

# EXPLANATORY STATEMENT

## **Veterans' Affairs (Treatment Principles – Private Accommodation in Hospital Surcharge) Amendment Instrument 2014**

### **EMPOWERING PROVISIONS**

The *Veterans' Entitlements Act 1986* (the VEA) – subsection 90(4).

The *Military Rehabilitation and Compensation Act 2004* (MRCA) – subsection 286(2).

The *Australian Participants in British Nuclear Tests (Treatment) Act 2006* (APBNT(T)A) – subsection 16(6).

### **PURPOSE**

The attached instrument (2014 No.R78/MRCC78) varies provisions in the three (virtually identical) sets of Treatment Principles under the VEA, MCRA and APBNT(T)A.

The Treatment Principles is a legislative instrument that sets out the circumstances in which treatment may be provided under the VEA, MRCA and APBNT(T)A to persons eligible for treatment (entitled persons) and the circumstances in which the Repatriation Commission and Military Rehabilitation and Compensation Commission (Commissions) may accept financial responsibility for treatment provided to entitled persons.

The provisions being varied relate to the prohibition on the Commissions accepting financial responsibility for treatment where part or all of the treatment has been paid by a health insurance fund.

Generally speaking, repatriation treatment policy is that an entitled person is treated totally at the expense of the Department of Veterans' Affairs (DVA) and the payment of a co-payment removes a person from this arrangement. The rationale for the position is that it protects entitled persons from being charged for treatment when their treatment is intended to be free. In situations where this position works to the disadvantage of an entitled person, such as the present situation, the position is mollified.

The intention of the attached instrument is to ensure the relevant provisions in the Treatment Principles do not affect new changes to the Private Patient Principles under the VEA, MRCA and APBNT(T)A that enable DVA to pay for non-medically necessary private accommodation for an entitled person in hospital where the entitled person or a private health insurer agrees to pay the difference (or surcharge) between the amount DVA would pay for shared accommodation for the person and the cost of the private accommodation for the person.

Under the Private Patients Principles (e.g. the *Repatriation Private Patient Principles*) the Commissions are able to accept financial responsibility for the cost of an entitled person's private accommodation in hospital but only where it is medically necessary. Some patients prefer private accommodation where such accommodation is not medically necessary. Where a client chooses non-medically necessary private

accommodation over shared accommodation, DVA does not pay the full cost of the private accommodation because it is a lifestyle choice by the client and unrelated to any medical need of the client.

The attached instrument clarified the legal situation by ensuring that in the circumstances in question the Treatment Principles did not prevent DVA paying for part of the cost of a treatment (hospital accommodation) despite a health insurance fund paying the remainder of the cost (surcharge).

The changes to the Private Patient Principles constitute the main initiative in this exercise with the changes to the Treatment Principles being consequential amendments.

Accordingly, for the Treatment Principles under the VEA and MRCA, the attached instrument introduces an exception to paragraph 3.5.3 by providing that the paragraph does not prevent the Commissions from accepting financial responsibility for part of the cost of an entitled person's private accommodation in hospital where a private health insurer agrees to pay the surcharge.

For the Treatment Principles under the VEA (VEA Treatment Principles) that apply under the APBNT(T)A, there was no need to modify the VEA Treatment Principles as the variation to paragraph 3.5.3 could apply seamlessly under the APBNT(T)A. However the existing modifications to the VEA Treatment Principles contained in the *Treatment Principles (Australian Participants in British Nuclear Tests) 2006* have been varied to refer to a definition of "private health insurer".

## **CONSULTATION**

Yes. There has been consultation with the forum known as ESORT (Ex Service Organisations Round Table). ESORT endorsed the proposal at its meeting on 12 August 2014.

In any event, the changes made by the attached instrument merely strengthen the legal basis on which the Commissions are currently accepting financial responsibility for private accommodation in hospital where the patient or a private health insurer pays the surcharge. In practice, therefore, no new change will be made by the attached instrument.

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 was listing the matter as an agenda item for an ESORT meeting.

## **RETROSPECTIVITY**

None.

## **DOCUMENTS INCORPORATED-BY-REFERENCE**

No.

## **HUMAN RIGHTS STATEMENT**

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

The attached legislative instrument engages and promotes the Right to Health contained in article 12(1) of the International Covenant on Economic Social and Cultural Rights.

Although the changes made by the attached instrument are not made on the basis they will advance the health of an entitled person in that in the relevant circumstances the person would not medically need private accommodation in hospital (shared accommodation being adequate) and obtaining private accommodation is a lifestyle choice, nevertheless any measure that could enhance the wellbeing of a person could be regarded as engaging the person's right to health and in this regard the attached instrument does that and in a positive manner.

Michael Ronaldson  
Minister for Veterans' Affairs  
Rule-Maker

#### **FURTHER EXPLANATION OF NEW PROVISIONS**

See: [Attachment A](#)

## Attachment A

### **Section [1]**

This section sets out the name of the instrument - *Veterans' Affairs (Treatment Principles – Private Accommodation in Hospital Surcharge) Instrument 2014*.

### **Section [2]**

This section provides that the instrument commences on the day after it is registered.

### **Section [3]**

This section is a transitional provision and provides that if, before the commencement of the attached instrument, an entitled person, or the person's insurer, had requested the Repatriation Commission or Military Rehabilitation and Compensation Commission to accept financial responsibility for part of the cost of the entitled person being accommodated in private accommodation in a hospital, and on the commencement of the instrument the request had not been determined, then the request is to be determined by reference to the relevant set of Treatment Principles as those Treatment Principles have been varied by the attached instrument.

## **Schedule 1**

This Schedule varies the Treatment Principles under the *Veterans' Entitlements Act 1986* in accordance with Part A of the Schedule.

### **Part A**

#### **Item 1**

This is a definitions section.

#### **Item 2**

This is a drafting variation.

#### **Item 3**

This section provides that paragraph 3.5.3(a) of the Treatment Principles i.e. the provision that prevents the Repatriation Commission from accepting financial responsibility for a treatment provided to an entitled person where the whole or part of the treatment has been paid by, among other bodies, a health insurance fund, does not apply to prevent the Repatriation Commission from accepting financial responsibility for treatment that is private accommodation in hospital where the entitled person's private health insurer agrees to pay the difference between the cost of shared accommodation for the person at the hospital and the cost of the person's private accommodation at the hospital. The section also makes it clear that the situation, in terms of working out the cost-sharing, is covered by the *Repatriation Private Patient Principles*.

## **Schedule 2**

This Schedule varies the Treatment Principles under the *Military Rehabilitation and Compensation Act 2004* in accordance with Part A of the Schedule.

### **Part A**

#### **Item 1**

This is a definitions section.

**Item 2**

This is a drafting variation.

**Item 3**

This section provides that paragraph 3.5.3(a) of the MRCA Treatment Principles i.e. the provision that prevents the Military Rehabilitation and Compensation Commission from accepting financial responsibility for a treatment provided to an entitled person where the whole or part of the treatment has been paid by, among other bodies, a health insurance fund, does not apply to prevent the Military Rehabilitation and Compensation Commission from accepting financial responsibility for treatment that is private accommodation in hospital where the entitled person's private health insurer agrees to pay the difference between the cost of shared accommodation for the person at the hospital and the cost of the person's private accommodation at the hospital. The section also makes it clear that the situation, in terms of working out the cost-sharing, is covered by the *MRCA Private Patient Principles*.

**Schedule 3**

This Schedule varies the Treatment Principles under the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* in accordance with Part A of the Schedule.

Note the variations made to the Treatment Principles under the *Veterans' Entitlements Act 1986* in relation to the private accommodation in hospital surcharge automatically apply to entitled persons under the APBNT(T)A.

**Part A**

**Item 1**

This is a definition section.