EXPLANATORY STATEMENT


EMPOWERING PROVISION

Section 16 of the Australian Participants in British Nuclear Tests (Treatment) Act 2006 (the Act).

PURPOSE

The attached instrument amends the Treatment Principles (Australian Participants in British Nuclear Tests) 2006 (Treatment Principles (Nuclear)).

The Treatment Principles (Nuclear) is a legislative instrument made under section 16 of the Act and sets out the circumstances in which the Repatriation Commission may accept financial liability for treatment for malignant neoplasia provided to Australian participants in British nuclear tests (entitled persons).

The attached instrument deals with:

- arrangements between the Repatriation Commission (or the Department of Veterans’ Affairs) and health care providers (the primary issue);
- treatment by diabetes educators and exercise physiologists (secondary issue).

Arrangements

Prior to the attached instrument it was a requirement of the Treatment Principles (Nuclear) that for the Repatriation Commission (Commission) to accept financial liability for certain treatment services provided by health care providers (providers) to entitled persons, the provider needed to have an arrangement with the Repatriation Commission or the Department of Veterans’ Affairs (DVA) (arrangement-requirement).

An example of a typical arrangement-requirement is as follows:
7.4.1 The Commission will accept financial responsibility for optometrical services, in respect of a condition associated with malignant neoplasia, provided to an entitled person who consults an optometrist participating in the arrangements between optometrists and the Commission entered into for the purposes of the *VEA Treatment Principles*.

Many types of arrangements are formal contracts and tended to address matters such as fees for treatment, manner of claiming fees and, in some cases, a registration system aimed at securing better services for entitled persons and facilitating accountability.

The arrangements the Repatriation Commission has with providers in respect of the provision of treatment to entitled persons for malignant neoplasia are the same arrangements the Repatriation Commission has with providers under the Treatment Principles made under the *Veterans’ Entitlements Act 1986*.

Issuing contracts to new providers and the renewal of contracts for existing providers is a huge task for DVA and likewise imposes a significant burden on busy health care providers. Accordingly DVA reviewed the situation.

It was found that the use of arrangements by the Commission/DVA was not necessary for the majority of providers and that the matters addressed in arrangements could be dealt with in the Treatment Principles (Nuclear), either directly or indirectly via incorporated documents.

Accordingly the Repatriation Commission, acting on advice from DVA, decided to remove the arrangement-requirement from the Treatment Principles (Nuclear) and regulate relationships with the relevant providers in a more prescriptive way ie in the Treatment Principles (Nuclear).

The amendments made by the attached instrument will not operate in situations where a provider still has a current arrangement/contract with the Commission or DVA as previously required by the Treatment Principles (Nuclear).

Where a current arrangement/contract is on foot, the Treatment Principles (Nuclear) will apply to the situation in the state they were in immediately before they were amended by the attached instrument. It is only when that current arrangement/contract expires (or is terminated) and the provider treats an entitled person and claims payment from DVA that the attached amendments would apply.
The reason for allowing the current arrangements/contracts to run their course, rather than terminating them, is because terminating several thousands of arrangements/contracts would impose significant demands on both providers and DVA.

_Diabetes Educators/Exercise Physiologists_

The attached instrument will introduce two new treatments for entitled persons:

- diabetes education program for entitled persons with diabetes associated with malignant neoplasia.
- exercise physiology for a condition associated with malignant neoplasia.

It should be noted that under section 80 of the Act the definition of “treatment” is very broad and means, among other things, action taken with a view to restoring a person to, or maintaining a person in, physical health.

The attached instrument enables the Repatriation Commission to accept financial liability for diabetes education services and exercise physiology services provided to an entitled person by, respectively, a diabetes educator and an exercise physiologist.

The amendments at Items 19 and 20 of the attached Instrument (drafting-type matters) were made as a result of comments made by the Chairman, Senate Standing Committee on Regulations and Ordinances, in a letter to the Minister for Veterans’ Affairs in relation to a previous amendment to the Treatment Principles (Nuclear).

**RETROSPECTIVE**

No.

**CONSULTATION**

Yes, regarding the business aspects of the attached instruments. Consultation occurred with relevant providers in a number of DVA/provider consultative forums at various times.

No, regarding the two new treatments introduced by the attached instruments because the measures are beneficial and the treatments should be made available under the DVA Health Care System without delay.
DOCUMENTS INCORPORATED-BY-REFERENCE

Yes. The following non-legislative documents in force on 1 May 2007 are incorporated into the *Treatment Principles* by the attached instrument:

(i) Notes for Chiropractors;
(ii) Notes for Diabetes Educators;
(iii) Notes for Dietitians;
(iv) Notes for Local Medical Officers;
(v) Notes for Occupational Therapists;
(vi) Notes for Osteopaths;
(vii) Notes for Providers of Optometric Services /Dispensers of Optical Appliances;
(viii) Notes for Podiatrists;
(ix) Notes for Physiotherapists;
(x) Notes for Speech Pathologists;
(xi) Pricing Schedule for Visual Aids;
(xii) Fee Schedules for treatment provided by health care providers.

At the time the attached instrument was made, all the documents except those at (ii), (v), (ix) (x) and (xi) were available on the Internet (Department of Veterans’ Affairs web page – under Health – Doctors/Health Care Professionals):


At the time the attached instrument was made all the documents were available at:

Department of Veterans’ Affairs (ACT Office), Lovett Tower, 13 Keltie St Woden ACT 2606 / PO Box 21 Woden ACT 2606. Tel.no.(02) 6289 6243.

Any State or Territory Office of the Department of Veterans’ Affairs:
Tel.no: 133 254

FURTHER EXPLANATION

Attachment A.
<table>
<thead>
<tr>
<th>Clauses</th>
<th>Explanation</th>
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>sets out the name of the instrument.</td>
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<tr>
<td>2.</td>
<td>provides that the instrument commences when it is registered on the Federal Register of Legislative Instruments.</td>
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<td>3.</td>
<td>contains definitions.</td>
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<tr>
<td>4.</td>
<td>ensures that the amendments made by the instrument will not apply to the situation where a health care provider has a current contract with the Repatriation Commission (Commission) (or the Department of Veterans’ Affairs (DVA)) that exists immediately before the amendments commence. The amendments will only regulate the relationship between the Commission/DVA and a health care provider who treats an entitled person and seeks payment from DVA, when there is no contract or other arrangement between the parties governing that relationship.</td>
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<td>5.</td>
<td>omits the delayed-commencement provision in the Treatment Principles (Nuclear) in relation to diabetes educator services. This means provisions in relation to diabetes educator services in the Treatment Principles (Nuclear) were operative on and from the commencement of that instrument.</td>
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<tr>
<td>6.</td>
<td>revises the definition of “Access Payment” by removing the reference to the actual amount of the payment and providing instead that the amount of the payment is the relevant amount set out in the Fee Schedule for payments to Local Medical Officers.</td>
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<td>7.</td>
<td>defines “diabetes educator” and “diabetes educator services” for the purposes of the new treatment of “diabetes educator services”.</td>
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<tr>
<td>8.</td>
<td>defines “dentist” because the term is used in the principal instrument but previously had not been defined.</td>
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<tr>
<td>9.</td>
<td>defines “Fee Schedule”. A Fee Schedule is a document in force on 1 May 2007 that sets out the fees DVA will pay for treatment services provided by health care providers to entitled persons. A Fee Schedule may form part of the Treatment Principles (e.g., Schedule 2 Repatriation Medical Fee Schedule) or it may be a document incorporated by reference into the Treatment Principles by the amendments at 24. Fee Schedules relate mainly to payments</td>
</tr>
</tbody>
</table>
for medical services provided by Local Medical Officers and medical specialists.

10. defines “health care provider”. This amendment simply adds the word “care” to the previous definition so as to make it more accurate.

11. revises the definition of “LMO” (Local Medical Officer) to provide that in order for DVA to pay for an LMO’s services:

- the LMO must be registered with DVA under the Repatriation Commission/DVA approved-document entitled “Notes for Local Medical Officers”;  
- the LMO’s services must have been provided not only in accordance with the Treatment Principles (Nuclear) but also in accordance with the “Notes for Local Medical Officers”; and  
- the LMO must have a current provider number given by Medicare Australia.

Previously the requirement for LMOs to provide services in accordance with the Notes for Local Medical Officers was contained in the contract between LMOs and the Repatriation Commission/DVA. That requirement is now in the Treatment Principles (Nuclear). This is an example of the implementation of the main purpose of the attached instrument.

12. defines “Medicare Australia”.

13. revises the definition of “Medicare Benefits Schedule” (MBS) to provide that where the term is used in the context of the fees payable to a health care provider, it is a Fee Schedule but where the term is used in any other context, it has its usual meaning. This amendment is necessary because in some contexts in the Treatment Principles the term MBS is used not solely in relation to fees but in relation to the types of services that may be provided i.e. a service not listed on the MBS may only be provided in special circumstances. In this context it would be inaccurate to describe the MBS as a Fee Schedule.

14. inserts definitions of “Notes for Local Medical Officers” and “Notes for Providers of Optometric Services/Dispensers of Optical Appliances”.

The “Notes for Local Medical Officers” establish a registration procedure for medical practitioners who are willing to treat entitled
persons in accordance with the conditions in the Notes (and as a result receive higher payments for their services than other non-specialist medical practitioners who treat entitled persons).

The Notes currently provide that a consequence of registration is that a contract is formed between the medical practitioner and the Repatriation Commission/DVA. However that aspect of the Notes is now, due to this exercise (which is about removing arrangement-requirements) redundant and will be omitted when the Notes are revised. Accordingly the Notes for Local Medical Officers as incorporated into the Treatment Principles (Nuclear) by the attached instrument do not include that part of the Notes that refers to the formation of a contract between a medical practitioner and the Repatriation Commission/DVA.

The “Notes for Providers of Optometric Services/Dispensers of Optical Appliances” set out the conditions on which the Repatriation Commission will accept financial liability for optometrical services provided to entitled persons by optometrists.

15. revises the definition of “other GP” to provide that a condition of the Repatriation Commission accepting financial liability for medical services provided to an entitled person by a medical practitioner who is an other GP is that the other GP has a current provider number given by Medicare Australia.

An “other GP” is a medical practitioner who is not prepared to be subject to the stricter conditions that apply to Local Medical Officers but who, nonetheless, is willing to treat an entitled person and instead of charging the entitled person, charge DVA. That forbearance entitles the medical practitioner to slightly higher payments than he or she would receive from Medicare Australia.

16. inserts a new definition of “Pricing Schedule for Visual Aids”. This definition reflects the change in name of the document from the “Schedule of Prescribable Items”. Generally speaking, only items in the Schedule may be prescribed for entitled persons.

17. inserts a new definition of “provider number”. The attached instrument requires medical practitioners, optometrists and diabetes educators to have current provider numbers. Provider numbers are allocated by Medicare Australia to medical practitioners, optometrists, and diabetes educators, who participate in the Medicare system. The requirement for medical practitioners, optometrists, and diabetes educators, to now have a current provider number as a condition of the Repatriation Commission
accepting financial liability for their services is a new safeguard that will help ensure that the Commission is dealing with fit and proper health care providers.

18. omits the definition of “Schedule of Prescribable Items” because that document has been re-named the “Pricing Schedule for Visual Aids.”.

19. corrects a typographical error.

20. corrects a typographical error.

21. has the effect of requiring optometrists and optical dispensers to obtain the prior approval of the Repatriation Commission before providing optical products to an entitled person where those products are not covered by an arrangement between the optometrist/optical dispenser and the Repatriation Commission/DVA.

The supply of optical products will be one of the few treatment services that will still be covered by an arrangement between the optometrist/optical dispenser and the Repatriation Commission/DVA.

22. has the effect of providing that an optometrist and an optical dispenser need not obtain the prior approval of the Repatriation Commission before providing optical services to an entitled person but where optical products are being provided, they must be covered by an arrangement with the Repatriation Commission/DVA.

23. revises the provisions that set out the extent to which the Repatriation Commission will accept financial liability for services provided by health care providers to entitled persons.

The main change is that the level of payments will be set by Repatriation Commission/DVA-approved Fee Schedules and will not need to be worked out by reference to the Medicare Benefits Schedule. This will make the task of ascertaining the relevant payments more simple.

24. (3.5.1A.1) incorporates external Repatriation Commission/DVA-approved Fee Schedules (documents) into the Treatment Principles that have the word “Notes”, or the words “Notes for Providers”, in their title, as those documents are in force on 1 May 2007.
(3.5.1A.2) incorporates external Repatriation Commission/DVA-approved Fee Schedules (documents) into the Treatment Principles that do not have the word “Notes”, or the words “Notes for Providers”, in their title, as those documents are in force on 1 May 2007.

(3.5.1A.3) states that the extent of financial liability the Repatriation Commission will accept for a particular treatment service provided to an entitled person by a type of health care provider is the highest amount payable for that type of treatment provided by that type of provider as set out in a Fee Schedule.

25. revises the Outline of the three different levels of engagement between the Repatriation Commission/DVA and medical practitioners, by removing the reference to Local Medical Officers needing to have an arrangement with the Repatriation Commission/DVA.

25A. makes it clear that the Repatriation Commission will only accept financial liability for the treatment of “diabetes educator services” if it is provided under Part 7 of the Treatment Principles (Nuclear) (where the treatment is specifically regulated) and not under Part 4, where the treatment is not specifically regulated. The nature of “diabetes educator services” is such that it could be regarded as a medical service that could, but for the amendment made by this clause, be provided under Part 4 of the Treatment Principles (Nuclear).

26. revises a number of provisions in relation to dental treatment provided by a dental prosthetist, dentist or a dental specialist, to an entitled person.

The main change removes the requirement for dental practitioners to have an arrangement with the Repatriation Commission as a condition of the Repatriation Commission accepting financial liability for dental services provided by a dental practitioner to an entitled person. Instead the Repatriation Commission will accept financial liability where the dental services are provided to an entitled person in accordance with the Treatment Principles and, in the case of dental services provided by a dentist to an entitled person, provided in accordance with the Notes for Local Dental Officers in force on 1 May 2007.

New provisions 5.1.2 and 5.1.3 essentially reproduce previous provisions. These former provisions have been slightly revised for drafting purposes and have been updated to reflect the new legal
regime whereby dental practitioners will now not be required to enter into arrangements with the Repatriation Commission/DVA.

27. lists the new treatment of “exercise physiology” in Part 7 of the Treatment Principles thereby making it a treatment recognised by the Repatriation Commission as being available under the Treatment Principles for entitled persons and accordingly a treatment the Repatriation Commission will accept financial liability for if provided in accordance with the Treatment Principles.

28. introduces a general provision (7.1A.1) that makes it a condition of the Repatriation Commission accepting financial liability for a type of treatment provided by a type of health care provider under Part 7 of the Treatment Principles that the treatment was provided in accordance with the terms and conditions in any document approved by the Repatriation Commission/DVA called “Notes for Providers” (or a similar name) in force on 1 May 2007.

New paragraph 7.1A.2 incorporates such a document into the Treatment Principles and also incorporates into the Treatment Principles the documents in new paragraph 7.1A.3 as those documents are in force on 1 May 2007.

New paragraph 7.1A.3 operates in the same manner as new paragraph 7.1A.2 save that it is more specific as to the incorporated documents that set out the terms and conditions applying to the provision of a type of treatment by a type of health care provider. These terms and conditions must be satisfied by a health care provider in order for the Repatriation Commission to be able to accept financial liability for the health care provider’s services.

For example. In order for the Repatriation Commission to be able to accept financial liability for physiotherapy provided to an entitled person, one condition that must be satisfied is that the physiotherapy was provided by a physiotherapist and provided in accordance with the Notes for Physiotherapists in force on 1 May 2007. The other condition is that the physiotherapy was provided in accordance with the Treatment Principles.

29. revises the former provisions to provide that:

- it is a condition of the Repatriation Commission accepting financial liability for optometrical services provided by an optometrist to an entitled person that the optometrist has a current provider number provided by Medicare Australia and
provided the services in accordance with the *Treatment Principles* and the Notes for Providers of Optometric Services/Dispensers of Optical Appliances.

- in order for the Repatriation Commission to accept financial liability for optometrical products provided by an optometrist or an optical dispenser to an entitled person the products must have been provided in accordance with the *Treatment Principles*, the Notes for Providers of Optometric Services/Dispensers of Optical Appliances and an arrangement between the optometrist, or an optical dispenser, and the Repatriation Commission/DVA.

New provision 7.4.3 is essentially the former provision updated to refer to “Pricing Schedule for Visual Aids” instead of “Schedule for Prescribable Items”.

New provisions 7.4.4 and 7.4.5 are essentially the former provisions updated to refer to “Medicare Australia” instead of “Medicare”.

30. omits the requirement for the Repatriation Commission to have a contract with a supplier of footwear in order for the Commission to be able to accept financial liability for footwear provided by a supplier to an entitled person.

31. omits the requirement for the Repatriation Commission to have a contract with a supplier of footwear in order for the Commission to be able to accept financial liability for footwear/footwear-repairs provided by a supplier to an entitled person. New paragraph 7.6.5(c) retains the former requirement that the supplier of footwear must be approved by the Commission.

32. omits “credentialled” from the term “credentialled diabetes educator”. However under the Treatment Principles (Nuclear) a diabetes educator is still required to be credentialled with the Australian Diabetes Educators Association.

33. omits the requirement that in order for the Repatriation Commission to be able to accept financial liability for diabetes educator services provided to an entitled person, the diabetes educator services must have been provided under an arrangement between the diabetes educator and the Repatriation Commission. Clause 33 also re-inserts the requirement that a diabetes educator must have a provider number issued by Medicare Australia, albeit in a different paragraph.
34. corrects a typographical error.

35. revises the former provisions to provide that it is a condition of the Repatriation Commission accepting financial liability for visual aids dispensed by an optical dispenser/optometrist to an entitled person, on the prescription of an ophthalmologist, or an optometrist with a current provider number allocated by Medicare Australia, that the visual aids were provided in accordance with:

- the Treatment Principles (Nuclear);
- the Notes for Providers of Optometric Services/Dispensers of Optical Appliances; and
- an arrangement between the optometrist, or optical dispenser, and the Repatriation Commission/DVA.

New provisions 11.4.2 and 11.4.3 are essentially the former provisions updated to refer to “Pricing Schedule for Visual Aids” instead of “Schedule for Prescribable Items”.

In new provision 11.4.3, the reference to the circumstances in paragraph 11.4.6 means that if an entitled person seeks to have the Repatriation Commission accept financial liability for a spectacle frame or lens that is not listed on the Pricing Schedule for Visual Aids, the Commission will accept financial liability for the spectacle frame or lens to the extent it would have for a listed spectacle frame or lens and the entitled person does not need the Commission’s prior approval before obtaining the unlisted spectacle frame or lens.

36. replaces the reference to “Schedule of Prescribable Items” in paragraph 11.4.6 with “Pricing Schedule for Visual Aids”. The Pricing Schedule for Visual Aids lists the visual aids that may be supplied to an entitled person at DVA expense. In general the Repatriation Commission will only accept financial liability for the provision of visual aids listed in the Schedule.

37. replaces “health provider” and “Health Provider”, wherever occurring in the Treatment Principles, with the more accurate term “health care provider” (emp.add.).

38. substitutes a new medical Fee Schedule. This schedule sets out the fees DVA will accept for a medical attendance or medical procedure provided by a medical specialist who is not an anaesthetist, pathologist or diagnostician (see paragraph 3.5.1(c) introduced by clause 23).