Australian Government

Repatriation Medical Authority

EXPLANATORY STATEMENT

STATEMENT OF PRINCIPLES CONCERNING SPINAL ADHESIVE ARACHNOIDITIS (REASONABLE HYPOTHESIS) (NO. 74 OF 2020)

VETERANS' ENTITLEMENTS ACT 1986
MILITARY REHABILITATION AND COMPENSATION ACT 2004

1. This is the Explanatory Statement to the *Statement of Principles concerning spinal adhesive arachnoiditis (Reasonable Hypothesis)* (No. 74 of 2020).

Background

2. The Repatriation Medical Authority (the Authority), under subsection 196B(8) of the *Veterans' Entitlements Act 1986* (the VEA), repeals Instrument No. 116 of 2011 (Federal Register of Legislation No. F2011L01748) determined under subsection 196B(2) of the VEA concerning **spinal adhesive arachnoiditis**.

3. The Authority is of the view that there is sound medical-scientific evidence that indicates that **spinal adhesive arachnoiditis** and **death from spinal adhesive arachnoiditis** 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 concerning **spinal adhesive arachnoiditis** (Reasonable Hypothesis) (No. 74 of 2020). This Instrument will in effect replace the repealed Statement of Principles.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 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 **spinal adhesive arachnoiditis** or death from **spinal adhesive arachnoiditis**, 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 6 November 2018 concerning **spinal adhesive arachnoiditis** 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 'spinal adhesive arachnoiditis' in subsection 7(2);
- revising the factors in subsections 9(1) and 9(18) concerning having severe spinal trauma involving the affected site;
- revising the factors in subsections 9(2) and 9(19) concerning undergoing spinal surgery involving the affected site;
- new factors in subsections 9(3) and 9(20) concerning having a lumboperitoneal shunt at the affected site;
- revising the factors in subsections 9(4) and 9(21) concerning having an epidural blood patch;
- new factors in subsections 9(5) and 9(22) concerning having a myelogram involving an injection of oil-soluble intrathecal radiological contrast agent;
- new factors in subsections 9(6) and 9(23) concerning having a myelogram involving an injection of water-soluble intrathecal radiological contrast agent;
- new factors in subsections 9(7) and 9(24) concerning having an injection of Thorotrast (thorium dioxide suspension) into the subarachnoid space;
- revising the factor in subsection 9(8) concerning having intrathecal injection of methylprednisolone acetate (Depo-Medrol), for clinical onset only;
- new factors in subsections 9(9) and 9(25) concerning having an in situ intrathecal drug delivery system at the affected site;
- new factors in subsections 9(10) and 9(26) concerning having intrathecal injection of methotrexate or cytosine arabinoside;
- new factors in subsections 9(11) and 9(27) concerning having intrathecal injection of radioactive gold at the affected site;
- revising the factors in subsections 9(12) and 9(28) concerning having an infection from the specified list of infections;
- revising the factor in subsection 9(14) concerning having a spinal subdural haematoma at the affected site, for clinical onset;
- new factors in subsections 9(15) and 9(31) concerning having ankylosing spondylitis involving the affected site;
- new factors in subsections 9(16) and 9(32) concerning having an intervertebral disc prolapse causing spinal stenosis at the affected site;
- new factors in subsections 9(17) and 9(33) concerning having sarcoidosis;
- revising the factor in subsection 9(29) concerning having a subarachnoid haemorrhage, for clinical worsening;
- deleting the factors concerning having an intraspinal myelogram, as these are now covered by the factors in subsections 9(5) and 9(22) concerning having a myelogram involving an injection of oil-soluble intrathecal radiological contrast agent, the factors in subsections 9(6) and 9(23) concerning having a myelogram involving an injection of water-soluble intrathecal radiological

contrast agent and the factors in subsections 9(7) and 9(24) concerning having an injection of Thorotrast (thorium dioxide suspension) into the subarachnoid space;

- deleting the factors concerning having an epidural catheter left in situ;
- deleting the factor concerning being treated with intrathecal methylprednisolone acetate (Depo-Medrol), for clinical worsening only;
- deleting the factors concerning having an injury from a dural puncture involving the affected site;
- new definitions of 'MRCA', 'specified list of infections', 'specified list of radiological contrast agents' and 'VEA' in Schedule 1 - Dictionary;
- revising the definitions of 'relevant service' and 'severe spinal trauma' in Schedule 1 - Dictionary; and
- deleting the definitions of 'an infection from the specified list', 'an injury from a dural puncture' and 'ICD-10-AM code'.

Consultation

8. Prior to determining this Instrument, the Authority advertised its intention to undertake an investigation in relation to **spinal adhesive arachnoiditis** in the Government Notices Gazette of 6 November 2018, 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.

9. On 15 June 2020, 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 an injury from a dural puncture involving the affected site within the five years before the clinical onset of spinal adhesive arachnoiditis*, *having an epidural catheter left in situ for a continuous period of at least 24 hours at the affected site, within the five years before the clinical onset of spinal adhesive arachnoiditis*, *having an injury from a dural puncture involving the affected site within the two years before the clinical worsening of spinal adhesive arachnoiditis*, *having an epidural catheter left in situ for a continuous period of at least 24 hours at the affected site, within the two years before the clinical worsening of spinal adhesive arachnoiditis* and *being treated with intrathecal methylprednisolone acetate (Depo-Medrol) within the one year before the clinical worsening of spinal adhesive arachnoiditis*. 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. Minor changes were made to the proposed Instrument following this consultation process.

Human Rights

10. 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

11. The determining of this Instrument finalises the investigation in relation to **spinal adhesive arachnoiditis** as advertised in the Government Notices Gazette of 6 November 2018.

References

12. 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. 74 of 2020**

Kind of Injury, Disease or Death: **Spinal adhesive arachnoiditis**

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(2) 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 spinal adhesive arachnoiditis;
- 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 spinal adhesive arachnoiditis with the circumstances of eligible service rendered by a person, as set out in clause 5 of the Explanatory Statement;
- replaces Instrument No. 116 of 2011; and
- reflects developments in the available sound medical-scientific evidence concerning spinal adhesive arachnoiditis 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. 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.