

REPLACEMENT EXPLANATORY STATEMENT

Veterans' Entitlements Act 1986

Issued by the Repatriation Commission

Veterans' Entitlements (Point Cook Firefighters) Determination 2021

Instrument 2021 No. R40

EMPOWERING PROVISION

Subsection 88A(1) of the *Veterans' Entitlements Act 1986* (VEA).

PURPOSE

The 2021-22 Budget announced a range of support measures for Australian Defence Force (ADF) Firefighters who served at Royal Australian Air Force (RAAF) Base Point Cook between 1 January 1957 and 31 December 1986 under the Budget measure "Supporting Australian Defence Force firefighters".

This Budget measure recognises this group has been directly exposed to a wide range of hazardous (and at times unknown) substances during fire suppression training, at a time when personal protective equipment was not of the same standard available today. Section 88A of the *Veterans' Entitlements Act 1986* (the VEA), which is the authority for the making of this Determination, allows the Repatriation Commission to determine that persons who are not necessarily a veteran, or was or who is a dependant of a veteran, who is in a specified class is eligible to be provided with treatment of a specified kind under Part V of the Act. This Determination implements the Budget measure "Supporting Australian Defence Force Firefighters" and specifies Point Cook firefighters who were at the RAAF Base Point Cook between 1 January 1957 and 31 December 1986 as the specified class of persons being eligible to be provided with the treatment specified in the determination.

This Determination provides for Point Cook firefighters to receive treatment as a part of a preventative health strategy, including colorectal and melanoma screening. In addition, this Determination provides for treatment for the Point Cook firefighters through participation in a Healthy Lifestyle Program. Being the specified class of persons, these Point Cook firefighters are eligible to receive the specified treatment under subsection 5(2) of this Determination, and there is no specified discretion for the Commission not to provide the specified treatment if the person satisfies the eligibility criteria as specified in subsection 5(1), subject to the availability of the group program in the person's local area.

Specified Class of Persons – Firefighter (subsection 5(1) of the Determination)

This Determination provides that 'firefighters' are specified as a class of persons. Under section 4 of the Determination, 'firefighter' means a person who served as a firefighter, or participated in a firefighting training course; or was an instructor of a firefighter training course at RAAF Base Point Cook between 1 January 1957 and 31 December 1986.

Treatment of a Specified Kind - Healthy Lifestyle Program (paragraphs 5(2)(a) and (b) of the Determination)

Point Cook firefighters as specified in subsection 5(1) will be eligible for treatment through the Healthy Lifestyle Program (also known as the Heart Health Program).

The Heart Health Program was established in 2000 and is designed to address the types of health issues identified in the 1999 Vietnam Veterans Health Studies. The program covers a range of topics including setting healthy goals, eating well, lowering alcohol consumption, improving sleep quality, stress management, diabetes, taking care of your body, solving problems, managing your weight and maintaining a healthy heart.

The program is offered in two formats of which a participant chooses one (subject to both forms being available in their local area):

- the Heart Health Group Program; or
- the Individual Heart Health Program.

Both forms run over 12 months (52 weeks). The program includes free weekly tailored exercise sessions and 12 health education seminars over the course of the year.

Both forms of the program include:

- access to a team of health and fitness experts to provide support;
- custom food diary reviews by a nutritionist; and
- a participant manual.

Notwithstanding the individual's choice of program if both options are available, accessibility to a group program may be limited in a particular region or location if there are insufficient participants available to form a group. If a group program is available in a regional or metro area, then an ADF Firefighter scheme participant has the option to access a group program. If not, the ADF Firefighter scheme participant will have access to an individual health program. There is no significant advantage or disadvantage with regard to accessing a group or individual health program as both have the same health objectives and general content.

Heart Health Group Program

This program is delivered in locally formed groups of approximately 10-15. It is typically held at a local Recreation Centre or Health Club. The group meets at a designated gym for weekly activity sessions and educational seminars. Experienced exercise and health professionals provide the participants with a structured and supervised fitness training schedule.

The Department of Veterans' Affairs (DVA) has made an arrangement with a provider to deliver the Heart Health Program. Accessibility to a group program is dependent on a sufficient number of eligible persons in a particular region or location being able to form a group. As mentioned above, if a group program is available in a regional or metro area then a firefighter has the option to access a group program. If not, the firefighter will need to access an individual health program.

Heart Health Individual Program

The Individual Program is suitable for those who are looking for a customised individual program or who are unable to participate in a Group Program, in areas where local groups of 10-15 cannot be formed. Program content is delivered via phone, internet and written correspondence over a 12-month period with participants having their physical activity program and health education modules tailored to their specific needs.

Participants are supported by an experienced health coach and their GP's guidance throughout the program. The health coach will conduct fortnightly sessions via the phone and tailor a program specifically for the individual. Under the guidance of the health coach, participants in the program are supported to obtain exercise equipment and gym memberships, as appropriate for their individual circumstances.

Treatment of a Specified Kind – Colorectal and Melanoma Screening (paragraphs 5(2)(c) and (d) of the Determination)

Point Cook firefighters will be eligible for treatment through the specified types of cancer screening. This is a General Practitioner (GP)-based program which provides participants with access to cancer screening that provides early detection for colorectal cancer and melanoma.

Two screening options are available for colorectal cancer screening. An eligible client's GP will determine which option is best, either a faecal occult blood test or a colonoscopy.

Melanoma screening is undertaken either through an examination by an eligible client's GP, or through dermoscopy or dermatoscopy and/or total body digital photography.

Clients must register for this program before undertaking screening and this will be done by contacting the Department. After an eligible client has been registered they will receive a letter of authority to show their GP to enable the Cancer Screening.

FURTHER EXPLANATION OF PROVISIONS

Further details of the attached instrument are set out in Attachment A.

COMMENCEMENT

These measures are to commence on 20 September 2021.

REPLACEMENT EXPLANATORY STATEMENT

This Replacement Explanatory Statement is made following engagement with the Secretariat of the Senate Standing Committee for the Scrutiny of Delegated Legislation (the Senate Committee).

The Senate Committee assesses legislative instruments against the scrutiny principles set out in Senate standing order 23. The Secretariat sought clarification on the operation of the Health Program and the Commission's discretion in relation to the provision of treatment specified in the Determination, in particular access to an individual or group Health program.

MERITS REVIEW

As discussed, section 88A of the *Veterans' Entitlements Act 1986* (the VEA), which is the authority for the making of this Determination, allows the Repatriation Commission to determine that persons who are not necessarily a veteran, or was or who is a dependant of a veteran, who is in a specified class is eligible to be provided with treatment of a specified kind under Part V of the Act. This Determination implements the Budget measure "Supporting Australian Defence Force Firefighters" and specifies Point Cook firefighters who were at the RAAF Base Point Cook between 1 January 1957 and 31 December 1986 as the specified class of persons being eligible to be provided with the treatment specified in the determination. If a person meets the eligibility criteria, that of being a Point Cook firefighter who were at that specific location during the specified period, the Commission has no discretion to refuse to provide specified treatment to that person, subject to the availability of the group Heart Health Program in the particular location that the person wishes to access. The eligibility criteria are as specified in subsection 5(1) of the Determination.

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 Department of Veterans' Affairs has consulted with Mr Carl Schiller, National President, Air Force Association and other key ex-serving Point Cook firefighters during 2020 and 2021. Feedback has been positive with representatives satisfied with the proposed scheme. Representatives have not identified any issues with the scheme.

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

RETROSPECTIVITY

Not applicable.

DOCUMENTS INCORPORATED BY REFERENCE

None.

REGULATION IMPACT STATEMENT

The Office of Best Practice Regulation has confirmed that a Regulation Impact Statement is not required (OBPR ID 43592).

Statement of Compatibility with Human Rights

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

Veterans' Entitlements (Point Cook Firefighters) Determination 2021

This legislative instrument is compatible with the human rights and freedoms recognised or declared by the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The *Veterans' Entitlements Act 1986* (VEA) provides for pensions by way of compensation, social security payments and benefits for certain veterans and their dependents. In addition the VEA also provides for treatment of medical conditions for certain veterans, their dependents and in some cases other persons.

In the *Veterans' Entitlements (Point Cook Firefighters) Determination 2021* (Determination) the Repatriation Commission (Commission) has made a determination in writing that provides that a specified class of veterans and other persons (Point Cook Firefighters) may receive specified classes of treatment as outlined in the determination.

The Determination specifies that Point Cook Firefighters, that is persons who served in the Australian Defence Force as a firefighter, or participated in a firefighting training course, or was an Instructor of a firefighting training course at the Royal Australian Air Force (RAAF) Base Point Cook Fire Training School between 1 January 1957 and 31 December 1986, may receive the specified classes of treatment.

The Determination specifies that the Point Cook Firefighters may receive screening for melanomas and colorectal cancer. In addition the Determination also specifies that the Point Cook Firefighters may be eligible to participate in a 12 month program aimed at improving physical health.

The purpose of the Determination is to implement the 2021-22 Budget measure for ADF Firefighters who served at RAAF Base Point Cook between 1 January 1957 and 31 December 1986.

This group has been directly exposed to a wide range of hazardous (and at times unknown) substances during fire suppression training, at a time when personal protective equipment was not of the same standard available today. The measure recognises a potential for health effects from occupational exposures.

Human rights implications

Article 12(1) of the *International Covenant on Economic Social and Cultural Rights* provides for right of everyone to enjoyment of the highest attainable standard of physical and mental health. Article 12(2)(c) provides steps taken by the State Parties [...] to achieve the full realisation of this right [...] include those necessary for the 'prevention, treatment and control of epidemic, endemic, occupational and other diseases'.

The Determination provides eligible persons access to preventative health measures which includes ongoing screening for certain types of cancer and a 12 month (52 week) training

program which includes access to a team of health and fitness experts and to provide support and tailored exercise training.

If the cancer screening indicates the eligible person has cancer, then compensation and further treatment can be provided to them under the *Safety, Rehabilitation and Compensation (Defence-related) Claims Act 1986*.

Conclusion

The attached instrument promotes the *Right to Health* by providing a class of persons (Point Cook Firefighters) with access to specified treatment, including preventative health measures.

This legislative instrument is compatible with human rights.

Repatriation Commission

Rule-Maker

FURTHER EXPLANATIONS OF PROVISIONS

Veterans' Entitlements (Point Cook Firefighters) Determination 2021

Section 1

This section sets out the name of the instrument – the *Veterans' Entitlements (Point Cook Firefighters) Determination 2021*.

Section 2

This section provides that the instrument will commence on 20 September 2021.

Section 3

This section sets out the empowering provisions in the primary legislation that authorises the making of this instrument – paragraph 88A(1)(d) of the *Veterans' Entitlements Act 1986*.

Section 4

This section provides for the interpretation provision. It defines the terms in the instrument, including importantly the definition of who is a 'firefighter' for the purposes of this determination. A 'firefighter' means a person who service as a firefighter, or participated in a firefighter training course, or was an instructor of a firefighter training course at RAAF Base Point Cook between 1 January 1957 and 31 December 1986.

Section 5

Subsection 5(1) determines, for the purpose of paragraph 88A(1)(d) of the VEA, the class of persons who are eligible for the specified kinds of treatment under subsection 5(2).

If the person is one of those persons specified in subsection 5(1) of the Determination, then that person is eligible and can be provided with treatment specified in this determination at subsection 5(2). The class of persons is a **firefighter**, which is defined in section 4.

There is no discretion that the person would not be provided with the treatment specified in subsection 5(2), they are either eligible to the treatment or they are not, subject to limitations or meeting other requirements (if any) in relation to the particular treatment. If a person meets the eligibility criteria, that of being a Point Cook firefighter who were at that specific location during the specified period, the Commission has no discretion to refuse to provide specified treatment to that person, subject to the availability of the group Heart Health Program in the particular location that the person wishes to access.

Subsection 5(2) specifies four kinds of treatment available to an eligible firefighter for the purposes of paragraph 88A(1)(d) of the VEA.

Paragraph 5(2)(a) – Group Program

Paragraph 5(2)(a) provides that an eligible person may be provided treatment in the form of a one-off Healthy Lifestyle (Heart Health) 12 month group program aimed at improving physical health that includes:

- (i) weekly group exercise sessions; and

- (ii) monthly health education seminars; and
- (iii) access to a team of health and fitness experts; and
- (iv) custom food diary reviews by a nutritionist; and
- (v) a participant manual

Paragraph 5(2)(b) – Individual Program

Paragraph 5(2)(b) provides that an eligible person may be provided treatment in the form of a one-off Health Lifestyle (Heart Health) 12 month individual program aimed at improving physical health that includes:

- (i) a personalised exercise program; and
- (ii) exercise resources; and
- (iii) fortnightly health articles; and
- (iv) fortnightly phone sessions with a health coach; and
- (v) access to monthly health education seminars; and
- (vi) custom food diary reviews by a nutritionist; and
- (vii) a participant manual

Paragraph 5(2)(c) – Colorectal Cancer Screening

Paragraph 5(2)(c) provides that an eligible person may be provided treatment in the form of colorectal screening.

Two screening options are available, either a faecal occult blood test or a colonoscopy. An eligible person's General Practitioner will determine which option is best for them.

Paragraph 5(2)(d) – Melanoma Screening

Paragraph 5(2)(d) provides that an eligible person may be provided treatment in the form of melanoma screening.

Three screening options are available:

- (i) an examination by a general practitioner;
- (ii) dermoscopy or dermatoscopy; and
- (iii) total body digital photography.

An eligible person's General Practitioner or specialist will determine which method or combination of methods are the best option for the eligible person.