. frailty.

Section 8

This section extends a service under the Treatment Principles known as a limited VHC-type service to a number of classes of people. A limited VHC-type service is a

service identical to the service under the Treatment Principles known as “Domestic Assistance” or “Home and Garden Maintenance”.

Section 9

This section extends eligibility for treatment to a person where the person has lodged a claim for pension or compensation in respect of a condition, under, respectively, the VEA or MRCA, and the claim has not been determined i.e. the condition has not been determined as being service-related. In these circumstances, and subject to the requirements in the instrument, the person is eligible for treatment for the condition under the attached instrument until the person’s claim is determined.