

EXPLANATORY STATEMENT

MRCA Treatment Principles (RAP Schedule/Incorporated Documents Update) Instrument 2012

EMPOWERING PROVISION

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

PURPOSE

The attached instrument (M17/2012) amends the *MRCA Treatment Principles* (Principles). The *MRCA 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 (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 the references in the Principles to the RAP National Schedule of Equipment (RAP Schedule) so that the references are to the latest RAP Schedule;
- update references in the Principles to documents generally so that the references are to the latest documents in question.

The RAP Schedule is a document prepared in the Department of Veterans' Affairs (DVA) that lists the rehabilitation appliances DVA may provide to entitled persons. It is incorporated-by reference into the *MRCA Treatment Principles*.

A number of other documents are incorporated-by-reference into the *MRCA Treatment Principles* and if those documents have changed then the attached instrument will ensure the Principles refer to the most recent version of the relevant document.

The RAP Schedule has been changed to refer to the availability of a new rehabilitation appliance (positional sleep apnoea device). This appliance has been supplied to entitled persons on and from 21 December 2011.

The RAP Schedule has also been changed by varying the information in it in relation to a number of speech pathology aids and appliances.

RETROSPECTIVE

Partly.

Section 1 of the attached instrument, as it incorporates the “21 December 2011 RAP Schedule” (item 25 of the new Schedule) into the Principles, is taken to have commenced before registration. In this regard section 1 is taken to have commenced on 21 December 2011.

The retrospective commencement of section 1 in relation to the RAP Schedule is necessary in order to authorise the decisions of DVA officials to make positional sleep apnoea devices available to entitled persons on and from 21 December 2011 because at the time those decisions were made, and although the Military Rehabilitation and Compensation Commission had agreed to the RAP Schedule listing the devices, the changed RAP Schedule with the devices included had not been formally recognised by the Principles as it needed to be in order for the supply of the devices to be fully authorised.

The retrospective commencement of section 1 as it relates to the RAP Schedule will not contravene subsection 12(2) of the *Legislative Instruments Act 2003* (a legislative instrument is of no effect if it takes effect before registration and disadvantages a person or imposes liabilities on a person other than the Commonwealth) because the operation of section 1 before registration will not disadvantage any person or impose a liability on a person other than the Commonwealth.

CONSULTATION

Yes.

DVA consulted representatives of key industry bodies (medical, occupational therapy, physiotherapy, nursing) through their membership of the RAP Reference Committee. The Committee endorsed the inclusion of the positional sleep apnoea device in the RAP Schedule and the changes in the RAP Schedule to the information in relation to a number of speech pathology aids and appliances.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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

The attached instrument updates “treatment documents” referred to in the MRCA Treatment Principles i.e. documents that relate to the treatments that may be provided to members of the Defence Force (ADF members) and their dependants and in particular (i.e. the new development) enables the Department of Veterans’ Affairs to arrange for the supply of free positional sleep apnoea devices to ADF members and dependants.

This measure is intended to enable people to have free access to the latest health care appliances and would be in accordance with Australia’s social security obligations under the International Covenant on Economic, Social and Cultural Rights.

The UN Committee on Economic Social and Cultural Rights has stated that qualifying conditions for benefits must be reasonable, proportionate and transparent.

The attached legislative instrument (in the context of the MRCA Treatment Principles it amends) appears to satisfy these criteria. The conditions on which a positional sleep apnoea device is supplied are related to ensuring there is a clinical need for the device.

Conclusion

The attached legislative instrument is considered to be compatible with human rights because it maintains the right to social security (essential health care) and the qualifying conditions it imposes on the supply of positional sleep apnoea devices is considered appropriate in the circumstances.

Warren Snowdon
Minister for Veterans’ Affairs
Rule-Maker

DOCUMENTS INCORPORATED-BY-REFERENCE

Yes.

The following non-legislative documents are incorporated in the Principles by the attached instrument as they exist on 21 December 2011:

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. ...
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).

At the time the attached instrument was made, all the documents were available on the Internet (Department of Veterans' Affairs web page — Service providers):

<http://www.dva.gov.au/>

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

Items	Explanation
[1]	sets out the name of the instrument.
[2]	provides that generally the instrument commences on the day after the day it is registered on the Federal Register of Legislative Instruments but that section 1 of the instrument, to the extent it incorporates the RAP Schedule of 21 December 2011 into the Principles, is taken to have commenced on 21 December 2011.

Schedule

1. revoked the former Schedule 1 in the Principles and substituted a new Schedule 1.

Schedule 1 lists documents referred to in the Principles and identifies the version of the document that is recognised by the Principles, namely the version as at 21 December 2011.