

EXPLANATORY STATEMENT

Treatment Benefits (Special Access) (Modifications of the Repatriation Private Patient Principles) Instrument 2019

(Instrument 2019 No. R19)

EMPOWERING PROVISION

Section 19 of the *Treatment Benefits (Special Access) Act 2019*.

PURPOSE

The attached instrument (Instrument 2019 No. RC19) modifies the Repatriation Private Patient Principles (RPPPs) for the purposes of the *Treatment Benefits (Special Access) Act 2019* (Treatment Benefits Act). The RPPPs, in force under section 90A of the *Veterans' Entitlements Act 1986* (VEA), set out the circumstances in which the Commission may accept financial responsibility for treatment provided to veterans and their dependents as private patients. The RPPPs are a disallowable instrument for the purposes of the *Legislative Instruments Act 2003*.

The Treatment Benefits Act gives effect to a Government decision to provide medical treatment through a Department of Veterans' Affairs (DVA) Health Card for All Conditions (Gold Card) to those persons who served in the Australian Civilian Surgical Medical Teams (CSMTs) that gave medical aid, training and treatment to local Vietnamese people during the Vietnam War. Eligible CSMT members will have access to treatment for any injury or disease, including those unrelated to their CSMT work performed in South Vietnam.

Under section 19 of the Treatment Benefits Act, the RPPPs are binding on the Repatriation Commission (Commission) in the exercise of its powers and discretions under that Act. Subsection 19(2) of the Treatment Benefits Act enables the Commission to prepare written modifications of the RPPPs which will then apply for the purposes of that Act. A modification is an alteration to the text of a law that is not permanent or only applies to particular locations or cases. Modifications have effect as if they were amendments, but do not actually amend the principal legislation. Modification of the RPPPs is necessary for the application of such Principles to the Treatment Benefits Act as treatment under that Act is restricted to treatment for a different class of persons than those eligible under the VEA. Subsection 19(6) of the Treatment Benefits Act provides that a modification has no effect unless the Minister has, in writing, approved the instrument making the modification.

The RPPPs, as modified by the attached instrument, set out the circumstances in which the Commission may accept financial responsibility for treatment provided to eligible persons under the Treatment Benefits Act as private patients. Members of CSMTs who are Australian residents are eligible persons under section 7 of the Treatment Benefits Act. Under the Treatment Benefits 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. This is also the case under the VEA.

The provision of treatment for eligible CSMT members under the Treatment Benefits Act has been modelled on the provision of treatment available to persons eligible under the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006* (British Nuclear Test Act). The RPPPs under the VEA were

modified by the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) (Modifications of the Repatriation Private Patient Principles) Instrument 2017* (British Nuclear Test instrument) to apply to persons eligible for treatment under the British Nuclear Test Act.

The modifications of the RPPPs, made by the attached instrument, are modelled on the modified RPPPs made by the British Nuclear Test instrument. This will ensure consistency in treatment provided to Gold Card holders as private patients under the Treatment Benefits Act and the British Nuclear Test Act.

The modifications of the RPPPs are a legislative instrument. They will be effective on registration on the Federal Register of Legislation and subject to the usual disallowance period of 15 sitting days for each House of Parliament.

CONSULTATION

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

Consultation was undertaken within the Department of Veterans' Affairs with the Veterans' Services Design Division.

Consultation was by way of phone calls, email correspondence and meetings.

External stakeholders will be notified of the changes in accordance with a communication plan to be implemented prior to the commencement date. The measure is beneficial in nature in terms of the impact on the eligible persons.

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

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*.

Human rights implications

The attached legislative instrument engages and promotes the Right to Health. The Right to Health is contained in article 12(1) of the International Covenant on Economic Social and Cultural Rights (ICESCR). Article 12 of the ICESCR refers to the “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.

Overview

The RPPPs (as modified by the attached instrument) set out the circumstances in which the Commission will accept financial responsibility for treatment provided to eligible persons under the Treatment Benefits Act as private patients. Treatment for all conditions is provided to eligible persons via a Gold Card. The treatment in question is treatment provided to a person in hospital or by a medical specialist outside of a hospital, as a private patient (choice of medical practitioner). The instrument enables enhanced (choice of medical practitioner) treatment to eligible persons under the Treatment Benefits Act.

Conclusion

The attached instrument engages with and promotes the Right to Health. Accordingly, the attached instrument is considered to be “human rights compatible”.

Darren Chester
Minister for Veterans and Defence Personnel
Rule-Maker

FURTHER EXPLANATION OF PROVISIONS

See: [Attachment A](#)

FURTHER EXPLANATION OF PROVISIONS

The attached instrument modifies the application of the Repatriation Private Patient Principles (RPPPs) to eligible persons under the Treatment Benefits Act. In preparing the modifications, the language of making amendments has been used because modifications have effect as if they were amendments. Accordingly, in the attached instrument:

- a reference to a provision in the RPPPs being substituted, means the provision no longer applies to an eligible person under the Treatment Benefits Act but the substituted provision does;
- a reference to a provision in the RPPPs being amended means the provision applies to an eligible person under the Treatment Benefits Act as specified by the amendment;
- a reference to a provision in the RPPPs being omitted means the provision no longer applies to an eligible person under the Treatment Benefits Act.

The attached instrument does not amend the RPPPs and is intended to be read alongside the RPPPs. The same drafting approach was used for the modifications made to the RPPPs by the British Nuclear Test instrument to apply the RPPPs to persons eligible for treatment under the British Nuclear Test Act.

Section 1

This section provides the name of the instrument is the *Treatment Benefits (Special Access) (Modifications of the Repatriation Private Patient Principles) Instrument 2019*.

Section 2

This section provides the instrument commences on 1 July 2019.

Section 3

This section provides the authority for making the instrument is section 19 of the *Treatment Benefits (Special Access) Act 2019*.

Section 4

This section provides the modifications to the Repatriation Private Patient Principles made by the Schedule will take effect according to the terms of the items in the Schedule.

Schedule—Modifications of the Repatriation Private Patient Principles

The amendments made by the Schedule modify, for the purposes of the *Treatment Benefits (Special Access) Act 2019*, the Repatriation Private Patient Principles as made under the *Veterans' Entitlements Act 1986*.

Item 1 omits paragraphs 1.1 and 1.1A and substitutes new paragraphs 1.1 and 1.1A.

New paragraph 1.1 provides that the modified instrument is to be referred to as “the Principles”.

New paragraph 1.1A provides that the instrument will commence on 1 July 2019.

Item 2 substitutes the paragraph 1.2 definition of “Act” for the modified RPPPs. The “Act” is defined as the *Treatment Benefits (Special Access) Act 2019*.

Item 3 substitutes the paragraph 1.2 definition of “Commission” for the modified RPPPs. “Commission” is defined as the Repatriation Commission continued in existence by section 179 of the *Veterans’ Entitlements Act 1986*.

Item 4 omits the definition of “dependent of a Vietnam veteran”, at paragraph 1.2, as it is not relevant for the purposes of the modified RPPPs.

Item 5 substitutes the paragraph 1.2 definition of “entitled person”. An “entitled person” is defined as an eligible person within the meaning of the *Treatment Benefits (Special Access) Act 2019*.

The *Treatment Benefits (Special Access) Act 2019* defines an “eligible person” as a person who, under section 7, is eligible to be provided with treatment under that Act.

Item 6 substitutes the paragraph 1.2 definition of “former Repatriation Hospital” to mean a hospital or other institution that was formerly operated by the Commission under paragraph 89(1)(a) of the *Veterans’ Entitlements Act 1986*.

Item 7 substitutes the paragraph 1.2 definition of “Principles” for the purposes of the modified RPPPs. A reference to the “Principles” is defined as a reference to the RPPPs as modified by the *Treatment Benefits (Special Access) Modifications of the Private Patient Principles Instrument 2019*.

Item 8 substitutes the paragraph 1.2 definition of “private patient” for the purposes of the modified RPPPs. The revised definition provides “private patient” has the same meaning given by subsection 19(8) of the *Treatment Benefits (Special Access) Act 2019*.

Subsection 19(8) of the *Treatment Benefits (Special Access) Act 2019* provides that treatment is taken to be provided to a person as a private patient if:

- (a) the treatment is provided to the person as a person who is, for the purposes of the *Health Insurance Act 1973*, a private patient of a hospital; or
- (b) the treatment is provided to the person by a medical specialist to whom the person has been referred but is not provided at a hospital.

Item 9 omits the definition of “revoked Repatriation Private Patient Principles”, at paragraph 1.2, as it is not relevant for the purposes of the modified RPPPs.

Item 10 substitutes the paragraph 1.2 definition of “Treatment Principles” for the modified RPPPs. The revised definition refers to the Treatment Principles as modified by the *Treatment Benefits (Special Access) Modifications of the Treatment Principles Instrument 2019*.

Item 11 omits the words “the Act” and substitutes the words “the *Veterans’ Entitlements Act 1986*” in the paragraph 1.2 definition of “veteran partnering private hospital”. This amendment ensures the correct Act is referred to within the definition.

Item 12 omits the definition of “Vietnam veteran”, at paragraph 1.2, as it is not relevant for the purposes of the modified RPPPs.

Item 13 omits paragraph 3.6 (Urgent treatment for Vietnam veterans and their dependents) as it is not relevant for the purposes of the modified RPPPs.