Australian Government
Repatriation Medical Authority

REPATRIATION MEDICAL AUTHORITY

INSTRUMENT NO. 84 of 2014

VETERANS' ENTITLEMENTS ACT 1986
MILITARY REHABILITATION AND COMPENSATION ACT 2004

EXPLANATORY NOTES FOR TABLING

1. The Repatriation Medical Authority (the Authority), under subsection 196B(8) of the *Veterans' Entitlements Act 1986* (the VEA), revokes Instrument No. 9 of 2005, as amended by Instrument No. 28 of 2014, determined under subsection 196B(2) of the VEA concerning **chronic lymphoid leukaemia**.

2. The Authority is of the view that there is sound medical-scientific evidence that indicates that **chronic lymphocytic leukaemia/small lymphocytic lymphoma** and **death from chronic lymphocytic leukaemia/small lymphocytic lymphoma** can be related to particular kinds of service. The Authority has therefore determined pursuant to subsection 196B(2) of the VEA a Statement of Principles, Instrument No. 84 of 2014 concerning chronic lymphocytic leukaemia/small lymphocytic lymphoma. This Instrument will in effect replace the revoked Statements of Principles.

3. The provisions of the *Military Rehabilitation and Compensation Act 2004* (the MRCA) relating to claims for compensation commenced on 1 July 2004. Claims under section 319 of the MRCA for acceptance of liability for a service injury sustained, a service disease contracted or service death on or after 1 July 2004 are determined by the Military Rehabilitation and Compensation Commission by reference to Statements of Principles issued by the Authority pursuant to the VEA.

4. The Statement of Principles sets out the factors that must as a minimum exist, and which of those factors must be related to the following kinds of service rendered by a person:
   - operational service under the VEA;
   - peacekeeping service under the VEA;
   - hazardous service under the VEA;
   - British nuclear test defence service under the VEA;
   - warlike service under the MRCA;
   - non-warlike service under the MRCA,

   before it can be said that a reasonable hypothesis has been raised connecting chronic lymphocytic leukaemia/small lymphocytic lymphoma or death from chronic lymphocytic leukaemia/small lymphocytic lymphoma, with the circumstances of that service.

5. This Instrument results from investigations notified by the Authority in the Government Notices Gazettes of 3 November 2010 and 18 December 2013 concerning chronic lymphoid leukaemia in accordance with section 196G of the VEA. These investigations involved an examination of the sound medical-scientific evidence now available to the Authority, including the sound medical-scientific evidence it has previously considered.

6. The contents of this Instrument are in similar terms as the revoked Instruments. Comparing this Instrument and the revoked Instruments, the differences include:

- adopting the latest revised Instrument format, which commenced in 2005;
- changing the name of the Instrument to 'chronic lymphocytic leukaemia/small lymphocytic lymphoma';
- new definition of 'chronic lymphocytic leukaemia/small lymphocytic lymphoma' in clause 3;
- revising factor 6(a) concerning 'benzene';
- new factor 6(b) concerning 'chronic hepatitis C virus infection';
- deleting a factor concerning 'HTLV-1 virus' which is effectively covered by the Statements of Principles concerning non-Hodgkin's lymphoma;
- deleting factors concerning 'non-ionising radiation', 'a chemical agent contaminated by 2,3,7,8-tetrachlorodibenzo-para-dioxin (TCDD)', 'consuming potable water produced by evaporative distillation of water that has been contaminated by 2,3,7,8-tetrachlorodibenzo-para-dioxin (TCDD)', 'a pesticide', 'inhaling respirable asbestos fibres in an enclosed space' and 'inhaling respirable asbestos fibres in an open environment';
- new definition of 'death from chronic lymphocytic leukaemia/small lymphocytic lymphoma' in clause 9;
- revising the definitions of 'ICD-10-AM code' and 'relevant service' in clause 9;
- deleting the definitions of 'a pesticide', 'adult T-cell chronic lymphoid leukaemia', 'being exposed to non-ionising radiation as specified', 'being infected by the HTLV-1 virus', 'death from chronic lymphoid leukaemia', 'inhaling, ingesting or having cutaneous contact with a chemical agent contaminated by 2,3,7,8-tetrachlorodibenzo-para-dioxin (TCDD)', 'magnetic fields generated at extremely low frequencies', 'microTesla (μT)-years' and 'potable water' in clause 9; and
- specifying a date of effect for the Instrument in clause 11.

7. Further changes to the format of the Instrument reflect the commencement of the MRCA and clarify that pursuant to subsection 196B(3A) of the VEA, the Statement of Principles has been determined for the purposes of both the VEA and the MRCA.

8. Prior to determining this Instrument, the Authority advertised its intention to undertake investigations in relation to chronic lymphoid leukaemia in the Government Notices Gazettes of 3 November 2010 and 18 December 2013. The focussed investigation notified on 18 December 2013 was conducted at the direction of the Specialist Medical Review Council (SMRC) as outlined in clause 4 of the SMRC Direction No. 22, dated 26 November 2013, in respect of chronic lymphoid leukaemia. Copies of the notices of intention to investigate were circulated to a wide range of organisations representing veterans, service

personnel and their dependants. The Authority invited submissions from the Repatriation Commission, organisations and persons referred to in section 196E of the VEA, and any person having expertise in the field. Four submissions were received for consideration by the Authority during the investigations.

9. On 15 April 2014, 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 factors relating to '*non-ionising radiation*', '*a chemical agent contaminated by 2,3,7,8-tetrachlorodibenzo-para-dioxin (TCDD)*', '*consuming potable water produced by evaporative distillation of water that has been contaminated by 2,3,7,8-tetrachlorodibenzo-para-dioxin (TCDD)*', '*a pesticide*', '*inhaling respirable asbestos fibres in an enclosed space*' and '*inhaling respirable asbestos fibres in an open environment*'. This letter also explained that the reclassification of the haematological disorders has meant that existing factors 6(a) in the reasonable hypothesis and balance of probabilities Statements of Principles are now proposed to be covered by the non-Hodgkin's lymphoma Statements of Principles. These factors concern a specific form of disease called adult T cell lymphoma/leukaemia, which is caused by infection with the HTLV-1 virus. For the purposes of the Statements of Principles, adult T cell lymphoma/leukaemia is considered to be a subtype of non-Hodgkin's lymphoma, and is therefore appropriately covered in the Statements of Principles for non-Hodgkin's lymphoma. The new definition for chronic lymphocytic leukaemia/small lymphocytic lymphoma excludes all forms of T cell lymphomas, including adult T cell lymphoma/leukaemia, but as this condition is covered under the Statements of Principles for non-Hodgkin's lymphoma, no disadvantage results from the removal of this factor.

10. The letter provided an opportunity to the organisations to make representations to the Authority in relation to the proposed Instrument prior to its determination. No submissions were received for consideration by the Authority. No changes were made to the proposed Instrument following this consultation process.

11. 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.

12. The determining of this Instrument finalises the investigations in relation to chronic lymphoid leukaemia as advertised in the Government Notices Gazettes of 3 November 2010 and 18 December 2013.

13. A list of references relating to the above condition is available to any person or organisation referred to in subsection 196E(1)(a) to (c) of the VEA. Any such request must be made in writing to the Repatriation Medical Authority at the following address:

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. 84 of 2014**

Kind of Injury, Disease or Death: **Chronic lymphocytic leukaemia/small lymphocytic lymphoma**

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).

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 chronic lymphocytic leukaemia/small lymphocytic lymphoma;

- facilitates the review of such decisions by the Veterans' Review Board and the Administrative Appeals Tribunal;

- outlines the factors which the current sound medical-scientific evidence indicates must as a minimum exist, before it can be said that a reasonable hypothesis has been raised, connecting chronic lymphocytic leukaemia/small lymphocytic lymphoma with the circumstances of eligible service rendered by a person, as set out in clause 4 of the Explanatory Notes;

- replaces Instrument No. 9 of 2005, as amended by Instrument No. 28 of 2014; and

- reflects developments in the available sound medical-scientific evidence concerning chronic lymphocytic leukaemia/small lymphocytic lymphoma which have occurred since 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.