



Australian Government
Repatriation Medical Authority

EXPLANATORY STATEMENT

**AMENDMENT STATEMENT OF PRINCIPLES CONCERNING
MORBID OBESITY
NO. 76 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 morbid obesity* No. 76 of 2019.

Background

2. The Repatriation Medical Authority (the Authority) has determined, under subsections 196B(8) of the *Veterans' Entitlements Act 1986* (the VEA) Amendment Statement of Principles concerning **morbid obesity** No. 76 of 2019.
3. This Instrument amends Statement of Principles concerning **morbid obesity** No. 6 of 2014) (Federal Register of Legislation No. F2014L00022) by:
 - replacing the definition of 'morbid obesity' in clause 3(b); and
 - revising the existing definition of 'BMI' in clause 9.

Day of Commencement

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

Incorporation

5. This Instrument incorporates at paragraph 3(b) a reference to the 2007 *World Health Organisation Body Mass Index Charts, for Age and Gender*. Those charts are set out in the National Health and Medical Research Council (2013) *Clinical Practice Guidelines for the Management of Overweight and Obesity in Adults, Adolescents and Children in Australia*, Melbourne, at pages 110 and 111. A copy of this publication is available from the offices of the Repatriation Medical Authority, Level 8, 259 Queen St, Brisbane, Queensland 4000, by contacting the Registrar on telephone (07) 3815 9404.

Consultation

6. Prior to determining this Instrument, the Authority advertised its intention to undertake an investigation in relation to morbid obesity in the Government Notices Gazette of 12 March 2019, 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, the Military Rehabilitation and Compensation 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.

Human Rights

7. 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

8. The determining of this Instrument finalises the investigation in relation to morbid obesity as advertised in the Government Notices Gazette of 12 March 2019.

References

9. 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. 76 of 2019**

Kind of Injury, Disease or Death: **Morbid obesity**

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(3) 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 connecting 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 Instrument No. 6 of 2014;
 - 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 morbid obesity and in particular, includes a revised definition which removes the requirement for the claimant to be morbidly obese at the date of claim; 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 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.