



Australian Government
Repatriation Medical Authority

EXPLANATORY STATEMENT

**VETERANS' ENTITLEMENTS (STATEMENTS OF PRINCIPLES—
DEFINITION OF "ONE PACK-YEAR") AMENDMENT DETERMINATION
2022 (NO. 94 OF 2022)**

VETERANS' ENTITLEMENTS ACT 1986
MILITARY REHABILITATION AND COMPENSATION ACT 2004

1. This is the Explanatory Statement to the *Veterans' Entitlements (Statements of Principles—Definition of "one pack-year") Amendment Determination 2022* (No. 94 of 2022).

Background

2. The Repatriation Medical Authority (the Authority) has determined, under section 196B of the *Veterans' Entitlements Act 1986* (the VEA), the *Veterans' Entitlements (Statements of Principles—Definition of "one pack-year") Amendment Determination 2022* (No. 94 of 2022) (the "Instrument").
3. This Instrument amends the various Statements of Principles referred to in Part 2 of the Schedule 1-Amendments to the Instrument by:
 - omitting the note commencing "pack year" in subsection 9 of Statements of Principles listed in Part 2;
 - substituting the omitted note with a note concerning the definition of "one pack-year";
 - omitting the existing definition commencing: "pack-year" contained in each of the Statements of Principles listed in Part 2; and
 - substituting the omitted definition with a new definition of "one pack-year".

Day of Commencement

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

Consultation

5. Prior to determining this Instrument, the Authority advertised its intention to undertake an investigation in relation to the definition of 'pack-year' in the Government Notices Gazette of 4 May 2021, 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

6. 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

7. The determining of this Instrument finalises the investigation in relation to the definition of the term "pack-year" referred to in the various Statements of Principles outlined in Schedule 1 of the notice published in the Government Notices Gazette of 4 May 2021.

References

8. A list of references relating to the conditions listed in Part 2 of the Schedule 1-Amendments are available on the Authority's website at: www.rma.gov.au. Any other documents referred to in this Amendment Determination are 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.:	Veterans' Entitlements (Statements of Principles—Definition of "one pack-year") Amendment Determination 2022 (No. 94 of 2022)
Kind of Injury, Disease or Death:	Each kind the subject of a Statement of Principles referred to in Part 2 of the Schedule 1-Amendments to this Instrument.

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). 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:-
 - 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 Part 2 of the Schedule 1-Amendments to this Instrument;
 - 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.