

## EXPLANATORY STATEMENT

### **Veterans' Entitlements (Treatment Principles – Incorporated Documents Update) Instrument 2008**

#### **EMPOWERING PROVISION**

Section 90 of the *Veterans' Entitlements Act 1986* (the Act).

#### **PURPOSE**

The attached instrument (R16/2008) amends the *Treatment Principles*. The *Treatment Principles* is a legislative instrument made under section 90 of the Act and sets out the circumstances in which the Repatriation Commission may accept financial liability for treatment provided to veterans or their dependants.

The purpose of the attached instrument is to:

- update references to documents incorporated-by-reference into the *Treatment Principles* (Incorporated Documents Amendment);
- attend to an issue raised by the Senate Standing Committee on Regulations and Ordinances (Senate Committee Amendment); and
- make minor and technical amendments (Minor/Technical Amendments).

#### *Incorporated Documents Amendment*

The *Treatment Principles* refer to a number of documents that are not set out in full in the Principles (external documents). An example of such a document is the Pricing Schedule for Visual Aids.

It is legally permissible to make an external document 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 in the form the external document is in when the incorporating-provision in the legislative instrument takes effect.

In other words, the external document is “frozen” and changes to it can only form part of the document as incorporated in the legislative instrument if the incorporating-provision is re-made to refer to the external document as updated. The attached instrument re-makes the incorporating-provision in the *Treatment Principles* so that updated

external documents as at 1 September 2008 become part of the *Treatment Principles*.

#### *Senate Committee Amendment*

The Senate Standing Committee on Regulations and Ordinances queried whether a grant of prior approval for the supply of a rehabilitation appliance under the *Treatment Principles (Australian Participants in British Nuclear Tests) 2006* (made under the *Australian Participants in British Nuclear Tests (Treatment) Act 2006*) should be recorded in writing.

Although the Committee's query did not encompass the identical situations under the *Treatment Principles* (made under the *Veterans' Entitlements Act 1986*) or under the *MRCA Treatment Principles* (made under the *Military Rehabilitation and Compensation Act 2004*), the Repatriation Commission and the Military Rehabilitation and Compensation Commission decided that it would be appropriate to also address the Committee's query in the context of these (virtually identical) sets of "Treatment Principles".

As a matter of practice grants of prior approval for rehabilitation appliances are recorded in writing. One advantage of this is that the potential for disputes is lessened.

The Repatriation Commission decided that it should be made a legal requirement that a grant of prior approval for a rehabilitation appliance be recorded in writing and this is achieved by the attached instrument.

#### *Minor/Technical Amendments*

The phrase "in force on the date in Schedule 3" [for a document] has been defined.

The new definition is required for timing reasons. It is necessary to define the phrase to make it clear what "in force" means so that, generally speaking, it applies to the situation where an external document, on a particular date, has been formally approved by the Repatriation Commission or the Department of Veterans' Affairs rather than applying to the situation where the document was "in force" because it was incorporated into the *Treatment Principles* upon registration of the instrument that incorporated the document into the *Treatment Principles*.

If "in force" encompassed the latter situation (e.g. for a document "in force on 1 September 2008"), a delay in registering the instrument that

incorporated the document (e.g. document registered on 5 September 2008) would mean that the document was not “in force” on 1 September 2008 and the phrase *in force on the date in Schedule 3* [1 September 2008] would not apply to the document because on 1 September 2008 the document was not in force because the instrument incorporating the document was not in force.

Accordingly it was necessary to give the phrase *in force on the date in Schedule 3* a meaning that avoided this possible problem.

The new definition does not enable an incorporated document, as incorporated into the *Treatment Principles* by the attached instrument, to operate retrospectively and affect a person, negatively or otherwise, before the registration of the instrument.

Further, although an incorporated document might be “in force” (as that phrase has been especially defined for the *Treatment Principles*) before the attached instrument is registered, it could not be administered by the Repatriation Commission or the Department of Veterans’ Affairs because it derives its effectiveness, for the purposes of the Repatriation Commission and the Department of Veterans’ Affairs, only when incorporated in the *Treatment Principles*.

The attached instrument also corrects a minor drafting error in the definition of “dental schedules”.

## **RETROSPECTIVE**

No.

## **CONSULTATION**

Not in relation to the legislative instrument because the Rule-Maker considered that consultation was not appropriate because the amendments were of a machinery nature and did not substantially alter existing arrangements.

However in relation to the incorporated document that the Department has changed (RAP National Schedule of Equipment), the Department consulted the Local Medical Officer Advisory Committee (a committee comprised of departmental and non-departmental persons), the Allied Health Advisory Committee (a committee comprised of departmental and non-departmental persons), the Chiropractors’ Association of Australia and the Australian Osteopathic Association.

Broad agreement was reached with these parties.

## DOCUMENTS INCORPORATED-BY-REFERENCE

Yes.

The following non-legislative documents in force on 1 September 2008 are, on the day after registration of the attached instrument, incorporated into the *Treatment Principles*:

- 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;
- American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (commonly known as DSM-IV);
- 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, except the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, 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, or could be made 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

| <b>Clauses</b> | <b>Explanation</b> |
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| [1] | sets out the name of the instrument.   |
| [2] | provides that the instrument commences on the day after it is registered on the Federal Register of Legislative Instruments. |

**Schedule**

1. inserts a definition of *in force on the date in Schedule 3*.

Paragraph (a) describes what “in force on the date in Schedule 3” means for a document that the *Treatment Principles* specify must be approved by the Repatriation Commission or the Department of Veterans’ Affairs or by either.

In this situation the phrase means that on the date in Schedule 3 for the document, the document has been approved as the *Treatment Principles* require it to be approved. If the *Treatment Principles* require the document to be approved by the Repatriation Commission then, in order for the document to be incorporated into the *Treatment Principles* it must, on the date in Schedule 3 for the document, have been approved by the Repatriation Commission.

The intention is not that on the date in Schedule 3 the Repatriation Commission or Department of Veterans’ Affairs must actually approve the document, merely that on that date the document has been approved by the Repatriation Commission or the Department of Veterans’ Affairs (whether on or before that day).

Paragraph (b) describes what “in force on the date in Schedule 3” means for a document that the *Treatment Principles* do not specify must be approved by the Repatriation Commission or the Department of Veterans’ Affairs or by either.

In this situation the phrase means that on the date in Schedule 3 for the document, the document has been approved by the Repatriation Commission or the Department of Veterans’ Affairs or by either, in order for the document to be incorporated into the *Treatment Principles*.

The intention is not that on the date in Schedule 3 the Repatriation Commission or Department of Veterans’ Affairs must actually approve the document, merely that on that date the document has

been approved by the Repatriation Commission or the Department of Veterans' Affairs (whether on or before that day).

Paragraph (c) describes what "in force on the date in Schedule 3" means for a document that is not prepared for the Repatriation Commission or the Department of Veterans' Affairs (i.e. not an in-house manual) and that is not required by the *Treatment Principles* to be approved by the Repatriation Commission or the Department of Veterans' Affairs or by either.

In this situation the phrase simply means that on the date in Schedule 3 for the document, the document existed, in order for the document to be incorporated into the *Treatment Principles*.

2. corrects a drafting error that defined the dental schedules by reference to two descriptions when only one is intended and that is that the Schedules are documents, as described in item 2, and in force on the date in Schedule 3 for the Dental Schedules.
3. resolves an issue raised by the Senate Standing Committee on Regulations and Ordinances.

The attached instrument specifies that a grant of prior approval for a rehabilitation appliance be recorded in writing (which is the issue).

The attached instrument also specifies that the record be made within 7 days after a grant of prior approval has been made and that the record be stored for at least 12 months. The record may be stored electronically.

4. omits "1 November 2007" from Schedule 3 and substitutes "1 September 2008" with the result that on the day after registration of the attached instrument, the documents mentioned in this Explanatory Statement under the heading "Documents Incorporated-by-Reference" are incorporated into the *Treatment Principles* in the form those documents were in on 1 September 2008.