

EXPLANATORY STATEMENT

Military Rehabilitation and Compensation (Accelerated Access to Rehabilitation) Amendment Determination 2018

(Instrument 2018 No. MRCC58)

EMPOWERING PROVISION

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

PURPOSE

The attached instrument (2018 No. MRCC58) varies the *Military Rehabilitation and Compensation (Accelerated Access to Rehabilitation) Determination 2017*.

The *Military Rehabilitation and Compensation (Accelerated Access to Rehabilitation) Determination 2017* provides accelerated access to rehabilitation services for certain clients of the Department of Veterans' Affairs.

The attached instrument varies the *Military Rehabilitation and Compensation (Accelerated Access to Rehabilitation) Determination 2017* by adding a new class of persons who will be eligible (subject to further selection by the Commission) for early access to rehabilitation services. The new class are persons who have made a claim under paragraph 319(1)(a) of the MRCA and are receiving a veteran payment.

Veteran payment is a form of interim income support paid by the Department of Veterans' Affairs to assist vulnerable people who might be in financial difficulty while their claim for liability for a mental health condition is determined. A condition of a member or former member receiving a veteran payment is the requirement to participate in a rehabilitation program. As this rehabilitation is pre-liability, it is necessary to specify persons in receipt of veteran payment as a class of persons eligible to be provided with early access to rehabilitation.

In addition to the power to make this instrument under 43(4) of the *Military Rehabilitation and Compensation Act 2004*, subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

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.

On 24 October 2017, the Government announced its response to the Foreign Affairs, Defence and Trade Committee's Report on the Inquiry into suicide by veterans and ex-service personnel. The response included several measures to be put in place to reduce suicide and self-harm in the veteran community, with a package of new measures to deliver better support for veterans and their families, including veteran payment.

Consultation has taken place with the Department of Education, the Department of Employment, the Department of Human Services, Treasury and the Department of Social Services.

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

RETROSPECTIVITY

None, if the attached legislative instrument is made before 1 May 2018.

If made after that date, the instrument will be taken to have commenced on 1 May 2018 and will operate retrospectively from that date.

Any such retrospective commencement will not contravene subsection 12(2) of the *Legislation Act 2003* (a provision of a legislative instrument is of no effect if it takes effect before registration and disadvantages a person or imposes liabilities on a person other than the Commonwealth) because the changes implemented by the attached instrument are beneficial in nature; the changes do not disadvantage any person or impose a liability on a person other than the Commonwealth.

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 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.

Rights of Persons with a Disability

The Rights of Persons 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.

Overview

The instrument enables persons who are receiving a veteran payment to access rehabilitation services while their claims are being processed and liability determined. Providing early access to appropriate rehabilitation services, will assist veteran payment recipients to achieve better health and employment outcomes. In this way the instrument can be said to engage positively with the Right to Health and the Rights of Persons with a Disability.

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

See: [Attachment A](#)

Attachment A

Military Rehabilitation and Compensation (Accelerated Access to Rehabilitation) Amendment Determination 2018

Section 1

This section sets out the name of the instrument – *Military Rehabilitation and Compensation (Accelerated Access to Rehabilitation) Amendment Determination 2018*.

Section 2

This section provides that the instrument commences, or is taken to have commenced, on 1 May 2018.

Section 3

This section sets out the primary legislation that authorises the making of the instrument, namely subsection 43(4) of the *Military Rehabilitation and Compensation Act 2004*.

Section 4

This section provides for the variations to the Determination outlined in Schedule 1 to have effect.

Schedule 1

Variations to the *Military Rehabilitation and Compensation (Accelerated Access to Rehabilitation) Determination 2017*

Item 1

This item inserts a new section 8. It provides for a new class of persons to be eligible for accelerated access to rehabilitation. The new class are persons who:

- have made a claim under paragraph 319(1)(a) of the MRCA; and
- are receiving a veteran payment.