



Australian Government
Repatriation Medical Authority

EXPLANATORY STATEMENT

**VETERANS' ENTITLEMENTS (STATEMENTS OF PRINCIPLES—
CATEGORY 1B STRESSOR) AMENDMENT DETERMINATION 2018
(NO. 87 OF 2018)**

VETERANS' ENTITLEMENTS ACT 1986
MILITARY REHABILITATION AND COMPENSATION ACT 2004

1. This is the Explanatory Statement to the *Veterans' Entitlements (Statements of Principles—Category 1B Stressor) Amendment Determination 2018* (No. 87 of 2018).

Background

2. The Repatriation Medical Authority (the Authority) has determined, under section 196B of the *Veterans' Entitlements Act 1986* (the VEA), the *Veterans' Entitlements (Statements of Principles—Category 1B Stressor) Amendment Determination 2018* (No. 87 of 2018) (the "Instrument").
3. This Instrument amends the various Statements of Principles referred to in Schedule 1 - Amendments to the Instrument to ensure they each contain consistent definitions of the terms "category 1B stressor", "eyewitness" and "corpse". Consistent with the format and contents of each Statement of Principles, this Instrument:
 - (a) amends the various Statements of Principles referred to in Part 1 of the Schedule 1 - Amendments to the Instrument by:
 - omitting the existing definitions of "a category 1B stressor" and "an eyewitness" contained in each of those Statements of Principles; and
 - substituting the definitions of "a category 1B stressor" and "an eyewitness" contained in paragraph 1 of Part 1 of the Schedule 1 - Amendments to this Instrument; and
 - inserting the new definition of "a corpse" contained in paragraph 1 of Part 1 of the Schedule 1 - Amendments to this Instrument.
 - (b) amends the various Statements of Principles referred to in Part 2 of the Schedule 1 - Amendments to the Instrument by:
 - omitting the existing definitions of "category 1B stressor" and "eyewitness" contained in each of those Statements of Principles; and
 - substituting the definitions of "category 1B stressor" and "eyewitness" contained in paragraph 1 of Part 2 of the Schedule 1 - Amendments to this Instrument; and
 - inserting the new definition of "corpse" contained in paragraph 1 of Part 2 of the Schedule 1 - Amendments to this Instrument.

- (c) amends the various Statements of Principles referred to in Part 3 of the Schedule 1 - Amendments to the Instrument by:
- omitting the existing definition of "category 1B stressor" contained in each of those Statements of Principles; and
 - substituting the definition of "category 1B stressor" contained in paragraph 1 of Part 3 of the Schedule 1 - Amendments to this Instrument; and
 - inserting the new definition of "corpse" contained in paragraph 1 of Part 3 of the Schedule 1 - Amendments to this Instrument.
4. The new definition of "a corpse" contained in paragraph 1 of Part 1 and "corpse" contained in paragraph 1 of Parts 2 and 3 of the Schedule 1 - Amendments to this Instrument includes a Note to the definition. The Note has been included to assist stakeholders in interpreting the definition and thereby to better facilitate the determination of claims relating to treatment, rehabilitation and compensation.

Day of Commencement

5. This Instrument also specifies a day of commencement for the amendment of the various Statements of Principles in accordance with subsection 12(3) of the *Legislation Act 2003*.

Consultation

6. Prior to determining this Instrument, in response to a request for review the Authority advertised its intention to undertake an investigation in respect of the use of the terms 'corpse' and 'casualty' in the plural in the definition of "a category 1B stressor" in the Statements of Principles concerning posttraumatic stress disorder by publishing a notice in the Government Notices Gazette of 9 January 2018.
7. In considering the focussed review of posttraumatic stress disorder as advertised, the Authority concluded there were grounds for a review of the terms "eyewitness" and "'corpse' and 'casualty' in the plural" in the definition of "category 1B stressor" in all Statements of Principles with category 1B stressor factors.
8. The Authority published a notice of investigation in relation to the use of these terms in the definition of "category 1B stressor" referred to in the 37 Statements of Principles concerning 21 different conditions outlined in the notice (including posttraumatic stress disorder) in the Government Notices Gazette of 3 July 2018.
9. The Authority circulated a copy of these notices of investigation to the Repatriation Commission and the Military Rehabilitation and Compensation Commission (the Commissions) and a wide range of organisations representing veterans, service personnel and their dependants. The Authority invited submissions from the Commissions, organisations and persons referred to in section 196E of the VEA, and any person having expertise in the field. Five submissions were received for consideration by the Authority during the course of these focussed reviews.
10. The various Statements of Principles outlined in the notice published in the Government Notices Gazette of 3 July 2018, and none other, are all referred to in Parts 1, 2 and 3 of the Schedule 1 - Amendments to this Instrument.

Human Rights

11. 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

12. The determination of this Instrument finalises the investigation in relation to posttraumatic stress disorder as advertised in the Government Notices Gazette of 9 January 2018, and the investigation in relation to the terms "eyewitness" and "'corpse' and 'casualty' in the plural" in the definition of "category 1B stressor" referred to in the various Statements of Principles outlined in the notice published in the Government Notices Gazette of 3 July 2018.

References

13. 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.: | Veterans' Entitlements (Statements of Principles— Category 1B stressor) Amendment Determination 2018 (No. 87 of 2018) |
| Kind of Injury, Disease or Death: | Each kind the subject of a Statement of Principles referred to in Parts 1, 2 and 3 of the Schedule 1 - Amendments to this Instrument. |

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 section 196B 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 linking 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 the particular kinds of injury, disease or death referred to in the various Statements of Principles referred to in Schedule 1 - Amendments to this Instrument;
 - facilitates the review of such decisions by the Veterans' Review Board and the Administrative Appeals Tribunal;
 - includes a revised definition of the terms "(a) category 1B stressor" and "(an) eyewitness" and a new definition of "(a) corpse" referred to in the various Statements of Principles for particular kinds of injury, disease or death referred to in Schedule 1 - Amendments to this Instrument. In those Statements of Principles "experiencing a category 1B stressor" in various circumstances as described in them, is a factor which connects those particular kinds of injury, disease or death with the circumstances of eligible service rendered by a person;

- reflects:
 - developments in the available sound medical-scientific evidence concerning the quantity and quality of traumatic stressor exposure in the category 1B stressor factor; and
 - the need for more detailed guidance concerning the terms "eyewitness" and "corpse" in the category 1B stressor factors in the various Statements of Principles referred to in Schedule 1 - Amendments to this Instrument.
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.