



Australian Government
Repatriation Medical Authority

EXPLANATORY STATEMENT

**AMENDMENT STATEMENT OF PRINCIPLES CONCERNING
LOCALISED SCLEROSIS
(BALANCE OF PROBABILITIES) (NO. 16 OF 2019)**

VETERANS' ENTITLEMENTS ACT 1986
MILITARY REHABILITATION AND COMPENSATION ACT 2004

1. This is the Explanatory Statement to the *Amendment Statement of Principles concerning localised sclerosis (Balance of Probabilities)* (No. 16 of 2019).

Background

2. The Repatriation Medical Authority (the Authority) has determined, under subsections 196B(3) and (8) of the *Veterans' Entitlements Act 1986* (the VEA) Amendment Statement of Principles concerning **localised sclerosis** (Balance of Probabilities) (No. 16 of 2019).
3. This Instrument amends Statement of Principles concerning **localised sclerosis** (Balance of Probabilities) (No. 62 of 2018) (Federal Register of Legislation No. F2018L00884), by:
 - amending the existing factors in subsections 9(1) & 9(3) concerning 'being treated with a drug or a drug from a class of drugs', by replacing "systemic sclerosis" with "localised sclerosis".
4. The Authority has become aware that the principal instrument contains a typographical error in the factors in subsections 9(1) and 9(3) where those factors refer to "systemic sclerosis" when "localised sclerosis" was intended, being the subject of the Statement of Principles. The Authority has therefore amended Statement of Principles concerning **localised sclerosis** (Balance of Probabilities) (No. 62 of 2018) to ensure that the Statement of Principles accords with the decision taken by the Authority. This amendment ensures no adverse effect upon the rights of a person by correcting this typographical error.

Day of Commencement

5. In accordance with subsections 12(1A) and 12(2) of the *Legislation Act 2003* the day of commencement will be 23 July 2018, the day of commencement of Statement of Principles concerning **localised sclerosis** (Balance of Probabilities) (No. 62 of 2018).
6. This earlier commencement date is necessary to ensure that the error in the Instrument does not disadvantage claimants.

Consultation

7. Prior to determining Statement of Principles concerning **localised sclerosis** (Balance of Probabilities) (No. 62 of 2018), the Authority advertised its intention to undertake

an investigation in relation to localised sclerosis in the Government Notices Gazette of 19 October 2016, in accordance with section 196G of the VEA, 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.

8. On 13 February 2018 and 11 May 2018, 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. These correspondence emphasised the deletion of factors relating to *silica dust*, *chronic graft versus host disease*, *trichloroethylene* and *gaseous vinyl chloride*. The Authority provided an opportunity to the organisations to make representations in relation to the proposed Instrument prior to its determination. No submissions were received for consideration by the Authority. No changes were made to the proposed Instrument following this consultation process.
9. 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. The investigation resulted in the determination of Statement of Principles concerning **localised sclerosis** (Balance of Probabilities) (No. 62 of 2018).
10. No consultation was undertaken by the Authority prior to determining this Instrument as it is solely necessary to correct a typographical error in the subject of two factors in the Statement of Principles concerning **localised sclerosis** (Balance of Probabilities) (No. 62 of 2018).

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.

References

12. 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.: **Amendment Statement of Principles No. 16 of 2019**

Kind of Injury, Disease or Death: **Localised sclerosis**

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:-
 - amends the previously registered Statement of Principles concerning localised sclerosis (Balance of Probabilities) (No. 62 of 2018) to correct a typographical error in the subject of two factors in the Statement of Principles;
 - will have the same day of commencement as the existing registered Statement of Principles concerning localised sclerosis (Balance of Probabilities) (No. 62 of 2018);
 - 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 localised sclerosis;
 - facilitates the review of such decisions by the Veterans' Review Board and the Administrative Appeals Tribunal; and
 - ensures that the factors which the current sound medical-scientific evidence indicates must exist before it can be said that, on the balance of probabilities, localised sclerosis is connected with the circumstances of eligible service rendered by a person, accord with that sound medical-scientific evidence.
3. The Instrument is assessed as being a technical instrument which improves the medico-scientific quality of outcomes under the VEA and the MRCA and ensures that the Statement of Principles concerning localised sclerosis (Balance of Probabilities) (No. 62 of 2018) accords with the decision of the Authority.

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.