

## EXPLANATORY STATEMENT

### **Veterans' Entitlements (Treatment Principles – Streamlining Access to Non-Liability Health Care) Amendment Instrument 2016** (Instrument 2016 No. R16)

#### EMPOWERING PROVISION

Subsection 90(4) of the *Veterans' Entitlements Act 1986* (the VEA).

#### PURPOSE

The attached instrument (2016 No. R16) varies the legislative instrument known as the *Treatment Principles* to implement measures designed to improve access to non-liability health care for mental health conditions.

The Treatment Principles set out the circumstances in which treatment may be provided to clients of the Department of Veterans' Affairs (DVA).

The variations to the Treatment Principles made by the attached instrument are part of a suite of measures designed to streamline access to non-liability health care for mental health conditions and reduce barriers to accessing timely treatment.

Non-liability health care (NLHC) is health care paid for by the Commonwealth without the need to establish a link to the eligible person's service. Generally, under DVA-administered legislation, only service-related conditions attract treatment at the Commonwealth's expense. The NLHC regime enables DVA to pay for treatment for certain conditions whether or not the conditions are "service-related" or "war-caused".

The NLHC arrangements are implemented under the legislative framework found in Part V of the VEA (in particular, subsection 85(2)), the Treatment Principles, and in the following instruments made by the Repatriation Commission under section 88A of the VEA (the "section 88A instruments"):

- *Veterans' Entitlements Treatment (Anxiety and Depressive Disorders) Determination* (Instrument No. 2015 No. R13); and
- *Veterans' Affairs (Peacetime Service Eligibility for Non-Liability Health Care) Instrument 2014* (Instrument No. 2014 R18).

The purpose of the attached instrument is to improve access to NLHC for mental health conditions by giving effect to the following proposals:

- Providing for non-vocationally registered (non-VR) general practitioners (GPs) to diagnose mental health conditions; and
- Clarifying the application of the Treatment Principles in relation to NLHC for "peacetime service personnel".

- Making a minor amendment to update a definition in the Treatment Principles.

*Providing for non-vocationally registered (non-VR) general practitioners (GPs) to diagnose mental health conditions*

Currently, under the Treatment Principles and the section 88A instruments, a diagnosis to trigger access to NLHC for mental health conditions may only be made by a general practitioner who is a vocationally-registered general practitioner, a clinical psychologist, or a psychiatrist.

A significant proportion of general practitioners are not vocationally registered. It is proposed to remove this restriction and enable all GPs to make diagnoses for the purposes of NLHC mental health treatment.

The attached instrument amends the definition of “general practitioner” in the Treatment Principles to clarify that medical practitioners who are not vocationally registered general practitioners are “general practitioners” within the meaning of the Treatment Principles and are thus authorised to make diagnoses for mental health conditions under the Treatment Principles. A similar change will automatically be effected to the section 88A instruments as the term “general practitioner” in those instruments is defined by way of reference to the corresponding definition in the Treatment Principles.

This amendment will speed access to mental health care treatment for DVA clients by expanding the category of practitioners authorised to make relevant mental health diagnoses. This ensures easier and quicker access for DVA clients by reducing delays associated with the availability of medical practitioners and with scheduling and attending appointments.

*Clarifying the application of the Treatment Principles in relation to NLHC for “peacetime service personnel”.*

Peacetime service personnel with service on or after 7 April 1994, or before and on or after 7 April 1994, where brought within the ambit of the NLHC regime for mental health treatment in 2014 by virtue of the *Veterans’ Affairs (Peacetime Service Eligibility for Non-Liability Health Care) Instrument 2014* (Peacetime Service Instrument). This instrument ensured prima facie entitlement to DVA-funded treatment for alcohol use disorder, substance use disorder, post-traumatic stress disorder, anxiety disorder and depressive disorder for this category of persons.

Peacetime service personnel are members of the Defence Force who have rendered only “peacetime service” and have completed at least three years continuous full time service on or after 1972, unless discharged early on medical grounds.

The attached instrument adds new provisions to Part 2 of the Treatment Principles to confirm the provision of treatment for mental health conditions on a NLHC basis for “peacetime service personnel” and to clarify the extent of the Commission’s responsibility for NLHC for mental health treatment for this category of persons.

### *Minor amendments to the Treatment Principles*

The attached instrument makes minor variations to the Treatment Principles including an update to the definition of “eligible person” to remove references to repealed provisions of the VEA and bring it in line with the definition of “eligible person” in Part V of the VEA.

### **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 “non-VR general practitioner diagnosis” measure removes a barrier to treatment and aligns the diagnosis requirements for mental health treatment with the Medicare Benefits Schedule Better Access Initiative.

The “peacetime service personnel” measure confirms and clarifies the provisions of the Treatment Principles for treatment of mental health conditions on a NLHC basis for this category of persons. This measure flows from an earlier proposal implemented by the *Veterans' Affairs (Peacetime Service Eligibility for Non-Liability Health Care) Instrument 2014* which was the subject of consultation with the veteran and defence community via the Steering Committee for the Review of Military Compensation Arrangements.

Other amendments implemented by the attached instrument are technical in nature. All measures are either beneficial or neutral in terms of their impact on DVA clients and stakeholders could reasonably be expected to agree to the changes. No further external consultation was considered necessary.

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

### **RETROSPECTIVITY**

None.

### **DOCUMENTS INCORPORATED-BY-REFERENCE**

No.

### **REGULATORY IMPACT**

Nil.

### **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 - the Right to Health contained in article 12(1) of the International Covenant on Economic Social and Cultural Rights and to the rights of people with a disability.

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 the Right to Health by streamlining access to mental health care treatment for DVA clients. It expands the category of medical practitioners authorised to make diagnoses for mental health conditions and confirms and clarifies existing arrangements for access to DVA-funded treatment for mental health conditions on a non-liability basis.

### *Conclusion*

The attached legislative instrument has the effect of advancing the mental health of the veterans and “peacetime service personnel” concerned and accordingly, is considered compatible with human rights.

Dan Tehan  
Minister for Veterans’ Affairs  
Rule-Maker

### **FURTHER EXPLANATION OF PROVISIONS**

*See Attachment A*

Attachment A**FURTHER EXPLANATION OF PROVISIONS**Section 1

This section sets out the name of the instrument – *Veterans’ Entitlements (Treatment Principles – Streamlining Access to Non-Liability Health Care) Amendment Instrument 2016*.

Section 2

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

Section 3

This section sets out the empowering provision of the *Veterans’ Entitlements Act 1986* under which the variations to the Treatment Principles are made.

Specifically, variations to the *Treatment Principles* under the *Veterans’ Entitlements Act 1986* are made by the Repatriation Commission pursuant to section 90(4) of that Act.

Section 4

This section provides for the Treatment Principles to be varied in accordance with the items in the Schedule.

Schedule – Variations to the *Treatment Principles* under the *Veterans’ Entitlements Act 1986*Item 1

This item amends the definition of “general practitioner” to clarify that medical practitioners who are not vocationally registered general practitioners are “general practitioners” for the purposes of the Treatment Principles.

The note below the definition makes it clear that the definition has relevance to paragraph 2.4.2A of the Treatment Principles which provides for general practitioners, along with psychiatrists and clinical psychologists, to provide the necessary diagnosis for the specified mental health conditions to trigger DVA-funded treatment in accordance with that provision.

Item 2

This item updates the definition of “eligible person” in the Treatment Principles to bring it in line with the definition of “eligible person” in subsection 90(8) of the VEA. The current definition of “eligible person” in the Treatment Principles is outdated in that it refers to sections 87 and 88 of the VEA – both now repealed.

Item 3

This item updates the definition of “White Card” in the Treatment Principles to include reference to the additional mental health conditions of alcohol use disorder, anxiety disorder, depressive disorder and substance use disorder, and to update the reference to the legislative instrument referred to in the note below the definition.

Item 4

This item adds new definitions into the interpretation provision of the Treatment Principles for “alcohol use disorder”, “anxiety disorder”, “depressive disorder”, “post-traumatic stress disorder” and “substance use disorder”.

The terms are defined by reference to the medical conditions as described in the relevant Statement of Principles for the conditions.

These new definitions will aid the interpretation of paragraph 2.4 and new paragraph 2.5A of the Treatment Principles.

Item 5

This item replaces the heading in paragraph 2.4. It now includes a reference to “veterans” to distinguish the provisions of paragraph 2.4 with those in new paragraph 2.5A which deals with “peacetime service personnel”.

Item 6

This item adds a note at the end of paragraph 2.5.1 to refer the reader to the *Veterans’ Entitlements Treatment (Anxiety and Depressive Disorders) Determination* (Instrument 2015 No. R13) made under section 88A of the VEA. That determination establishes eligibility for *veterans* for treatment, on a non-liability health care basis, for other mental health conditions – namely anxiety disorder and depressive disorder.

Item 7

By replacing the term “veteran” with “person” in paragraph 2.5.1, this item makes a minor technical correction that recognises that instruments made under section 88A of the VEA may cover persons who are not “veterans” within the meaning of Part V of the VEA and the Treatment Principles.

Item 8

This item adds a new paragraph 2.5A to the Treatment Principles to include provisions relating to the mental health care treatment, within the non-liability health care regime, for “peacetime service persons” as specified in the *Veterans’ Affairs (Peacetime Service Eligibility for Non-Liability Health Care) Instrument 2014*.