EXPLANATORY STATEMENT

MRCA Treatment Principles (Outreach Program Counsellors) Instrument 2012

EMPOWERING PROVISION

Subsection 286(3) of the Military Rehabilitation and Compensation Act 2004 (the Act).

PURPOSE

The attached instrument (2012 No. MRCC 40) amends the MRCA Treatment Principles. The MRCA Treatment Principles (the Principles) is a legislative instrument made under subsection 286(3) of the Act and sets out the circumstances in which the Military Rehabilitation and Compensation Commission (the Commission) may accept financial liability for treatment provided to entitled persons (members of the Defence Force (including former members) or their dependants).

The purpose of the attached instrument is to extend “statutory registration” to outreach program counsellors (psychologists and social workers) who provide mental health counselling services to entitled persons under the Veterans and Veterans Families Counselling Service (VVCS).

Statutory registration is the process whereby providers move from a contractual basis for dealing with the Department of Veterans’ Affairs (DVA) in relation to the provision of treatment to entitled persons to one regulated by subordinate legislation (the Principles). Essentially the conditions that were previously contained in a contract are incorporated in the Principles and determine whether DVA will pay for treatment or not.

Further, another element of statutory registration is that a health care provider has been given a “provider number” by Medicare Australia in respect of the provision of services for which a Medicare benefit is payable.

CONSULTATION

Yes – outreach program counsellors, the Australian Psychological Society and the Australian Association of Social Workers. The nature of the consultation was meetings, written correspondence and e mails.
RETROSPECTIVITY

The attached instrument could commence before registration. If that occurs subsection 12(2) of the *Legislative Instruments Act 2003* (legislative instrument of no effect if it takes effect before registration and disadvantages a person or imposes liabilities on a person) would not be contravened because the instrument does not disadvantage any person or impose a liability on any person (except the Commonwealth).

DOCUMENTS INCORPORATED-BY-REFERENCE

Yes.

The following non-legislative documents in force on 1 October 2012 are, on commencement of the attached instrument, incorporated into the *Principles*:

1. Notes for Local Medical Officers (paragraph 1.4.1);
2. Department of Veterans’ Affairs Fee Schedules for Medical Services (paragraph 3.5.1);
3. Notes for Allied Health Providers (paragraphs 3.5.1 and 7.1A.1);
4. Optometrist Fees for Consultation (paragraph 3.5.1);
5. DVA Schedule of Fees Orthoptists (paragraph 3.5.1);
6. Pricing Schedule for visual aids (paragraph 3.5.1);
7. The fourth edition of the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (commonly known as DSM-IV) (paragraph 2.4.2A);
8. Fee Schedule of Dental Services for Dentists and Dental Specialists (paragraph 3.5.1);
9. Fee Schedule of Dental Services for Dental Prosthetists (paragraph 3.5.1);
10. Chiropractors Schedule of Fees (paragraph 3.5.1);
11. Diabetes Educators Schedule of Fees (paragraph 3.5.1);
12. Dietitians Schedule of Fees (paragraph 3.5.1);
13. Exercise Physiologists Schedule of Fees (paragraph 3.5.1);
14. Occupational Therapists Schedule of Fees (paragraph 3.5.1);
15. Osteopaths Schedule of Fees (paragraph 3.5.1);
16. Physiotherapists Schedule of Fees (paragraph 3.5.1);
17. Psychologists Schedule of Fees (paragraph 3.5.1);
18. Podiatrists Schedule of Fees (paragraph 3.5.1);
19. Social Workers Schedule of Fees (paragraph 3.5.1);
20. Clinical Counsellors Schedule of Fees (paragraph 3.5.1);
21. Speech Pathologists Schedule of Fees (paragraph 3.5.1);
22. Australian Government Department of Veterans’ Affairs Classification System and Schedule of Item Numbers and Fees — Community Nursing Services;
23. Notes for Coordinated Veterans' Care Program Providers;
24. Rehabilitation Appliances Program (RAP) National Guidelines (paragraph 11.2A.1);
25. RAP National Schedule of Equipment (paragraph 11.2A.1);
26. Veterans and Veterans Families Counselling Services (VVCS) Outreach Program Counsellors (OPC) Provider Notes (paragraph 1.4.1 and 7.1A.1);
27. Veterans and Veterans Families Counselling Service (VVCS) Outreach Program Counsellors (OPC) Schedule of Fees (paragraph 3.5.1);
28. General information about VVCS – Veterans and Veterans Families Counselling Service (paragraph 1.4.1)
29. Better Access to Psychiatrists, Psychologists & General Practitioners through the Medical Benefits Schedule Initiative.

At the time the attached instrument was made, all the documents except:

- the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders; and
- the Better Access to Psychiatrists, Psychologists & General Practitioners through the Medical Benefits Schedule Initiative;

were available on the DVA Web Page:


At the time the attached instrument was made, all the documents except the “Better Access to Psychiatrists, Psychologists & General Practitioners through the Medical Benefits Schedule Initiative” 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.

At the time the attached instrument was made the document “Better Access to Psychiatrists, Psychologists & General Practitioners through the Medical Benefits Schedule Initiative” was available on the Internet:
HUMAN RIGHTS STATEMENT


The attached legislative instrument does engage an applicable right or freedom. It relates to the Right to Health contained in article 12(1) of the International Covenant on Economic Social and Cultural Rights.

The Right to Health is the right to the enjoyment of the highest attainable standard of physical and mental health. The UN Committee on Economic Social and Cultural Rights has stated that health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity.

The attached legislative instrument engages with, and promotes, the Right to Health. The health initiative introduced by the instrument could benefit the health of the entitled persons by enabling them to be provided with mental health counselling.

The instrument does impose certain criteria that an entitled person needs to satisfy in order to be eligible for the outreach program counselling treatment. The UN Committee on Economic Social and Cultural Rights has stated that qualifying conditions for benefits must be reasonable, proportionate and transparent.

In this case the main conditions for the treatment are that a person:

- satisfies the requirements for VVCS counselling (e.g. is a member of the Defence Force)
- resides in an isolated area or otherwise has a reason to require outreach program counselling (the treatment (outreach program counselling) is specifically for people in remote areas)
- is referred for counselling by the VVCS (this enables the VVCS to check that a person satisfies VVCS requirements).

It is considered that the conditions are reasonable in the context of the treatment which is to enable entitled persons who live in isolated areas or who for some other reason are unable to attend at a VVCS counselling centre, to avail themselves of VVCS counselling.

Conclusion
The attached legislative instrument is considered to be compatible with the human right to health because it promotes that right (creates a new type of treatment) and the conditions it imposes on the availability of the treatment are reasonable in the circumstances.

Warren Snowdon  
Minister for Veterans’ Affairs  
Rule-Maker

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 or is taken to have commenced on 1 October 2012.</td>
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### Schedule

1. is a definition section. In particular “outreach program counsellor” is defined as are the documents called “General information about VVCS – Veterans and Veterans Families Counselling Service” and the “VVCS OPC Provider Notes”.

   Generally speaking an Outreach Program Counsellor is a psychologist or social worker with the appropriate qualifications who holds a medicare provider number and who has an appreciation of veteran and military culture.

   The document called “General information about VVCS – Veterans and Veterans Families Counselling Service” sets out, amongst other things, the criteria for eligibility under VVCS.

   The VVCS OPC Provider Notes are incorporated into the Principles by the attached instrument and contain additional conditions (to those in the Principles) that determine if DVA will pay for treatment provided to entitled persons by outreach program counsellors.

2. deletes the old reference to Vietnam Veterans Counselling Service in paragraph 2.6.1 and 2.6.2 and substitutes it with the new name.

3. inserts a provision in paragraph 3.5.1.

   (oa) provides that the Commission’s financial liability for fees charged by an outreach program counsellor for treating an entitled person is worked out under the “VVCS OPC Schedule of Fees” in force on 1 October 2012.

   The condition on which the Commission will accept financial liability for an outreach program counsellor’s treatment was provided in accordance with the Principles and the VVCS OPC Provider Notes
(as the document relates to outreach program counsellors as psychologists or social workers (mental health)).

4. enables, in the context of outreach program counselling, the Principles, a Fee Schedule or the VVCS OPC Provider Notes to exempt an outreach program counsellor from the general requirement to obtain the Commission’s prior approval before providing outreach program counselling to an entitled person.

5. substitutes a new paragraph 7.1A.1. The new provision largely duplicates former paragraph 7.1A.1 but excludes, from the application of the Notes for Allied Health Providers, psychologists and social workers (mental health) in their capacity as outreach program counsellors and applies the VVCS OPC Provider Notes to outreach program counsellors. The effect of the change is that in order for DVA to pay for outreach program counselling it must have been provided in accordance with the VVCS OPC Provider Notes.

6. inserts a new paragraph 7.7A.

7.7A.1 establishes outreach program counselling as a treatment under the Principles.

Note 1 makes it clear that outreach program counselling is to be provided in accordance with the VVCS OPC Provider Notes if DVA is to pay for the counselling.

7.7A.2 sets out the criteria an entitled person needs to satisfy in order to be eligible for outreach program counselling, namely that the person:

- is eligible for VVCS (this requirement is expanded by paragraph 7.7A.3 which is explained below)
- in the opinion of the Commission is unable to reasonably have access to a VVCS Centre due to the person living in a remote part of Australia or, even if the person is able to have reasonable access to a VVCS Centre, in the opinion of the Commission there is a special reason for the person requiring outreach program counselling
- was provided with outreach program counselling pursuant to a referral from the VVCS.

7.7A.3 states that an entitled person is eligible for VVCS if he/she satisfies the VVCS criterion. The phrase “VVCS criterion” is
defined and refers to one of the criteria set out in the document “General information about VVCS – Veterans and Veterans Families Counselling Service”.

7.7A.4 states that prior approval is not required in order to receive outreach program counselling. For the purposes of paragraph 7.1.1, paragraph 7.7A.4 is a provision in the Principles that exempts a provider from the need to obtain the Commission’s prior approval before providing a particular treatment (outreach program counselling).

7. substitutes a revised schedule of incorporated documents in the Principles and specifies the date of 1 October 2012 for the documents. This means that a document in the schedule is incorporated into the Principles as it existed on 1 October 2012.

The schedule is essentially the same as the former schedule except that new documents have been added:

- Veterans and Veterans Families Counselling Services (VVCS) Outreach Program Counsellors (OPC) Provider Notes
- Veterans and Veterans Families Counselling Service (VVCS) Outreach Program Counsellors (OPC) Schedule of Fees
- General information about VVCS – Veterans and Veterans Families Counselling Service
- Better Access to Psychiatrists, Psychologists & General Practitioners through the Medical Benefits Schedule Initiative.