



Australian Government
Repatriation Medical Authority

EXPLANATORY STATEMENT

**VETERANS' ENTITLEMENTS (REPEAL OF EXPIRED AMENDMENT
STATEMENTS OF PRINCIPLES) DETERMINATION 2018
(NO. 52 OF 2018)**

VETERANS' ENTITLEMENTS ACT 1986
MILITARY REHABILITATION AND COMPENSATION ACT 2004

1. This is the Explanatory Statement to the *Veterans' Entitlements (Repeal of Expired Amendment Statements of Principles) Determination 2018* (No. 52 of 2018).

Background

2. The Repatriation Medical Authority (the Authority) has determined, under section 196B of the *Veterans' Entitlements Act 1986* (the VEA), the *Veterans' Entitlements (Repeal of Expired Amendment Statements of Principles) Determination 2018* (No. 52 of 2018) (the "Instrument").
3. This Instrument repeals the various Amendment Statements of Principles referred to in *Schedule 1- Expired Amendment Statements of Principles* to the Instrument.
4. Each Amendment Statement of Principles referred to in Schedule 1 deals with a particular kind of injury, disease or death and the only legal effect of the substantive provisions of each of them was to amend the existing Statement of Principles dealing with that particular kind of injury, disease or death.
5. However, those Amendment Statements of Principles each contained an application provision which prevented their repeal pursuant to section 48A of the *Legislation Act 2003*. In each case the application provision only provided for the amendment to operate consistent with the terms of the existing Statement of Principles dealing with that particular kind of injury, disease or death.
6. By operation of section 48C of the *Legislation Act 2003* the substantive provisions of each Amendment Statements of Principles were themselves repealed upon commencement.
7. The effect was to leave extant on the Federal Register of Legislation legislative instruments that have no legal effect.
8. As the Statements of Principles are used to facilitate claimants in making, and the Repatriation Commission in assessing, claims under the VEA and the *Military Rehabilitation and Compensation Act 2004* (the MRCA) respectively, the existence of these otherwise expired instruments on the Federal Register of Legislation had the capacity to confuse those parties and frustrate the making of such decisions. The Authority therefore determined this Instrument to remove the Amendment Statements of Principles referred to in Schedule 1 from the Register.

Day of Commencement

9. This Instrument also specifies a day of commencement for the Instrument in accordance with subsection 12(3) of the *Legislation Act 2003*.

Consultation

10. Prior to determining this Instrument, the Authority consulted with the Office of Parliamentary Counsel concerning the matter.

Human Rights

11. 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.



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Statement of Compatibility with Human Rights

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

Instrument No.:	Veterans' Entitlements (Repeal of Expired Amendment Statements of Principles) Determination 2018 (No. 52 of 2018).
Kind of Injury, Disease or Death:	Each kind the subject of a Statement of Principles referred to in Schedule 1- Expired Amendment Statements of Principles.

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 section 196B 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:-
 - Repeals expired Amendment Statements of Principles and corrects the Federal Register of Legislation; and thereby
 - 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 the particular kinds of injury, disease or death referred to in the various Statements of Principles referred to in the Schedule 1 - Expired Amendment Statements of Principles to this Instrument; and
 - facilitates the review of such decisions by the Veterans' Review Board and the Administrative Appeals Tribunal.
3. The Instrument is assessed as being a technical instrument necessary to ensure the integrity of the Federal Register of Legislation.

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.

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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.