

EXPLANATORY STATEMENT

Military Rehabilitation and Compensation (Accelerated Access to Rehabilitation) Determination 2017 (Instrument 2017 No. MRCC22)

EMPOWERING PROVISION

Subsection 43(4) of the *Military Rehabilitation and Compensation Act 2004* (the Act).

PURPOSE

The attached instrument (Instrument 2017 No. MRCC22) forms part of the legislative framework that will give effect to the Australian Government's 2017–2018 Budget measure to provide accelerated access to rehabilitation services for certain DVA clients.

The *Veterans' Affairs Legislation Amendment (Budget Measures) Act 2017* amends section 43 of the Act to enable the Military Rehabilitation and Compensation Commission (the Commission) to determine a class of persons who will be eligible (subject to further selection by the Commission) for early access to rehabilitation services after a claim for liability under the Act has been made and before that claim has been determined.

The amendment supports the principle of early intervention by providing access to rehabilitation to selected participants while their claim for liability under paragraph 319(1)(a) of the Act is being processed and liability determined.

The class determined by this instrument, for the purposes of paragraph 43(3)(c) of the Act, is a person, whose claim under paragraph 319(1)(a) of the Act involves one or more specified rehabilitation conditions, and who is likely to benefit from participation in an early access to rehabilitation program, and who consents to participation in the program.

The specified rehabilitation conditions defined in the instrument represent the top 20 medical conditions that are most commonly claimed and accepted as service related injuries and the top 5 most commonly claimed and accepted mental health conditions.

On commencement of the relevant provisions of the *Veterans' Affairs Legislation Amendment (Budget Measures) Act 2017*, the Commission will be further empowered (by paragraph 43(3)(d) of the Act) to determine in writing that Part 2 of Chapter 3 of the Act (Rehabilitation programs) applies to a person who falls within the class determined by this instrument. This will enable the Commission to select participants in the early access to rehabilitation trial program.

Should the liability claim of a participant in a trial program ultimately be denied, the Department would transition the veteran to a community-based service with no cost recovery sought from the veteran in those circumstances.

The 2011 MRCA Review recognised the need for early intervention and noted that access to rehabilitation as soon as a claim for initial liability is lodged is desirable. Early access to rehabilitation will facilitate participation in economic activities with all of the ensuing benefits of work and recovery, assist in minimising the ongoing effects of injury and illness and promote recovery and wellbeing.

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 measure formed part of the Australian Government's 2017–2018 Budget initiative to increase veteran participation in the workforce.

The Department of Finance was consulted as part of the Budget approval process.

Consultation was also undertaken within the Department of Veterans' Affairs across the Rehabilitation and Support and Veteran Centric Reform Divisions.

In addition, the Ex-Service Organisation Round Table (known as ESORT), which comprises the National Presidents of 14 Ex-service organisations, was advised about the nature of this Budget measure on 9 May 2017.

Consultation was by way of phone calls, written correspondence and meetings.

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

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

None.

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 and promotes the Right to Health and the Rights of persons with a disability.

Right to health

The right to health is 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 instrument determines a class of persons who may be eligible for early access to rehabilitation services through a pilot program which would provide for the more effective delivery of services to injured and former Defence Force members seeking employment.

The measure will support workplace participation by eligible ADF members by providing early access to rehabilitation services while they are waiting for a decision to be made on their claim for liability. This will allow for an identification of the rehabilitation needs of the person and if practicable, development of a rehabilitation plan for quick implementation once a claim is accepted.

Rights of persons with a disability

The rights of people with a disability are set out in the Convention on the Rights of Persons with Disabilities. Article 26 requires countries to organise and strengthen rehabilitation programs for people with disability, particularly in health, employment, education and social services.

The instrument enables a determined class of persons to access rehabilitation services while their claims are being processed and liability determined. This will ensure that participating clients will have their rehabilitation needs identified early and minimise the ongoing effects of injuries and illness and promote speedier recovery and return to wellbeing.

Conclusion

The attached instrument promotes the right to health and the rights of a person with a disability. Accordingly, the attached instrument is considered to be “human rights compatible”.

Military Rehabilitation and Compensation Commission
Rule-Maker

FURTHER EXPLANATION OF PROVISIONS

Section 1

This section provides that the name of the instrument is the *Military Rehabilitation and Compensation (Accelerated Access to Rehabilitation) Determination 2017*.

Section 2

This section provides that the instrument commences immediately after the commencement of items 1 to 6 of Schedule 3 to the *Veterans' Affairs Legislation Amendment (Budget Measures) Act 2017*.

The Note to the provision informs readers that those items commence on the 28th day after the *Veterans' Affairs Legislation Amendment (Budget Measures) Bill 2017* receives the Royal Assent.

The effect of section 2 is to ensure that the commencement of the instrument aligns with the commencement of the empowering provision of the Act.

Section 3

This section sets out the primary legislation that authorises the making of the instrument, namely subsection 43(4) of the Act.

Section 4

This section is a purpose provision. It informs readers of the legislative intent of the instrument, namely to determine a class of persons eligible (subject to further selection by the Commission) for early access to rehabilitation services during the period from the time the person has made a claim for liability under the Act and before liability for that claim has been determined.

The term “rehabilitation services” is defined in section 5 of the instrument to mean a service provided under Part 2 of Chapter 3 of the Act including a request for assessment (initial assessment or further assessment) mentioned in section 44 of the Act and a rehabilitation program mentioned in section 51 of the Act.

The notes to section 4 inform readers that the Commission is empowered, under paragraph 43(3)(d) of the Act to determine in writing that Part 2 of Chapter 3 of the Act (rehabilitation programs) applies to a person who falls within the class determined by this instrument. The effect of this provision is to enable the Commission, by determination in writing, to select persons from the class determined by this instrument to be provided with rehabilitation services after they have made a claim under paragraph 319(1)(a) of the Act and before that claim has been determined.

Section 5

This is the interpretation section. It defines the terms that are used in the instrument.

Section 6

This section defines the term “specified rehabilitation condition” for the purposes of the instrument.

The term is defined to mean each of the 20 medical conditions and each of the 5 mental health conditions listed in column 1 of the table in this section.

Those conditions are defined by reference to the definition in the relevant Statement of Principles, as in force from time to time, listed in column 2 of the table at the corresponding item number for the condition. The section makes it clear that the various Statement of Principles referred to in the table (disallowable Commonwealth legislative instruments) will apply in the form in which they exist from time to time.

These 20 specified medical conditions represent the claims which are most often accepted and which make up the highest proportion of referrals to rehabilitation.

The 5 specified mental health conditions (alcohol use disorder, anxiety disorder, depressive disorder, posttraumatic stress disorder and substance use disorder) represent the mental health conditions that are most frequently claimed and accepted.

Section 7

Subsection 43(4) of the Act empowers the Commission by legislative instrument, to determine a class of persons for the purposes of paragraph 43(3)(c).

Section 7 of the instrument determines, as a class of persons for the purposes of that paragraph, a person:

- whose claim under paragraph 319(1)(a) of the Act involves one or more specified rehabilitation conditions; and
- who is, in the opinion of the Commission, likely to benefit from participation in an early access to rehabilitation program; and
- who consents to participating in an early access to rehabilitation program.

The term “specified rehabilitation condition” is defined in section 6 of the instrument by a table of 20 medical conditions and 5 mental health conditions. Each condition is defined in the table by reference to the definition in the corresponding Statement of Principles for the condition.

The term “early access to rehabilitation program” is defined in section 5 of the instrument to mean an early intervention program funded by the Department to provide rehabilitation services to selected eligible claimants with the aim of assisting them to meet their recovery goals and transition to civilian life.

The term “rehabilitation services” is also defined in section 5 of the instrument. It means a service provided under Part 2 of Chapter 3 of the Act including a request for assessment (initial assessment or further assessment) mentioned in section 44 and a rehabilitation program mentioned in section 51.