

## EXPLANATORY STATEMENT

### **Treatment Principles (Australian Participants in British Nuclear Tests) 2006 (Providers/Incorporated Documents) Instrument 2007**

#### **EMPOWERING PROVISION**

Subsection 16(6) of the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* (the Act).

#### **PURPOSE**

The attached instrument (No. R27/2007) amends the *Treatment Principles (Australian Participants in British Nuclear Tests) 2006* (the Nuclear Treatment Principles).

The Nuclear Treatment Principles is a legislative instrument made under subsection 16(6) of the Act and sets out the circumstances in which the Repatriation Commission may accept financial liability for treatment provided to entitled persons for malignant neoplasia. Generally speaking, entitled persons are Australian participants in British nuclear tests.

The purpose of the attached instrument is to:

- enable the Department of Veterans' Affairs (DVA) to decline to pay for treatment provided to an entitled person if the practitioner providing the treatment is disqualified under the *Health Insurance Act 1973* from being paid a medicare benefit ("Disqualification Amendment"); and
- update certain documents incorporated-by-reference into the Nuclear Treatment Principles ("Incorporated Documents Amendment").

#### *Disqualification Amendment*

The aim here is to maintain the financial integrity of the Repatriation Comprehensive Care Scheme (as adopted for the purposes of the *Australian Participants in British Nuclear Tests (Treatment) Act 2006*) by ensuring that DVA does not pay for treatment services provided by practitioners who have been found by Medicare Australia to have acted in an unprofessional manner e.g. overserviced.

### *Incorporated Documents Amendment*

The Nuclear Treatment Principles refer to a number of documents that are not set out in the Principles (external documents). An example of such a document is the Pricing Schedule for Visual Aids in force on 1 May 2007.

It is legally permissible to make external documents part of a legislative instrument but the *Legislative Instruments Act 2003* specifies that unless the external document is also legislative then it can only be incorporated into the legislative instrument as it, the external document, exists at the time the legislative instrument takes effect and not as the external document might exist at a future date when it has changed (s.14). In other words, a non-legislative external document is “frozen” in the form it is in when the legislative instrument that incorporates it, takes effect.

Accordingly, if an external document has been changed then it is necessary to amend the legislative instrument that refers to the document so that the reference to the document is made a reference to the updated document.

The attached instrument amends the Nuclear Treatment Principles so that references to certain external documents are references to those documents in their updated (changed) form.

### **RETROSPECTIVE**

No.

### **CONSULTATION**

In relation to the “Disqualification Amendment”, Medicare Australia was consulted. Practitioners were not consulted because the Rule-Maker considered that consultation was not appropriate because the relevant practitioners were already subject to the same type of provision in the *Health Insurance Act 1973* in relation to treating Commonwealth-funded patients and essentially all the attached instrument does is enlarge that group of Commonwealth-funded patients.

In relation to the “Incorporated Documents Amendment”, the Rule-Maker considered that consultation was not appropriate because the amendment was of a machinery nature and did not substantially alter existing arrangements.

## **Documents Incorporated-by-Reference**

Yes.

The following non-legislative documents in force on 1 November 2007 are incorporated into the Nuclear Treatment Principles by the attached instrument:

- Dental Schedules;
- Fee Schedules for treatment provided by health care providers;
- Notes for Local Medical Officers;
- Notes for Providers of Optometric Services /Dispensers of Optical Appliances;
- Pricing Schedule for Visual Aids;
- Notes for Providers (general);
- Notes for Local Dental Officers;
- Notes for Chiropractors;
- Notes for Diabetes Educators;
- Notes for Dietitians;
- Notes for Exercise Physiologists;
- Notes for Occupational Therapists;
- Notes for Osteopaths;
- Notes for Podiatrists;
- Notes for Physiotherapists;
- Notes for Speech Pathologists;
- RAP National Schedule of Equipment;
- Rehabilitation Appliances Program (RAP) National Guidelines.

At the time the attached instrument was made, all the documents were available on the Internet (Department of Veterans' Affairs web page – under Health – Doctors/Health Care Professionals):

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

and at the time the attached instrument was made all the documents were available at:

Department of Veterans' Affairs (ACT Office), Lovett Tower, 13 Keltie St Woden ACT 2606 / PO Box 21 Woden ACT 2606. Tel.no.(02) 6289 6243.

Any State or Territory Office of the Department of Veterans' Affairs:  
Tel.no: 133 254

## **FURTHER EXPLANATION**

Attachment A.

## Attachment A

Clauses	Explanation
1.	sets out the name of the instrument.
2.	provides that the instrument commences when it is registered on the Federal Register of Legislative Instruments.
3.	contains definitions.
4.	ensures that any action taken, or decision made, under Notes for Providers, before the commencement of the attached instrument, that on the commencement of the instrument had not been completed or implemented, as the case requires, may be completed or implemented under the relevant Notes for Providers as those Notes are incorporated into the Nuclear Treatment Principles by the attached instrument.

### Schedule A – Disqualification of Providers

1. inserts a more accurate definition of “medicare benefit”.
2. inserts a new definition of “practitioner”. This complements the amendments at items 3, 4, 5 and 6.
3. revises the definition of “provider number” in order to incorporate the more comprehensive definition of “practitioner” in the *Health Insurance Act 1973* so that a practitioner under that Act (who may also be a provider under the Nuclear Treatment Principles) is not only a medical practitioner, dentist or optometrist (as was formerly the case) but is also an allied health care provider.

This means that allied health care providers, and not just medical practitioners, dentists and optometrists, need a provider number if DVA is to pay them for treating entitled persons under the Nuclear Treatment Principles.

4. prohibits the Repatriation Commission from accepting financial responsibility for a medical-service provided to an entitled person by a medical practitioner if, had the medical practitioner provided the service as a *practitioner* under the *Health Insurance Act 1973*, a medicare benefit would not have been payable in respect of the service because the practitioner had been disqualified under that Act.

It should be noted that the Repatriation Commission may accept financial liability for a treatment-service and DVA may meet the Commission's liability by paying for the service.

5. prohibits the Repatriation Commission from accepting financial responsibility for a dental-service provided to an entitled person by a dental practitioner if, had the dental practitioner provided the service as a *practitioner* under the *Health Insurance Act 1973*, a medicare benefit would not have been payable in respect of the service because the practitioner had been disqualified under that Act.
6. prohibits the Repatriation Commission from accepting financial responsibility for a service provided to an entitled person by a health care provider (i.e. a provider covered by Part 7 of the Nuclear Treatment Principles ) if, had the health care provider provided the service as a *practitioner* under the *Health Insurance Act 1973*, a medicare benefit would not have been payable in respect of the service because the practitioner had been disqualified under that Act.

### **Schedule B – Incorporated Documents**

1. incorporates the dental schedules in force on 1 November 2007 into the Nuclear Treatment Principles.
2. incorporates Fee Schedules in force on 1 November 2007 into the Nuclear Treatment Principles.
3. incorporates Notes for Local Medical Officers in force on 1 November 2007 into the Nuclear Treatment Principles.
4. incorporates Notes for Providers of Optometric Services/Dispensers of Optical Appliances in force on 1 November 2007 into the Nuclear Treatment Principles.
5. incorporates the Pricing Schedule for Visual Aids in force on 1 November 2007 into the Nuclear Treatment Principles.
6. amends the general provisions that incorporate Notes for Providers into the Nuclear Treatment Principles by providing that Notes for Providers in force on 1 November 2007 are incorporated into the Principles.

7. incorporates the Notes for Local Dental Officers in force on 1 November 2007 into the Nuclear Treatment Principles.
8. amends the specific provisions that incorporate Notes for Providers into the Nuclear Treatment Principles by providing that Notes for Providers in force on 1 November 2007 are incorporated into the Nuclear Treatment Principles.
9. provides that in order for the Repatriation Commission to be able to accept financial liability for exercise physiology treatment provided by an exercise physiologist to an entitled person, the treatment must have been provided in accordance with the Notes for Exercise Physiologists (in force on 1 November 2007).
10. incorporates the *RAP National Schedule of Equipment* and the *Rehabilitation Appliances Program (RAP) National Guidelines*, in force on 1 November 2007, into the Nuclear Treatment Principles.
11. specifies the date on which external documents incorporated into the Nuclear Treatment Principles are to be regarded as being in force for the purposes of the Nuclear Treatment Principles, namely 1 November 2007.