



Australian Government
Repatriation Medical Authority

EXPLANATORY STATEMENT

**AMENDMENT STATEMENT OF PRINCIPLES CONCERNING
MALIGNANT NEOPLASM OF THE PROSTATE
NO. 20 OF 2017**

VETERANS' ENTITLEMENTS ACT 1986
MILITARY REHABILITATION AND COMPENSATION ACT 2004

1. This is the Explanatory Statement to the *Amendment Statement of Principles concerning malignant neoplasm of the prostate* No. 20 of 2017.

Background

2. The Repatriation Medical Authority (the Authority) has determined, under subsection 196B(10) of the *Veterans' Entitlements Act 1986* (the VEA) Amendment Statement of Principles concerning **malignant neoplasm of the prostate** No. 20 of 2017.
3. This instrument amends Statement of Principles concerning **malignant neoplasm of the prostate** Instrument No. 54 of 2014 by:
 - deleting and replacing existing clause 4;
 - deleting and replacing existing clause 5;
 - renumbering existing clause 6 'Other definitions' as clause 9;
 - inserting a new clause 6 and heading 'Factors';
 - inserting new factor (a) in clause 6 concerning 'smoking';
 - inserting new factor (b) in clause 6 concerning 'inability to obtain appropriate clinical management for malignant neoplasm of the prostate';
 - renumbering existing clause 7 'Application' to clause 10;
 - inserting a new clause 7 and heading 'Factors that apply only to material contribution or aggravation';
 - renumbering existing clause 8 'Date of effect' to clause 11.
 - inserting a new clause 8 and heading 'Inclusion of Statement of Principles';
 - inserting a definition of 'pack-years of cigarettes, or the equivalent thereof in other tobacco products' in clause 9;
 - specifying the day of commencement of these amendments.
4. The changes are made at the direction of the Specialist Medical Review Council (the SMRC) in accordance with its Declaration No. 30 dated 19 September 2016. The SMRC Declaration appeared in the Government Notices Gazette of 21 September 2016. The SMRC directed the Authority under subsection 196W(4)(d) of the VEA to characterise a factor concerning smoking cigarettes, or the equivalent thereof in other tobacco products and the clinical worsening of malignant neoplasm of the prostate, taking into account whatever new information has become available since the Statements of Principles concerning malignant neoplasm of the prostate, Instrument Nos. 53 and 54 of 2014, were determined.

Day of Commencement

5. In accordance with subsection 196B(13) of the VEA, the changes as made by Instrument No. 20 of 2017, commence on 21 September 2016.
6. As these changes provide additional means by which malignant neoplasm of the prostate 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.

Consultation

7. To comply with the direction of the SMRC, the Authority advertised its intention to undertake an investigation in relation to malignant neoplasm of the prostate in the Government Notices Gazette of 19 October 2016, 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, 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 during the investigation.

Human Rights

8. 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

9. The determining of this Instrument finalises the investigation in relation to malignant neoplasm of the prostate as advertised in the Government Notices Gazette of 19 October 2016.

References

10. 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.: **Amendment Statement of Principles No. 20 of 2017**

Kind of Injury, Disease or Death: **Malignant neoplasm of the prostate**

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). Part XIA of the VEA requires the determination of these instruments outlining the factors linking 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 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 malignant neoplasm of the prostate;
 - facilitates the review of such decisions by the Veterans' Review Board and the Administrative Appeals Tribunal;
 - includes new factors and a new definition which the current sound medical-scientific evidence indicates must exist before it can be said that, on the balance of probabilities, malignant neoplasm of the prostate is connected with the circumstances of eligible service rendered by a person;
 - amends Instrument No. 54 of 2014; and
 - reflects the Specialist Medical Review Council's review of the available sound medical-scientific evidence concerning malignant neoplasm of the prostate and developments in the available sound medical-scientific evidence concerning malignant neoplasm of the prostate which have occurred since that earlier instrument was 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;
 - 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. BP (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.