

EXPLANATORY STATEMENT

Veterans' Entitlements (Provisional Access to Medical Treatment) Amendment Determination No. 2 2020 (Instrument 2020 No. R28)

EMPOWERING PROVISION

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

PURPOSE

The attached instrument (Instrument 2020 No. R28) amends the *Veterans' Entitlements (Provisional Access to Medical Treatment) Determination 2017* (the determination) to extend the intake period of the Provisional Access to Medical Treatment Trial (the Trial) by twelve months to 1 July 2021 and the closing date of the provision of treatment under the Trial by twelve months to 31 December 2021.

The 2017–2018 Budget provided the original funding for an initiative to provide provisional access to medical treatment for a “top 20” list of specified conditions. Following previous extensions an additional \$5.8 million in funding has been provided under the July 2020 “Special Budget” to extend the Trial into the 2021-22 financial year.

The Trial consists of two stages. Firstly, the registration (intake) stage where clients register to access medical treatment. Secondly, the access to treatment stage where the Department of Veterans' Affairs (DVA) pays for treatment that has been provided to a person who has registered for the Trial.

The current extension of the trial was scheduled to cease 31 December 2020, with an evaluation to be provided to the Government for their consideration in the Budget context. The intake period of the Trial is being extended by a further twelve months to 1 July 2021.

Flowing from this, the provision of treatment has also been extended by twelve months to 31 December 2021, which reflects changing processing times and capacity amid unprecedented increases in claims intakes as well as workforce capacity within the COVID-19 pandemic environment. The purpose of this extension is to allow participants to continue to receive treatment while their claim is being determined.

The extension will also provide a longer period for data collection, analysis and client feedback to produce a comprehensive evaluation of the Trial. The evaluation will help inform decisions in relation to the ongoing viability of the Trial past 30 June 2021.

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.

Consultation has occurred within DVA concerning the extension of the Trial. The proposed extension continues access to the Trial and is consistent with how DVA has provided treatment under the Trial since it commenced on 1 July 2017. Consequently, the additional consultation that occurred during the development of the original beneficial legislative instrument is considered as still relevant for the purposes of the extension.

The measure implemented by this instrument is entirely beneficial in nature in terms of its impact on Australian Defence Force members and former members.

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

RETROSPECTIVITY

The determination will be taken to have commenced on 1 July 2020 in line with the provision of additional funding for the Trial and will operate from that date.

The retrospective commencement is designed to support clients who have been provided with treatment for claims made on or after that date. Treatment provided to clients who had made a claim prior to 1 July 2020 will be covered by the current instrument.

The retrospective operation of the instrument will not infringe section 12 of the *Legislation Act 2003* because the retrospective operation would not disadvantage any person or impose a liability on a person other than the Commonwealth.

DOCUMENTS INCORPORATED BY REFERENCE

None.

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 and promotes the Right to Health.

Human rights implications

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.

Overview

The instrument varies the determination to extend the intake period of the Trial by a further twelve months to 1 July 2021 and the provision of treatment by twelve months to 31 December 2021. This will allow new clients to register for treatment under the Trial during the extension period, and extend the treatment period for those people as well as existing clients.

Conclusion

The attached instrument promotes the Right to Health by extending the intake period and the provision of treatment under the Trial. DVA clients will benefit from the extension as they will be able to access medical treatment by participating in the Trial. The attached instrument

also confirms treatment is to continue under the Trial while an appeal or review is being undertaken. Accordingly, the attached instrument is considered to be “human rights compatible”

Repatriation Commission
Rule-Maker

FURTHER EXPLANATION OF PROVISIONS

See: Attachment A

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

This section provides that the name of the instrument is the *Veterans' Entitlements (Provisional Access to Medical Treatment) Amendment Determination No. 2 2020*.

Section 2

This section provides that the instrument commences on 1 July 2020.

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' Entitlements (Provisional Access to Medical Treatment) Determination 2017* is varied in accordance with the items in the Schedule to this instrument.

Schedule

Variations to the *Veterans' Entitlements (Provisional Access to Medical Treatment) Determination 2017*

Item 1

This item omits from section 4 the reference to “1 July 2020” and substitutes a reference to “1 July 2021”.

Item 2

This item omits from paragraph 7(1)(a) the reference to “1 July 2020” and substitutes a reference to “1 July 2021”.

Item 3

This item omits from subparagraph 7(1)(d)(ii) the reference to “1 July 2020” and substitutes a reference to “1 July 2021”.

Item 4

This item omits from paragraph 8(a) the reference to “1 July 2020” and substitutes a reference to “1 July 2021”.

Item 5

This item omits paragraph 9(1)(c) the reference to “31 December 2020” and substitutes a reference to “31 December 2021”.