

EXPLANATORY STATEMENT

Veterans' Affairs (Extended Eligibility for Treatment) Amendment Instrument 2018

(Instrument 2018 No. R74)

EMPOWERING PROVISION

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

PURPOSE

The attached instrument (2018 No. R74) varies the *Veterans' Affairs (Extended Eligibility for Treatment) Instrument 2015* (F2015L01145) (the Principal Instrument) to ensure that all former and current Australian Defence Force (ADF) personnel who are eligible for "Non-Liability Health Care" (NLHC) treatment for mental health conditions are eligible for residential care, residential care (respite), Respite Care and non-subsidised residential care (respite).

"Non-Liability Health Care" is provided to eligible current and former ADF members to access treatment, paid for by the Department of Veterans' Affairs (DVA), without needing to establish a link between their medical condition and their service. NLHC is completely separate from any claim for compensation or liability.

The Principal Instrument came into force on 15 July 2015. Under that instrument, eligibility for residential care, residential care (respite), Respite Care and non-subsidised residential care (respite) for former and current ADF personnel is limited to specified mental health conditions, that is, post-traumatic stress disorder, alcohol use disorder and substance abuse disorder.

The 2017-2018 Budget provided \$33.5 million over the forward estimates to extend NLHC treatment to all mental health conditions. From 1 July 2017 all past and current members of the ADF with at least one day of continuous full-time service and certain ADF Reservists from 1 July 2018 became eligible. Also included was provision for aligning eligibility for residential care, residential care (respite), Respite Care and non-subsidised residential care (respite) with the expanded eligibility for NLHC treatment for all mental health conditions.

However, to date the required changes have not been made to the eligibility provisions under the Principal Instrument and eligibility remains limited to post-traumatic stress disorder, alcohol use disorder and substance abuse disorder. It is now proposed to vary the Principal Instrument to expand eligibility for residential care, residential care (respite), Respite Care and non-subsidised residential care (respite) to those eligible for NLHC treatment for any mental health condition.

The changes to the Principal Instrument replace the references to "post-traumatic stress disorder, alcohol use disorder, and substance abuse disorder" with a reference to "a mental health condition". An expanded definition of "mental health condition" is also being added to be inclusive of the full range of mental health conditions and disorders that may be diagnosed by a mental health professional. A definition of "mental health professional" has also been included. The definitions of "mental health condition" and "mental health professional" are the same as those in the *Veterans' Entitlements (Expanded Access to Non-Liability Health Care for Mental Health*

Treatment) Determination 2017. Under that determination, eligibility for treatment for mental health conditions on a NLHC basis extends to all past and current members of the ADF with at least one day of continuous full-time service.

Residential care, residential care (respite) and Respite Care are defined in the *Treatment Principles* made under subsection 90(4) of the *Veterans' Entitlements Act 1986*. Residential care includes personal care or nursing care that is provided to a person in a residential care facility with appropriate staff and where meals are provided, but excludes care provided in the home or a hospital or psychiatric facility, or a residential facility that primarily provides care to people who are not frail and aged. Residential care (respite) is provided to an eligible person as short-term care in an Australian Government-subsidised residential aged care facility. Respite Care provides short-term appropriate care to an eligible person when their carer needs a break or is unable to fulfil their caring role.

Non-subsidised residential care (respite) is defined in the Principal Instrument as respite provided under Part C of Part 10 of the *Treatment Principles*. Non-subsidised residential care (respite) is provided to an eligible person as short-term care in a residential setting that is not an Australian Government-subsidised residential aged care facility, such as a hospital, Multipurpose Service or Cottage Respite under the Commonwealth Home Support Program.

The provision of residential care, residential care (respite), Respite Care and non-subsidised residential care (respite) is generally subject to a needs assessment.

CONSULTATION

Section 17 of the *Legislation Act 2003* requires a rule-maker to be satisfied, before making a legislative instrument that any consultation the rule-maker considered appropriate and reasonably practicable, has been undertaken.

Consultation within DVA has been undertaken with Veterans' Services Design Division and Client Engagement and Support Services Division.

External consultation was not undertaken as the changes to the Principal Instrument are consequential in order to align eligibility for residential care, residential care (respite), Respite Care and non-subsidised residential care (respite) with recent Budget measures to expand eligibility for NLHC treatment to any mental health condition.

Accordingly, it is considered the requirements of section 17 of the *Legislation Act 2003* have been met.

RETROSPECTIVITY

None.

DOCUMENTS INCORPORATED BY REFERENCE

No.

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 positively with the right to the enjoyment of the highest attainable standard of physical and mental health.

That right is contained in Article 12(1) of the International Covenant on Economic, Social and Cultural Rights. Article 12(1) provides that “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”

Overview

The Principal Instrument, amongst other matters, details the conditions by which certain individuals are eligible for residential care, residential care (respite), Respite Care and non-subsidised residential care (respite).

Amending the Principal Instrument to allow all DVA clients eligible for NLHC treatment for a mental health condition to be eligible for residential care, residential care (respite), Respite Care and non-subsidised residential care (respite) ensures that those clients can access the highest attainable standard of physical and mental health.

Conclusion

The attached legislative instrument is considered to be human rights compatible.

Repatriation Commission
Rule-Maker

FURTHER EXPLANATION OF PROVISIONS

See: [Attachment A](#)

Veterans' Affairs (Extended Eligibility for Treatment) Amendment Instrument 2018

Section 1

This section provides that the name of the instrument is the *Veterans' Affairs (Extended Eligibility for Treatment) Amendment Instrument 2018*.

Section 2

This is the commencement provision and it provides for the instrument to commence on the day after registration on the Federal Register of Legislation.

Section 3

This section sets out the primary legislation that authorises the making of the instrument, namely, subsection 88A(2) of the *Veterans' Entitlements Act 1986* (VEA).

Section 4

This section provides that the *Veterans' Affairs (Extended Eligibility for Treatment) Instrument 2015* (the Principal Instrument) is varied in accordance with the items in the Schedule.

Schedule

Item 1

Item 1 inserts a signpost definition of "mental health condition" into section 5 of the Principal Instrument and refers to the new section 5A which contains the actual definition, see Item 2. Item 1 also inserts the definition "MRCA".

Item 2

Item 2 inserts a new section 5A in the Principal Instrument. The new section 5A defines the term "mental health condition" and "mental health professional".

The term is defined to mean a mental disorder that could be assessed and diagnosed by a mental health professional in accordance with recognised criteria for such assessment and diagnosis.

Section 5A defines a mental health professional to mean a person who is:

- a medical practitioner (whether a general practitioner or psychiatrist) who is registered with the Australian Health Practitioner Regulation Agency (AHPRA) to practise as a medical practitioner; or
- a psychologist who is registered with AHPRA to practise as a clinical psychologist and who holds a post-graduate qualification in clinical psychology.

In essence, the definition of mental health professional covers general practitioners, psychiatrists and clinical psychologists who hold current AHPRA registration.

The note to the section informs readers of some of the medical reference materials that are recognised by Australian mental health professionals in the assessment and diagnosis of mental disorders. These include the DSM-5 (fifth edition of the American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders) and Chapter V of ICD-10-AM (the International Statistical Classification of Diseases and Related Health Problems, 10th Revision, Australian Modification).

The note merely refers to these materials and should not be taken as an intention to incorporate the content of these medical reference resources into the instrument as documents incorporated by reference.

The definitions of “mental health condition” and “mental health professional” are the same as those in the *Veterans’ Entitlements (Expanded Access to Non-Liability Health Care for Mental Health Treatment) Determination 2017*. A similar note is contained in that determination.

Item 3

Section 88A of the VEA empowers the Repatriation Commission to determine a class of persons to be eligible to be provided with treatment of a specified kind.

Part A of section 6 of the Principal Instrument specifies the class of persons eligible to be provided with the kind of treatment specified in Part B, that is, residential care, residential care (respite), Respite Care and non-subsidised residential care (respite).

Item 3 repeals the existing Part A of section 6 and replaces it with a new Part A. The new Part A removes the reference to post-traumatic stress disorder, alcohol use disorder and substance abuse disorder in paragraphs (h), (i) and (j) respectively, and replaces those paragraphs with a new paragraph (f) that refers to a mental health condition.

The new Part A also corrects a paragraphing error. It retains paragraphs (a), (b), (e), (f) and (g) of the existing Part A, but the new Part A renames them correctly as paragraphs (a), (b), (c), (d) and (e). Other than renaming the paragraphs, changes have not been made to them.

The new Part A specifies the following class of persons:

A person eligible for treatment under the VEA or MRCA 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) a mental health condition.

Item 4

Item 4 removes Note 2 in Part B of section 6 as the note no longer applies following the revocation of the instrument referred to in the note.