



Australian Government
Repatriation Medical Authority

REPATRIATION MEDICAL AUTHORITY

INSTRUMENT NO. 2 of 2016

VETERANS' ENTITLEMENTS ACT 1986
MILITARY REHABILITATION AND COMPENSATION ACT 2004

EXPLANATORY STATEMENT

1. The Repatriation Medical Authority (the Authority), under subsection 196B(8) of the *Veterans' Entitlements Act 1986* (the VEA), revokes Instrument No. 90 of 2007, as amended, determined under subsections 196B(3) and (8) of the VEA concerning **ischaemic heart disease**.
2. The Authority is of the view that there is sound medical-scientific evidence that indicates that **ischaemic heart disease** and **death from ischaemic heart 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 concerning **ischaemic heart disease** (Balance of Probabilities) (No. 2 of 2016). This Instrument will in effect replace the revoked Statement of Principles.

Purpose and Operation

3. The Statement of Principles will be applied in determining claims under the VEA and the *Military Rehabilitation and Compensation Act 2004* (the MRCA).
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, ischaemic heart disease or death from ischaemic heart disease is connected with the circumstances of that service. The Statement of Principles has been determined for the purposes of both the VEA and the MRCA.

5. This Instrument results from an investigation notified by the Authority in the Government Notices Gazette of 31 October 2012 concerning ischaemic heart 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 Instrument. Comparing this Instrument and the revoked Instrument, the differences include:

- adopting the latest revised Instrument format, which commenced in 2015;
- specifying a day of commencement for the Instrument in section 2;
- revising the definition of 'ischaemic heart disease' in subsection 7(2);
- revising the reference to 'ICD-10-AM code' in subsection 7(4);
- revising the factors in subsections 9(5) & 9(38) concerning 'smoking', where smoking has not ceased;
- revising the factors in subsections 9(6) & 9(39) concerning 'smoking', where smoking has ceased;
- new factors in subsections 9(7) & 9(40) concerning 'exposure to second-hand smoke', where exposure to second-hand smoke has not ceased;
- new factors in subsections 9(8) & 9(41) concerning 'exposure to second-hand smoke', where exposure to second-hand smoke has ceased;
- new factors in subsections 9(9) & 9(42) concerning 'chewing tobacco', where use of chewing tobacco has not ceased;
- new factors in subsections 9(10) & 9(43) concerning 'chewing tobacco', where use of chewing tobacco has ceased;
- revising the factors in subsections 9(11) & 9(44) concerning 'inability to undertake physical activity';
- new factors in subsections 9(12) & 9(45) concerning 'being sedentary';
- revising the factors in subsections 9(13) & 9(46) concerning 'chronic kidney disease';
- revising the factors in subsections 9(14) & 9(47) concerning 'hypothyroidism or Hashimoto's thyroiditis with hypothyroidism';
- new factors in subsections 9(15) & 9(48) concerning 'ionising radiation';
- revising the factors in subsections 9(16) & 9(49) concerning 'therapeutic radiation';
- new factors in subsections 9(17) & 9(50) concerning 'a clinically significant disorder of mental health';
- new factors in subsections 9(18) & 9(51) concerning 'a combined oral contraceptive pill';
- new factors in subsections 9(19) & 9(52) concerning 'a drug, or a drug from a class of drugs, from Specified List 1 of drugs';
- revising the factors in subsections 9(20) & 9(53) concerning 'a drug belonging to the non-steroidal anti-inflammatory class of drugs';
- new factors in subsections 9(21) & 9(54) concerning 'bilateral orchiectomy';
- new factors in subsections 9(22) & 9(55) concerning 'antiandrogen therapy';
- new factors in subsections 9(23) & 9(56) concerning 'thrombosis of a coronary artery as a result of being in a hypercoagulable state';
- new factors in subsections 9(24) & 9(57) concerning 'ambient chronically polluted air';
- new factors in subsections 9(25) & 9(58) concerning 'inability to consume an average of at least 100 grams per day of vegetables or fruits';
- new factors in subsections 9(26) & 9(59) concerning 'inability to consume an average of at least 100 grams of fish per fortnight';
- new factors in subsections 9(27) & 9(60) concerning 'inability to sleep';
- new factors in subsections 9(28) & 9(61) concerning 'human immunodeficiency virus';
- new factors in subsections 9(29) & 9(62) concerning 'periodontitis';

- new factors in subsections 9(30) & 9(63) concerning 'infective endocarditis or syphilis';
- new factors in subsections 9(31) & 9(64) concerning 'a procedure involving catheterisation of the affected coronary artery';
- new factors in subsections 9(32) & 9(65) concerning 'a specified autoimmune collagen vascular disease';
- adding the factor in subsection 9(33)(a) concerning 'undertaking physical activity of six METs or more' as a cause of angina, in addition to acute myocardial infarction or sudden death from ischaemic heart disease only;
- revising the factor in subsection 9(33)(b) concerning 'a category 1A stressor', for angina, acute myocardial infarction or sudden death from ischaemic heart disease only;
- revising the factor in subsection 9(33)(c) concerning 'a category 1B stressor', for angina, acute myocardial infarction or sudden death from ischaemic heart disease only;
- new factor in subsection 9(33)(d) concerning 'an acute, severe, emotional stressor', for angina, acute myocardial infarction or sudden death from ischaemic heart disease only;
- new factor in subsection 9(33)(f) concerning 'a drug from Specified List 2 of drugs', for angina, acute myocardial infarction or sudden death from ischaemic heart disease only;
- revising the factor in subsection 9(33)(g) concerning 'acute cholinergic poisoning from exposure to an organophosphorus ester', and adding for angina and sudden death from ischaemic heart disease, in addition to acute myocardial infarction only;
- new factor in subsection 9(33)(h) concerning 'being exposed to extreme heat, extreme cold or an abrupt alteration of temperature', for angina, acute myocardial infarction or sudden death from ischaemic heart disease only;
- new factor in subsection 9(33)(i) concerning 'ambient highly polluted air', for angina, acute myocardial infarction or sudden death from ischaemic heart disease only;
- new factor in subsection 9(33)(j) concerning 'being envenomated', for angina, acute myocardial infarction or sudden death from ischaemic heart disease only;
- new factor in subsection 9(33)(k) concerning 'an acute hypersensitivity reaction', for angina, acute myocardial infarction or sudden death from ischaemic heart disease only;
- new factor in subsection 9(33)(l) concerning 'influenza or a lower respiratory tract infection', for angina, acute myocardial infarction or sudden death from ischaemic heart disease only;
- new factor in subsection 9(33)(m) concerning 'being pregnant', for angina, acute myocardial infarction or sudden death from ischaemic heart disease only;
- removing the factor in subsection 9(66)(b) concerning 'a category 1A stressor' as a cause of angina, while the factor remains as a cause of acute myocardial infarction or sudden death from ischaemic heart disease only;
- removing the factor in subsection 9(66)(c) concerning 'a category 1B stressor' as a cause of angina, while the factor remains as a cause of acute myocardial infarction or sudden death from ischaemic heart disease only;

- new factor in subsection 9(66)(d) concerning 'an acute, severe, emotional stressor', for acute myocardial infarction or sudden death from ischaemic heart disease only;
- removing the factor in subsection 9(66)(e) concerning 'the death of a significant other' as a cause of angina, while the factor remains as a cause of acute myocardial infarction or sudden death from ischaemic heart disease only;
- new factor in subsection 9(66)(f) concerning 'a drug from Specified List 2 of drugs', for acute myocardial infarction or sudden death from ischaemic heart disease only;
- revising the factor in subsection 9(66)(g) concerning 'acute cholinergic poisoning from exposure to an organophosphorus ester', and adding for sudden death from ischaemic heart disease, in addition to acute myocardial infarction only;
- new factor in subsection 9(66)(h) concerning 'being exposed to extreme heat, extreme cold or an abrupt alteration of temperature', for acute myocardial infarction or sudden death from ischaemic heart disease only;
- new factor in subsection 9(66)(i) concerning 'ambient highly polluted air', for acute myocardial infarction or sudden death from ischaemic heart disease only;
- new factor in subsection 9(66)(j) concerning 'being envenomated', for acute myocardial infarction or sudden death from ischaemic heart disease only;
- new factor in subsection 9(66)(k) concerning 'an acute hypersensitivity reaction', for acute myocardial infarction or sudden death from ischaemic heart disease only;
- new factor in subsection 9(66)(l) concerning 'influenza or a lower respiratory tract infection', for acute myocardial infarction or sudden death from ischaemic heart disease only;
- new factor in subsection 9(66)(m) concerning 'being pregnant', for acute myocardial infarction or sudden death from ischaemic heart disease only;
- deleting the factors concerning 'waist to hip circumference ratio' as they are now covered by factors in subsections 9(3) & 9(36) concerning 'being obese';
- deleting the factors concerning 'a visible tobacco smoke haze' as they are now covered by factors in subsections 9(7), 9(8), 9(40) & 9(41) concerning 'second-hand smoke';
- deleting the factors concerning 'clinically significant depressive disorder' and 'a clinically significant anxiety spectrum disorder' as they are now covered by factors in subsections 9(17) & 9(50) concerning 'a clinically significant disorder of mental health';
- new definitions of 'acute, severe, emotional stressor', 'ambient chronically polluted air as specified', 'ambient highly polluted air as specified', 'amphetamines as specified', 'being exposed to second-hand smoke', 'being sedentary', 'BMI', 'chronic kidney disease', 'clinically significant disorder of mental health as specified', 'cold snap', 'cumulative equivalent dose', 'drug, food or environmental agent from the specified list', 'extreme cold', 'extreme heat', 'heatwave', 'hypercoagulable state as specified', 'MRCA', 'specified autoimmune collagen vascular disease', 'Specified List 1 of drugs', 'Specified List 2 of drugs' and 'VEA' in Schedule 1 - Dictionary;

- revising the definitions of 'being obese', 'category 1A stressor', 'dyslipidaemia', 'pack-year of cigarettes, or the equivalent thereof in other tobacco products' and 'relevant service' in Schedule 1 - Dictionary; and
- deleting the definitions of 'a clinically significant anxiety spectrum disorder as specified', 'a course of therapeutic radiation', 'chronic renal disease', 'clinically significant', 'DSM-IV-TR', 'hypothyroidism', 'pack-years of cigarettes, or the equivalent thereof in other tobacco products', 'panic attack' and 'phobic anxiety'.

Consultation

7. Prior to determining this Instrument, the Authority advertised its intention to undertake an investigation in relation to ischaemic heart disease in the Government Notices Gazette of 31 October 2012, 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. Five submissions were received for consideration by the Authority during the investigation.

Human Rights

8. 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.

Finalisation of Investigation

9. The determining of this Instrument finalises the investigation in relation to ischaemic heart disease as advertised in the Government Notices Gazette of 31 October 2012.

References

10. 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. 2 of 2016**

Kind of Injury, Disease or Death: **Ischaemic heart 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). Part XIA of the VEA requires the determination of these instruments outlining the factors linking particular kinds of injury, disease or death with service such being determined solely on the available sound medical-scientific evidence.
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 ischaemic heart 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 exist before it can be said that, on the balance of probabilities, ischaemic heart disease is connected with the circumstances of eligible service rendered by a person, as set out in clause 4 of the Explanatory Statement;
 - replaces Instrument No. 90 of 2007, as amended; and
 - reflects developments in the available sound medical-scientific evidence concerning ischaemic heart 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'¹;
- 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;
- the rights of persons with disabilities by facilitating the determination of claims relating to treatment and rehabilitation (Art 26, CRPD); and
- ensuring that those rights "will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (Art 2, ICESCR).

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

¹ 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.