



Repatriation Commission

Veterans' Entitlements (Counselling) Extended Eligibility Determination 2021

Instrument 2021 No. R11

I, Vicki Rundle, as delegate of the Minister for Veterans' Affairs, approve for the purposes of subsection 92(1) of the *Veterans' Entitlements Act 1986*, the arrangement between the Repatriation Commission and "Open Arms" (formerly the "Veterans and Veterans' Families Counselling Service" (VVCS)) of the Department of Veterans' Affairs whereby Open Arms is to provide counselling services for the classes of persons specified in Part 2 of the following determination.

Dated this 17th June 2021

...Vicki Rundle...

Vicki Rundle

Deputy Secretary, Veterans' and Families' Services

Department of Veterans' Affairs

The Repatriation Commission, under subsection 92(2) of the *Veterans' Entitlements Act 1986* makes the following determination.

Dated this 17th day of June 2021

The Seal of the Repatriation Commission was affixed hereto in the presence of:

Elizabeth Cosson *Kate Pope* *Donald Spinks*

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| ELIZABETH COSSON | KATE POPE | DONALD SPINKS |
| AM CSC | PSM | AM |
| PRESIDENT | DEPUTY PRESIDENT | COMMISSIONER |

Gwen Cherne *Stuart Smith*

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| GWEN CHERNE | STUART SMITH |
| | AO DSC |
| COMMISSIONER | COMMISSIONER |

Part 1 Introduction

1 Name

This instrument is the *Veterans' Entitlements (Counselling) Extended Eligibility Determination 2021*.

2 Commencement

- (1) Subject to subsection (2), this instrument is taken to have commenced on the day after it is registered.
- (2) Paragraph (o) of section 6 of Part 2 is taken to have commenced on 1 July 2017 immediately after the commencement of the *Veterans' Entitlements (Counselling) Extended Eligibility Determination (No. 2) 2017*.

3 Authority

This instrument is made under subsection 92(2) of the *Veterans' Entitlements Act 1986*.

4 Revocation

The *Veterans' Entitlements (Counselling) Extended Eligibility Determination (No. 2) 2017* is revoked.

5 Interpretation

In this instrument:

Act means the *Veterans' Entitlements Act 1986*.

accepted mental health disability, in relation to a member or former member of the Australian Defence Force who is not a veteran, member of the Forces or a member of a Peacekeeping Force, means:

- (a) a mental health disability of the person for which the Military Rehabilitation and Compensation Commission has accepted liability to pay compensation under the *Military Rehabilitation and Compensation Act 2004*; or
- (b) a mental health disability of the person for which the person has received compensation under the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*.

Note 1: A veteran, member of the Forces or a member of a Peacekeeping Force, with a mental health disability (whether a pension is paid for it or not) is eligible for counselling under s.92 of the *Act*, as affected by s.81, simply by virtue of being "a veteran".

Note 2: Section 81 of the *Act* provides that for the purposes of Part V of the *Act* i.e. the Part containing s.92 under which counselling may be provided, "veteran"

includes a “member of the Forces”, or a “member of a Peacekeeping Force”, as defined by subsection 68(1) of the *Act*.

Australian or overseas disaster zone service means service rendered by a member of the Australian Defence Force in an area in or outside Australia that, in the opinion of the *Commission*, was an area in which a natural or other disaster occurred and the service was rendered as part of the disaster relief effort.

border protection service means service rendered by a member of the Australian Defence Force in an area in or outside Australia that, in the opinion of the *Commission*, had the purpose of securing Australia’s borders against a potential or real threat by a State, person or persons.

break-up date, in relation to a former partner of a person, means the date on which a divorce-order takes effect in respect of the marriage between the former partner and the person or, as the case may be, the date on which the marriage-like relationship between the former partner and the person ceased to exist.

DRCA means the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*.

family member of a person, means:

- (a) a parent, partner, former partner, child, former child or sibling of the person; or
- (b) another person, who in the opinion of the *Commission*, should be treated as a family member of the person for the purposes of this instrument.

former child means a person who was once a child within the meaning of subsection 5F(1) of the *Act*.

Note: “Child” as defined in the *Act* means someone who has not turned 16 years or, someone who is in full-time education has not turned 25 years but does not include such a person receiving certain benefits under the *Social Security Act 1991* such as a disability support pension and carer payments – see subsection 5F(1) of the *Act*. A “former child” is, therefore, depending on their education circumstances, a child aged 16 years or over or aged 25 years or over.

former partner of a person means a person who was once a partner of the person within the meaning of subsection 5E(1) of the *Act*.

Note: “Partner” is defined in subsection 5E(1) of the *Act*, in relation to a person who is a member of a couple, to mean the other member of the couple. “Member of a couple” includes a person in a legal marriage, or in a same sex or different sex relationship, who is not living separately and apart from the other person in that marriage or relationship on a permanent basis – see subsection 5E(2) of the *Act*.

Gold Card holder means a person who has been provided by the Department with a Repatriation Health Card known as the Gold Card to indicate eligibility under *veterans affairs law* for treatment, subject to the *Treatment Principles*, for all injuries or diseases.

killed in a service-related incident, in relation to a *service member*, means:

- (a) if the *service member* was rendering defence service under the *Military Rehabilitation and Compensation Act 2004* at the time of being killed in the incident – the *service member's* death is a *service-death*; or
- (b) if the *service member* was rendering defence service under the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* at the time of being killed in the incident – the *service member's* death resulted from an injury as defined in the DRCA.

Note 1: The definition of “defence service” is the same in both Acts.

Note 2: Under the DRCA, “injury” (in s.5A of the DRCA) includes “disease” (in s.5B of the DRCA)

NLHC service member means a person in respect of whom a claim for treatment of a mental health condition on a non-liability health care basis has been accepted under the *Veterans' Entitlements (Expanded Access to Non-Liability Health Care for Mental Health Treatment) Determination 2017* as in force from time to time, or subsequent legislative instrument, as in force from time to time, that repeals and replaces that determination.

post-Vietnam War member means a *veteran* or a *service member* who has rendered any amount of continuous full time service after 11 January 1973.

Note: This definition covers a certain subset of Australian Defence Force members with post-Vietnam War service, namely “service members” as defined in this instrument and “veterans” within the meaning of section 92 of the *Act*, who have served after the Vietnam War. The date of 11 January 1973 has been chosen as the date to indicate the end of the Vietnam War.

registered DART complainant means a person who is registered and accepted to access a reparation payment or other outcome from the Defence Abuse Reparation Taskforce under the Defence Abuse Reparation Scheme.

service-death has the meaning given by section 28 and subsection 29(3) of the *Military Rehabilitation and Compensation Act 2004*.

service member means a person who is not a *veteran* under paragraph (a) of the definition of *veteran* in subsection 5C(1) of the *Act* or a member of the Forces or a member of a Peacekeeping Force but a person who is:

- (a) a member or former member of the Australian Defence Force with an *accepted mental health disability*; or
- (b) a person who, as a member of the Australian Defence Force, rendered *border protection service, Australian or overseas disaster zone service* or *submariner service*; or
- (c) a member or former member of the Australian Defence Force involved in a *training accident*; or
- (d) a person who has been medically discharged from the Australian Defence Force; or
- (e) a member of the Australian Defence Force *killed in a service-related incident*; or

(f) a veteran under paragraph (b) of the definition of veteran in subsection 5C(1) of the *Act* who satisfies subsection 37(3) of the *Act* and who is undertaking a rehabilitation program under the *Veterans' Vocational Rehabilitation Scheme*.

Note: Subsection 37(3) of the *Act* refers to a person who is a veteran by reason only of being a Commonwealth veteran, an allied veteran or an allied mariner.

SHOAMP participant means a person who is a Group 1 or Group 2 participant in the SHOAMP (Study of Health Outcomes in Aircraft Maintenance Personnel) health care scheme.

Note: A SHOAMP participant may be a family member or an ex partner (GROUP 2) of the primary participant (GROUP 1) i.e. the aircraft maintenance (aircraft fuel tank) worker.

sibling has the same meaning as it has in section 23 of the *Social Security Act 1991*.

Note: Under section 23 of the *Social Security Act 1991*, sibling, of a person, is defined to include a half-brother, half-sister, adoptive brother, adoptive sister, stepbrother or stepsister of the person, but does not include a foster-brother or a foster-sister of the person.

submariner service means service rendered by a member of the Australian Defence Force as part of the crew of a submarine of the Australian Navy.

training accident means an accident that, in the opinion of the *Commission*, occurred during a training exercise undertaken by the Australian Defence Force in which a member of the Australian Defence Force died or sustained an injury, that in the opinion of the *Commission*, was a serious injury.

Treatment Principles means the legislative instrument known as the Treatment Principles made under section 90 of the *Act*, as in force from time to time, or the legislative instrument known as the MRCA Treatment Principles made under paragraph 286(1)(a) of the *MRCA*, as in force from time to time, as the case requires.

Veterans' affairs law means an Act, or provision of an Act, that in accordance with the Administrative Arrangements Order, is administered by the Veterans' Affairs Minister.

Veterans' Affairs Minister means the Minister responsible for administering the *Veterans' Entitlements Act 1986*.

Veterans' Vocational Rehabilitation Scheme means the scheme of that name made by the Repatriation Commission under section 115B of the *Act*.

White Card holder (mental health condition) means:

- (a) a *NLHC service member*; or
- (b) a person who has been provided by the Department with a Repatriation Health Card known as the White Card for an *accepted mental health disability*.

Note: The following terms used in this instrument are defined in the Act:

child (s.5F(1))
Commission (s.5A)
Defence Force (s.5C(1))
parent (s.5F(1)); (s.10A)
partner (s.5E(1))
member of the Forces (s.68(1))
MRCA (s.5Q(1))
veteran (s.5C(1))

Part 2 Specified Class of Person

6. For the purposes of subparagraph 92(1)(a)(iii) of the *Act*, the following classes of person are specified:

(a) *service member*.

Note 1: “Veterans”, “members of the Forces” and “members of a Peacekeeping Force”, and their dependants (including former dependants), are not covered by this instrument because they may be provided with counselling under subparagraphs 92(1)(a)(i) and (ii) of the *Act*.

Note 2: Section 81 of the *Act* provides that for the purposes of Part V of the *Act* i.e. the Part containing section 92 under which counselling services are provided, “veteran” includes a “member of the Forces”, or a “member of a Peacekeeping Force”, as defined by subsection 68(1) of the *Act*.

(b) *NLHC service member*.

(c) *Registered DART complainant*.

(d) *SHOAMP participant*.

(e) *child* of a *service member* who is dependent on the *service member*.

(f) *family member* of a *service member* killed in a *service-related incident*.

(g) *family member* of a *veteran* killed in a *service-related incident*.

(h) *family member* of a current or former member of the Australian Defence Force where the member has died by suicide or suspected suicide.

(i) *family member* of a *registered DART complainant*.

(j) *former child* or *former partner* of a *post-Vietnam War member* or a *former child* or *former partner* of a deceased *post-Vietnam War member*.

(k) *partner* or *former partner* of a *Gold Card holder*.

(l) *child* or *former child* of a *Gold Card holder*.

(m) *partner* or *former partner* of a *White Card holder (mental health condition)*.

- (n) *child or former child of a White Card holder (mental health condition).*
- (o) *partner or former partner of a veteran or a person within a class specified in paragraph 6(a), 6(b) or 6(c).*

7. A *former partner* is eligible for counselling services:

- (a) for a period of 5 years commencing on the *break-up date*; or
- (b) if the *former partner* has co-parenting responsibility with the *veteran* or person in the class specified in paragraph 6(a), 6(b) or 6(c) in respect of a child aged 18 or younger, for the period of the duration of that co-parenting responsibility.