



Australian Government
Repatriation Medical Authority

EXPLANATORY STATEMENT

**STATEMENT OF PRINCIPLES CONCERNING
RETINAL VASCULAR OCCLUSION
(REASONABLE HYPOTHESIS) (No. 50 of 2020)**

VETERANS' ENTITLEMENTS ACT 1986
MILITARY REHABILITATION AND COMPENSATION ACT 2004

1. This is the Explanatory Statement to the *Statement of Principles concerning retinal vascular occlusion (Reasonable Hypothesis)* (No. 50 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. 83 of 2011 (Federal Register of Legislation No. F2011L01440) determined under subsection 196B(2) of the VEA concerning **retinal vascular occlusive disease**.
3. The Authority is of the view that there is sound medical-scientific evidence that indicates that **retinal vascular occlusion** and **death from retinal vascular occlusion** 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 **retinal vascular occlusion** (Reasonable Hypothesis) (No. 50 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 This Instrument will in effect replace the repealed Statement of Principles.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 **retinal vascular occlusion** or death from **retinal vascular occlusion**, 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 **retinal vascular**

occlusive disease 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 'retinal vascular occlusive disease' to 'retinal vascular occlusion';
- new definition of 'retinal vascular occlusion' in subsection 7(2);
- revising the reference to 'ICD-10-AM code' in subsection 7(4);
- revising the factor in subsection 9(1) concerning smoking of tobacco products, for clinical onset;
- revising the factor in subsection 9(2) concerning hypertension, for clinical onset;
- revising the factor in subsection 9(3) concerning diabetes mellitus, for clinical onset;
- revising the factor in subsection 9(4) concerning being obese, for clinical onset;
- revising the factor in subsection 9(5) concerning dyslipidaemia, for clinical onset, by the inclusion of a note;
- revising the factor in subsection 9(6) concerning hyperhomocysteinaemia, for clinical onset;
- revising the factor in subsection 9(7) concerning arteritis, for clinical onset;
- revising the factor in subsection 9(8) concerning retinal vasculitis, for clinical onset;
- new factors in subsections 9(9) and 9(31) concerning non-inflammatory vasculopathy of the cerebral or retinal vessels;
- new factors in subsections 9(10) and 9(32) concerning a disorder that is associated with a hypercoagulable state or hyperviscosity;
- new factors in subsections 9(11) and 9(33) concerning benign or malignant neoplasm or non-neoplastic mass lesion;
- revising the factor in subsection 9(12) concerning vascular abnormality of the retinal vessels, for clinical onset;
- revising the factor in subsection 9(13) concerning migraine, for clinical onset;
- revising the factor in subsection 9(14) concerning infection with human immunodeficiency virus, for clinical onset;
- revising the factor in subsection 9(15) concerning ocular or orbital infection, for clinical onset;
- revising the factor in subsection 9(16) concerning direct external pressure to the eyeball, for clinical onset;
- revising the factor in subsection 9(17) concerning blunt or penetrating injury, for clinical onset;
- revising the factor in subsection 9(18) concerning taking a drug from the specified list of drugs, for clinical onset;
- revising the factor in subsection 9(19) concerning taking a combined oral contraceptive pill, for clinical onset;

- revising the factor in subsection 9(20) concerning an acute hypotensive episode, for clinical onset, by the inclusion of a note;
- revising the factor in paragraph 9(21)(a) concerning open-angle glaucoma, angle-closure glaucoma or ocular hypertension, for clinical onset and for retinal venous occlusion only, by the inclusion of a note;
- new factors in paragraphs 9(21)(b) and 9(43)(b) concerning chronic renal failure, for retinal venous occlusion only;
- revising the factor in paragraph 9(21)(c) concerning being severely dehydrated, for clinical onset and for retinal venous occlusion only;
- new factors in paragraphs 9(21)(d) and 9(43)(d) concerning obstructive sleep apnoea, for retinal venous occlusion only;
- revising the factor in paragraph 9(22)(a) concerning carotid artery disease, for clinical onset and for retinal arterial occlusion only;
- new factors in paragraphs 9(22)(b) and 9(44)(b) concerning cardiac disease with the potential to give rise to a retinal embolus, for retinal arterial occlusion only;
- new factors in paragraphs 9(22)(c) and 9(44)(c) concerning a non-cardiac potential source of retinal embolus, for retinal arterial occlusion only;
- new factors in paragraphs 9(22)(d) and 9(44)(d) concerning a procedure to the heart or the carotid artery, or an intravascular procedure involving the vessels of the head or neck, for retinal arterial occlusion only;
- new factor in subsection 9(23) concerning smoking of tobacco products, for clinical worsening;
- new factor in subsection 9(24) concerning hypertension, for clinical worsening;
- new factor in subsection 9(25) concerning diabetes mellitus, for clinical worsening;
- new factor in subsection 9(26) concerning being obese, for clinical worsening;
- new factor in subsection 9(27) concerning dyslipidaemia, for clinical worsening;
- new factor in subsection 9(28) concerning hyperhomocysteinaemia, for clinical worsening;
- new factor in subsection 9(29) concerning arteritis, for clinical worsening;
- new factor in subsection 9(30) concerning retinal vasculitis, for clinical worsening;
- new factor in subsection 9(34) concerning vascular abnormality of the retinal vessels, for clinical worsening;
- new factor in subsection 9(35) concerning migraine, for clinical worsening;
- new factor in subsection 9(36) concerning infection with human immunodeficiency virus, for clinical worsening;
- new factor in subsection 9(37) concerning ocular or orbital infection, for clinical worsening;
- new factor in subsection 9(38) concerning direct external pressure to the eyeball, for clinical worsening;
- new factor in subsection 9(39) concerning blunt or penetrating injury, for clinical worsening;
- new factor in subsection 9(40) concerning taking a drug from the specified list of drugs, for clinical worsening;

- new factor in subsection 9(41) concerning taking a combined oral contraceptive pill, for clinical worsening;
- new factor in subsection 9(42) concerning an acute hypotensive episode, for clinical worsening;
- new factor in paragraph 9(43)(a) concerning open-angle glaucoma, angle-closure glaucoma or ocular hypertension, for retinal venous occlusion only;
- new factor in paragraph 9(43)(c) concerning being severely dehydrated, for clinical worsening and for retinal venous occlusion only;
- new factor in paragraph 9(44)(a) concerning carotid artery disease, for clinical worsening and for retinal arterial occlusion only;
- revising the factor in subsection 9(45) concerning inability to obtain appropriate clinical management for retinal vascular occlusion;
- deleting the factor concerning thromboangiitis obliterans (Buerger's disease), as this is covered by the factors in subsections 9(7) and 9(29) concerning arteritis;
- deleting the factor concerning microscopic polyangiitis, as this is now covered by the factors in subsections 9(8) and 9(30) concerning retinal vasculitis;
- deleting the factor concerning systemic lupus erythematosus, as this is now covered by the factors in subsections 9(8) and 9(30) concerning retinal vasculitis;
- deleting the factor concerning antiphospholipid antibody syndrome, as this is now covered by the factors in subsections 9(10) and 9(32) concerning a disorder that is associated with a hypercoagulable state or hyperviscosity;
- deleting the factor concerning paroxysmal nocturnal haemoglobinuria, for clinical onset and for retinal venous occlusion only, as this is now covered by the factors in subsections 9(10) and 9(32) concerning a disorder that is associated with a hypercoagulable state or hyperviscosity;
- deleting the factor concerning having a haematological disorder, as this is now covered by the factors in subsections 9(10) and 9(32) concerning a disorder that is associated with a hypercoagulable state or hyperviscosity;
- deleting the factor concerning having a disease from the specified list affecting the cerebral or retinal vessels, as the factor is now covered by the factors in subsections 9(9) and 9(31) concerning non-inflammatory vasculopathy of the cerebral or retinal vessels, and by the factors in subsections 9(11) and 9(33) concerning benign or malignant neoplasm or non-neoplastic mass lesion;
- deleting the factor concerning having a lesion of the tissues within the orbit, a lesion of the optic nerve or a lesion within the eye, as these are now covered by the factors in subsections 9(11) and 9(33) concerning benign or malignant neoplasm or non-neoplastic mass lesion;
- deleting the factor concerning ipsilateral neoplasm infiltrating the optic nerve or within the eye, for clinical onset, as this is now covered by the factors in subsections 9(11) and 9(33) concerning benign or malignant neoplasm or non-neoplastic mass lesion;
- deleting the factor concerning a potential source of embolus to the eye, for retinal arterial occlusion only, as the factor is now covered by the factors in paragraphs 9(22)(b) and 9(44)(b) concerning having a cardiac disease with the potential to give rise to a retinal embolus, for retinal arterial occlusion only; by the factors in paragraphs 9(22)(c) and 9(44)(c) concerning having a non-cardiac potential source of retinal embolus, for retinal arterial occlusion only;

and by the factors in paragraphs 9(22)(d) and 9(44)(d) concerning undergoing a procedure to the heart or the carotid artery, or an intravascular procedure involving the vessels of the head or neck, for retinal arterial occlusion only;

- deleting the factor concerning using a drug belonging to the nonsteroidal anti-inflammatory class of drugs;
- new definitions of 'being severely dehydrated', 'BMI', 'chronic renal failure', 'disorder that is associated with a hypercoagulable state or hyperviscosity', 'MRCA', 'pack-year of tobacco products', 'retinal vasculitis', 'specified list of drugs', 'specified list of systemic arteritides' and 'specified list of vasculopathies' and 'VEA' in Schedule 1 - Dictionary;
- revising the definitions of 'being obese', 'dyslipidaemia' and 'relevant service' in Schedule 1 - Dictionary; and
- deleting the definitions of 'a disease from the specified list', 'a drug from the specified list', 'a haematological disorder from the specified list of haematological disorders that are associated with a hypercoagulable state', 'a potential source of embolus to the eye', 'antiphospholipid antibody syndrome', 'dehydrated', 'hyperhomocysteinaemia', 'ocular or orbital infection', 'pack-years of cigarettes, or the equivalent thereof in other tobacco products', 'paroxysmal nocturnal haemoglobinuria', 'prolonged external pressure to the eyeball' and 'trauma, including surgical trauma'.

Consultation

8. Prior to determining this Instrument, the Authority advertised its intention to undertake an investigation in relation to **retinal vascular occlusive disease** 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 24 February 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 the factor relating to *using a drug belonging to the nonsteroidal anti-inflammatory class of drugs*. 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. Non-substantial 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 **retinal vascular occlusive disease** 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.
13. Any other document referred to in this Instrument is available on request to the Authority using the following details:

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. 50 of 2020**

Kind of Injury, Disease or Death: **Retinal vascular occlusion**

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 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 retinal vascular occlusion;
 - 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 retinal vascular occlusion with the circumstances of eligible service rendered by a person, as set out in clause 5 of the Explanatory Statement;
 - replaces Instrument No. 83 of 2011; and
 - reflects developments in the available sound medical-scientific evidence concerning retinal vascular occlusion 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.