



Australian Government
Repatriation Medical Authority

REPATRIATION MEDICAL AUTHORITY

INSTRUMENT NO. 70 OF 2013

VETERANS' ENTITLEMENTS ACT 1986
MILITARY REHABILITATION AND COMPENSATION ACT 2004

EXPLANATORY NOTES FOR TABLING

1. The Repatriation Medical Authority (the Authority) has determined, under subsection 196B(10) of the *Veterans' Entitlements Act 1986* (the VEA) Amendment Statement of Principles Instrument No. 70 of 2013 concerning **lumbar spondylosis**.
2. This instrument amends Statement of Principles Instrument No. 38 of 2005, as amended by Instrument No. 79 of 2008 and Instrument No. 37 of 2010, concerning lumbar spondylosis as follows:
 - inserting new factors 6(iab) & 6(rab) concerning 'extreme forward flexion of the lumbar spine';
 - inserting a new definition for 'extreme forward flexion of the lumbar spine' in clause 9; and
 - specifying the date of effect of this amendment.
3. The amendments are made at the direction of the Specialist Medical Review Council (SMRC) in accordance with its Declaration No. 19 dated 21 June 2013. The SMRC Declaration appeared in the Government Notices Gazette of 26 June 2013.
4. In accordance with subsection 196B(13) of the VEA, the amendments as made by Instrument No. 70 of 2013, take effect from 26 June 2013.
5. As these amendments provide an additional basis on which lumbar spondylosis can be related to relevant service the earlier date of effect does not affect the rights of claimants so as to disadvantage them nor would it impose additional liabilities on them.
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. 70 of 2013**

Kind of Injury, Disease or Death: **Lumbar spondylosis**

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(10) of the *Veterans' Entitlements Act 1986* (the VEA) for the purposes of the VEA and the *Military Rehabilitation and Compensation Act 2004* (the MRCA).
2. This Legislative Instrument:-
 - facilitates claimants in making, and the Repatriation Commission and 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 lumbar spondylosis;
 - facilitates the review of such decisions by the Veterans' Review Board and the Administrative Appeals Tribunal;
 - includes new factors which the current sound medical-scientific evidence indicates must exist before it can be said that, on the balance of probabilities, lumbar spondylosis is connected with the circumstances of eligible service rendered by a person;
 - amends Instrument No. 38 of 2005, as amended by Instrument No. 79 of 2008 and Instrument No. 37 of 2010; and
 - reflects the Specialist Medical Review Council's review of the available sound medical-scientific evidence concerning lumbar spondylosis considered by the Repatriation Medical Authority when those earlier instruments were 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; and
 - the rights of persons with disabilities by facilitating the determination of claims relating to treatment and rehabilitation (Art 26, CRPD).

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.