



Australian Government
Repatriation Medical Authority

EXPLANATORY STATEMENT

**STATEMENT OF PRINCIPLES CONCERNING
SEIZURE
(BALANCE OF PROBABILITIES) (NO. 38 OF 2022)**

VETERANS' ENTITLEMENTS ACT 1986
MILITARY REHABILITATION AND COMPENSATION ACT 2004

1. This is the Explanatory Statement to the *Statement of Principles concerning seizure (Balance of Probabilities)* (No. 38 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. 78 of 2013 (Federal Register of Legislation No. F2013L01899) determined under subsection 196B(3) of the VEA concerning **epileptic seizure**.
3. The Authority is of the view that on the sound medical-scientific evidence available it is more probable than not that **seizure** and **death from seizure** 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 **seizure** (Balance of Probabilities) (No. 38 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 This Instrument will in effect replace the repealed Statement of Principles.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, seizure or death from seizure 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 epileptic seizure 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 The contents of this Instrument are in similar terms as the repealed Instrument. Comparing this Instrument and the repealed Instrument, the differences include: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 name of the condition from 'epileptic seizure' to 'seizure';
 - new definition of 'seizure' in subsection 7(2);
 - new factor in subsection 9(3) concerning having an electrical injury of the brain, for clinical onset only;
 - revising the factor in subsection 9(4) concerning having a surgical procedure which involves a craniotomy or cranioplasty, for clinical onset only;
 - new factor in subsection 9(5) concerning having cardiac surgery or extracorporeal membrane oxygenation, for clinical onset only;
 - new factor in subsection 9(6) concerning having brain radiotherapy, for clinical onset only;
 - revising the factor in subsection 9(7) concerning having an hypoxic cerebral insult, for clinical onset only, by the inclusion of a note;
 - new factor in subsection 9(8) concerning having a central nervous system vascular lesion, for clinical onset only;
 - new factor in subsection 9(9) concerning having autoimmune encephalitis, for clinical onset only;
 - revising the factor in subsection 9(11) concerning having infection with human immunodeficiency virus, for clinical onset only;
 - new factor in subsection 9(12) concerning having septicaemia, for clinical onset only;
 - revising the factor in subsection 9(13) concerning having an intracranial space-occupying lesion, for clinical onset only, by the inclusion of a note;
 - revising the factor in subsection 9(14) concerning having dementia as specified, for clinical onset only;
 - revising the factor in subsection 9(15) concerning having a medical condition affecting the brain, for clinical onset only;
 - revising the factor in subsection 9(16) concerning having alcohol intoxication, alcohol withdrawal or moderate to severe alcohol use disorder, for clinical onset only;
 - revising the factor in subsection 9(17) concerning having malignant hypertension or hypertensive encephalopathy, for clinical onset only;
 - new factor in subsection 9(18) concerning having eclampsia, now included as a separate factor, for clinical onset only;
 - revising the factor in subsection 9(20) concerning having acute renal failure or chronic renal failure, for clinical onset only;
 - new factor in subsection 9(21) concerning having an amniotic fluid embolism or fat embolism, for clinical onset only;
 - revising the factor in subsection 9(22) concerning having hypoglycaemia, for clinical onset only, by the inclusion of a note;
 - revising the factor in subsection 9(23) concerning having hyperglycaemia, for clinical onset only;
 - new factor in subsection 9(24) concerning having diabetes mellitus, for clinical onset only;
 - revising the factor in subsection 9(25) concerning having an electrolyte abnormality, for clinical onset only;

- revising the factor in subsection 9(26) concerning having carbon monoxide poisoning, for clinical onset only;
- new factor in subsection 9(27) concerning having sleep deprivation, for clinical onset only;
- new factor in subsection 9(28) concerning having exertional heat stroke, for clinical onset only;
- new factor in subsection 9(29) concerning being dehydrated, for clinical onset only;
- revising the factor in subsection 9(30) concerning undergoing organ or tissue transplantation, excluding corneal transplant, for clinical onset only;
- revising the factor in subsection 9(31) concerning taking a drug, for clinical onset only;
- new factor in subsection 9(33) concerning being exposed to radiographic contrast media, for clinical onset only;
- revising the factor in subsection 9(34) concerning reducing the intake of, or withdrawing from, a chronically administered sedative drug, for clinical onset only, by the inclusion of a note;
- revising the factor in subsection 9(35) concerning being exposed to partial pressures of oxygen above 1.2 atmospheres absolute (120 kPa), for clinical onset only;
- revising the factor in subsection 9(36) concerning being exposed to an abrupt reduction in the pressure of the air surrounding the person, for clinical onset only;
- revising the factor in subsection 9(37) concerning being poisoned with a metal, for clinical onset only;
- revising the factor in subsection 9(38) concerning inhaling, ingesting or having cutaneous contact with a neurotoxic substance or a food or compound containing a neurotoxic substance, for clinical onset only;
- deleting the factor concerning having a cerebrovascular accident or subarachnoid haemorrhage, for clinical onset only, as this is now covered by the factor in subsection 9(8) concerning having a central nervous system vascular lesion, for clinical onset only;
- deleting the factors concerning having central nervous system systemic lupus erythematosus and having an autoimmune disorder affecting the brain, for clinical onset only, as these are now covered by the factor in subsection 9(9) concerning having autoimmune encephalitis, for clinical onset only;
- deleting the factor concerning undergoing renal dialysis, for clinical onset only, as this is now covered by the factor in subsection 9(20) concerning having acute renal failure or chronic renal failure, for clinical onset only;
- deleting the factor concerning experiencing a specified physical stimulus, for clinical onset only, as this is now covered by the factors in:
 - subsection 9(27) concerning having sleep deprivation, for clinical onset only; and
 - subsection 9(28) concerning having exertional heat stroke, for clinical onset only; and
 - subsection 9(29) concerning being dehydrated, for clinical onset only;
- new definitions of 'autoimmune encephalitis', 'chronic renal failure', 'dementia as specified', 'electrolyte abnormality', 'hyperglycaemia', 'hypoglycaemia', 'inhalants', 'iron overload', 'MRCA', 'organ or tissue transplantation', 'organic solvents', 'specified list of central nervous system vascular lesions', 'specified

list of medical conditions', 'specified list of metals' and 'VEA' in Schedule 1 - Dictionary;

- revising the definitions of 'intracranial space-occupying lesion', 'neurotoxic substance or a food or compound containing a neurotoxic substance', 'relevant service' and 'signs and symptoms of poisoning' in Schedule 1 - Dictionary;
- new table of specified drugs in Schedule 2 - Drugs; and
- deleting the definitions of 'a drug from Specified List 1', 'a drug or a drug from a class of drugs from the specified list', 'a medical condition from the specified list', 'a specified metal', 'a specified physical stimulus', 'an autoimmune disorder affecting the brain', 'an electrolyte imbalance', 'an inhalant', 'dementia', 'RDX' and 'status epilepticus'.

Consultation

8. Prior to determining this Instrument, the Authority advertised its intention to undertake an investigation in relation to epileptic seizure 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.

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 epileptic seizure as advertised in the Government Notices Gazette of 9 March 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. 38 of 2022**

Kind of Injury, Disease or Death: **Seizure**

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 seizure;
 - 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, seizure 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. 78 of 2013; and
 - reflects developments in the available sound medical-scientific evidence concerning seizure 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.