

EXPLANATORY STATEMENT

Veterans' Affairs (Treatment Principles – Extend Eligibility for Coordinated Veterans' Care to Eligible White Card Holders) Determination 2021 (Instrument 2021 No. R14/MRCC14)

EMPOWERING PROVISIONS

For Schedule 1 of the attached instrument which varies the *Treatment Principles* (VEA Treatment Principles) — subsection 90(5) of the *Veterans' Entitlements Act 1986* (the VEA).

For Schedule 2 of the attached instrument which varies the *MRCA Treatment Principles* (MRCA Treatment Principles) — subsection 286(5) of the *Military Rehabilitation and Compensation Act 2004* (the MRCA).

PURPOSE

The attached instrument *Veterans' Affairs (Treatment Principles – Extend Eligibility for Coordinated Veterans' Care to Eligible White Card Holders) Determination 2021* (Instrument 2021 No. R14/MRCC14) makes variations to the VEA Treatment Principles and the MRCA Treatment Principles – collectively known as the Treatment Principles.

The Treatment Principles set out the circumstances in which treatment may be provided to persons who are eligible to receive treatment under the provisions of various Veterans' Affairs portfolio Acts.

These amendments:

- provide for the extension of eligibility for the provision of Coordinated Veterans' Care to eligible White Card holders who have an accepted mental health condition and have complex care needs for the chronic condition; and
- update a number of terms used within the Treatment Principles, including references to 'Aboriginal and/or Torres Strait Island Primary Health Care Workers', 'Comprehensive Care Plans', references to the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (DRCA) and references to programs run by the Department of Health.

Extension of eligibility of Coordinated Veterans' Care to eligible White Card holders with complex care needs

The Coordinated Veterans' Care Program is provided under Part 6A of the Treatment Principles. It is an initiative that aims to improve the health and the quality of life of the class of persons who are eligible for the Program by decreasing the need for unplanned hospital admissions and improve their social wellbeing.

The class of persons who are currently eligible for the program are Gold Card holders with complex care needs as a result of the diagnosis of a particular chronic health condition.

The instrument will provide for the extension of eligibility for the provision of Coordinated Veterans' Care under Part 6A of the Treatment Principles to eligible White Card holders who also have complex care needs as a consequence of an accepted mental health condition but only to those persons where it is due to the diagnosis that it is a chronic mental health condition.

Eligible White Card holders will include only those persons who are eligible for treatment under the VEA or the MRCA on the basis that they have an accepted mental health condition as a consequence of a war caused or service injury or disease.

Included in those groups will be White Card holders for whom the Military Rehabilitation and Compensation Commission has accepted liability under the DRCA and who are provided with treatment under the VEA or the MRCA for the mental health condition for which liability was accepted.

White Card holders who receive treatment for mental health conditions on a non-liability basis because they are eligible under the provisions of the *Veterans' Entitlements (Expanded Access to Non-Liability Health Care for Mental Health Treatment) Determination 2017* (Instrument 2017 No. R24) will not be eligible for the Coordinated Veterans' Care Program.

The proposal aligns with one of the key objectives of the Veteran Mental Health and Wellbeing Strategy and National Action Plan to "implement improved models of care that provide holistic, coordinated support and access to community and volunteer services, and prioritise high intensity care coordination for people with complex care needs along with more coordinated approaches for individuals presenting with mental health challenges".

Updating terms

The Treatment Principles have also been amended to:

- update references to "aboriginal health worker" to refer to "Aboriginal and/or Torres Strait Islander Primary Health Care worker" and their required registration with the Aboriginal and Torres Strait Health Islander Practice Board of Australia;
- update references to "GPMP" to "comprehensive care plan";
- replace references to the *Safety, Rehabilitation and Compensation Act 1988* with references to the DRCA; and
- update references to programs run by the Department of Health.

The instrument also corrects a minor technical error in the definition of "Coordinated Veterans' Care Program" in paragraph 1.4.1.

MERITS REVIEW

Eligibility for acceptance into the Coordinated Veterans Care' Program for White Card holders with an accepted mental health condition will automatically be granted (subject to the consent of the White Card holder) if the veteran or former ADF member meet the criteria set out in Part 6A of the Treatment Principles. The criteria are either factual, or assessed by a general practitioner. There is no scope for either

the Repatriation Commission or the Military Rehabilitation and Compensation Commission to have any discretion whether or not the veteran or former ADF member meets the criteria.

As a consequence, the application of these criteria can be categorised in accordance with the Administrative Review Council's publication '*What decisions should be subject to merits review?*' as a type of decision that is, by its nature, unsuitable for merits review or which leaves no room for merits review.

The Administrative Review Council's document can be found at the following link:

www.ag.gov.au/legal-system/administrative-law/administrative-review-council-publications

Further, the operation of the Coordinated Veterans' Care Program will not, at any level, whether in the application of the applicable eligibility criteria, or in the determination of what form of assistance will be provided to a veteran or former ADF member, result in disputable facts or involve discretionary factors which could be subject to merits review and assessed by a tribunal.

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.

The purpose of these variations to the Treatment Principles is to extend eligibility for the Coordinated Veterans' Care program to eligible White Card holders who have an accepted mental health condition and have complex care needs for the chronic condition and who would benefit from the program.

The proposed amendments will implement a 2020-2021 Budget Measure with a 1 July 2021 commencement.

Within the Department, the Client Programs Branch has been consulted extensively and the proposal which will be implemented by the Department and Services Australia.

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

RETROSPECTIVITY

None.

DOCUMENTS INCORPORATED BY REFERENCE

None.

REGULATORY IMPACT

OBPR 25978. The "proposal is unlikely to have more than a minor regulatory impact" on businesses, community organisations or individuals.

FURTHER EXPLANATION OF PROVISIONS

See Attachment A.

FURTHER EXPLANATION OF PROVISIONS

Section 1

This section sets out the name of the instrument - the *Veterans' Affairs (Treatment Principles – Extend Eligibility for Coordinated Veterans' Care to Eligible White Card Holders) Determination 2021*.

Section 2

This section provides that the instrument commences on 1 July 2021.

Section 3

This section sets out the legislative authority for the making of the variations to the Treatment Principles.

Section 4

Section 4 provides that the variations to the Treatment Principles, as outlined in each of the Schedules to the instrument, have effect.

Schedule 1 – (Variations to the Treatment Principles under the Veterans' Entitlements Act 1986)

Items 1 and 2 amend the paragraph 1.4.1 definitions of “aboriginal health worker” and “Aboriginal Health Worker Care Co-ordination treatment”.

The definitions have been updated to be more inclusive with the addition of a reference to “Torres Strait Islander” workers and the provision of “Primary Health Care”.

An “aboriginal health care worker” is to be referred as an “Aboriginal and/or Torres Strait Islander Primary Health Care worker” who is qualified to work as such if he or she has undertaken an approved course (at a Certificate Level III or higher) that has been recognised by the Aboriginal and Torres Strait Health Islander Practice Board of Australia.

Treatment provided under the Coordinated Veterans' Care Program by an “Aboriginal and/or Torres Strait Islander Primary Health Care worker” is defined as “Aboriginal and/or Torres Strait Islander Primary Health Worker Care Co-ordination treatment”

Item 3 amends the paragraph 1.4.1 definition of “Community Nurse Care Co-ordination treatment” to replace references to the provision of a “GPMP” (the care plan prepared by a general practitioner for the purposes of the Co-ordinated Veterans' Care Program) with a “Comprehensive Care Plan” (inserted by Item 4).

Item 4 inserts a definition of the term “Comprehensive Care Plan” which replaces the redundant term “GPMP”. A “Comprehensive Care Plan” is defined as a care plan prepared by a General Practitioner for an eligible person in accordance with the Notes for Coordinated Veterans' Care Program Providers (an incorporated document for the

purposes of the Treatment Principles) for participation in the Coordinated Veterans' Care Program.

Item 5 makes consequential amendments to the paragraph 1.4.1 definition of "Coordinated Veterans' Care Program to replace the reference to "*Gold Card* members of the veteran and defence force community" with a reference to "*Gold Card* holders and eligible *White Card* holders of the veteran and defence force community" and to correct a minor formatting error and to revise the terms used in the definition.

Items 6 to 22 include the further consequential amendments to the paragraph 1.4.1 definitions of "Coordinated Veterans' Care Program treatment", "entitled person", "entitled veteran", "GP Care Leadership Treatment", "Notes for Coordinated Veterans' Care Program Providers", "period of care" and "Practice Nurse Care Co-ordination treatment".

The amendments revoke the definition of "GPMP" and replaces references to it with references to the "Comprehensive Care Plan". The consequential amendments to the definitions listed also replace references to "aboriginal health worker" and "Aboriginal Health Worker Care Co-ordination Treatment" with references to "Aboriginal and/or Torres Strait Islander Primary Health Care worker" and "Aboriginal and/or Torres Strait Islander Primary Health Worker Care Co-ordination treatment".

The redundant references to the "Department of Prime Minister and Cabinet" are also removed as a consequence of the new definition of "Aboriginal and/or Torres Strait Islander Primary Health Care worker".

New definitions are included for "DRCA" and "DRCA disability" to replace the redundant references to "SRCA" and "SRCA disability" with consequential amendments to the definitions of "entitled person", "entitled veteran", "veteran", "war-caused" and "White Card".

Items 23 to 39 amend Part 6A of the Treatment Principles which provides for the Coordinated Veterans' Care Program. Under the existing criteria, only Gold Card holders who meet the criteria set out in paragraph 6A.5.1 are eligible for the Program.

The amendment to the Part 6A Outline (Principle 6A.1) removes the paragraph:

"The entitled persons are Gold Card holders with complex care needs due to diagnosis of a particular chronic condition (set out in 6A.5)."

and refers to the extended eligibility with the insertion of a revised paragraph:

"The entitled persons are:

- a Gold Card holder with complex care needs due to diagnosis of a particular chronic health condition (set out in Principle 6A.5); and
- White Card holders with an accepted mental health condition with complex care needs due to the diagnosis of that mental health condition as a chronic health condition (set out in Principle 6A.5).

The other amendments to Principle 6A.1 update the references to "aboriginal health worker" and remove references to the deleted term "GPMP".

New Principle 6A.1A is inserted for the purpose of defining the term “accepted mental health condition” as the term is to be used only in Part 6A for eligible White Card holders.

An “accepted mental health condition” is defined as being a mental health condition for which treatment can be provided under Part V of the VEA on the basis that a determination has been made that the mental health condition is due to a war-caused injury or war-caused disease.

Note 1 to the definition refers to the definition of “war-caused” as including persons with a “DRCA disability”. Persons with a “DRCA disability” may be provided with treatment under the VEA for which liability has been accepted under the DRCA.

Note 2 to the definition clarifies the eligibility of persons receiving treatment for a “mental health condition” under the “non-liability health care” arrangements. It states that veterans or eligible members who are only eligible for and in receipt of treatment for a mental health condition as a member of a class of persons specified in Part 2 of the *Veterans’ Entitlements (Expanded Access to Non-Liability Health Care for Mental Health Treatment) Determination 2017* (Instrument 2017 No. R24), as in force from time to time, as not being eligible for the Coordinated Veterans’ Care Program.

The amendments to Part 6A include consequential amendments to paragraphs 6A.2.7, 6A.2.8, 6A.4.1, 6A.4.2(a), 6A.4.3 and 6A.4.5 to update references to “aboriginal health worker” and “Aboriginal Health Worker Care Co-ordination treatment” to refer to “Aboriginal and/or Torres Strait Islander Primary Health Care worker” and “Aboriginal and/or Torres Strait Islander Health Worker Care Co-ordination treatment”.

Paragraph 6A.5.1 sets out the criteria to be met by a person with a chronic health condition in order to be eligible for acceptance into the Coordinated Veterans’ Care Program.

Subparagraph 6A.5.1(1) currently provides that the first element of the criteria for the eligibility of Gold Card holders for acceptance into the Coordinated Veterans’ Care Program is that a “general practitioner” must be of the opinion that an “entitled person” must have one or more of the listed health conditions including (at paragraph (vi)) “some other chronic condition”.

To simplify the provisions and to extend eligibility for the Program to White Card holders, paragraph 6A.5.1(1)(a) is omitted and replaced with:

- (a) in the opinion of a general practitioner treating the person the entitled person has a chronic health condition (including an “accepted mental health condition”); and

The reference to an “accepted mental health condition” will only be applicable to White Card holders.

Subparagraph 6A.5.1(2) currently provides that a person may be eligible for the Program if they are eligible for treatment under the VEA “for any injury suffered, or

disease contracted by the person”. Only the holder of a Gold Card is eligible for such treatment.

Subparagraph 6A.5.1(2) is omitted and substituted. New subparagraph 6A.5.1(2) provides that a person is eligible for the Program if they are eligible for treatment under the VEA as either a Gold Card holder or as a White Card holder with an “accepted mental health condition”.

Consequential amendments are made to subparagraph 6A.5.1(5) to clarify the reference to “comprehensive care plan” by replacing it with a reference to “Comprehensive Care Plan” and to remove the reference to “(GPMP)”.

Subparagraph 6A.6.1 is an exclusionary provision which ensures that an otherwise eligible person will not be eligible for treatment under the Program if they are (under paragraph (c)) participating in a “Coordinated Care for Patients with Diabetes” or a “Transition Care” or similar program provided by either the Department of Health or the Department of Social Services.

Paragraph 6A.6.1(c) is omitted and updated to refer to the person participating in a Department of Health “Transition Care Program”.

Consequential amendments are made to paragraphs 6A.7.1, 6A.9.4, 6A.9.5 and 6A.9.9 to update the references to “aboriginal health worker” and omit the references to “GPMP” and substitute references to “Comprehensive Care Plan”.

Items 40 and 41 amend paragraph 11.1.1 (which outlines eligibility for the Rehabilitation Appliances Program) and Note 2 to paragraph 11.1.1 to replace the redundant references to “SRCA” with references to “DRCA”.

Item 42 amends the Note to section 1 of the Transitional Provisions to update the reference to “aboriginal health worker” and to replace the references to the “Department of Prime Minister and Cabinet” with references to the “Aboriginal and Torres Strait Health Islander Practice Board of Australia”.

Schedule 2 – (Variations to the Treatment Principles under the Military Rehabilitation and Compensation Act 2004) (MRCA)

Items 1 and 2 amend the paragraph 1.4.1 definitions of “aboriginal health worker” and “Aboriginal Health Worker Care Co-ordination treatment”.

The definitions have been updated to be more inclusive with the addition of a reference to “Torres Strait Islander” workers and the provision of “Primary Health Care”.

An “aboriginal health care worker” is to be referred as an “Aboriginal and/or Torres Strait Islander Primary Health Care worker” who is qualified to work as such if he or she has undertaken an approved course (at a Certificate Level III or higher) that has been recognised by the Aboriginal and Torres Strait Health Islander Practice Board of Australia.

Treatment provided under the Coordinated Veterans' Care Program by an “Aboriginal and/or Torres Strait Islander Primary Health Care worker” is defined as “Aboriginal and/or Torres Strait Islander Health Worker Care Co-ordination treatment”

Item 3 amends the paragraph 1.4.1 definition of “Community Nurse Care Co-ordination treatment” to replace references to the provision of a “GPMP” (the care plan prepared by a general practitioner for the purposes of the Co-ordinated Veterans’ Care Program) with a “Comprehensive Care Plan” (inserted by [Item 4](#)).

Item 4 inserts a definition of the term “Comprehensive Care Plan” which replaces the redundant term “GPMP”. A “Comprehensive Care Plan” is defined as a care plan prepared by a General Practitioner for an eligible person in accordance with the Notes for Coordinated Veterans’ Care Program Providers (an incorporated document for the purposes of the Treatment Principles) for participation in the Coordinated Veterans’ Care Program.

Item 5 makes a consequential amendment to the paragraph 1.4.1 definition of “Coordinated Veterans’ Care Program to replace the reference to “*Gold Card* members of the veteran and defence force community” with a reference to “*Gold Card* holders and eligible *White Card* holders of the veteran and defence force community”.

Items 6 to 22 include the further consequential amendments to the paragraph 1.4.1 definitions of “Coordinated Veterans’ Care Program treatment”, “entitled member”, “entitled person”, “GP Care Leadership Treatment”, “member”, “Notes for Coordinated Veterans’ Care Program Providers”, “period of care” and “Practice Nurse Care Co-ordination treatment”.

The amendments revoke the definition of “GPMP” and replaces references to it with references to the “Comprehensive Care Plan”. The consequential amendments to the definitions listed also replace references to “aboriginal health worker” and “Aboriginal Health Worker Care Co-ordination Treatment” with references to “Aboriginal and/or Torres Strait Islander Primary Health Care worker” and “Aboriginal and/or Torres Strait Islander Primary Health Worker Care Co-ordination treatment”.

The redundant references to the ‘Department of Prime Minister and Cabinet’ are also removed as a consequence of the new definition of “Aboriginal and/or Torres Strait Islander Primary Health Care worker”.

New definitions are included for “DRCA” and “DRCA disability” to replace the redundant references to “SRCA” and “SRCA disability” with consequential amendments to the definitions of “entitled person”, “entitled veteran”, “veteran”, “war-caused” and “White Card”.

The wrongly placed joint definition of “service injury” and “service disease” is correctly alphabetically placed and amended to replace the references to “SRCA disability” and the “*Safety, Rehabilitation and Compensation Act 1988*” with references to “DRCA liability” and the “DRCA”.

Items 23 to 39 amend Part 6A of the Treatment Principles which provides for the Coordinated Veterans' Care Program. Under the existing criteria, only Gold Card holders who meet the criteria set out in paragraph 6A.5.1 are eligible for the Program.

The amendment to the Part 6A Outline (Principle 6A.1) removes the paragraph:

“The entitled persons are Gold Card holders with complex care needs due to diagnosis of a particular chronic condition (set out in 6A.5).”

and refers to the extended eligibility with the insertion of a revised paragraph:

“The entitled persons are:

- a Gold Card holder with complex care needs due to diagnosis of a particular chronic health condition (set out in Principle 6A.5); and
- White Card holders with an accepted mental health condition with complex care needs due to the diagnosis of that mental health condition as a chronic health condition (set out in Principle 6A.5).

The other amendments to Principle 6A.1 update the references to “aboriginal health worker” and remove references to the deleted term “GPMP”.

New Principle 6A.1A is inserted for the purpose of defining the term “accepted mental health condition” as the term is to be used only in Part 6A for eligible White Card holders.

An “accepted mental health condition” is defined as being a mental health condition for which treatment can be provided under the MRCA on the basis that a determination has been made that the mental health condition is due to a service injury or service disease.

The Note to the definition refers to the definitions of “service injury” and “service disease” as including persons with a “DRCA disability”. Persons with a “DRCA disability” may be provided with treatment under the MRCA for which liability has been accepted under the DRCA.

The amendments to Part 6A include consequential amendments to paragraphs 6A.2.7, 6A.2.8, 6A.4.1, 6A.4.2(a), 6A.4.3 and 6A.4.5 to update references to “aboriginal health worker” and “Aboriginal Health Worker Care Co-ordination treatment” to refer to “Aboriginal and/or Torres Strait Islander Primary Health Care worker” and “Aboriginal and/or Torres Strait Islander Health Worker Care Co-ordination treatment”.

Subparagraph 6A.5.1(1) currently provides that the first element of the criteria for the eligibility of Gold Card holders for acceptance into the Coordinated Veterans' Care Program is that a “general practitioner” must be of the opinion that an “entitled person” must have one or more of the listed health conditions including (at paragraph (vi)) “some other chronic condition”.

To simplify the provisions and to extend eligibility for the Program to White Card holders, paragraph 6A.5.1(1)(a) is omitted and replaced with:

- (a) in the opinion of a general practitioner treating the person the entitled person has a chronic health condition (including an “accepted mental health condition”); and

The reference to an “accepted mental health condition” will only be applicable to White Card holders.

Subparagraph 6A.5.1(2) currently provides that a person may be eligible for the Program if they are eligible for treatment under the MRCA “for any injury suffered, or disease contracted by the person”. Only the holder of a Gold Card is eligible for such treatment.

Subparagraph 6A.5.1(2) is omitted and substituted. New subparagraph 6A.5.1(2) provides that a person is eligible for the Program if they are eligible for treatment under the MRCA as either a Gold Card holder or as a White Card holder with an “accepted mental health condition”.

Consequential amendments are made to subparagraph 6A.5.1(5) to clarify the reference to “comprehensive care plan” by replacing it with a reference to “Comprehensive Care Plan” and to remove the reference to “(GPMP)”.

Subparagraph 6A.6.1 is an exclusionary provision which ensures that an otherwise eligible person will not be eligible for treatment under the Program if they are (under paragraph (c)) participating in a “Coordinated Care for Patients with Diabetes” or a “Transition Care” or similar program provided by either the Department of Health or the Department of Social Services.

Paragraph 6A.6.1(c) is omitted and updated to refer to the person participating in either a Department of Health “Transition Care Program”.

Consequential amendments are made to paragraphs 6A.7.1, 6A.9.4, 6A.9.5 and 6A.9.9 to update the references to “aboriginal health worker” and omit the references to “GPMP” and substitute references to “Comprehensive Care Plan”.

Items 40 and 41 amend paragraph 11.1.1 (which outlines eligibility for the Rehabilitation Appliances Program) and Note 1 to the paragraph to replace the redundant references to “SRCA” with references to “DRCA”.

Item 42 amends the Note to section of the Transitional Provisions to update the reference to “aboriginal health worker” and to replace the references to the “Department of Prime Minister and Cabinet” with references to the “Aboriginal and Torres Strait Health Islander Practice Board of Australia”.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Veterans' Affairs (Treatment Principles – Extend Eligibility for Coordinated Veterans' Care to Eligible White Card Holders) Determination 2021

Overview of the Determination

The purpose of the Determination is to amend the Treatment Principles which set out the circumstances in which treatment may be provided to persons who are eligible to receive treatment under the provisions of various Veterans' Affairs portfolio Acts.

The Coordinated Veterans' Care Program is provided under the Treatment Principles and is an initiative that aims to improve the health and the quality of life of those persons who are eligible for the Program by decreasing the risk of unplanned hospital admissions and improving their social wellbeing.

The amendments extend eligibility for the provision of Coordinated Veterans' Care under the Treatment Principles to eligible White Card holders who also have complex care needs as a consequence of an accepted mental health condition diagnosed as a chronic health condition.

The eligible White Card holders will be those persons who are eligible for treatment under the VEA or the MRCA on the basis that they have an accepted mental health condition as a consequence of a war caused or service injury or disease.

The extension of eligibility aligns with one of the key objectives of the Veteran Mental Health and Wellbeing Strategy and National Action Plan to “implement improved models of care that provide holistic, coordinated support and access to community and volunteer services, and prioritise high intensity care coordination for people with complex care needs along with more coordinated approaches for individuals presenting with mental health challenges”.

Human rights implications

This instrument engages Article 12 of the International Covenant on Economic Social and Cultural Rights (ICESCR), specifically the right to health.

The Right to Health

The right to the enjoyment of the highest attainable standard of physical and mental health is contained in Article 12(1) of the ICESCR. The UN Committee on Economic Social and Cultural Rights (the Committee) has stated that the right to health is not a right for each individual to be healthy, but is a right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

The Committee reports that the *'highest attainable standard of health'* takes into account the country's available resources. This right may be understood as a right of access to a variety of public health and health care facilities, goods, services, programs, and conditions necessary for the realisation of the highest attainable standard of health.

Analysis

This instrument advances the right to health with eligibility for treatment under the Coordinated Veterans' Care Program as provided by the Treatment Principles being extended to White Card holders with complex care needs as a consequence of having an "accepted mental health condition".

Conclusion

This instrument is compatible with human rights as it advances the right to health.

Vicki Rundle
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