Australian Government
Repatriation Medical Authority

REPATRIATION MEDICAL AUTHORITY

INSTRUMENT NO. 38 of 2012

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. 10 of 2003, as amended by Instrument No. 30 of 2003, determined under subsection 196B(3) of the VEA concerning **carotid arterial disease**.

2. The Authority is of the view that on the sound medical-scientific evidence available it is more probable than not that **carotid arterial disease** and **death from carotid arterial disease** 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. 38 of 2012 concerning carotid arterial disease. 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 and British nuclear test defence service) under the VEA;
   - peacetime service under the MRCA,

   before it can be said that, on the balance of probabilities, carotid arterial disease or death from carotid arterial disease is connected with the circumstances of that service.

5. This Instrument results from an investigation notified by the Authority in the Government Notices Gazette of 14 January 2009 concerning carotid arterial disease in accordance with section 196G of the VEA. 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 this Instrument are in similar terms as the revoked Instruments. Comparing this Instrument and the revoked Instruments, the differences include:

- adopting the latest revised Instrument format, which commenced in 2005;
- revising the definition of 'carotid arterial disease' in clause 3;
- revising factors 6(a) & 6(p) concerning 'hypertension';
- revising factors 6(b) & 6(q) concerning 'dyslipidaemia';
- revising factors 6(c) & 6(r) concerning 'diabetes mellitus';
- revising factors 6(e) & 6(t) concerning 'trauma' for dissection of the common, internal or external carotid artery only;
- revising factors 6(f)(i) & 6(u)(i) concerning 'trauma' for aneurysm of the common, internal or external carotid artery only;
- new factors 6(f)(ii) & 6(u)(ii) concerning 'therapy with BCG vaccine' for aneurysm of the common, internal or external carotid artery only;
- revising factors 6(g) & 6(v) concerning 'therapeutic radiation';
- new factors 6(h) & 6(w) concerning 'ionising radiation';
- revising factors 6(i) & 6(x) concerning 'hyperhomocysteinaemia';
- revising factors 6(j) & 6(y) concerning 'infective or noninfective vasculitis';
- revising factors 6(k) & 6(z) concerning 'a disorder from the specified list';
- new factors 6(l) & 6(aa) concerning 'chronic renal disease';
- new factors 6(m) & 6(bb) concerning 'a neoplasm';
- new factors 6(n) & 6(cc) concerning 'using a drug' for aneurysm or dissection of the common or internal carotid artery only;
- new factors 6(o) & 6(dd) concerning 'being within the one month postpartum' for dissection of the internal carotid artery only;
- new definitions of 'a disorder from the specified list', 'a drug from the specified list', 'chronic renal disease', 'cumulative equivalent dose', 'cystic medial necrosis', 'Ehlers-Danlos type IV syndrome', 'hyperhomocysteinaemia' and 'undergoing therapy with BCG vaccine' in clause 9;
- revising the definitions of 'dyslipidaemia', 'ICD-10-AM code', 'pack-years of cigarettes, or the equivalent thereof in other tobacco products', 'relevant service', 'trauma to the affected segment of the artery' and 'trauma to the neck or the base of the skull' in clause 9;
- deleting the definitions of 'a course of therapeutic radiation', 'connective tissue disorder' and 'hyperhomocystinaemia'; 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 carotid arterial disease in the Government Notices Gazette of 14 January 2009, 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. No submissions were received for consideration by the Authority during the investigation.

9. This 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)*. A Statement of Compatibility with Human Rights follows.

10. The determining of this Instrument finalises the investigation in relation to carotid arterial disease as advertised in the Government Notices Gazette of 14 January 2009.

11. A list of references relating to the above condition is available to any person or organisation referred to in subsection 196E(1)(a) to (c) of the VEA. Any such request must be made in writing to the Repatriation Medical Authority at the following address:

The Registrar
Repatriation Medical Authority
GPO Box 1014
BRISBANE QLD 4001

Australian Government

Repatriation Medical Authority

Statement of Compatibility with Human Rights

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

Instrument No: **Statement of Principles No. 38 of 2012**

Kind of Injury Disease or Death: **Carotid Arterial Disease**

This 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*.

Overview of the Legislative Instrument

1. This Legislative Instrument is determined pursuant to subsection 196B(8) of the *Veterans' Entitlements Act 1986* (VEA).

2. The purposes of the VEA include:

- the rehabilitation of disabled persons (Article 26 of the *Convention on the Rights of Persons with Disabilities 2006);* and
- the right to the enjoyment of the highest attainable standard of physical and mental health (article 12(1) *International Covenant on Economic, Social and Cultural Rights 1966*).

3. This Legislative Instrument:-

- facilitates claimants in making, and the Repatriation Commission in assessing, claims under the VEA, by specifying the circumstances in which medical treatment and compensation can be extended to eligible persons who have carotid arterial disease;
- outlines the factors which the current sound medical-scientific evidence indicates must exist before it can be said that, on the balance of probabilities, carotid arterial disease is connected with the circumstances of eligible service rendered by a person, as set out in clause 4 of the Explanatory Notes;
- replaces Instrument No. 10 of 2003, as amended by Instrument No. 30 of 2003; and

- reflects developments in the available sound medical-scientific evidence concerning carotid arterial disease which have occurred since that earlier instrument was determined.

4. The Instrument is assessed as being a technical instrument which improves the medico-scientific quality of outcomes under the VEA.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Repatriation Medical Authority