



**Australian Government**  
**Repatriation Medical Authority**

**REPATRIATION MEDICAL AUTHORITY**

**INSTRUMENT NO. 37 of 2014**

***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. 30 of 2004, determined under subsection 196B(2) of the VEA concerning **chronic bronchitis and emphysema**.
2. The Authority is of the view that there is sound medical-scientific evidence that indicates that **chronic obstructive pulmonary disease** and **death from chronic obstructive pulmonary disease** can be related to particular kinds of service. The Authority has therefore determined pursuant to subsection 196B(2) of the VEA a Statement of Principles, Instrument No. 37 of 2014 concerning chronic obstructive pulmonary disease. This Instrument will in effect replace the revoked Statement 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 as a minimum exist, and which of those factors must be related to the following kinds of service rendered by a person:
  - operational service under the VEA;
  - peacekeeping service under the VEA;
  - hazardous service under the VEA;
  - British nuclear test defence service under the VEA;
  - warlike service under the MRCA;
  - non-warlike service under the MRCA,before it can be said that a reasonable hypothesis has been raised connecting chronic obstructive pulmonary disease or death from chronic obstructive pulmonary disease, with the circumstances of that service.
5. This Instrument results from an investigation notified by the Authority in the Government Notices Gazette of 18 May 2011 concerning chronic bronchitis and

emphysema 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 Instrument. Comparing this Instrument and the revoked Instrument, the differences include:
  - adopting the latest revised Instrument format, which commenced in 2005;
  - changing the name of the Instrument to 'chronic obstructive pulmonary disease';
  - new definition of 'chronic obstructive pulmonary disease' in clause 3;
  - revising factors 6(a) & 6(j) concerning 'smoking';
  - revising factors 6(b) & 6(k) concerning 'a respiratory tract irritant';
  - revising factors 6(c) & 6(l) concerning 'smoke from the combustion of wood, charcoal, coal or other biomass or fossil fuel';
  - revising factors 6(d) & 6(m) concerning 'visible tobacco smoke haze';
  - new factors 6(e) & 6(n) concerning 'cannabis';
  - new factors 6(f) & 6(o) concerning 'vapour, gas, dust or fumes of a substance from the specified list in an enclosed space';
  - new factors 6(g) & 6(p) concerning 'vapour, gas, dust or fumes of a substance from the specified list, or smoke from fire, in an open environment';
  - new factors 6(h) & 6(q) concerning 'ambient polluted air';
  - new factors 6(i) & 6(r) concerning 'human immunodeficiency virus';
  - deleting the factors concerning 'respirable crystalline silica dust' as they are now covered by factors 6(f) & 6(o) concerning 'vapour, gas, dust or fumes of a substance from the specified list in an enclosed space' and factors 6(g) & 6(p) concerning 'vapour, gas, dust or fumes of a substance from the specified list, or smoke from fire, in an open environment';
  - new definitions of 'a respiratory tract irritant from the specified list', 'a substance from the specified list', 'ambient polluted air', 'death from chronic obstructive pulmonary disease' and 'joint-years of cannabis' in clause 9;
  - revising the definitions of 'pack-years of cigarettes, or the equivalent thereof in other tobacco products' and 'relevant service' in clause 9;
  - deleting the definitions of 'an enclosed space', 'a respiratory tract irritant', 'death from chronic bronchitis and/or emphysema' and 'never-smoker'; 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 chronic bronchitis and emphysema in the Government Notices Gazette of 18 May 2011, 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. One submission was 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 chronic bronchitis and emphysema as advertised in the Government Notices Gazette of 18 May 2011.
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. 37 of 2014**

**Kind of Injury, Disease or Death:** **Chronic obstructive pulmonary 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* (the VEA) for the purposes of the VEA and the *Military Rehabilitation and Compensation Act 2004* (the MRCA).
2. This Legislative Instrument:-
  - facilitates claimants in making, and the Repatriation Commission in assessing, claims under the VEA and the MRCA respectively, by specifying the circumstances in which medical treatment and compensation can be extended to eligible persons who have chronic obstructive pulmonary disease;
  - facilitates the review of such decisions by the Veterans' Review Board and the Administrative Appeals Tribunal;
  - outlines the factors which the current sound medical-scientific evidence indicates must as a minimum exist, before it can be said that a reasonable hypothesis has been raised, connecting chronic obstructive pulmonary disease with the circumstances of eligible service rendered by a person, as set out in clause 4 of the Explanatory Notes;
  - replaces Instrument No. 30 of 2004; and
  - reflects developments in the available sound medical-scientific evidence concerning chronic obstructive pulmonary disease which have occurred since that earlier instrument was determined.

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

### **Human Rights Implications**

4. This Legislative Instrument does not derogate from any human rights. It promotes the human rights of veterans, current and former Defence Force members as well as other persons such as their dependents, including:
  - the right to social security (Art 9, *International Covenant on Economic, Social and Cultural Rights*; Art 26, *Convention on the Rights of the Child* and Art 28, *Convention on the Rights of Persons with Disabilities*) by helping to ensure that the qualifying conditions for the benefit are 'reasonable, proportionate and transparent'<sup>1</sup>;
  - the right to an adequate standard of living (Art 11, ICSECR; Art 27, CRC and Art 28, CRPD) by facilitating the assessment and determination of social security benefits;
  - the right to the enjoyment of the highest attainable standard of physical and mental health (Art 12, ICSECR and Art 25, CRPD), by facilitating the assessment and determination of compensation and benefits in relation to the treatment and rehabilitation of veterans and Defence Force members; and
  - the rights of persons with disabilities by facilitating the determination of claims relating to treatment and rehabilitation (Art 26, CRPD).

### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not derogate from and promotes a number of human rights.

Repatriation Medical Authority

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<sup>1</sup> In General Comment No. 19 (The right to social security), the Committee on Economic, Social and Cultural Rights said (at paragraph 24) this to be one of the elements of ensuring accessibility to social security.