

EXPLANATORY STATEMENT

MRCA Private Patient Principles 2004

EMPOWERING PROVISION

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

PURPOSE

The attached instrument (2015 No. MRCC 33) is essentially a re-made version of the former MRCA Private Patient Principles 2004 with only one significant change.

The *MRCA Private Patient Principles 2004* set out the circumstances in which the Military Rehabilitation and Compensation Commission will accept financial responsibility for treatment provided to members (including former members) of the Defence Force and their dependants as private patients (entitled persons). Under the Act a person is a private patient if they are provided with treatment as a private patient at a hospital or provided with treatment by a medical specialist other than at a hospital.

The former *MRCA Private Patient Principles 2004* were contained in an omnibus legislative instrument called the *Veterans' Affairs (Private Patient Principles Re-Making) Instrument 2014* (2014 No.R79/MRCC79) (Omnibus Instrument).

This latter instrument re-made, for sunseting purposes, all three sets of "Private Patient Principles" under, respectively, the *Veterans' Entitlements Act 1986*, the *Military Rehabilitation and Compensation Act 2004* and the *Australian Participants in British Nuclear Tests (Treatment) Act 2006*.

The intention was that the three sets of Private Patients Principles in the Omnibus Instrument would, on the Omnibus Instrument being made, separate from it and stand alone. Unfortunately advice from the Office of Parliamentary Counsel said otherwise.

The current exercise, therefore, is merely about fixing a drafting format and involves revoking the Omnibus Instrument (carried out by a separate repeal instrument) and re-making the three sets of Private Patient Principles as separate instruments.

In the process the opportunity has been taken to make a policy change. The change is that on and after 1 July 2016 entitled persons will be entitled to private accommodation (if available) in a "contracted private hospital" i.e. a hospital that has entered into a contract with the Military Rehabilitation and Compensation Commission. Private accommodation for entitled persons in hospitals generally, is not an automatic entitlement and various conditions apply.

It should be noted that subsection 26(1B) of the *Legislative Instruments Act 2003* (as it was known on 1 May 2015) provides that the requirement for an explanatory statement to explain the purpose and operation of an instrument may be met by an explanation that the instrument replaces a specified earlier legislative instrument or a specified provision of an earlier legislative instrument and is the same in substance as the specified instrument or provision.

The main purpose, therefore, of the attached instrument is to re-make the *MRCA Private Patient Principles 2004* in a more appropriate format and in that regard it is, subject to the change mentioned above, essentially the same in substance as the *MRCA Private Patient Principles 2004* contained in the *Veterans' Affairs (Private Patient Principles Re-Making) Instrument 2014*.

CONSULTATION

No – the reasons being that there was recent consultation (12 August 2014) in relation to the former version of the attached instrument and apart from one change the attached instrument is the same as the former version, and in relation to the change, because it is beneficial in nature (makes private accommodation in hospital more readily available) it was considered that interested parties could be expected to agree to it thereby making consultation unnecessary.

The former consultation occurred via the forum known as ESORT (Ex Service Organisations Round Table). ESORT endorsed the former *MRCA Private Patient Principles 2004* at its meeting on 12 August 2014.

Nature of (former) 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 was listing the matter as an agenda item for the ESORT meeting.

RETROSPECTIVITY

None.

DOCUMENTS INCORPORATED-BY-REFERENCE

No.

HUMAN RIGHTS STATEMENT

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

The attached legislative instrument engages and promotes the Right to Health contained in article 12(1) of the International Covenant on Economic Social and Cultural Rights.

The instrument re-makes a legislative instrument that sets out the circumstances in which the Military Rehabilitation and Compensation Commission may accept financial responsibility for a section of the community (members (including former members) of the Defence Force and their dependants) to be treated in hospital/or by a medical specialist outside of a hospital, as private patients (choice of medical practitioner). Accordingly the instrument enables free and enhanced (choice of medical practitioner) treatment to be provided to the people in question and therefore promotes their right to health.

Further, the attached instrument makes private accommodation in hospital more readily available to members (including former members) of the Defence Force and their dependants which could also enhance their wellbeing.

Conclusion

The attached legislative instrument is considered to be compatible with human rights, in particular the right to health.

Michael Ronaldson
Minister for Veterans' Affairs
Rule-Maker

FURTHER EXPLANATION OF NEW PROVISIONS

See: Attachment A

Attachment A

Section 1.1

This section sets out the name of the instrument – the *MRCA Private Patient Principles 2004*.

Section 1.1.2

This section provides that the *MRCA Private Patient Principles* commence when the *Repatriation Private Patient Principles* (Instrument 2015 No. R33) commence.

Section 1.3

This section describes the entitlements associated with receiving hospital care as a private patient. The section has been changed from the previous version by the addition of paragraph (e).