

# EXPLANATORY STATEMENT

## **Veterans' Affairs (Treatment Principles – Rehabilitation in the Home and Other Amendments) Determination 2020** (Instrument No. R3/MRCC3 of 2020)

### **EMPOWERING PROVISIONS**

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

For Schedule 2 of the attached instrument which varies the *MRCA Treatment Principles* (MRCA Treatment Principles) — subsection 286(5) of the *Military Rehabilitation and Compensation Act 2004* (the MRCA).

### **PURPOSE**

The attached instrument *Veterans' Affairs (Treatment Principles – Rehabilitation in the Home and Other Amendments) Determination 2020* (Instrument 2020 No. R3/MRCC3) makes variations to the VEA Treatment Principles and the MRCA Treatment Principles – collectively known as the “Treatment Principles”.

The Treatment Principles set out the circumstances in which treatment may be provided to persons who are eligible to receive treatment under the provisions of various Veterans' Affairs portfolio Acts.

#### *Rehabilitation in the Home*

The purpose of these variations to the Treatment Principles is to include the Rehabilitation in the Home provisions under which the Commissions may accept financial responsibility for such treatment.

The amendments to the Treatment Principles provide for the appointment of a panel of Rehabilitation in the Home providers who will provide “Rehabilitation in the Home” programs to persons eligible for treatment under the Treatment Principles.

Rehabilitation in the Home is a coordinated, home-based, rehabilitation program for persons who would otherwise receive functional rehabilitation services as inpatients in hospital.

It is anticipated that a Rehabilitation in the Home program would appropriately be provided in circumstances such as after joint replacement surgery or for “re-conditioning” purposes following an extended period in hospital or the exacerbation of a chronic illness.

Eligible persons will in most cases continue to receive rehabilitation services in the hospital as the Rehabilitation in the Home option will only be provided when an eligible person is medically stable and it is determined that the home environment is suitable.

Eligible persons who meet the requirements for provision of a Rehabilitation in the Home program will be offered the choice of receiving all of the rehabilitation program at home or to receive their rehabilitation services partly as an admitted patient in hospital and subsequently at home, thus allowing for earlier discharge.

The highest possible standards will be applied to the Rehabilitation in the Home program as the minimum standards that will apply are based on the standards for quality, safety and performance that meet Commonwealth and State requirements for 'Hospital in the Home' services. Those standards include mandatory admission protocols and significant data reporting.

Programs provided under Rehabilitation in the Home will use a client-centred, coordinated and case managed approach to rehabilitation care that is based on clinical need. Individual treatment plans will be goal based and regularly assessed in the same manner as rehabilitation programs in hospitals.

Only rehabilitation services can be supplied under a contract to provide a Rehabilitation in the Home program. The services provided will not impact on other community based supports provided under the Treatment Principles, including community nursing services, the Veterans' Home Care Programs or the Coordinated Veterans' Care Program.

#### *Other Amendments*

As part of the machinery of government changes which commenced on 1 February 2020, Services Australia was established as an executive agency in the Social Services Portfolio to deliver the services which were previously the responsibility of the Department of Human Services.

As the Department of Human Services had responsibility for Medicare there are a number of references to that Department in the Treatment Principles.

The purpose of these additional variations to the Treatment Principles is to replace references to the Department of Human Services with a more generic term the "Human Services Department". The term has been defined in a manner which will not require amendments if the name of the agency is altered.

The variations to the Treatment Principles will take effect from the day the instrument is registered.

## **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.

#### *Rehabilitation in the Home*

Much of the design and the administrative detail of the Rehabilitation in the Home program will form the basis of the contracts under which the treatment will be provided by the providers who will form the panel.

To ensure the design of the Rehabilitation in the Home program is informed by current practice and experience, a Request for Information (RFI) was released through AusTender on 31 January 2020. The RFI is an information gathering exercise to assist with the design of a possible future operating model for the provision of functional rehabilitation services in the home of persons eligible for treatment.

Through the RFI, the Department obtained constructive, detailed feedback and information from interested parties involved in the delivery of functional rehabilitation services. The information will be used to test the proposed features of a potential Rehabilitation in the Home program.

Interested parties had been invited to provide information on current industry practice, service delivery, standards of rehabilitation treatment and other relevant information to meet the requirements of the program. The RFI enables the industry to provide the Department with innovative options to ensure that it can achieve the outcomes it seeks.

Responses to the RFI closed on 2 March 2020

The RFI process is only one part of a wider information gathering, market research and industry consultation process that has been undertaken by the Department. The information obtained through the RFI and the other research and consultative processes will form part of the relevant DVA decision-making and approval process for the Rehabilitation in the Home program.

Consultation has also been undertaken for the introduction of the program with the representatives of the major Ex-Service Organisations.

If required, the Department may undertake further industry consultation and may approach the market through a formal tender process.

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

#### *Other Amendments*

The amendments to replace references to the “Department of Human Services” have been made in consultation with the Department of Social Services.

Consultation with the major Ex-Service Organisations was not required as the amendments are consequential and will have no impact on the provision of treatment.

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

## **RETROSPECTIVITY**

None.

## **DOCUMENTS INCORPORATED BY REFERENCE**

None.

## **REGULATORY IMPACT**

OBPR Reference Number: 25985

This proposal does not have any regulatory impact on businesses, community organisations or individuals.

## **FURTHER EXPLANATION OF PROVISIONS**

See Attachment A.

## **FURTHER EXPLANATION OF PROVISIONS**

### **Section 1**

This section sets out the name of the instrument - *the Veterans' Affairs (Treatment Principles – Rehabilitation in the Home) Amendment Determination 2020*.

### **Section 2**

This section provides that the instrument commences on the day that it is registered.

### **Section 3**

This section sets out the legislative authority for the making of the variations to the Treatment Principles.

### **Section 4**

Section 4 provides that the variations to the Treatment Principles, as outlined in each of the Schedules to the instrument, have effect.

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

**Items 1 to 4, 6 to 17, 19 and 20** are the amendments required to replace references in the *Treatment Principles* to the “Department of Human Services” with the more generic term “Human Services Department”.

The paragraph 1.4.1 definition of “Department of Human Services” is repealed by **Item 2**.

The replacement term is defined by **Item 3** in paragraph 1.4.1 as being the Department or Executive Agency that is administered by the Minister who administers the *Human Services (Centrelink) Act 1997*.

The references in the paragraph 1.4.1 definitions of “Co-ordinated Veterans' Care Program”, “neuropsychologist”, “occupational therapist (mental health)”, “social worker (mental health)” and “speech pathologist” to *Department of Human Services* are replaced by **Items 1, 4 and 6** with references to *Human Services Department*.

**Item 5** inserts definitions for the following terms in paragraph 1.4.1.:

“Rehabilitation in the Home” as meaning the coordinated, home-based, rehabilitation program in respect of which the Repatriation Commission will accept financial responsibility under Principle 7.7B;

“Rehabilitation in the Home Provider” as meaning the ambulatory service providing a rehabilitation program who has entered into an agreement with the Repatriation Commission to provide Rehabilitation in the Home to eligible persons;

“Rehabilitation in the Home care co-ordinator” as meaning the person who co-ordinates the rehabilitation services provided to an eligible person under a Rehabilitation in the Home program.

The purpose of the amendments is to include definitions in the Treatment Principles for the purposes of the Rehabilitation in the Home provisions (new Principle 7.7B).

Principles 3.4 and 3.5 provide for the circumstances in which the Repatriation Commission will provide retrospective approval and accept financial responsibility for the treatment provided to entitled persons by health care providers.

Paragraphs 3.4.4(b), 3.4.5(b), Note 2 to paragraph 3.5.2 and paragraph 3.5.3(a) are amended by **Items 7 to 10** to replace the references to *Department of Human Services* with references to *Human Services Department*.

Principle 4.3 provides for the circumstances in which the Repatriation Commission will also accept financial responsibility for the treatment provided to entitled persons by a GP or a specialist.

Paragraph 4.3.2(a) is amended by **Item 11** to replace the reference to *Department of Human Services* with a reference to the *Human Services Department*.

Principle 4.7 refers to the requirement to obtain prior approval in certain circumstances where an entitled person is being referred to a medical specialist for treatment.

Paragraph 4.7.3 is amended by **Item 12** to replace the reference to *Department of Human Services* with a reference to the *Human Services Department*.

Principle 4.8 provides a listing of certain forms of treatment for which the Repatriation Commission will not accept financial responsibility.

Paragraph 4.8.1(g) is amended by **Item 13** to replace the reference to *Department of Human Services* with a reference to the *Human Services Department*.

Part 6A of the Treatment Principles provides for the Coordinated Veterans' Care Program. The aim of the program is to improve the health of Gold Card holders with complex care needs.

The Note to paragraph 6A.4.2 and paragraph 6A.9.2 are amended by **Items 14 and 15** to replace the references to *Department of Human Services* with references to the *Human Services Department*.

Principle 7.4 provides for the circumstances in which the Repatriation Commission will accept financial responsibility for optometrical services.

Paragraphs 7.4.4 and 7.4.5 are amended by **Items 16 and 17** to replace the references to *Department of Human Services* with references to the *Human Services Department*.

Principles 10.10 and 10.12 provide for the circumstances in which the providers of *home care* or *transition care* will charge the *Human Services Department* for the services provided.

Paragraphs 10.10.1 and 10.12.1 are amended by **Items 19 and 20** to replace the references to *Department of Human Services* with references to the *Human Services Department*.

**Item 18** inserts new Principle 7.7B - Rehabilitation in the Home

New paragraph 7.7B.1 provides an Outline of the Rehabilitation in the Home program. It is described as a coordinated, home-based, rehabilitation program for eligible persons who would otherwise be receiving the treatment in hospital.

While most persons eligible for rehabilitation under the Treatment Principles will continue to receive rehabilitation in hospital those who are medically stable and who have a suitable home or other environment will be eligible for a Rehabilitation in the Home program.

The quality, safety and performance standards applicable to Rehabilitation in the Home programs will be based on the Commonwealth and State requirements for Hospital in the Home services including mandatory admission protocols,

The approach to be taken by a Rehabilitation in the Home program will be client-centred, coordinated and case managed rehabilitation care that is based on clinical need. The individual treatment plans are to be goal based and will be subject to regular assessment on a similar basis to rehabilitation programs in hospitals.

Only rehabilitation services can be provided under a Rehabilitation in the Home program. The programs will not replace or displace other community based supports provided under the Treatment Principles, including community nursing services, Veterans' Home Care Program or the Coordinated Veterans' Care Program.

The agreements under which Rehabilitation in the Home programs are provided will explicitly prohibit the provision of nursing or mental health services by the rehabilitation provider. However, in the circumstances where it is appropriate, a Rehabilitation in the Home care co-ordinator would be expected to communicate issues which are outside the scope of a Rehabilitation in the Home Program to the relevant care provider including a community nurse.

New paragraph 7.7B.2 expands the paragraph 1.4.1 definition of "home" for the purposes of Principle 7.7B to include other premises in which a Rehabilitation in the Home program may be provided.

A "home" for the purposes of a Rehabilitation in the Home program will include the premises or the part of the premises in which a person temporarily resides and includes premises where the person is in receipt of residential care.

New paragraph 7.7B.3 provides for the circumstances in which the Repatriation Commission will accept financial responsibility for the provision of Rehabilitation in the Home program:

- (a) the person has a referral to a Rehabilitation in the Home provider from a general practitioner, a treating doctor in a hospital, a hospital discharge planner or a medical specialist; and
- (b) the Rehabilitation in the Home provider, who has entered into an arrangement with the Repatriation Commission, has undertaken an assessment of the eligible person for the provision of Rehabilitation and made an assessment that the person has both a clinical need and is suitable for the Rehabilitation in the Home program; and
- (c) before deciding whether to accept financial responsibility for the provision of a Rehabilitation in the Home program the Repatriation Commission should take into account whether the proposed medical and allied health services to

be provided as part of the Rehabilitation in the Home program will duplicate the medial and allied health services the eligible person is receiving under the other provisions of the Treatment Principles.

New paragraph 7.7B.4 allows the Department to make a request of a Rehabilitation in the Home provider to provide the Department with all of the care documentation for an eligible person.

New paragraph 7.7B.5 provides that referrals for the provision of a Rehabilitation in the Home program can only be made to a Rehabilitation in the Home provider who has entered into an agreement with the Repatriation Commission or the Department to provide programs during the period in which the eligible person requires treatment and for the geographical area in which the eligible person will reside while undergoing the program.

New paragraph 7.7B.6 provides for an exception to the requirements of paragraph 7.7B.5 that must be met for providing a Rehabilitation in the Home program to an eligible person. If the contracted Rehabilitation in the Home provider is unable to provide a Rehabilitation in the Home program within a reasonable time, the provider may refer the eligible person to another Rehabilitation in the Home provider.

New paragraph 7.7B.7 provides that the Repatriation Commission will not accept financial responsibility for other health or domestic health services or goods that can be provided under the other provisions of the Treatment Principles. The exclusions include but are not limited to services or goods provided under community nursing services, the Veterans' Home Care program, the Coordinated Veterans' Care Program or the Rehabilitation Appliances Program.

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

**Items 21 to 4, 6 to 17, 19 and 20** are the amendments required to replace references in the *Treatment Principles* to the “Department of Human Services” with the more generic term “Human Services Department”.

The paragraph 1.4.1 definition of “Department of Human Services” is repealed by **Item 22**.

The replacement term is defined by **Item 23** in paragraph 1.4.1 as being the Department or Executive Agency that is administered by the Minister who administers the *Human Services (Centrelink) Act 1997*.

The references in the paragraph 1.4.1 definitions of “clinical psychologist”, “Coordinated Veterans' Care Program”, “neuropsychologist”, “occupational therapist (mental health)”, “social worker (mental health)” and “speech pathologist” to *Department of Human Services* are replaced by **Items 21, 24 and 26** with references to *Human Services Department*.



**Item 25** inserts definitions for the following terms in paragraph 1.4.1. (Interpretation provision):

“Rehabilitation in the Home” as meaning the coordinated, home-based, rehabilitation program in respect of which the Military Rehabilitation and Compensation Commission (MRCC) will accept financial responsibility under Principle 7.7B;

“Rehabilitation in the Home Provider” as meaning the ambulatory service providing a rehabilitation program who has entered into an agreement with the MRCC to provide Rehabilitation in the Home to eligible persons;

“Rehabilitation in the Home care co-ordinator” as meaning the person who co-ordinates the rehabilitation services provided to an eligible person under a Rehabilitation in the Home program.

The purpose of the amendments is to include definitions in the *MRCAT Treatment Principles* for the purposes of the Rehabilitation in the Home provisions (new Principle 7.7B).

Principles 3.4 and 3.5 provide for the circumstances in which the Repatriation Commission will provide retrospective approval and accept financial responsibility for the treatment provided to entitled persons by health care providers.

Paragraphs 3.4.4(b), 3.4.5(b), Note 2 to paragraph 3.5.2 and paragraph 3.5.3(a) are amended by **Items 27 to 30** to replace the references to *Department of Human Services* with references to *Human Services Department*.

Principle 4.3 provides for the circumstances in which the Repatriation Commission will also accept financial responsibility for the treatment provided to entitled persons by a GP or a specialist.

Paragraph 4.3.2(a) is amended by **Item 31** to replace the reference to *Department of Human Services* with a reference to the *Human Services Department*.

Principle 4.7 refers to the requirement to obtain prior approval in certain circumstances where an entitled person is being referred to a medical specialist for treatment.

Paragraph 4.7.3 is amended by **Item 32** to replace the reference to *Department of Human Services* with a reference to the *Human Services Department*.

Principle 4.8 provides a listing of certain forms of treatment for which the Repatriation Commission will not accept financial responsibility.

Paragraph 4.8.1(g) is amended by **Item 33** to replace the reference to *Department of Human Services* with a reference to the *Human Services Department*.

Part 6A of the Treatment Principles provides for the Coordinated Veterans’ Care Program. The aim of the program is to improve the health of Gold Card holders with complex care needs.

The Note to paragraph 6A.4.2 and paragraph 6A.9.2 are amended by **Items 34 and 35** to replace the references to *Department of Human Services* with references to the *Human Services Department*.

Principle 7.4 provides for the circumstances in which the Repatriation Commission will accept financial responsibility for optometrical services.

Paragraphs 7.4.4 and 7.4.5 are amended by **Items 36 and 37** to replace the references to *Department of Human Services* with references to the *Human Services Department*.

Principles 10.7, 10.9 and 10.11 provide for the circumstances in which the providers of *home care, transition care or short-term restorative care* will charge the *Human Services Department* for the services provided.

Paragraphs 10.7.1, 10.9.1 and 10.11.1 are amended by **Items 39 and 41** to replace the references to *Department of Human Services* with references to the *Human Services Department*.

**Item 38** inserts new Principle 7.7B – Rehabilitation in the Home

New paragraph 7.7B.1 provides an Outline of the Rehabilitation in the Home program. It is described as a coordinated, home-based, rehabilitation program for eligible persons who would otherwise be receiving the treatment in hospital.

While most persons eligible for rehabilitation under the MRCA Treatment Principles will continue to receive rehabilitation in hospital those who are medically stable and who have a suitable home or other environment will be eligible for a Rehabilitation in the Home program.

The quality, safety and performance standards applicable to Rehabilitation in the Home programs will be based on the Commonwealth and State requirements for Hospital in the Home services including mandatory admission protocols,

The approach to be taken by a Rehabilitation in the Home program will be client-centred, coordinated and case managed rehabilitation care that is based on clinical need. The individual treatment plans are to be goal based and will be subject to regular assessment on a similar basis to rehabilitation programs in hospitals.

Only rehabilitation services can be provided under a Rehabilitation in the Home program. The programs will not replace or displace other community based supports provided under the Treatment Principles, including community nursing services, MRCA Home Care Program or the Coordinated Veterans' Care Program.

The agreements under which Rehabilitation in the Home programs are provided will explicitly prohibit the provision of nursing or mental health services. However, in the circumstances where it is appropriate, a Rehabilitation in the Home care co-ordinator would be expected to communicate issues which are outside the scope of a Rehabilitation in the Home Program to the relevant care provider including a community nurse.

New paragraph 7.7B.2 expands the paragraph 1.4.1 definition of “home” for the purposes of Principle 7.7B to include other premises in which a Rehabilitation in the Home program may be provided.

A “home” for the purposes of a Rehabilitation in the Home program will include the premises or the part of the premises in which a person temporarily resides and includes premises where the person is in receipt of residential care.

New paragraph 7.7B.3 provides for the circumstances in which the MRCC will accept financial responsibility for the provision of Rehabilitation in the Home program:

- (d) the person has a referral to as Rehabilitation in the Home provider from a general practitioner, a treating doctor in a hospital, a hospital discharge planner or a medical specialist; and
- (e) the Rehabilitation in the Home provider, who has entered into an arrangement with the MRCC, has undertaken an assessment of the eligible person for the provision of Rehabilitation and made an assessment that the person has both a clinical need and is suitable for the Rehabilitation in the Home program; and
- (f) before deciding whether to accept financial responsibility for the provision of a Rehabilitation in the Home program the MRCC should take into account whether the proposed medical and allied health services to be provided as part of the Rehabilitation in the Home program will duplicate the medical and allied health services the eligible person is receiving under the other provisions of the MRCA Treatment Principles.

New paragraph 7.7B.4 allows the Department to make a request of a Rehabilitation in the Home provider to provide the Department with all of the care documentation for an eligible person.

New paragraph 7.7B.5 provides that referrals for the provision of a Rehabilitation in the Home program can only be made to a Rehabilitation in the Home provider who has entered into an agreement with the MRCC or the Department to provide programs during the period in which the eligible person requires treatment and for the geographical area in which the eligible person will reside while undergoing the program.

New paragraph 7.7B.6 provides for an exception to the requirements of paragraph 7.7B.5 that must be met for providing a Rehabilitation in the Home program to an eligible person. If the contracted Rehabilitation in the Home provider is unable to provide a Rehabilitation in the Home program within a reasonable time, the provider may refer the eligible person to another Rehabilitation in the Home provider.

New paragraph 7.7B.7 provides that the MRCC will not accept financial responsibility for other health or domestic health services or goods that can be provided under the other provisions of the MRCA Treatment Principles. The exclusions include but are not limited to services or goods provided under community nursing services, the MRCA Home Care program, the Coordinated Veterans’ Care Program or the Rehabilitation Appliances Program.

## Statement of Compatibility with Human Rights

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

### **Veterans' Affairs (Treatment Principles – Rehabilitation in the Home and Other Amendments) Determination 2020**

#### *Overview of the Parts*

The attached legislative instrument engages positively with the Right to Health, and the Rights of Persons with a disability.

#### *Right to health*

Article 12 of the International Covenant on Economic, Cultural and Social Rights refers to the “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.

#### *Rights of people with a disability*

The rights of people with a disability are set out in the Convention on the Rights of Persons with Disabilities. Article 26 requires countries to organise and strengthen rehabilitation programs for people with disability, particularly in health, employment, education and social services.

#### *Overview*

The main purpose of the attached instrument is to provide for an extension in the availability of an existing form of treatment in enabling the provision of Rehabilitation in the Home as an option for those who are suitable to receive the treatment in that form.

The funding of these additional services will support the rehabilitation and return to health of eligible members of the veteran community including those with disabilities from a service injury or service disease.

#### *Conclusion*

The attached instrument engages with and promotes the right to health, and the rights of a person with a disability. Accordingly, the attached instrument is considered to be “human rights compatible”.

Vicki Rundle  
Rule-Maker  
Deputy Secretary, Veterans and Families Services  
Department of Veterans' Affairs