

# EXPLANATORY STATEMENT

## **Military Rehabilitation and Compensation (Non-liability Rehabilitation Pilot) Determination 2021**

(Instrument 2021 No. MRCC43)

### **EMPOWERING PROVISION**

Subsection 53D(1) of the *Military Rehabilitation and Compensation Act 2004* (MRCA).

### **PURPOSE**

The proposed instrument, the *Military Rehabilitation and Compensation (Non-liability Rehabilitation Pilot) Determination 2021* (Instrument 2021 No. MRCC43), implements the 2021-2022 Budget measure to establish a non-liability rehabilitation pilot (the Pilot), due to commence on 1 January 2022.

The Pilot is able to proceed as a consequence of the amendments made by the *Veterans' Affairs Legislation Amendment (Exempting Disability Payments from Income Testing and Other Measures) Act 2021* which provides funding of \$2.3 million for a two year program to provide access to vocational and psychosocial rehabilitation, for certain veterans without the requirement for any liability claim to be lodged. It is expected that one hundred veterans will be involved in each year of the Pilot.

The Pilot has been established in response to Recommendation 6.3 of the Productivity Commission report, *A Better Way to Support Veterans* which proposed that consideration be given to providing rehabilitation on a non-liability basis across the interval from Australian Defence Force (ADF) service to determination of claims post-service.

The Pilot builds on the outcomes and lessons learnt from the Accelerated Access to Rehabilitation Pilot (AARP). The AARP was a 2017-2018 Budget measure which provided early access to veterans pending determination of their liability claim for certain medical conditions.

Currently, a veteran under the *Military Rehabilitation and Compensation Act 2004* (MRCA) or the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (DRCA) must have a liability claim accepted, or be eligible for Veteran Payment, before Department of Veterans' Affairs (DVA) rehabilitation can be provided.

The Pilot will target MRCA or DRCA veterans who identify a requirement for rehabilitation, who have not yet participated in DVA rehabilitation and are not in receipt of incapacity compensation payments. The target group will include transitioning ADF members and other vulnerable groups on a needs basis. Participation will be by an 'opt-in' model, with informed consent of the veteran.

The core processes of assessment, planning and delivery of activities to achieve goals will be consistent between the pilot and current DVA rehabilitation. Veterans

participating in the pilot will have interactions with a contracted DVA rehabilitation provider to develop a rehabilitation plan for a set duration, and streamlined arrangements to assist with matching goals with appropriate activities from a pre-approved schedule of services.

The Pilot participants will have concurrent but discrete support if they need to progress a MRCA or DRCA compensation claim while participating in the pilot. A veteran who has a liability claim accepted during the pilot will transfer to the 'standard' rehabilitation services offered by DVA.

## **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 proposal implements a 2021-2022 Budget measure which was announced by the Minister on 11 May 2021.

The Pilot has been established in response to a recommendation made by the Productivity Commission in its report, *A Better Way to Support Veterans* and builds on the outcomes and lessons learnt from the Accelerated Access to Rehabilitation Pilot (AARP) which commenced in 2017.

For the purposes of the instrument that implemented that pilot, consultation had taken place with the Department of Education, the Department of Employment, the Department of Human Services, Treasury and the Department of Social Services.

The Pilot being implemented by this instrument is entirely beneficial in nature in terms of its impact on ADF members and former members.

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

## **MERITS REVIEW**

A determination by the Military Rehabilitation and Compensation Commission (MRCC) to provide a rehabilitation program within the scope of the Non-Liability Rehabilitation Pilot under Part 2A of the Chapter 3 of the MRCA to a person, in accordance with the criteria set out in subsection 53B(1) of the MRCA, is an 'original determination' of the Commission for the purposes of subsection 345(1) of the MRCA. As decisions made under Part 2A of Chapter 3 have not been included in the list of subsection 345(2) listing of determinations which are not 'original determinations' they can be reconsidered and reviewed under the provisions of Chapter 8.

Section 345 lists which decisions of the MRCC can be considered to be an 'original determination' for the purposes of Chapter 8 of the MRCA, which provides for the reconsideration and review of an 'original determination'. Original determinations are reviewable by the Veterans Review Board (refer to section 352 of the MRCA). An application can be made to the Administrative Appeals Tribunal for a review of reviewable decisions. Reviewable decisions include decisions made by the MRCC and the VRB on an original determination (such as a decision by the VRB on an original determination and a determination by the Commission revoking, confirming or varying an original determination under subsection 350(2)).

## **RETROSPECTIVITY**

None.

## **DOCUMENTS INCORPORATED BY REFERENCE**

None.

## **REGULATORY IMPACT**

The Office of Best Practice Regulation (OBPR) in assessing the measures included in the *Veterans' Affairs Legislation Amendment (Exempting Disability Payments from Income Testing and Other Measures) Act 2021* assessed the measures as being unlikely to have more than a minor regulatory impact.

## **HUMAN RIGHTS STATEMENT**

The attached legislative instrument engages and promotes the Right to Health and the Rights of persons with a disability.

### **Human rights implications**

The instrument engages the Right to Health under article 12(1), of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Rights of persons with a disability under article 26 of the Convention on the Rights of Persons with Disabilities.

#### *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.

The instrument provides for the two year Pilot which will target MRCA or DRCA veterans who identify a requirement for rehabilitation, who have not yet participated in DVA rehabilitation and are not in receipt of incapacity compensation payments. The target group will include transitioning ADF members and other vulnerable groups on a needs basis

The provision of early access to rehabilitation services without the need to wait for a decision to be made on their claim for liability will improve the social, health and financial outcomes for veterans and their families.

#### *Rights of persons with a disability*

The rights of people 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.

The instrument enables a determined class of persons to access rehabilitation services while their claims are being processed and liability determined. This will ensure that participating clients will have their rehabilitation needs identified early and minimise the ongoing effects of injuries and illness and promote speedier recovery and return to wellbeing.

### *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](#)

## **Military Rehabilitation and Compensation (Non-liability Rehabilitation Pilot) Determination 2021**

### **Part 1 - Preliminary**

#### Section 1

This section provides that the name of the instrument is the *Military Rehabilitation and Compensation (Non-liability Rehabilitation Pilot) Determination 2021*.

#### Section 2

This is the commencement provision and provides that the instrument is to commence immediately after the commencement of Schedule 5 to the *Veterans' Affairs Legislation Amendment (Exempting Disability Payments from Income Testing and Other Measures) Act 2021*.

#### Section 3

This section sets out the empowering provision in the primary legislation that authorises the making of this instrument, that is, subsection 53D(1) of the MRCA.

#### Section 4

This section is a purpose provision. It informs readers of the legislative intent of the instrument, which is:

- to determine a class of persons eligible (subject to further selection by the Commission to be part of the pilot) for access to an approved rehabilitation program on a non-liability basis under the program established by the Commonwealth as the non-liability rehabilitation pilot; and
- to set out the limits and the conditions that will apply to an approved rehabilitation program under subsection 53C(3) of the MRCA.

The term “approved rehabilitation program” is defined in section 5 of the instrument to mean a rehabilitation program provided under section 53C of the MRCA for a person by the person’s rehabilitation authority.

The Note to section 4 informs readers that the MRCC is empowered, under paragraph 53B(1)(d) of the MRCA to determine in writing that Part 2A of Chapter 3 of the MRCA (rehabilitation programs) applies to a person who, in addition to the criteria set out in paragraphs 53B(1)(a) and (b), falls within the class determined by this instrument (paragraph 53B(1)(c) refers).

The effect of paragraph 53B(1)(d) of the MRCA is to enable the MRCC, by determination in writing, and in addition to the criteria set out in paragraphs 53B(1)(a) and (b), to select persons, from the class of persons determined by the instrument made under section 53D, to be provided with an approved rehabilitation program under the non-liability rehabilitation pilot.

#### Section 5

This is the interpretation section. It defines the terms that are used in the instrument.

Some of the terms used in the instrument are defined by reference to the meaning of the term in the MRCA.

Other terms have been defined to have a meaning which is applicable only for the purposes of the instrument. In some cases that meaning will differ from the meaning the same term would have when it is used in the MRCA.

While the term “member” will have the same meaning as in the MRCA, a “former member” has been defined for the purposes of the instrument to mean a person who is a “former member” within the meaning of the MRCA and who was a “member” at any time on or after 1 December 1988.

The remaining terms used in the instrument which are defined specifically to have a meaning which is applicable only for the purposes of the instrument include:

- *approved rehabilitation program*, defined as a “rehabilitation program” (as also defined in section 5) provided under section 53C of the MRCA for a person by the person’s rehabilitation authority;
- *participant*, defined as meaning a person who is undertaking an “approved rehabilitation program” as provided by an “approved program provider” under the non-liability rehabilitation pilot;
- *psycho-social training*, broadly defined to include but not be limited to services and activities to assist with building social connectedness and overcoming barriers to social wellbeing. A Note to the definition provides examples which include, but are not limited to, community inclusion activities, sporting clubs, hobby clubs and wellbeing activities;
- *rehabilitation program* is strictly defined as meaning a program which includes either or both psycho-social training or vocational assessment and rehabilitation provided to a member or former member under Part 2A of Chapter 3 of the Act that has been approved by the rehabilitation authority and provided by an approved program provider;
- *vocational assessment and rehabilitation*, defined as including the types of assistance set out in subsection 18D(3) of the *Military Rehabilitation and Compensation Regulations 2020*.

### Section 6

The criteria in paragraph 53B(1)(b) and subsection 53B(3) makes it clear that a determination by the MRCC to provide access to *an approved rehabilitation program* on a non-liability basis is available without the need of a person to establish acceptance of liability by the Commission for a service injury or a service disease.

Subsection 53D(1) of the MRCA empowers the MRCC by legislative instrument, to determine a class of persons for the purposes of paragraph 53B(1)(c).

Section 6 of the instrument determines, as a class of persons for the purposes of that paragraph, a member or a former member who:

- is, in the opinion of the MRCC, likely to benefit from participation in the non-liability rehabilitation pilot; and
- consents to participating in the non-liability rehabilitation pilot.

### Section 7

Paragraph 53C(3)(a) of the MRCA, provides that the conditions that will apply for the purposes of the provision of the non-liability rehabilitation program will be determined under the instrument made under section 53D.

For the purposes of paragraph 53C(3)(a) of the *Act*, the conditions under which an *approved rehabilitation program* is provided by an *approved program provider* under the non-liability rehabilitation pilot are that a participant:

- must reside in Australia; and
- is not:
  - undertaking an approved rehabilitation program under the MRCA (within the meaning of the MRCA); or
  - undertaking a rehabilitation program under section 37 of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (within the meaning of that Act); or
  - receiving, or previously received, assistance to transition into civilian work under Part 3A of the *Military Rehabilitation and Compensation Regulations 2020*.

### Section 8

Paragraph 53C(3)(b) of the MRCA, provides that the limits (whether financial or otherwise) that are applicable for the purposes of the provision of the non-liability rehabilitation program will be determined under the instrument made under section 53D.

The limits which apply to an approved rehabilitation program for a member or former member selected by the MRCC to be a participant in the non-liability rehabilitation pilot being provided by an approved program provider are set out in subsection 8(1) as described in the table below.

| <b>Limits (individual rehabilitation program)</b>   | <b>Additional limitations</b>   |
|---|---|
| An amount not exceeding \$4,000 may be allocated to pay for the cost of managing an approved rehabilitation program.                                  | Nil.  |
| An amount not exceeding \$2,500 may be allocated for psychosocial training activities.  | Includes activities such as sport/exercise membership fees, community club membership fees, and short courses that promote health and wellbeing |
| An amount not exceeding \$2,000 may be allocated for vocational assessment and rehabilitation.  | Includes the activities outlined in subsection 18D(3) of the <i>Military Rehabilitation and Compensation Regulations</i>                        |
| Duration of an approved rehabilitation program is not to exceed six months.   | Nil.  |
| A participant may elect to participate again in the non-liability rehabilitation pilot after the conclusion of their approved rehabilitation program. | The new program is not to provide the same, or substantially the same, activities that were previously provided.                                |

However, subsection 8(2) of the instrument provides that the maximum amount payable for activities under an approved rehabilitation program, the duration of an approved rehabilitation program and the activities that can be provided under an approved rehabilitation program, may be varied by the rehabilitation authority.