



Australian Government

## Veterans' Entitlements Act 1986

# Veterans' Affairs (Extended Eligibility for Treatment) Instrument 2015

Instrument 2015 No.R21

The Repatriation Commission makes this legislative instrument under section 88A of the *Veterans' Entitlements Act 1986*.

Dated this 2<sup>nd</sup> day of July 2015

The Seal of the )  
Repatriation Commission  
was affixed hereto in the ) SEAL  
presence of: )

Simon Lewis      Major General Craig Orme      Major General Mark Kelly

.....  
**SIMON LEWIS      MAJOR GENERAL CRAIG ORME      MAJOR GENERAL MARK KELLY**  
**PRESIDENT      DEPUTY PRESIDENT      AO DSC**  
**COMMISSIONER**

## 1 Name

This is the *Veterans' Affairs (Extended Eligibility for Treatment) Instrument 2015*.

## 2 Commencement

This instrument commences on the day after it is registered.

## 3 Authority

This instrument is made under the *Veterans' Entitlements Act 1986*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## 5 Definitions

***Domestic Assistance***, in the context of the *Treatment Principles*, has the meaning it has in the *Treatment Principles* and in the context of the *MRCA Treatment Principles* has the meaning it has in the *MRCA Treatment Principles*.

***defence-caused***, in relation to an injury or disease, has the meaning given in section 70 of the *VEA*.

***former member*** has the meaning it has in section 5 of the *MRCA*.

***hazardous service*** has the meaning it has in subsection 68(1) of the *VEA*.

***homecare treatment*** means treatment under the *Veterans' Home Care Program* or the *MRCA Home Care Program*, as the case may be, comprised of:

- a Home Care service (category A); or
- a Home Care service (category B); or
- a Home Care service (category C).

Note: these categories of treatment are defined in the *Treatment Principles* and in the *MRCA Treatment Principles*.

***Home and Garden Maintenance*** in the context of the *Treatment Principles*, has the meaning it has in the *Treatment Principles* and in the context of the *MRCA Treatment Principles* has the meaning it has in the *MRCA Treatment Principles*.

***limited VHC-type service*** has the meaning it has in the *Treatment Principles*.

Note: a limited VHC-type service is a service identical to *Domestic Assistance* or *Home and Garden Maintenance*.

**member** has the meaning it has in section 5 of the *MRCA*.

**MRCA Home Care Program** has the meaning it has in the *MRCA Treatment Principles*.

**MRCA Treatment Principles** means the legislative instrument of that name made by the Military Rehabilitation and Compensation Commission under paragraph 286(1)(a) of the *MRCA*.

**non-subsidised residential care (respite)** means respite provided under Part C of Part 10 of the *Treatment Principles*.

**peacekeeping service** has the meaning it has in subsection 68(1) of the *VEA*.

**relevant service** means:

- (a) operational service, hazardous service, warlike service, non-warlike service, peacekeeping service — as covered by the *VEA*;
- (b) warlike service or non-warlike service — as covered by the *MRCA*.

**residential care** has the meaning it has in the *Treatment Principles*.

Note (1): residential care does not include medical treatment or allied health treatment (to the extent it is not residential care).

Note (2): generally the Repatriation Commission and the Military Rehabilitation and Compensation Commission accept financial responsibility for the cost of residential care where the cost is not attributable to the Commissions under the *Aged Care Act 1997* e.g. the cost known as the “Resident fee” under Division 52C of Part 3A.1 of the *Aged Care Act 1997* but in some instances the *Treatment Principles* and *MRCA Treatment Principles* may enable a Commission to accept financial responsibility for such a cost.

**residential care (respite)** has the meaning it has in the *Treatment Principles*.

Note (1): residential care (respite) does not include medical treatment or allied health treatment (to the extent it is not residential care (respite)).

Note (2): generally the Repatriation Commission and the Military Rehabilitation and Compensation Commission accept financial responsibility for the cost of residential care (respite) where the cost is not attributable to the Commissions under the *Aged Care Act 1997* e.g. the cost known as the “Resident fee” under Division 52C of Part 3A.1 of the *Aged Care Act 1997* but in some instances the *Treatment Principles* and *MRCA Treatment Principles* may enable a Commission to accept financial responsibility for such a cost.

**respite** has the meaning it has in the *Treatment Principles*.

**Respite Care** has the meaning it has in the *Treatment Principles*.

**service injury or disease** has the meaning it has in section 5 of the *MRCA*.

**service condition** means:

- (a) a *war-caused* injury;
- (b) a *war-caused* disease;

- (c) a *defence-caused* injury arising from peacekeeping service or hazardous service;
- (d) a *defence-caused* disease arising from peacekeeping service or hazardous service; or
- (e) a *service injury or disease* arising from war-like service or non-warlike service.

***Treatment Principles*** means the legislative instrument of that name made by the Repatriation Commission under section 90 of the *VEA*.

***VEA*** means the *Veterans' Entitlements Act 1986*.

***veteran*** has the meaning it has in paragraph (a) of the definition of "veteran" in subsection 5C(1) of the *VEA* and includes the extended meaning of "veteran" in subsection 81(2) of the *VEA* (i.e. member of the Forces; member of a Peacekeeping Force).

***Veterans' Home Care Program*** has the meaning it has in the *Treatment Principles*.

***war-caused***, in relation to an injury or disease, has the meaning given in section 9 of the *VEA*.

The following terms are defined in the *VEA*:

- child – 5F(1)
- continuous full-time service – 5C(1)
- MRCA – 5Q(1)
- partner – 5E(1)

## **6 Extended Eligibility for Residential Care (including Residential Care (Respite)), Respite Care and non-subsidised residential care (respite)**

- (1) A *veteran* included in the class of person specified in Part A is eligible to be provided with the kind of treatment specified in Part B.

Note: see paragraph 88A(1)(a) of the *VEA*.

- (2) A person who was a dependant of a *veteran* and who is, or was, a *member* or *former member* included in the class of person specified in Part A is eligible to be provided with the kind of treatment specified in Part B.

Note (1) see paragraph 88A(1)(c) of the *VEA*. It is necessary for this provision to also cover members/former members who are former dependants of veterans because paragraph 88A(1)(d) of the *VEA*, the provision that could cover such members/former members, only applies if the person is not covered under another paragraph of section 88A and members/former members who were dependants of veterans would be covered by paragraph 88A(1)(c).

Note (2) a person who was the dependant of a veteran includes a child of the veteran who has turned 16 and is not under 25 and in full-time education.

- (3) A *member* or *former member*, being a person who is not a veteran, a dependant of a veteran or former dependant of a veteran, included in the class of person specified in Part A is eligible to be provided with the kind of treatment specified in Part B.

Note (1) see paragraph 88A(1)(d) of the *VEA*.

- (4) A person who is a dependant of a veteran, member or former member, being a dependant included in the class of person specified in Part AA, is eligible to be provided with the kind of treatment for that person specified in Part B.

Note: although dependants are eligible for the kind of treatment in Part B (as distinct from how the treatment is applied) without the need for this instrument, that eligibility is for the application of that kind of treatment to an injury or disease. This instrument extends that eligibility to eligibility for the application of the treatment to a condition that is not an injury or disease e.g. a condition due to the effects of ageing.

### **Part A – Class of Person**

A person eligible for treatment under the *VEA* or *MRCIA* in respect of:

- (a) a *war-caused* injury or a *war-caused* disease; or
- (b) a *defence-caused* injury or a *defence-caused* disease; or
- (c) a *service injury or disease*; or
- (d) malignant neoplasia; or
- (e) pulmonary tuberculosis; or
- (f) post-traumatic stress disorder; or
- (g) alcohol use disorder; or
- (h) substance use disorder.

### **Part AA – Class of Person**

A dependant of a veteran under the *VEA* or a dependant of a member or former member under the *MRCA*.

## **Part B – Kind of Treatment**

### for a person in Part A:

- *residential care*;
- *residential care (respite)*;
- *Respite Care*; and
- *non-subsidised residential care (respite)*;

under the *Treatment Principles* under the *VEA* — for any injury, disease or condition (e.g. frailty) that is not mentioned in Part A.

### for a person in Part AA:

- *residential care*;
- *residential care (respite)*;
- *Respite Care*; and
- *non-subsidised residential care (respite)*;

under the *Treatment Principles* under the *VEA* for any condition that is not an injury or disease (e.g. frailty).

Note (1): an example of how this instrument operates is where a former member with a mobility impairment of the right leg, being a *service injury or disease*, is receiving *residential care treatment* for the condition and the person also has a mobility impairment of the left leg, that is not a *service injury or disease*.

In practice *residential care treatment* (e.g. personal assistance) would not differentiate between the two conditions albeit, strictly speaking, but for this instrument the application of the *residential care treatment* to the non-service-related condition would not be covered under Department of Veterans' Affairs treatment arrangements.

This instrument grants the person eligibility for *residential care treatment* of the non-service-related condition thereby resolving a technical eligibility issue.

Note (2): A person who is, or was, a member of the Defence Force and who has non-service related post-traumatic stress disorder, alcohol use disorder or substance use disorder and who is not covered under this instrument, could be eligible for “whole-of-person residential care treatment” under the *Veterans' Affairs (Peacetime Service Eligibility for Non-Liability Health Care) Instrument 2014*.

Note (3): Although this instrument confers eligibility on a member or former member for a treatment partly available under the *MRCA* i.e. residential care/residential care (respite) applied to a service injury or disease, the remainder of the treatment i.e. residential care/residential care (respite) applied to a non-service injury or disease, can, under this instrument, only be provided under the *VEA*.

## 7 Extended Eligibility for Treatment under the Veterans' Home Care Program

- (1) A person included in a class of person in Part A is eligible to be provided with the kind of treatment specified in Part B.

### Part A – Class of Person

A person eligible for *home care treatment* for an injury or disease under the *Veterans' Home Care Program* or the *MRCA Home Care Program* (primary treatment).

### Part B – Kind of Treatment

*home care treatment* under the *Veterans' Home Care Program* (secondary treatment) for:

- (a) any condition of the person that is not a *service condition*; and
- (b) any condition of the person that is not an injury or disease;

on the basis that the secondary treatment is provided as part of, and on the same terms as, the primary treatment.

Note (1): this provision enables *home care treatment* under the *Veterans' Home Care Program* to be applied whole-of-person. Accordingly if a veteran or former member is only eligible for treatment under the *Veterans' Home Care Program* or the *MRCA Home Care Program*, as the case may, for a *service condition*, this instrument enables the treatment to be provided for any other condition, including a non-service condition, or a condition that is not an injury or disease e.g. a condition due to the effects of ageing.

Note (2): similarly, a dependant of a veteran, member or of a former member, being a dependant eligible for treatment for any injury or disease under the *Veterans' Home Care Program* or the *MRCA Home Care Program*, is eligible under this instrument for the application of *home care treatment* to a condition of the dependant that is not an injury or disease e.g. a condition due to the effects of ageing

## 8 Extended Eligibility for a limited VHC-type service

- (1) A partner or former partner of a veteran included in the class of person specified in Part A is eligible to be provided with the kind of treatment specified in Part B.

Note (1) see paragraphs 88A(1)(b) and (c) of the VEA.

- (2) A child or former child of a veteran included in the class of person specified in Part A is eligible to be provided with the kind of treatment specified in Part B

Note (1) see paragraphs 88A(1)(b) and (c) of the VEA.

Note (2) a person who was the dependant of a veteran includes a child of the veteran who has turned 16 and is not under 25 and in full-time education.

- (3) A partner or former partner of a member or of a former member included in the class of person specified in Part A is eligible to be provided with the kind of treatment specified in Part B

Note (1) see paragraph 88A(1)(d) of the VEA.

- (4) A child or former child of a member or of a former member included in the class of person specified in Part A is eligible to be provided with the kind of treatment specified in Part B.

Note (1) see paragraph 88A(1)(d) of the VEA.

### **Part A – Class of Person (Family Member)**

A person (family member) who was sharing a home with a person (beneficiary) when the beneficiary died or needed to leave the home for treatment and immediately before either of these events:

Note: a beneficiary may be a veteran (including a deceased veteran), a member or former member or a former partner (by death) of a veteran, member or former member.

(a) the beneficiary was eligible to receive *Domestic Assistance* or *Home and Garden Maintenance* under the *Treatment Principles* or the *MRCA Treatment Principles*; and

(b) the family member was:

(i) the partner of the beneficiary — the beneficiary being a veteran, member or former member; or

(ii) the former partner of the beneficiary (by reason of the death of the beneficiary) — the beneficiary having been a veteran, member or former member; or

(iii) a child of the beneficiary:

(A) where the beneficiary is or was a veteran, member or former member; or

(B) where the beneficiary was the partner of a veteran, member or former member and the child is the child of the veteran, member or former member.

(iv) a former child of the beneficiary who was a full-time carer of the beneficiary:

(A) where the beneficiary is or was a veteran, member or former member; or

(B) where the beneficiary was the partner of a veteran, member or former member and the child is the former child of the veteran, member or former member.

(v) a former child of the beneficiary — being a former child with a serious disability:

(A) where the beneficiary is or was a veteran, member or former member; or

(B) where the beneficiary was the partner of a veteran, member or former member and the child is the former child of the veteran, member or former member.

Note (1): the person to whom the class of person relates is the “family member” not the “beneficiary”.

Note (2): "child" under the VEA has a different meaning to its normal meaning and means a person who has not turned 16 unless the person is undertaking full time education in which case the person is a child until turning 25. Accordingly under the VEA a child ceases to be a child upon turning 16 or 25, as the case may be. The child is then a former child.

Note (3) Although the terms "partner", "former partner", "child", former child", are mentioned in relation to a member or former member (i.e. people covered by the MRCA), as this instrument is made under the VEA, the definitions of "child" and "partner" in the VEA and not the MRCA prevail.

Note (4): the Treatment Principles limit the delivery of a limited VHC-type service to, generally speaking, 12 weeks.

## **Part B – Kind of Treatment**

(a) for a person in the class of person in Part A who is entitled to a limited VHC-type service under the *Treatment Principles — limited VHC-type service*.

Note (1): a limited VHC-type service is a service identical to *Domestic Assistance* or *Home and Garden Maintenance* which a relevant beneficiary was eligible to receive.

Note (2): example - a partner of a veteran, where the veteran was eligible for *home and garden maintenance* under the *Treatment Principles* and who left the home for treatment, is, in conjunction with this instrument, entitled to a *limited VHC-type service* under the *Treatment Principles*.

(b) for a person in the class of person in Part A who is not entitled to a *limited VHC-type service* under the *Treatment Principles — limited VHC-type service* as if the person is entitled to a *limited VHC-type service* under the *Treatment Principles* and as if the relevant beneficiary of the *Domestic Assistance* or *Home and Garden Maintenance* under the *MRCA Treatment Principles* was eligible for those services under the *Treatment Principles*.

Note (1): example - a partner of a member, where the member was eligible for *domestic assistance* under the *MRCA Treatment Principles* and who left the home for treatment, is not prima facie entitled to a *limited VHC-type service* under the *Treatment Principles* but by virtue of this instrument is taken to be entitled to a *limited VHC-type service* under the *Treatment Principles*.

Note (2): although a person is taken to be eligible for a *limited VHC-type service* under the *Treatment Principles* and the relevant beneficiary is taken to be eligible for *Domestic Assistance* or *Home and Garden Maintenance*, as the case may be, under the *Treatment Principles*, nevertheless the terms on which the *limited VHC-type service* is to be provided are the same terms that applied to the provision of *Domestic Assistance* or *Home and Garden Maintenance* to the relevant beneficiary under the *MRCA Treatment Principles*.

Note (3): example – if a former member was eligible for 10 hours *Home and Garden Maintenance* under the *MRCA Treatment Principles* then a partner of the former member is eligible for a *limited VHC-type service* under the *Treatment Principles* of *Home and Garden Maintenance* of 10 hours only.

## **9 Extended Eligibility for Treatment of Unidentifiable Condition**

(1) A veteran included in the class of person specified in Part A is eligible to be provided with the kind of treatment specified in Part B.

Note (1) see paragraph 88A(1)(a) of the VEA.

- (2) A member or former member included in the class of person specified in Part A is eligible to be provided with the kind of treatment specified in Part B.

Note (1) see paragraph 88A(1)(d) of the VEA.

### **Part A – Class of Person**

A person in the following circumstances:

- (a) the person is a veteran or member or former member who rendered continuous full-time *relevant service*; and
- (b) the person lodged a claim for pension under the *VEA* or for compensation under the *MRCRA* within 15 years after the date of the end of the *relevant service* in respect of a physical or mental condition (unidentifiable condition) that could be a *service condition*; and
- (c) the Commonwealth (as represented by the Department of Veterans' Affairs) notified the person that the person's condition is an identifiable condition i.e. a medical condition that does not satisfy diagnostic criteria in current evidence-based medicine; and
- (d) the person's claim for pension or compensation has not been determined by the Repatriation Commission or the Military Rehabilitation and Compensation Commission, as the case requires.

### **Part B – Kind of Treatment**

Treatment under, and subject to:

- the *Treatment Principles*; or
  - the *Repatriation Pharmaceutical Benefits Scheme*; or
  - the *Repatriation Private Patient Principles*; or
  - an arrangement between the *Repatriation Commission* and a health care provider pursuant to Part V of the *Act*.
- (3) Eligibility for treatment in Part B commences on and from the date that is 3 months before the date the claim lodged by the person in Part A was received at an Office of the Department of Veterans' Affairs in Australia, to and including the date the person's claim for pension or compensation under the VEA or MRCA, as the case may be, is determined.

## **Schedule 1 Repeal**

The following instruments are revoked:

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

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

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

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

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

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

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

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

