

EXPLANATORY STATEMENT

Military Rehabilitation and Compensation (Treatment and Pharmaceutical) Amendment (Aged Care Act 2024) Instrument 2025

EMPOWERING PROVISIONS

The Military Rehabilitation and Compensation Commission (MRCC) makes, and the Minister for Veterans' Affairs approves the instrument under subsection 286(5) of the *Military Rehabilitation and Compensation Act 2004* (MRCA).

PURPOSE

This instrument makes consequential amendments to the *MRCA Treatment Principles* and the *MRCA Pharmaceutical Benefits Scheme* upon commencement of the *Aged Care (Consequential and Transitional Provisions) Act 2024*, the *Aged Care Act 2024*, and the *Aged Care Rules 2025*.

The amendments to these instruments, which both require MRCC endorsement and Ministerial approval, have been combined into the one consolidated instrument for convenience.

OVERVIEW

The *Aged Care (Consequential and Transitional Provisions) Act 2024* repeals the *Aged Care Act 1997*, the *Aged Care (Transitional Provisions) Act 1997* and the *Aged Care Quality and Safety Commission Act 2018* (and instruments thereunder) with effect from 1 November 2025.

This instrument makes consequential amendments to DVA instruments upon commencement of the *Aged Care Act 2024* and the *Aged Care Rules 2025* and the repeal of the above Acts. Specifically, the proposed amendments replace references to sections of the repealed Acts and subordinate instruments with references to the relevant sections of the *Aged Care Act 2024* and the *Aged Care Act Rules 2025*. Additionally, proposed amendments update certain terminology and definitions to ensure that legislation appropriately aligns with the new aged care legislation.

EXPLANATION OF PROVISIONS

Section 1 states the name of the instrument.

Section 2 provides that the instrument commences at the same time as the *Aged Care Act 2024* commences.

Section 3 sets out the authority for the Military Rehabilitation and Compensation Commission to make the instrument under subsection 286(5) of the *Military Rehabilitation and Compensation Act 2004*.

Section 4 is a standard provision that gives effect to the Items in the Schedules outlined below.

Schedule 1 - MRCA Pharmaceutical Benefits Scheme (Instrument 2013 No. MRCC44)

Item 1

Repeals the definition of *residential care* under section 3 as the ‘residential care service’ definition is being amended to directly refer to the *Aged Care Act 2024*. A separate definition of ‘residential care’ is no longer required.

Item 2

Updates the definition of *residential care service* under section 3 to reference the new terminology of ‘residential care home’ in subsection 10(2) of the *Aged Care Act 2024*, as that term is clarified by subsections 10(3), (4) and (5) of that Act. This maintains an equivalency in the definition of ‘residential care service’ from the *Aged Care Act 1997*.

Item 3

Removes from subparagraph 11B(1)(a)(i) the wording ‘at which a person is receiving residential care’ to make the reference to a ‘residential care service’ consistent with the rest of the instrument and avoid unnecessary language duplication.

Item 4

Repeals the note under section 16 relating to a point in time medication chart prescribing trial within ‘residential care services’ as this information has been superseded. Repealing this note also avoids confusion with the new way that ‘residential care services’ is defined in this instrument (per Item 2), which is no longer a reference to the *Aged Care Act 1997*, as was defined in this note.

Schedule 2 - *MRCA Treatment Principles (Instrument 2013 No. MRCC53)*

Item 1

Inserts a definition for the *Aged Care Rules* (the *Rules*) as made under section 602 of the *Aged Care Act 2024* under section 1.4. The *Rules* are a subordinate instrument under the *Aged Care Act 2024* that will consolidate a range of repealed subordinate instruments under the *Aged Care Act 1997*.

Items 2-3

Updates the following definitions under section 1.4 for the following purposes:

- preserve references to ***approved provider*** (first occurring) definition for the purposes of the ‘MRCA Home Care Program’ and simplifies language as this definition is now only used once within this instrument;
- repeals the definition of ***approved provider*** (second occurring) in relation to short-term restorative care as that programme no longer exists under the *Aged Care Act 2024*; and
- repeals the definition of ***approved provider*** (third occurring) in relation to transition care, which is replaced by a separate definition of ‘registered provider’ under the *Aged Care Act 2024* (per Item 12).

Item 4

Repeals the definition of ***Classification Principles 2014*** under section 1.4. As part of the *Aged Care Act 2024* reforms, this instrument will be repealed and consolidated into the *Aged Care Rules*.

Item 5

Updates departmental responsibility for the ***Commonwealth Home Support Programme service*** from the Department of Social Services to the Department of Health.

Item 6

Updates the definition of ***daily care fee*** under section 1.4 for ‘entitled persons’ (including former prisoners of war and persons awarded the Victoria Cross) for the following purposes:

- updates subparagraph (b) to reference the calculation of the maximum daily amount of the resident contribution under section 277 of the *Aged Care Act 2024*;
- inserts a new subparagraph (c) to reference the maximum daily amount of the transitional resident contribution for a class referred to in section 275A of the *Aged Care Act 2024* and worked out under section 285A-10 of the *Aged Care Rules*; and
- inserts a new subparagraph (d) to reference residential respite fees worked out under subsection 283(2) of the *Aged Care Act 2024*.

Item 7

Repeals the definition of the ***Department of Social Services*** under section 1.4, as it is no longer used in this instrument due to changes to the definition of the ‘Commonwealth Home Support

Programme service’ (per Item 5).

Item 8

Repeals the definition of ***flexible care*** under section 1.4, as flexible care has been incorporated into ‘specialist aged care programs’ under the *Aged Care Act 2024*.

Item 9

Updates the definition of ***home care*** under section 1.4 to mean a funded aged care service in the ‘home care’ service group referred to in paragraph 8(3)(a) within the meaning of the *Aged Care Act 2024*. This excludes the residential care, assistive technology and home modification service groups within the meaning of the *Aged Care Act 2024*. The phrase ‘service group residential care’ is used in the *Aged Care Act 2024* but not defined, so this amended definition points to the primary provision from which it is derived.

Item 10

Repeals the definition of the ***Quality of Care Principles 2014*** under section 1.4. Under the *Aged Care Act 2024*, this instrument will be repealed and consolidated into the *Aged Care Rules* (as defined in Item 1).

Item 11

Inserts the definition of ***registered provider*** under section 1.4 as per the meaning in subsection 11(2) of the *Aged Care Act 2024*. This replaces the definition of ‘approved provider’ that was used in the *Aged Care Act 1997* (per Item 3).

Item 12

Updates the definition of ***residential care*** under section 1.4 to simply refer to a ‘facility’ instead of ‘residential care facility’ to avoid unnecessary duplication and a circular definition.

Item 13

Updates the definition of ***residential care subsidy*** under section 1.4 to reference amounts worked out under Divisions 4 or 4A of Part 2 of Chapter 4 of the *Aged Care Act 2024*.

Item 14

Repeals the definition of ***Short-Term Restorative Care*** under section 1.4 as the Short-Term Restorative Care Programme will cease under the *Aged Care Act 2024*.

Item 15

Inserts a new definition for the ***specialist aged care program*** under section 1.4 per the meaning given in section 7 of the *Aged Care Act 2024*. This is a new addition to the programs being introduced as part of the *Aged Care Act 2024* reforms and offers a service that is the operational equivalent of the Short-Term Restorative Care Programme.

Item 16

Inserts a new definition of ***System Governor*** under section 1.4 as having the meaning given in section 7 of the *Aged Care Act 2024*.

Item 17

Updates the definition of *transition care* under section 1.4 to reference the Transition Care Programme as defined in section 7 of the *Aged Care Act 2024*.

Item 18

Updates the definition of *veterans' supplement* under section 1.4, in relation to an 'entitled person', to mean a primary person-centred supplement or a secondary person-centred supplement that applies under the *Aged Care Act 2024* to the person as a care needs recipient under that Act because the person is a veteran.

Item 19

Updates paragraph 2.2.4 (note 2) to specify that the Military Rehabilitation and Compensation Commission (the Commission), rather than the Commonwealth, accepts, in the first instance, responsibility for the provision of residential care and residential care (respite) under the *Aged Care Act 2024* to *entitled persons*.

Item 20

Updates paragraph 2.2.4 (note 3) to point to the definition of *daily care fee* in section 1.4.1 as the revised definition of *daily care fee* provides the relevant information that is the equivalent to the original intent of this note, which referred to how the daily care fee amount was worked out under the *Aged Care Act 1997*.

Item 21

Updates paragraph 7.3A.12 to specify that the Commission should not accept financial responsibility for the provisions under 'Home Care Service (Category A)' to an entitled person if they are receiving residential care under the *Aged Care Act 2024*.

Item 22

Updates subparagraph 9.3.2(a) to reflect that residential care subsidies are payable to registered providers under the *Aged Care Act 2024* and not to eligible persons, as was the case under the *Aged Care Act 1997*.

Item 23

Updates paragraph 9.3.3 to prevent payments by the Commonwealth for nursing home-type care under the *Veterans Entitlements Act 1986* for the same amounts that may be liable under either the *Aged Care Act 2024* or the *National Health Act 1953*.

Item 24

Updates paragraph 10.1.2 reference from the *Aged Care Act 1997* to the *Aged Care Act 2024* in relation to eligibility for DVA-funded residential care.

Item 25

Updates paragraph 10.1.3 reference from the *Aged Care Act 1997* to the *Aged Care Act 2024* or the *Aged Care Rules*, as applicable in relation to payment of amounts for residential aged care services.

Item 26

Updates paragraph 10.1.3 (note) to reference section 598 of the *Aged Care Act 2024*, which provides that residential care subsidies are payable under Part 2 of Chapter 4 of that Act.

Item 27

Updates paragraph 10.1.4 to prevent payments for residential care for the same amount from being made by the Commonwealth under both the *Veterans' Entitlements Act 1986* and the *Aged Care Act 2024*.

Item 28

Updates paragraph 10.1.5 to allow the Commission to accept financial liability for amounts incurred by an *entitled person* for residential care where the Commonwealth is not liable to pay an amount under the *Aged Care Act 2024*.

Item 29

Updates paragraph 10.1.5 (note) to clarify that the Commonwealth is not necessarily liable to pay residential care fees under the *Aged Care Act 2024*, such as the daily care fee.

Item 30

Updates paragraph 10.3.2 reference to the *Aged Care Act 2024* and the *Aged Care Rules*, which replace the *Subsidy Principles*, a subordinate instrument under the *Aged Care Act 1997*, for determining the rules around the provision of respite care, should the Commission choose to accept financial responsibility.

Item 31

Updates paragraph 10.3.2 (note 3) to refer to the *Aged Care Rules* regarding the classification level for the classification type 'short term', having effect for a limited period, subject to extension upon decision of the 'System Governor'. The *Aged Care Act 2024* and the *Aged Care Rules* do not define respite care in the same way as the *MRCA Treatment Principles*. This change is to align DVA's concept of respite care with the equivalent terminology used in the *Aged Care Act 2024*, which uses classification levels.

Items 32-35

These Items update provisions relating to the acceptance of financial responsibility for residential care (respite) fees by the Commission under paragraph 10.3.2 (table), subparagraph 10.3.4(a), paragraph 10.3.6, and paragraph 10.3.7. They replace references to the *Subsidy Principles 2014*, a subordinate instrument under the *Aged Care Act 1997*, with the *Aged Care Rules* (the appropriate subordinate instrument under the *Aged Care Act 2024*).

Items 36-38

These Items update provisions relating to the acceptance of financial responsibility for residential care (respite) fees by the Commission under paragraph 10.3.9, paragraph 10.3.9 (note 1) and paragraph 10.3.10 to replace references from the *Aged Care Act 1997* to the *Aged Care Act 2024*.

Items 39-42

These Items update provisions relating to amounts payable to home care providers under Part 10, Part D (definition of co-payment), paragraph 10.5, paragraph 10.6 and Part 10, Part E (definition of co-payment) to replace references from the *Aged Care Act 1997* to the *Aged Care Act 2024*.

Item 43

Updates paragraph 10.8.1 reference from an *approved provider* to a *registered provider* (for the purpose of transition care) in accordance with terminology changes as part of the *Aged Care Act 2024* (per Item 11).

Item 44

Updates subparagraph 10.8.1(a) to replace reference to flexible care provided under the *Subsidy Principles 2014*, a subordinate instrument of the *Aged Care Act 1997*, to specialist aged care programs provided under section 248 of the *Aged Care Act 2024*.

Item 45

Repeals subparagraph 10.8.1(a) (note 1). This note referred to the maximum number of days a flexible care subsidy that was payable in December 2010 and is no longer applicable.

Item 46

Updates subparagraph 10.8.1(b) to refer to co-payment amounts a *registered provider* is permitted to charge the ex-prisoner of war or Victoria Cross recipient under section 286 of the *Aged Care Act 2024*.

Item 47

Updates subparagraph 10.8.2(a) pertaining to the acceptance of financial responsibility by the Commission for the co-payment for transition care provided to ex-prisoners of war and Victoria Cross recipients based on whether it was provided in accordance with the *Aged Care Act 2024* (and relevant instruments thereunder) instead of the *Aged Care Act 1997*.

Items 48-49

These items repeal subparagraphs 10.8.2(a) (note 1) and 10.8.2(a) (note 2) as information relating to transition care under the *Aged Care Act 2024* (and instruments thereunder) as it is now captured in subparagraph 10.11.2(a) (per Item 47).

Items 50-51

These items repeal subparagraphs 10.8.2(b) and 10.8.2(c) as these provisions are unnecessarily duplicative of subparagraph 10.8.2(a), which states that care must be provided in accordance with provisions and instruments under the *Aged Care Act 2024*.

Item 52

Updates paragraph 10.9.1 reference from an ‘approved provider’ to a ‘registered provider’ in relation to billing arrangements for transition care services in accordance with terminology changes as part of the *Aged Care Act 2024* (per Item 11).

Item 53

Repeals the entire Part 10, Part F that covers the Short-Term Restorative Care Programme. The Short-Term Restorative Care Programme will no longer exist with the commencement of the *Aged Care Act 2024*. Under the new aged care reforms, this programme is now subsumed under the service group ‘home support’.

Consultation

The Department of Veterans' Affairs (DVA) consulted with the Department of Health, Disability and Aged Care (DHDA) on the alignment of DVA instruments to the new *Aged Care Act 2024* legislative arrangements, including initial project scoping, detailed instrument analysis, and providing specialist advice on the application of the *Aged Care Act 2024*. Consultation occurred over approximately six months via email correspondence, with follow-up meetings as needed.

DVA did not consult directly with veteran groups as they are not adversely impacted by these consequential amendments to the *MRCA Treatment Principles* and other instruments. Consultation was not considered necessary given the amendments are administrative in nature to ensure continuity of DVA service delivery and that relevant DVA legislative instruments are aligned with the new Aged Care legislative landscape and health policy settings, from 1 November 2025.

DHDA undertook extensive public consultation on both the *Aged Care Act 2024* and the *Aged Care Rules 2025*, as outlined in their respective Explanatory Memorandum and Explanatory Statement.

Human rights implications

This instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment A**.

Approved by:

Matthew James Keogh.
Minister for Veterans' Affairs

Attachment A

Statement of Compatibility with Human Rights

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

Military Rehabilitation and Compensation (Treatment and Pharmaceutical) Amendment (Aged Care Act 2024) Instrument 2025

This disallowable legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of Instrument

This instrument makes consequential amendments to the *MRCA Treatment Principles* and the *MRCA Pharmaceutical Benefits Scheme* upon commencement of the *Aged Care (Consequential and Transitional Provisions) Act 2024*, the *Aged Care Act 2024*, and the *Aged Care Rules 2025*.

The proposed amendments replace references to sections of repealed aged care Acts and subordinate instruments with references to the relevant sections of the *Aged Care Act 2024* and the *Aged Care Rules 2025*. Additionally, proposed amendments update certain terminology and definitions to ensure that legislation appropriately aligns with the new aged care legislation.

Human rights implications

The proposed consequential amendments have no negative human rights implications, as they are administrative in nature and intended to ensure service continuity for DVA clients accessing aged care services.

The respective Explanatory Memorandum and Explanatory Statement to the *Aged Care Act 2024* and the *Aged Care Rules 2025* include Statements of Compatibility with Human Rights which found that they are consistent with the human rights and freedoms recognised by the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Conclusion

This instrument is compatible with human rights as it does not raise any human rights issues.

Matthew James Keogh.
Minister for Veterans' Affairs

Rule-maker