



Australian Government
Repatriation Medical Authority

EXPLANATORY STATEMENT

**STATEMENT OF PRINCIPLES CONCERNING
DIAPHRAGMATIC HERNIA
(BALANCE OF PROBABILITIES) (NO. 100 OF 2022)**

VETERANS' ENTITLEMENTS ACT 1986
MILITARY REHABILITATION AND COMPENSATION ACT 2004

1. This is the Explanatory Statement to the *Statement of Principles concerning diaphragmatic hernia (Balance of Probabilities)* (No. 100 of 2022).

Background

2. The Repatriation Medical Authority (the Authority) has determined, under subsection 196B(3) of the *Veterans' Entitlements Act 1986* (the VEA), Statement of Principles concerning **diaphragmatic hernia** (Balance of Probabilities) (No. 100 of 2022).
3. The Authority is of the view that on the sound medical-scientific evidence available it is more probable than not that **diaphragmatic hernia** and **death from diaphragmatic hernia** can be related to particular kinds of service. The Authority has therefore determined this Statement of Principles concerning diaphragmatic hernia pursuant to subsection 196B(3) of the VEA.

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, diaphragmatic hernia or death from diaphragmatic hernia 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. The Repatriation Commission, Military Rehabilitation and Compensation Commission, Veterans' Review Board or Administrative Appeals Tribunal cannot accept any claim for pension; or a claim for liability or compensation relating to **diaphragmatic hernia** or **death from diaphragmatic hernia** that was lodged on or after 1 June 1994 in the case of the VEA, or 1 July 2004 in the case of the MRCA respectively, unless this Statement of Principles upholds that claim (subsection 120B(3) of the VEA or subsection 339(3) of the MRCA).

7. This new Instrument results from an investigation notified by the Authority in the Government Notices Gazette of 10 May 2022 concerning diaphragmatic hernia in accordance with section 196G of the VEA. The investigation involved an examination of the sound medical-scientific evidence available to the Authority.

Consultation

8. Prior to determining this Instrument, the Authority advertised its intention to undertake an investigation in relation to diaphragmatic hernia 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.

Human Rights

9. 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

10. The determining of this new Instrument finalises the investigation in relation to diaphragmatic hernia as advertised in the Government Notices Gazette of 10 May 2022.

References

11. 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. 100 of 2022**

Kind of Injury, Disease or Death: **Diaphragmatic hernia**

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 diaphragmatic hernia;
 - facilitates the review of such decisions by the Veterans' Review Board and the Administrative Appeals Tribunal; and
 - outlines the factors which the current sound medical-scientific evidence indicates must exist before it can be said that, on the balance of probabilities, diaphragmatic hernia is connected with the circumstances of eligible service rendered by a person, as set out in clause 5 of the Explanatory Statement.
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.