EXPLANATORY STATEMENT

MRCA Treatment Principles (Residential Care Classification) 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 25) 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 varies the provisions in the *MRCA Treatment Principles* to:

- update the classification of entitled persons in residential care (Residential Care Measure).
- incorporate certain non-legislative documents into the *MRCA Treatment Principles* in the form in which they exist on 1 July 2014 and not as they may change from time to time (Incorporated Document Measure).

Residential Care Measure

This measure was introduced as part of the "Living Longer, Living Better" aged care reforms that have been progressively implemented since 1 July 2013.

The particular aged care reform covered by the attached instrument is the replacement of the low-high classifications for residential care (non-respite) with classifications based on "domains" i.e. the domain of: "activities of daily living (ADL); "behaviour domain"; and domain of "complex health care" (CHC). This classification model (domain classification) is set out in the *Classification Principles 2014* made under the *Aged Care Act 1997*.

Under the domain classifications a person in residential care is rated in a category for each domain being (either nil, low, medium or high). For example, a person could be rated as: medium ADL domain category or medium ADL domain category and medium CHC domain category.

Essentially the attached instrument omits references in the MRCA Treatment Principles to "low level residential care" and "high level residential care" and replaces the references to "high level residential care" with the new domain classification namely the classification comprised of any of the following:

(i)high ADL domain category;
(ii)high CHC domain category;
(iii)high behaviour domain category;
(iv)a medium domain category in at least 2 domains.

This new classification is set out in paragraph 7(6)(a) of the *Quality of Care Principles 2014* and means that a care recipient with the classification may be provided with care and services specified in Part 3 of Schedule 1 of the *Quality of Care Principles 2014* (in addition to the care and services in Parts 1 and 2 of that Schedule). The care and services in Part 3 of Schedule 1 of the *Quality of Care Principles 2014* are more intensive than the care and services in the other parts of the Schedule.

For residential care that is respite care, the "low/high level terminology" has been retained.

Incorporated Document Measure

The key documents incorporated by the attached instrument are documents prepared in the Department of Veterans' Affairs (DVA) known as the RAP National Guidelines, the RAP National Schedule of Equipment, Fee Schedules and Notes for Providers (Incorporated Document Measure).

The RAP National Guidelines and the RAP National Schedule of Equipment have been changed to support the Residential Care Measure. References to the former residential care classifications of high/low care have been replaced with the new "domain classification" (described above).

The Fee Schedules and Notes for Providers have been changed to omit references to the annual indexation of fees and, in the case of fees for General (Medical) Practitioners, index (increase) those fees.

The 2014-15 Federal Budget deferred the indexation of Medicare fees (except General Practitioner fees) administered by the Department of Health and DVA medical, dental and allied health fees until 1 July 2016. The changes to DVA's Fee Schedules and Notes for Providers bring DVA in line with the Government's Budget position.

The actual fee levels in the Fee Schedules have not been changed, except for General (Medical) Practitioner fees, and remain at their 1 November 2013 level where they will stay until 1 July 2016.

CONSULTATION

For the Residential Care Measure — Yes, by the Department of Social Services which is introducing the changes to the residential care classifications under the *Aged Care Act 1997* and on which the attached instrument is based.

The impact of the removal of the high care/low care distinction in residential care and the revised schedule of specified care and services has been discussed in detail with the Specified Care and Services Reference Group. This Group comprises peak industry bodies, consumer and union representatives, medical professionals and other relevant aged care experts. The National Aged Care Alliance publishes the Group's advisory reports and meeting communiques on its public website. The Department of

Veterans' Affairs has membership on the Group and the Department of Human Services has also been involved.

Discussions have also been held with relevant State and Territory agencies, through the Aged and Community Care Officials forum and correspondence between Ministers, particularly around how these changes will affect State and Territory programmes and legislation.

For the Incorporated Document Measure and those documents unrelated to the Residential Care Measure – No, because the measure is part of a whole-of-government measure and it would be inappropriate for DVA to consult in these circumstances as it could suggest the existence of options, which is not the case.

It should be noted that an instrument that gives effect to a budget decision to adjust a fee, which arguably is what the attached instruments do, is cited in the *Legislative Instruments Act 2003* as an example of a legislative instrument for which consultation may be inappropriate.

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:

- Meetings of the "Specified Care and Services Reference Group" (SCSRG).
- Publication, by the National Aged Care Alliance, of the SCSRG reports/communiques on the Internet.
- Meetings with relevant State and Territory agencies, through the Aged and Community Care Officials forum.
- Correspondence with State/Territory Governments.

RETROSPECTIVITY

Yes – the attached instrument could commence before registration. If it does, and noting subsection 12(2) of the *Legislative Instruments Act 2003* (instruments commencing before registration not to disadvantage a person), it would not disadvantage any person or impose any liability on a person other than the Commonwealth.

DOCUMENTS INCORPORATED-BY-REFERENCE

Yes.

The following non-legislative documents are incorporated into the *MRCA Treatment Principles*. These instruments are incorporated as they exist on 1 July 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. Fee Schedule of Dental Services for Dentists and Dental Specialists (paragraph 3.5.1);

8. Fee Schedule of Dental Services for Dental Prosthetists (paragraph 3.5.1);

9. Chiropractors Schedule of Fees (paragraph 3.5.1);

10. Diabetes Educators Schedule of Fees (paragraph 3.5.1);

11. Dietitians Schedule of Fees (paragraph 3.5.1);

12. Exercise Physiologists Schedule of Fees (paragraph 3.5.1);

13. Occupational Therapists Schedule of Fees (paragraph 3.5.1);

14. Osteopaths Schedule of Fees (paragraph 3.5.1);

15. Physiotherapists Schedule of Fees (paragraph 3.5.1);

16. Psychologists Schedule of Fees (paragraph 3.5.1);

17. Podiatrists Schedule of Fees (paragraph 3.5.1);

18. Social Workers Schedule of Fees (paragraph 3.5.1);

19. Clinical Counsellors Schedule of Fees (paragraph 3.5.1);

20. Speech Pathologists Schedule of Fees (paragraph 3.5.1);

21. Australian Government Department of Veterans' Affairs Classification System and Schedule of Item Numbers and Fees — Community Nursing Services (paragraph 6A.4.2(b));

22. Notes for Coordinated Veterans' Care Program Providers (Part 6A);

23. Rehabilitation Appliances Program (RAP) National Guidelines (paragraph 11.2A.1);

24. RAP National Schedule of Equipment (paragraph 11.2A.1);

25. Veterans and Veterans Families Counselling Services (VVCS) Outreach Program Counsellors (OPC) Provider Notes (paragraph 1.4.1 and 7.1A.1);

26. Veterans and Veterans Families Counselling Service (VVCS) Outreach Program Counsellors (OPC) Schedule of Fees (paragraph 3.5.1);

27. General information about VVCS – Veterans and Veterans Families Counselling Service (paragraph 1.4.1);

28. 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.

For the Residential Care Measure the attached legislative instrument has been assessed by the Department of Veterans' Affairs (DVA) as being compatible with and promoting the right to health in that the instrument adopts the latest model for classifying persons in residential care that is in use under the *Aged Care Act 1997* (classification model). The classification of a person in residential care denotes the type of care and services the person may receive.

If DVA did not adopt the classification model under the *Aged Care Act 1997* it would not be able to pay for residential care provided to entitled persons as treatment because the *Aged Care Act 1997* regulates residential care and provides the model for classifying residential care and DVA treatment (residential care) legislation is based on a residential care classification model under the *Aged Care Act 1997*. Accordingly, by adopting the current classification model in the attached instrument DVA is able to pay for residential care for entitled persons and therefore the attached instrument promotes the right to health for a section of the community.

The attached instrument does not impose any limitation on the right to health in the context in question.

For the Incorporated Document Measure (in relation to the documents that are not part of the Residential Care Measure), the attached instrument does not engage a human right and therefore the instrument as it relates to that measure is compatible with human rights.

Conclusion

The attached legislative instrument is considered to be compatible with the human right to health because it adopts the residential care classification model under the *Aged Care Act 1997* which enables DVA to pay the residential care costs for a section of the community.

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 (Residential Care Classification) Amendment Instrument 2014*.

Section [2]
This section provides that the instrument commences, or is taken to have commenced, on 1 July 2014.

Schedule

Item 1
This item inserts new definitions.

Item 2
This item omits the definition of "high level of residential care" because it is no longer relevant.

Item 3
This item replaces the definition of "high level of residential care (respite)" with an updated definition which refers to the new classification principles under the *Aged Care Act 1997* i.e. *Classification Principles 2014*.

Item 4
This item omits the definition of "low level of residential care" because it is no longer relevant.

Item 5
This item removes part of Note (2) in the definition of "veterans' supplement" because the part referred to outdated sources for the "veterans supplement" namely, the *Residential Care Subsidy Principles 1997* and the *Home Care Subsidy Principles 2013* under the *Aged Care Act 1997*. These legislative instruments have been combined to form the *Subsidy Principles* and it is the *Subsidy Principles* which may specify in respect of a veterans' supplement, the circumstances in which the supplement will apply to a care recipient in respect of a payment period.

Item 6
This item replaces paragraph 7.1.3 with a new paragraph 7.1.3. The effect of new paragraph 7.1.3 is that, subject to exceptions, the Commission will not accept financial responsibility for providing an entitled person in residential care with the allied health care services mentioned in paragraph 7.1.2 of the MRCA Treatment Principles if the person is covered by paragraph 7(6)(a) of the *Quality of Care Principles 2014* (i.e. the person is a person who would previously have been classified as being in "high level residential care").

A residential care facility receives a higher subsidy for a person covered by paragraph 7(6)(a) of the *Quality of Care Principles 2014* and therefore could reasonably be expected to provide the allied health care services in question to the person where needed. Indeed under the *Quality of Care Principles 2014* the residential care facility could be required to provide some of those services. The aim of paragraph 7.1.3, therefore, is to ensure residential care facilities are not, in effect, subsidised twice.

There are exceptions to the prohibition on the Commission accepting financial responsibility for the provision of the allied health care services mentioned in paragraph 7.1.2 of the MRCA Treatment Principles to a person is covered by paragraph 7(6)(a) of the *Quality of Care Principles 2014*. The Commission may accept financial responsibility for the provision of the allied health care treatments of physiotherapy, podiatry and diabetes educator services to a person covered by paragraph 7(6)(a) of the *Quality of Care Principles 2014* if the Commission's prior approval is obtained (see items 7, 8 and 9).

Item 7
This item substitutes the former residential care classification of "high level of residential care" in paragraph 7.5.3 with the new relevant classification i.e. "residential care (consisting of at least one high or two medium domain categories)". The effect of this is that if an entitled person is receiving residential care consisting of at least one high or two medium domain categories (see explanation of domains at the start of this Statement) i.e. the level of care that was formerly "high level residential care", the person may be provided with physiotherapy treatment under the MRCA Treatment Principles if the prior approval of the Commission is obtained.

Paragraph 7.5.3 constitutes an exception to the prohibition on the Commission accepting financial responsibility for the provision of the allied health care service of physiotherapy mentioned in paragraph 7.1.2 of the MRCA Treatment Principles to a person covered by paragraph 7(6)(a) of the *Quality of Care Principles 2014*.

Item 8
This item substitutes the former residential care classification of "high level of residential care" in paragraph 7.6.2 with the new relevant classification i.e. "residential care (consisting of at least one high or two medium domain categories)". The effect of this is that if an entitled person is receiving residential care consisting of at least one high or two medium domain categories (see explanation of domains at the start of this Statement) i.e. the level of care that was formerly "high level residential care", the person may be provided with podiatry treatment under the MRCA Treatment Principles if the prior approval of the Commission is obtained.

Paragraph 7.6.2 constitutes an exception to the prohibition on the Commission accepting financial responsibility for the provision of the allied health care service of podiatry mentioned in paragraph 7.1.2 of the MRCA Treatment Principles to a person covered by paragraph 7(6)(a) of the *Quality of Care Principles 2014*.

Item 9
This item substitutes the former residential care classification of "high level of residential care" in paragraph 7.6A.2 with the new relevant classification i.e. "residential care (consisting of at least one high or two medium domain categories)". The effect of this is that if an entitled person is receiving residential care consisting of at least one high or two medium domain categories (see explanation of domains at the start of this Statement) i.e. the level of care that was formerly "high level residential care", the person may be provided with diabetes educator services (treatment) under the MRCA Treatment Principles if the prior approval of the Commission is obtained.

Paragraph 7.6A.2 constitutes an exception to the prohibition on the Commission accepting financial responsibility for the provision of the allied health care service of diabetes educator services mentioned in paragraph 7.1.2 of the MRCA Treatment

Principles to a person covered by paragraph 7(6)(a) of the *Quality of Care Principles 2014*.

Item 9A
This item substitutes the former residential care classification of "high level of residential care" in paragraph 10.2.1 with the new relevant classification i.e. "residential care (consisting of at least one high or two medium domain categories)".

The effect of this is that if an entitled member (defined in 1.4.1 of the MRCA Treatment Principles) is receiving residential care consisting of at least one high or two medium domain categories (see explanation of domains at the start of this Statement) i.e. the level of care that was formerly "high level residential care" and the entitled member:

- has a dependant;
- is receiving residential care (consisting of at least one high or two medium domain categories) for a service-related injury or disease (or both);

and the Commission considers the circumstances to be exceptional, the Commission may accept financial responsibility for the residential care amount otherwise payable by the entitled member. The term "residential care amount" is defined in paragraph 1.4.1 of the MRCA Treatment Principles.

Item 10
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 July 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 July 2014 and not in any changed form after 1 July 2014.