



Australian Government
Repatriation Medical Authority

EXPLANATORY STATEMENT

**STATEMENT OF PRINCIPLES CONCERNING
TINNITUS
(BALANCE OF PROBABILITIES) (NO. 85 OF 2020)**

VETERANS' ENTITLEMENTS ACT 1986
MILITARY REHABILITATION AND COMPENSATION ACT 2004

1. This is the Explanatory Statement to the *Statement of Principles concerning tinnitus (Balance of Probabilities)* (No. 85 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. 34 of 2012 (Federal Register of Legislation No. F2012L00944) determined under subsections 196B(3) and (8) of the VEA concerning **tinnitus**.
3. The Authority is of the view that on the sound medical-scientific evidence available it is more probable than not that **tinnitus** and **death from tinnitus** 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 **tinnitus (Balance of Probabilities)** (No. 85 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 This Instrument will in effect replace the repealed Statement of Principles.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 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, tinnitus or death from tinnitus 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.

6. This Instrument results from an investigation notified by the Authority in the Government Notices Gazette of 29 October 2019 concerning tinnitus 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 The contents of this Instrument are in similar terms as the repealed Instrument. Comparing this Instrument and the repealed Instrument, the differences include: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 'tinnitus' in subsection 7(2);
 - revising the reference to 'ICD-10-AM code' in subsection 7(4);
 - revising the factors in subsections 9(1) and 9(33) concerning being exposed to a peak sound pressure level at the tympanic membrane of at least 140 dB(C), by the inclusion of a note;
 - revising the factors in subsections 9(2) and 9(34) concerning being exposed to a sound pressure level at the tympanic membrane of at least 85 dB(A) as an 8-hour time-weighted average (TWA) with a 3-dB exchange rate, by the inclusion of a note;
 - revising the factors in subsections 9(3) and 9(35) concerning having blunt trauma, penetrating trauma or surgery to an auditory structure or central auditory neural pathway;
 - revising the factors in subsections 9(5) and 9(37) concerning taking a drug from the specified list of drugs;
 - new factor in subsection 9(6) concerning taking a drug which is associated with particular effects in the individual, for clinical onset only;
 - new factors in subsections 9(7) and 9(38) concerning having inner ear exposure to a chemical agent from the specified list of chemical agents;
 - revising the factors in subsections 9(8) and 9(39) concerning having a vascular, muscular or other anatomical source of sound that can be transmitted to the affected ear, by the inclusion of a note;
 - new factors in subsections 9(9) and 9(40) concerning having a reduced supply of blood to an auditory structure of the affected ear;
 - new factors in subsections 9(10) and 9(41) concerning having a bone disease from the specified list of bone diseases, affecting the petrous temporal bone or middle ear ossicles of the affected side;
 - new factors in subsections 9(11) and 9(42) concerning having an autoimmune disease;
 - new factors in subsections 9(12) and 9(43) concerning having multiple sclerosis;
 - new factors in subsections 9(13) and 9(44) concerning having a benign or malignant neoplasm involving the petrous temporal bone, an auditory structure or central auditory neural pathway of the affected ear;
 - new factors in subsections 9(14) and 9(45) concerning having a haematological disease from the specified list of haematological diseases;
 - new factors in subsections 9(15) and 9(46) concerning having a cerebrovascular accident;
 - new factors in subsections 9(16) and 9(47) concerning being exposed to an explosive blast;
 - new factors in subsections 9(17) and 9(48) concerning being struck by lightning;
 - new factors in subsections 9(18) and 9(49) concerning having temporomandibular disorder;
 - new factors in subsections 9(19) and 9(50) concerning having migraine with brainstem aura (basilar migraine);

- new factors in subsections 9(20) and 9(51) concerning having Meniere's disease or delayed endolymphatic hydrops;
- new factors in subsections 9(21) and 9(52) concerning having an episode of otitic barotrauma involving the affected ear, cerebral arterial gas embolism or decompression sickness;
- revising the factors in subsections 9(22) and 9(53) concerning having acoustic shock, by the inclusion of a note;
- new factors in subsections 9(23) and 9(54) concerning having a bacterial infection from the specified list of bacterial infections;
- new factors in subsections 9(24) and 9(55) concerning having a viral infection from the specified list of viral infections;
- new factors in subsections 9(25) and 9(56) concerning having meningitis or encephalitis;
- new factors in subsections 9(26) and 9(57) concerning having neurosyphilis;
- new factors in subsections 9(27) and 9(58) concerning having tuberculosis involving the nasopharynx, meninges, temporal bone, middle ear or inner ear of the affected side;
- new factors in subsections 9(28) and 9(59) concerning having typhoid fever;
- revising the factors in subsections 9(30) and 9(61) concerning having a cobalt-containing metal-on-metal hip prosthesis, or a serum cobalt concentration of at least 200 micrograms per litre;
- deleting the factors concerning receiving a specified otological medication directly into the inner ear, in the presence of a tympanic membrane perforation, as these are now covered by the factors in subsections 9(9) and 9(47) concerning having inner ear exposure to a chemical agent from the specified list of chemical agents;
- deleting the factors concerning having a specified disease or injury involving the auditory structures or central auditory neural pathways of the affected ear, as these are now covered by the factors in:
 - subsections 9(9) and 9(40) concerning having a reduced supply of blood to an auditory structure of the affected ear;
 - subsections 9(10) and 9(41) concerning having a bone disease from the specified list of bone diseases, affecting the petrous temporal bone or middle ear ossicles of the affected side;
 - subsections 9(11) and 9(42) concerning having an autoimmune disease;
 - subsections 9(12) and 9(43) concerning having multiple sclerosis;
 - subsections 9(13) and 9(44) concerning having a benign or malignant neoplasm involving the petrous temporal bone, auditory structures or central auditory neural pathways of the affected ear;
 - subsections 9(14) and 9(45) concerning having a haematological disease from the specified list of haematological diseases;
 - subsections 9(15) and 9(46) concerning having a cerebrovascular accident;
 - subsections 9(20) and 9(51) concerning having Meniere's disease or delayed endolymphatic hydrops;
- deleting the factors concerning having cerebral arterial gas embolism or decompression sickness involving the auditory apparatus or central auditory neural pathways of the affected ear, as these are now covered by the factors in

- subsections 9(21) and 9(52) concerning having an episode of otitic barotrauma involving the affected ear, cerebral arterial gas embolism or decompression sickness;
- deleting the factors concerning having an episode of otitic barotrauma involving the affected ear, as these are now covered by the factors in subsections 9(21) and 9(52) concerning having an episode of otitic barotrauma involving the affected ear, cerebral arterial gas embolism or decompression sickness;
 - deleting the factors concerning having a specified infection, as these are now covered by the factors in:
 - subsections 9(23) and 9(54) concerning having a bacterial infection from the specified list of bacterial infections;
 - subsections 9(24) and 9(55) concerning having a viral infection from the specified list of viral infections;
 - subsections 9(25) and 9(56) concerning having meningitis or encephalitis;
 - subsections 9(26) and 9(57) concerning having neurosyphilis;
 - subsections 9(27) and 9(58) concerning having tuberculosis involving the nasopharynx, meninges, temporal bone, middle ear or inner ear of the affected side;
 - subsections 9(28) and 9(59) concerning having typhoid fever;
 - deleting the factors concerning receiving ionising radiation to the auditory apparatus, as these have been subsumed into the factors in subsections 9(29) and 9(60) concerning undergoing a course of therapeutic radiation for cancer, where the auditory apparatus was in the field of radiation;
 - new definitions of 'acoustic shock symptoms', 'chronic suppurative otitis media', 'hyperviscosity syndrome', 'MRCA', 'specified list of bacterial infections', 'specified list of bone diseases', 'specified list of chemical agents', 'specified list of drugs', 'specified list of haematological diseases', 'specified list of viral infections', 'suppurative labyrinthitis' and 'VEA' in Schedule 1 - Dictionary;
 - revising the definitions of 'acoustic shock', 'auditory structure', 'dB(A)', 'dB(C)', 'relevant service' and 'vascular, muscular or other anatomical source of sound' in Schedule 1 - Dictionary; and
 - deleting the definitions of 'a drug or a drug from a class of drugs from the specified list', 'a specified autoimmune disorder', 'a specified disease or injury', 'a specified infection', 'a specified ototopical medication', 'cumulative equivalent dose' and 'ischaemia'.

Incorporation

8. The definition of "acoustic shock symptoms" contained in the Schedule 1 - Dictionary incorporates the *Work Health and Safety (Managing Noise and Preventing Hearing Loss at Work) Code of Practice 2015*, as in force on 17 December 2015. 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 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 tinnitus in the Government Notices Gazette of 29 October 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 in relation to the investigation.

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.

Finalisation of Investigation

12. The determining of this Instrument finalises the investigation in relation to tinnitus as advertised in the Government Notices Gazette of 29 October 2019.

References

13. A list of references relating to the above condition is available on the Authority's website at: www.rma.gov.au. Any other document referred to in this Statement of Principles is available on request to the Repatriation Medical Authority at the following address:

Email: info@rma.gov.au

Post: 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. 85 of 2020**

Kind of Injury, Disease or Death: **Tinnitus**

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:-
 - facilitates claimants in making, and the Repatriation Commission and the Military Rehabilitation and Compensation 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 tinnitus;
 - 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, tinnitus is connected with the circumstances of eligible service rendered by a person, as set out in clause 5 of the Explanatory Statement;
 - replaces Instrument No. 34 of 2012; and
 - reflects developments in the available sound medical-scientific evidence concerning tinnitus 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.