



Australian Government
Repatriation Medical Authority

EXPLANATORY STATEMENT

**STATEMENT OF PRINCIPLES CONCERNING
DYSBARIC OSTEONECROSIS
NO. 18 OF 2015 - REPEAL**

VETERANS' ENTITLEMENTS ACT 1986
MILITARY REHABILITATION AND COMPENSATION ACT 2004

1. This is the Explanatory Statement to Statement of Principles concerning dysbaric osteonecrosis No. 18 of 2015 – Repeal.

Background

2. Statement of Principles concerning dysbaric osteonecrosis No. 18 of 2015, was determined by the Repatriation Medical Authority (the Authority) on 19 December 2014 under subsection 196B(3) of the *Veterans' Entitlements Act 1986* (the VEA).
3. The Authority subsequently notified an investigation concerning osteonecrosis, including dysbaric osteonecrosis, in the Government Notices Gazette of 7 May 2019 in accordance with section 196G of the VEA. The investigation involved an examination of the sound medical-scientific evidence available to the Authority concerning the wider entity of osteonecrosis, including the sound medical-scientific evidence it had previously considered concerning dysbaric osteonecrosis.
4. The Authority is of the view that there is sound medical-scientific evidence that indicates that osteonecrosis, including dysbaric osteonecrosis, and death from osteonecrosis, including dysbaric osteonecrosis, can be related to particular kinds of service.
5. The Authority has therefore determined pursuant to subsection 196B(3) of the VEA, a Statement of Principles concerning osteonecrosis (Balance of Probabilities) (No. 14 of 2020). Subsection 6(2) of that instrument defines osteonecrosis to include dysbaric osteonecrosis.
6. Dysbaric osteonecrosis is now covered by Statement of Principles concerning osteonecrosis (Balance of Probabilities) (No. 14 of 2020) and the clinical onset factors for dysbaric osteonecrosis have been included in the new Instrument. This separate Instrument is therefore redundant and the Authority has decided to repeal it.
7. The Authority has determined pursuant to subsection 196B(8)(c) of the VEA, Statement of Principles No. 18 of 2015 – Repeal, concerning dysbaric osteonecrosis. This Instrument repeals the existing Statement of Principles No. 18 of 2015, determined under subsection 196B(3) of the VEA, concerning dysbaric osteonecrosis.
8. The repeal of this Instrument will assist claimants and decision makers by removing the possibility of confusion about the relevant Instrument to be applied in claims concerning osteonecrosis made either under the VEA or the *Military Rehabilitation and Compensation Act 2004* (MRCA).

Day of Commencement

9. This Instrument also specifies a day of commencement for the repeal in accordance with subsection 12(1)(a) of the *Legislation Act 2003*.

Consultation

10. Prior to determining this Instrument, the Authority advertised its intention to undertake an investigation in relation to osteonecrosis, including dysbaric osteonecrosis, in the Government Notices Gazette of 7 May 2019, 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. One submission was received for consideration by the Authority in relation to the investigation.
11. Following the investigation, the Authority formed the view that as a matter of sound medical science, osteonecrosis only has relevant risks relating to its clinical onset and not to the clinical worsening of the condition. This is so because:
 - (a) if osteonecrosis occurs at a different site to an existing occurrence, it is a new episode and is properly to be considered as another clinical onset of osteonecrosis;
 - (b) any additional occurrence of osteonecrosis at the same site following a further relevant exposure as set out in the causal factors in the Statement of Principles, is also to be regarded as a new episode; and
 - (c) alternatively, if an episode of osteonecrosis at an existing site simply becomes more symptomatic without there being such a further relevant exposure, it is a sequela of the original insult.
12. As a result, the Authority concluded that the clinical worsening factors which had been included in Statement of Principles No. 18 of 2015 concerning dysbaric osteonecrosis were redundant and unnecessary. Accordingly, the new Instrument concerning osteonecrosis (No. 14 of 2020) only includes factors relating to the clinical onset of osteonecrosis.
13. Since there is no potential clinical worsening of this condition, the previous worsening factors to be found in Statement of Principles No. 18 of 2015, were unnecessary as a matter of sound medical science. As there was no diminution in the availability of factors under the new Instrument, nor a reduction in any rights afforded to potential claimants, it was not necessary to consult further regarding the absence of clinical worsening factors in the new Instrument.

Human Rights

14. 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

15. The determination of this new Instrument and the associated Instrument, Statement of Principles concerning osteonecrosis (Balance of Probabilities) (No. 14 of 2020),

finalises the investigation in relation to osteonecrosis, including dysbaric osteonecrosis, as advertised in the Government Notices Gazette of 7 May 2019.

References

16. A list of references relating to osteonecrosis, including dysbaric osteonecrosis, 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. 18 of 2015 - Repeal**

Kind of Injury, Disease or Death: **Dysbaric osteonecrosis**

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)(c) of the VEA.
2. This Legislative Instrument:-
 - replaces Instrument No. 18 of 2015; and
 - removes the possibility of confusion for claimants and decision makers with regard to the relevant Instrument to be applied in claims concerning osteonecrosis made under the VEA or the *Military Rehabilitation and Compensation Act 2004*.

Human Rights Implications

3. 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;

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.

- 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