Australian Government

Repatriation Medical Authority

EXPLANATORY STATEMENT

STATEMENT OF PRINCIPLES CONCERNING FIBROSING INTERSTITIAL LUNG DISEASE (REASONABLE HYPOTHESIS) (NO. 85 OF 2021)

VETERANS' ENTITLEMENTS ACT 1986
MILITARY REHABILITATION AND COMPENSATION ACT 2004

1. This is the Explanatory Statement to the *Statement of Principles concerning* ***fibrosing interstitial lung disease*** *(Reasonable Hypothesis)* (No. 85 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. 53 of 2013 (Federal Register of Legislation No. F2013L01640) determined under subsections 196B(2) and (8) of the VEA concerning **fibrosing interstitial lung disease**.

3. The Authority is of the view that there is sound medical-scientific evidence that indicates that **fibrosing interstitial lung disease** and **death from fibrosing interstitial lung disease** 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 **fibrosing interstitial lung disease** (Reasonable Hypothesis) (No. 85 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 This Instrument will in effect replace the repealed Statement of Principles.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 fibrosing interstitial lung disease or death from fibrosing interstitial lung disease, 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 5 January 2021 concerning fibrosing interstitial lung disease 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 'fibrosing interstitial lung disease' in subsection 7(2);
- revising the factors in subsections 9(1) and 9(26) concerning having smoked tobacco products;
- revising the factor in subsection 9(2) concerning inhaling respirable asbestos fibres in an enclosed space, for clinical onset;
- revising the factor in subsection 9(3) concerning inhaling respirable asbestos fibres in an open environment, for clinical onset;
- revising the factors in subsections 9(4) and 9(28) concerning inhaling beryllium dust or fumes, by the inclusion of a note;
- new factors in subsections 9(5) and 9(29) concerning inhaling respirable crystalline silica dust;
- revising the factors in subsections 9(6) and 9(30) concerning having acute silicosis, by the inclusion of a note;
- revising the factors in subsections 9(7) and 9(31) concerning inhaling or intravenously injecting a talc-containing compound or mixture;
- revising the factors in subsections 9(8) and 9(32) concerning inhaling respirable coal dust while engaged in the mining or transport of coal;
- revising the factors in subsections 9(9) and 9(33) concerning inhaling respirable dust generated from hard metal or diamond-cobalt, by the inclusion of a note;
- revising the factors in subsections 9(10) and 9(34) concerning inhaling a toxic gas or fumes;
- revising the factors in subsections 9(11) and 9(35) concerning having paraquat poisoning, by the inclusion of a note;
- revising the factors in subsections 9(13) and 9(37) concerning having received ionising radiation to the lung;
- revising the factors in subsections 9(15) and 9(39) concerning having received iodine-131 (radioactive iodine);
- revising the factors in subsections 9(16) and 9(40) concerning having received yttrium-90 microspheres;
- revising the factors in subsections 9(17) and 9(41) concerning having acute respiratory distress syndrome, by the inclusion of a note;
- revising the factors in subsections 9(19) and 9(43) concerning taking a drug from the specified list of drugs;
- revising the factors in subsections 9(20) and 9(44) concerning having chronic or recurrent diffuse alveolar haemorrhage, by the inclusion of a note;
- revising the factors in subsections 9(21) and 9(45) concerning having exogenous lipoid pneumonitis, by the inclusion of a note;
- revising the factors in subsections 9(22) and 9(46) concerning having tropical pulmonary eosinophilia, by the inclusion of a note;

- new factors in subsections 9(23) and 9(48) concerning inhaling a vapour, gas, dust or fumes produced by a substance from the specified list of substances, or smoke from fire, in an enclosed space;
- new factors in subsections 9(24) and 9(49) concerning inhaling a vapour, gas, dust or fumes produced by a substance from the specified list of substances, or smoke from fire, in an open environment;
- new factors in subsections 9(25) and 9(50) concerning inhaling smoke from the combustion of wood, charcoal, coal or other biomass or fossil fuel, in an enclosed space;
- revising the factor in subsection 9(27) concerning inhaling respirable asbestos fibres, for clinical worsening;
- deleting the factors concerning inhaling respirable crystalline silica dust in an enclosed space and the factors concerning inhaling respirable crystalline silica dust in an open environment, as these have been combined into the factors in subsections 9(5) and 9(29) concerning inhaling respirable crystalline silica dust;
- new definitions of 'acute beryllium disease', 'MRCA', 'one pack-year', 'specified list of drugs', 'specified list of substances' and 'VEA' in Schedule 1 - Dictionary;
- revising the definitions of 'acute respiratory distress syndrome', 'acute silicosis', 'diffuse alveolar haemorrhage', 'inhaling beryllium dust or fumes' and 'relevant service' in Schedule 1 - Dictionary; and
- deleting the definitions of 'a drug or a drug from a class of drugs from the specified list', 'pack-years of cigarettes, or the equivalent thereof in other tobacco products' and 'toxic gases or fumes'.

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 fibrosing interstitial lung disease in the Government Notices Gazette of 5 January 2021, 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.

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 fibrosing interstitial lung disease as advertised in the Government Notices Gazette of 5 January 2021.

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. 85 of 2021**

Kind of Injury, Disease or Death: **Fibrosing interstitial lung disease**

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 fibrosing interstitial lung disease;
- 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 fibrosing interstitial lung disease with the circumstances of eligible service rendered by a person, as set out in clause 5 of the Explanatory Statement;
- replaces Instrument No. 53 of 2013; and
- reflects developments in the available sound medical-scientific evidence concerning fibrosing interstitial lung disease 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.