

EXPLANATORY STATEMENT

TREATMENT PRINCIPLES (AUSTRALIAN PARTICIPANTS IN BRITISH NUCLEAR TESTS) 2006

EMPOWERING PROVISION

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

PURPOSE

The attached instrument (2013 No. R54) (the Treatment Principles) replaces the *Treatment Principles (Australian Participants in British Nuclear Tests) 2006* (No. R30 of 2006) (the revoked Treatment Principles).

The Treatment Principles is a legislative instrument made under section 16 of the Act. It applies, with modifications, the Treatment Principles made under section 90 of the *Veterans' Entitlements Act 1986* (VEA Treatment Principles) to the situation of eligible persons requiring treatment for malignant neoplasia.

An eligible person is an Australian participant in British nuclear tests who is eligible for treatment of malignant neoplasia under the Act.

The VEA Treatment Principles have been modified and the modifications are explained in Attachment A.

A number of new measures have been included in the VEA Treatment Principles. However the only new measure that automatically applies to eligible persons under the Act relates to enabling an authorised nurse practitioner to refer a client to a DVA-contracted Community Nursing Provider (Nurse Referral Measure).

Before the attached instrument an eligible person could be referred to a DVA-contracted community nursing provider by a Local Medical Officer or other General Practitioner, a treating doctor in a hospital, a hospital discharge planner or a Veterans' Home Care assessment agency. The relatively recent elevation of nurse practitioners to semi-medical practitioner status meant it was appropriate for nurse practitioners to also be able to refer eligible persons to a DVA-contracted community nursing provider and the Treatment Principles were amended accordingly.

CONSULTATION

Yes – for the Nurse Referral measure. DVA consulted the Australian Medical Association (AMA). Consultation was by way of e-mail and telephone conversations. There was no point of disagreement between the parties. The AMA supported the proposal.

RETROSPECTIVITY

No.

DOCUMENTS INCORPORATED-BY-REFERENCE

Yes.

The following non-legislative documents are incorporated into the *Treatment Principles*. These instruments are incorporated as they exist on 1 November 2013 and not as they may exist from time to time:

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 (paragraph 6A.4.2(b));
23. ...
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 DVA Web Page:

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

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.

HUMAN RIGHTS STATEMENT

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 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 by setting out the circumstances in which DVA will provide free treatment for a section of the community.

Generally the attached instrument does not alter existing arrangements (the former instrument has been remade). The only change to existing arrangements is that an authorised nurse practitioner will be able to refer an eligible person to a DVA-contracted community nursing provider. This measure would have a positive impact on the provision of health care benefits because it could enable eligible persons to receive community nursing services more quickly i.e. an authorised nurse practitioner (in addition to a medical practitioner etc) could refer an eligible person to a DVA-contracted community nursing provider.

The only negative measure is the one aimed at preventing double-dipping by recipients of rehabilitation appliances but this measure does not detract from the human right to health, it merely prevents it from being abused. It is, therefore, a legitimate limitation placed on the human right in issue.

Conclusion

The attached legislative instrument is considered to be compatible with the human right to health because it enables a section of the community to receive free health care.

Michael Ronaldson
Minister for Veterans' Affairs
Rule-Maker

FURTHER EXPLANATION OF NEW PROVISIONS

Attachment A.

Attachment A

The attached instrument modifies the application of the VEA Treatment Principles to eligible persons under the Act. The attached instrument cannot amend etc the VEA Treatment Principles. However for ease of drafting the language of making amendments etc has been used. Accordingly, in this attachment:

- a reference to a provision in the VEA Treatment Principles being substituted, means the provision no longer applies to an eligible person under the Act but the substituted provision does;
- a reference to a provision in the VEA Treatment Principles being amended means the provision applies to an eligible person under the Act as if it contained the amendment;
- a reference to a provision in the VEA Treatment Principles being omitted means the provision no longer applies to an eligible person under the Act.

Item [1]

This item provides that the attached instrument commences immediately after the commencement of paragraph 1.1.3 of the Treatment Principles under the *Veterans' Entitlements Act 1986* (VEA Treatment Principles). Paragraph 1.1.3 commenced on the day after the VEA Treatment Principles were registered on the Federal Register of Legislative Instruments.

This will enable the modifications made by the attached instrument to the VEA Treatment Principles to be able to attach to VEA Treatment Principles in existence.

Item [2]

This item is a definition section and defines “modified TPs” to mean the VEA Treatment Principles as modified by the attached instrument.

Schedule

Item 1

This item modifies the VEA Treatment Principles by substituting the Table of provisions. A number of minor modifications needed to be made to the Table of provisions and it was easier to substitute the entire Table.

Item 2

This item modifies the preamble to the VEA Treatment Principles to make it more specific to eligible persons under the Act.

Item 3

This item modifies the purpose of the VEA Treatment Principles so that it relates to eligible people under the Act.

Item 4

This item modifies the interpretation section of the VEA Treatment Principles. A number of minor modifications needed to be made to the interpretation section and it was easier to substitute the entire interpretation section. An example of a modification that needed to be made is the definition of “eligible person”. This definition has been modified so that it relates to eligible persons under the Act and not eligible persons under the *Veterans’ Entitlements Act 1986*.

Item 5

This item modifies paragraph 2.1.1 of the VEA Treatment Principles (by substituting it) so that the provision does not mention Gold Cards because Gold Cards are not provided to eligible persons under the Act. Gold Cards are provided to people who are eligible for treatment for any condition. An eligible person under the Act is only eligible for treatment of a specific condition i.e. malignant neoplasia. A White Card (or its equivalent) is provided to persons eligible for treatment of a specific condition.

Item 6

This item modifies the note to paragraph 2.2.3 of the VEA Treatment Principles by removing the reference to a veteran including a former POW. The modified TPs only relate to Australian participants in British Nuclear Tests and therefore the reference was of no effect and needed to be modified.

Item 7

This item modifies paragraph 2.2.6 of the VEA Treatment Principles by omitting it. Paragraph 2.2.6 refers to overseas treatment for widows of Victoria Cross recipients which is irrelevant to the purposes of the Act.

Item 8

This item modifies paragraph 2.2.7 (including the Note) of the VEA Treatment Principles by omitting it. Paragraph 2.2.7 (including the Note) refers to treatment for any condition of an entitled person who has resided in New Guinea since Independence (16 September 1975). The paragraph was omitted because an eligible person under the Act is only eligible for treatment of a specific condition (malignant neoplasia), not any condition, and an eligible person under the Act who resided in New Guinea would be covered by paragraph 2.2.1 of the VEA Treatment Principles as applied to the person under the Act.

Item 9

This item modifies paragraph 2.4 of the VEA Treatment Principles by substituting it. The paragraph is essentially the same as the former paragraph 2.4 except that it no longer refers to the conditions of pulmonary tuberculosis and post-traumatic stress disorder because the only condition relevant to the purposes of the Act is malignant neoplasia.

Item 10

This item modifies paragraph 2.5 of the VEA Treatment Principles by omitting it. Paragraph 2.5 refers to determinations under section 88A of the *Veterans’ Entitlements Act 1986* which are not relevant to the purposes of the Act.

Item 11

This item modifies paragraph 2.6 of the VEA Treatment Principles by omitting it. Paragraph 2.6 refers to the *Veterans and Veterans Families Counselling Service* which is not relevant to the purposes of the Act.

Item 13

This item modifies paragraph 2.7A of the VEA Treatment Principles by omitting it. Paragraph 2.7A refers to the Centre for Military and Veterans' Health Treatment and CMVH treatment which are not relevant to the purposes of the Act.

Item 14

This item modifies paragraph 2.7B of the VEA Treatment Principles by omitting it. Paragraph 2.7B refers to the Australian Centre for Posttraumatic Mental Health Treatment and ACPMH treatment which are not relevant to the purposes of the Act.

Item 15

This item modifies paragraph 2.8 (including the Note) of the VEA Treatment Principles by omitting it and substituting a new provision in essentially the same terms except that it refers to a loss of eligibility for treatment under the Act instead of under the *Veterans' Entitlements Act 1986*.

Item 16

This item modifies paragraph 4.3.1 of the VEA Treatment Principles by omitting it and substituting a new provision that does not refer to treatment of an entitled person issued with a Gold Card (denoting eligibility for treatment for all conditions) because an eligible person under the Act is only issued with a White Card (denoting eligibility for treatment of the specific condition of malignant neoplasia).

Item 17

This item modifies paragraph 4.8.1(k)(including the Notes) of the VEA Treatment Principles by omitting it and substituting a new provision that prohibits DVA paying for a vaccination for an entitled person under the Act who proposes to travel outside Australia because the person would not hold a Gold Card and DVA only pays for vaccinations for Gold Card holders proposing to travel outside Australia.

Item 18

This item modifies paragraph 5.2.5 of the VEA Treatment Principles by omitting it and substituting a new provision which is confined to the condition of malignant neoplasia i.e. the only condition for which a dental service can be provided under the Act. The relevant annual monetary limit will not apply in relation to a dental service for malignant neoplasia as distinct from any war-caused condition etc.

Item 19

This item modifies paragraph 5.3 of the VEA Treatment Principles by omitting it and substituting a new provision that is basically in the same terms as the omitted provision except that references relevant to the *Veterans' Entitlements Act 1986*, but not to the Act, have been removed e.g. Gold Card, former prisoner of war, war-caused etc.

Item 20

This item modifies paragraph 5.4.2 of the VEA Treatment Principles by omitting it and substituting a new provision that is basically in the same terms as the omitted provision except that its operation is confined to the condition of malignant neoplasia i.e. the only condition that may be treated under the Act.

Item 21

This item modifies paragraph 5.5 of the VEA Treatment Principles by omitting it. Paragraph 5.5 relates to orthodontic treatment for children and eligible persons under the Act would not include children.

Item 22

This item modifies paragraph 5.7 of the VEA Treatment Principles by omitting it and substituting a new provision in basically the same terms as the omitted provision except that its operation is confined to the condition of malignant neoplasia i.e. the only condition that may be treated under the Act.

Item 23

This item modifies paragraph 6.2 of the VEA Treatment Principles by omitting it and substituting a new provision which is confined to a person with a White Card for malignant neoplasia i.e. the only person eligible for treatment under the Act. The omitted provision referred to holders of Gold Cards and contained other references that were relevant to the *Veterans Entitlements Act 1986* but not to the Act.

Item 24

This item modifies Part 6A of the VEA Treatment Principles by omitting it. Part 6A relates to Coordinated Veterans' Care which is not available to eligible persons under the Act.

Item 25

This item modifies Part 6B of the VEA Treatment Principles by omitting it. Part 6B relates to Telemonitoring Treatment which is not available to eligible persons under the Act.

Item 26

This item modifies paragraph 7.1A.1 of the VEA Treatment Principles by amending it to omit the reference to the VVCS OPC Provider Notes because these Notes relate to the Veterans and Veterans Families Counselling Service which is not relevant to the Act.

Item 27

This item modifies paragraph 7.1A.1 (the Table) of the VEA Treatment Principles by amending it to omit the reference to “outreach program counsellors” because such counsellors are relevant to the Veterans and Veterans Families Counselling Service which is not relevant to the Act.

Item 28

This item modifies paragraph 7.1A.1 (the Table) of the VEA Treatment Principles by amending it to omit item 18 which refers to “outreach program counsellors” and the “VVCS OPC Provider Notes” which are relevant to the Veterans and Veterans Families Counselling Service which is not relevant to the Act.

Item 29

This item modifies paragraphs 7.3A-7.3A.22 (inc) of the VEA Treatment Principles by omitting the paragraphs. The omitted paragraphs relate to the Veterans’ Home Care Program which is not available to eligible persons under the Act.

Item 30

This item modifies paragraph 7.7A of the VEA Treatment Principles by omitting it. Paragraph 7.7A relates to the treatment of Outreach Program Counselling which is relevant to the Veterans and Veterans Families Counselling Service which is not relevant to the Act.

Item 31

This item modifies paragraph 9.1.1 of the VEA Treatment Principles by amending it to remove the reference to Vietnam veterans and their dependants because these categories of people are not eligible for treatment under the Act.

Item 32

This item modifies paragraph 9.1.1 (the Note) of the VEA Treatment Principles by omitting it because the Note referred to a matter and a provision in the *Veterans’ Entitlements Act 1986* which were not relevant to the Act (charge for treatment under section 93A).

Item 33

This item modifies paragraph 9.3.2(d) of the VEA Treatment Principles by amending it to remove references to a former prisoner of war and recipient of the Victoria Cross because these references are not relevant to the purposes of the Act.

Item 34

This item modifies paragraph 9.3.3 of the VEA Treatment Principles by amending it so that it prevents double payments under the Act (instead of under the *Veterans’ Entitlements Act 1986*) and various other Acts.

Item 35

This item modifies paragraph 10.1.1 (including the Notes) of the VEA Treatment Principles by omitting it and substituting a new provision which confines the provision (residential care) to a person with a White Card because a person eligible for treatment (e.g. residential care) under the Act is issued with a White Card only.

Item 36

This item modifies paragraph 10.1.3 (the Note) of the VEA Treatment Principles by omitting the Note and substituting a new Note which is in basically the same terms as the omitted Note except that references to the *Veterans' Entitlements Act 1986* have been replaced with references to the Act.

Item 37

This item modifies paragraph 10.1.4 of the VEA Treatment Principles (residential care) by amending it so it prevents double-payments under the Act (instead of under the *Veterans' Entitlements Act 1986*) and the *Aged Care Act 1997*.

Item 38

This item modifies paragraph 10.2 of the VEA Treatment Principles by omitting it. Paragraph 10.2 related to the payment of the residential care amount for former prisoners of war. Former prisoners of war are not relevant to the purposes of the Act.

Item 39

This item modifies the heading to paragraph 10.4 and paragraph 10.4 of the VEA Treatment Principles by omitting them. The heading and the provision relate to payment of residential care fees for veterans awarded the Victoria Cross and this category of person is not relevant to the purposes of the Act.

Item 40

This item modifies paragraph 10.5 of the VEA Treatment Principles by omitting it. Paragraph 10.5 relates to part-payment of the residential care amount to a veteran transferred from Rozelle Hospital. This category of person is not relevant to the purposes of the Act.

Item 41

This item modifies paragraph 10.6.2 (Note 3) of the VEA Treatment Principles by omitting the Note because it referred to a determination under section 88A of the *Veterans' Entitlements Act 1986*. Section 88A and the determinations under it are not relevant to the purposes of the Act.

Item 42

This item modifies paragraph 10.6.2 (Table and definitions)(Respite Admission) of the VEA Treatment Principles by omitting it and substituting a new Table and definitions. The new Table and definitions do not contain references to a former prisoner of war or recipient of the Victoria Cross because these categories of people are not relevant to the purposes of the Act.

Item 43

This item modifies paragraph 10.6.8 Note (1) of the VEA Treatment Principles by omitting it and substituting a new Note which is in basically the same terms as the omitted Note except that references to the *Veterans' Entitlements Act 1986* have been replaced with references to the Act.

Item 44

This item modifies paragraph 10.6.9 of the VEA Treatment Principles (residential care (respite)) by amending it to prevent double-payments under the Act (instead of under the *Veterans' Entitlements Act 1986*) and the *Aged Care Act 1997*.

Item 45

This item modifies Part 10 Part D (Care at Home Packages) of the VEA Treatment Principles by omitting Part D because it relates to a treatment for former prisoners of war and recipients of the Victoria Cross and these categories of people are not relevant to the purposes of the Act.

Item 46

This item modifies Part 10 Part E (Transition Care Co-Payment) of the VEA Treatment Principles by omitting Part D because it relates to a treatment for former prisoners of war and recipients of the Victoria Cross and these categories of people are not relevant to the purposes of the Act.

Item 47

This item modifies paragraph 11.3.1 of the VEA Treatment Principles (restrictions on supply of certain appliances) by amending it to confine its operation to entitled persons under the Act (instead of certain entitled persons under the *Veterans' Entitlements Act 1986*).

Item 48

This item modifies paragraph 11.3.2 of the VEA Treatment Principles (supply of electronic communication devices) by amending it to confine its operation to entitled persons under the Act (instead of certain entitled persons under the *Veterans' Entitlements Act 1986*).

Item 49

This item modifies paragraph 11.3.3 of the VEA Treatment Principles (definition of legally blind veteran) by amending it to confine its operation to entitled persons under the Act (instead of certain entitled persons under the *Veterans' Entitlements Act 1986*).

Item 50

This item modifies paragraph 11.3.3(a) of the VEA Treatment Principles (definition of legally blind veteran) by amending it to confine its operation to legal blindness

caused by malignant neoplasia only because under the Act electronic communication equipment may only be provided to an entitled person whose blindness is caused by malignant neoplasia and not by any other condition.

Item 51

This item modifies paragraph 11.3.4 of the VEA Treatment Principles (definition of severely handicapped veteran) by amending it to confine its operation to a severe handicap caused by malignant neoplasia only because under the Act electronic communication equipment may only be provided to an entitled person whose severe handicap is caused by malignant neoplasia and not by any other condition.

Item 52

This item modifies paragraph 11.3.4(c) of the VEA Treatment Principles by using more appropriate terminology to describe a person eligible for treatment under the Act (“entitled person” instead of “veteran”).

Item 53

This item modifies paragraphs 11.5.1 and 11.5.2 of the VEA Treatment Principles by substituting them with new paragraphs 11.5.1 and 11.5.2 which are confined to the treatment (provision of spectacle hearing aid) of malignant neoplasia and not other conditions because under the Act a person is only entitled to treatment of malignant neoplasia.

Item 54

This item modifies paragraph 11.6.1(a) of the VEA Treatment Principles by substituting it with a new paragraph 11.6.1(a) which is confined to the treatment (provision of a wig) of malignant neoplasia and not other conditions because under the Act a person is only entitled to treatment of malignant neoplasia.

Item 55

This item modifies paragraph 11.9.1B (the Note) of the VEA Treatment Principles by omitting it. The Note referred to section 88A of the *Veterans' Entitlements Act 1986*. Section 88A is not relevant to the purposes of the Act.

Item 56

This item modifies paragraph 12.3.1 (the Note) of the VEA Treatment Principles by omitting it. The Note referred to section 93 and section 93A of the *Veterans' Entitlements Act 1986*. These sections are not relevant to the purposes of the Act.

Item 57

This item modifies paragraph 12.5 of the VEA Treatment Principles (Veterans' Home Services Program) by omitting it. The relevant Program is confined to certain DVA clients with needs assessments made on 15 September 1987. The program could not apply to eligible persons under the Act as their entitlement to treatment commences on 19 June 2006.

Item 58

This item modifies the Transitional Provisions of the VEA Treatment Principles by substituting new Transitional Provisions that apply to the modified Treatment Principles under the Act.

Apart from confining the provisions to the modified Treatment Principles, paragraph (d) of the Transitional Provisions of the VEA Treatment Principles has been omitted because it applied to a person who was receiving care under a Community Aged Care Package or Extended Aged Care at Home Package under the revoked VEA Treatment Principles and these treatments were not available to an eligible person under the Act.

Item 59

This item modifies Schedule 1 of the VEA Treatment Principles by substituting it with a new Schedule 1. This was necessary because not all of the documents incorporated by reference into the VEA Treatment Principles need to be incorporated into the modified Treatment Principles under the Act e.g. the Notes for Coordinated Veterans' Care Program Providers (because Coordinated Veterans' Care is not a treatment available to eligible persons under the Act).

The documents incorporated by reference into the modified Treatment Principles under the Act are incorporated in the state they existed on 1 November 2013 and not as they exist from time to time.