



Australian Government
Repatriation Medical Authority

EXPLANATORY STATEMENT

**STATEMENT OF PRINCIPLES CONCERNING
PES PLANUS
(REASONABLE HYPOTHESIS) (NO. 67 OF 2021)**

VETERANS' ENTITLEMENTS ACT 1986
MILITARY REHABILITATION AND COMPENSATION ACT 2004

1. This is the Explanatory Statement to the *Statement of Principles concerning pes planus (Reasonable Hypothesis)* (No. 67 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. 45 of 2012 (Federal Register of Legislation No. F2012L01361) determined under subsection 196B(2) of the VEA concerning **pes planus**.
3. The Authority is of the view that there is sound medical-scientific evidence that indicates that **pes planus** and **death from pes planus** 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 **pes planus** (Reasonable Hypothesis) (No. 67 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 This Instrument will in effect replace the repealed Statement of Principles.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 pes planus or death from pes planus, 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 29 October 2019 concerning pes planus 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 sound medical-scientific evidence demonstrates that some stress fractures, ligament sprains, muscle tendon strains, joint dislocations and joint subluxations can occur naturally as an integral manifestation of progressive pes planus. Accordingly, when considering whether a particular factor in this Instrument is related to service, care should be taken to ensure that the relevant factor occurred prior to the clinical onset or clinical worsening (as the case may be) of pes planus, rather than having occurred as an integral manifestation of the pes planus.
8. 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 definition of 'pes planus' in subsection 7(2);
 - revising the reference to 'ICD-10-AM code' in subsection 7(4);
 - revising the factors in subsections 9(1) and 9(13) concerning having a fracture or osteonecrosis;
 - revising the factors in subsections 9(2) and 9(14) concerning having a dislocation of a joint or subluxation of a joint or joint instability;
 - new factors in subsections 9(3) and 9(15) concerning having a sprain, penetrating trauma or surgery to the ligaments;
 - new factors in subsections 9(4) and 9(16) concerning having a strain, penetrating trauma or surgery involving the muscles or tendons;
 - revising the factor in subsection 9(5) concerning having rupture or division of the plantar fascia, for clinical onset;
 - revising the factors in subsections 9(6) and 9(18) concerning having weakness or paralysis of the supinators;
 - new factors in subsections 9(7) and 9(19) concerning having spasticity or shortening of the pronators;
 - new factors in subsections 9(8) and 9(20) concerning having posterior tibialis tendinopathy;
 - revising the factor in subsection 9(9) concerning having a space occupying lesion, for clinical onset;
 - revising the factors in subsections 9(10) and 9(22) concerning having arthritis or other destructive lesion;
 - revising the factor in subsection 9(11) concerning being obese, for clinical onset;
 - new factors in subsections 9(12) and 9(24) concerning being pregnant;
 - revising the factor in subsection 9(25) concerning running or jogging, for clinical worsening only;
 - revising the factor in subsection 9(26) concerning walking while carrying loads, for clinical worsening only;

- deleting the factors concerning having a discrete ligamentous, muscular or tendon injury, including that from surgery, resulting in instability of one or more of the tarsal or tarso-metatarsal joints of the affected foot, as these are now covered by the factors in:
 - subsections 9(3) and 9(15) concerning having a sprain, penetrating trauma or surgery to the ligaments; and
 - subsections 9(4) and 9(16) concerning having a strain, penetrating trauma, or surgery involving the muscles or tendons;
- deleting the factors concerning having tightening of pronators, as these are now covered by the factors in subsections 9(7) and 9(19) concerning having spasticity or shortening of the pronators;
- new definitions of 'BMI', 'MRCA', 'tarsal or metatarsal bones of the medial longitudinal arch' and 'VEA' in Schedule 1 - Dictionary;
- revising the definitions of 'being obese' and 'relevant service' in Schedule 1 - Dictionary; and
- deleting the definitions of 'tightening of pronators' and 'weakness or paralysis of supinators or small muscles of the sole of the foot'.

Consultation

9. Prior to determining this Instrument, the Authority advertised its intention to undertake an investigation in relation to pes planus in the Government Notices Gazette of 29 October 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.
10. On 3 March 2021, 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 *running an average of at least 15 kilometres per week, for the one month before the clinical worsening of pes planus* and *walking while carrying loads of at least 15 kilograms, an average of at least 15 kilometres per week, for the one month before the clinical worsening of pes planus* from the balance of probabilities Statement of Principles. 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. No changes were made to the proposed Instrument following this consultation process.

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 determining of this Instrument finalises the investigation in relation to pes planus as advertised in the Government Notices Gazette of 29 October 2019.

References

13. 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. 67 of 2021**

Kind of Injury, Disease or Death: **Pes planus**

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 pes planus;
 - 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 pes planus with the circumstances of eligible service rendered by a person, as set out in clause 5 of the Explanatory Statement;
 - replaces Instrument No. 45 of 2012; and
 - reflects developments in the available sound medical-scientific evidence concerning pes planus 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, ICESCR; 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, ICESCR 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.