

# EXPLANATORY STATEMENT

## **Treatment Principles (Australian Participants in British Nuclear Tests) 2006 (Rehabilitation Appliance Program) Amendment Instrument 2014**

### **EMPOWERING PROVISION**

Section 16(7) of the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* (the Act).

### **PURPOSE**

The attached instrument (2014 No. R3) varies the *Treatment Principles (Australian Participants in British Nuclear Tests) 2006* (modified Treatment Principles) which, in turn, modified the *Treatment Principles* under the *Veterans' Entitlements Act 1986* (VEA Treatment Principles) in their application to eligible persons (entitled persons) under the *Australian Participants in British Nuclear Tests (Treatment) Act 2006*.

The modified Treatment Principles is a legislative instrument made under section 16 of the Act. An entitled person is an Australian participant in British nuclear tests who is eligible for treatment of malignant neoplasia under the Act.

The modified Treatment Principles have been varied and the variations are explained in Attachment A.

A number of new measures have been included in the VEA Treatment Principles and the application of some of these measures to entitled persons has been modified by varying the modified Treatment Principles. The variations are superficial (e.g. replacing “veteran” with “entitled person”).

Not all of the new measures introduced in the VEA Treatment Principles have been modified as they could apply directly to entitled persons.

The following is a list of the new measures in the VEA Treatment Principles that apply to entitled persons under the Act together with an indication of whether they have been modified, and if so, the nature of the modification or whether, as a result of the new measures, the Modified Treatment Principles needed to be varied, and if so, the nature of the variation.

### **Revising the Rehabilitation Appliances Program (RAP) National Guidelines and the RAP National Schedule of Equipment**

The Rehabilitation Appliances Program (RAP) National Guidelines and the RAP National Schedule of Equipment are non-legislative documents incorporated-by-reference into the VEA Treatment Principles on the date for those documents in Schedule 1 of the VEA Treatment Principles (1 April 2014).

The Rehabilitation Appliances Program (RAP) National Guidelines (Guidelines) sets out guidelines for the Commission in relation to accepting financial responsibility for the provision of certain rehabilitation aids or appliances to entitled persons and the

RAP National Schedule of Equipment (the Schedule) lists all the rehabilitation aids or appliances that may be provided.

Generally speaking the Guidelines have been updated to remove outdated policy assumptions, to create policy in relation to the provision of tablet computers and smart `phones for speech pathology applications, to reflect current clinical issues relating to the supply of recliner chairs, and to remove those guidelines that were superfluous.

A major change to the Schedule was the creation of a section that covered the provision of a rehabilitation aid or appliance for dementia sufferers. The new section denotes assessing health providers, prescribes assessment tools and imposes limits in respect to the quantity and duration of supply for individual dementia items. The section also ensures that provision of dementia-specific aids and appliances is done within whole-of-government policy parameters.

The Schedule has been updated to reflect “community norms” and to more flexible.

Major changes to the Schedule are the inclusion of tablet computers and smart `phones for speech pathology applications and cognitive, dementia and memory assistive technology items such as pillbox alarms and specially designed clocks.

Variation – varying the modified Treatment Principles so as to refer to the Guidelines and Schedule as they exist on 1 April 2014.

### **Updating the Statement of Purpose of a RAP Appliance**

Previously the VEA Treatment Principles stated that in order for a RAP Appliance (a rehabilitation appliance) to be provided to an entitled person it needed to be an item other than: “...an item that is customarily used for domestic purposes and would be used merely for such a purpose by the entitled person”.

The statement effectively assumes that any item not specifically designed for a person with a disability cannot be of benefit to such a person as a rehabilitation aid or appliance. It also fails to reflect the reality of recent technological advancements, particularly tablet computers and smart phones, that perform a multiplicity of functions, including a clinically-related function, notwithstanding they are not designed specifically for persons with a disability. In short the requirement that a RAP Appliance cannot be a “commonly used appliance” could deprive relevant entitled persons of an aid or appliance that could assist with their rehabilitation and effective functioning. The replacement “statement of purpose” is:

“[the appliance should be] ... likely to facilitate the independence and/or self-reliance of the entitled person based on an assessment of clinical need by an appropriately qualified health professional.”.

No modification/no variation – the variation to the VEA Treatment Principles is able to apply to entitled persons without modification.

### **Providing Vertical Platform Lifts only to veterans with service-related or determined conditions**

Previously under the VEA Treatment Principles Vertical Platform Lifts (VPLs) could be provided by the Department of Veterans’ Affairs (DVA) to any client who was

eligible for treatment and who had a clinical need for the lift. VPLs are expensive to install (around \$100,000), maintain and remove. The VEA Treatment Principles have been varied so that VPLs may only be made available to veterans with a clinical need for the lifts that has been caused by a war-caused condition or determined condition

A “determined condition” is a condition, other than a “determined residential care condition”, for which a veteran is eligible for treatment by virtue of a determination under s.88A of the *Veterans’ Entitlements Act 1986*.

A determined residential care condition is a condition that may be treated with residential care at DVA expense only because of the *Veterans’ Entitlements Treatment (Residential Care) Determination*.

No modification/no variation – despite the veteran-specific provisions the variation to the VEA Treatment Principles is able to apply to entitled persons without modification.

### **Providing Assistive Communication Devices**

Assistive communication devices (ACDs) are provided to clients with complex communication difficulties.

Previously the circumstances in which DVA could provide ACDs to entitled persons were limited - the client needed an ACD due to being legally blind or having a severe handicap.

However many state-of-the-art communication applications are designed for use on ACDs that are tablet computers and smart `phones. Tablet computers and smart `phones are affordable, convenient and portable and there is an emerging demand for such devices within the veteran and defence community.

The previous DVA policy settings for ACDs were outdated and did not reflect recent technological advances or prevailing community norms. Accordingly the attached instrument broadens the class of entitled persons who may receive a tablet computer or smart `phone. Such devices will now also be available to any entitled person who has a clinical need for the devices.

Variation – varying the modified Treatment Principles so as to remove the references to the cards (an entitled person can only be eligible for treatment of malignant neoplasia so references to any card is unnecessary) and so as to apply the measure with references to “entitled person” instead of “veteran”.

### **Paying Guide Dog Upkeep**

Under the VEA Treatment Principles DVA pays for guide dogs for veterans whose war-caused condition (or determined condition (explained below) other than a determined residential care condition (explained below)) causes the need for such an aid (eligible veteran).

Previously there was a prohibition in the VEA Treatment Principles on DVA paying for the upkeep of a guide dog that had been provided to an eligible veteran at DVA expense . That prohibition has been removed and DVA may now pay the reasonable costs of keeping such a dog.

No modification/no variation – the variation to the VEA Treatment Principles is able to apply to entitled persons without modification.

### **Removing prior approval requirement for certain medical grade footwear (MGF) items**

This measure removes the requirement for DVA prior approval for the supply to entitled persons of most items of medical grade footwear and certain podiatry reports.

No modification/no variation - the variation to the VEA Treatment Principles is able to apply to entitled persons without modification.

### **Making Minor and Technical Variations**

The manner in which the VEA Treatment Principles refers to non-legislative documents incorporated-by-reference into the VEA Treatment Principles (incorporated documents) has been simplified. In short, a reference in the VEA Treatment Principles to an incorporated document is taken to be a reference to the version of the document that existed on the date for the document in Schedule 1 to the VEA Treatment Principles.

Variation - varying the modified Treatment Principles so that the definition of “in force on the date in Schedule 1” follows the definition in the VEA Treatment Principles (see explanation of item 2 below).

The definitions of “Gold Card” and “White Card” in the VEA Treatment Principles (the identification cards provided by DVA to entitled persons that denote their eligibility for treatment) have been made more flexible by defining the cards by reference to their purpose (i.e. identification of treatment eligibility) rather than to their title. This ensures that if the title of the cards change, the VEA Treatment Principles do not need to be amended. The “White Card” is the only card relevant to entitled persons under the Act because such people are only entitled to treatment for one condition – malignant neoplasia.

Variation - varying the modified Treatment Principles so that the definition of “White Card” follows the definition of “White Card” in the VEA Treatment Principles (see explanation of item 2 below).

## **CONSULTATION**

### **For RAP Measures (other than guide dog upkeep)**

Yes – a Committee known as the “RAP Reference Committee”, which operates under the auspices of DVA, provided general oversight of the relevant measures. The Committee is comprised of independent health professionals from the fields of Specialist Rehabilitation Medicine, General Practice, Occupational Therapy, Physiotherapy, and Nursing. Each member is nominated and endorsed by their professional association.

### **For Guide Dog Upkeep Measure**

Yes - Various Dog Associations, Younger Diggers Australia.

### **For Medical Grade Footwear Measure**

Yes – in addition to the RAP Reference Committee (see above) — representatives of the podiatry profession.

### **For Minor and Technical Measures**

No – the measures have no impact on clients or providers. They are technical, legal variations.

### **Nature of Consultation**

Noting that paragraph 26(1A)(d) of the *Legislative Instruments Act 2003* requires an Explanatory Statement for a legislative instrument to contain a description of the nature of any consultation, the nature of the consultation for the attached legislative instrument was:

For RAP measures (other than guide dog upkeep) — meetings of the RAP Reference Committee; e-mail correspondence; and telephone conversations between Committee members and DVA. No aspect of the proposals proved contentious.

For Guide Dog Upkeep Measure — meetings and telephone conversations between DVA officials and representatives of various dog Associations and representatives of Younger Diggers Australia. No aspect of the measure proved contentious.

For Medical Grade Footwear Measure — meetings of the RAP Reference Committee; e-mail correspondence; and telephone conversations between Committee members and DVA officials. Meetings, e-mail correspondence; and telephone conversations between DVA officials and representatives of the podiatry profession. No aspect of the measures proved contentious.

## **RETROSPECTIVITY**

No.

## **DOCUMENTS INCORPORATED-BY-REFERENCE**

Yes.

The following non-legislative documents are incorporated into the modified Treatment Principles. These instruments are incorporated as they exist on 1 April 2014 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. ...
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. ...
24. Rehabilitation Appliances Program (RAP) National Guidelines (paragraph 11.2A.1);
25. RAP National Schedule of Equipment (paragraph 11.2A.1);

At the time the attached instrument was made, all the documents were available on the DVA Web Page:

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

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 / 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.

## **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. The treatment in question relates to the provision of certain rehabilitation appliances to Australian Participants in British Nuclear Tests eligible for treatment of malignant neoplasia under the *Australian Participants in British Nuclear Tests (Treatment) Act 2006*.

Although the attached instrument engages the right to health it does not do so in a way that would affect the provision of essential health services. The measures affected by the instrument would mostly relate to the quality of life of the relevant DVA clients rather than actual physical or mental wellbeing.

All the measures are positive in their interaction with the human right to health. For example, entitled persons with complex communication needs will now have the opportunity to be supplied with a computer tablet or smart `phone if clinically necessary. Entitled persons with guide dogs provided under the Act may now have DVA pay for the upkeep of the dogs. Podiatrists no longer need to obtain DVA's approval before supplying most items of medical grade footwear to DVA clients which could enable the clients to receive the footwear more quickly.

### **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 additional free health care (e.g. computer tablets, `smart phones for clients with complex communication needs).

Michael Ronaldson  
Minister for Veterans' Affairs  
Rule-Maker

## **FURTHER EXPLANATION OF NEW PROVISIONS**

Attachment A.



## Attachment A

### **Section [1]**

This section sets out the name of the instrument - *Treatment Principles (Australian Participants in British Nuclear Tests) 2006 (Rehabilitation Appliance Program) Amendment Instrument 2014*.

### **Section [2]**

This section provides that the instrument commences immediately after the commencement of the *Veterans' Entitlements (Treatment Principles – Rehabilitation Appliance Program) Amendment Instrument 2014*.

The note to section [2] advises that the *Veterans' Entitlements (Treatment Principles – Rehabilitation Appliance Program) Amendment Instrument 2014* commences on the day after it is registered on the Federal Register of Legislative Instruments.

### **Section [3]**

This section has the effect of applying the VEA Treatment Principles, or the modified Treatment Principles, as the cases requires, before they were amended by, respectively, the *Veterans' Entitlements (Treatment Principles – Rehabilitation Appliance Program) Amendment Instrument 2014* and the attached instrument, to processes under the VEA Treatment Principles or modified Treatment Principles that had not been completed before the VEA Treatment Principles was amended by the *Veterans' Entitlements (Treatment Principles – Rehabilitation Appliance Program) Amendment Instrument 2014* or before the modified Treatment Principles had been varied by attached instrument. The processes in question include requests for treatment.

### **Schedule**

The references to “substituted paragraph” etc is a reference to a provision in the modified Treatment Principles that is in substitution for a provision in the VEA Treatment Principles.

### **Item 1**

This item inserts in substituted paragraph 1.4.1 new definitions of:

- “assistive communication device”
- “speech pathologist”
- “VEA TPs”
- “Vertical Platform Lift”

### **Item 2**

This item substitutes the definition in substituted paragraph 1.4.1 of “in force on the date in Schedule 1” with a more simple definition.

### **Item 3**

This item substitutes the definition in paragraph 1.4.1 of “White Card” with a more flexible definition.

### **Item 4**

This item adds a new item to the modified Treatment Principles, item 47A. The effect is to replace “veteran” with “entitled person” so that paragraph 11.3.1(c) of the VEA

Treatment Principles may apply to an entitled person under the Act. Paragraph 11.3.1(c) enables the Repatriation Commission (Commission) to provide, or accept financial responsibility for, special vehicle driving controls and devices for an entitled person if the entitled person has a medically assessed need for the appliances and if the entitled person owns the vehicle and is licensed under relevant State or Territory law to drive a modified vehicle.

### **Item 5**

This item substitutes item 48 of the modified Treatment Principles. The substituted item 48 has the effect of modifying paragraph 11.3.2 of the VEA Treatment Principles by replacing the reference to “veteran” with “entitled person” and by omitting references to cards.

Substituted paragraph 11.3.2 provides that, subject to paragraph 11.1.3 of the VEA Treatment Principles (general conditions for the supply of a rehabilitation aid) the Commission may accept financial responsibility for the provision to an entitled person of an assistive communication device. An “assistive communication device” is defined in paragraph 1.4.1 of the modified Treatment Principles.

Substituted paragraph 11.3.3 provides that where the assistive communication device is a computer tablet or smart `phone, the Commission may only accept financial responsibility for the device if:

- the entitled person has been clinically assessed by a speech pathologist as having complex communication needs that would be significantly met by a computer tablet or smart `phone; and
- in the case of a smart `phone — the entitled person’s communication needs:
  - (i) could not be reasonably satisfied by the provision of a computer tablet; or
  - (ii) are not being reasonably satisfied by the use of a computer tablet; and
- the computer tablet or smart `phone has been preloaded with a speech pathology application; and
- the Commission considers all relevant guidelines in relation to the provision of an assistive communication device that is a computer tablet or a `smart phone as set out in the RAP National Schedule of Equipment and the Rehabilitation Appliances Program (RAP) National Guidelines.

The RAP National Schedule of Equipment and the Rehabilitation Appliances Program (RAP) National Guidelines are incorporated-by-reference into the modified Treatment Principles as those documents existed on the date in Schedule 1 of the modified Treatment Principles for those documents (1 April 2014) and not as they may exist from time to time.

The notes to substituted paragraph 11.3.3 advise that the repair and replacement of rehabilitation appliances is covered by VEA Treatment Principle 11.7.

### **Item 6**

This item omitted items 49-52 inclusive of the modified Treatment Principles. The relevant items were omitted because they related to assistive communication devices only for legally blind/severely handicapped entitled persons. Assistive

communication devices will now be available for a broader class of entitled person which would include legally blind/severely handicapped entitled persons where the condition was caused by malignant neoplasia.

**Item 7**

This item substitutes item 59 of the modified Treatment Principles. The effect of this is to substitute Schedule 1 of the modified Treatment Principles with a new Schedule 1. Substituted Schedule 1 is to be read in conjunction with the definition of “in force on the date in Schedule 1” in paragraph 1.4.1 of the modified Treatment Principles.

Substituted Schedule 1 sets out the non-legislative documents that are incorporated-by-reference into the modified Treatment Principles and states a date for those documents (1 April 2014). The effect of this is that the documents are incorporated into the modified Treatment Principles i.e. become part of the modified Treatment Principles, in the form they were in on 1 April 2014 and not in any changed form after 1 April 2014.