



Australian Government
Repatriation Medical Authority

REPATRIATION MEDICAL AUTHORITY

INSTRUMENT NO. 35 of 2012

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. 27 of 2001, determined under subsection 196B(2) of the VEA concerning **otitic barotrauma**.
2. The Authority is of the view that there is sound medical-scientific evidence that indicates that **otitic barotrauma** and **death from otitic barotrauma** 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. 35 of 2012 concerning otitic barotrauma. This Instrument will in effect replace the revoked Statement 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 otitic barotrauma or death from otitic barotrauma, with the circumstances of that service.

5. This Instrument results from an investigation notified by the Authority in the Government Notices Gazette of 30 June 2010 concerning otitic barotrauma 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.
6. The contents of this Instrument are in similar terms as the revoked Instrument. Comparing this Instrument and the revoked Instrument, the differences include:
 - adopting the latest revised Instrument format, which commenced in 2005;
 - deleting the ICD code from the Instrument header;
 - revising the definition of 'otitic barotrauma' in clause 3;
 - revising factors 6(a) & 6(f) concerning 'a change in ambient barometric pressure';
 - new factors 6(b) & 6(g) concerning 'being exposed to a blast';
 - new factors 6(c) & 6(h) concerning 'mechanical ventilation';
 - new factors 6(d) & 6(i) concerning 'breathing 100 percent oxygen';
 - new factors 6(e) & 6(j) concerning 'eustachian tube dysfunction';
 - new definitions of 'a change in the ambient barometric pressure as specified', 'eustachian tube dysfunction' and 'mechanical ventilation' in clause 9;
 - revising the definitions of 'ICD-10-AM code' and 'relevant service' in clause 9;
 - deleting the definition of 'being exposed to an abrupt change in the barometric pressure'; 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 an investigation in relation to otitic barotrauma in the Government Notices Gazette of 30 June 2010, 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.
9. 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.
10. The determining of this Instrument finalises the investigation in relation to otitic barotrauma as advertised in the Government Notices Gazette of 30 June 2010.

11. 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. 35 of 2012**

Kind of Injury Disease or Death: **Otitic Barotrauma**

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* (VEA).
2. The purposes of the VEA include:
 - the rehabilitation of disabled persons (Article 26 of the *Convention on the Rights of Persons with Disabilities 2006*); and
 - the right to the enjoyment of the highest attainable standard of physical and mental health (article 12(1) *International Covenant on Economic, Social and Cultural Rights 1966*).
3. This Legislative Instrument:-
 - facilitates claimants in making, and the Repatriation Commission in assessing, claims under the VEA, by specifying the circumstances in which medical treatment and compensation can be extended to eligible persons who have otitic barotrauma;
 - 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 otitic barotrauma with the circumstances of eligible service rendered by a person, as set out in clause 4 of the Explanatory Notes;
 - replaces Instrument No. 27 of 2001; and

- reflects developments in the available sound medical-scientific evidence concerning otitic barotrauma which have occurred since that earlier instrument was determined.
4. The Instrument is assessed as being a technical instrument which improves the medico-scientific quality of outcomes under the VEA.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Repatriation Medical Authority