

EXPLANATORY STATEMENT

Veterans' Affairs (Treatment Principles – Updating of Fee Schedules for Medical Services and Other Matters) Amendment Instrument 2017 (Instrument 2017 No. R21/MRCC21)

EMPOWERING PROVISIONS

For Schedule 1 of the attached instrument which varies the *Treatment Principles* (VEA Treatment Principles) — subsection 90(4) of the *Veterans' Entitlements Act 1986* (the VEA).

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

PURPOSE

The attached instrument (2017 No. R21/MRCC21) varies the VEA Treatment Principles and the MRCA Treatment Principles – collectively known 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 give effect to the following Budget and other measures:

1. Reintroduction of indexation for the Veterans Access Payment (VAP) which is included in the Department of Veterans' Affairs Fee Schedules for Medical Services (a document incorporated by reference into the Treatment Principles).
2. Consequential amendments on the making of the *Veterans' Entitlements (Expanded Access to Non-Liability Health Care for Mental Health Treatment) Determination 2017*.
3. Minor and technical amendments.

Reintroduction of Indexation of Veterans Access Payment (VAP)

This measure gives effect to the 2017-18 Budget decision to reintroduce indexation of certain Medicare Benefits Schedule fees including the Veterans Access Payment (VAP).

In the 2017-18 Budget, the Government provided just over \$1 billion as part of the Department of Health's Guaranteeing Medicare measure which included the reintroduction of indexation on certain items on the Medicare Benefits Schedule.

The VAP is a supplementary payment that Local Medical Officers (LMOs) can claim for services provided to eligible DVA clients. LMOs are general practitioners (GPs) who are registered with DVA and have agreed to provide and arrange medical services for veterans and persons entitled under DVA legislation.

The payment is designed to encourage LMOs to treat veterans by setting the fees that the Government pays GPs for certain services provided at a higher rate in recognition of enhanced services provided.

The VAP will increase by 1.4% on 1 July 2017 in accordance with the Wage Cost Index 5 formulated by the Department of Finance. This payment has not been indexed since 1 July 2014.

The new VAP amounts will be reflected in the “Department of Veterans’ Affairs Fee Schedules for Medical Services” (Medical Fee Schedule). The Medical Fee Schedule is a document that is incorporated by reference into the Treatment Principles.

The attached instrument varies the Treatment Principles to update the “as-in-force date” for incorporated documents to 1 July 2017. This will ensure that the updated version of the Medical Fee Schedule (with the new indexed VAP amounts) as it exists on 1 July 2017 is the version of the Medical Fee Schedule that is incorporated into, and made part of, the Treatment Principles.

The as-in-force date for all other documents incorporated by reference into the Treatment Principles (all those documents listed in Schedule 1) will similarly apply in the form in which they exist as at 1 July 2017.

Veterans' Entitlements (Expanded Access to Non-Liability Health Care for Mental Health Treatment) Determination 2017 – consequential amendments

The 2017–18 Budget provided \$33.5 million for an initiative to extend non-liability health care to cover *all* mental health conditions for current and former members of the Defence Force with continuous full-time service.

Non-liability health care provides access to DVA-funded treatment for certain conditions without the need to link the condition to service and without the need for a compensation claim.

This Budget measure is implemented primarily by the *Veterans' Entitlements (Expanded Access to Non-Liability Health Care for Mental Health Treatment) Determination 2017* – a legislative instrument made under section 88A of the VEA.

That determination revokes the former instrument and remakes it to include an expanded definition of “mental health condition” to give effect to the proposal approved in the 2017-18 Budget.

The attached instrument consequentially amends relevant provisions in paragraphs 2.5 and 2.5A of the VEA Treatment Principles to update the name of the section 88A determination, and to update the definitions of “veteran or eligible ADF member” and “mental health condition” to link those definitions to the definitions contained in the

new section 88A determination. In addition, the attached instrument amends related definitions in paragraph 1.4 of the VEA Treatment Principles to omit the now redundant references to specific mental health disorders.

Minor and technical amendments

The opportunity has been taken to review the list of incorporated documents listed in Schedule 1 to the Treatment Principles and make minor amendments to that Schedule to correctly reference the names of some of the documents that have changed over time and to remove references to some redundant documents.

Where the name of an incorporated document has been corrected, an amendment has been made to the relevant provision in the body of the Treatment Principles where that reference occurs to refer to the correct title of the incorporated document. In addition, a minor change has been made to the note to paragraph 1.3.1 of the VEA Treatment Principles to correct a reference to a provision of the VEA.

CONSULTATION

Section 17 of the *Legislation Act 2003* requires a rule-maker to be satisfied, before making a legislative instrument that any consultation the rule-maker considered appropriate and reasonably practicable, has been undertaken.

The changes to the Medical Fee Schedule for the reintroduction of indexation for the Veterans Access Payment (VAP) formed part of the Government's 2017-18 Budget.

The Department of Health and the Department of Finance were consulted in connection with this measure. Consultation was by way of written exchange including costing the impact of the measure for DVA.

The changes are beneficial in nature in terms of their impact on LMOs and veterans and are consistent with the Government's approach to maintain DVA arrangements for LMOs and DVA clients.

No external consultation was considered necessary or appropriate for the consequential and minor and technical amendments.

In these circumstances, it is considered the requirements of section 17 of the *Legislation Act 2003* have been fulfilled.

RETROSPECTIVITY

None, if the attached legislative instrument is made before 1 July 2017.

If made after that date, the instrument will be taken to have commenced on 1 July 2017 and will operate retrospectively from that date.

Any such retrospective commencement will not contravene subsection 12(2) of the *Legislation Act 2003* (a provision of 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 changes implemented by the attached instrument are beneficial in nature; the changes do not disadvantage any person or impose a liability on a person other than the Commonwealth.

DOCUMENTS INCORPORATED BY REFERENCE

Yes. Following the amendments made by the attached instrument, the documents listed in Schedule 1 to the Treatment Principles will be incorporated into the Treatment Principles in the form in which they exist on 1 July 2017.

The documents listed in Schedule 1 to the Treatment Principles are available for inspection at:

Department of Veterans' Affairs, Level 5 Gnabra Building, Genge Street, Civic, Canberra. Tel.no: (02) 6289 6076.

In addition, the various fee schedules and other Department of Veterans' Affairs documents are available electronically on the DVA Web Page at:

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

The Department of Veterans' Affairs Fee Schedules for Medical Services (which includes the VAP) is available at:

<https://www.dva.gov.au/providers/fee-schedules>

REGULATORY IMPACT

None.

HUMAN RIGHTS STATEMENT

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

The attached legislative instrument engages an applicable right or freedom - specifically, 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.

Overview

The instrument provides for, amongst other things, changes to the Department of Veterans' Affairs Fee Schedules for Medical Services to update the amounts for the Veterans Access Payment (VAP) in line with the Government's 2017-18 Budget measure to reintroduce indexation on the VAP.

The increase in the fees that LMOs (DVA registered general practitioners) will receive for treating DVA clients will encourage LMOs to continue treating DVA clients thus ensuring a higher standard of medical care and treatment for members of the veteran community.

Other measures contained in the attached instrument do not engage applicable rights or freedoms: the amendments relating to expanded mental health treatment update certain provisions of the Treatment Principles on the making of the *Veterans' Entitlements (Expanded Access to Non-Liability Health Care for Mental Health Treatment) Determination 2017* and are consequential in nature. Similarly, the minor and technical amendments are updating measures that do not give effect to any change of policy.

Conclusion

The attached legislative instrument promotes the health of the veteran community by supporting continued access to LMOs. Accordingly, it is considered to be compatible with human rights, specifically, the Right to Health.

Dan Tehan
Minister for Veterans' Affairs
Rule-Maker

FURTHER EXPLANATION OF PROVISIONS

See [Attachment A](#).

FURTHER EXPLANATION OF PROVISIONS

Section 1

This section sets out the name of the instrument - *the Veterans' Affairs (Treatment Principles – Updating of Fee Schedules for Medical Services and Other Matters) Amendment Instrument 2017*.

Section 2

This section provides that the instrument commences, or is taken to have commenced, on 1 July 2017.

Section 3

This section sets out the legislative authority for the making of the variations to each set of Treatment Principles.

Section 4

Section 4 provides that the variations to the Treatment Principles, as outlined in each of the 2 Schedules, have effect.

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

Part 1 - Updating of incorporated documents.

Item 1

This item replaces Schedule 1 of the *Treatment Principles* which sets out the list of documents that are incorporated by reference into the *Treatment Principles* and the relevant date of effect for those incorporated documents. The new (substituted) Schedule updates the “as-in-force” date from 1 April 2017 to 1 July 2017.

This has the effect of incorporating the document entitled the “Department of Veterans' Affairs Fee Schedules for Medical Services” into the *Treatment Principles* in the form in which it exists on 1 July 2017. This updated version of the Fees Schedules for Medical Services will include the new indexed VAP amounts in line with the 2017-18 Budget Measure.

The names of some of the documents listed in Schedule 1 to the *Treatment Principles* have changed over time and the replacement Schedule 1 includes the updated names of those documents to ensure consistency with the names as they appear on the DVA website.

Specifically, the replacement Schedule 1 updates the names of the incorporated documents as they appear at the following items of that Schedule:

5. Orthoptists Schedule of Fees (paragraph 3.5.1)
19. Clinical Psychologists Schedule of Fees (paragraph 3.5.1)

25. Veterans and Veterans Families Counselling Services Outreach Program Counsellors Provider Notes (paragraph 1.4.1 and 7.1A.1)
26. Veterans and Veterans Families Counselling Service (VVCS) Outreach Program Counsellor Schedule of Fees (paragraph 3.5.1)
27. Factsheet VCS01 - Veterans and Veterans Families Counselling Service (VVCS) (paragraph 1.4.1, definition of “VVCS criterion”)
28. Better Access to Psychiatrists, Psychologists and General Practitioners through the MBS (Better Access) initiative (paragraph 1.4.1, definition of “*Australian Government’s Better Access initiative*”):

<http://www.health.gov.au/internet/main/publishing.nsf/Content/mental-ba>

In addition, references to some redundant documents in Schedule 1 have been omitted.

Part 2 Expansion of NLHC for mental health treatment

Items 2 to 8 update the provisions of the VEA Treatment Principles which reference the name of the section 88A determination for non-liability mental health treatment and related provisions.

On 1 July 2017, the legislative instrument (*Veterans’ Entitlements (Extension of Non-Liability Health Care for Mental Health Treatment) Determination 2016* (Instrument 2016 No.R34) will be revoked and replaced by the *Veterans’ Entitlements (Expanded Access to Non-Liability Health Care for Mental Health Treatment) Determination 2017* (Instrument 2017 No.R24).

Item 8 updates the definitions and the Note in paragraph 2.5A.4 to reflect the name of the new instrument.

In addition, items 2, 3 and 4 amend certain definitions in paragraph 1.4 of the VEA Treatment Principles to update provisions which reference the 5 mental health conditions of “alcohol use disorder”, “anxiety disorder”, “depressive disorder”, “post-traumatic stress disorder” and “substance use disorder”.

The specific references to these 5 conditions are no longer required given the revised definition of “mental health condition” contained in the *Veterans’ Entitlements (Expanded Access to Non-Liability Health Care for Mental Health Treatment) Determination 2017* (Instrument 2017 No.R24).

Items 5, 6 and 7 omit certain notes and examples in paragraphs 2.5.1, 2.5A.1 and 2.5A.2 which will become outdated on 1 July 2017 on revocation of the *Veterans’ Entitlements (Extension of Non-Liability Health Care for Mental Health Treatment) Determination 2016* (Instrument 2016 No.R34).

Part 3 Minor and technical amendments

Item 9 amends the note to paragraph 1.3.1 to correct the reference to the section of the VEA dealing with “Delegation by Commission”. The correct section reference is

section 213 of the VEA. The item omits “section 32” and substitutes “section 213” accordingly.

Items 10 to 15 amend the relevant provisions in the body of the VEA Treatment Principles to update or omit (where applicable) the names of the various incorporated documents that have been corrected in Schedule 1 – see item [1].

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

Part 1 - Updating of incorporated documents.

Item 1

This item replaces Schedule 1 of the *MRCA Treatment Principles* which sets out the list of documents that are incorporated by reference into the *MRCA Treatment Principles* and the relevant date of effect for those incorporated documents. The new (substituted) Schedule updates the “as-in-force” date from 1 April 2017 to 1 July 2017.

This has the effect of incorporating the document entitled the “Department of Veterans’ Affairs Fee Schedules for Medical Services” into the *MRCA Treatment Principles* in the form in which it exists on 1 July 2017. This updated version of the Fees Schedules for Medical Services will include the new indexed VAP amounts in line with the 2017-18 Budget Measure.

The names of some of the documents listed in Schedule 1 to the *MRCA Treatment Principles* have changed over time and the replacement Schedule 1 includes the updated names of those documents to ensure consistency with the names of the documents as they appear to clients and the public on the DVA website.

Specifically, the replacement Schedule 1 updates the names of the incorporated documents at the following items of that Schedule:

5. Orthoptists Schedule of Fees (paragraph 3.5.1)
19. Clinical Psychologists Schedule of Fees (paragraph 3.5.1)
25. Veterans and Veterans Families Counselling Services Outreach Program Counsellors Provider Notes (paragraph 1.4.1 and 7.1A.1)
26. Veterans and Veterans Families Counselling Service (VVCS) Outreach Program Counsellor Schedule of Fees (paragraph 3.5.1)
27. Factsheet VCS01 - Veterans and Veterans Families Counselling Service (VVCS) (paragraph 1.4.1, definition of “VVCS criterion”)
28. Better Access to Psychiatrists, Psychologists and General Practitioners through the MBS (Better Access) initiative (paragraph 1.4.1, definition of “*Australian Government’s Better Access initiative*”):

<http://www.health.gov.au/internet/main/publishing.nsf/Content/mental-ba>

In addition, references to some redundant documents in Schedule 1 have been omitted.

Part 2 - Minor and technical amendments

Items 2 to 7 amend the relevant provisions in the body of the MRCA Treatment Principles to update or omit (where applicable) the names of the various incorporated documents that have been corrected in Schedule 1– see item [1].