

EXPLANATORY STATEMENT

Veterans' Entitlements Treatment Principles Amendment (Outreach Program Counselling) Determination 2024

Empowering provision

Subsection 90(5) of the *Veterans' Entitlements Act 1986* (the *Act*).

Purpose

The *Veterans' Entitlements Treatment Principles Amendment (Outreach Program Counselling) Determination 2024* (the **Instrument**) amends the *Treatment Principles (No. R52/2013)* to reflect new arrangements for engaging Outreach Program Counsellors (**OPCs**) under the Open Arms – Veterans & Families Counselling program.

The Department of Veterans' Affairs is establishing a panel arrangement under which OPCs will provide Open Arms services to Clients. The Instrument amends the Treatment Principles to reflect the new panel arrangements.

Open Arms provides free and confidential counselling services for current and former serving Australian Defence Force members and their families. Open Arms provides services through a national network of multidisciplinary mental health professionals, both in dedicated Open Arms centres and by outreach partnerships with private psychologists and accredited mental health social workers, called OPCs.

Under section 84 of the Act, the Repatriation Commission may arrange for the provision of treatment for veterans and other eligible persons. Under subsection 92(1) of the Act, the Commission may, with the Minister's approval, arrange for the provision of counselling services for:

- veterans and their dependants; and
- others specified in the *Veterans' Entitlements (Counselling) Extended Eligibility Determination 2021* made under subsection 92(2) of the Act.

The Treatment Principles, made under subsection 90(4) of the Act, set out circumstances in which certain types of treatment may be provided to persons eligible under Part V of the Act. Part 7.7A of the Treatment Principles establishes the OPC element of Open Arms.

Explanation of provisions

Section 1 states the name of the Instrument.

Section 2 provides that the Instrument commences at the start of the day after registration.

Section 3 sets out the authority for the Commission making the Instrument – subsection 90(5) of the Act. The Minister then approves the Instrument made by the Commission – subsection 90(6) of the Act.

Section 4 is a standard provision used in instruments that amend or repeal other instruments. It gives effect to Schedule 1.

Schedule 1—Amendments

Item 1 omits the definition of “Australian Government’s Better Access initiative” from paragraph 1.4.1. That definition will no longer be used given the amendments made by item 3.

Item 2 amends the definition of “outreach program counselling”, as a consequence of the amendments made by item 8.

Item 3 replaces the definition of “outreach program counsellor” in paragraph 1.4.1. There are two substantive changes. First, the definition will refer to a psychologist or social worker approved by the Department or the Commission to provide OPC services under Part 7.7A of the Treatment Principles, rather than a person who does not have a written contract with the Department or the Commission for those services. Registration with the Department as an OPC (the previous process), and engagement under the OPC panel (the new process), will each be approval for this purpose.

Second, item 3 means a counsellor will be eligible to provide OPC services even if they are not eligible to provide health services under the Australian Government’s Better Access initiative. The Better Access initiative provides Medicare rebates for up to 10 allied health services per year from certain health practitioners, including psychologists and social workers.

Item 4 replaces the definition of “Principles” with an updated reference to the Treatment Principles, ie the principal instrument.

Item 5 replaces the definition of “Veterans and Veterans Families Counselling Service” or “VVCS” in paragraph 1.4.1. The substantive change is to refer to the current name of the program “Open Arms – Veterans & Families Counselling”.

Item 6 omits the definition of “VVCS criterion” from paragraph 1.4.1, which will no longer be used given the amendments made by item 8.

Item 7 amends the definition of “VVCS Provider Notes” as a consequence of the amendments made by item 8.

Item 8 substitutes paragraphs 7.7A.1, 7.7A.2 and 7.7A.3 with new paragraphs 7.7A.1 and 7.7A.2. Paragraph 7.7A.3 is repealed.

The amendments made by item 8 reflect the new OPC panel arrangement, and the fact that Open Arms eligibility is under Part V of the Act, including the *Veterans’ Entitlements (Counselling) Extended Eligibility Determination 2021*, made under subsection 92(2) of the Act.

The substantive changes are:

- to delete Note 2 to paragraph 7.7A.1, and paragraph 7.7A.3, to reflect eligibility for OPC services; and
- to remove the requirement throughout paragraphs 7.7A.1 and 7.7A.2 for a person to be an “entitled person” as defined in paragraph 1.4.1 – the person need only be an “eligible person” as defined in paragraph 1.4.1, which applies the meaning in subsection 90(8) of the Act.

Items 9 and 10 update website hyperlinks in items 25 and 26 of Schedule 1 of the Treatment Principles. Under subsection 90(7A) of the Act, the Treatment Principles

may incorporate by reference documents existing from time to time. This displaces subsection 14(2) of the *Legislation Act 2003*.

Schedule 1 of the Treatment Principles incorporates specified documents by reference to website hyperlinks. The links in items 25 and 26 of Schedule 1 are out of date. The incorporated documents are freely available at the new hyperlinks:

- item 25 – *Veterans and Veterans Families Counselling Services Outreach Program Counsellors Provider Notes* (see paragraph 1.4.1 and 7.1A.1):
<https://www.openarms.gov.au/resources/provider-resources>
- item 26 – *Veterans and Veterans Families Counselling Service (VVCS) Outreach Program Counsellor Schedule of Fees* (see paragraph 3.5.1):
<https://www.openarms.gov.au/resources/provider-resources>

Item 11 deletes items from Schedule 1 that refer to documents that will be irrelevant given the amendments made by item 3 and item 6.

Consultation

The purpose of these amendments to the Treatment Principles is to support the new OPC panel arrangement. The Department has provided information about the establishment of an OPC panel to current OPCs, prospective OPCs and other stakeholders through several channels:

1. On three occasions the Department wrote to all current OPCs explaining the transition to a panel arrangement and detailing the process to submit a tender to join the panel.
2. Three publicly advertised industry briefings were delivered about the tender process, with recordings made available through AusTender.
3. The Department wrote to the Australian Psychological Society and the Australian Association of Social Workers about the establishment of an OPC panel arrangement.
4. The Department has published information on the Open Arms website, Open Arms LinkedIn account and in Repatriation Commissioner Fegan’s newsletter.
5. The Open Arms National Advisory Committee (NAC), which includes two current OPCs and provides independent advice to the Assistant Minister for Veterans and Defence Personnel, was briefed about the changes. The Department took advice from the NAC on how to best communicate the changes to OPCs.

The Department has not actively sought feedback from external parties about the establishment of an OPC panel arrangement for the following reasons:

1. The current process for procuring OPC services is not compliant with the Commonwealth Procurement Rules (CPRs), as reported in the Department’s Annual Report 2022-23. If the Outreach Program is to continue, the Department is required to establish a procurement process that is compliant with the CPRs.
2. The most suitable procurement process to ensure compliance with the CPRs while maintaining continuity of care within the Outreach Program is an open market tender to establish an OPC panel.
3. The change is largely administrative. The scope of services offered through the Outreach Program will remain unchanged, as will the eligibility criteria to access those services.

4. Consultation with OPCs, being prospective tenderers, prior to the release of the Request for Tender to the open market could have provided an undue advantage by giving OPCs advance notice of the procurement that would not have been available to the broader market. This would be inconsistent with the Department's probity obligations.

Impact Analysis

The Office of Impact Analysis (OIA) within the Department of Prime Minister and Cabinet has been consulted about the proposed amendments. OIA considers that the proposal is unlikely to have more than a minor impact and does not require the completion of an Impact Analysis.

Statement of Compatibility with Human Rights

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

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The Instrument is compatible with the human rights and freedoms recognised or declared in the international Instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Instrument engages, and is compatible with, the right to health under article 12 of the International Covenant on Economic Social and Cultural Rights (ICESCR).

Article 12 of the ICESCR promotes the right of all individuals to enjoy the highest attainable standards of physical and mental health.

The United Nations Committee on Economic, Social and Cultural Rights has stated in General Comment 14 (2000) that health is a 'fundamental human right indispensable for the exercise of other human rights' and that the right to health is not to be understood as the right to be healthy, but rather entails 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.

Article 4 of the ICESCR provides that countries may subject economic, social and cultural rights (such as the right to health) only to such limitations 'as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.' The United Nations Committee has stated that such limitations must be proportionate and must be the least restrictive alternative where several types of limitations are available and that even where such limitations are permitted, they should be of limited duration and be subject to review.

The Instrument has no impact on the mental health services available to Open Arms clients. It does not limit access to those services.

The Instrument is compatible with the right to health in the ICESCR.