

EXPLANATORY STATEMENT

Military Rehabilitation and Compensation Treatment Principles Amendment (Sustainability Payments) Determination 2024

EMPOWERING PROVISION

The Military Rehabilitation and Compensation Commission makes this instrument under subsection 286(5) of the *Military Rehabilitation and Compensation Act 2004* (the *Act*).

PURPOSE

This instrument amends the *MRCA Treatment Principles* (the *TPs*).

OVERVIEW

The Veterans' Home Care (VHC) and Community Nursing (CN) programs support veterans and war widow(er)s to access services to enable them to remain independent in their own home. This instrument amends the TPs for the purpose of making sustainability payments to VHC and CN providers under these programs to ensure continuity of access for DVA clients. The sustainability payments will support the immediate viability of providers to deliver these programs, including essential care management, in the face of increasing market pressures. They seek to reduce the risk of providers withdrawing from program delivery and DVA clients not being able to access care or experiencing significant disruption to their care.

EXPLANATION OF PROVISIONS

Section 1 states the name of the Instrument.

Section 2 provides that the instrument commences on the start of the day after it is registered.

Section 3 sets out the authority for the Military Rehabilitation and Compensation Commission making the Instrument, namely subsection 286(5) of the *Military Rehabilitation and Compensation Act 2004* (MRCA).

Section 4 is a standard provision used in instruments that amend or repeal other instruments. It gives effect to Schedule 1.

Schedule 1—Amendments

Item 1

Paragraph 1.4.1, definition of “approved provider” (first occurring)

This item inserts “, in relation to the *MRCA Home Care Program* (Part 7.3A),” immediately after the words “**approved provider**” in the definition. As there are two definitions of

approved provider in paragraph 1.4.1 of the TPs, this amendment makes it clear that this definition applies in relation to the MRCA Home Care Program in part 7.3A.

Item 2

New subpart 7.3AA (Sustainability payments—community nursing)

This item inserts a new subpart 7.3AA immediately after the existing subpart 7.3 of the TPs.

New paragraph 7.3AA.1 sets out the purpose of a sustainability payment. Its purpose is to defray part of the costs incurred by a community nursing provider in providing community nursing services to an entitled person for which the Commission has accepted financial responsibility. The costs to be partly defrayed include costs of care coordination and care management.

A sustainability payment is a payment paid to a provider on a quarterly basis for the costs incurred in the preceding quarter. As the payments are to be paid on an accrual basis and must be made between 1 July 2024 and 30 June 2026, the payment would only be for costs incurred between 1 April 2024 and 31 March 2026.

The Department has published on the internet a Frequently Asked Questions (FAQs) about the payments.

New paragraph 7.3AA.2 sets out the eligibility criteria that a community nursing provider must satisfy for the Commission to make a sustainability payment. To be eligible for the payments, a community nursing provider—

- (a) must have provided a community nursing service to an entitled person in accordance with part 7; and
- (b) the service must have been provided—
 - (i) in a quarter between 1 April 2024 and 31 March 2026; and
 - (ii) under an agreement with the Commission that was in force at the time the service was provided, and at the time the eligibility for the payments is determined by the Commission.

New paragraph 7.3AA.3 provides for the way to work out the amount of a sustainability payment to be made to a community nursing provider. It is useful to state, at the outset, that even though a sustainability payment is made on a quarterly basis, it is worked out on a monthly basis.

First, the total number of entitled people is to be worked out. An entitled person is counted towards the total number if—

- (a) the person received a community nursing service from the provider in a calendar month in a quarter for which a payment is to be made; and

- (b) the Commission has accepted financial responsibility for the community nursing service received by the person.

This paragraph requires working out the number of entitled people, instead of the number of occasions on which a service is provided to an entitled person in a calendar month. As such, an entitled person is counted only once for each calendar month in a quarter, even if the person received a community nursing service on more than one occasions in the calendar month. To remove this potential doubt, *new paragraph 7.3AA.4* is inserted.

After working out the number of entitled people under paragraph 7.3AA.3(a), the Commission is to then multiply the number by an amount determined in writing by the Commission for paragraph 7.3AA.3(b). A determination under paragraph 7.3AA.3(b) is neither a legislative instrument nor a notifiable instrument under the *Legislation Act 2003*, thus it does not need to be registered on the Federal Register of Legislation.

Item 3

New Subpart 7.3B “Sustainability payments—MRCA Home Care Program”

This item inserts a new subpart 7.3B immediately after subpart 7.3A of the TPs.

New paragraph 7.3B.1 sets out the purpose of a sustainability payment. Its purpose is to defray part of the costs incurred by an approved provider in providing services to an entitled person for which the Commission has accepted financial responsibility. The costs to be partly defrayed include costs of care coordination and care management.

A sustainability payment is a payment paid to a provider on a quarterly basis for the costs incurred in the preceding quarter. As the payments are to be paid on an accrual basis and must be made between 1 July 2024 and 30 June 2026, the payment would only be for costs incurred between 1 April 2024 and 31 March 2026.

The Department has published on the internet a Frequently Asked Questions (FAQs) about the payments.

New paragraph 7.3B.2 sets out the eligibility criteria that an approved provider must satisfy for the Commission to make a sustainability payment. To be eligible for the payments, an approved provider—

- (a) must have provided a service to an entitled person in accordance with part 7; and
- (b) the service must have been provided—
 - (i) in a quarter between 1 April 2024 and 31 March 2026; and
 - (ii) under an agreement with the Commission that was in force at the time the service was provided, and at the time the eligibility for the payments is determined by the Commission.

New paragraph 7.3B.3 provides for the way to work out the amount of a sustainability payment to be made to a provider. It is useful to state, at the outset, that even though a sustainability payment is made on a quarterly basis, it is worked out on a monthly basis.

First, the total number of entitled people is to be worked out. An entitled person is counted towards the total number if—

- (a) the person received a service from the approved provider in a calendar month in a quarter for which a payment is to be made; and
- (b) the Commission has accepted financial responsibility for the service received by the person.

This paragraph requires working out the number of entitled people, instead of the number of occasions on which a service is provided to an entitled person in a calendar month. As such, an entitled person is counted only once for each calendar month in a quarter, even if the person received a service on more than one occasions in the calendar month. To remove this potential doubt, *new paragraph 7.3B.4* is inserted.

After working out the number of entitled people under paragraph 7.3B.3(a), the Commission is to then multiply the number by an amount determined in writing by the Commission for paragraph 7.3B.3(b). A determination under paragraph 7.3B.3(b) is neither a legislative instrument nor a notifiable instrument under the *Legislation Act 2003*, thus it does not need to be registered on the Federal Register of Legislation.

Consultation

DVA has not consulted with existing DVA clients under the VHC and CN programs regarding the sustainability payments, given the beneficial nature of these payments. The payments will support existing and future clients to access care by strengthening the immediate viability of providers to deliver DVA programs in the face of increasing market pressures, reducing the risk of care disruption. DVA has not formally consulted with VHC and CN providers but has provided advice on the intent of the sustainability payments.

Human rights implications

This instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment A**.

Making the instrument

The instrument is made by the Military and Rehabilitation Compensation Commission.

Attachment A

Statement of Compatibility with Human Rights

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

Military Rehabilitation and Compensation Treatment Principles Amendment (Sustainability Payments) Determination 2024

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (the ***recognised rights***).

Overview of the Disallowable Legislative Instrument

The *Military Rehabilitation and Compensation Treatment Principles Amendment (Sustainability Payments) Determination 2024* (the Instrument) amends the MRCA Treatment Principles (the Principal Instrument) to enable sustainability payments to be made to providers under the Veterans' Home Care and Community Nursing programs from 1 July 2024 to 30 June 2026.

Human rights implications

The Instrument engages and promotes the right to health (the ***right***) contained in article 12 of the International Covenant on Economic Social and Cultural Rights (the ***ICESCR***).

The right is to be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the individual to realise their highest attainable standard of health. This, in turn, means that payment for health care services, as well as services related to the underlying determinants of health, must be based on the principle that the services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups.

The United Nations Committee on Economic, Social and Cultural Rights has said that accessibility is an essential element of the right to health.¹ For health facilities to be accessible, they should be made available to all, without discrimination on any of the prohibited grounds. They should also be affordable for all.

This Instrument is made to promote the very spirit of the right. It allows payments to be made to community nursing providers and approved providers of the MRCA Home Care Program so their cost of coordinating and managing care for eligible members would be partly covered. This will ensure that eligible members can continue to receive the care they are entitled to under the Principal Instrument.

¹ Committee on Economic, Social and Cultural Rights, *General Comment No 14: The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, 22nd sess, UN Doc E/C.12/2000/4 (11 August 2000) 4–5 [12]–[13].

Conclusion

The Instrument is compatible with the recognised rights because it promotes the right to health. It does not limit any recognised rights.

Military Rehabilitation and Compensation Commission
Rule-Maker