



Australian Government
Repatriation Medical Authority

EXPLANATORY STATEMENT

**STATEMENT OF PRINCIPLES CONCERNING
MALIGNANT NEOPLASM OF THE LUNG
(BALANCE OF PROBABILITIES) (NO. 87 OF 2023)**

VETERANS' ENTITLEMENTS ACT 1986
MILITARY REHABILITATION AND COMPENSATION ACT 2004

1. This is the Explanatory Statement to the *Statement of Principles concerning malignant neoplasm of the lung (Balance of Probabilities)* (No. 87 of 2023).

Background

2. The Repatriation Medical Authority (the Authority), under subsection 196B(8) of the *Veterans' Entitlements Act 1986* (the VEA), repeals Instrument No. 93 of 2014 (Federal Register of Legislation No. F2014L01384) determined under subsections 196B(3) and (8) of the VEA concerning **malignant neoplasm of the lung**.
3. The Authority is of the view that on the sound medical-scientific evidence available it is more probable than not that **malignant neoplasm of the lung** and **death from malignant neoplasm of the lung** 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 **malignant neoplasm of the lung** (Balance of Probabilities) (No. 87 of 2023). This Instrument will in effect replace the repealed Statement of Principles.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 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, malignant neoplasm of the lung or death from malignant neoplasm of the lung 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.

6. This Instrument results from an investigation notified by the Authority in the Government Notices Gazette of 10 May 2022 concerning malignant neoplasm of the lung 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 definition of 'malignant neoplasm of the lung' in subsection 7(2);
- revising ICD-10-AM codes for 'malignant neoplasm of the lung' in subsection 7(3);
- revising the reference to 'ICD-10-AM code' in subsection 7(4);
- revising the factor in subsection 9(2) concerning having been exposed to second-hand smoke;
- revising the factor in subsection 9(3) concerning inhaling respirable asbestos fibres in an enclosed space;
- revising the factor in subsection 9(4) concerning inhaling respirable asbestos fibres in an open environment;
- revising the factor in subsection 9(5) concerning inhaling high concentrations of polycyclic aromatic hydrocarbons;
- revising the factor in subsection 9(9) concerning inhaling radon gas;
- revising the factor in subsection 9(12) concerning inhaling respirable crystalline silica dust;
- new factor in subsection 9(13) concerning having acute silicosis;
- revising the factor in subsection 9(20) concerning inhaling mist from sulphuric, nitric or hydrochloric acid;
- revising the factor in subsection 9(22) concerning taking a chemotherapy regimen with procarbazine or mechlorethamine (nitrogen mustard);
- revising the factor in subsection 9(23) concerning having systemic sclerosis;
- new factor in subsection 9(24) concerning inhaling opium smoke or ingesting opium;
- new factor in subsection 9(25) concerning using manual welding equipment for welding metal;
- deleting the factor concerning in current smokers only, receiving 20 milligrams of beta-carotene supplement;
- deleting the factor concerning being within 100 metres of an industrial coke oven as this is now covered by factor 9(5) concerning inhaling high concentrations of polycyclic aromatic hydrocarbons;
- deleting the factor concerning inhaling soot as this is now covered by factor 9(5) concerning inhaling high concentrations of polycyclic aromatic hydrocarbons;
- new definitions of 'having been exposed to second-hand smoke', 'mist', 'MRCA', 'one pack-year', 'opium', 'polycyclic aromatic hydrocarbons', 'specified industry, manufacturing process or substance' and 'VEA' in Schedule 1 - Dictionary;
- revising the definitions of 'ambient, chronically polluted air as specified', 'berylliosis', 'metal or metalloid from the specified list', 'pulmonary disease' and 'Working Level Month' in Schedule 1 - Dictionary; and
- deleting the definitions of 'a specified industry or manufacturing process', 'mist from a strong inorganic acid', 'MOPP', 'pack-year of cigarettes, or the equivalent thereof in other tobacco products' and 'Working Level'.

Incorporation

8. The definition of "cumulative equivalent dose" contained in the Schedule 1 – Dictionary incorporates the *Guide to calculation of 'cumulative equivalent dose' for the purpose of applying ionising radiation factors contained in Statements of Principles determined under Part XIA of the Veterans' Entitlements Act 1986 (Cth)*, Australian Radiation Protection and Nuclear Safety Agency, as in force on 2 August 2017. This writing is incorporated pursuant to subsection 14(b) of the *Legislation Act 2003*.
9. A copy of this document is available to any person on the website of the Repatriation Medical Authority at www.rma.gov.au or from the Repatriation Medical Authority, Level 8, 480 Queen St, Brisbane, Queensland 4000, by contacting the Registrar on telephone (07) 3815 9404.

Consultation

10. Prior to determining this Instrument, the Authority advertised its intention to undertake an investigation in relation to malignant neoplasm of the lung in the Government Notices Gazette of 10 May 2022, 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.
11. On 23 May 2023, 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 *'in current smokers only, receiving 20 milligrams of beta-carotene supplement daily for a continuous period of at least 3 years, before the clinical onset of malignant neoplasm of the lung'*. 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

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 malignant neoplasm of the lung as advertised in the Government Notices Gazette of 10 May 2022.

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. 87 of 2023**

Kind of Injury, Disease or Death: **malignant neoplasm of the lung**

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 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 malignant neoplasm of the lung;
 - 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, malignant neoplasm of the lung is connected with the circumstances of eligible service rendered by a person, as set out in clause 5 of the Explanatory Statement;
 - replaces Instrument No. 93 of 2014; and
 - reflects developments in the available sound medical-scientific evidence concerning malignant neoplasm of the lung 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.