

# EXPLANATORY STATEMENT

## **Veterans' Affairs (Treatment Principles – Extend Eligibility for Treatment by Allied Health Providers for Entitled Persons Receiving Residential Care) Amendment Determination 2022 (Instrument 2022 No.R29/MRCC29)**

### **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 instrument *Veterans' Affairs (Treatment Principles – Extend Eligibility for Treatment by Allied Health Providers for Entitled Persons Receiving Residential Care) Amendment Determination 2022* (Instrument 2022 No.R29/MRCC29) made 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.

Paragraphs 7.1.3 of the Treatment Principles prevented the Repatriation Commission and the Military, Rehabilitation and Compensation Commission (collectively the Commissions) from accepting financial responsibility for services listed at paragraph 7.1.2 of the Treatment Principles for a person receiving residential care if the person is a person described in paragraph 7(6)(a) of the *Quality of Care Principles 2014*, i.e.:

- “(a) a care recipient whose classification level includes any of the following:
- (i) high ADL domain category;
  - (ii) high CHC domain category;
  - (iii) high behaviour domain category;
  - (iv) a medium domain category in at least 2 domains;”.

The *Veterans' Affairs (Treatment Principles – Extend Eligibility for Allied Health Treatment to Residential Care Recipients) Determination 2020* (the Determination), amended the Treatment Principles to provide temporary eligibility for persons otherwise excluded by paragraph 7.1.3 for the following allied health and mental health services specified at paragraph 7.1.2 of the Treatment Principles:

- audiology (paragraph (a));

- diabetes educator services (paragraph (aa));
- dietetics (paragraph (b));
- chiropractic services (paragraph (c));
- exercise physiology (paragraph (dd));
- occupational therapy (paragraph (e));
- osteopathic services (paragraph (h));
- physiotherapy (paragraph (j));
- podiatry (paragraph (k));
- psychology (paragraph (l));
- social work (paragraph (m)); and
- speech pathology (paragraph (n)).

The temporary eligibility took effect on 1 July 2020 and will cease on 30 June 2022. The Determination was made as part of the Australian Government's response to recommendation three of the Royal Commission into Aged Care Quality and Safety's COVID-19 special report published on 1 October 2020.

The instrument varies paragraph 7.1C.1 in the Treatment Principles to allow the Commissions to continue to accept financial responsibility for the following services, specified at paragraph 7.1.2, for a further six months, beginning on 1 July 2022 and ending on 31 December 2022:

- occupational therapy (paragraph (e));
- psychology (paragraph (l)); and
- social work (paragraph (m)).

The variation to paragraph 7.1C.1 is a result of the Australian Government's Covid-19 response package – 'prioritising mental health', which included \$58.8 million in 2022-23 to extend the COVID-19 mental health support services available under the *Better Access initiative to psychiatrists, psychologists, and general practitioners through the Medicare Benefits Schedule* until 31 December 2022.

The variation to paragraph 7.1C.1 recognises the impacts of the COVID-19 pandemic on the mental health and wellbeing of people in residential aged care, and addresses recommendations from the Royal Commission into Aged Care Quality and Safety's COVID-19 special report. Psychology services, social work services and occupational therapy services will be provided by eligible general practitioners, psychologists, social workers or occupational therapists.

The variations to the Treatment Principles take effect on 1 July 2022.

## **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 Commonwealth has received stakeholder advice supporting the extension of psychology services, social work services and occupational therapy services for care recipients in a residential aged care facility. Due to the short timeframe in drafting this legislative instrument to implement the extension, further consultation on the drafting of the legislative instrument was not undertaken.

It is considered the requirements of section 17 of the *Legislation Act 2003* have been fulfilled.

## **MERITS REVIEW**

The extension of the provision of psychological services by eligible general practitioners, psychologists, social workers or occupational therapists to eligible residential care residents will enable the residents to access up to 20 individual psychological services each calendar year from 10 December 2020 until 31 December 2022.

Eligibility for the psychological services will be automatic for entitled persons under the provisions of Principle 7.1C. The criteria for eligibility are either factual, or assessed by a general practitioner. There is no scope for the Commissions to have any discretion whether or not the entitled person who meets the criteria is provided with psychological services under the limitations and within the period they will be available.

As a consequence, the application of the criteria and the limits to the provision of the psychological services 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.

## **RETROSPECTIVITY**

No.

## **DOCUMENTS INCORPORATED BY REFERENCE**

None.

## **REGULATORY IMPACT**

This proposal does not have any 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 (Extend Eligibility for Treatment by Allied Health Providers for Entitled Persons Receiving Residential Care) 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 – (Variations to the Treatment Principles under the Veterans' Entitlements Act 1986)**

**Item 1** omits and substitutes certain words contained in paragraph 7.1C.1 of the Treatment Principles to allow the Repatriation Commission to continue to accept financial responsibility for the following listed services received by entitled persons in residential care, in the period beginning on 1 July 2022 and ending on 31 December 2022:

- occupational therapy (paragraph 7.1.2(e));
- psychology (paragraph 7.1.2(l)); and
- social work (paragraph 7.1.2(m)).

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

**Item 1** omits and substitutes certain words contained in paragraph 7.1C.1 of the Treatment Principles to allow the Military, Rehabilitation and Compensation Commission to continue to accept financial responsibility for the following listed services received by entitled persons in residential care, in the period beginning from 1 July 2022 and ending on 31 December 2022:

- occupational therapy (paragraph 7.1.2(e));
- psychology (paragraph 7.1.2(l)); and
- social work (paragraph 7.1.2(m)).

## 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 Treatment by Allied Health Providers for Entitled Persons Receiving Residential Care) Amendment Determination 2022*

### Overview of the Determination

The purpose of the Determination is to extend the ability of the Commissions to accept financial responsibility for psychological, occupational therapy and social work services for persons in residential care.

The measure is a result of the Australian Government's Covid-19 response package – 'prioritising mental health', which included \$58.8 million in 2022-23 to extend the COVID-19 mental health support services available under the *Better Access initiative to psychiatrists, psychologists, and general practitioners through the Medicare Benefits Schedule* until 31 December 2022.

The extension recognises the impacts of the COVID-19 pandemic on the mental health and wellbeing of people in residential care, and addresses recommendations from the Royal Commission into Aged Care Quality and Safety's COVID-19 special report. Mental health services will be provided by eligible general practitioners, psychologists, social workers or occupational therapists.

### Human rights implications

This instrument engages Articles 9 and 12 of the International Covenant on Economic Social and Cultural Rights (ICESCR), specifically the rights to health and social security.

#### *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.

#### *The Right to Social Security*

The right to social security is contained in Article 9 of the ICESCR. It requires that a country must, within its maximum available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care. Countries

are obliged to demonstrate that every effort has been made to use all resources that are at their disposal in an effort to satisfy, as a matter of priority, this minimum obligation.

### Analysis

This instrument advances the right to health and the right to social security of care recipients with eligibility for treatment under the Treatment Principles of a residential aged care facility by providing for an extension of certain services that are funded by DVA at no cost to the eligible DVA client.

This will ensure that DVA clients who are care recipients of a residential care facility receive access to mental health support under the Treatment Principles in the same way as other older Australians residing in a residential care facility in recognition of the impacts of the COVID-19 pandemic and the measures taken to contain its spread.

### Conclusion

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

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