



Australian Government
Repatriation Medical Authority

EXPLANATORY STATEMENT

**STATEMENTS OF PRINCIPLES CONCERNING
HORSESHOE KIDNEY (REPEAL)**

VETERANS' ENTITLEMENTS ACT 1986
MILITARY REHABILITATION AND COMPENSATION ACT 2004

1. This is the Explanatory Statement to the *Statements of Principles concerning horseshoe kidney* (repeal) (No. 31 of 2024).

Background

2. The Repatriation Medical Authority (the Authority), under subsection 196B(9) of the *Veterans' Entitlements Act 1986* (the VEA), repeals Instrument No. 31 of 2015 (Federal Register of Legislation No. F2014L01844) and Instrument No. 32 of 2015 (Federal Register of Legislation No. F2014L01845) determined under subsection 196B(2) and (3) of the VEA concerning **horseshoe kidney**.

Following investigation, the Authority is of the view that there is insufficient medical-scientific evidence in order to determine factors for **horseshoe kidney** which might be related to service. The Authority has therefore decided pursuant to subsection 196B(9) that there is insufficient sound medical-scientific evidence in order to determine Statements of Principles for horseshoe kidney either on the basis of reasonable hypothesis or balance of probability.

3. This Instrument results from an investigation notified by the Authority in the Government Notices Gazette of 10 May 2022 concerning horseshoe kidney 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.

Consultation

4. Prior to determining this Instrument, the Authority advertised its intention to undertake an investigation in relation to horseshoe kidney in the Government Notices Gazette of 10 May 2022, 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.
5. On 22 May 2023, 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 the factor relating to "inability to obtain appropriate clinical management for horseshoe

kidney" which was the only factor in the Statements of Principles for horseshoe kidney. The Authority provided an opportunity to the organisations to make representations in relation to the deletion. No submissions were received for consideration by the Authority. No changes were made to the proposed Instruments repeal following this consultation process.

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 horseshoe kidney as advertised in the Government Notices Gazette of 10 May 2022.

References

8. 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. 31 of 2024**

Kind of Injury, Disease or Death: **Horseshoe kidney**

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(8) 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 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 horseshoe kidney;
 - 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, 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

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.