##### EXPLANATORY STATEMENT

# **Veterans’ Affairs (Treatment Principles – Electric Mobility Aids and Other Measures) Amendment Instrument 2019** (Instrument No. R13/MRCC13 of 2019)

**EMPOWERING PROVISIONS**

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

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

**PURPOSE**

The attached instrument 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).

These variations to the Treatment Principles provide for the supply of psychiatric assistance dogs to eligible veterans and expand eligibility for the supply of electric wheelchairs and other electric mobility aids.

*Assistance Dogs*

The attached instrument varies the Treatment Principles to establish eligibility under the Rehabilitation Appliances Program (RAP) for the supply of psychiatric assistance dogs to veterans who meet the requirements for the program.

The variations will allow the supply of a DVA-funded psychiatric assistance dog, as an adjunct to treatment, for veterans with a diagnosis of post-traumatic stress disorder (PTSD) who have been assessed as suitable for the program by a psychiatrist or psychologist or other mental health professional. Guidelines for the assessment will be included in the Rehabilitation Appliances Program (RAP) National Guidelines.

The variations will ensure that veterans and former members who meet the eligibility criteria for the program can access a psychiatric assistance dog through the RAP National Schedule of Equipment (RAP Schedule). This will include veterans and former members on a rehabilitation plan who meet the eligibility criteria for the program and would use the supply arrangement through the RAP.

Further, the variations will align the policy for the supply of other types of assistance dogs supplied by DVA through the RAP Schedule (guide dogs, mobility dogs and hearing dogs) and will ensure a consistent approach to the funding of upkeep costs for all assistance dogs.

*Electric Mobility Aids*

The attached instrument will also expand eligibility for the supply of electric wheelchairs, electric scooters and power-assist devices to encompass all veterans who hold a DVA Health Card for all Conditions (Gold Card) and who have a medically assessed need for the item.

Currently, the supply of these items under the RAP is restricted to veterans and former members who have a medically assessed need for the item due to a war-caused (or service-related) injury or disease.

These variations will remove this restriction for veterans who are Gold Card holders and will ensure they are not excluded from eligibility because their need arises from a civilian injury or a condition that is not related to service.

In addition, the variations clarify that “power assist devices” (electrically powered devices that can be mounted on to a manual wheelchair) are subject to the same eligibility requirements under the RAP as electric wheelchairs and electric scooters.

The measure will align the policy on the supply of these electric mobility aids with the broader policy intent of the Gold Card which is to treat all conditions, rather than just those arising from service.

Eligibility for these aids will remain restricted to veterans – it does not extend to dependants, war widows and war widowers. Veterans who hold a DVA Health Card for Specific Conditions (White Card) - will continue to be eligible if they have a clinical need for the item arising from their war-caused (or service-related) injury or disease or other condition for which they are covered for treatment under the Treatment Principles.

*Veteran Card*

The DVA Health Cards (“White Card” and “Gold Card”) have been redesigned as the “Veteran Card”. DVA Health Cards will be progressively replaced over time with the “Veteran Card”. While the name of the cards will change, entitlement to treatment under the cards will remain the same.

The attached legislative instrument will take effect on 25 April 2019.

**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.

*Assistance Dogs*

The Repatriation Commission and the Military Rehabilitation and Compensation Commission approved the proposal for these variations at the meeting of 13 December 2018.

DVA recognises that there is an opportunity to address the needs of veterans who experience chronic and severe PTSD. These legislative changes will establish the eligibility criteria for veterans to participate in the assistance dog program. Further, they provide the legislative authority for DVA to fund the supply and upkeep costs of the assistance dogs to those eligible through the RAP.

By way of background, the Foreign Affairs, Defence and Trade References Committee, tabled its report “The Constant Battle: Suicide by Veterans”, on 15 August 2017. One of the recommendations from that report (recommendation 21) was that the Australian Government fund a trial of assistance dogs for veterans with PTSD. That report followed an inquiry into suicide by veterans and ex-service personnel which included public hearings and consideration of submissions from government, veterans, veterans’ representative organisations, and members of the public.

On 17 August 2017, the Minister for Veterans’ Affairs asked DVA to develop a trial of assistance dogs for veterans with PTSD to evaluate clinical efficacy, delivery feasibility and safety. On 30 May 2018, the Minister announced La Trobe University would be conducting a four-year trial into the use of psychiatric assistance dogs as an adjunct to treatment for veterans with clinically diagnosed PTSD.  That trial is currently underway.

*Electric Mobility Aids*

In 2018, DVA conducted a review of the RAP National Schedule of Equipment and the RAP National Guidelines.

This review considered submissions from the public, veterans and health providers. In addition, DVA consulted with the veteran community through direct interviews and forums under DVA’s National Consultation Framework and with key health provider associations through the DVA Health Providers Partnership Forum and Review Advisory Panel as well as with DVA-contracted RAP suppliers.

One of the recommendations from that review was amendment to the Treatment Principles to expand eligibility for the supply of electric wheelchairs and electric scooters to all veterans issued with a Gold Card who have a clinical need for the item.

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

**RETROSPECTIVITY**

The attached instrumentcommenced on 25 April 2019 and will operate retrospectively.

The instrument will vary the Treatment Principles to:

* expand eligibility for the supply of electric wheelchairs, electric scooters and power-assist devices to include veterans who hold a Gold Card and have a medically assessed need for the item; and
* include psychiatric assistance dogs. A psychiatric assistance dog may assist an eligible veteran suffering from post-traumatic stress disorder (PTSD) by providing a safe presence and interrupt a flashback or dissociative episode, or to alleviate fear.

The retrospective commencement will not contravene subsection 12(2) of the *Legislation Act 2003* 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**

The variations to the Treatment Principles in the attached instrument will be supported by changes to the RAP National Schedule of Equipment and the RAP National Guidelines.

Both of these documents are incorporated by reference into the Treatment Principles in the form in which they exist from time to time.

The documents are freely accessible on the DVA website at:

<https://www.dva.gov.au/providers/provider-programs/rehabilitation-appliances-program-rap>

**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 positively with the Right to Health, and the Rights of Persons with a disability.

*Right to health*

Article 12 of the International Covenant on Economic, Cultural and Social Rights refers to the “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.

*Rights of people with a disability*

The rights of people with a disability are set out in the Convention on the Rights of Persons with Disabilities. Article 26 requires countries to organise and strengthen rehabilitation programs for people with disability, particularly in health, employment, education and social services.

*Overview*

*Assistance Dogs*

The attached instrument will authorise the supply of a DVA-funded psychiatric assistance dog, as an adjunct to treatment, for veterans with a diagnosis of post-traumatic stress disorder (PTSD) who have been assessed as suitable for the program by a mental health professional and who meet the other criteria for the program.

Psychiatric assistance dogs are highly trained to perform tasks that actively contribute to the clinical recovery goals of a person suffering from PTSD. The dogs are trained with a veteran to recognise and respond to their emotional and physical cues. They can assist by assuming control and performing tasks to help the veteran mitigate a loss of emotion regulation and control. They are trained to provide support in situations such as a veteran experiencing a night terror or panic attack. Assistance dogs also have special privileges such as access to pet-prohibited public areas.

The efficacy of psychiatric assistance dogs for veterans as an adjunct to the treatment and management of PTSD is supported by emerging evidence, for example, the outcome of a Canadian trial conducted by Veterans Affairs Canada announced in October 2018.

The provision of a psychiatric assistance dog, where assessed as suitable, will complement treatment for PTSD by the veteran’s mental health professional and assist the veteran with a return to mental health and wellbeing.

*Electric Mobility Aids*

The attached instrument will expand eligibility for the funding of an electric wheelchair, an electric scooter or a power-assist device to all veterans who hold the DVA Health Card for all Conditions (“Gold Card”) and have a clinical need for the item, regardless of whether the need arose from a war-caused or service-related injury or disease.

The measure will align the policy on the supply of these items with the broader policy intent of the Gold Card which is to treat all conditions, rather than just those arising from service.

The measure is designed to support independence, self-reliance and quality of life, and minimise the impact of disabilities for veterans and former members.

The funding of these additional RAP services will support the rehabilitation and return to health of eligible members of the veteran community including those with disabilities from a service injury or service disease.

*Conclusion*

The attached instrument engages with and promotes the right to health, and the rights of a person with a disability. Accordingly, the attached instrument is considered to be “human rights compatible”.

Darren Chester

Minister for Veterans’ Affairs

Rule-Maker

Attachment A

**FURTHER EXPLANATION OF PROVISIONS**

Section 1

This section sets out the name of the instrument**:** *the Veterans’ Affairs (Treatment Principles – Electric Mobility Aids and Other Measures) Amendment Instrument 2019.*

Section 2

This section provides that the instrument commences on 25 April 2019.

Section 3

This section sets out the legislative authority for the making of this instrument, namely: section 90 of the *Veterans’ Entitlements Act 1986* in respect of the variations to the Treatment Principles, and section 286 of the *Military Rehabilitation and Compensation Act 2004* in respect of the variations to the MRCA Treatment Principles.

Section 4

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

**Schedule 1 – Variations to the *Treatment Principles* under the *Veterans’ Entitlements Act 1986***

Items 1 and 2 are minor, technical amendments. They update the definition of “determined residential condition” in paragraph 1.4 of the Treatment Principles and the “note” to that definition.

The items omit the words “Determination No.20/2000” and replace it with “section 6 of the *Veterans Affairs (Extended Eligibility for Treatment) Instrument 2015”.*

Determination No.20/2000 - *Veterans’ Entitlement Treatment (Residential Care) Determination 2000* - was repealed by the *Veterans Affairs (Extended Eligibility for Treatment) Instrument 2015* and replaced by the provisions in section 6 of that instrument.

The amendments at items 1 and 2 ensure that the definition of “determined residential condition” remains current.

Items 3 and 4 update the definitions of “Gold Card” and “White Card” respectively in paragraph 1.4 of the Treatment Principles. The amendments insert the words “(also known as the Veteran Card)” in the opening sentence of each of the definitions, after the words “means the identification card”.

The DVA Heath Cards (“White Card” and “Gold Card”) are being redesigned and renamed as the “Veteran Card”. The Health Cards will be progressively replaced over time. While the name of the cards will change, entitlements to treatment under the cards will remain the same.

Item 5 omits subparagraph 11.3.1(a) of the Treatment Principles.

Paragraph 11.3.1 restricts the supply of certain items in the RAP National Schedule of Equipment to veterans whose medically assessed need for the item is due to their war-caused injury or disease.

Subparagraph (a) deals with electric wheelchairs and electric scooters. The provision restricts the supply of electric wheelchairs or electric scooters to veterans who have a medically assessed need for the item due to a war-caused injury or disease or a determined condition other than a determined residential care condition.

The provision is omitted and replaced by new paragraph 11.3.4 (***see item 7***) below.

Item 6 omits subparagraph (b) and substitutes a new subparagraph (b) in paragraph 11.3.1 of the Treatment Principles.

Subparagraph (b) provides for the supply of a guide dog, including the reasonable costs of keeping the dog.

It is replaced by new paragraph (b): “the supply of a guide dog, mobility dog or hearing dog”.

The effect of this amendment is to extend the current arrangements for the supply of guide dogs under the RAP to include other types of assistance dogs funded by the Commission, namely mobility dogs and hearing dogs.

These types of assistance dogs will be available to a veteran with a medically assessed need for the item due to a war-caused injury or disease or a determined condition other than a determined residential care condition. The Commission is also to have regard to the factors for the supply of these types of assistance dogs set out in the RAP Guidelines (see new paragraph 11.3.5.3 inserted by ***item 7***).

The supply of psychiatric assistance dogs is dealt with separately by the inclusion of new paragraphs 11.3.5.1 to 11.3.5.4 in Part 11 - at ***item 7***.

The provision for upkeep is removed and replaced by new provision (paragraph 11.3.5.3 – at ***item 7***) that will harmonise arrangements for the funding of upkeep costs and ensure a consistent approach for all types of assistance dogs.

Item 7 inserts new paragraphs 11.3.4.1 and 11.3.4.2 for Electric Mobility Aids, and new paragraphs 11.3.5.1 to 11.3.5.4 for Assistance Dogs.

*Electric Mobility Aids*

New paragraph 11.3.4.1 provides that the Commission may provide or accept financial responsibility for the supply of an electric wheelchair, electric scooter or a power-assist device to:

1. an entitled veteran who has a medically assessed need for the item due to a war-caused injury or disease or a determined condition other than a determined residential care condition; or
2. an entitled veteran who has a medically assessed need for the item and is eligible to be provided with treatment under the Act, subject to these Principles, for all injuries or diseases; or
3. an entitled veteran who has a medically assessed need for the item due to malignant neoplasm, and in respect of whom the Commission has accepted financial responsibility under paragraph 2.4 for treatment of that condition.

New subparagraph 11.3.4.1(a) restates the existing provision in the Treatment Principles for the supply of electric wheelchairs and electric scooters to veterans who are White Card holders.

New subparagraph 11.3.4.1(b) covers veterans who are Gold Card holders. The requirement that the medically assessed need for the item be due to a war-caused injury or disease is removed from this provision.

New subparagraph 11.3.4.1(c) retains eligibility for these items for those eligible for treatment of malignant neoplasm (cancer) under the non-liability health care arrangements in subsection 85(2) of the Act and paragraph 2.4 of the Treatment Principles. It replaces paragraph 11.3.5 omitted by this instrument (at ***item 8***).

Paragraph 11.3.4.1 includes power-assist devices as well as electric wheelchairs and electric scooters. The provision confirms that eligibility for the supply of a power-assist device under the RAP mirrors eligibility for the supply of electric wheelchairs and electric scooters.

New paragraph 11.3.4.2 adds a definition of “power-assist device” for the purpose of this provision. It is defined to mean an electrically-powered device that can be mounted onto a manual wheelchair to provide additional mobility assistance and support independent operation.

*Assistance Dogs*

New paragraph 11.3.5.1 provides that the Commission may accept financial responsibility for the supply of a psychiatric assistance dog to a person if the Commission is satisfied of the following:

* the person is an entitled veteran; and
* the person has an accepted condition of post-traumatic stress disorder or a diagnosis of post-traumatic stress disorder from a psychiatrist; and
* at the time the dog is supplied, the person is undergoing treatment by a psychiatrist or a psychologist for post-traumatic stress disorder and has been undergoing such treatment for at least 3 months, and
* the person has been assessed as suitable for the supply of a psychiatric assistance dog by a mental health professional having regard to the factors in the RAP Guidelines for this assessment; and
* the person is suitable for the supply of a psychiatric assistance dog having regard to the factors in the RAP Guidelines relating to living arrangements, current life circumstances, support networks, and ability to properly care for the dog.

New paragraph 11.3.5.2 provides that in making a decision about the supply of a guide dog, mobility dog or hearing dog for a veteran under paragraph 11.3.1, the Commission is to have regard to the factors in the RAP Guidelines relating to the supply of a guide dog, mobility dog or hearing dog, as the case requires.

New paragraph 11.3.5.3 provides that if the Commission has accepted financial responsibility for the supply of an assistance dog the Commission will also be responsible for the reasonable costs associated with keeping the dog while the dog remains in the care of the veteran.

Reasonable upkeep costs will, for example, include food costs, veterinary costs and the annual “public access” certification cost for the assistance dog.

Paragraph 11.3.5.4 defines terms used in paragraphs 11.3.5.1 to 11.3.5.4.

“AHPRA” is defined to mean the Australian Health Practitioner Regulation Agency.

“Assistance dog” is defined to mean a guide dog, a mobility dog, a hearing dog or a psychiatric assistance dog.

“Mental health professional” is defined to mean:

* a psychiatrist; or
* a psychologist; or
* a mental health occupational therapist; or
* a mental health social worker.

“Mental health occupational therapist” is defined to mean a person who is registered with AHPRA to practise as an occupational therapist and who is eligible to provide focussed psychological strategies under Medicare.

“Mental health social worker” is defined to mean a social worker who is a member of the Australian Association of Social Workers and who is certified by that association as eligible to provide focussed psychological strategies under Medicare.

“Psychologist” is defined to mean a person who is registered with AHPRA to practise as a psychologist.

“Psychiatrist” is defined to mean a medical practitioner who is registered with AHPRA and who holds specialist registration as a psychiatrist.

“RAP Guidelines” is defined to mean the Rehabilitation Appliances Program (RAP) National Guidelines defined in paragraph 1.4.1 of the Treatment Principles. This is a publicly accessible document listed in Schedule 1 to the Treatment Principles incorporated by reference into the Treatment Principles in the form in which it exists from time to time.

Item 8 omits paragraph 11.3.5 of the Treatment Principles.

Paragraph 11.3.5 enables the Commission to provide an electric wheelchair or electric scooter to a veteran who has a medically assessed need for the item because of malignant neoplasm, where treatment for that condition has been accepted under paragraph 2.4 of the Treatment Principles. Paragraph 2.4 provides non-liability health care coverage for certain conditions including malignant neoplasia.

These veterans will now be entitled under new paragraph 11.3.4.1(c).

Consequently, paragraph 11.3.5 is now longer required and is omitted.

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

Items 1 and 2 update the definitions of “Gold Card” and “White Card” respectively in paragraph 1.4 of the Treatment Principles. The amendments insert the words “(also known as the Veteran Card)” in the opening sentence of each of the definitions, after the words “means the identification card”.

The DVA Health Cards (“White Card” and “Gold Card”) are being redesigned and renamed as the “Veteran Card”. The Health Cards will be progressively replaced over time. While the name of the cards will change, entitlements to treatment under the cards will remain the same.

Item 3 omits subparagraph 11.3.1(a) from the Treatment Principles.

Paragraph 11.3.1 of the Treatment Principles restricts the supply of certain items in the RAP National Schedule of Equipment to entitled members whose medically assessed need for the item is due to a service injury or service disease.

Subparagraph (a) deals with electric wheelchairs and electric scooters. This provision has the effect of limiting the supply of these items to entitled members whose need for the item arises from a service injury or service disease.

The provision is omitted and is replaced by a new paragraph 11.3.4.1 (at ***item 5***).

Item 4 omits subparagraph (b) in paragraph 11.3.1 of the Treatment Principles and replaces it with new subparagraph (b).

Subparagraph (b) provides “the supply of a guide dog, including the reasonable costs of keeping the dog”.

New subparagraph (b) provides: “the supply of a guide dog, mobility dog or hearing dog”.

The effect of this variation is to extend the current arrangements for the supply of guide dogs under the RAP to include other types of assistance dogs funded by the Commission, namely mobility dogs and hearing dogs.

These types of assistance dogs will be available to an entitled member with a medically assessed need for the item due to a service injury or service disease.

The Commission is also to have regard to the factors set out in the RAP Guidelines for the supply of these types of assistance dogs (see new paragraph 11.3.5.3 inserted by ***item 5***).

The supply of psychiatric assistance dogs is dealt with at new paragraphs 11.3.5.1 to 11.3.5.4 (***see item 5***).

The provision for upkeep is removed and replaced by a new provision (paragraph 11.3.5.3) (***see item 5***) that will harmonise arrangements and ensure a consistent approach for the funding by DVA of the upkeep costs for all types of assistance dogs.

Item 3 inserts new paragraphs 11.3.4.1 and 11.3.4.2 for Electric Mobility Aids, and new paragraphs 11.3.5.1 to 11.3.5.4 for Assistance Dogs.

*Electric Mobility Aids*

New paragraph 11.3.4.1 provides that the Commission may provide or accept financial responsibility for the supply of an electric wheelchair, an electric scooter, or a power-assist device to:

1. an entitled member who has a medically assessed need for the item due to a service injury or service disease; or
2. an entitled member who has a medically assessed need for the item and is eligible to be provided with treatment under the Act, subject to these Principles, for all injuries or diseases.

New subparagraph 11.3.4.1(a) restates the existing provision in the Treatment Principles for the supply of electric wheelchairs and electric scooters to entitled members who are White Card holders.

New subparagraph 11.3.4.1(b) covers entitled members who are Gold Card holders. The requirement that the medically assessed need for the item be due to a service injury or service disease is removed from this provision.

Paragraph 11.3.4.1 includes power-assist devices as well as electric wheelchairs and electric scooters. The provision confirms that eligibility for the supply of these devices under the RAP is the same as eligibility for the supply of electric wheelchairs and electric scooters.

A definition of “power-assist device” is added in new paragraph 11.3.4.2 for the purpose of this provision. It is defined to mean an electrically-powered device that can be mounted onto a manual wheelchair to provide additional mobility assistance and support independent operation.

*Assistance Dogs*

New paragraph 11.3.5.1 provides that the Commission may accept financial responsibility for the supply of a psychiatric assistance dog to a person if the Commission is satisfied of the following:

* the person is an entitled member; and
* the person has an accepted condition of post-traumatic stress disorder or a diagnosis of post-traumatic stress disorder from a psychiatrist; and
* at the time the dog is supplied, the person is undergoing treatment by a psychiatrist or a psychologist for post-traumatic stress disorder and has been undergoing such treatment for at least 3 months, and
* the person has been assessed as suitable for the supply of a psychiatric assistance dog by a mental health professional having regard to the factors in the RAP Guidelines for this assessment; and
* the person is suitable for the supply of a psychiatric assistance dog having regard to the factors in the RAP Guidelines relating to living arrangements, current life circumstances, support networks, and ability to properly care for the dog.

New paragraph 11.3.5.2 provides that in making a decision about the supply of a guide dog, mobility dog or hearing dog for a veteran under paragraph 11.3.1, the Commission is to have regard to the factors in the RAP Guidelines relating to the supply of a guide dog, mobility dog or hearing dog, as the case requires.

New paragraph 11.3.5.3 provides that if the Commission has accepted financial responsibility for the supply of an assistance dog the Commission will also be responsible for the reasonable costs associated with keeping the dog while the dog remains in the care of the entitled member.

Reasonable upkeep costs will, for example, include food costs, veterinary costs and the annual “public access” certification cost for the assistance dog.

Paragraph 11.3.5.4 defines terms used in paragraphs 11.3.5.1 to 11.3.5.4.

“AHPRA” is defined to mean the Australian Health Practitioner Regulation Agency.

“Assistance dog” is defined to mean a guide dog, a mobility dog, a hearing dog or a psychiatric assistance dog.

“Mental health professional” is defined to mean:

* a psychiatrist; or
* a psychologist; or
* a mental health occupational therapist; or
* a mental health social worker.

“Mental health occupational therapist” is defined to mean a person who is registered with AHPRA to practise as an occupational therapist and who is eligible to provide focussed psychological strategies under Medicare.

“Mental health social worker” is defined to mean a social worker who is a member of the Australian Association of Social Workers and who is certified by that association as eligible to provide focussed psychological strategies under Medicare.

“Psychologist” is defined to mean a person who is registered with AHPRA to practise as a psychologist.

“Psychiatrist” is defined to mean a medical practitioner who is registered with AHPRA and who holds specialist registration as a psychiatrist.

 “RAP Guidelines” is defined to mean the Rehabilitation Appliances Program (RAP) National Guidelines defined in paragraph 1.4.1 of the Treatment Principles. This is a publicly accessible document listed in Schedule 1 to the Treatment Principles incorporated by reference into the Treatment Principles in the form in which it exists from time to time.