



Australian Government
Repatriation Medical Authority

EXPLANATORY STATEMENT

**AMENDMENT STATEMENT OF PRINCIPLES CONCERNING
RESTLESS LEGS SYNDROME
(BALANCE OF PROBABILITIES) (NO. 61 OF 2023)**

VETERANS' ENTITLEMENTS ACT 1986
MILITARY REHABILITATION AND COMPENSATION ACT 2004

1. This is the Explanatory Statement to the *Amendment Statement of Principles concerning restless legs syndrome (Balance of Probabilities)* (No. 61 of 2023).

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 **restless legs syndrome** (Balance of Probabilities) (No. 61 of 2023).
3. This Instrument amends Statement of Principles concerning **restless legs syndrome** (Balance of Probabilities) (No. 114 of 2022) (Federal Register of Legislation No. F2022L01399) by:
 - replacing the existing definition of 'relevant service' in the Schedule 1 – Dictionary;

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*.

Consultation

5. Having already undertaken consultation in relation to instrument number 114 of 2022, "Statement of Principles concerning restless legs syndrome" (Federal Register of Legislation No. F2022L01399) the Authority became aware that the Statement of Principles contained an error in that the definition of "relevant service" was incorrect. As this error was clearly an administrative error and was not in accordance with the provisions of Section 196B(3) of the *Veterans' Entitlements Act 1986*, The Authority decided to amend the Statement of Principles so that it was in accordance with Section 196B(3) of the Veteran's Entitlements Act. The Amendment is a minor, technical correction. No consultation has therefore been undertaken by reason of the nature of the amendment.

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.



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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. 61 of 2023**

Kind of Injury, Disease or Death: **Restless legs syndrome**

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 restless legs syndrome;
 - facilitates the review of such decisions by the Veterans' Review Board and the Administrative Appeals Tribunal;
 - amends Instrument No. 114 of 2022; and
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, ICESCR; 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, ICESCR 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.

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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.