



Australian Government
Repatriation Medical Authority

EXPLANATORY STATEMENT

**STATEMENT OF PRINCIPLES CONCERNING
MULTIPLE SCLEROSIS
(REASONABLE HYPOTHESIS) (NO. 11 OF 2020)**

VETERANS' ENTITLEMENTS ACT 1986
MILITARY REHABILITATION AND COMPENSATION ACT 2004

1. This is the Explanatory Statement to the *Statement of Principles concerning **multiple sclerosis** (Reasonable Hypothesis)* (No. 11 of 2020).

Background

2. The Repatriation Medical Authority (the Authority), under subsection 196B(8) of the *Veterans' Entitlements Act 1986* (the VEA), repeals Instrument No. 100 of 2011 (Federal Register of Legislation No. F2011L01736) determined under subsections 196B(2) and (8) of the VEA concerning **multiple sclerosis**.
3. The Authority is of the view that there is sound medical-scientific evidence that indicates that **multiple sclerosis** and **death from multiple sclerosis** 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 concerning **multiple sclerosis** (Reasonable Hypothesis) (No. 11 of 2020). This Instrument will in effect replace the repealed Statement of Principles.

Purpose and Operation

4. The Statement of Principles will be applied in determining claims under the VEA and the *Military Rehabilitation and Compensation Act 2004* (the MRCA).
5. 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 multiple sclerosis or death from multiple sclerosis, with the circumstances of that service. The Statement of Principles has been determined for the purposes of both the VEA and the MRCA.

6. This Instrument results from an investigation notified by the Authority in the Government Notices Gazette of 6 November 2018 concerning multiple sclerosis 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.

7. The contents of this Instrument are in similar terms as the repealed Instrument. Comparing this Instrument and the repealed 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 'multiple sclerosis' in subsection 7(2);
- revising the reference to 'ICD-10-AM code' in subsection 7(4);
- new factor in subsection 9(1) concerning having acute infectious mononucleosis;
- revising the factors in subsections 9(2) & 9(12) concerning smoking, with the inclusion of a note;
- new factors in subsections 9(3) & 9(13) concerning being exposed to second-hand smoke;
- revising the factor in subsection 9(4) concerning an organic solvent;
- new factor in subsection 9(6) concerning an inability to meet the specified sunlight exposure levels;
- revising the factor in subsection 9(7) concerning having vitamin D deficiency;
- new factors in subsections 9(8) & 9(16) concerning undergoing a course of treatment with an immune checkpoint inhibitor;
- new factor in subsection 9(9) concerning being overweight, for clinical onset only;
- new factor in subsection 9(10) concerning having type 1 diabetes mellitus, for clinical onset only;
- new factor in subsection 9(14) concerning undergoing a course of treatment with a tumour necrosis factor alpha antagonist, for clinical worsening;
- new factor in subsection 9(15) concerning undergoing a course of treatment with granulocyte colony-stimulating factor or interferon, for clinical worsening only;
- revising the factor in subsection 9(17) concerning experiencing the death of a significant other, with the inclusion of a note;
- revising the factor in subsection 9(18) concerning experiencing a category 1A stressor, with the inclusion of a note;
- revising the factor in subsection 9(19) concerning experiencing a category 1B stressor, with the inclusion of a note;
- revising the factor in subsection 9(20) concerning experiencing a category 2 stressor, with the inclusion of two notes;
- revising the factor in subsection 9(22) concerning using hormonal assisted reproductive therapy, for women only;
- revising the factor in subsection 9(23) concerning undergoing a course of therapeutic radiation;
- revising the factor in subsection 9(24) concerning ionising radiation, with the inclusion of a note;
- new factor in subsection 9(25) concerning having dyslipidaemia, for clinical worsening only;

- deleting the factor concerning being infected with Epstein-Barr virus, as it is now covered by the factor in subsection 9(1) concerning acute infectious mononucleosis;
- deleting the factor concerning undergoing a course of treatment with a drug or a drug from a class of drugs, as it is now subsumed by the factor in subsection 9(14) concerning undergoing a course of treatment with a tumour necrosis factor alpha antagonist, and the factor in subsection 9(15) concerning undergoing a course of treatment with granulocyte colony-stimulating factor or interferon;
- deleting the factor concerning having evidence of vitamin D insufficiency as it is now covered by the factor in subsection 9(6) concerning an inability to meet the specified sunlight exposure levels, and the factor in subsection 9(7) concerning having vitamin D deficiency;
- deleting the factor concerning experiencing the death of a related child;
- deleting the factor concerning being within six months postpartum;
- new definitions of 'being exposed to second-hand smoke', 'being overweight', 'BMI', 'dyslipidaemia', 'hormonal assisted reproductive therapy', 'MRCA' and 'VEA' in Schedule 1 - Dictionary;
- revising the definitions of 'category 1A stressor', 'category 1B stressor', with the inclusion of a note, 'category 2 stressor', with the inclusion of a note, 'pack-years of cigarettes, or the equivalent thereof in other tobacco products', 'relevant service' and 'specified sunlight exposure levels' in Schedule 1 - Dictionary; and
- deleting the definitions of 'a course of therapeutic radiation', 'a drug or a drug from a class of drugs from the specified list', 'a related child', 'assisted reproductive technology', 'being infected with Epstein-Barr virus', 'having evidence of vitamin D insufficiency' and 'vitamin D deficiency'.

Incorporation

8. The definition of "cumulative equivalent dose" contained in the Schedule 1 – Dictionary incorporates the *Guide to calculation of 'cumulative equivalent dose' for the purpose of applying ionising radiation factors contained in Statements of Principles determined under Part XIA of the Veterans' Entitlements Act 1986 (Cth)*, Australian Radiation Protection and Nuclear Safety Agency, as in force on 2 August 2017. This writing is incorporated pursuant to subsection 14(b) of the *Legislation Act 2003*.
9. A copy of this document is available to any person on the website of the Repatriation Medical Authority at <http://www.rma.gov.au> or from the Repatriation Medical Authority, Level 8, 259 Queen St, Brisbane, Queensland 4000, by contacting the Registrar on telephone (07) 3815 9404.

Consultation

10. Prior to determining this Instrument, the Authority advertised its intention to undertake an investigation in relation to multiple sclerosis in the Government Notices Gazette of 6 November 2018, 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 in relation to the investigation.

11. On 4 October 2019, 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. This letter emphasised the deletion of clinical onset factors relating to *experiencing the death of a related child* and *being within six months postpartum*. 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.

Human Rights

12. 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

13. The determining of this Instrument finalises the investigation in relation to multiple sclerosis as advertised in the Government Notices Gazette of 6 November 2018.

References

14. 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. 11 of 2020**

Kind of Injury, Disease or Death: **Multiple 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(2) 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:-
 - 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 multiple sclerosis;
 - 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 multiple sclerosis with the circumstances of eligible service rendered by a person, as set out in clause 5 of the Explanatory Statement;
 - replaces Instrument No. 100 of 2011; and
 - reflects developments in the available sound medical-scientific evidence concerning multiple sclerosis 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.