EXPLANATORY STATEMENT

MRCA Treatment Principles (Removal of Prior Approval/New Dental Providers/Coordinated Care Adjustment) Instrument 2012

EMPOWERING PROVISION

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

PURPOSE

The attached instrument (2012 No. MRCC 28) amends the MRCA Treatment Principles. The MRCA Treatment Principles (the Treatment 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:

- update references in the Treatment Principles to the documents known as the Dental Schedules, Notes for Allied Health Providers and the RAP National Schedule of Equipment (“Updating Documents”).
- enable new categories of dental providers to provide services to entitled persons at Department of Veterans’ Affairs (DVA) expense (“New Dental Services”).
- remove the condition from the Coordinated Veterans’ Care Program that a person is ineligible for participation in the CVC Program if the person is participating in the Community Aged Care Program (CACP) provided by the Department of Health and Ageing (“Removing Ineligibility Condition”).
- provide a definite legislative basis for certain funding under the Coordinated Veterans’ Care Program to take into account the High Court decision in Ronald Williams v The Commonwealth & Ors [2012] HCA 23 (the Chaplaincy case) (“Legislative Basis for Funding”).

Updating Documents
The Treatment Principles incorporate-by-reference a number of documents. These documents include the DVA-prepared documents known as the Dental Schedules, Notes for Allied Health Providers and the RAP National Schedule of Equipment (external documents). These external documents have been revised to remove the requirement for “prior approval” in respect of certain services or the provision of certain items (rehabilitation aids and appliances). If a service or item is listed in one of the external documents as needing “prior approval” it means a service provider must obtain the approval of the Commission (in practice, a delegate) before the service or item may be provided to an entitled person.

The prior approval requirement is being removed for the relevant services and items because they are low expense service and items and provider-accountability can be maintained by post payment monitoring. This initiative will reduce the “red tape” burden for providers and enable DVA to reorganise resources.

The attached instrument will amend the Treatment Principles so that they refer to the external documents in their revised state.

New Dental Providers

The attached instrument will introduce new categories of dental providers who may provide services for entitled persons namely dental hygienists, dental therapists and oral health therapists.

Removing Ineligibility Condition

Currently, a Gold Card holder participating in the Community Aged Care Program (CACP) provided by the Department of Health and Ageing is ineligible to participate in the Coordinated Veterans’ Care (CVC) Program.

If Gold Card holders who are otherwise eligible for the CVC Program were allowed to participate in both the CVC and CACP Programs, the changes will:
- remove a barrier to participation in the CVC Program for chronically ill Gold Card holders who at high risk of being admitted to hospital; and
- enable an increased level of holistic care and support through the combined delivery of these complementary programs.

The services under Community Aged Care Program (CACP) have little duplication with the CVC Program. The CACP aims to help older
Australians remain living in their own homes through provision of services such as personal care, social support, transport to appointments, home help, meal preparation, and gardening. On the other hand, the aim of the CVC Program is to reduce the need for participants to be admitted to hospital through provision of coordinated health care.

The CVC Program provide significant health care benefits to Gold Card holders with chronic conditions and participation should not be unnecessarily restricted where other programs do not provide duplication of services.

Accordingly the attached instrument removed the condition in question.

**Legislative Basis for Funding**

Under the Coordinated Veterans’ Care Program (CVC program) DVA contracts with certain providers to deliver services for the program e.g. data analysis. Previously provision was not made for these services in the Treatment Principles and it is the Treatment Principles that should provide the legislative basis for DVA paying for the services because the Treatment Principles are the most appropriate piece of legislation in this regard.

The decision in the Chaplaincy case has required Commonwealth agencies to examine their funding arrangements to ensure they have a legislative basis. Although it is probable that the CVC services in question have a legal basis in section 287 of the Act, nevertheless it has been decided to put the legislative basis for the services beyond doubt and the attached instrument ensures the services have a specific legislative basis in the Treatment Principles.

**CONSULTATION**

Yes – relevant providers (for removal of prior approval for certain services) – Australian Dental Association and the Dental Board of Australia (for new dental providers) – Department of Health & Ageing (for removal of CVC ineligibility condition). The nature of the consultation included meetings, written correspondence or emails.

**RETROSPECTIVE**

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 is benevolent in nature.
DOCUMENTS INCORPORATED-BY-REFERENCE

Yes.

The following non-legislative documents in force on 31 August 2012 are, on commencement of the attached instrument, incorporated into the MRCA Treatment 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);

is 31 August 2012.
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 DVA Web Page:


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.

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<tr>
<th>HUMAN RIGHTS STATEMENT</th>
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<td>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.</td>
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<td>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.</td>
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<td>The attached legislative instrument engages with, and promotes, the Right to Health. The health initiatives introduced by the instrument could benefit the health of the entitled persons by:</td>
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<td>- delivering services to them more quickly (removal of prior approval)</td>
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<td>- enabling new categories of dental providers to provide dental services to the entitled persons</td>
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<td>- removing eligibility obstacles to comprehensive treatment coordination programs.</td>
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The instrument does impose certain criteria governing the provision of
dental services by the new categories of dental providers. 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 condition applying to the new categories of dental
providers is that they be registered under the National Accreditation &
Registration Scheme.

It is considered that this condition is reasonable in the context of the
treatment in that it ensures the relevant dental services are provided by
appropriately qualified providers.

Conclusion

The attached legislative instrument is considered to be compatible with
the human right to health because it promotes that right and the
conditions it imposes on the provision of dental services by the new
categories of dental providers are reasonable in the circumstances.

Warren Snowdon
Minister for Veterans’ Affairs
Rule-Maker

FURTHER EXPLANATION

Attachment A.
Attachment A

<table>
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<tr>
<th>Items</th>
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<tr>
<td>[1]</td>
<td>sets out the name of the instrument.</td>
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<td>[2]</td>
<td>provides that the instrument commences, or is taken to have commenced, on 31 August 2012.</td>
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**Schedule**

1. is a definition section.

   In particular the terms dental hygienist, dental therapist and oral health therapist are defined. These providers need to be registered under the National Accreditation & Registration Scheme.

2. omits paragraph 3.2.1(a), which required prior approval for the provision of medical specialist services to entitled persons in metropolitan areas, because the *MRCA Private Patient Principles 2004*, made under paragraph 286(1)(b) of the Act, permit the provision of medical services to an entitled person in any area, without prior approval, if the fees for the services do not exceed the relevant DVA rates.

3. corrects a drafting error.

4. makes it clear that prior approval for dental treatment may be specified not only in the Treatment Principles but also in a DVA-prepared document incorporated into the Treatment Principles such as a Dental Schedule.

5. omits the need for prior approval for chiropractic and osteopathic services that exceed the limits specified in paragraph 7.7.1 of the Treatment Principles because paragraph 7.7.1 no longer sets limits for these services.

6. inserts a new paragraph (za). Paragraph (z) is an existing paragraph that has merely been re-inserted for ease of drafting. New paragraph (za) is essentially a reminder, in a provision dealing with prior approval, that an external document incorporated into the Treatment Principles that is Notes for Providers or a Fee Schedule, may also, in addition to paragraph 3.2.1 of the Treatment Principles, specify the need for prior approval for a treatment.
7. makes it clear that a statement that prior approval for dental treatment does not apply may appear not only in the Treatment Principles but also in a DVA-prepared document incorporated into the Treatment Principles such as a Dental Schedule.

8. omits the phrase that suggests prior approval might be required for chiropractic or osteopathic treatment under paragraph 7.7 of the Treatment Principles because paragraph 7.7 does not require prior approval for either of the two treatments.

9. enables the Commission to accept financial responsibility for dental services provided by a dental hygienist, dental therapist or oral health therapist on behalf of a dentist.

10. enables the Commission to accept financial responsibility for dental services provided by a dental hygienist, dental therapist or oral health therapist on behalf of a dental specialist.

11. Paragraph 4.6 enabled the Commission to accept financial responsibility for medical specialist treatment provided to an entitled person in a country or Territory area, without the Commission needing to have given prior approval for the referral to the medical specialist.

Paragraph 4.6. has been omitted because the *MRCA Private Patient Principles 2004*, made under paragraph 286(1)(b) of the Act, permit the provision of medical services to an entitled person in any area, without prior approval, if the fees for the services do not exceed the relevant DVA rates.

12. has the effect of specifying that except where an entitled person is referred to a medical specialist under paragraph 4.7.3 (diagnostic imaging/pathology service billed to DVA at DVA rates) of the Treatment Principles and the *MRCA Private Patient Principles 2004* (medical specialist provides services at DVA rates), prior approval is required for the referral of an entitled person to a medical specialist.

13. enables the Commission to accept financial responsibility for elective surgery given to an entitled person in a public hospital, without the Commission needing to have approved the surgery before it was provided.
This amendment brings the Treatment Principles in line with the *MRCA Private Patient Principles 2004* in this regard.

14. inserts a new paragraph 5.1.1A that provides that for paragraph 5.1.1 of the Treatment Principles (provision that enables the Commission to accept financial responsibility for dental treatment provided to an *entitled person* by a dental prosthodontist, a dentist or dental specialist), the dental treatment is to include any dental treatment provided by a dental hygienist, dental therapist or oral health therapist on behalf of the dentist or dental specialist.

15. makes it clear that retrospective approval for emergency dental treatment is not required if prior approval for the emergency dental treatment was not required in the first place.

16. provides specific legislative authority for the Commission to arrange certain services with relevant providers for the purposes of the Coordinated Veterans’ Care Program.

17-19 relate to the omission of the condition that in order to participate in the Coordinated Veterans’ Care program, an entitled person must not be participating in the Community Aged Care Program operated by the Department of Health and Ageing.

20. changes the emphasis for the prior approval concept where allied health treatment under Part 7 of the Treatment Principles is concerned.

Previously prior approval for a treatment under Part 7 was required unless it was specified in the Treatment Principles, the Notes for Allied Health Providers or a Fee Schedule that it was not required.

In line with the diminishing significance of prior approval, paragraph 7.1.1 of the Treatment Principles has been amended so that prior approval for a treatment under Part 7 is not required unless it is specified in the Treatment Principles, the Notes for Allied Health Providers or a Fee Schedule that it is required.

21. replaces Schedule 1 of the Treatment Principles. The references to documents in the Schedule are now references to those documents as they have been revised, particularly the references to the:

- Notes for Allied Health Providers
• Fee Schedule of Dental Services for Dentists and Dental Specialists
• Fee Schedule of Dental Services for Dental Prosthetists
• RAP National Schedule of Equipment

22. enables the numbering or lettering for provisions in the MRCA Treatment Principles to be corrected as a result of the amendments made by the attached instrument.