EXPLANATORY STATEMENT

MRCA Treatment Principles

EMPOWERING PROVISION

Subsection 286(3) of the *Military Rehabilitation and Compensation Act 2004* (the Act or MRCA).

PURPOSE

The attached instrument (2013 No. MRCC 53) is the *MRCA Treatment Principles*.

The *MRCA Treatment Principles* is a legislative instrument made under subsection 286(3) of the Act and sets out the circumstances in which the Military Rehabilitation and Compensation Commission (the Commission) may accept financial liability for treatment provided to entitled persons (members of the Defence Force (including former members) or their dependants).

A number of routine amendments were required to the *MRCA Treatment Principles* and the opportunity was taken to remake them and update them where necessary.

The measures contained in the new amendments are as follows:

Aged Care Act Consequential Amendments (Aged Care measure)

On 1 July 2013 amendments to the *Aged Care Act 1997* took effect. These amendments are known as the *Living Longer, Living Better* (LLLB) Aged Care Act 1997 reforms.

The impact on the *MRCA Treatment Principles* of the LLLB was that, among other things, certain types of treatments that were based on care under the *Aged Care Act 1997* needed to be renamed to reflect the changes to the names of that care under the *Aged Care Act 1997*.

The aged care services under the *Aged Care Act 1997* known as "Community Aged Care Package" and "Extended Aged Care at Home Package" have been subsumed in the care service called "Home Care". Similarly, treatments under the *MRCA Treatment Principles* of "Community Aged Care Package" and "Extended Aged Care at Home Package need to be consolidated in a new treatment called "home care".

The provisions of the *MRCA Treatment Principles* that needed amending were those that enable the Department of Veterans' Affairs (DVA) to pay the co-payment for a Community Aged Care Package and an Extended Aged Care at Home Package for ex POWs and recipients of the Victoria Cross for Australia and those that exclude eligibility for Coordinated Veterans' Care if a person receives an Extended Aged Care at Home Package from the Department of Health and Ageing.

Safety, Rehabilitation and Compensation Act Consequential Amendments (SRCA measure)

On 1 July 2013 the *Veterans' Affairs Legislation Amendment (Military Compensation Review and Other Measures) Act 2013* (amending Act) amended, among other Acts, the *Safety, Rehabilitation and Compensation Act 1988* (SRCA) to enable certain employees (service personnel) with compensable conditions to obtain treatment for those conditions under the MRCA or the *Veterans' Entitlements Act 1986* (VEA).

As a consequence of this transition a number of fine-tuning amendments needed to be made to the *MRCA Treatment Principles*. Firstly, the reference to "entitled person" needed to encompass this new group (SRCA client). The revised reference will take effect on 10 December 2013 in line with the commencement of the relevant amendment to the SRCA. Provision also needed to be made in the *MCRA Treatment Principles* to prevent the potential for SRCA clients receiving double benefits.

The main concern regarding the potential for double-benefits is that a SRCA client could obtain a rehabilitation appliance under Part III or s. 148 of the SRCA and also under MRCA Treatment Principle 11.1.1.

Although the Commission could probably prevent the double-supply of an appliance by the use of its discretion in this area, nevertheless it was considered preferable to state the situation clearly. Accordingly the Commission decided to close off the possibility of SRCA clients receiving a rehabilitation appliance for the same condition under SRCA and MRCA.

Enabling Authorised Nurse Practitioners to refer clients to a DVA-contracted Community Nursing Provider (Nurse Referral measure)

Before the attached instrument a DVA client could be referred to a DVA-contracted community nursing provider by a Local Medical Officer or other General Practitioner, a treating doctor in a hospital, a hospital discharge planner or a Veterans' Home Care assessment agency. The relatively recent elevation of Nurse Practitioners to semi-medical practitioner status meant it was appropriate for Nurse Practitioners to also be able to refer clients to a DVA-contracted community nursing provider and the *MRCA Treatment Principles* were amended accordingly.

Minor and Technical Measure

An entitled person may only receive Telemonitoring Treatment (a treatment under the *MRCA Treatment Principles*) if the person also receives Coordinated Veterans' Care Treatment (a treatment under the *MRCA Treatment Principles*) . It was more convenient for DVA and providers for the billing periods for the two treatments to be aligned. Accordingly the attached instruments aligned the billing period for Telemonitoring Treatment with the billing period for Coordinated Veterans' Care Treatment.

CONSULTATION

Yes – for the Aged Care measure. DVA consulted the Department of Health and Ageing which introduced amendments to its legislation which necessitated consequential amendments to the *MRCA Treatment Principles*. Consultation was by way of meetings, telephone conversations and e-mail. No particular issue arose in the course of the consultation.

Yes – for the Nurse Referral measure. DVA consulted the Australian Medical Association (AMA). Consultation was by way of e-mail and telephone conversations. There was no point of disagreement between the parties. The AMA supported the proposal.

No – for the SRCA measure in respect of the amendments that related to modifying the eligibility provisions of the *MRCA Treatment Principles* in relation to SRCA clients because the amendments were necessary, technical amendments to implement the transition of SRCA clients from the treatment regime under the SRCA to the one under the MRCA. In any event, affected clients could reasonably be expected to agree to the amendments thereby making consultation unnecessary.

No - for the SRCA measure in respect of the amendments that related to preventing double benefits because the measure is aimed at protecting the public revenue and there is no scope for consultation in such cases as both the Government and Public generally would agree that people should not "double dip".

No – for the minor and technical measure as the changes are of a machinery nature .

RETROSPECTIVITY

No.

DOCUMENTS INCORPORATED-BY-REFERENCE

Yes.

The following non-legislative documents are incorporated into the *MRCA Treatment Principles*. These instruments are incorporated as they exist on 1 November 2013 and not as they may exist from time to time:

1. Notes for Local Medical Officers (paragraph 1.4.1);

2. Department of Veterans' Affairs Fee Schedules for Medical Services (paragraph 3.5.1);

3. Notes for Allied Health Providers (paragraphs 3.5.1 and 7.1A.1);

4. Optometrist Fees for Consultation (paragraph 3.5.1);

5. DVA Schedule of Fees Orthoptists (paragraph 3.5.1);

6. Pricing Schedule for visual aids (paragraph 3.5.1);

7. The fourth edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (commonly known as DSM-IV) (paragraph 2.4.2A);

8. Fee Schedule of Dental Services for Dentists and Dental Specialists (paragraph 3.5.1);

9. Fee Schedule of Dental Services for Dental Prosthetists (paragraph 3.5.1);

10. Chiropractors Schedule of Fees (paragraph 3.5.1);

11. Diabetes Educators Schedule of Fees (paragraph 3.5.1);

12. Dietitians Schedule of Fees (paragraph 3.5.1);

13. Exercise Physiologists Schedule of Fees (paragraph 3.5.1);

14. Occupational Therapists Schedule of Fees (paragraph 3.5.1);

15. Osteopaths Schedule of Fees (paragraph 3.5.1);

16. Physiotherapists Schedule of Fees (paragraph 3.5.1);

17. Psychologists Schedule of Fees (paragraph 3.5.1);

18. Podiatrists Schedule of Fees (paragraph 3.5.1);

19. Social Workers Schedule of Fees (paragraph 3.5.1);

20. Clinical Counsellors Schedule of Fees (paragraph 3.5.1);

21. Speech Pathologists Schedule of Fees (paragraph 3.5.1);

22. Australian Government Department of Veterans' Affairs Classification System and Schedule of Item Numbers and Fees — Community Nursing Services (paragraph 6A.4.2(b));

23. Notes for Coordinated Veterans' Care Program Providers (Part 6A);

24. Rehabilitation Appliances Program (RAP) National Guidelines (paragraph 11.2A.1);

25. RAP National Schedule of Equipment (paragraph 11.2A.1);

26. Veterans and Veterans Families Counselling Services (VVCS) Outreach Program Counsellors (OPC) Provider Notes (paragraph 1.4.1 and 7.1A.1);

27. Veterans and Veterans Families Counselling Service (VVCS) Outreach Program Counsellors (OPC) Schedule of Fees (paragraph 3.5.1);

28. General information about VVCS – Veterans and Veterans Families Counselling Service (paragraph 1.4.1);

29. Better Access to Psychiatrists, Psychologists & General Practitioners through the Medical Benefits Schedule Initiative

http://www.health.gov.au/internet/mentalhealth/publishing.nsf/Content/better-access-through-mbs-1;

At the time the attached instrument was made, all the documents except:

- the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders; and
- the Better Access to Psychiatrists, Psychologists & General Practitioners through the Medical Benefits Schedule Initiative;

were available on the DVA Web Page:

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

At the time the attached instrument was made, all the documents except the "Better Access to Psychiatrists, Psychologists & General Practitioners through the Medical Benefits Schedule Initiative" were available, or could be made available, at:

Department of Veterans' Affairs (ACT Office), Lovett Tower, 13 Keltie St, Woden ACT 2606 / GPO 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.

At the time the attached instrument was made the document "Better Access to Psychiatrists, Psychologists & General Practitioners through the Medical Benefits Schedule Initiative" was available on the Internet:

http://www.health.gov.au/internet/mentalhealth/publishing.nsf/Content/better-access-through-mbs-1

HUMAN RIGHTS STATEMENT

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

The attached legislative instrument does engage an applicable right or freedom. It relates to the Right to Health contained in article 12(1) of the International Covenant on Economic Social and Cultural Rights.

The Right to Health is the right to the enjoyment of the highest attainable standard of physical and mental health. The UN Committee on Economic Social and Cultural Rights has stated that health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity.

The attached legislative instrument engages with, and promotes, the Right to Health by setting out the circumstances in which DVA will provide free treatment for a section of the community.

Generally the attached instrument does not alter existing arrangements (the former instrument has been remade). In relation to new provisions in the instrument, the majority could be categorised as minor or technical with no impact on the provision of health care benefits. The remaining new provision (nurse referral measure) would have a positive impact on the provision of health care benefits because it could enable

DVA clients to receive community nursing services more quickly i.e. an authorised nurse practitioner (in addition to a medical practitioner etc) could refer a client to a DVA-contracted community nursing provider.

The only negative measure is the one aimed at preventing double-dipping by recipients of rehabilitation appliances but this measure does not detract from the human right to health, it merely prevents it from being abused. It is, therefore, a legitimate limitation placed on the human right in issue.

Conclusion

The attached legislative instrument is considered to be compatible with the human right to health because it enables a section of the community to receive free health care.

Michael Ronaldson
Minister for Veterans' Affairs
Rule-Maker

FURTHER EXPLANATION OF NEW PROVISIONS

Attachment A.

Attachment A

Items Explanation

1.4.1 contains new or revised definitions of:

"authorised nurse practitioner"
"entitled member" (to include person with a SRCA disability)
"entitled person" (to include person with a SRCA disability)
"home care"
"residential care subsidy"
"SRCA"
"SRCA disability"
"member" (to include person with a SRCA disability)
"veterans' supplement"
"White Card".

The references to SRCA disability in paragraph 1.4.1 commence on 10 December 2013 when Schedule 11 of the *Veterans' Affairs Legislation Amendment (Military Compensation Review and Other Measures) Act 2013* commences.

The following definitions have been removed from 1.4.1:

"Community Aged Care Package"
"Extended Aged Care at Home Package".

6A.6.1(c)(ii) – has been amended to refer to the new name of the "Extended Aged Care at Home program" i.e. "home care"

Part 10 Heading – has been amended to refer to "home care" instead of "Home Care at Home Packages" because home care is the new name of the service under the *Aged Care Act 1997.*

10.1.3 and Note – have been amended to refer to the new "veterans' supplement" as an example of subsidy the Commonwealth could pay providers of residential care. The veterans' supplement is a payment by the Commonwealth to providers of residential care for veterans (the term "veteran", for the purposes of the veterans' supplement, includes members and former members) with a service-related mental health condition.

10.3.2 Table - definition of 'RCS' – has been amended to refer to the new "veterans' supplement to make it clear that the residential care subsidy for which the Commission will accept financial responsibility includes the new veterans supplement.

10.3.2 Table - definition of 'RCS +RCA' – has been amended to refer to the new "veterans' supplement to make it clear that the residential care subsidy for which the Commission will accept financial responsibility includes the new veterans supplement.

10.3.9 has been amended to refer to the new "veterans' supplement" to make it clear that an amount the Commonwealth or an entitled person may be liable to pay

for residential care (respite) under the *Aged care Act 1997* could include the new veterans supplement.

10.3.9 (the Note) – have been amended to refer to the new "veterans' supplement" to make it clear that subsidies covered by section 96-10 of the *Aged Care Act 1997* includes the new veterans supplement.

Part 10 Part D Heading – has been amended to refer to "home care" instead of "Home Care at Home Packages" because home care is the new name of the service under the *Aged Care Act 1997.*

Part 10 Part D – has been amended to include a new definition of "co-payment" specifically for Part D.

10.5 – has been substituted for the former 10.5 and 10.6 and is substantially the same as the former provisions except that it refers to the new name of the relevant treatment i.e. home care which is an amalgam of the previous treatments called "Community Aged Care Package" and "Extended Aged Care at Home Package".

10.6 – has been amended to refer to the new name of the relevant treatment i.e. home care, instead of the previous treatments called "Community Aged Care Package" and "Extended Aged Care at Home Package".

10.7.1 - has been amended to refer to the new name of the relevant treatment i.e. home care, instead of the previous treatments called "Community Aged Care Package" and "Extended Aged Care at Home Package".

Part 10 Part E - has been amended to include a new definition of "co-payment" specifically for Part E.

10.8.1 has been substituted for the former 10.9.1 and 10.9.2 and is substantially the same as the former provisions except that it has been redrafted so that the style of the provision follows that of the similar provision at 10.8.

11.1.1 has been amended to prevent an entitled person being provided with a surgical appliance or an appliance for self-help and rehabilitation (hereinafter collectively referred to as a rehabilitation appliance) for a particular condition where that rehabilitation appliance could be provided to the person for the same condition under SRCA.

11.3.6 (a)(iv) Note(1) has been amended to refer to self care units as a cluster of self-care units in order to more accurately reflect the definition of "institution" which refers to a cluster of self-care units.

11.3.6 (b) Note (1) has been amended to refer to self care units as a cluster of self-care units in order to more accurately reflect the definition of "institution" which refers to a cluster of self-care units.

11.3.6A(c) Note (1) has been amended to refer to self care units as a cluster of self-care units in order to more accurately reflect the definition of "institution" which refers to a cluster of self-care units.

11.9.5 Note (1) has been amended to refer to self care units as a cluster of self-care units in order to more accurately reflect the definition of "institution" which refers to a cluster of self-care units.

Transitional Provisions has been amended to ensure the provisions apply to the transition of certain matters under the previous *MRCA Treatment Principles* to the current *MRCA Treatment Principles*. Essentially the only change is updating the reference to the *MRCA Treatment Principles* (2013 No. MRCC 53).

Schedule 1 has been amended by referring to a new date for documents incorporated by reference into the *MRCA Treatment Principles*. The documents listed in Schedule 1 are incorporated into the *MRCA Treatment Principles* as they exist on 1 November 2013 and not as they may change from time to time.