

REPATRIATION MEDICAL AUTHORITY

INSTRUMENT NO. 40 of 2007

VETERANS' ENTITLEMENTS ACT 1986
MILITARY REHABILITATION AND COMPENSATION ACT 2004

EXPLANATORY NOTES FOR TABLING

1. The Repatriation Medical Authority ('the Authority'), under subsection 196B(8) of the *Veterans' Entitlements Act 1986* ('the VEA') revokes Instrument No. 131 of 1996, as amended by Instrument No. 93 of 1997, determined under subsection 196B(3) of the VEA concerning **intervertebral disc prolapse** and **death from intervertebral disc prolapse**.
2. The Authority is of the view that on the sound medical-scientific evidence available it is more probable than not that **intervertebral disc prolapse** and **death from intervertebral disc prolapse** can be related to particular kinds of service. The Authority has therefore determined pursuant to subsection 196B(3) of the VEA a Statement of Principles, Instrument No. 40 of 2007 concerning **intervertebral disc prolapse**. This Instrument will in effect replace the revoked Statements of Principles.
3. The provisions of the *Military Rehabilitation and Compensation Act 2004* ('the MRCA') relating to claims for compensation commenced on 1 July 2004. Claims under section 319 of the MRCA for acceptance of liability for a service injury sustained, a service disease contracted or service death on or after 1 July 2004 are determined by the Military Rehabilitation and Compensation Commission by reference to Statements of Principles issued by the Authority pursuant to the VEA.
4. The Statement of Principles sets out the factors that must exist, and which of those factors must be related to the following kinds of service rendered by a person:
 - eligible war service (other than operational service) under the VEA;
 - defence service (other than hazardous service) under the VEA;
 - peacetime service under the MRCA,before it can be said that, on the balance of probabilities, **intervertebral disc prolapse** or **death from intervertebral disc prolapse** is connected with the circumstances of that service.
5. This new instrument results from an investigation notified by the Authority in the Government Notices Gazette of 23 June 2004 concerning **intervertebral disc**

prolapse in accordance with section 196G of the Act. The investigation involved an examination of the sound medical-scientific evidence now available to the Authority, including the sound medical-scientific evidence it has previously considered.

6. The contents of the new Instrument are in similar terms as the revoked Instruments. Comparing the new and the revoked Instruments, the differences include:
 - adopting the latest revised Instrument format, which commenced in 2005;
 - deleting the ICD code from the Instrument header;
 - revising the definition of 'intervertebral disc prolapse' in clause 3;
 - revising factors 6(a) & 6(h) concerning 'trauma to the relevant disc'. This factor now includes G force-induced trauma;
 - revising factors 6(c) & 6(j) concerning 'carrying and lifting';
 - revising factors 6(d) & 6(k) concerning 'driving and flying';
 - revising factors 6(f) & 6(m) concerning 'smoking';
 - new factors 6(b) & 6(i) concerning 'a penetrating injury';
 - new factors 6(e)(i) & 6(l)(i) concerning 'industrial tools';
 - new factors 6(e)(ii) & 6(l)(ii) concerning 'high performance aircraft';
 - new factors 6(g) & 6(n) concerning 'bacterial infection';
 - deleting factors concerning 'fracture of the endplate of the adjacent vertebral body';
 - revising the definitions of 'penetrating injury to the relevant disc or adjacent vertebral body'; 'relevant service' and 'trauma to the relevant disc' in clause 9;
 - including new definitions of 'cigarettes per day, or the equivalent thereof in other tobacco products'; 'death from intervertebral disc prolapse'; 'G force'; 'high performance aircraft'; 'ICD-10-AM code'; 'Load-Factor' and 'terminal event' in clause 9;
 - deleting the definitions of 'an environment of high positive G forces'; 'ICD code' and 'pack year' in clause 9; and
 - specifying a date of effect for the Instrument in clause 11.
7. Further changes to the format of the Instrument reflect the commencement of the MRCA and clarify that pursuant to subsection 196B(3A) of the VEA, the Statement of Principles has been determined for the purposes of both the VEA and the MRCA.
8. Prior to determining this instrument, the Authority advertised its intention to undertake an investigation in relation to intervertebral disc prolapse in the Government Notices Gazette of 23 June 2004, and circulated a copy of the notice of intention to investigate to a wide range of organisations representing veterans, service personnel and their dependants. The Authority invited submissions from the Repatriation Commission, organisations and persons referred to in section 196E of the VEA, and any person having expertise in the field.
9. Following the commencement of the MRCA, the Authority published a "Further Notice of Investigations" in the Government Notices Gazette of 14 July 2004,

extending the closing date for submissions in relation to the above mentioned investigation until 10 September 2004. The Authority again invited submissions from the Repatriation Commission, organisations and persons referred to in section 196E of the VEA (who include persons eligible to make a claim under the MRCA), as well as the Military Rehabilitation and Compensation Commission and any person having expertise in the field. A total of six submissions were received for consideration by the Authority during the course of the investigation process.

10. On 20 December 2006, the Authority wrote to organisations representing veterans, service personnel and their dependants regarding the proposed Instrument and the medical-scientific material considered by the Authority. This letter emphasised the deletion of factors relating to *fracture*. The Authority provided an opportunity to the organisations to make representations in relation to the proposed instrument prior to its determination. One submission was received in response to the proposed Instrument for consideration by the Authority.
11. The determining of this new instrument finalises the investigation in relation to **intervertebral disc prolapse** as advertised in the Government Notices Gazette of 23 June 2004.
12. A list of references relating to the above condition is available, on written request, from the Repatriation Medical Authority Secretariat.