



Australian Government
Repatriation Medical Authority

EXPLANATORY STATEMENT

**AMENDMENT STATEMENT OF PRINCIPLES CONCERNING
MOTOR NEURONE DISEASE
NO. 88 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* No. 88 of 2018.

Background

2. On 20 June 2018 the Specialist Medical Review Council (SMRC) made its Request for Review Declaration No. 31. The SMRC Declaration appeared in the Government Notices Gazette C2018G00472 of 21 June 2018.
3. Request for Review Declaration No. 31 directed the Repatriation Medical Authority (the Authority) to amend Statement of Principles concerning **motor neurone disease** No. 67 of 2013 (Federal Register of Legislation No. F2013L01655), by:
 - removing factors 6(b) and (c).
4. In accordance with the SMRC's direction and pursuant to subsection 196B(10) of the *Veterans' Entitlements Act 1986* (the VEA), the Authority has determined this Instrument.
5. This Instrument amends Instrument No. 67 of 2013 by:
 - repealing the existing factor "(b)" in clause 6 concerning 'moderate to severe traumatic brain injury';
 - repealing the existing factor "(c)" in clause 6 concerning 'blows to the head'; and
 - repealing the existing definitions of "a high impact contact activity" and "blows to the head" in clause 9, those definitions being only associated with factors 6(b) and (c) respectively.

Day of Commencement

6. In accordance with subsection 196B(13) of the VEA, the changes made by this Instrument commence on the day on which the decision of the SMRC was notified in the Government Notices Gazette, 21 June 2018.
7. Pursuant to subsection 196B(13AA) of the VEA, although this Instrument repeals factors connecting **motor neurone disease** to relevant service and affects the rights of claimants so as to disadvantage them, it has this date of commencement even though that is a date earlier than the day of registration of this Instrument.

Consultation

8. No consultation was undertaken by the Authority prior to determining this Instrument, as the changes are made at the direction of the SMRC in accordance with subsection 196B(10) of the VEA.
9. The SMRC undertook public notification and consultation as part of its consideration of the matter, inviting eligible persons or organisations to make submissions. The SMRC decision, and directions to the Authority, were contained in the Request for Review Declaration No. 31 published in the Government Notices Gazette of 21 June 2018.

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.



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. 88 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. By its Request for Review Declaration No. 31 the Specialist Medical Review Council (SMRC) directed the Repatriation Medical Authority (the Authority) to amend Instrument No. 67 of 2013. This Legislative Instrument, Amendment Statement of Principles No. 88 of 2018, is determined by the Authority pursuant to the requirements of subsection 196B(10) of Part XIA of the VEA to amend Instrument No. 67 of 2013 as directed by the SMRC.
2. Instrument No. 67 of 2013 as amended by this Legislative Instrument, has a statutory operation for the purposes of the VEA and the *Military Rehabilitation and Compensation Act 2004* (the MRCA). In accordance with the provisions of the VEA and MRCA it:
 - facilitates claimants in making, and the Repatriation Commission and 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 motor neurone disease; and
 - facilitates the review of such decisions by the Veterans' Review Board and the Administrative Appeals Tribunal;
3. This Legislative Instrument:-
 - gives effect to the SMRC's review of the available sound medical-scientific evidence concerning motor neurone disease considered by the Authority;
 - deletes factors which the SMRC has determined do not raise a reasonable hypothesis that motor neurone disease can be related to eligible service involving exposure to these factors; and
 - amends Instrument No. 67 of 2013 accordingly.

Human Rights Implications

4. This Legislative Instrument is determined under Part XIA of the VEA pursuant to a statutory scheme which 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*) and in particular, 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).
5. Although this Legislative Instrument repeals some of the means by which motor neurone disease can be connected to relevant service and affects the rights of claimants so as to disadvantage them, the repeals are:
 - necessary, as they accord with the statutory scheme which promotes a number of human rights;
 - reasonable, as they reflect the available sound medical-scientific evidence concerning motor neurone disease; and
 - proportionate, as they only incorporate the findings and directions made by the SMRC.
6. As it incorporates the available sound medical-scientific evidence concerning motor neurone disease, this Legislative Instrument ensures the liability provisions of the VEA and MRCA continue to be evidence-based and provide continuing rights to veterans, current and former Defence Force members, as well as other persons such as their dependents.
7. This Legislative Instrument is assessed as primarily being a technical instrument which improves the medico-scientific quality of outcomes under the VEA and the MRCA and does not derogate from the human rights promoted by the statutory scheme.

¹ In General Comment No. RH (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.

Conclusion

This Legislative Instrument is compatible with human rights as it is determined in accordance with a statutory scheme which promotes a number of human rights and does not derogate from them.

Repatriation Medical Authority