

# EXPLANATORY STATEMENT

## **Veterans' Affairs (Treatment Principles – Extend Support Provided Under the Psychiatric Assistance Dog Program) Amendment Determination 2022**

(Instrument 2022 No. R16/MRCC16)

### **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 Support Provided Under the Psychiatric Assistance Dog Program) Amendment Determination 2022* (Instrument 2022 No. R16/MRCC16) (the Determination) 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 will provide to eligible veterans living with post-traumatic stress disorder (PTSD) the same financial support for the upkeep of their privately sourced and suitably trained and accredited psychiatric assistance dog as is provided to veterans who had obtained a dog under the Psychiatric Assistance Dog Program (the Program) after its commencement in September 2019.

The Psychiatric Assistance Dog Program was formally announced by the then Minister for Veterans' Affairs, Darren Chester on 27 September 2019.

The level of the financial support provided and the types of expenses for the upkeep of a psychiatric assistance dog that can be reimbursed are set out in Rehabilitation Appliances Program (RAP) National Guidelines (*RAP National Guidelines*).

The *RAP National Guidelines* are incorporated by reference into the VEA Treatment Principles and the MRCA Treatment Principles as in force or existing from time to time. The definition of *RAP National Guidelines* is provided under Principle 1.4 and is listed in Schedule 1 to these Principles. Schedule 1 provides that the listed documents are incorporated by reference into the Treatment Principles in the form in which they exist from time to time.

The RAP National Guidelines are publicly available on the department's website, and can be downloaded free of charge using the following link:

<https://www.dva.gov.au/providers/rehabilitation-appliances-program-rap/rap-national-guidelines>.

The financial support will be provided to eligible veterans who were supplied with a suitably trained psychiatric assistance dog prior to 27 September 2019 or who were supplied with a dog which had commenced its training prior to that date and was subsequently supplied to the eligible veteran who must have commenced training.

### *Amendments to the Psychiatric Assistance Dog Program*

The Psychiatric Assistance Dog Program (the Program) is provided under the Department's Rehabilitation Appliances Program (RAP) as set out in Part 11 of the Treatment Principles. Veterans who are eligible for a psychiatric assistance dog must meet all of the eligibility, exclusion and suitability criteria outlined in the *RAP National Guidelines* in order to be provided with a psychiatric assistance dog.

For the purposes of the VEA Treatment Principles eligible veterans may include those veterans defined as 'entitled veterans' being those who are eligible for treatment under section 85 of the VEA, but not a person who is eligible only under subsection 85(9) of the VEA. Also included are veterans who are eligible for treatment under the VEA in accordance with a determination made under section 88A or 88B of the VEA.

For the purposes of the MRCA Treatment Principles eligible veterans may include those members defined as 'entitled members' being those members or former members as defined in section 5 of the MRCA who are entitled to treatment under Part 3 of Chapter 6 of the MRCA. Also included are members who are eligible for treatment under the MRCA under the provisions of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*.

Those persons who have been provided with a psychiatric assistance dog under the Program are eligible for the reimbursement of the costs needed to maintain its welfare. These include veterinary costs, food, insurance and reasonable costs of upkeep and maintenance.

Under the proposed amendments to the Treatment Principles entitled veterans who had obtained a privately sourced psychiatric assistance dog prior to the announcement of the commencement of the Psychiatric Assistance Dog Program on 27 September 2019 may be eligible for financial assistance for the upkeep of that dog from 1 July 2022.

To be eligible for financial assistance for the upkeep of a privately sourced psychiatric assistance dog the entitled veteran will have to undergo the same application process as is undertaken by a person who is applying for a new psychiatric assistance dog under the Program.

They will need to have been assessed by a medical health professional and meet all of the criteria set out in the Treatment Principles and the *RAP National Guidelines*.

### **MERITS REVIEW**

The *Veterans' Affairs (Treatment Principles – Extend Support Provided Under the Psychiatric Assistance Dog Program) Amendment Determination 2022* amends the Treatment Principles to insert the provisions which provide for financial support to be provided for the upkeep of privately sourced and suitably trained and accredited psychiatric assistance dogs that were supplied or were in training for the veteran prior to the implementation of the Psychiatric Assistance Dog Program on 27 September 2019.

#### *Exclusion of merits review*

It is well established that all decisions made pursuant to the Treatment Principles (either those made under VEA or the MRCA) are not subject to independent merits review.

For the purposes of the Treatment Principles, decisions made under or in connection with the new provisions of the VEA Treatment Principles are made under Part V of

the VEA which provides for the making of the legislative instrument, the VEA Treatment Principles and decisions made under the MRCA Treatment Principles are made under Part 3 of Chapter 6 which provides for the making of the legislative instrument, the MRCA Treatment Principles.

No merits review is available under the VEA in respect of decisions made under the VEA Treatment Principles and decisions made under the MRCA Treatment Principles have been specifically excluded from merits review by being excluded the definitions of 'original determination' and 'reviewable determination' under section 345 of the MRCA.

Because the relevant primary legislation which enables the making of the Determination to amend the Treatment Principles does not permit merits review of the decisions of delegates that are made under the Treatment Principles, the Determination itself cannot contain a merits review provision as it is not authorised by the relevant primary legislation.

#### *Privately sourced Psychiatric Assistance Dogs*

New paragraph 11.3.5.3A provides that the owner of a privately sourced psychiatric assistance dog will be eligible for the reasonable costs incurred with keeping a psychiatric assistance dog if they met the same conditions concerning diagnosis and treatment as an eligible veteran who was provided with a psychiatric assistance dog under the Psychiatric Assistance Dog Program.

For the purposes of the Program, paragraph 11.3.5.1 provides that an eligible veteran will be eligible for a psychiatric assistance dog if they have or have had a diagnosis of post-traumatic stress disorder and have undergone or are undergoing treatment.

In addition to meeting the eligibility criteria the eligible veteran must meet all of the other conditions set out in the Treatment Principles and the *RAP National Guidelines* before a psychiatric assistance dog is supplied under the Program.

#### *Decisions under new paragraph 11.3.5.3A*

While the provisions of new paragraph 11.3.5.3A provide the delegate of either of the Commissions with some discretion it can only be exercised after some facts about supply of the psychiatric assistance dog to the entitled veteran have been established.

It is envisaged that for most of the applications under the new provisions that the dog owners have previously been in contact with the Department and that they will be informed of the proposed amendments and advised to make a formal application for assessment under the existing criteria.

Suppliers of psychiatric assistance dogs who have a contract with the Department have also been advised of the proposed changes and have been requested to advise the owners of dogs that they had privately supplied prior to the commencement of the Program that they may be eligible for the assistance to be provided.

Decisions concerning the provision of financial support for a privately sourced psychiatric assistance dog can only be made on the basis that the eligible veteran has met the requirements set out in new paragraph 11.3.5.3A of the Treatment Principles and the *RAP National Guidelines*.

On the basis that many of the expected applicants will be known to the Department or will have been advised by the contracted provider who supplied them with a

psychiatric assistance dog there will in most instances be little discretion to be exercised by a delegate of the Commissions.

#### *Informal Review*

In line with previous amendments to the Treatment Principles, it is acknowledged that despite the lack of a formal merits review mechanism, delegates of the Commissions will informally review the eligibility of clients that provide new evidence to support new decisions under the Treatment Principles.

The important point for affected clients is that there must be sufficient evidence to support the making of a new decision.

### **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 provide eligible veterans living with post-traumatic stress disorder (PTSD) the same financial support for the upkeep of their privately sourced and suitably trained and accredited psychiatric assistance dog as is provided to eligible veterans who have received a dog under the Psychiatric Assistance Dog Program.

Within the Department, the Wellbeing Policy Branch has been consulted extensively concerning the proposal which will be implemented by the Department.

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**

*RAP National Guidelines*

### **REGULATORY IMPACT**

The earlier amendments to implement the Psychiatric Assistance Dog Program were not considered to have any regulatory impact on businesses, community organisations or individuals.

The proposed amendments are also considered not to have any regulatory impact.

### **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 Support Provided Under the Psychiatric Assistance Dog Program) Amendment Determination 2022*.

### **Section 2**

This section provides that the instrument commences on 1 July 2022.

### **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 – *Treatment Principles (No. R52/2013)*

### Item 1 inserts new paragraph 11.3.5.3A

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New paragraph 11.3.5.3A provides that the Commission may accept responsibility for the reasonable costs associated with the upkeep of a psychiatric assistance dog while the dog is in the care of the person from 1 July 2022 if the person is an entitled veteran (as defined in paragraph 1.4.1) and the veteran:

- has an accepted condition of post-traumatic stress disorder or a diagnosis of post-traumatic stress disorder from a psychiatrist (as defined in subparagraph 11.3.5.4); and
- has undergone or is undergoing treatment by a psychiatrist or a psychologist (as both are defined in paragraph 11.3.5.4) for post-traumatic stress disorder and has accessed such treatment for at least 3 months; and

the Commission is also satisfied that:

- the dog was supplied to the veteran before the commencement of the Psychiatric Assistance Dog Program on 27 September 2019; or
- in the circumstances where the dog was supplied to the veteran on or after the commencement of the Program on 27 September 2019:
  - the veteran had commenced training before that date with the dog that was subsequently supplied; or
  - the veteran had commenced training with another psychiatric assistance dog before that date and was subsequently supplied with the dog for which the reasonable costs are to be reimbursed; and
- the person has been assessed as suitable for the supply of a psychiatric assistance dog by a mental health professional (defined in subparagraph 11.3.5.4 as a psychiatrist, psychologist, a mental health occupational therapist or a mental health social worker) having regard to the factors set out in the *RAP Guidelines* for that assessment.

## **Schedule 2 – MRCA Treatment Principles (No. MRCC 53/2013)**

### **Item 1 inserts new paragraph 11.3.5.3A**

New paragraph 11.3.5.3A provides that the Commission may accept responsibility for the reasonable costs associated with the upkeep of a psychiatric assistance dog while the dog is in the care of the person from 1 July 2022 if the person is an entitled member (as defined in paragraph 1.4.1) and the member:

- has an accepted condition of post-traumatic stress disorder or a diagnosis of post-traumatic stress disorder from a psychiatrist (as defined in subparagraph 11.3.5.4); and
- has undergone or is undergoing treatment by a psychiatrist or a psychologist (as both are defined in paragraph 11.3.5.4) for post-traumatic stress disorder and has accessed such treatment for at least 3 months; and

the Commission is also satisfied that:

- the dog was supplied to the member before the commencement of the Psychiatric Assistance Dog Program on 27 September 2019; or
- in the circumstances where the dog was supplied to the member on or after the commencement of the Program on 27 September 2019:
  - the member had commenced training before that date with the dog that was subsequently supplied; or
  - the member had commenced training with another psychiatric assistance dog before that date and was subsequently supplied with the dog for which the reasonable costs are to be reimbursed; and
- the person has been assessed as suitable for the supply of a psychiatric assistance dog by a mental health professional (defined in subparagraph 11.3.5.4 as a psychiatrist, psychologist, a mental health occupational therapist or a mental health social worker) having regard to the factors set out in the *RAP Guidelines* for that assessment.

## **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 Support Provided Under the Psychiatric Assistance Dog Program) Amendment Determination 2022**

#### **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 Psychiatric Assistance Dog 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.

#### **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 assistance under the Psychiatric Assistance Dog Program being extended to those eligible veterans who have privately sourced a dog prior to the commencement of the Program.

#### **Conclusion**

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

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