

EXPLANATORY STATEMENT

Veterans' Affairs (Treatment Principles) Variation (Sustainability Payments) Determination 2024

EMPOWERING PROVISION

The Repatriation Commission makes this instrument under subsection 90(5) of the *Veterans' Entitlements Act 1986* (the *Act*).

PURPOSE

This instrument amends the *Treatment Principles (Instrument 2013 No. R52)* made under section 90 of the *Act* (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* to clarify previous amendments made by the *Veterans' Entitlements Treatment Principles Amendment (Sustainability Payments) Determination 2024*. That determination added subparts 7.3.AA and 7.3.B to the *TPs* to authorise sustainability payments to CN and VHC providers under these programs. The sustainability payments are intended to ensure continuity of access for DVA clients.

This instrument clarifies the eligibility criteria that a provider must satisfy for the Repatriation Commission to make a sustainability payment in respect of a service delivered by a provider, specifically to clarify the basis of calculating the sustainability payments that a provider will receive. The instrument amends the *TPs* so that payments are calculated based on the date the claim for payment was approved, not the date the service was provided.

EXPLANATION OF PROVISIONS

Section 1 states the name of the instrument.

Section 2 provides that the instrument is taken to have commenced on 1 July 2024. Section 12 of the *Legislation Act 2003* provides that an instrument may operate retrospectively if it does not affect the right of a person so to disadvantage the person. This instrument meets that requirement for retrospectivity because it expands eligibility for the sustainability payment. It amends the previous instrument to provide authority for the Commission to make sustainability payments from 1 July 2024 in line with the policy intent.

Section 3 sets out the authority for the Repatriation Commission making the instrument, namely subsection 90(5) of the *Veterans' Entitlements Act 1986* (VEA).

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

Schedule 1—Amendments

Community nursing (items 1-7)

Items 1-7 amend Part 7.3AA (Sustainability payments—community nursing) of the *TPs*.

Items 1 and 2

These items amend paragraph 7.3AA.1, which sets out the purpose of a sustainability payment. The amendments make it clear that a sustainability payment is to be made between 1 July 2024 and 30 June 2026 for certain costs incurred in providing community nursing services. It does not matter when the service was provided.

Items 3 and 4

These items amend paragraph 7.3AA.2, which sets out the eligibility criteria that a provider must satisfy for the Commission to make a sustainability payment for a quarter between 1 April 2024 and 31 March 2026 (the *claim processed period*). To be eligible for the payments—

- (a) a provider must have delivered a community nursing service to an entitled person (at any time) in accordance with Part 7 of the *TPs*;
- (b) the service must have been delivered under an agreement with the Commission that is in force at the time the eligibility for the payments is determined by the Commission; and
- (c) the provider's claim for payment for that service must have been approved during the quarter.

Items 5 and 6

These items amend paragraph 7.3AA.3, which specifies how to work out the amount of a sustainability payment to be made to a CN provider for a quarter within the *claim processed period*.

First, the total number of entitled people for a provider is worked out under paragraph 7.3AA.3(a). An entitled person is counted towards the total number if the provider's claim for payment for providing a community nursing service to that person was approved in a calendar month during the quarter.

After working out the number of entitled people under paragraph 7.3AA.3(a), the Commission then multiplies the number by the amount determined in writing by the Commission for paragraph 7.3AA.3(b).

Item 7

This item amends paragraph 7.3AA.4, to remove potential doubt about how the number of entitled people is worked out. An entitled person is counted only once for a calendar month even if more than one claim for payment was approved in that month for community nursing services that the person received from the provider.

Veterans' Home Care Program (items 8-14)

Items 8-14 amend Part 7.3B (Sustainability payments—Veterans' Home Care Program) of the *TPs*.

Items 8 and 9

These items amend paragraph 7.3B.1, which sets out the purpose of a sustainability payment. The amendments make it clear that a sustainability payment is to be made between 1 July 2024 and 30 June 2026 for certain costs incurred in providing veterans' home care services. It does not matter when the service was provided.

Items 10 and 11

These items amend paragraph 7.3B.2, which sets out the eligibility criteria that an approved provider must satisfy for the Commission to make a sustainability payment for a quarter between 1 April 2024 and 31 March 2026 (the *claim processed period*). To be eligible for the payments—

- (a) a provider must have delivered a service under the Veterans' Home Care program to an entitled person (at any time) in accordance with Part 7 of the *TPs*;
- (b) the service must have been delivered under an agreement with the Commission that is in force at the time the eligibility for the payments is determined by the Commission; and
- (c) the provider's claim for payment for that service must have been approved during the quarter.

Items 12 and 13

These items amend paragraph 7.3B.3, which specifies how to work out the amount of a sustainability payment to be made to an approved provider for a quarter within the *claim processed period*.

First, the total number of entitled people for a provider is worked out under paragraph 7.3B.3(a). An entitled person is counted towards the total number if the provider's claim for payment for providing a Veterans' Home Care service to that person was approved in a calendar month during the quarter.

After working out the number of entitled people under paragraph 7.3B.3(a), the Commission then multiplies the number by the amount determined in writing by the Commission for paragraph 7.3B.3(b).

Item 14

This item amends paragraph 7.3B.4, to remove potential doubt about how the number of entitled people is worked out. An entitled person is counted only once for a calendar month even if more than one claim for payment was approved in that month for Veterans' Home Care services that the person received from the provider.

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 Repatriation Commission.

Attachment A

Statement of Compatibility with Human Rights

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

Veterans' Affairs (Treatment Principles) Variation (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 *Veterans' Affairs (Treatment Principles) Variation (Sustainability Payments) Determination 2024* (the **Instrument**) amends the *Treatment Principles (No. R52/2013)* (the **Principal Instrument**) to clarify the operation of the provisions that 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.

This Instrument is made to promote the very spirit of the right. It clarifies the operation of provisions of the Principal Instrument that allow payments to be made to community nursing providers and approved providers of Veterans' Home Care Program so their cost of coordinating and managing care for eligible veterans would be partly covered. This will

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].

ensure that eligible veterans can continue to receive the care they are entitled to under the Principal Instrument.

Even though the Instrument operates retrospectively, it does not impose any liability on a person but allows past events to be taken in account in assessing the payments for the providers.

Conclusion

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

Repatriation Commission
Rule-Maker