EXPLANATORY STATEMENT

TREATMENT PRINCIPLES (AUSTRALIAN PARTICIPANTS IN BRITISH NUCLEAR TESTS) 2006 (RESIDENTIAL CARE CLASSIFICATION) AMENDMENT INSTRUMENT 2014

EMPOWERING PROVISION

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

PURPOSE

The attached instrument (2014 No. R26) varies the *Treatment Principles (Australian Participants in British Nuclear Tests) 2006* (modified Treatment Principles) which, in turn, modified the *Treatment Principles* under the *Veterans' Entitlements Act 1986* (VEA Treatment Principles) in their application to eligible persons (entitled persons) under the *Australian Participants in British Nuclear Tests (Treatment) Act 2006*.

The modified Treatment Principles is a legislative instrument made under section 16 of the Act. An entitled person is an Australian participant in British nuclear tests who is eligible for treatment of malignant neoplasia under the Act.

A number of new measures have been included in the VEA Treatment Principles and the application of some of these measures to entitled persons under the Act has been modified by varying the modified Treatment Principles. The variations to the VEA Treatment Principles relate to the classification of entitled persons in residential care (Residential Care Measure) and the incorporation of changed non-legislative documents in the form in which they existed 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 VEA Treatment Principles (and which automatically applies to entitled persons under the Act subject to any modifications) is the replacement of the low-high classifications for residential (non-respite) care 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 (non-respite) 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 variations to the VEA Treatment Principles involved omitting the residential care classification of "low level residential care" and replacing the

classification of "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.

Hereinafter the new classification is referred to as the intensive care classification.

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 (respite) care, the "low/high level terminology" has been retained.

Incorporated Document Measure

The key documents under this measure both under the VEA Treatment Principles and 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.

Not all of the relevant variations to the VEA Treatment Principles have been modified as some could apply directly to entitled persons without modification.

The following is a list of the variations to the VEA Treatment Principles that apply to entitled persons under the Act together with an indication of whether they have been modified, and if so, the nature of the modification or whether, as a result of the variations, the Modified Treatment Principles needed to be varied, and if so, the nature of the variation.

Definitions relating to residential care

Variation – varying the modified Treatment Principles in relation to residential care (or residential care related) definitions. The definitions reflect the residential care definitions under the VEA Treatment Principles.

Preventing double-dipping by ensuring the Repatriation Commission cannot accept financial responsibility for allied health care services provided to people in subsidised intensive residential care unless the Commission's prior approval is obtained for certain services (this is not a new provision in the VEA Treatment Principles. It was varied in the VEA Treatment Principles to reflect the new intensive residential care classification).

No modification/no variation – the variation to the VEA Treatment Principles is able to apply to entitled persons under the Act without modification.

Enabling the Repatriation Commission to accept financial responsibility for the allied health care treatments of physiotherapy, podiatry and diabetes education services provided to a person in subsidised intensive residential care if the Commission's prior approval is obtained (this is not a new provision in the VEA Treatment Principles. It was varied in the VEA Treatment Principles to reflect the new intensive residential care classification).

No modification/no variation – the variation to the VEA Treatment Principles is able to apply to entitled persons under the Act without modification.

Providing that the Repatriation Commission may accept financial responsibility for the "residential care amount" payable by a veteran in subsidised residential care (intensive care classification) who has a dependant and is receiving residential care for a war-caused injury or war-caused disease (or both), if the Repatriation Commission considers the circumstances exceptional (this is not a new provision in the VEA Treatment Principles. It was varied in the VEA Treatment Principles to reflect the new intensive residential care classification).

No modification/no variation – the variation to the VEA Treatment Principles, in conjunction with the definitions in the modified Treatment Principles, is able to apply to entitled persons under the Act without modification.

Incorporating Documents

Variation - varying the modified Treatment Principles in relation to the incorporation of non-legislative documents into the modified Treatment Principles. The documents (set out at item 3 of the Schedule) are incorporated into the modified Treatment Principles in the state they were in on 1 July 2014 and not as they may change from time to time.

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 proposal implemented by 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 modified 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. Rehabilitation Appliances Program (RAP) National Guidelines (paragraph 11.2A.1);

23. 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.

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

See: Attachment A

Attachment A

Schedule

The references to "substituted paragraph" etc is a reference to a provision in the modified Treatment Principles that is in substitution for a provision in the VEA Treatment Principles.

Item 1
This item omits the definition of "high level of residential care" in substituted paragraph 1.4.1.

Item 2
This item includes definitions of the following terms in substituted paragraph 1.4.1:

"Classification Principles 2014"
"Quality of Care Principles 2014"
"residential care (consisting of at least one high or two medium domain categories)"
"high level of residential care (respite)"

Item 3
This item substitutes item 59 of the modified Treatment Principles. The effect of this is to substitute Schedule 1 of the modified Treatment Principles with a new Schedule 1. Substituted 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 modified Treatment Principles.

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