



Australian Government
Repatriation Medical Authority

EXPLANATORY STATEMENT

**STATEMENT OF PRINCIPLES CONCERNING
OSTEONECROSIS
(BALANCE OF PROBABILITIES) (NO. 14 OF 2020)**

VETERANS' ENTITLEMENTS ACT 1986
MILITARY REHABILITATION AND COMPENSATION ACT 2004

1. This is the Explanatory Statement to the *Statement of Principles concerning osteonecrosis (Balance of Probabilities)* (No. 14 of 2020).

Background

2. The Repatriation Medical Authority (the Authority) has determined, under subsection 196B(3) of the *Veterans' Entitlements Act 1986* (the VEA), Statement of Principles concerning **osteonecrosis** (Balance of Probabilities) (No. 14 of 2020).
3. Previously, the Authority had determined, under subsection 196B(3) of the VEA, a Statement of Principles concerning dysbaric osteonecrosis No. 18 of 2015.
4. 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.
5. The Authority is of the view that on the sound medical-scientific evidence available it is more probable than not that **osteonecrosis, including dysbaric osteonecrosis**, and death from **osteonecrosis, including dysbaric osteonecrosis**, 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 **osteonecrosis** (Balance of Probabilities) (No. 14 of 2020).
6. Subsection 6(2) specifies that for the purposes of the Statement of Principles, osteonecrosis includes dysbaric osteonecrosis. Updated factors relating to dysbaric osteonecrosis have been included in the Statement of Principles concerning **osteonecrosis** (Balance of Probabilities) (No. 14 of 2020) and the Statement of Principles concerning dysbaric osteonecrosis No. 18 of 2015, has been repealed.

Worsening Factors - dysbaric osteonecrosis

7. 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 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 SOP, 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.
8. 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.

Purpose and Operation

9. The Statement of Principles will be applied in determining claims under the VEA and the *Military Rehabilitation and Compensation Act 2004* (the MRCA).
10. 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, osteonecrosis or death from osteonecrosis 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.

11. The Repatriation Commission, Military Rehabilitation and Compensation Commission, Veterans' Review Board or Administrative Appeals Tribunal cannot accept any claim for pension; or a claim for liability or compensation relating to **osteonecrosis** or **death from osteonecrosis** that was lodged on or after 1 June 1994 in the case of the VEA, or 1 July 2004 in the case of the MRCA respectively, unless this Statement of Principles upholds that claim (subsection 120B(3) of the VEA or subsection 339(3) of the MRCA).
12. This new Instrument results from an investigation notified by the Authority in the Government Notices Gazette of 7 May 2019 concerning osteonecrosis, including dysbaric osteonecrosis, in accordance with section 196G of the VEA. The investigation involved an examination of the sound medical-scientific evidence available to the Authority, including the sound medical-scientific evidence previously considered in relation to dysbaric osteonecrosis.

Consultation

13. 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.

14. 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 concerning dysbaric osteonecrosis, 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 this Instrument.

Human Rights

15. 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

16. The determining of this new Instrument finalises the investigation in relation to osteonecrosis, including dysbaric osteonecrosis, as advertised in the Government Notices Gazette of 7 May 2019.

References

17. A list of references relating to the above condition 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. 14 of 2020**

Kind of Injury, Disease or Death: **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(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 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 osteonecrosis;
 - 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, osteonecrosis, including dysbaric osteonecrosis, is connected with the circumstances of eligible service rendered by a person, as set out in clause 10 of the Explanatory Statement; and
 - removes unnecessary factors concerning the worsening of dysbaric osteonecrosis previously found in the Statement of Principles concerning dysbaric osteonecrosis No. 18 of 2015.
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.