



Australian Government
Repatriation Medical Authority

EXPLANATORY STATEMENT

**AMENDMENT STATEMENT OF PRINCIPLES CONCERNING
CEREBROVASCULAR ACCIDENT (STROKE)
(BALANCE OF PROBABILITIES) (NO. 59 OF 2024)**

VETERANS' ENTITLEMENTS ACT 1986
MILITARY REHABILITATION AND COMPENSATION ACT 2004

1. This is the Explanatory Statement to the *Amendment Statement of Principles concerning cerebrovascular accident (stroke) (Balance of Probabilities)* (No. 59 of 2024).

Background

2. The Repatriation Medical Authority (the Authority) has determined, under subsections 196B(3) and (8) of the *Veterans' Entitlements Act 1986* (the VEA), Amendment Statement of Principles concerning **cerebrovascular accident (stroke)** (Balance of Probabilities) (No. 59 of 2024).
3. This Instrument amends Statement of Principles concerning **cerebrovascular accident (stroke)** (Balance of Probabilities) (No. 46 of 2024) (Federal Register of Legislation No. F2024L00745) by:
 - Correcting a typographical error in subsection 9(42) which incorrectly provided the factor for “intracerebral haemorrhage only where smoking has not ceased”
The factor should have provided for the situation “where smoking has ceased”.
Section 9(42) erroneously duplicated the factor contained in subsection 9(40).

Day of Commencement

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

Consultation

5. In July 2024 it came to the attention of the Authority that the Statement of Principles concerning cerebrovascular accident (stroke) (Balance of Probabilities) (No. 46 of 2024) contained a typographical error.

As the incorrect factor had been included in obvious error, it was considered that there was no utility in engaging in a further formal consultation process and delay correction of the error. The error if allowed to remain will mean that a factor that the authority has approved will not be contained in the instrument and that would not be in the interests of veterans.

Prior to the Statement of Principles concerning cerebrovascular accident (stroke) (Balance of Probabilities) (No. 46 of 2024) originally being adopted there was consultation through a notice of investigation and writing to associations representing

veterans' interests seeking submissions in relation to the Statement of Principles that is the subject of this amendment. That consultative process is outlined in the explanatory statement to the original Statement of Principles.

Human Rights

6. 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.

References

7. 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.: **Amendment Statement of Principles No. 59 of 2024**

Kind of Injury, Disease or Death: **Cerebrovascular accident (stroke)**

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) and (8) 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 cerebrovascular accident (stroke);
 - facilitates the review of such decisions by the Veterans' Review Board and the Administrative Appeals Tribunal;
 - amends Instrument No. 46 of 2024;
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.