



**Australian Government**  
**Repatriation Medical Authority**

**EXPLANATORY STATEMENT**

**AMENDMENT STATEMENT OF PRINCIPLES CONCERNING  
FACTORS RELATING TO BEING IN VIETNAM  
(REASONABLE HYPOTHESIS) (NO. 27 OF 2024)**

***VETERANS' ENTITLEMENTS ACT 1986***  
***MILITARY REHABILITATION AND COMPENSATION ACT 2004***

1. This is the Explanatory Statement to the *Amendment Statement of Principles concerning factors relating to being in Vietnam (Reasonable Hypothesis)* (No. 27 of 2024).

**Background**

2. The Repatriation Medical Authority (the Authority) has determined, under subsections 196B(2) and (8) of the *Veterans' Entitlements Act 1986* (the VEA), *Amendment Statement of Principles concerning factors relating to being in Vietnam (Reasonable Hypothesis)* (No. 27 of 2024).
3. The amendment revises the definition of:  
'Being: (a) on land in Vietnam; or (b) at sea in Vietnamese waters'  
in the Schedule 1 - Dictionary of Statements of Principles concerning:  
malignant neoplasm of the lung (Reasonable Hypothesis) (No. 86 of 2023) (Federal Register of Legislation No. F2023L01145)  
soft tissue sarcoma (Reasonable Hypothesis) (No. 76 of 2023) (Federal Register of Legislation No. F2023L01136)  
Hodgkin lymphoma (Reasonable Hypothesis) (No. 70 of 2023) (Federal Register of Legislation No. F2023L00948)  
malignant neoplasm of the prostate (Reasonable Hypothesis) (No. 3 of 2023) (Federal Register of Legislation No. F2023L00001)  
malignant neoplasm of the larynx (Reasonable Hypothesis) (No. 41 of 2022) (Federal Register of Legislation No. F2022L00660)  
myeloma (Reasonable Hypothesis) (No. 95 of 2021) (Federal Register of Legislation No. F2021L01182)  
non-Hodgkin lymphoma (Reasonable Hypothesis) (No. 90 of 2018) (Federal Register of Legislation No. F2018L01489)

**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. In October 2023 the Authority became aware that Statements of Principles containing the so-called “Vietnam factor”, that is:

“being:

- (a) on land in Vietnam; or
- (b) at sea in Vietnamese waters;

means service in at least one of the areas and at the times described in Items 4 and 8 of Schedule 2 of the Veterans' Entitlements Act 1986.”

suffered from a historical omission/anomaly in that the definition of the “Vietnam factor” as drafted, failed to also include items 3A and 3B of Schedule 2 of the Veterans' Entitlements Act 1986 (“VEA”). This omission had the effect that veterans who had served in Ubon, Thailand between 31 May 1962 to and including 27 July 1962 and North East Thailand from 25 June 1965 to and including 31 August 1968, places and periods where Australian veterans were operational during the Vietnam war, were excluded from the factor.

As the items were omitted in error, as the “Vietnam factor” as currently drafted constituted an anomaly when compared to Schedule 2 “Operational Areas” contained within the VEA and as the amendment is beneficial and has the effect of expanding access by veterans to the Statements of Principles, it was considered that there was no utility in engaging in a formal consultation process and indeed that such a process may in fact compound the delay in access to the “Vietnam factor” by aging veterans.

Prior to the Vietnam factors originally being adopted there was consultation through a notice of investigation and writing to associations representing veterans’ interests seeking submissions in relation to the Statements of Principles that are the subject of this 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.

## References

7. A list of references relating to the above condition is available on the Authority's website at: [www.rma.gov.au](http://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](mailto:info@rma.gov.au)

Post: The Registrar  
Repatriation Medical Authority  
GPO Box 1014  
BRISBANE QLD 4001



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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 concerning factors relating to being in Vietnam (reasonable Hypothesis) No. 27 of 2024**

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 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;
  - facilitates the review of such decisions by the Veterans' Review Board and the Administrative Appeals Tribunal;
  - amends Instrument Nos. 86 of 2023, 76 of 2023, 70 of 2023, 3 of 2023, 41 of 2022, 95 of 2021 and 90 of 2018;
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'<sup>1</sup>;

- 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.

Repatriation Medical Authority

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<sup>1</sup> 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.