

EXPLANATORY STATEMENT

Veterans' Entitlements (Treatment Principles – Community Care at Home approved under the *Aged Care Act 1997* for Former Prisoners of War and Victoria Cross Recipients) Instrument 2009

EMPOWERING PROVISION

Subsection 90(4) of the *Veterans' Entitlements Act 1986* (Act).

PURPOSE

The attached instrument amended the Treatment Principles (the Principles) to enable the Repatriation Commission (the Commission) to accept financial responsibility for amounts (co-payments) payable by former *prisoners of war* and veterans awarded the Victoria Cross under a community care at home package.

Community care at home packages are funded by the Australian Government under provisions set out in the *Aged Care Act 1997* and include services such as community care and flexible care. Flexible care includes the Extended Aged Care in the Home Package (EACH) and an EACH Dementia package (the flexible care packages relevant here).

The Principles is a legislative instrument made under subsection 90(4) of the Act and sets out the circumstances in which the Commission may accept financial liability for treatment provided to veterans and their dependants.

Before the attached instrument the Principles enabled the Commission to accept financial responsibility for the co-payment payable by former *prisoners of war* and veterans awarded the Victoria Cross in residential care but not for the co-payment payable by those veterans under community care at home packages. This was an anomalous situation.

The attached instrument removed the anomaly and grants the Commission the discretion to accept financial responsibility for co-payments that former *prisoners of war* and Victoria Cross recipients are required to pay while in receipt of a community care at home package.

RETROSPECTIVITY

The Instrument is retrospective. The Instrument is taken to have commenced on 21 August 2009. For the purposes of section 12 of the *Legislative Instruments Act 2003* (retrospective legislative instruments) the Instrument does not disadvantage any person nor impose any liabilities on any person (other than the Commonwealth).

CONSULTATION

Consultation on this proposal has occurred with the Department of Health and Ageing and it agreed with the proposal. The President of the RSL and the President of the Ex-POW Association were also consulted and both were supportive of the proposal.

DOCUMENTS INCORPORATED - BY - REFERENCE

No.

FURTHER EXPLANATION

Attachment A

Attachment A

Items

- Paragraph [1] sets out the name of the Instrument.
- Paragraph [2] provides that the Instrument commences on 21 August 2009. This Instrument commences retrospectively on this date as this is the date that the Commission approved the proposal to be financially responsible for co-payments payable under the community care at home packages.

Schedule

- Item 1 defines a Community Aged Care Package and an Extended Aged Care at Home Package.

A Community Aged Care Package means “community care” under section 45-3 of the *Aged Care Act 1997*, being community care in respect of which an approved provider (approved under the *Aged Care Act 1997*) is eligible for community care subsidy under the *Aged Care Act 1997* on the day the care is provided to a former *prisoner of war* or an entitled veteran awarded the Victoria Cross.

An Extended Aged Care at Home Package means “flexible care” under section 49-3 of the *Aged Care Act 1997*, being:

- flexible care in respect of which an approved provider (approved under the *Aged Care Act 1997*) is eligible for flexible care subsidy under the *Aged Care Act 1997* on the day the care is provided to a former *prisoner of war* or an entitled veteran awarded the Victoria Cross; and
- comprised only of the flexible care described in the *Flexible Care Subsidy Principles 1997* as “extended aged care at home” or “extended aged care at home – dementia”.

Notes to these definitions state that the relevant Aged Care Legislation may be found on the Internet at COMLAW and make it clear that legislative instruments under the *Aged Care Act 1997* are relevant to what is/is not community care/flexible care.

Item 2 substitutes a new Heading to Part 10 of the Principles that reflects that Part 10 now also covers care at home packages in addition to residential care.

Item 3 inserts a new Part D (comprised of paragraphs 10.9 to 10.12.1) after Part C of Part 10 of the *Principles*.

Paragraph 10.9 provides that where a former *prisoner of war* or an entitled veteran awarded the Victoria Cross (VC veteran) is receiving, or has received, a Community Aged Care Package or an Extended Aged Care at Home Package, the Commission may accept financial responsibility for the package.

Paragraph 10.10 sets out the amount that the Commission may accept financial responsibility for, which is the co-payment a former *prisoner of war* or VC veteran is required to pay under an agreement between themselves and the care-provider.

However the Commission cannot accept responsibility for an amount of co-payment that exceeds the limit for the co-payment set out in the *Aged Care Act 1997*; or in any instruments thereunder; or in an agreement between the provider of the care and the Secretary of the Department that administers the *Aged Care Act 1997*.

Paragraph 10.10 also makes it clear that the Commission may only accept financial responsibility for a co-payment and not an amount for which subsidy is payable under the *Aged Care Act 1997*.

Paragraph 10.11 sets out matters the Commission should take into account when deciding whether to accept financial responsibility for co-payments payable under a Community Aged Care Package or an Extended Aged Care at Home Package. Matters the Commission should consider are:

- whether the care was provided in accordance with the *Aged Care Act 1997* and any relevant instruments thereunder;
- whether the care complies with the requirements of any agreement between the provider of the care and the Secretary of the Department that administers the *Aged Care Act 1997*; and
- whether any care received under a Community Aged Care Package or an Extended Aged Care at Home Package is essentially the same as care a former *prisoner of war* or VC veteran is receiving under the *Principles* e.g. under the *Veterans' Home Care Program*. This would prevent double dipping.

Paragraph 10.12.1 provides that the provider of a Community Aged Care Package or an Extended Aged Care at Home Package should bill *Medicare Australia* rather than the former *prisoner of war* or VC veteran. However if the former *prisoner of war* or VC veteran is billed then the Commission may still accept financial responsibility for the amount.

Item 4 renumbers the paragraphs under Part 10 to ensure they run sequentially.