**EXPLANATORY STATEMENT**

**Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) (Modifications of the Repatriation Private Patient Principles) Instrument 2017**

**EMPOWERING PROVISION**

Subsection 17(6) of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*.

**PURPOSE**

The attached instrument is essentially a re-made version of the former *Veterans’ Affairs (Modified Repatriation Private Patient Principles – Australian Participants in British Nuclear Tests) Instrument 2006*.

The *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) (Modifications of the Repatriation Private Patient Principles) Instrument 2017* modifies the Repatriation Private Patient Principles, as made under the *Veterans’ Entitlements Act 1986*, in their application under the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006.*

The instrument has been remade to reflect the additional treatment to be provided to eligible persons as a consequence of the changes to the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*. In addition to the renaming of the Act from the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* to the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006* the changes also provide people already covered under the former Act and civilians present at a nuclear test area during a relevant period, as well as Australian veterans of the British Commonwealth Occupation Force (BCOF) with treatment for all conditions.

The Repatriation Private Patient Principles (as modified by the attached instrument) set out the circumstances in which the Repatriation Commission will accept financial responsibility for treatment under the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006* provided to persons eligible for treatment (entitled persons) as private patients.

Usually, but not necessarily, treatment provided to a person as a private patient is treatment provided to a person in a hospital where the person has a choice of medical practitioner.

**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 revocation and re-make of the *Scheme* gives effect to a Government decision to provide people already covered under the Australian Participants in British Nuclear Tests (Treatment) Act 2006 (British Nuclear Test Participants), as well as Australian veterans of the British Commonwealth Occupation Force and civilians present at a British nuclear test area during a relevant period with treatment for all conditions.

The Ex-Service Organisation Round Table, which comprises the National Presidents of 14 Ex-Service Organisations was advised about the nature of this Budget measure on 9 May 2017. In addition, consultation was undertaken within the Department of Veterans’ Affairs across the Rehabilitation and Support, and the Health and Community Services, Divisions.

Consultation was by way of phone calls, email correspondence and meetings.

External stakeholders will be notified of the changes in accordance with a communication plan to be implemented prior to the commencement date. This will include promulgating information to indigenous communities by engaging with the existing Indigenous networks including indigenous medical networks, the Department of the Prime Minister & Cabinet indigenous affairs unit and through indigenous liaison officers across the Australian Public Service.

The changes are beneficial in nature in terms of their impact on clients.

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

**RETROSPECTIVITY**

None.

**DOCUMENTS INCORPORATED-BY-REFERENCE**

None.

**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.

The instrument re-makes a legislative instrument that modifies the circumstances in which the Repatriation Commission may accept financial responsibility for treatment provided to veterans and their dependants so that those circumstances also apply to persons eligible for treatment under the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006.*

The treatment in question is treatment provided to a person in hospital/or by a medical specialist outside of a hospital, as a private patient (choice of medical practitioner).

Accordingly the instrument facilitates the provision of free and enhanced (choice of medical practitioner) treatment to the people in question and therefore promotes their right to health.

**Conclusion**

The attached legislative instrument is considered to be compatible with human rights, in particular the right to health.

Dan Tehan

Minister for Veterans’ Affairs

**FURTHER EXPLANATION OF NEW PROVISIONS**

**Section [1]**

This section sets out the name of the instrument - *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) (Modifications of the Repatriation Private Patient Principles) Instrument 2017*.

**Section [2]**

This section provides that the instrument commences on the 1 July 2017.

**Section [3]**

This section provides that the authority of the Repatriation Commission to make the instrument is derived from section 17 of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006.*

**Section [4]**

This section provides that the modifications to the Repatriation Private Patient Principles made by Schedule 1 will take effect according to the terms of the items in that schedule.

**Section [5]**

This section provides that the instruments which modify the Repatriation Private Patient Principles that are repealed by an item in Schedule 2 will take effect according to the terms of the item and the schedule.

**Schedule 1**

The amendments made by Schedule 1 modify for the purposes of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006,* the Repatriation Private Patient Principles as made under the *Veterans’ Entitlements Act 1986*.

**Item 1** omits paragraphs 1.1 and 1.1A and substitutes new paragraphs 1.1, 1.1A and 1.1B of the Repatriation Private Patient Principles (as modified for the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*).

New paragraph 1.1 provides that the modified instrument is to be referred to as “the Principles”.

New paragraph 1.1A provides that the Principles will commence on 1 July 2017.

New paragraph 1.1B provides that the revocation of the *Veterans’ Affairs (Modified Repatriation Private Patient Principles – Australian Participants in British Nuclear Tests) Instrument 2006* by this instrument will not affect the provision of treatment under that instrument which had commenced prior to 1 July 2017 and had not been completed before that date.

Such treatment will be regarded as having commenced under this instrument.

**Item 2** repeals and substitutes the paragraph 1.2 definition of “Act” for the modified Repatriation Private Patient Principles. The “Act” is defined as the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006.*

**Item 3**repeals and substitutes the paragraph 1.2 definition of “Commission” for the modified Repatriation Private Patient Principles. The “Commission” is defined as having the meaning given by section 5A of the *Veterans’ Entitlements Act 1986*, the Repatriation Commission*.*

**Item 4** omits the paragraph 1.2 definition of “dependent of a Vietnam veteran” which is not relevant for the purposes of the modified Repatriation Private Patient Principles*.*

**Item 5** repeals and substitutes the paragraph 1.2 definition of “entitled person”. An “entitled person” is defined for the modified Repatriation Private Patient Principles as having the same meaning as an “eligible person” within the meaning of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006.*

**Item 6** modifies the paragraph 1.2 definition of “former Repatriation Hospital” for the modified Repatriation Private Patient Principles to substitute the reference to “the Act” with a reference to the “*Veterans’ Entitlements Act 1986*”.

**Item 7** repeals and substitutes the paragraph 1.2 definition of “Principles” for the purposes of the modified Repatriation Private Patient Principles. A reference to the “Principles” is defined as a reference to the Repatriation Private Patient Principles as modified by the *Australian Participants in British Nuclear Tests and British Nuclear Tests and British Commonwealth Occupation Force (Treatment) (Modifications of the Repatriation Private Patient Principles) Instrument 2017.*

**Item 8** repeals and substitutes the paragraph 1.2 definition of “private patient” for the purposes of the modified Repatriation Private Patient Principles. The revised definition refers to the effect of subsection 17(8) of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006.*

Subsection 17(8) of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006* provides that treatment is to be taken to be provided to a person as a private patient if the treatment is provided to the person as a private patient of a hospital, for the purposes of the *Health Insurance Act 1973*, or the treatment is provided by a medical specialist to whom the person has been referred but is not provided at a hospital.

**Item 9** repeals and substitutes the paragraph 1.2 definition of “Treatment Principles” for the modified Repatriation Private Patient Principles. The reference to the Treatment Principles made under the *Veterans’ Entitlements Act 1986* is replaced with a reference to the *Treatment Principles* as modified by the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) (Modifications of the Treatment Principles) Instrument 2013*.

**Item 10**modifies the paragraph 1.2 definition of “veteran partnering private hospital” for the modified Repatriation Private Patient Principles to substitute the reference to “the Act” with a reference to the “*Veterans’ Entitlements Act 1986*”.

**Item 11** omits the paragraph 1.2 definition of “Vietnam veteran” which is not relevant for the purposes of the modified Repatriation Private Patient Principles*.*

**Item 12** omits paragraph 3.6 for the purposes of the modified Repatriation Private Patient Principles. Paragraph 3.6 of the Repatriation Private Patient Principles sets out the circumstances in which a Vietnam veteran or a dependant of a Vietnam veteran may be admitted to a hospital for urgently required treatment without prior approval.

**Schedule 2**

**Item 1** of Schedule 2 revokes the *Veterans’ Affairs (Modified Repatriation Private Patient Principles - Australian Participants in British Nuclear Tests) Instrument* *2006*. That instrument had previously modified the Repatriation Private Patient Principles for the purposes of the former *Australian Participants in British Nuclear Tests (Treatment) Act 2006.*