

EXPLANATORY STATEMENT

Veterans' Entitlements (Treatment Principles – Claims/Dental/Fees) Instrument 2010

EMPOWERING PROVISION

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

PURPOSE

The attached instrument (R7/2010) 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:

- extend the time limit for treatment-providers to lodge claims for payment for treating veterans or their dependants from 6 months to 5 years with a discretionary late lodgement procedure (Extending Claim Time Limit).
- remove prior-approval for dental services in Tier 1 Hospitals and Contracted Day Procedure Centres (Removal of Prior-Approval for Dental Services in Tier 1 Hospitals and Contracted Day Procedure Centres)
- authorise fee increases (fee increases)
- more accurately describe fee schedules (Better Describing of Fee Schedules).
- update references to incorporated documents (Updating Document References).
- remove the redundant prohibition on the Repatriation Commission accepting financial liability for in-vitro treatment (Removing In-Vitro Treatment Prohibition).

Extending Claim Time Limit

Before the attached instrument, treatment-providers had 6 months from the date of the treatment-service in which to lodge a claim for payment, with the possibility of the period being extended for an unlimited period by the Repatriation Commission in appropriate circumstances. The situation remains unchanged except that treatment-providers now have 5

years from the date of the treatment-service in which to lodge a claim for payment (with the possibility of the period being extended).

The situation for Health Care Providers who:

- provided a service before the commencement of the attached instrument but who, on the commencement of the attached instrument, had not lodged a claim for payment (Case 1); or
- on the commencement of the attached instrument had lodged a claim for payment but the claim had not been determined (Case 2); or
- on the commencement of the attached instrument had lodged an application for an extension of time in which to lodge a claim for payment and the application had not been determined (Case 3)

is as follows:

Cases 1 and 2 – the *Treatment Principles* as varied by the attached instrument apply, meaning the provider has 5 years from the date of service in which to lodge a claim with the possibility of that period being extended.

Case 3

- if the application had been made within 5 years after the treatment had been provided, the Repatriation Commission is to accept the claim in respect of which the application is made.
- if the application had been made more than 5 years after the treatment had been provided the application is governed by the *Treatment Principles* as varied by this instrument, meaning that the application will be assessed under late-lodgement guidelines.

Removal of Prior-Approval for Dental Services in Tier 1 Hospitals and Contracted Day Procedure Centres

Currently the provision of all dental services to entitled persons under Commission-arrangements requires the Commissions' prior approval i.e. prior-approval is mandatory. The attached instrument will relax this requirement for Tier 1 Hospitals (former repatriation hospital, public hospital, veteran partnering private hospital) and Contracted Day Procedure Centres and provide that, apart from treatment in Tier 1 Hospitals/Contracted Day Procedure Centres (where prior approval is not necessary), if prior-approval for a dental service is necessary, the requirement will be set out in a dental schedule.

Fee Increases

Fees for health care providers under the *Veterans' Entitlements Act 1986* were increased on 1 November 2009 and again on 1 May 2010. The attached instrument will retrospectively authorise those increases.

Better Describing of Fee Schedules

Before the attached instrument, a Fee Schedule was described generically i.e. as a fee schedule, and fees for health care providers were paid in accordance with a fee schedule that related to the relevant treatment. Under the attached instrument fee schedules are now referred to by the name of the occupation to which the fees relate e.g. Fee Schedule of Dental Services for Dental Prosthetists.

Updating Document References

The attached instrument updates references to the various external documents incorporated into the *Treatment Principles* so as to provide that those documents are the versions in force on 1 November 2009 and 1 May 2010 and, for some documents, 1 November 2010, as the case may be.

For example, one external document, the RAP Schedule, sets out the financial limits above which Prior Approval is required. These need to be indexed annually to keep pace with inflation. The implementation process is a simple one; the RAP Schedule is updated and a new edition date is inserted into the *Treatment Principles* by a legislative instrument (as the attached legislative instrument will do). The indexed (updated) RAP Schedule is the version recognised by the *Treatment Principles*.

Removing In-Vitro Treatment Prohibition

In 2007 the *Treatment Principles* were amended to include in-vitro treatment as a treatment that could be provided to entitled persons under arrangements made by the Repatriation Commission. This action was taken as a consequence of Medicare Australia including in-vitro treatment on the Medicare Benefits Schedule. Prior to this amendment the *Treatment Principles* prohibited the Repatriation Commission from accepting financial liability for in-vitro treatment. Inadvertently the prohibition was not removed in 2007. The attached instrument removes the redundant prohibition.

RETROSPECTIVE

Yes but only so as to retrospectively authorise fee-increases. The remainder of the instrument commences after registration. For the purposes of subsection 12(2) of the *Legislative Instruments Act 2003* the instrument does not negatively affect any person.

CONSULTATION

Extending Claim Time Limit

Yes. Representations as to the relatively short period (6 Months) in which to lodge claims were received by the Department of Veterans' Affairs and the Department liaised with providers over the issue.

Removal of Prior-Approval for Dental Services in Tier 1 Hospitals and Contracted Day Procedure Centres

Yes. Australian Dentists Association.

Fee Increases

Yes. Treatment Providers were notified about the increases in fees brought about by the attached instrument. This was achieved via the DVA Website and the distribution of hard copies of the schedules to interested parties.

Better Describing Fee Schedules

No. Because the amendments are minor and technical.

Updating Document References

No. Because the amendments are minor and technical.

Removing In-Vitro Treatment Prohibition

No. Because the amendment merely removes a redundant provision. In-vitro treatment has been available under the *Treatment Principles* since 2007.

DOCUMENTS INCORPORATED-BY-REFERENCE

Yes.

The following non-legislative documents in force on 1 November 2009 (to 1 May 2010) and on 1 May 2010 are, on commencement of the attached instrument, incorporated into the *Treatment Principles*:

- Notes for Local Medical Officers;
- Notes for Providers of Optometric Services /Dispensers of Optical Appliances;
- American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (commonly known as DSM-IV);
- 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 Physiotherapists;
- Notes for Podiatrists;
- Notes for Speech Pathologists;

The following non-legislative documents in force on 1 November 2010 are, on 1 November 2010, incorporated into the *Treatment Principles*:

- 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 9998 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

Items	Explanation
[1]	sets out the name of the instrument.
[2]	<p data-bbox="371 456 1355 577">provides that the instrument commences on the day after the day it is registered on the Federal Register of Legislative Instruments (registration) save that:</p> <ul data-bbox="421 629 1355 837" style="list-style-type: none"> <li data-bbox="421 629 1355 837">• paragraph 26 (new Schedule 1 (updated documents)) takes effect in respect of fee-increases in the relevant documents on and from 1 November 2009 and takes effect in respect of the remaining matters in those documents on the day after registration; <p data-bbox="467 889 1299 965">This variation will authorise unauthorised fee increases that have been in place on and from 1 November 2010.</p> <ul data-bbox="421 1016 1355 1270" style="list-style-type: none"> <li data-bbox="421 1016 1355 1270">• paragraph 26A (new Schedule 1 (updated documents)) takes effect after the revocation of Schedule 1, and, in respect of fee-increases in the relevant documents in Part 1 of the Schedule 1, takes effect on and from 1 May 2010 and takes effect in respect of the remaining matters in the documents in Part 1 on the day after registration. <p data-bbox="467 1319 1281 1482">For the documents in Part 2 of the Schedule 1 (“RAP National Schedule of Equipment” and “Rehabilitation Appliances Program (RAP) National Guidelines”), paragraph 26A takes effect on 1 November 2010.</p> <p data-bbox="467 1532 1315 1823">In summary, the variation made by paragraph 26A authorises unauthorised fee increases that have been in place on and from 1 May 2010, incorporates certain documents in existence on 1 May 2010 and incorporates the “RAP National Schedule of Equipment” and the “Rehabilitation Appliances Program (RAP) National Guidelines” in existence on 1 November 2010.</p>
[3]	addresses the situation where claims for payment, and applications for an extension of time to lodge a claim for payment, are made before the commencement of the attached instrument and on its commencement, have not been determined. The rules that apply in this situation are explained in more detail above under the heading “Extending Claim Time Limit”.

This provision also makes it clear that an external document incorporated into the Treatment Principles before registration of the attached instrument can only affect a person by authorising the increased fees payable for the person's services. It cannot affect the person so as to disadvantage the person.

- [4] saves the rehabilitation appliance documents in the Treatment Principles until the updated versions are incorporated in the Treatment Principles on 1 November 2010.
- [5] is a definition provision.

Schedule

1. changed the place in the *Treatment Principles* where the date of incorporated documents is found – from Schedule 3 to Schedule 1 (Dates for Incorporated Documents). A relevant document approved by the Repatriation Commission (or member thereof) or by the Secretary of the Department of Veterans' Affairs on the date in Schedule 1 (Dates for Incorporated Documents) is incorporated-by-reference into the *Treatment Principles*.
2. removed the reference to Schedule 3 in the definition of "in force on the date in Schedule 3" and replaced it with a reference to new Schedule 1 (Dates for Incorporated Documents). New Schedule 1 is the schedule that now lists incorporated documents and, for identification purposes, specifies the date on which they are to be in force (officially approved).
3. omitted definitions relating to fees. This is a consequential amendment made necessary because fees are now addressed in better defined documents.

Item 3 also inserted definitions of certain documents that are incorporated-by-reference into the *Treatment Principles*. These documents are guidelines (Notes) for the various health care providers that treat entitled persons under the *Treatment Principles* and set out the conditions on which the Repatriation Commission will accept financial liability for treatment provided by a provider to an entitled person.

For a set of notes to be validly incorporated into the *Treatment Principles* it must, on the date in Schedule 1 (Dates for Incorporated Documents) for the relevant notes, have been

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

4. is a consequential amendment made necessary because the document containing the Veterans' Access Payment is differently defined.
5. substituted paragraph 3.5.1 with a new paragraph 3.5.1 so as to reflect the fact that fees for health care providers are now addressed in documents that specifically refer to the health care provider's occupation.

Under new paragraph 3.5.1, in order to be paid the fee in a relevant fee schedule, a health care provider must have provided the treatment in accordance with the *Treatment Principles* and the relevant notes (guidelines) for the treatment service.

Although fees are stated in the relevant fee schedules, provision is made by paragraph 3.5.1 for the Repatriation Commission to approve a higher fee in exceptional circumstances and after considering the matters in paragraph 3.2.2 of the *Treatment Principles* viz:

- relevant requirements in the *Veterans' Entitlements Act 1986* or the *Treatment Principles*
- available funds
- control over expenditure
- clinical need for the treatment
- suitability/quality of treatment.

6. is a consequential amendment made necessary because fees are now addressed not in generic fee documents but in documents that specifically refer to the occupation of a health care provider.
7. inserts the correct term for a health care provider.
- 8/8A. increase the time in which a health care provider may lodge a claim for payment for treating an entitled person from 6 months to 5 years with the possibility of that 5 year limit being extended by the Repatriation Commission.
9. inserted a note to paragraph 4.3.1 (provision referring to Commonwealth liability for treatment by medical practitioners)

to the effect that the subject matter of paragraph 4.3.1 is also addressed in paragraph 3.5.1 of the *Treatment Principles*.

10. removes the redundant prohibition on the Repatriation Commission accepting financial responsibility for in-vitro treatment.
11. reflects the fact that the Notes for Local Dental Officers is now referred to in new Schedule 1 (Dates for Incorporated Documents).
12. has the effect that an entitled person may receive dental treatment in a Tier 1 Hospital (former repatriation hospital, public hospital, veteran partnering private hospital) or Contracted Daily Procedure Centre without the need for the Repatriation Commission's approval to be first obtained.

Aside from dental treatment at a Tier 1 Hospital or Contracted Daily Procedure Centre, and except in an emergency, the Commission's prior approval is necessary before dental treatment is provided unless the "dental fee schedules" ("Fee Schedule of Dental Services for Dentists and Dental Specialists"/the "Fee Schedule of Dental Services for Dental Prosthetists") provides differently.

13. essentially replaced the former paragraphs 5.2.1 – 5.2.4 with identical provisions.

Paragraphs 5.2.1 and 5.2.2 provide that fees for dental services are now addressed in Schedule 1 (Fee Schedule of Dental Services for Dentists and Dental Specialists/Fee Schedule of Dental Services for Dental Prosthetists) to the *Treatment Principles* and not in the external documents formerly known as the Dental Schedules/Dental Prosthetist Schedule.

Paragraph 5.2.3 gives notice of a monetary limit on dental services imposed in Dental Schedule C.

Paragraph 5.2.4 states that if, under the "dental schedules", the prior-approval of the Repatriation Commission is required for dental-treatment then the Commission is not to accept financial liability for such treatment if prior approval/retrospective approval was not given. However any requirement for prior approval in the dental schedules is subject to the overriding exception to the need for prior approval where dental treatment

is provided in Tier 1 Hospitals or Contracted Day Procedure Centres.

14. is a drafting amendment that refers to a new cross-reference.
15. essentially replaced the former paragraphs 5.3.2-5.3.4 with the former paragraphs except that the fee documents are now referred to in Schedule 1 (Fee Schedule of Dental Services for Dentists and Dental Specialists/Fee Schedule of Dental Services for Dental Prosthetists).

Paragraph 5.3.2(a) provides that the holder of a Gold Card (an identification card issued by the Department of Veterans' Affairs that denotes that the holder is eligible for treatment for all conditions, not just war/defence-caused conditions) who is not a former prisoner of war is entitled to the following dental services for a non-war/defence-caused condition:

- services in the Fee Schedule of Dental Services for Dentists and Dental Specialists/Fee Schedule of Dental Services for Dental Prosthetists, if the service is provided in accordance with the schedules

Paragraph 5.3.2(b) provides that the holder of a Gold Card who is not a former prisoner of war is entitled to the following dental services for a war/defence-caused condition or for malignant neoplasia:

- services in the Fee Schedule of Dental Services for Dentists and Dental Specialists/Fee Schedule of Dental Services for Dental Prosthetists, if the service is provided in accordance with the schedules

Paragraph 5.3.3 provides that the holder of a Gold Card who is a former prisoner of war is entitled to the following dental services:

- services in the Fee Schedule of Dental Services for Dentists and Dental Specialists/Fee Schedule of Dental Services for Dental Prosthetists, if the service is provided in accordance with the schedules, but without the imposition of any monetary limit in Schedule C of the Fee Schedule of Dental Services for Dentists and Dental Specialists.

Paragraph 5.3.4 sets out the entitlement of the holder of a White Card for dental treatment. A White Card is an identification card issued by the Department of Veterans' Affairs that denotes that the holder is eligible for treatment for specific conditions (usually, but not necessarily, war/defence-caused conditions).

Under paragraph 5.3.4 the holder of a White Card is entitled to dental treatment under the Fee Schedule of Dental Services for Dentists and Dental Specialists or under the Fee Schedule of Dental Services for Dental Prosthetists, to the *Treatment Principles*, for:

- a determined condition (a condition specified in a determination under section 88A of the *Veterans' Entitlements Act 1986* (being a condition that need not be war/defence-caused)
- a condition associated with malignant neoplasia.

However the holder of a White Card is not entitled to dental treatment for a determined residential care condition.

A determined residential care condition is a determined condition under section 88A of the *Veterans' Entitlements Act 1986*) that enables the holder of a white card suffering from an "eligible-for-treatment-condition" e.g. a malfunctioning knee, to receive residential care for an otherwise "ineligible-for-treatment-condition" e.g. nursing care for a mouth condition.

Although the condition is a "determined condition" nevertheless treatment of the condition is confined to residential (nursing care) and any other treatment for the condition, such as dental treatment, is only available if eligibility for the treatment is derived from a source of eligibility other than the determined residential care condition.

16. removed the need for the prior approval of the Repatriation Commission to be obtained where emergency dental treatment was provided to an entitled person. However the Commission's retrospective approval is still required.
17. removed the need for the prior approval of the Repatriation Commission to be obtained where a general anaesthetic was provided to an entitled person as part of dental treatment in a Tier 1 Hospital or at a Contracted Day Procedure Centre. Apart

from these situations, the Commission's prior approval is required for the administration of a general anaesthetic in the course of providing dental treatment.

18. omitted paragraphs 7.1A.1 and 7.1A.2 because they were redundant. Paragraph 7.1A.1 was a catch-all precautionary provision designed to incorporate all Notes for Providers (guidelines) into the *Treatment Principles* in case some were not specifically named in the more specific provision incorporating Notes for Providers into the *Treatment Principles* (former paragraph 7.1A.3).

The Repatriation Commission is now satisfied that new paragraph 7.1A.1 (former paragraph 7.1A.3) covers all the various Notes for Providers and therefore the catch-all provision in paragraph 7.1A.1 is no longer required.

Former paragraph 7.1A.2 was a mechanical provision that specifically incorporated documents referred to in former paragraph 7.1A.1, into the *Treatment Principles*.

Such a provision was not necessary as merely referring to an external document in the *Treatment Principles*, in a substantive context, is enough of itself to incorporate the document into the *Treatment Principles* so as to make it part of the *Treatment Principles*.

19. essentially replaced the former paragraph 7.1A.3 with an identical provision. The former paragraph was replaced because it stated that the relevant Notes for Providers were required to be in force on the date in former Schedule 3 (reference to date of effect). However the reference to the date of effect in Schedule 3 was made redundant by the amendments made by item 3 of the schedule to the attached instrument which inserted references to the date of effect for the various Notes for Providers in the actual definitions for those documents. Further, the date of effect for the Notes for Providers is now contained in new Schedule 1 (Dates for Incorporated Documents) of the *Treatment Principles* (not Schedule 3).

New paragraph 7.1A.1 provides that in order for the Repatriation Commission to accept financial liability for treatment provided by a particular health care provider to a person entitled to treatment under the *Treatment Principles* (entitled person), the provider must have provided the treatment in accordance with

the terms and conditions in the Notes for Providers that covered the treatment.

Thus if a podiatrist provided treatment to an entitled person then in order to be paid by the Commonwealth for the treatment, the treatment must have been provide in accordance with the terms and conditions in the Notes for Podiatrists in force on 1 November 2009.

20. discloses where the “Pricing Schedule for Visual Aids” is located in the *Treatment Principles* – namely in Schedule 1 (as an incorporated document), not Schedule 3.
21. describes the RAP National Schedule of Equipment and the Rehabilitation Appliances Program (RAP) National Guidelines as “DVA documents” and discloses where these documents are located in the *Treatment Principles* – namely in Schedule 1 (as an incorporated document), not Schedule 3.
- 22-24. disclose where the “Pricing Schedule for Visual Aids” is located in the *Treatment Principles* – namely in Schedule 1 (as an incorporated document), not Schedule 3.
25. is a consequential drafting amendment made necessary by the re-arrangement of schedules.
26. omitted Schedules 2 (a fee document that will no longer be included in the *Treatment Principles*) and 3 (Dates for Incorporated Documents) and substituted a new Schedule 1 (Dates for Incorporated Documents) which lists the external documents that are incorporated-by-reference into the *Treatment Principles* and specifies the date on which the documents are to have been in force (officially approved) in order for them to be incorporated into the *Treatment Principles*.
- 26A. immediately after the commencement of Schedule 1 (Dates for Incorporated Documents), omitted Schedule 1 and substituted a new Schedule 1 which lists the external documents that are incorporated-by-reference into the *Treatment Principles* and specifies the date on which the documents are to have been in force (officially approved) in order for them to be incorporated into the *Treatment Principles*.
27. is a drafting amendment to ensure numbering is accurate.