



Australian Government
Repatriation Medical Authority

EXPLANATORY STATEMENT

**STATEMENT OF PRINCIPLES CONCERNING
AORTIC ANEURYSM AND AORTIC WALL DISORDERS
(REASONABLE HYPOTHESIS) (NO. 21 OF 2021)**

VETERANS' ENTITLEMENTS ACT 1986
MILITARY REHABILITATION AND COMPENSATION ACT 2004

1. This is the Explanatory Statement to the *Statement of Principles concerning aortic aneurysm and aortic wall disorders (Reasonable Hypothesis)* (No. 21 of 2021).

Background

2. The Repatriation Medical Authority (the Authority), under subsection 196B(8) of the *Veterans' Entitlements Act 1986* (the VEA), repeals Instrument No. 9 of 2012 (Federal Register of Legislation No. F2012L00017) determined under subsections 196B(2) and (8) of the VEA concerning **aortic aneurysm**.
3. The Authority is of the view that there is sound medical-scientific evidence that indicates that **aortic aneurysm or an aortic wall disorder** and **death from aortic aneurysm or an aortic wall disorder** 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 **aortic aneurysm and aortic wall disorders (Reasonable Hypothesis)** (No. 21 of 2021). This Instrument will in effect replace the repealed Statement of Principles.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 **aortic aneurysm or an aortic wall disorder** or death from **aortic aneurysm or an aortic wall disorder**, 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 7 May 2019 concerning **aortic aneurysm** 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 'aortic aneurysm' to 'aortic aneurysm and aortic wall disorders'
 - revising the definition of 'aortic aneurysm' in subsection 7(2);
 - new definition of 'aortic wall disorders' in subsection 7(2);
 - revising ICD-10-AM codes for 'aortic aneurysm and aortic wall disorders' in subsection 7(3);
 - revising the reference to 'ICD-10-AM code' in subsection 7(4);
 - new factors in subsections 9(2) and 9(20) concerning being obese;
 - revising the factors in subsections 9(3) and 9(21) concerning having dyslipidaemia, by the inclusion of a note;
 - new factors in subsections 9(4) and 9(22) concerning smoking of tobacco products, where smoking has not permanently ceased;
 - new factors in subsections 9(5) and 9(23) concerning smoking of tobacco products, where smoking has permanently ceased;
 - revising the factors in subsections 9(6) and 9(24) concerning exposure to second-hand smoke, where that exposure has not permanently ceased;
 - revising the factors in subsections 9(7) and 9(25) concerning exposure to second-hand smoke, where that exposure has permanently ceased;
 - new factors in subsections 9(9) and 9(27) concerning having chronic kidney disease;
 - new factors in subsections 9(10) and 9(28) concerning inability to consume fruit and vegetables;
 - new factors in subsections 9(11) and 9(29) concerning having infection with human immunodeficiency virus;
 - new factors in subsections 9(12) and 9(30) concerning having infection of the affected part of the aorta with a bacterial or fungal organism;
 - new factors in subsections 9(13) and 9(31) concerning having autoimmune aortitis or vasculitis;
 - revising the factors in subsections 9(14) and 9(32) concerning having trauma to the affected part of the aorta;
 - new factors in subsections 9(15) and 9(33) concerning having a solid organ transplant;
 - new factor in subsection 9(16) concerning having non-aneurysmal aortic atherosclerotic disease, for clinical onset only;
 - new factors in subsections 9(17) and 9(34) concerning taking a fluoroquinolone antibiotic;
 - new factors in paragraphs 9(18)(a) and 9(35)(a) concerning undertaking physical activity, for aortic wall disorders only;

- new factors in paragraphs 9(18)(b) and 9(35)(b) concerning being pregnant, for aortic wall disorders only;
- new factors in paragraphs 9(18)(c) and 9(35)(c) concerning having invasion of the affected part of the aorta by a malignant neoplasm, for aortic wall disorders only;
- new factors in paragraphs 9(18)(d) and 9(35)(d) concerning having erosion of the affected part of the aorta due to inflammation of a contiguous tissue or organ, for aortic wall disorders only;
- new factors in paragraphs 9(18)(e) and 9(35)(e) concerning taking a drug from the specified list of drugs, for aortic wall disorders only;
- new factors in paragraphs 9(18)(f) and 9(35)(f) concerning having infection with severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);
- deleting the factors concerning smoking of cigarettes or the equivalent thereof in other tobacco products, as these are now covered by the factors in subsections 9(4) and 9(22) concerning smoking of tobacco products, where smoking has not permanently ceased and the factors in subsections 9(5) and 9(23) concerning smoking of tobacco products, where smoking has permanently ceased;
- deleting the factors concerning Marfan dissection, Ehler-Danlos type IV dissection, cutis laxa or bicuspid aortic valve;
- deleting the factors concerning having coarctation of the aorta;
- deleting the factors concerning having cystic medial necrosis;
- deleting the factors concerning having infective aortitis, as these are now covered by the factors in subsections 9(12) and 9(30) concerning having infection of the affected part of the aorta with a bacterial or fungal organism;
- deleting the factors concerning undergoing therapy with BCG vaccine, as these are now covered by the factors in subsections 9(12) and 9(30) concerning having infection of the affected part of the aorta with a bacterial or fungal organism;
- deleting the factors concerning having tertiary syphilis, as these are now covered by the factors in subsections 9(12) and 9(30) concerning having infection of the affected part of the aorta with a bacterial or fungal organism;
- deleting the factors concerning having rheumatic aortitis due to a specified condition, as these are now covered by the factors in subsections 9(13) and 9(31) concerning having autoimmune aortitis or vasculitis;
- deleting the factors concerning having Takayasu's arteritis or giant cell arteritis, as these are now covered by the factors in subsections 9(13) and 9(31) concerning having autoimmune aortitis or vasculitis;
- deleting the factors concerning having chronic bronchitis or emphysema;
- new definitions of 'abnormality of kidney structure or function', 'aortic dissection', 'being obese', 'BMI', 'chronic kidney disease', 'false aneurysm of the aorta', 'MET', 'MRCA', 'pack-year of tobacco products', 'specified list of drugs', 'symptomatic penetrating aortic ulcer' and 'VEA' in Schedule 1 - Dictionary;
- revising the definitions of 'being exposed to second-hand smoke', 'dyslipidaemia' and 'relevant service' in Schedule 1 - Dictionary; and

- deleting the definitions of 'a specified condition', 'coarctation of the aorta', 'cystic medial necrosis', 'Ehlers-Danlos type IV dissection', 'hyperhomocysteinaemia', 'infective aortitis', 'pack-years of cigarettes, or the equivalent thereof in other tobacco products', 'tertiary syphilis' and 'undergoing therapy with BCG vaccine'.

Consultation

8. Prior to determining this Instrument, the Authority advertised its intention to undertake an investigation in relation to **aortic aneurysm** 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. No submissions were received for consideration by the Authority in relation to the investigation.
9. On 25 August 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 factors relating to *having Marfan syndrome, Ehler-Danlos type IV syndrome, cutis laxa or bicuspid aortic valve before the clinical onset of aortic aneurysm, having cystic medial necrosis before the clinical onset of aortic aneurysm, having Marfan syndrome, Ehler-Danlos type IV syndrome, cutis laxa or bicuspid aortic valve before the clinical worsening of aortic aneurysm, having cystic medial necrosis before the clinical worsening of aortic aneurysm, having coarctation of the aorta before the clinical worsening of aortic aneurysm and having chronic bronchitis or emphysema before the clinical worsening of aortic aneurysm*. The Authority provided an opportunity to the organisations to make representations in relation to the proposed Instrument prior to its determination.
10. One submission was received for consideration by the Authority, from an organisation representing veterans, service personnel and their dependants. The organisation enquired about the wording of the definition of 'being exposed to second-hand smoke' in Schedule 1 - Dictionary. The Authority provided a response to the organisation, and no changes were made to the proposed Instrument as a result of this submission.
11. One change was made to the proposed Instrument following this stakeholder consultation process, which was unrelated to the submission received as part of the consultation process. New factors concerning *having infection with severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)* were inserted, to reflect the emerging medical-scientific evidence in this area. The inclusion of these factors does not have an adverse impact on claimants, and rather provides additional factors for the acceptance of a reasonable hypothesis connecting the clinical onset or clinical worsening of aortic aneurysm or an aortic wall disorder with military service.

Human Rights

12. 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

13. The determining of this Instrument finalises the investigation in relation to **aortic aneurysm** as advertised in the Government Notices Gazette of 7 May 2019.

References

14. 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. 21 of 2021**

Kind of Injury, Disease or Death: **Aortic aneurysm and aortic wall disorders**

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 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 aortic aneurysm or an aortic wall disorder;
 - 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 aortic aneurysm or an aortic wall disorder with the circumstances of eligible service rendered by a person, as set out in clause 5 of the Explanatory Statement;
 - replaces Instrument No. 9 of 2012; and
 - reflects developments in the available sound medical-scientific evidence concerning aortic aneurysm or an aortic wall disorder 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.