



RSL AUSTRALIA  
NON-LIABILITY HEALTHCARE  
FOR RESERVISTS

SUBMISSION

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## **Sign-off and ESO Endorsement**

This submission has the confirmed endorsement of the following ex-service organisations and veterans' advocates:

- The Returned & Services League of Australia (RSL)
- The Defence Force Welfare Association (DFWA)
- The Defence Reserves' Association (DRA)
- The Alliance of Defence Service Organisations (ADSO)
- The TPI Federation
- The RAAC Corporation
- The 4/19 Prince of Wales's Light Horse Regiment Association
- Mr Andrew Sloane - Veterans' Advocate

## Introduction

On 20 July 2022, RSL, DRA, and DFWA made a joint submission regarding the extension of provision of Non-Liability Health Care (NLHC) to all Reservists. The letter of 2 November 2022 to Major Generals Irving, Flawith and Melick, advised:

*"Given the costs and health system implications involved, extensions to eligibility for non-liability health care is a matter for consideration by Government in a Budget process. I will take your views into account if or when any deliberations occur on this matter."*

We note the details of Minister Keogh's response (copied below) and requests that the provision of Non-Liability Health Care (NLHC) for all Reservists be given consideration in the next Budget. Minister Keogh states:

*"While you mention that many reserve members may have had extensive periods of service by comparison to a member who has rendered CFTS, it is important to understand that non-liability mental health treatment is provided due to an identified health need rather than purely as recognition of service in the ADF."*

*Studies have shown that members of the full time ADF, particularly younger members who are separated for medical reasons, can struggle with the process of transition from the military and have high rates of mental illness and suicidal ideation in the years following transition. By contrast, Reserve members have an established civilian identity and career and may not experience these difficulties to the same degree.*

*It may interest you that the recent census information collected about veterans has shown that while former full time ADF members have significantly elevated rates of long-term mental health conditions, reserve members experience long term mental illness at a similar, but slightly lower rate, to the general Australian population."*

## The issues raised in this submission

### Issue 1

We strongly refute that the request for Non-Liability Health Care for all Reservists is being sought *purely as recognition of service in the ADF*.

### Issue 2

We strongly endorse the point made *"that non-liability mental health treatment is provided due to an identified health need rather than purely as recognition of service in the ADF"* and our submission makes the point that NLHC is only provided by those who have a diagnosable mental health condition.

### Issue 3

It is our submission that all members of the ADF should be treated equally in their entitlement to receive appropriate medical treatment for diagnosable mental health conditions. The rate at which they experience mental health problems is irrelevant - the issue of concern is that there are Reservists who are experiencing mental health problems.

#### Issue 4

This submission emphasises that Non-Liability Health Care (NLHC) entitlement should be extended so that all Reservists, on completion of their initial training, become entitled to receive treatment for any mental health conditions from which they are suffering. This effectively extends the existing entitlements and removes the current requirement for veterans to have at least one day of continuous full-time service (CFTS) to qualify for NLHC.

**We wish to emphasise that our submission is for all Reservists to be eligible for NLHC for mental health conditions based on the same identified health need as applies to other Reservists and Regulars.**

This document provides the information to support this submission. It deals only with NLHC provision of access to mental health treatment. This submission does not consider s85(2) access to the treatment of tuberculosis and malignant cancers.

## Submission

1. The NLHC is a safety net, underpinning the compensation schemes provided under the Veterans' Entitlements Act 1986 (VEA), Safety, Rehabilitation and Compensation (Defence-related) Claims Act 1988 (DRCA), and the Military Rehabilitation and Compensation Act 2004 (MRCA).
2. NLHC is not a part of the compensation process. If there is a causal connection between the condition/s and service, liability for the condition/s can be claimed.

### Liability for Compensation coverage following injury or illness

3. The core of a liability determination is whether the employee's proven injury or illness *'arose out of or in the course of'* Australian Defence Force employment.
4. Under the VEA, in the conflicts since World War 2, the definition of a veteran who may claim liability also includes any reservists rendering continuous full-time service in operational areas.
5. Under the DRCA, the claimant must be an 'employee' within the meaning of S5 of the SRCA. For DVA purposes, this means members of the ADF including reservists, cadets, and volunteer instructors of cadets.
6. Under the MRCA, persons provided compensation coverage are Members and former members of the ADF, including members of the Permanent Forces and the Reserves, specifically:
7. All members and former members of the permanent Navy, Regular Army and the permanent Air Force are covered for service rendered on or after the commencement day of 1 July 2004.
8. Reservists on continuous full-time service and part-time service are also covered.
9. This identifies that Reservists who served during a period covered by DRCA and/or MRCA can claim liability and hence compensation and associated benefits in relation to injury or illness which can be established as being causally related to their Defence service.

## Current NLHC Arrangements

10. All regular ADF members are eligible for *non-liability mental health treatment after serving one day*. The first period in the ADF for recruits of all services is dated from the initial military training. (Details are at Defence Force Recruiting publication DFR-RECRE139, dated 15 Nov 2022.)
11. RAN Initial Military Training for Regulars and Reservists is conducted by the RAN Recruit School at HMAS Cerberus in Western Port Bay, Victoria. Naval Reservists join general entry (regular) recruits for 3 weeks of combined training.
12. Army Initial Military Training for Regulars and Reservists is conducted by the Army Recruit Training Centre at Kapooka. The Regular residential course is 10 weeks and Reservists
13. RAAF Initial Military Training for Regulars and Reservists is conducted by 1 Recruit Training Unit at RAAF Base Wagga. A training day starts at 0600 and finishes at 2200. Reservists undertake the same 10.6 weeks course as Regulars.
14. Reservists do their initial military training at the same establishments as Regular ADF and undertake the same induction, skill, and physical training. Similar standards are required.
15. Regulars are eligible for non-liability mental health treatment after one day of the same service as Reservists complete.

## Equality for all ADF members

16. A regular member of the permanent forces of the ADF is covered by both compensation and NLHC because he/she has "signed up", not because he/she has gone on operations or gone overseas or been posted interstate. We wish to emphasize that our submission for all Reservists to be eligible for NLHC for mental health conditions is based on the same identified health need as applies to other Reservists and Regulars
17. As an adjunct to the compensation scheme for injured and ill members of the ADF, NLHC can be provided where:
  - (a) there is no causal link to service.
  - (b) there is believed to be a causal link, but it cannot be established to the satisfaction of a DVA delegate.
  - (c) there is a causal link, but an ex-member wishes to have treatment provided in such a time frame before the link can be established.
18. The fact that both the DRCA and MRCA make provision for Reservists to claim liability for injury or illness caused by service, acknowledges that these members serve in situations where they may be injured or become ill during their Defence employment.
19. A Reservist may claim compensation for service-related injury or illness as soon as he/she signs up regardless of what else he may or may not have done. It is a contradiction that a part-time Reservist may claim compensation and associated benefits but is not entitled to the demonstrated benefits of prompt and seamless access to mental health care. Not having been designated as having full-time service (or being involved in the services identified in legislative instruments) should not bar a reservist from receiving mental health care through DVA.
20. Apart from the conditions of their service, there can be additional pressures on Reservists who give up their family and social time to serve. They may have issues with non-supportive employers or direct report managers. They must maintain their fitness in their own time, unpaid. Army reservists must meet the six components of the Army Individual Readiness Notice (AIRN) and have an option to sign a statement to say they are available to be deployed each year.
21. Section 24 of the *Defence Act 1903* notes the conditions under which a Reservist can render continuous full-time service:

*A member of the Reserves is not bound to render continuous full time service unless the member:*

- (a) is involved in a period of training that requires continuous full-time service; or*
- (b) is required to render continuous full-time service after volunteering to do so (see section 26); or*
- (c) is called out under Division 3 of this Part for a period of service that is specified by the Chief of the Defence Force to be continuous full time service; or*
- (d) is called upon under Division 1 of Part IV.*



22. This identifies that a member of the Reserves may be required to render full-time continuous service - either by volunteering to do so or being called out to do so (ss24(b) and (c) refers).
23. Non-Liability Health Care (NLHC) is a safety net which should logically cover the same periods and conditions of service. Put simply, there is no apparent reason to exclude certain reservists from NLHC when they are included in the consideration of eligibility for compensation.
24. Anybody joining the ADF loses a degree of control over their own destiny. They agree to obey orders and that gives the ADF compensation schemes a unique flavour. This is true of both reservists on duty and regulars. The conditions of service are different but with advantages and disadvantages both ways.
25. No two people who join the ADF have the same military experience. Hence, it is meaningless to take the view that a reservist has a different experience from a regular. It is true, but meaningless. And it is illogical to hold that because he/she has a different experience, he/she is not entitled to NLHC. One regular soldier may have a twenty-year career, multiple operational deployments, severe personal impacts whilst another may have a three-year career, no deployments and worked in an office environment. They both are entitled to NLHC.
26. The inequity can be demonstrated by comparing three hypothetical members. One is a part-time Reservist who has had a 20- or 30-year career, has suffered substantial impact on personal affairs and has suffered loss of career opportunity because of military commitment. Second is a young person who joined the service, injured himself/herself on first day of recruit training, and is discharged medically unfit. Third is a person who has done one month of service but been discharged because "the soldier is not suited to be a soldier". Three different situations. The second two generate an entitlement to NLHC, the first doesn't.

## Royal Commission into Defence and Veteran Suicide

27. On 3 December 2021, day 5 of Block 1 hearings by the Royal Commission into Defence and Veteran Suicide, Major General Paul Irving AM PSM RFD (Ret'd), National President of the Defence Reserves Association was a member of a panel of witnesses. He stated:

*MAJOR GEN. (RET'D) IRVING: Thank you very much. My submission is clear on the background to the issue by government of the Department of Veterans' Affairs White Card. We, like Mr von Berg, think that the access to treatment for mental health is critical in reducing the incidence of self-harm.*

*I have indicated the poor record keeping within Defence. They have no idea how many Reservists have served who have not done any period of full-time service. As I have also pointed out, this was a Reserve initiative that the additional question in the most recent Census should give that information later this year.*

*But DVA, the Department of Veterans' Affairs, and sometimes the Minister for Veterans' Affairs, attempt to use that White Card as the panacea for all the mental health problems within the Australian Defence Force.*

*I have here in front of me an article from The Sun-Herald newspaper in Sydney on Sunday, 14 November. There is a big write-up about the Royal Commission and the work of the Royal Commission and some of the cases the Royal Commission will hear. It quotes a spokesperson from the Department of Veterans' Affairs, who said:*

*'Each year the government invests more than \$11.5 billion to support about 336,000 veterans and their families in Australia. This includes free mental health care for life for all veterans without the need to link that condition to their service.'*

*That's patently false. As I have indicated, there are something like 40,000 Reservists out of the 100,000 people in uniform and we don't know how many of those are actually entitled to a White Card. So there is a percentage, maybe a very large percentage, of Reservists who are not entitled to a White Card and, therefore, not entitled to mental health treatment when they have concerns. Some of these people have done more than 40 years' service in the Reserves.*

28. This raises the issue that it is quite possible that neither DVA nor Defence are aware of the extent of any mental health issues being suffered by part-time reservists and whether those Reservists are seeking appropriate support. It would be most unfortunate if these part-time Reservists were not able to access mental health care through DVA primarily because of administrative issues with Defence record keeping.
29. The 2020-2021 DVA Annual report records 103,100 living Reservists as of 30 June 2021 who have neither continuous full-time service nor qualifying service. That is, this initiative if accepted, could benefit potentially 103,100 people who have

served with the ADF:<sup>1</sup>

- More than half a million Australians (581,139) have served, or are currently serving, in the ADF
- There are 84,865 current serving members and 496,276 former serving members
- 64.8% (321,800 people) had previously served in the Regular service (of these, 47,800 people had also served in the Reserves service)
- 35.2% (174,500 people) had previously served in the Reserves service.
- The 2020-2021 DVA Annual report records
- 103,100 living Reservists as of 30 June 2021 who have neither continuous full-time service nor qualifying service.

**Table 1. Long-term health condition by type of previous ADF service (a), 2021**

	<b>Previously served in the Regular service(a)</b>	<b>Previously served in the Reserves service only. No CFTS</b>	<b>Never served in the Australian Defence Force</b>
<b>Number of members</b>	496,276	103,100	unknown
<b>Mental health(b)</b>	18.1%	9.8%	10.7%
<b>Number with Mental Health conditions</b>	89,826	<b>10,104</b>	

**Note:**

- Data from the Census and DVA provides the information for the table above
- (a) Includes all people who had served in the Regular service only and those who served in both the Regular and Reserve service.
- (b) Includes depression or anxiety

30. It should be noted that the percentages of members who are shown as suffering from Mental Health conditions are those who have self-declared at Census time. The figures have not been cross-checked with DVA data.

31. The data above indicates that there are approximately 10,000 Reservists who believe they are suffering from a mental health condition. This submission is not about recognition of Reservists – it is about ensuring they receive appropriate medical care for their mental health conditions.

<sup>1</sup> DVA Annual Report 2020-21 Appendix A Table A2

## The Minister's letter of 2 November 2022

### Point 1

32. We strongly endorse the point made *"that non-liability mental health treatment is provided due to an identified health need rather than purely as recognition of service in the ADF.* Our submission strongly refutes that the request for Non-Liability Health Care for all Reservists is being sought *purely as recognition of service in the ADF.*

### Point 2

33. We agree that, *"Studies have shown that members of the full time ADF, particularly younger members who are separated for medical reasons, can struggle with the process of transition from the military and have high rates of mental illness and suicidal ideation in the years following transition."*

34. Full-time members medically discharged would likely have higher rates of mental illness, which includes substance use disorder, painkillers etc, as this can be one of the reasons for the medical discharges in the first place. While Transition is likely to exacerbate the existing mental health condition, there is no conclusive data that transition itself is a significant cause of mental health issues.

35. It is also agreed that transition is likely easier for Reservists, *"Reserve members have an established civilian identity and career and may not experience these difficulties to the same degree."* Comparing like with like, it is likely that Reserve members who are medically discharged would also have a high proportion discharged for mental health reasons. However, there are no studies to confirm these theories.

### Point 3

*"It may interest you that the recent census information collected about veterans has shown that while former full time ADF members have significantly elevated rates of long-term mental health conditions, reserve members experience long term mental illness at a similar, but slightly lower rate, to the general Australian population."*

36. The Ex-Service community looks forward to deeper analysis of Census data for the insights it could provide. It is indeed interesting that, *"The recent census information collected about veterans has shown that while former full time ADF members have significantly elevated rates of long-term mental health conditions, reserve members experience long term mental illness at a similar, but slightly lower rate, to the general Australian population."*

37. However, the Census data does not differentiate between Reservists with different types of service e.g., CFTS or not, or served/not served on Border, or Bushfire etc and yet some Reservists to get NLHC. (While other data can be extracted from DVA reports, a lot of assumptions are required - mental health includes alcohol and substance use disorder, which can involve painkillers used to treat pain from physical injuries.) It seems quite possible that those with similar services as regulars may have similar rates.

38. Our submission makes the point that NLHC is only provided by those who have a diagnosable mental health condition and that all members of the ADF should be treated equally in their entitlement to receive appropriate medical treatment for these conditions. The rate at which they experience mental health problems is irrelevant - the issue of concern is that there are Reservists who are experiencing mental health problems. More information concerning census data has been provided in the previous page of this document

## In Summary

39. In 1974 Dr T B Millar propounded the concept of 'One Army' which would make full use of the total personnel asset available to the Army. <sup>2</sup>Since that time several initiatives have been undertaken to create a more integrated force. Most notable has been the creation of mixed ARA and GRes units, known as integrated units, and the recent standardisation of training for ARA and GRes. Whilst on duty a Reservist performs the same role, under the same conditions as a Regular member of the ADF.
40. In fact, for the past five years, the Service Chiefs have actively pursued the promotion of a 'Total Force' concept, appreciating the significant additional capability provided by their respective Reserve components in support of ADF operations. The Service Chiefs promote the structure of their Service as having full time and part time components and openly acknowledge that without the contribution of the part time component, they would not be capable of delivering the outcomes demanded by Government. The part time component has become critical to ensuring the delivery of ADF operational capability.
41. Despite the promotion of the 'Total Force' and standardisation of training, Defence Reservists are essentially the equivalent of civilian casual employees, but without some of the benefits accruing to many casual employees such as superannuation, long service leave and a loading for the intermittent nature of the work. They are not entitled to many of the conditions of service that apply to permanent members of the ADF to medical and dental care.
42. Reservists normally must maintain personal fitness AIRN in their own time, unpaid. Army reservists must meet the six components of AIRN and sign a statement to say they are available for deployment each year. As noted earlier in this report, Reservists often have additional stresses in managing their civilian employment and domestic situation.
43. Current and past members of the Reserve component of the ADF will benefit from improving equity of overall entitlement. The extension of entitlement to Non-Liability Health Care (NLHC) to include all Reservists who have completed their enlistment would be an important step in gaining that equity across the ADF.
44. Reservists who have previously served in the regular force are covered because of that regular service but the reservist who has provided efficient service (sometimes for many years) without ever having been allotted to FTD or met one of the other criteria is not.
45. The Explanatory memorandum for the *Veterans' Affairs Legislation Amendment (Budget and other Measures) Bill 2016* makes a clear statement:

*"The proposed changes will have the effect of removing administrative and financial barriers to accessing mental health care for past and present Defence Force members and will allow them to seek treatment as quickly as possible. Accessing treatment at an early stage is an important part of achieving good long-term*

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<sup>2</sup> Report March 1974/Committee of Inquiry into Citizen Military Forces. T.B. Millar

outcomes and increases the likelihood of an individual returning to a healthy and productive life.<sup>3</sup>"

46. Minister Keogh has stated:

*"Given the costs and health system implications involved, extensions to eligibility for non-liability health care is a matter for consideration by Government in a Budget process".*

**It is requested that this submission be given consideration.**

47. We note that this Government's 2021-2022 Veterans Affairs Budget Package stated:

*"Those who serve their nation by joining the Australian Defence Force (ADF) deserve access to a world class veteran support system that enables them to continue their meaningful contribution to our nation, while providing strong and stable support structures".*

*"The Department of Veterans' Affairs (DVA) has supported veterans and their families for over 100 years, and their wellbeing has always been, and continues to be, at the heart of everything it does."*

*"The Royal Commission will also provide an important opportunity for healing and to rebuild trust, unite our veteran community and restore hope."*

48. It is our submission that all members who enlisted to support their country should have equal access to important mental health care. With reference to the comment about the Royal Commission - it is an opportunity to heal and rebuild trust.

49. Minister Keogh has raised the issue of cost and health care implications. Research by this organisation (and DVA) has failed to identify just how many veterans are accessing their entitlement to non-liability health care. Indeed, before writing off a policy that could help those in need based on unknown costs, DVA may consider that it should have the data available to evaluate how many Reservists would access NLHC.

50. However, there are statistics available which indicate that liability claims for mental health conditions do not represent the bulk of liability claims. It is unlikely that a large percentage of reservists would access this service. In the interests of preserving the wellbeing of veterans and possibly saving lives, it would be money well spent.

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<sup>3</sup> EXPLANATORY MEMORANDUM - VETERANS' AFFAIRS LEGISLATION AMENDMENT (BUDGET AND OTHER MEASURES) BILL 2016





# ANNEXURE A - Relevant DVA Policy re. eligible service

## Continuous Full Time Service

### Who Meets the Criteria for Continuous Full-time Service

The information below has been copied from the DVA CLIK Policy Library:

*Most regular members of the Defence Force (Army, Navy, and Air Force) are appointed on a continuous full-time basis and thus meet the criteria. Some persons who are deemed by Ministerial Instrument to be members of the Defence Force are also deemed to have served on a continuous full-time basis.*

### Persons who do not meet the criteria

The following groups do not meet the requirement for continuous full-time service:

- Members of the citizens forces during World War 2 where service in such forces is not deemed to be continuous full-time service by ministerial instrument; and
- persons who serve part-time, (such as members of the Reserve Forces) where such service is not deemed to be continuous full-time service by ministerial instrument.

### Ministerial determinations

The Minister may make a determination under s5R of the VEA that the VEA or specific parts of the VEA, are to apply to a person or a specific group as if they had served on a continuous full-time basis. For a listing of these Determinations see Legislation Library Ministerial Determinations. (DVA staff have access to this link)

Such determinations are usually made in respect of members of the Reserve Forces who performed full-time duty in an operational area. For example, such determinations have been made in respect of members of the Reserve Forces who served in South Vietnam and the Gulf War.

Such determinations have also been made in respect of members of various philanthropic organisations. In these cases, the persons involved are both deemed to be members of the Defence Force and deemed to have served on a continuous full-time basis.

### Ministerial Determination for Certain Defence Force Personnel During WW2

Persons who served with the forces listed below generally served on a part-time basis. However, such service has been deemed to be continuous full-time service by Ministerial Instrument. Thus, a person is to be treated as a full-time member of the defence force during WW2 if they:

- served with the Citizens Military Force; or
- served with the Volunteer Defence Corp; or
- were appointment to the Royal Australian Air Force Reserve and were:
- members of a civil airline required to make flights involving risk of enemy action or risk greater than normal airline operations, or

- members of civil ground staff required for flights described above for servicing, maintaining or
- operating the aircraft involved, or
- employees of the Department of Civil Aviation stationed at a place where they were provided
- with arms and were partly or wholly responsible for local defence, or
- civil ground staff, employed by a civil airline or Department of Civil Aviation, stationed in a war
- zone outside the mainland of Australia, or
- were employed by Amalgamated Wireless (Australasia) Limited during the period of any appointment as Telegraphist Officers or while attested as Telegraphist Ratings in the Royal Australian Naval Volunteer Reserve (Immobilised).

#### Part-time reservists on extended periods of training or training camps

While training activities and training camps for reserve members may be "full time" (i.e., 9am-5pm or greater) for the period over which they run, they are not generally considered to be 'continuous full-time service'.

*Such service is only considered to meet this definition if a formal 'continuous full time service' agreement has been entered into with ADF by a reserve member prior to the service being rendered, or a ministerial determination has been made deeming a certain type of service to be continuous full time service. Where this type of agreement or determination exists, attendance at any kind of formal training is regarded as continuous full time service.*

Members during the First and Second World War who attended full time training camps and then undertook continuous full time operational service immediately after without a break in service have their training period covered as CFTS under the VEA.

For NLHC mental health purposes, the 1950s National Service scheme required members to undertake a period of fulltime service prior to a Citizen Military Force obligation. This initial period is considered to be continuous fulltime service for purposes of NLHC mental health eligibility (but does not give rise to other coverage under the VEA).

#### Service in Philanthropic Organisations

Members of the following philanthropic organisations, who provided welfare services to the Australian defence force on or after 7 December 1972, are deemed to be members of the defence force, rendering defence service.

- the Australian Red Cross
- the Campaigners for Christ-Everyman's Welfare Society
- the Salvation Army
- the Young Women's Christian Association of Australia
- the Young Men's Christian Association of Australia
- the Australian Forces Overseas Fund

## Treatment under Non-Liability Health Care (NLHC) arrangements

Who is eligible for treatment? (Information below copied from DVA CLIK)

### a. Mental health conditions

Any person who is or has been a permanent member of the Australian Defence Force (ADF), irrespective of the length of their service, when they served, or the type of service, is eligible for treatment for any mental health condition under Non-Liability Health Care (NLHC) arrangements.

Reservists who have rendered any period of continuous full-time service (CFTS), are also eligible to receive NLHC for these conditions.

Reservists without CFTS may be eligible to receive NLHC for any mental health condition if they rendered Reserve Service Days with:

- Disaster Relief Service (e.g., Operation BUSHFIRE ASSIST 2019-20, Operation COVID-19 ASSIST);
- Border Protection Service (e.g., Operation RESOLUTE); or
- Involvement in a serious service-related training accident.

A serious service-related training accident is an accident that occurred during a training exercise undertaken by Defence in which a member of the ADF died or sustained a serious injury. The person would have needed immediate treatment as an inpatient in a hospital. Some examples of serious injuries are:

- an injury that results in, or is likely to result in the loss of an eye, or total or partial loss of vision;
- a burn requiring intensive care or critical care;
- a spinal injury;
- deep or extensive cuts that cause muscle damage, tendon damage, or permanent impairment; or
- an injury that requires the amputation of a body part.

Eligibility for treatment for mental health conditions is provided under the *Veterans' Entitlements (Expanded Access to Non-Liability Health Care for Mental Health Treatment) Determination 2017 (Instrument 2017 No. R24)* made under section 88A of the Veterans' Entitlements Act 1986 (VEA).

### b. What is a mental health condition?

A mental health condition is a condition that could be assessed and diagnosed as such by a mental health professional in accordance with recognised criteria for such assessment and diagnosis.

A mental health professional capable of delivering such assessment and diagnosis includes general practitioners, psychiatrists and clinical psychologists registered with the Australian Health Practitioner Regulation Agency (AHPRA) to practise in Australia.

Medical reference materials used by Australian mental health professionals in the assessment and diagnosis of mental health conditions include:

- the DSM-5 (fifth edition of the American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders); and
- Chapter V of ICD-10-AM (the International Statistical Classification of Diseases and Related Health Problems, 10th Revision, Australian Modification).

The DSM-5 is copyrighted and available for purchase as an e-book or subscription from the American Psychiatric Association website. It is expected that relevant mental health professionals would have access to this as part of their professional practice. Members of the public may arrange to inspect a copy of DSM-5 free of charge at the Open Arms - Veterans & Families Counselling centre in their nearest capital city or in Townsville by phoning 1800 011 046. ICD-10 is available online free of charge through the World Health Organisation website.

Please note that a diagnosis is not required to access mental health treatment under Non-Liability Health Care arrangements; the above is to assist on defining a mental health condition.

- c. British nuclear test participants and British Commonwealth Occupation Force members

Australian participants in the British Nuclear Tests in Australia and members of the British Commonwealth Occupation Force in Japan at the end of World War Two are entitled to health care for any medical condition on a non-liability basis. This is provided through a Veteran Gold Card (Gold Card).

#### Applying for treatment under NLHC arrangements

To receive NLHC treatment for a specified mental health condition, an eligible person must make a request to the Department. This request can be made in writing (including via email to NLHC@dva.gov.au), in person or by phone call.

Alternatively, a person may choose to lodge an application using form D9213 Application for Health Care for Mental Health Condition(s).

To receive NLHC treatment for malignant neoplasm (cancer) or pulmonary tuberculosis, an eligible person must lodge a completed application form using D9215 Application for Health Care for Cancer (Malignant Neoplasm) or Tuberculosis. This can be lodged with the Department in person, by mail, or by email to NLHC@dva.gov.au.

Australian participants in the British Nuclear Tests in Australia and members of the British Commonwealth Occupation Force in Japan at the end of World War Two can claim for treatment through the D9056 Application for a Gold Card for Australian British Nuclear Test Participants and Australian British Commonwealth Occupation Force Participants.

If an eligible person has made a claim for compensation for a condition covered under NLHC arrangements, a determination to provide treatment under NLHC arrangements can be made without a separate application form if the client provides written consent (e.g. by email to the specified email address NLHC@dva.gov.au). This would only be relevant to provide treatment coverage prior to the claim being determined, or where a determination is made for that claim that the Commonwealth is not liable.

If a veteran has received a DVA Health Card - Specific Conditions (White Card) after

transitioning from the ADF, without claiming, they are eligible to receive NLHC mental health treatment immediately. There is no need for a transitioned member to apply for NLHC mental health treatment if they received a White Card for this reason.

### Diagnosis

A diagnosis of malignant neoplasm (cancer) or pulmonary tuberculosis must be provided to DVA prior to making a determination to grant NLHC treatment. Diagnosis of malignant neoplasm (cancer) or pulmonary tuberculosis can be made by the treating medical practitioner.

For mental health conditions, a diagnosis is not required. Proof of identity and service are required at the time of application.

Once DVA has all the required information to grant NLHC, a decision will be made and the client notified of the decision.

### Backdating of provision of treatment

Where a request is made by an eligible person, DVA will pay for treatment for the eligible condition up to three months prior to the date a request is made to the Department.

If a compensation claim is lodged and the claimant is determined to be eligible for treatment under NLHC arrangements for a condition in that claim, then DVA will pay for treatment up to three months prior to the date the claim is lodged, where the claim is lodged greater than three months after the relevant instrument came into effect.

Eligibility cannot be backdated for Australian participants in the British Nuclear Tests in Australia and members of the British Commonwealth Occupation Force in Japan at the end of World War Two.

### Continuation of eligibility for treatment

Where all required documentation has been provided, eligibility will generally continue for as long as the veteran or current or former member requires treatment.

### What type of treatment is available?

A range of treatments may be available, including treatment from a general practitioner, medical specialist, psychologist, social worker, occupational therapist, psychiatrist, hospital services, specialist PTSD programs, pharmaceuticals, or oncologist services as required to treat the condition.

### Other treatment available for veterans

- a. Open Arms - Veterans & Families Counselling Service (Open Arms)

Veterans of all wars and conflicts who served in the ADF are eligible for counselling from Open Arms. Open Arms is a specialised, free, and confidential counselling service for veterans, their wives or partners, and dependent children.

The NLHC White Card also confers eligibility to access counselling services through Open Arms.

b. Urgent hospital treatment for Vietnam Veterans

Vietnam Veterans are generally eligible for urgent hospital treatment at DVA expense for any condition.

For a veteran to be eligible for urgent treatment under subsections 85(9) and (10) of the VEA, they must have rendered continuous full-time service in the area described in item 4 or 8 of Schedule 2 (column 1) of the VEA during the period from 31 July 1962 to 11 January 1973 inclusive. They do not need to have been allotted for duty in that area.

## ANNEXURE B - DVA information re NLHC for Reservists

### Non-Liability Health Care (NLHC)

Department of Veterans Affairs (DVA) may pay for a veteran's treatment for mental health and certain physical conditions without the need to prove it was caused by their ADF service. It is referred to as Non-liability Health Care (NLHC).

*The treatment is known as "Non-Liability Health Care" because it need not be linked to a condition arising from the service of the eligible person. NLHC enables eligible persons to access treatment at the Department's expense for the specified conditions without needing to establish a link to service. Further, it is completely separate from any claim for compensation. Non-liability health care facilitates quick access to mental health treatment and encourages early intervention to stabilise and treat conditions as they arise, offering the best chance for recovery.<sup>4</sup>*

The Explanatory Memoranda also states:

*The proposed changes will have the effect of removing administrative and financial barriers to accessing mental health care for past and present Defence Force members and will allow them to seek treatment as quickly as possible. Accessing treatment at an early stage is an important part of achieving good long-term outcomes and increases the likelihood of an individual returning to a healthy and productive life.*

### What conditions are covered under NLHC

DVA covers treatment costs for all mental health conditions, such as:

- posttraumatic stress disorder (PTSD)
- depressive disorder
- anxiety disorder
- alcohol use disorder
- substance use disorder
- phobias
- adjustment disorders
- bipolar disorder

### Who is eligible under existing arrangements?

Current and former full-time members of the ADF can get free mental health treatment. This includes reservists who have at least one day of continuous full-time service (CFTS).

### What is Continuous Full-Time Service (CFTS)?

*Veterans' Entitlements Act 1986 (VEA)* section 5R(1)(b):

Continuous full-time service under the VEA means service as a permanent member of the Australian Defence Force or the equivalent in the forces of a Commonwealth or allied

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<sup>4</sup> EXPLANATORY MEMORANDUM - VETERANS' AFFAIRS LEGISLATION AMENDMENT (BUDGET AND OTHER MEASURES) BILL 2016

country. Under MRCA, it is relevant to service as a full-time reservist in the ADF for an agreed period.

### Who has Continuous Full-Time Service?

Most regular members of the Defence Force (Army, Navy, and Air Force) are appointed on a continuous full-time basis and thus meet the criteria for continuous full-time service. In addition, under sections 5R(1) (a) and (b) of the VEA, members of the Forces and civilians who would not otherwise meet the criteria can be deemed by Ministerial Instrument in to be members of the Defence Force who rendered continuous full-time service for a particular period or type of service rendered.

### Reservists who elect to serve on a continuous full-time basis

Under the *Defence Act 1903*, a member of the Reserve Forces may make a voluntary undertaking to serve on a full-time basis for an agreed period and are accepted. Service under such an arrangement meets the definition of continuous full-time service and no Ministerial determination is necessary for the service to be recognised as such.

### What effects do determinations of continuous full-time service have?

Determinations of continuous full-time service under section 5R(1) (b) of the VEA declare that the members or units of the Defence Force that are the subjects of the determinations are to be treated as if they were rendering continuous full-time service, for the purposes of any part of the VEA specified within the determinations.

This allows people who would otherwise not have met the continuous full-time service criterion for the specified part of the VEA to be deemed to have met it. They still must also meet any other criteria set out in the relevant part of the VEA before they can be eligible to access benefits and entitlements relating to that part.

People who are the subject of this type of determination are generally members of the Australian Army, Navy, and Air Force Reserves.

### Who does not have Continuous Full-Time Service?

The following groups do not meet the requirement for continuous full-time service:

- Members of the citizens forces during World War 2 where service in such forces is not deemed to be continuous full-time service by ministerial instrument; and
- *persons who serve part-time, (such as members of the Reserve Forces) where such service is not deemed to be continuous full-time service by ministerial instrument.*

### In Summary re CFTS

- CFTS is defined as:
  - Full-time service in the permanent forces of the ADF
  - A reservist who has been formally designated to be on full-time service by Defence
  - A reservist who has been called out for full-time service by the Governor General under the Defence Act
- CFTS does not include training conducted as reserve service days



- Reservists without CFTS may still be eligible if they have either:
  - Disaster Relief Service
  - Border Protection Service
  - involvement in a serious service-related training accident.
- To access NLHC for mental health issues, a veteran does not have to:
  - Prove that military service caused their mental health condition
  - Be able to provide a diagnosis to be able to make a claim
- A veteran does have to:
  - Be suffering from a mental health condition which can be diagnosed

## **ANNEXURE C - Relevant Legislation**

### **6.1 VETERANS' ENTITLEMENTS ACT 1986 - SECT 88A Commission may determine specified veterans and others are eligible to be provided with specified treatment**

Commission may determine specified veterans and others are eligible to be provided with specified treatment

(1) The Commission may, by written determination, state the following:

(a) that a veteran included in a specified class is eligible to be provided with treatment of a specified kind under this Part;

(b) that a person who is the dependant of a veteran and who is in a specified class is eligible to be provided with treatment of a specified kind under this Part;

(c) that a person who was the dependant of a veteran and who is in a specified class is eligible to be provided with treatment of a specified kind under this Part;

(d) that a person who is not covered by paragraph (a), (b) or (c) and who is in a specified class is eligible to be provided with treatment of a specified kind under this Part.

Variation or revocation

(2) The Commission may, by written determination, vary or revoke a determination under subsection (1).

Legislative instrument

(3) A determination under this section is a legislative instrument.

### **6.2 DEFENCE ACT 1903 - SECT 24 Service in the Reserves**

#### **Service in the Reserves**

A member of the Reserves is not bound to render continuous full time service unless the member:

(a) is involved in a period of training that requires continuous full time service; or

(b) is required to render continuous full time service after volunteering to do so (see section 26); or

(c) is called out under Division 3 of this Part for a period of service that is specified by the Chief of the Defence Force to be continuous full time service; or

(d) is called upon under Division 1 of Part IV.

Note: **Reserves** means the Naval Reserve, the Army Reserve and the Air Force Reserve: see subsection 4(1).

### **6.3 DEFENCE ACT 1903 - SECT 25 Training for Reserves**

#### **Training for Reserves**

Members of the Reserves must render service during training periods in accordance with the regulations.

## **6.4 DEFENCE ACT 1903 - SECT 26 Volunteer service by Reserves**

### **Volunteer service by Reserves**

(1) A member of the Reserves may volunteer to render the following for a period or periods specified by the member:

- (a) continuous full time service;
- (b) service other than continuous full time service.

(2) The Chief of the Defence Force may accept some or all of the service.

(3) The member is bound to render the service accepted by the Chief of the Defence Force.

## **6.5 DEFENCE ACT 1903 - SECT 27 Service is not a civil contract**

### **Service is not a civil contract**

No civil contract of any kind is created with the Crown or the Commonwealth in connection with a member's service in the Defence Force.

## **6.6 DEFENCE ACT 1903 - SECT 28 Governor-General may call out Reserves**

### **Governor-General may call out Reserves**

(1) The Governor-General may, by notifiable instrument, make an order (a **call out order**) calling out some or all of the Reserves for service.

Circumstances for call out order

(3) However, a call out order may only be made in circumstances (whether within or outside Australia) involving one or more of the following:

- (a) war or warlike operations;
- (b) a time of defence emergency;
- (c) defence preparation;
- (d) peacekeeping or peace enforcement;
- (e) assistance to Commonwealth, State, Territory or foreign government authorities and agencies in matters involving Australia's national security or affecting Australian defence interests;
- (f) support to community activities of national or international significance;
- (g) civil aid, humanitarian assistance, medical or civil emergency or disaster relief.

Advice to Governor-General

(4) In making or revoking a call out order, the Governor-General is to act with the advice of the Minister.

(4A) Before giving advice to the Governor-General in relation to the making or revoking of a call out order, the Minister must consult the Prime Minister.

Further orders

(8) The making of a call out order in relation to particular circumstances does not prevent the making of further call out orders in relation to those circumstances.

### **6.7 DEFENCE ACT 1903 - SECT 29 Period of service while covered by call out order**

#### **Period of service while covered by call out order**

Period specified by Chief of the Defence Force

(1) A member of the Reserves covered by a call out order is bound to render service for the period or periods specified in writing by the Chief of the Defence Force.

(2) Unless it ends earlier, and despite any specification by the Chief of the Defence Force, a period ends on the day on which the revocation of the call out order takes effect.

Other service not affected

(3) This section does not limit a requirement to render service otherwise than under this section.

### **6.8 DEFENCE REGULATION 2016**

made under the *Defence Act 1903*

**Compilation date:** 17 October 2020

Division 6—Service in the Reserves

27 Service in the Reserves

A member of the Reserves is bound to render service (including periods of training) as required by the Chief of the Defence Force.

### **6.9 Veterans' Entitlements (Expanded Access to Non-Liability Health Care for Mental Health Treatment) Determination 2017**

Instrument 2017 No. R24

made under paragraphs 88A(1)(a) and (d) of the

*Veterans' Entitlements Act 1986*

**Compilation date:** 1 July 2018

**Includes amendments up to:** F2018L00749

**Registered:** 2 July 2018

## **Part 2—Specified classes of person**

### **Veterans**

For paragraph 88A(1)(a) of the *Act*, the following class of person is specified:

A *veteran* who makes a request to be provided with treatment for a *mental health condition* to an office of the Department in Australia.

### **Past and current members of the Defence Force**

For paragraph 88A(1)(d) of the *Act*, the following class of person is specified:

A person (other than a person who is covered by paragraphs (a), (b) or (c) of section 88A of the *Act*) who:

(a) is, or has been, a member of the Defence Force rendering *continuous full-time service*; and

(b) makes a request to be provided with treatment for a *mental health condition* to an office of the Department in Australia.

### **Transitioning members of the Defence Force**

(1) For paragraphs 88A(1)(a) and (d) of the *Act*, the following class of person is specified:

A person who:

(a) is or was a member of the Defence Force rendering *continuous full-time service*; and

(b) has been issued with a *White Card* on transition from the Defence Force; and

(c) uses the *White Card* to access treatment for a *mental health condition*.

(2) A person in a class specified in subsection (1) is eligible for the treatment specified in Part 3 for a period of 3 months before the date when the treatment for the *mental health condition* is first accessed using the *White Card* referred to in paragraph 10A(1)(b).

### **Reservists with Disaster Relief Service etc.**

(1) For paragraphs 88A(1)(a) and (d) of the *Act*, the following class of person is specified:

A person who:

(a) is or was a member of the *Reserves*; and

(b) has on a *reserve service day*:

(i) rendered *border protection service*; or

(ii) rendered *disaster relief service*; or

(iii) been involved in or witnessed a *serious training accident*; and

(c) makes a request to be provided with treatment for a *mental health condition* to an office of the Department in Australia.

(2) A person who is within a class specified in subsection (1) is eligible to be provided with treatment of a kind specified in Part 3 from and including the date that is 3 months before the day on which the request to be provided with treatment is received

at an office of the Department in Australia provided that the treatment is not backdated to an earlier date than 1 July 2018.

### **Definition**

This instrument is the Veterans' Entitlements (Expanded Access to Non-Liability Health Care for Mental Health Treatment) Determination 2017.

**"continuous full-time service"** means:

(a) in relation to a member of the Defence Force:

(i) service in the Naval Forces of the Commonwealth of the kind known as continuous full-time naval service; or

(ii) service in the Military Forces of the Commonwealth of the kind known as continuous full-time military service; or

(iii) service in the Air Force of the Commonwealth of the kind known as continuous full-time air force service; or

(b) in relation to a member of the naval, military or air forces of a Commonwealth country or an allied country--service in those forces of a kind similar to a kind of service referred to in subparagraph (a)(i), (ii) or (iii).

Note: See also subsection 5R(1).

**"member of the Defence Force"** includes a person appointed for continuous full-time service with a unit of the Defence Force.

## **6.10 The Veterans' Affairs Legislation Amendment (Budget and other Measures) Bill 2016**

- proposed an extension to the existing non-liability health care (NLHC) that was being provided to certain classes of veterans by DVA.

### **The purpose of the Bill, as stated:**

*The mental health of veterans has emerged as a key issue in the Veterans' Affairs Portfolio—partly due to greater recognition and diagnoses of mental health issues amongst the veteran community and the long-term impact of previous conflicts, and partly due to the nature of recent operations making service-related psychological/psycho-social illnesses more common than other categories of injuries and illness. The prioritisation and implementation of mental health strategies has become a critical issue for the Australian Defence Force (ADF) and the DVA. In particular, efforts have been made to de-stigmatised mental health conditions and provide more effective supports.*

*Those with conditions accepted as war-caused or service-related and eligible for compensation under the VEA, MRCA or the SRCA will be entitled to health services funded by DVA including clinical psychological or psychiatric services.*

*Non-liability health care refers to coverage by DVA for health treatments without the need to establish service-causation or recognise liability for providing compensation.*

*In 2014, changes were made to non-liability health care provisions in the VEA following the 2011 Review of Military Compensation Arrangements.[32] Firstly, to include alcohol abuse disorder and substance abuse disorder as conditions that may be covered by non-liability health care. Secondly, to provide access to non-liability health care to those with peacetime service only. The expanded eligibility applied to:*

- *members of the ADF with at least three years continuous full-time peacetime service on or after 7 April 1994 (or before and on or after 7 April 1994) and*
- *members of the ADF with less than three years continuous full-time service on or after 7 April 1994 (or before and on or after 7 April 1994), who were discharged on the grounds of invalidity or mental or physical incapacity.*<sup>5</sup>

The Veterans' Affairs Legislation Amendment (Budget and Other Measures) Bill 2016 (the Bill) was to amend the *Military Rehabilitation and Compensation Act 2004* (the MRCA) and the *Veterans' Entitlements Act 1986* (the VEA) to:

- *allow for an interim incapacity payment at 100 per cent of normal earnings to be paid until information is received about an individual's Commonwealth superannuation entitlements, and their final incapacity payment rate can be determined*
- *extend access to non-liability mental health treatment to **all past and current members of the Australian Defence Force (ADF) irrespective of how long or where they served, or the type of service, and***<sup>6</sup>

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<sup>5</sup> The Veterans' Affairs Legislation Amendment (Budget and other Measures) Bill 2016

<sup>6</sup> The Veterans' Affairs Legislation Amendment (Budget and Other Measures) Bill 2016

- *align the end date for veterans' incapacity payments with the incremental increase in the Age Pension age (to 67 by 2024).*

The Bill stated:

*"All past and current members of the Australian Defence Force (ADF) irrespective of how long or where they served, or the type of service".*

This Bill did not appear to attempt to place any restriction on the access of Defence Reservists to NLHC

This proposed expanded access to non-liability care was based on a recommendation of the 2011 Review of Military Compensation Arrangements Report. The Review Committee was split on this matter:

*Committee members representing the DVA and the Australian Defence Organisation, and Mr Peter Sutherland [visiting fellow, Australian National University College of Law; an expert in workers' and military compensation] believe that non-liability health cover for all psychiatric disorders should be provided under the MRCA for former ADF members **and part-time Reservists who have served after 1 July 2004**. These Committee members also believe that this is consistent with the thrust of recommendations of recent reviews including the suicide study by Professor David Dunt, which drew particular attention to members' needs around the period of transition to discharge and did not limit consideration to those who had operational service.*

*The Committee members representing the Department of Finance and Deregulation, the Treasury and the Department of Education, Employment and Workplace Relations believe the MRCA (or Safety, Rehabilitation and Compensation Act 1988) is not an appropriate vehicle to extend non-liability health cover for all psychiatric disorders to former ADF members and part-time Reservists with peacetime service only. In principle, compensation schemes should only deal with cases where liability is established*

Schedule 2 (of the Bill) amends the VEA to remove superfluous provisions relating to eligibility for non-liability health care for mental health conditions. A 2016-17 Budget measure to extend access to non-liability mental health treatment to all past and current members of the ADF irrespective of how long or where they served, or the type of service, was implemented in August via a determination by the Repatriation Commission. The amendments in Schedule 2 are consequential to this determination and clarify the application of the VEA provisions for non-liability health care.