



Australian Government
Repatriation Medical Authority

EXPLANATORY STATEMENT

**AMENDMENT STATEMENT OF PRINCIPLES CONCERNING
MOTOR NEURONE DISEASE
(REASONABLE HYPOTHESIS) (NO. 99 OF 2018)**

*VETERANS' ENTITLEMENTS ACT 1986
MILITARY REHABILITATION AND COMPENSATION ACT 2004*

1. This is the Explanatory Statement to the *Amendment Statement of Principles concerning motor neurone disease (Reasonable Hypothesis)* (No. 99 of 2018).

Background

2. The Repatriation Medical Authority (the Authority) has determined, under subsections 196B(2) and (8) of the *Veterans' Entitlements Act 1986* (the VEA) Amendment Statement of Principles concerning **motor neurone disease** (Reasonable Hypothesis) (No. 99 of 2018).
3. This Instrument amends Statement of Principles concerning **motor neurone disease** No. 67 of 2013 (Federal Register of Legislation No. F2018C00590) by correcting a cross reference to another factor in the Statement of Principles. The error occurs in paragraph 7 which contains an incorrect cross-reference to "paragraph 6(d)" when "paragraph 6(b)" was intended. The error is plain on the face of the Instrument as there is no "paragraph 6(d)" in it. It is however necessary to correct this error as the rights of claimants may be affected so as to disadvantage them.
4. The error arose as the amendment to paragraph 7 should have been included as part of *Amendment Statement of Principles concerning motor neurone disease No. 88 of 2018*. That Instrument repealed the then existing factors numbered 6(b) and 6(c) and it was then necessary to adjust the cross-reference in paragraph 7.

Day of Commencement

5. In accordance with subsections 12(1A) and 12(2) of the *Legislation Act 2003* the date of commencement will be 21 June 2018, the date of commencement of *Amendment Statement of Principles concerning motor neurone disease No. 88 of 2018* which was the Amending Instrument originally containing the incorrect cross-reference.
6. This earlier commencement date is necessary to ensure that the error in that earlier Instrument does not disadvantage claimants.

Consultation

7. No consultation was undertaken by the Authority prior to determining this Instrument as it is solely necessary to correct an error that has resulted from an omission in the former *Amendment Statement of Principles concerning motor neurone disease No. 88 of 2018*.

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.

References

9. 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. 99 of 2018**

Kind of Injury, Disease or Death: **Motor neurone disease**

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). 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 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 motor neurone disease;
 - facilitates the review of such decisions by the Veterans' Review Board and the Administrative Appeals Tribunal;
 - corrects an error involving a cross-reference to a factor in the Statement of Principles;
 - amends Instrument No. 67 of 2013 (Federal Register of Legislation No. F2018C00590) to correct that error; and
3. is assessed as being necessary to prevent unintended disadvantage to claimants under the VEA and the MRCA from that error.

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.