EXPLANATORY STATEMENT

Veterans’ Entitlements (Treatment Principles – Transition Care Co-Payment for Former Prisoners of War and Victoria Cross Recipients) Instrument 2011

EMPOWERING PROVISION

Section 90 of the Veterans’ Entitlements Act 1986 (the Act).

PURPOSE

The attached instrument (R2/2011) amends the Treatment Principles. The Treatment Principles (the Principles) is a legislative instrument made under section 90 of the Act and sets out the circumstances in which the Repatriation Commission (Commission) may accept financial responsibility for treatment provided to veterans or their dependants.

The purpose of the attached instrument is to enable the Department of Veterans’ Affairs (DVA) to pay the co-payment otherwise payable by certain DVA clients who receive care under the Aged Care Act 1997 known as Transition Care.

Normally a person who receives the care pays for part of the care (the co-payment) and the Commonwealth pays the remaining cost as a subsidy.

The attached instrument will make that part of Transition Care for which certain DVA clients pay a co-payment, a treatment under the Treatment Principles which enables DVA to pay for the treatment and therefore pay the co-payment a client would otherwise pay.

The clients in question are former Prisoners of War (POW) and recipients of the Victoria Cross (including the Victoria Cross for Australia)(VC recipient).

Transition care enables elderly patients to restore health and maximise functional capacity following hospital treatment. The kinds of services provided can include nursing support or personal care; low intensity therapy or rehabilitation (such as physiotherapy, occupational therapy or social work); medical support such as GP or pharmacy oversight; and case management including community support and services.
RETROSPECTIVE

No.

CONSULTATION

Yes – Department of Health and Ageing.

DOCUMENTS INCORPORATED-BY-REFERENCE

No.

FURTHER EXPLANATION

Attachment A.
Attachment A

<table>
<thead>
<tr>
<th>Items</th>
<th>Explanation</th>
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<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 on the day after the day it is registered on the Federal Register of Legislative Instruments.</td>
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Schedule

1. is a definition section.
2. re-arranges the heading to Part 10 of the Principles to indicate that the Part also deals with the co-payment for Transition Care.
3. inserts a new part in the Principles – Part E (Transition Care Co-Payment).

10.12 – 10.12.1

Provides that the Repatriation Commission may accept financial responsibility for transition care where it is provided by an “approved provider” to former POW or VC recipient.

Where the Repatriation Commission accepts financial responsibility for a treatment such as transition care (incur a debt), DVA may meet the debt and pay for the treatment.

An “approved provider” is defined in the Aged Care Act 1997 and means a person or body in respect of which an approval under Part 2.1 of that Act is in force, and, to the extent provided for in section 8-6 of that Act, includes any State or Territory, authority of a State or Territory or local government authority.

A condition of the Repatriation Commission accepting financial responsibility for transition care is that the flexible care subsidy is payable for the care under the Flexible Care Subsidy Principles 1997 made under the Aged Care Act 1997. Transition care is a type of flexible care and there is a limit on the number of days for which the flexible care subsidy is payable (day limit).

The purpose of the condition is to ensure that the benefit DVA is providing to a person (payment of co-payment for transition care) is consistent with the terms of the overall benefit the Commonwealth is providing to the person. In short, if the
Commonwealth is not subsidising the person’s flexible care (transition care) because the person has reached the day limit for the care then DVA should not be paying any co-payment for the care should a co-payment be possible in the relevant circumstances.

10.12.2

Sets out the financial limits for the payment of the costs of Transition Care by DVA.

DVA will only meet the co-payment a POW or VC recipient could be required to pay for Transition Care. The remainder of the cost of the Transition Care will be met by the Commonwealth, subject to the Aged Care Act 1997, as a subsidy.

For DVA to pay a co-payment, the amount of the co-payment must not exceed the amount of co-payment the approved provider is permitted to charge under section 56-3 of the Aged Care Act 1997 nor exceed any amount of co-payment the approved provider is permitted to charge under any agreement between the Secretary of the Department that administers the Aged Care Act 1997 (as at 1 January 2011 the Department of Health and Ageing) and the approved provider pursuant to section 15.33 of the Flexible Care Subsidy Principles 1997 made under the Aged Care Act 1997.

10.12.3

The Commission has a discretion as to whether to accept financial responsibility for payment of the co-payment for Transition Care. Principle 10.12.3 provides that in exercising that discretion the Commission should consider the following matters:

- whether the Transition Care was provided in accordance with the Aged Care Act 1997 and the relevant instruments under that Act
- whether the Transition Care complies with any agreement the provider of the care has with the Secretary of the Department that administer the Aged Care Act 1997 (DOHA agreement).
- whether any provider/client agreement satisfies any requirement as to provider/client agreements in any DOHA agreement
- whether the Transition Care complies with any provider/client agreement
whether the POW/VC recipient is receiving treatment under the Principles that, in material respects, is similar to Transition Care. It is relevant for the Commission to consider if double-dipping is occurring. If there is, the Commission may decide not to accept financial responsibility for the Transition Care.

Payment of the co-payment has no impact upon the payment of subsidy to approved providers under the *Aged Care Act 1997*.

**10.13 – 10.13.1**

Requires an approved provider to, as a general rule, bill Medicare Australia for Transition Care provided to a POW/VC recipient rather than bill the POW/VC recipient but gives the Commission a discretion to accept financial responsibility for the Transition Care if the POW/VC recipient is billed.