



Australian Government
Repatriation Medical Authority

EXPLANATORY STATEMENT

**STATEMENT OF PRINCIPLES CONCERNING
HIATUS HERNIA
(REASONABLE HYPOTHESIS) (NO. 60 OF 2022)**

VETERANS' ENTITLEMENTS ACT 1986
MILITARY REHABILITATION AND COMPENSATION ACT 2004

1. This is the Explanatory Statement to the *Statement of Principles concerning hiatus hernia (Reasonable Hypothesis)* (No. 60 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. 68 of 2014 (Federal Register of Legislation No. F2014L00924) determined under subsection 196B(2) of the VEA concerning **hiatus hernia**.
3. The Authority is of the view that there is sound medical-scientific evidence that indicates that **hiatus hernia** and **death from hiatus hernia** 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 **hiatus hernia** (Reasonable Hypothesis) (No. 60 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 This Instrument will in effect replace the repealed Statement of Principles.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 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 hiatus hernia or death from hiatus hernia, 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 2 November 2021 concerning hiatus hernia 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 The contents of this Instrument are in similar terms as the repealed Instrument.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 'hiatus hernia' in subsection 7(2);
 - revising the factors in subsections 9(1) and 9(9) concerning having a surgical procedure;
 - deleting the factors concerning undergoing a partial or total gastrectomy as this is now covered by factors 9(1) and 9(9) concerning having a surgical procedure;
 - revising the factors in subsections 9(2) and 9(10) concerning having a blunt or penetrating injury;
 - revising the factors in subsections 9(3) and 9(11) concerning having acute elevation of pressure within the abdominal cavity;
 - revising the factors in subsections 9(4) and 9(12) concerning being overweight or obese;
 - new factor in subsection 9(5) concerning being pregnant at the time of clinical onset of hiatus hernia;
 - new factors in subsections 9(6) and 9(14) concerning having chronic elevation of pressure within the abdominal cavity due to ascites or peritoneal dialysis;
 - revising the factors in subsections 9(7) and 9(15) concerning 'systemic sclerosis';
 - revising the factors in subsections 9(8) and 9(16) concerning kyphosis or kyphoscoliosis;
 - new definitions of; 'acute abdomen', 'being overweight or obese' 'BMI', 'MRCA' and 'VEA' in Schedule 1 – Dictionary.
 - revising the definition of 'relevant service' in Schedule 1 – Dictionary; and
 - deleting the definitions of 'being obese' and 'episode of abruptly increased intra-abdominal pressure'.

Consultation

8. Prior to determining this Instrument, the Authority advertised its intention to undertake an investigation in relation to hiatus hernia in the Government Notices Gazette of 2 November 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.

Human Rights

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.

Finalisation of Investigation

10. The determining of this Instrument finalises the investigation in relation to hiatus hernia as advertised in the Government Notices Gazette of 2 November 2021.

References

11. 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. 60 of 2022**

Kind of Injury, Disease or Death: **Hiatus hernia**

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 hiatus hernia;
 - 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 hiatus hernia with the circumstances of eligible service rendered by a person, as set out in clause 5 of the Explanatory Statement;
 - replaces Instrument No. 68 of 2014; and
 - reflects developments in the available sound medical-scientific evidence concerning hiatus hernia 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.