

EXPLANATORY STATEMENT

MRCA Treatment Principles (Rehabilitation Appliance Program) Amendment Instrument 2014

EMPOWERING PROVISION

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

PURPOSE

The attached instrument (2014 No. MRCC 2) varies the *MRCA Treatment 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 (the Commission) may accept financial liability for treatment provided to entitled persons (members of the Defence Force (including former members) or their dependants).

The attached Instrument mainly varies the provisions in the *MRCA Treatment Principles* that relate to the provision of rehabilitation aids and appliances.

The measures contained in the new variations are as follows:

Revising the Rehabilitation Appliances Program (RAP) National Guidelines and the RAP National Schedule of Equipment

The Rehabilitation Appliances Program (RAP) National Guidelines and the RAP National Schedule of Equipment are non-legislative documents incorporated-by-reference into the *MRCA Treatment Principles* on the date for those documents in Schedule 1 of the *MRCA Treatment Principles* (1 April 2014).

The Rehabilitation Appliances Program (RAP) National Guidelines (Guidelines) sets out guidelines for the Commission in relation to accepting financial responsibility for the provision of certain rehabilitation aids or appliances to entitled persons and the RAP National Schedule of Equipment (the Schedule) lists all the rehabilitation aids or appliances that may be provided.

Generally speaking the Guidelines have been updated to remove outdated policy assumptions, to create policy in relation to the provision of tablet computers and smart phones for speech pathology applications, to reflect current clinical issues relating to the supply of recliner chairs, and to remove those guidelines that were superfluous.

A major change to the Schedule was the creation of a section that covered the provision of a rehabilitation aid or appliance for dementia sufferers. The new section denotes assessing health providers, prescribes assessment tools and imposes limits in respect to the quantity and duration of supply for individual dementia items. The section also ensures that provision of dementia-specific aids and appliances is done within whole-of-government policy parameters.

The Schedule has been updated to reflect “community norms” and to be sufficiently flexible in its application so as to meet the needs of an increasingly diverse treatment population, including veterans, members and dependants from contemporary (post-1999) deployments.

Major changes to the Schedule are the inclusion of tablet computers and smart phones for speech pathology applications and cognitive, dementia and memory assistive technology items such as pillbox alarms and specially designed clocks.

Updating the Statement of Purpose of a RAP Appliance

Previously the *MRCA Treatment Principles* stated that in order for a rehabilitation appliance to be provided to an entitled person it needed to be an item other than: “...an item that is customarily used for domestic purposes and would be used merely for such a purpose by the entitled person”.

The statement effectively assumes that any item not specifically designed for a person with a disability cannot be of benefit to such a person as a rehabilitation aid or appliance. It also fails to reflect the reality of recent technological advancements, particularly tablet computers and smart phones, that perform a multiplicity of functions, including a clinically-related function, notwithstanding they are not designed specifically for persons with a disability. In short the requirement that a RAP Appliance cannot be a “commonly used appliance” could deprive relevant entitled persons of an aid or appliance that could assist with their rehabilitation and effective functioning. The replacement “statement of purpose” is:

“[the appliance should be] ... likely to facilitate the independence and/or self-reliance of the entitled person based on an assessment of clinical need by an appropriately qualified health professional.”.

Providing Vertical Platform Lifts only to members with service-related conditions

Previously Vertical Platform Lifts (VPLs) could be provided by the Department of Veterans’ Affairs (DVA) to any client who was eligible for treatment and who had a clinical need for the lift. VPLs are expensive to install (around \$100,000), maintain and remove.

Before a client may have a VPL installed the Commission must approve the installation (prior approval) and under the *MRCA Treatment Principles* the Commission must consider, among other relevant considerations, the extent of funds that are available and the need for reasonable control over expenditure (paragraph 3.2.2).

The attached instrument strengthens the financial controls in relation to VPLs and adds more certainty to the situation by limiting VPLs to members who need the lifts due to their service-related conditions.

Providing Assistive Communication Devices

Assistive communication devices (ACDs) are provided to clients with complex communication difficulties.

Previously the circumstances in which DVA could provide ACDs to clients were limited - the client needed to be a member who required an ACD due to being legally blind or having a severe handicap, and the condition needed to be service-related.

However many state-of-the-art communication applications are designed for use on ACDs that are tablet computers and smart `phones. Tablet computers and smart `phones are affordable, convenient and portable and there is an emerging demand for such devices within the veteran and defence community.

The previous DVA policy settings for ACDs were outdated and did not reflect recent technological advances or prevailing community norms. Accordingly the attached instrument broadens the class of DVA client who may receive a tablet computer or smart `phone. Such devices will now also be available to the following clients who have a clinical need for the devices:

- members eligible for treatment only for a service-related condition and whose service-related condition caused the need for the device (known as the holder of a “White Card”).
- members eligible for treatment for any condition (known as a holder of a “Gold Card”).
- member’s dependant (also known as the holder of a “Gold Card”).

Paying Guide Dog Upkeep

DVA pays for guide dogs for members whose service-related condition causes the need for such an aid (eligible members).

Prior to the attached instrument there was a prohibition in the *MRCA Treatment Principles* on DVA paying for the upkeep of a guide dog that had been provided to an eligible member at DVA expense. The attached instrument removes this prohibition and enables DVA to pay the reasonable costs of keeping such a dog.

Removing prior approval requirement for certain medical grade footwear (MGF) items

This measure removes the requirement for DVA prior approval for the supply to entitled persons of most items of medical grade footwear and certain podiatry reports.

Making Minor and Technical Variation

The manner in which the *MRCA Treatment Principles* refers to non-legislative documents incorporated-by-reference into the *MRCA Treatment Principles* (incorporated documents) has been simplified. In short, a reference in the *MRCA Treatment Principles* to an incorporated document is taken to be a reference to the version of the document that existed on the date for the document in Schedule 1 to the *MRCA Treatment Principles*.

The definitions of “Gold Card” and “White Card” (the identification cards provided by DVA to entitled persons that denote their eligibility for treatment) have been made more flexible by defining the cards by reference to their purpose (i.e. identification of treatment eligibility) rather than to their title. This ensures that if the title of the cards change, the *MRCA Treatment Principles* do not need to be amended.

CONSULTATION

For RAP Measures (other than guide dog upkeep)

Yes – a Committee known as the “RAP Reference Committee”, which operates under the auspices of DVA, provided general oversight of the proposals implemented by the attached instrument. The Committee is comprised of independent health professionals from the fields of Specialist Rehabilitation Medicine, General Practice, Occupational Therapy, Physiotherapy, and Nursing. Each member is nominated and endorsed by their professional association.

For Guide Dog Upkeep Measure

Yes - Various Dog Associations, Younger Diggers Australia.

For Medical Grade Footwear Measure

Yes – in addition to the RAP Reference Committee (see above) — representatives of the podiatry profession.

For Minor and Technical Measures

No – the measures have no impact on clients or providers. They are technical, legal variations.

Nature of Consultation

Noting that paragraph 26(1A)(d) of the *Legislative Instruments Act 2003* requires an Explanatory Statement for a legislative instrument to contain a description of the nature of any consultation, the nature of the consultation for the attached legislative instrument was:

For RAP measures (other than guide dog upkeep) and the medical grade footwear measure — meetings of the RAP Reference Committee; e-mail correspondence; and telephone conversations between Committee members and DVA. No aspect of the measures proved contentious.

For Guide Dog Upkeep measure — meetings and telephone conversations between DVA officials and representatives of various dog Associations and representatives of Younger Diggers Australia. No aspect of the measure proved contentious.

For Medical Grade Footwear Measure —in addition to meetings of the RAP Reference Committee (see above) — meetings, e-mail correspondence; and telephone conversations between DVA officials and representatives of the podiatry profession. No aspect of the measure proved contentious.

RETROSPECTIVITY

No.

DOCUMENTS INCORPORATED-BY-REFERENCE

Yes.

The following non-legislative documents are incorporated into the *MRCIA Treatment Principles*. These instruments are incorporated as they exist on 1 April 2014 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. Notes for Coordinated Veterans' Care Program Providers (Part 6A);
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

<http://www.health.gov.au/internet/mentalhealth/publishing.nsf/Content/better-access-through-mbs-1>;

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 on the DVA Web Page:

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

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:

<http://www.health.gov.au/internet/mentalhealth/publishing.nsf/Content/better-access-through-mbs-1>

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. The treatment in question relates to the provision of certain rehabilitation appliances to members and their dependants.

Although the attached instrument engages the right to health it does not do so in a way that would affect the provision of essential health services. The measures introduced by the instrument would mostly affect the quality of life of the relevant DVA clients rather than actual physical or mental wellbeing.

Most of the measures are positive. For example, members and dependants with complex communication needs will now have the opportunity to be supplied with a computer tablet or smart `phone if clinically necessary. Eligible members with guide dogs may now have DVA pay for the upkeep of the dogs. Podiatrists no longer need to obtain DVA's approval before supplying most items of medical grade footwear to DVA clients which could enable the clients to receive the footwear more quickly.

However one measure, limiting Vertical Lift Platforms to members with a service-related condition where that condition caused the need for such a lift, curtails the class of client who may be provided with such items.

Previously, the Commission had a discretion as to whether to approve Vertical Platform Lifts for clients otherwise eligible for them as treatment (eligible entitled person) and two factors the Commission was required to take into account under the *MRCA Treatment Principles* before approving a Vertical Platform Lift were:

- the extent of funds that are available; and
- the need for reasonable control over expenditure

The situation, therefore, is that whereas previously the Commission could have ruled out providing an eligible entitled person with a Vertical Platform Lift on the ground of cost, by the exercise of its discretion, the Commission has decided to minimise the cost associated with such items (up to \$100,000) in a prescriptive way i.e. by limiting the class of eligible entitled person who may be given such items. The new approach has added certainty to the process which benefits both entitled persons and administrators alike albeit some classes of client (dependants and members without a service-related condition that causes the need for a VPL) will miss out.

The Parliamentary Joint Committee on Human Rights has stated three grounds for assessing whether a limitation on a human right is reasonable, namely:

- whether the limitation is aimed at achieving a legitimate objective;
- whether there is a rational connection between the limitation and that objective; and
- whether the limitation is proportionate to that objective.

The assessment by DVA of the relevant limitation using these grounds is as follows:

- the legitimate objective is “capping costs”. VPLs are very expensive (approx.\$100,000) and there are tight fiscal constraints on Government spending.
- by limiting VPLs only to DVA’s most deserving clients i.e. veterans/members with service related conditions (or, for veterans, determined conditions) that cause the need for a VPL, costs could be contained.
- the limitation is proportionate to the cost-savings objective in that VPLs will still be available to a class of DVA clients but the class will not be as wide as it was previously.

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 additional free health care (e.g. computer tablets, smart phones for clients with complex communication needs) and the limit it has imposed on the class of client who may be provided with a Vertical Platform Lift is reasonably justifiable.

Michael Ronaldson
Minister for Veterans’ Affairs
Rule-Maker

FURTHER EXPLANATION OF NEW PROVISIONS

Attachment A.

Attachment A

Section [1]

This section sets out the name of the instrument – *MRCA Treatment Principles (Rehabilitation Appliance Program) Amendment Instrument 2014*.

Section [2]

This section provides that the instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section [3]

This section has the effect of applying the *MRCA Treatment Principles* before they were amended by the attached instrument (old *MRCA Treatment Principles*) to processes under the old *MRCA Treatment Principles* that had not been completed before the *MRCA Treatment Principles* were amended by the attached instrument. The processes in question include requests for treatment.

Schedule

Item 1

This item inserts in paragraph 1.4.1 new definitions of:

- “assistive communication device”
- “speech pathologist”
- “Vertical Platform Lift”

Item 2

This item substitutes the definition in paragraph 1.4.1 of “in force on the date in Schedule 1” with a more simple definition.

Item 3

This item substitutes the definition in paragraph 1.4.1 of “Gold Card” with a more flexible definition.

Item 4

This item substitutes the definition in paragraph 1.4.1 of “White Card” with a more flexible definition.

Item 5

This item substitutes paragraph 7.6.2 and has the effect of removing the need for DVA prior approval for most items of Medical Grade Footwear except those mentioned.

Item 6

This item substitutes a new statement of purpose for a rehabilitation aid. A rehabilitation aid may now include an item customarily used for domestic purposes if, among other requirements, it is clinically required by an entitled person.

Item 7

This item includes the word “aids” in paragraph 11.3.1 as a possible description of the items that may be provided under the provision so as to enable the term to be applied to a guide dog. Describing an animal as an “appliance” is inaccurate.

Item 8

This item substitutes paragraph 11.3.1(b) and has the effect of enabling DVA to pay the reasonable costs associated with the keeping of a guide dog by a member eligible to be provided one at DVA expense. Whereas DVA can pay for guide dogs for eligible members, prior to the attached instrument it could not pay for the upkeep of such dogs.

Item 9

This item inserts a new provision dealing with Vertical Platform Lifts (paragraph (d)). Paragraph (c) is the same as the previous paragraph (c) but was substituted for ease of drafting. The effect of paragraph (d) is that the Commission will provide, or accept financial responsibility for, a Vertical Platform Lift only for a member with a medically assessed need for the item due to a service-related condition.

Item 10

This item substitutes paragraph 11.3.2. Previously paragraph 11.3.2 only allowed the Commission to provide (or accept financial responsibility for) assistive communication devices to members who were legally blind or severely handicapped due to a service-related condition.

New paragraph 11.3.2 provides that, subject to paragraph 11.1.3 of the *MRCA Treatment Principles* (general conditions for the supply of a rehabilitation aid) the Commission may accept financial responsibility for the provision to an entitled person of an assistive communication device. An “assistive communication device” is defined in paragraph 1.4.1.

New paragraph 11.3.3 provides that where the assistive communication device is a computer tablet or smart `phone, the Commission may only accept financial responsibility for the device if:

- the entitled person has been clinically assessed by a speech pathologist as having complex communication needs that would be significantly met by a computer tablet or smart `phone; and
- in the case of a smart `phone — the entitled person’s communication needs:
 - (i) could not be reasonably satisfied by the provision of a computer tablet; or
 - (ii) are not being reasonably satisfied by the use of a computer tablet; and
- the computer tablet or smart `phone has been preloaded with a speech pathology application; and
- the entitled person is a Gold Card holder; or a White Card holder whose communication needs are service-related; and
- the Commission considers all relevant guidelines in relation to the provision of an assistive communication device that is a computer tablet or a `smart phone as set out in the RAP National Schedule of Equipment and the Rehabilitation Appliances Program (RAP) National Guidelines.

The RAP National Schedule of Equipment and the Rehabilitation Appliances Program (RAP) National Guidelines are incorporated-by-reference into the *MRCA Treatment Principles* as they existed on the date in Schedule 1 of the

MRCA Treatment Principles for those documents and not as they may exist from time to time.

The notes to new paragraph 11.3.3 advise that:

- the repair and replacement of rehabilitation appliances is covered by MRCA Treatment Principle 11.7.
- the holder of a Gold Card is a member, or dependant of a member, eligible under the Act for treatment for any injury suffered, or disease contracted.
- the holder of a White Card is a member eligible under the Act for treatment for a service-related condition.
- “dependant” is defined in s.15 of the Act; and eligibility of dependants for treatment is set out in s.284 of the Act.

Item 11

This item omitted paragraph 11.3.3 because it related only to assistive communication devices for legally blind members. Assistive communication devices will now be available for a broader class of entitled person which would include legally blind members whose blindness was service-related.

Item 12

This item omitted paragraph 11.3.4 because it related only to assistive communication devices for severely handicapped members. Assistive communication devices will now be available for a broader class of entitled person which would include severely handicapped members whose handicap was service-related.

Item 13

This item omitted paragraph 11.6.3 because it duplicated medical grade footwear matters that are more comprehensively addressed under paragraph 7.6 of the *MRCA Treatment Principles*.

Item 14

This item substitutes a new Schedule 1 into the *MRCA Treatment Principles*. Schedule 1 is to be read in conjunction with the definition of “in force on the date in Schedule 1” in paragraph 1.4.1 of the *MRCA Treatment Principles*.

Schedule 1 sets out the non-legislative documents that are incorporated-by-reference into the *MRCA Treatment Principles* and states a date for those documents (1 April 2014). The effect of this is that the documents are incorporated into the *MRCA Treatment Principles* i.e. become part of the *MRCA Treatment Principles*, in the form they were in on 1 April 2014 and not in any changed form after 1 April 2014.