

## EXPLANATORY STATEMENT

### **Veterans' Affairs (Treatment Principles – Updating Home and Community Care (HACC) References and other References) Amendment Instrument 2015**

#### **EMPOWERING PROVISIONS**

For Schedule 1 of the attached instrument — subsection 90(5) of the *Veterans' Entitlements Act 1986* (the VEA).

For Schedule 2 of the attached instrument — subsection 286(3) of the *Military Rehabilitation and Compensation Act 2004* (the MRCA).

For Schedule 3 of the attached instrument — subsection 16(7) of the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* (the APBNT(T)A).

#### **PURPOSE**

The attached instrument (2015 No.R46/MRCC46) varies the legislative instruments known as the *Treatment Principles*, the *MRCA Treatment Principles* and the *Treatment Principles (Australian Participants in British Nuclear Tests) 2006* (hereinafter these 3 legislative instruments are referred to collectively as the Treatment Principles).

The Treatment Principles set out the circumstances in which treatment may be provided to clients of the Department of Veterans' Affairs (DVA). The variations to the Treatment Principles made by the attached instrument make no significant policy changes and essentially relate to updating references. The variations include:

- replacing most references to the former care program known as “HACC” (Home and Community Care) with references to the care program that replaces HACC, namely the Commonwealth Home Support Programme. Some HACC references have been retained and these relate to clients of the Department of Veterans' Affairs (DVA) who have been “grandfathered” when they ceased receiving services under the HACC program and commenced receiving similar services under the DVA care program known as the Veterans' Home Care Program.
- replacing references to the *Residential Care Subsidy Principles 1997* and the *Flexible Care Principles 1997* with references to the *Subsidy Principles 2014* – the latter legislative instrument covers the matters formerly covered by the previous legislative instruments.
- replacing the term “residential care amount” with “daily care fee” because the latter term is the one commonly used in residential care programs. A daily care fee is the co-payment a person in residential care makes toward their upkeep.
- updating references to documents incorporated-by-reference into the Treatment Principles so that those documents are the version of the document in existence on 1 August 2015 (not any version from time-to-time).

Further details of the attached instrument are set out in Attachment A.

## **CONSULTATION**

Yes – the Department of Social Services (DSS). DVA clients were not consulted because the instruments only make minor and technical changes to the *Treatment Principles*.

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 instruments was e-mail correspondence with DSS.

## **RETROSPECTIVITY**

Yes. However the instrument would not infringe subsection 12(2) of the *Legislative Instruments Act 2003* [a legislative instrument is of no effect if it takes effect before registration and disadvantages a person or imposes liabilities on a person other than the Commonwealth] because the retrospective operation of the instrument would not disadvantage any person or impose a liability on a person other than the Commonwealth.

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

Yes. The documents listed in the schedules introduced by the variations made by the attached instrument are incorporated into the Treatment Principles in the form in which those documents were on 1 August 2015 (not in the form they may be in from time to time).

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 the Right to Health by enabling the seamless transition of a type of health care provided to DVA clients, namely care services under the Home and Community Care program (HACC), to the health care program that replaces HACC, namely the Commonwealth Home Support Programme.

### **Conclusion**

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

Michael Ronaldson  
Minister for Veterans’ Affairs  
Rule-Maker

### **Regulatory Impact**

The attached instrument has no regulatory impact.

## Attachment A

### FURTHER EXPLANATION OF INSTRUMENT

#### Section 1

This section sets out the name of the instrument – the *Veterans' Affairs (Treatment Principles – Updating Home and Community Care (HACC) References and other References) Amendment Instrument 2015*.

#### Section 2

This section provides that the instrument commences on 1 July 2015 (the day the Commonwealth Home Support Program commences).

#### Section 3

This section advises that the legislative authority for the instrument is the *Veterans' Entitlements Act 1986*, the *Military Rehabilitation and Compensation Act 2004* and the *Australian Participants in British Nuclear Tests (Treatment) Act 2006*.

#### Section 4

This section provides that the variations to the Treatment Principles in a schedule to the instrument take effect according to the terms of the schedule.

#### Schedule 1 – Part A (Variations to the *Treatment Principles* under the *Veterans' Entitlements Act 1986*)

The sections in Part A make minor and technical variations to the *Treatment Principles*. The variations are comprised of changes to definitions and other terms and the updating of references to incorporated documents.

#### Schedule 2 – Part A (Variations to the *MRCA Treatment Principles* under the *Military Rehabilitation and Compensation Act 2004*)

The sections in Part A make minor and technical variations to the *MRCA Treatment Principles*. The variations are comprised of changes to definitions and other terms and the updating of references to incorporated documents.

#### Schedule 3 – Part A (Variations to the *Treatment Principles (Australian Participants in British Nuclear Tests) 2006*)

Under section 16 of the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* (APBNT(T)A) the Treatment Principles under the VEA (VEA Treatment Principles) apply to DVA clients under the APBNT(T)A unless modified.

A DVA client under the APBNT(T)A is an Australian participant in British nuclear tests who is eligible for treatment of malignant neoplasia.

The VEA Treatment Principles have been modified in their application under the APBNT(T)A by, among other things, replacing the definitions part of the VEA Treatment Principles with a modified definitions part.

Section 1 of Part A changes the modified definitions part of the *Treatment Principles (Australian Participants in British Nuclear Tests) 2006* by replacing certain definitions in it with new definitions.

The VEA Treatment Principles have also been modified in their application under the APBNT(T)A by the replacement of the table in paragraph 10.6.2 of the VEA Treatment Principles with a modified table.

Section 2 of Part A changes the modified table in the *Treatment Principles (Australian Participants in British Nuclear Tests) 2006* by substituting the definition of “residential care amount” with “daily care fee”.

The VEA Treatment Principles have also been modified in their application under the APBNT(T)A by the replacement of Schedule 1 of the VEA Treatment Principles with a modified Schedule 1.

Section 3 of Part A replaces the modified Schedule 1 in the *Treatment Principles (Australian Participants in British Nuclear Tests) 2006* with a new modified Schedule, namely a schedule of documents that are incorporated-by-reference into the *Treatment Principles (Australian Participants in British Nuclear Tests) 2006* in the version they were in on 1 August 2015 and not as they may change from time to time.