EXPLANATORY STATEMENT

Treatment Principles (Australian Participants in British Nuclear Tests) 2006 (Removal of Prior Approval Requirement for Optical Coherence Tomography) Instrument 2011

EMPOWERING PROVISION

Subsection 16(7) of the Australian Participants in British Nuclear Tests (Treatment) Act 2006, (the Act).

PURPOSE


The Principles is a legislative instrument made under subsection 16(7) of the Act and sets out the circumstances in which the Repatriation Commission (the Commission) may accept financial liability for treatment provided to entitled persons for malignant neoplasia. Entitled persons are Australian participants in British nuclear tests as described in the Act.

The purpose of the attached instrument is to remove the requirement in the Principles for health care providers to obtain the approval of the Repatriation Commission (in practice - the Commission’s delegate) before Optical Coherence Tomography (OCT) can be provided to the entitled person (prior approval requirement).

OCT is a medical procedure used for diagnosis and monitoring of retinal diseases in a specialist ophthalmologic setting.

Prior approval was required for OCT because it is an “un-listed treatment” under the Principles. This means it is not listed on the Medicare Benefits Schedule (MBS).

The attached instrument does not alter the status of OCT as an un-listed treatment, meaning that the rules in the Principles in relation to un-listed treatments apply to OCT except the rule that requires the Repatriation Commission’s prior approval before an un-listed treatment may be provided.
In any event although OCT is an un-listed treatment the Medical Services Advisory Council found it to be safe. Nevertheless at the time the attached instrument commenced the procedure was not listed on the MBS.

The problems with the prior approval requirement for OCT were that it was difficult in practice for health care providers to comply with the requirement because OCT is usually provided during a consultation and the short time frame between determining a need for the procedure and providing it did not normally enable prior approval to be obtained.

Further, because it was impractical to obtain prior approval, health care providers needed to obtain retrospective approval. But the rules governing retrospective approval are more stringent than those applying to prior approval.

In any event, the Department of Veterans’ Affairs (DVA) found that the requirement for health care providers to obtain approval for OCT, whether before providing the service or after, was unnecessary and therefore an administrative burden on both health care providers (need to request approval) and DVA (need to process requests for approval) and accordingly the requirement was removed by the attached instrument.

**RETROSPECTIVE**

Yes. The instrument is taken to have commenced on 1 May 2011 but for the purposes of subsection 12(2) of the *Legislative Instruments Act 2003* it does not negatively affect any person. The instrument is benevolent in nature.

**CONSULTATION**

Yes – Medicare Australia in respect of processing claims for payment for OCT. Consultation was carried out via meetings, telephone communication and e-mail.

**DOCUMENTS INCORPORATED-BY-REFERENCE**

No.

**FURTHER EXPLANATION**

Attachment A.
## Attachment A

### Items | Explanation
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[1] | sets out the name of the instrument.
[2] | provides that the instrument is taken to have commenced on 1 May 2011.

### Schedule

1. is a definition section.

2. amends 3.2.1(b) of the Principles (which covers un-listed treatments and is in the part of the Principles that sets out the treatments for which the Repatriation Commission’s prior approval is required) to make it clear that despite the general requirement that un-listed treatments need prior approval, the Principles may specify that prior-approval for a particular unlisted treatment is not necessary.

3. inserts new provisions in the Principles (4.2.6 and 4.2.7). These provisions identify OCT as a medical treatment and provide that the Repatriation Commission may accept financial responsibility for OCT where it is provided to an entitled person by an Ophthalmologist for the assessment or management of retinal disease.

The new provisions also provide that while OCT remains an unlisted treatment it is subject to all the requirements for an unlisted treatment except the requirement that prior approval be obtained before OCT is provided.