

EXPLANATORY STATEMENT

Veterans' Affairs Treatment Principles (Short-term Restorative Care) Amendment Instrument 2016 (Instrument 2016 No.R46/MRCC46)

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 (2016 No. R46/MRCC46) 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 collectively referred to as the Treatment Principles).

The Treatment Principles set out the circumstances in which treatment may be provided to clients of the Department of Veterans' Affairs (DVA).

The attached instrument amends the Treatment Principles to enable the Commission (Repatriation Commission and Military Rehabilitation and Compensation Commission, as appropriate) to fund the co-payment (client contribution component) of the costs of short-term restorative care when provided to certain DVA clients.

The clients in question are former Prisoners of War (POW) and recipients of the Victoria Cross (including the Victoria Cross for Australia)(VC recipient).

Short-term restorative care (STRC) is a new form of “flexible care” designed to assist older Australians to remain living in their homes thus avoiding preventable hospitalisations and premature entry into residential aged care.

The STRC program commences on 1 January 2017 as part of the Commonwealth's aged care reforms introduced by changes to the *Aged Care Act 1997*, the *Subsidy Principles 2014* and other legislation administered by the Department of Health.

The Commonwealth (Department of Health) funds the cost of STRC at a flat rate of \$197.21 per client per day. Providers are at liberty to charge clients an additional amount, known as a co-payment. The co-payment is set at a statutory maximum of 17.5% of the single basic age pension (approximately \$10 per day) for STRC services provided in a home setting, and 85% of the single basic aged pension for STRC provided in a residential care setting (approximately \$47 per day).

The amendments to the Treatment Principles made by this instrument enable the Commissions to fund the “co-payment” for STRC services provided to former Prisoners of War and recipients of the Victoria Cross.

In addition, the instrument includes minor amendments to correct an editorial error in section 10.7 of the VEA Treatment Principles and, its equivalent, section 10.4 of the MRCA Treatment Principles. The amendments remove the reference to “a person’s carer” inserted in those provisions in error when the Treatment Principles were amended in August 2015 to introduce convalescent and respite care changes.

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

CONSULTATION

Section 17 of the *Legislation Act 2003* requires the rule-maker to be satisfied that any consultation that is considered appropriate and reasonably practicable to undertake, has been undertaken.

The Department of Health was consulted during the course of developing the policy and drafting this instrument. The nature of consultation included face to face meetings and correspondence. The changes are wholly beneficial in nature and mirror existing arrangements in place for the funding of Transition Care co-payments and Home Care co-payments for this client group.

The changes will impact a small number of DVA clients - about 200 POWs and VC recipients. These clients will be advised via Ex-Service Organisations of the availability of the STRC program and funding of the co-payment for those accessing the services.

In these circumstances it is considered that the requirements of section 17 of the *Legislation Act 2003* have been met.

RETROSPECTIVITY

None.

DOCUMENTS INCORPORATED BY REFERENCE

None.

REGULATORY IMPACT

None.

HUMAN RIGHTS STATEMENT

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

The attached legislative instrument engages 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.

Overview

The STRC program will support the health needs of older Australians by enabling them to remain living in their homes longer and preventing hospitalisation and premature entry into residential aged care.

Conclusion

The attached legislative instrument is considered to be “human rights compatible” as it promotes the Right to Health by supporting the provision of flexible new aged care services for POWs and VC recipients.

Dan Tehan
Minister for Veterans’ Affairs
Rule-Maker

FURTHER EXPLANATION OF PROVISIONS

See [Attachment A](#).

Attachment A**FURTHER EXPLANATION OF PROVISIONS**Section 1

This section sets out the name of the instrument – the *Veterans’ Affairs Treatment Principles (Short-term Restorative Care) Amendment Instrument 2016*.

Section 2

This section provides that the instrument commences on 1 January 2017.

Section 3

This section sets out the empowering provisions in the primary legislation that authorise the making of this instrument.

Section 4

This is the operative section of the instrument. It provides for the variations to Treatment Principles set out in the Schedules to have effect.

Schedule 1 - Variations to the Treatment Principles under the *Veterans’ Entitlements Act 1986* (Instrument 2013 No. R52)

The items in this Schedule amend the Treatment Principles in place under the *Veterans’ Entitlements Act 1986* (VEA Treatment Principles).

Item 1 inserts definitions of “approved provider” and “short-term restorative care” into the interpretation provision of the Treatment Principles.

Item 2 is a corrective measure. The current wording of section 10.7 suggests that DVA will fund residential respite for a person’s carer where that carer is not an entitled person in their own right.

It has never been the intent for DVA to be financially responsible for a non-entitled person’s residential respite care. This amendment clarifies that position and corrects the earlier error by omitting the words “or that person’s carer” from section 10.7 of the Treatment Principles.

Item 3 inserts new Part F – Short-term Restorative Care Co-payment, into Part 10 of the Treatment Principles.

Section 10.13.1 of Part F establishes the Commission’s ability to fund the “co-payment” for short-term restorative care (STRC) provided to former prisoners of war (POWs) and entitled veterans awarded the Victoria Cross (VC recipients).

The “co-payment” is defined as the amount an approved provider of STRC is entitled to charge a client for the service - above and beyond the subsidy payable to the provider by the Commonwealth government.

Section 10.13.1 makes the Commission's ability to fund the co-payment conditional on (a), the provision of the flexible care subsidy for the STRC under relevant Health legislation, and (b) the co-payment not exceeding the statutory maximum amount.

The note to the provision points users to the Department of Health's legislation where the statutory maximum amounts are set out – namely, section 23AB of the *User Rights Principles 2014* made under paragraph 56-3(a) of the *Aged Care Act 1997*.

Section 10.13.2 sets out the matters the Commission should consider in deciding whether to fund the co-payment in a particular instance. The matters are: (a) whether the STRC was provided in accordance with the “agreed care plan” in place between the approved provider and the POW or VC recipient; (b) whether the care was provided in accordance with other relevant provisions of the *Aged Care Act 1997* and relevant instruments under that Act; and (c) whether the care duplicates treatment the POW or VC recipient is receiving under other provisions of the Treatment Principles.

Section 10.14 outlines the billing mechanism for the STRC co-payment. It mirrors the arrangement in place for the billing of the co-payment for Transitional care provided for this group of veterans. The section requires the provider to bill the Department of Human Services (Medicare) directly for the co-payment. However, should the client be billed directly, the Commission is empowered to reimburse the client.

Schedule 2 - Variations to the MRCA Treatment Principles (Instrument 2013 No. MRCC53)

The items in this Schedule amend the Treatment Principles in place under the *Military Rehabilitation and Compensation Act 2004* (MRCA Treatment Principles).

The amendments in this Schedule are identical to those in Schedule 1 with the exception that they amend the equivalent (but differently numbered) provisions of the MRCA Treatment Principles.

Schedule 3 - Variations to the Treatment Principles (Australian Participants in British Nuclear Tests) 2006 (Instrument 2013 No. R54)

The item in this Schedule updates the Treatment Principles in force for the purposes of the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* (the Act).

These are the VEA Treatment Principles as modified under subsection 16(7) of the Act. The modifications are set out in *Treatment Principles (Australian Participants in British Nuclear Tests) 2006* (Instrument 2013 No. R54) – modifying instrument.

Item 1 amends the modifying instrument to disapply the new Part F – Short-term Restorative Care Co-payment in the VEA Treatment Principles.

The new Part F relates solely to the care of former prisoners of war (POWs) and entitled veterans awarded the Victoria Cross (VC recipients). It is not relevant to Treatment Principles in force for the purposes of the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* and is disapplied accordingly.