EXPLANATORY STATEMENT

Treatment Principles (Australian Participants in British Nuclear Tests) 2006 (Retirement Villages and Rehabilitation Appliance Schedule) Instrument 2011

EMPOWERING PROVISION

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

PURPOSE

The attached instrument (R31/2011) amends the Treatment Principles (Australian Participants in British Nuclear Tests) 2006 (Principles).

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:

- define and re-arrange provisions applicable to institutions so as to make it clear that the Commission can decline to accept financial responsibility for the supply of ramps, hand rails and similar appliances to entitled persons in institutions (particularly Retirement Villages) (issue 1)

- update “the RAP Schedule” (a schedule of rehabilitation appliances) to include new items and a new category of appliance-assessor (exercise physiologist) (issue 2)

RAP means the Rehabilitation Appliance Program operated by the Department of Veterans’ Affairs’ (DVA).

For issue 1 (ramps etc in institutions) the instrument is not really doing anything new. Previously the Commission had a discretion (11.2A of the Principles – prior approval) to decline to provide ramps etc to entitled persons in institutions but the terminology in which the discretion was couched referred to “appliances”, which, although it included ramps etc, made it unnecessarily difficult for DVA in explaining to operators of
Retirement Villages that appliances did include ramps etc and that the Commission could decline to provide ramps etc to entitled persons in institutions. Accordingly the Commission decided to use more definite terminology so as to make its position clearer.

The attached instrument now makes it clear that the Commission has a discretion to decline to provide ramps etc to entitled persons in institutions such as Retirement Villages and all parties know where they stand.

For issue 2 (new appliances etc) the document known as the RAP National Schedule of Equipment, which lists the surgical aids and appliances for self-help and rehabilitation available to an entitled person under DVA’s Rehabilitation Appliances Program, has been updated by including 4 new aids/appliances and a new category of assessor of aid/appliances for entitled persons (exercise physiologist). The attached instrument incorporates the RAP National Schedule of Equipment, as updated by the addition of these 4 new aids/appliances, into the Principles.

**RETROSPECTIVE**

Partly. That part of the attached instrument that updates the RAP National Schedule of Equipment is taken to have commenced on 1 July 2011 because DVA wanted to provide entitled persons with the relevant appliances as soon as possible, with the legislative (financial) authority being supplied (retrospectively) at a later date. For the purposes of subsection 12(2) of the Legislative Instruments Act 2003 the retrospective operation of part of the attached instrument does not negatively affect any person and applies in a benevolent way.

**CONSULTATION**

Partly.

For issue 1 (ramps etc in institutions), although there was no consultation about the terms of the instrument because the instrument only clarified the former situation and therefore consultation was considered unnecessary, nevertheless DVA and operators of Retirement Villages liaised (by telephone/letters) about the apparent lack of clarity in the Principles and this led to the attached instrument being made.

For issue 2 (new appliances etc), consultation occurred via the RAP Reference Committee (the Committee).
The Committee includes four health care professionals qualified in general practice, occupational therapy, physiotherapy and nursing. The four represent the:

- Australian Medical Association
- Occupation Therapy Australia
- Australian Physiotherapy Association
- Royal District Nursing Service.

The four health care professional representatives are appointed for a three year period and represent the four major medical prescriber groups of all items as listed on the RAP National Schedule of Equipment.

The Committee is chaired by DVA’s National Manager, Primary Care Policy Group, with secretariat and research support provided by DVA’s Transport and Appliances Policy Section. DVA’s Principal and Senior Medical Advisers, National Manager, Community Health, Directors and Assistant Directors Transport and Appliances Policy Section and RAP and HomeFront (similar to RAP) Operations attend in an *ex-officio* capacity.

Consultation includes the preparation of research papers which are sent by post and email to all Committee members for all RAP items that are to be presented for RAP National Schedule of Equipment consideration.

Consultation also included further discussion/s held during the relevant Committee meetings.

In practice, the consultations require the Committee to make one of four recommendations:

- to list on the RAP National Schedule of Equipment
- not to list but make available as a one-off where the most clinically appropriate option
- not to list and not make available as a one-off; and
- remove from the RAP National Schedule of Equipment.

**DOCUMENTS INCORPORATED-BY-REFERENCE**

Yes. The following non-legislative documents are incorporated in the Principles by the attached instrument. Documents 1-35 are incorporated in the Principles as those documents existed on 1 August 2011 and document 36 (updated RAP National Schedule of Equipment) is incorporated in the Principles as it existed on 1 July 2011:
1. Notes for Local Medical Officers
2. Department of Veterans’ Affairs Fee Schedules for Medical Services
3. Notes for Providers of Optometric Services/Dispensers of Optical Appliances
4. Optometrist Fees for Consultation
5. DVA Schedule of Fees Orthoptists
6. Pricing Schedule for visual aids
7. The fourth edition of the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (commonly known as DSM-IV)
8. Notes for Local Dental Officers
9. Fee Schedule of Dental Services for Dentists and Dental Specialists
10. Fee Schedule of Dental Services for Dental Prosthetists
11. Notes for Chiropractors
12. Chiropractors Schedule of Fees
13. Notes for Diabetes Educators
14. Diabetes Educators Schedule of Fees
15. Notes for Dietitians
16. Dietitians Schedule of Fees
17. Notes for Exercise Physiologists
18. Exercise Physiologists Schedule of Fees
19. Notes for Occupational Therapists
20. Occupational Therapists Schedule of Fees
21. Notes for Osteopaths
22. Osteopaths Schedule of Fees
23. Notes for Physiotherapists
24. Physiotherapists Schedule of Fees
25. Notes for Psychologists
26. Psychologists Schedule of Fees
27. Notes for Podiatrists
28. Podiatrists Schedule of Fees
29. Social Workers Schedule of Fees
30. Clinical Counsellors Schedule of Fees
31. Notes for Speech Pathologists
32. Speech Pathologists Schedule of Fees
33. Australian Government Department of Veterans’ Affairs Classification System and Schedule of Item Numbers and Fees — Community Nursing Services;
34. Notes for Coordinated Veterans' Care Program Providers;
35. Rehabilitation Appliances Program (RAP) National Guidelines
36. RAP National Schedule of Equipment
At the time the attached instrument was made, all the documents, except the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders, were available on the Internet (Department of Veterans’ Affairs web page – under Health – Doctors/Health Care Professionals):


and at the time the attached instrument was made all the documents were available, or could be made available, at:

Department of Veterans’ Affairs (ACT Office), Lovett Tower, 13 Keltie St, Woden ACT 2606 / GPO Box 9998 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.
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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<td>[2]</td>
<td>provides that, in general, the instrument commences on the day after the day it is registered on the Federal Register of Legislative Instruments but that section 5 is taken to have commenced, for Part B of Schedule 1, on 1 July 2011. Part B of Schedule 1 refers to a schedule of equipment.</td>
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The reason for section 5 retrospectively commencing on 1 July 2011 is that for the period 1 July 2011 to the commencement of the attached instrument DVA may have provided new appliances under the relevant schedule of equipment to entitled persons albeit the schedule had not been made part of the Principles meaning that DVA lacked the financial authority to provide the appliances. The attached instrument retrospectively provides that authority by incorporating into the Principles, on 1 July 2011, the schedule of equipment as it existed on that date.

Schedule

1. is a definition section. The new definition of particular importance is the definition of “institution” because it puts beyond doubt that an institution includes a “retirement village”. Previously the situation was unclear.

1A. adds a note that incorporates-by-reference into the Principles the non-legislative DVA documents known as the “RAP National Schedule of Equipment” and the “Rehabilitation Appliances Program (RAP) National Guidelines”. These documents guide the Commission and prescribers in relation to the provision of rehabilitation appliances to entitled persons.

2. condenses and clarifies the former provisions in the Principles relating to the supply of rehabilitation appliances to entitled persons in institutions, particularly Retirement Villages.

11.3.6 sets out the situations when the Commission will not approve the supply of a rehabilitation appliance to an entitled person in an institution or participating in a program.
The situations where an appliance will not be approved in respect of an institution, including a retirement village, are:

- legislation covering the institution enables the appliance to be supplied
- charges imposed by the owner/operator of the institution or subsidies received by that person make it fair that the owner/operator covers the cost of supplying an appliance
- installing the appliance would require a structural alteration
- it is otherwise appropriate for the owner/operator of the institution to supply the appliance.
- where the appliance is a hand rail, ramp, non-slip surface or similar appliance, the appliance should be supplied by the entitled person or the owner/operator of the institution because when the entitled person arranged to enter the institution he/she should have known, by reason of the person’s condition, that an appliance would have been needed by the person upon being admitted to the institution or a short time thereafter (6 months is a guide to a “short time”).

The DVA document “RAP Business Rules” is a guide to decision making in respect of the supply of appliances. The rules would be particularly relevant when the Commission is determining if it would be “otherwise appropriate” for the owner/operator of an institution to provide an appliance.

The situations where an appliance will not be approved by the Commission in respect of an entitled person participating in a program are where it is more appropriate for the appliance to be provided under the program because:

- the Commonwealth financially contributed to the program
- the program’s budget appears sufficient to reasonably absorb the cost of the appliance
- DVA is under a short term financial constraint
- it is otherwise appropriate for the appliance to be supplied under the program.

Again the DVA document “RAP Business Rules” would be particularly relevant when the Commission is determining if it would be “otherwise appropriate” for an appliance to be provided under a program.
11.3.6A restates the previous provision more clearly. It provides that the Commission will approve the supply of a rehabilitation appliance to an entitled person in an institution, or participating in a program, in the following situation:

- the Commission approved the appliance for the person before he/she entered the institution/program and the approval had not been revoked; and
- where the installation of the appliance involves an alteration to the structure of an institution, the alteration complies with all relevant laws and the owner of the institution has given an undertaking not to seek compensation if the appliance is removed; and
- the appliance is not a “consumable rehabilitation appliance” (an appliance with a short term function such as a continence product).

3. substitutes a new 11.9.5. Paragraph 11.9.5 is part of the “HomeFront Program”, not the RAP program. Under “HomeFront” DVA pays a small subsidy toward the cost of accident-prevention/personal safety appliances in the home e.g. hand rails, smoke alarms.

A person’s home may be an institution such as a retirement village. Previously 11.9.5 replicated similar provisions that apply to the supply of rehabilitation appliances, under the RAP program, to entitled persons in institutions.

All that has occurred is that 11.9.5 has been condensed. Instead of setting out the RAP program provisions in detail, that it has adopted, 11.9.5 simply incorporates them by reference.

Note (2) to 11.9.5 makes it clear that the only provisions from the RAP program part of the Principles that are being adopted for the HomeFront program are those relating to the supply of appliances in institutions and under programs.

The new 11.9.5 provides that the Commission will not accept financial responsibility for any part of the cost of providing an aid or appliance for accident prevention and personal safety (HomeFront) in respect of an entitled person in an institution or participating in a program if, had the aid or appliance been a rehabilitation appliance, the Commission would not have approved the supply of the appliance under 11.3.6 of the Principles (the RAP program provision that covers the supply of rehabilitation.
appliances to entitled persons in institutions or participating in programs).

4. omits 11.9.6 because it is now subsumed in 11.9.5.

5. substitutes a new Schedule 1. Schedule 1 incorporates into the Principles a number of non-legislative documents as they existed on a particular date. For all but one of the documents the date is 1 August 2011. For the remaining document (RAP National Schedule of Equipment) the date is 1 July 2011, being the date on and after which 4 new appliances could be provided under that schedule to entitled persons and a new category of assessor (exercise physiologist) could have conducted assessments for relevant appliances.