

EXPLANATORY STATEMENT

Veterans' Affairs (Treatment Principles – TRCP Treatment and Updating of RAP Schedules) Amendment Instrument 2015

EMPOWERING PROVISIONS

For Schedule 1 of the attached instrument — subsection 90(5) of the *Veterans' Entitlements Act 1986* (the VEA).

For Schedule 2 of the attached instrument — subsection 286(3) of the *Military Rehabilitation and Compensation Act 2004* (the MRCA).

For Schedule 3 of the attached instrument — subsection 16(7) of the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* (the APBNT(T)A).

PURPOSE

The attached instrument (2015 No. R29/MRCC29) varies the legislative instruments known as the *Treatment Principles*, the *MRCA Treatment Principles* and the *Treatment Principles (Australian Participants in British Nuclear Tests) 2006* (hereinafter these 3 legislative instruments are referred to collectively as the Treatment Principles).

The attached instrument has been approved by the Minister for Veterans' Affairs as required by the empowering provisions mentioned above.

The Treatment Principles set out the circumstances in which treatment may be provided to clients of the Department of Veterans' Affairs (DVA). The variations to the Treatment Principles made by the attached instrument relate to:

- changing the name of the treatment known as “CMVH treatment” to TRCP treatment”; and
- updating references to incorporated documents that have changed, in particular the documents known as the “RAP National Schedule of Equipment” and the “Rehabilitation Appliances Program (RAP) National Guidelines (hereinafter referred to collectively as the RAP Schedules) and the Notes for Outreach Program Counsellors (OPC Notes).

CMVH treatment to TRCP treatment

The attached instrument substitutes the treatment known as “CMVH treatment” with a more generic treatment (TRCP treatment).

The two treatments in question are essentially the same, namely research-type treatment aimed at improving the health care of members of the Australian Defence Force (ADF) which in turn could benefit the health care of veterans, veterans'

dependants, ADF members (including former members) and ADF members' dependants.

TRCP is an acronym for Training, Researching, Communication-improvement and Policy-development in relation to health care for members of the ADF.

It should be noted that under subsection 80(1) of the VEA, section 13 of the MRCA and section 4 of the APBNT(T)A the definition of treatment is very broad and is not confined to treatment in its normal sense. Among other things treatment can be “action taken with a view to maintaining a person in physical or mental health”. TRCP treatment is an example of such treatment.

The issue with the former treatment (CMVH treatment) was that it was tied to a particular provider — the Centre for Military and Veterans' Health (CMVH) at The University of Queensland. This meant that if the partnership between the Department of Veterans' Affairs and the provider ended, the Treatment Principles would need to be amended (which can take some considerable time) in order to enable the treatment to continue under a different provider.

The Repatriation Commission and the Military Rehabilitation and Compensation Commission (the Commissions) decided that in the interests of minimising disruption to the provision of the treatment it would be preferable if the treatment was not tied to any particular provider and instead was couched in more general terms and able to be delivered by any Commission-approved provider.

Accordingly the treatment in question may now be provided by a provider that has an arrangement with a Commission to provide the treatment.

RAP Schedules Update

The RAP Schedules are incorporated-by-reference into the Treatment Principles in the form they exist on the date given in the Treatment principles.

The RAP Schedules set out guidelines for the Commissions in the exercise of their discretion to provide rehabilitation appliances to DVA clients.

The eligibility requirements in the RAP Schedules in relation to smoke alarms, and assistive listening devices, for hearing-impaired people, have been changed. For these changes to be operative the Treatment Principles need to be varied to refer to the RAP Schedules in their changed state.

OPC Notes Update

The OPC Notes set out the terms on which DVA will pay for outreach program counselling services provided to DVA clients. Outreach Program Counselling (Outreach Counselling) is counselling provided under the Veterans and Veterans Family Counselling Services (VVCS) to clients who are unable for some reason (usually remoteness) to attend at an established VVCS clinic. A number of miscellaneous amendments have been made to the Notes to improve their effectiveness. As with the RAP Schedules, in order for the updates to the OPC Notes to be effective, the reference in the Treatment Principles to the OPC Notes must be updated.

Further details of the attached instrument are set out in Attachment A.

CONSULTATION

No — for the “TRCP treatment variations”. The reason for not consulting was that the amendments are technical drafting-type amendments that have no impact on DVA clients. Although TRCP treatment is a new treatment it is new in name only and essentially the same as a former treatment.

Yes — for the “RAP Schedule update variations”. The Office of Hearing Services, the Department of Health and the Department of Human Services were consulted.

Yes — for the OPC Notes update variations. DVA consulted the relevant professional bodies in relation to the changes to the Notes

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 in the present case was:

- for the TRCP treatment variations and the RAP Schedule update variations — communication at meetings and by telephone and electronic mail;
- for the OPC Notes update variations — communication by electronic mail.

RETROSPECTIVITY

None.

DOCUMENTS INCORPORATED-BY-REFERENCE

Yes. The documents listed in the schedules to the attached instrument are incorporated into the Treatment Principles in the form in which those documents were on 1 May 2015 and not in the form they may be in from time to time.

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 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 and to the rights of people with a disability contained in the Convention on the Rights of Persons with Disabilities.

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 Convention on the Rights of Persons with Disabilities recognises the barriers that people with a disability may face in realising their rights. The rights under all human rights treaties apply to everyone, including people with disability.

The attached legislative instrument engages with the Right to Health and the rights of people with a disability by, respectively:

- enabling the more flexible provision of a type of treatment (TRCP treatment).

The main advantage of the new treatment is that it can be provided with less disruption if a provider of the treatment changes thereby ensuring research into the health needs of military personnel (with a potential benefit for other DVA clients) is maintained relatively constantly. This is achieved by not tying the treatment to a particular provider.

Accordingly, if the provider changes then the Treatment Principles no longer require amending (which can take some considerable time). The Repatriation Commission would simply enter into an arrangement with a new provider which could mean a quicker return to the provision of the relevant research. Apart from eligibility requirements there are no limitations imposed on the provision of the treatment.

- ensuring that certain services for the hearing impaired (provision of smoke alarms and listening devices) are better focussed. The changed eligibility criteria for these rehabilitation appliances have a greater emphasis on the existence of a clinical need for the appliance including the extent of its role in the overall management of a person’s rehabilitation and health care.
- increasing the effectiveness of the business relationship between DVA and Outreach Program Counsellors thereby ensuring treatment (outreach program counselling) is properly focussed.

Conclusion

The attached legislative instrument is considered to be compatible with the human right to health and the rights of people with a disability because it, respectively, minimises the disruption to the provision of research into military health care issues when a provider of that research changes and ensures certain services for the hearing impaired, and clients needing outreach counselling, are better focussed and therefore more efficient.

Michael Ronaldson
Minister for Veterans' Affairs
Rule-Maker

Attachment A

FURTHER EXPLANATION OF INSTRUMENT

Section 1

This section sets out the name of the instrument – the *Veterans' Affairs (Treatment Principles – TRCP Treatment and Updating of RAP Schedules) Amendment Instrument 2015*.

Section 2

This section provides that the instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3

This section advises that the legislative authority for the instrument is the *Veterans' Entitlements Act 1986*, the *Military Rehabilitation and Compensation Act 2004* and the *Australian Participants in British Nuclear Tests (Treatment) Act 2006*.

Section 4

This section provides that the variations to the Treatment Principles in a schedule to the instrument take effect according to the terms of the schedule.

Schedule 1 – Part A (Variations to the Treatment Principles under the Veterans' Entitlements Act 1986)

Section 1

This section omits redundant references to CMVH treatment.

Section 2

This section defines TRCP treatment and includes a definition of a TRCP provider.

Section 3

This section advises that certain terms in the *Treatment Principles* are defined in the *Veterans' Entitlements Act 1986*.

Section 4

This section introduces TRCP treatment and provides that the Repatriation Commission may accept financial responsibility for it where it is provided by a TRCP provider.

Section 5

This section replaces schedule 1 of the *Treatment Principles* and provides that the documents listed in the schedule are incorporated into the *Treatment Principles* as those documents existed on 1 May 2015.

Schedule 2 – Part A (Variations to the MRCA Treatment Principles under the Military Rehabilitation and Compensation Act 2004)

Section 1

This section omits redundant references to CMVH treatment.

Section 2

This section defines TRCP treatment as having the meaning it has under the *Treatment Principles* under the *Veterans' Entitlements Act 1986*.

Section 3

This section corrects a typographical error.

Section 4

This section advises that certain terms in the *MRCA Treatment Principles* are defined in the *Military Rehabilitation and Compensation Act 2004*.

Section 5

This section omits references to CMVH treatment and advises that TRCP treatment is provided to members, former members and certain dependants under the *Treatment Principles* under the *Veterans' Entitlements Act 1986*.

Section 6

This section replaces schedule 1 of the *MRCA Treatment Principles* and provides that the documents listed in the schedule are incorporated into the *MRCA Treatment Principles* as those documents existed on 1 May 2015.

Schedule 3 – Part A (Variations to the *Treatment Principles (Australian Participants in British Nuclear Tests) 2006*)

Section 1

This section substitutes the section that substitutes schedule 1 of the *Treatment Principles* under the *Veterans' Entitlements Act 1986* (VEA Treatment Principles).

Under section 16 of the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* (APBNT(T)A) the VEA Treatment Principles apply under the APBNT(T)A unless modified. The VEA Treatment Principles have been modified in their application under the APBNT(T)A by the substitution of Schedule 1 of the VEA Treatment Principles with a modified schedule. Section 1 of the attached instrument changes that modified schedule by substituting a new modified schedule.

The documents listed in the modified schedule are incorporated into the *Treatment Principles (Australian Participants in British Nuclear Tests) 2006* as those documents existed on 1 May 2015.