



Australian Government
Repatriation Medical Authority

EXPLANATORY STATEMENT

**STATEMENT OF PRINCIPLES CONCERNING
MORBID OBESITY
(BALANCE OF PROBABILITIES) (NO. 44 OF 2022)**

VETERANS' ENTITLEMENTS ACT 1986
MILITARY REHABILITATION AND COMPENSATION ACT 2004

1. This is the Explanatory Statement to the *Statement of Principles concerning morbid obesity (Balance of Probabilities)* (No. 44 of 2022).

Background

2. The Repatriation Medical Authority (the Authority), under subsection 196B(8) of the *Veterans' Entitlements Act 1986* (the VEA), repeals Instrument No. 6 of 2014 (Federal Register of Legislation No. F2014L00022) determined under subsections 196B(3) and (8) of the VEA concerning **morbid obesity**.
3. The Authority is of the view that on the sound medical-scientific evidence available it is more probable than not that **morbid obesity** and **death from morbid obesity** can be related to particular kinds of service. The Authority has therefore determined pursuant to subsection 196B(3) of the VEA a Statement of Principles concerning **morbid obesity** (Balance of Probabilities) (No. 44 of 2022). This Instrument will in effect replace the repealed Statement of Principles.

Purpose and Operation

4. The Statement of Principles will be applied in determining claims under the VEA and the *Military Rehabilitation and Compensation Act 2004* (the MRCA).
5. The Statement of Principles sets out the factors that must exist, and which of those factors must be related to the following kinds of service rendered by a person:
 - eligible war service (other than operational service) under the VEA;
 - defence service (other than hazardous service and British nuclear test defence service) under the VEA;
 - peacetime service under the MRCA,

before it can be said that, on the balance of probabilities, morbid obesity or death from morbid obesity is connected with the circumstances of that service. The Statement of Principles has been determined for the purposes of both the VEA and the MRCA.

6. This Instrument results from an investigation notified by the Authority in the Government Notices Gazette of 9 March 2021 concerning morbid obesity 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.

7. The contents of this Instrument are in similar terms as the repealed Instrument. Comparing this Instrument and the repealed Instrument, the differences include:
- adopting the latest revised Instrument format, which commenced in 2015;
 - specifying a day of commencement for the Instrument in section 2;
 - revising the definition of 'morbid obesity' in subsection 7(2) by the inclusion of a note;
 - new factors in subsections 9(2) and 9(15) concerning taking a drug from the specified list of drugs;
 - new factors in subsections 9(3) and 9(16) concerning taking an antipsychotic drug, excluding aripiprazole and ziprasidone;
 - new factors in subsections 9(4) and 9(17) concerning taking prednisone per day or equivalent glucocorticoid therapy;
 - revising the factor in subsection 9(5) concerning having binge eating disorder, for clinical onset only;
 - new factors in subsections 9(6) and 9(19) concerning having a clinically significant disorder of mental health as specified;
 - revising the factor in subsection 9(7) concerning having Cushing syndrome, for clinical onset only;
 - revising the factor in subsection 9(8) concerning having hypothyroidism, for clinical onset only;
 - revising the factor in subsection 9(9) concerning having a hypothalamic disorder causing excessive eating, for clinical onset only, by the inclusion of a note;
 - revising the factor in subsection 9(10) concerning inability to sleep for an average of more than 5 hours per night, for clinical onset only;
 - revising the factors in subsections 9(11) and 9(24) concerning undertaking night shift work;
 - revising the factor in subsection 9(12) concerning permanently ceasing to smoke, in a person with a prior history of a regular smoking habit as specified, for clinical onset only;
 - new factor in subsection 9(13) concerning experiencing severe childhood abuse, for clinical onset only;
 - new factor in subsection 9(14) concerning having a caloric intake that is excessive for energy needs, for clinical worsening only;
 - new factor in subsection 9(18) concerning having binge eating disorder or night eating syndrome, for clinical worsening only;
 - new factor in subsection 9(20) concerning having Cushing syndrome, for clinical worsening only;
 - new factor in subsection 9(21) concerning having hypothyroidism, for clinical worsening only;
 - new factor in subsection 9(22) concerning having a hypothalamic disorder causing excessive eating, for clinical worsening only;
 - new factor in subsection 9(23) concerning inability to sleep for an average of more than 5 hours per night, for clinical worsening only;
 - new factor in subsection 9(25) concerning permanently ceasing to smoke, in a person with a prior history of a regular smoking habit as specified, for clinical worsening only;
 - new definitions of 'clinically significant disorder of mental health as specified', 'DSM-5-TR', 'equivalent glucocorticoid therapy', 'MRCA', 'night eating

syndrome', 'night shift work', 'one pack-year', 'regular smoking habit as specified', 'severe childhood abuse', 'specified list of drugs' and 'VEA' in Schedule 1 - Dictionary;

- revising the definitions of 'binge eating disorder', 'BMI', 'hypothalamic disorder' and 'relevant service' in Schedule 1 - Dictionary; and
- deleting the definitions of 'a clinically significant psychiatric condition as specified' and 'a drug or a drug from a class of drugs from the specified list'.

Incorporation

8. This Instrument incorporates by reference the *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition, Text Revision. Washington, DC, American Psychiatric Association, 2022.
9. This Instrument also incorporates at paragraph 7(2)(b) a reference to the 2007 *World Health Organisation Body Mass Index charts, for age and gender*. Those charts are set out in the National Health and Medical Research Council (2013) *Clinical Practice Guidelines for the Management of Overweight and Obesity in Adults, Adolescents and Children in Australia*, Melbourne, at pages 110 and 111.
10. Copies of these documents are available from the offices of the Repatriation Medical Authority, Level 8, 480 Queen St, Brisbane, Queensland 4000, by contacting the Registrar on telephone (07) 3815 9404.

Consultation

11. Prior to determining this Instrument, the Authority advertised its intention to undertake an investigation in relation to morbid obesity in the Government Notices Gazette of 9 March 2021, 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.
12. On 10 December 2021, 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 *having polycystic ovary syndrome* from the reasonable hypothesis Statement of Principles. The Authority provided an opportunity to the organisations to make representations 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.

Human Rights

13. 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

14. The determining of this Instrument finalises the investigation in relation to morbid obesity as advertised in the Government Notices Gazette of 9 March 2021.

References

15. 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. 44 of 2022**

Kind of Injury, Disease or Death: **Morbid obesity**

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(3) 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 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 morbid obesity;
 - 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 exist before it can be said that, on the balance of probabilities, morbid obesity is connected with the circumstances of eligible service rendered by a person, as set out in clause 5 of the Explanatory Statement;
 - replaces Instrument No. 6 of 2014; and
 - reflects developments in the available sound medical-scientific evidence concerning morbid obesity 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, 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.