



Statement of Principles concerning intervertebral disc prolapse (Balance of Probabilities) (No. 44 of 2016)

made under subsection 196B(3) of the

Veterans' Entitlements Act 1986

Compilation No. 1

Compilation date: 25 May 2020

Includes amendments up to: Amendment Statement of Principles concerning
intervertebral disc prolapse (Balance of
Probabilities) (No. 39 of 2020) (F2020L00497)

The day of commencement of this Amendment Statement of Principles concerning
intervertebral disc prolapse is 25 May 2020.

Prepared by the Repatriation Medical Authority Secretariat, Brisbane

About this compilation

This compilation

This is a compilation of the *Statement of Principles concerning intervertebral disc prolapse (Balance of Probabilities)* (No. 44 of 2016) that shows the text of the law as amended and in force on 25 May 2020.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.



Australian Government
Repatriation Medical Authority

Statement of Principles
concerning
INTERVERTEBRAL DISC PROLAPSE
(Balance of Probabilities)
(No. 44 of 2016)

The Repatriation Medical Authority determines the following Statement of Principles under subsection 196B(3) of the *Veterans' Entitlements Act 1986*.

Dated 22 April 2016

Statement of Principles concerning
Intervertebral Disc Prolapse (Balance of Probabilities) (No. 44 of 2016)
Veterans' Entitlements Act 1986

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1 Name

This is the Statement of Principles concerning *intervertebral disc prolapse (Balance of Probabilities)* (No. 44 of 2016).

2 Commencement

This instrument commences on 23 May 2016.

3 Authority

This instrument is made under subsection 196B(3) of the *Veterans' Entitlements Act 1986*.

4 Revocation

The Statement of Principles concerning intervertebral disc prolapse No. 40 of 2007, as amended, made under subsections 196B(3) and (8) of the VEA is revoked.

5 Application

This instrument applies to a claim to which section 120B of the VEA or section 339 of the *Military Rehabilitation and Compensation Act 2004* applies.

6 Definitions

The terms defined in the Schedule 1 - Dictionary have the meaning given when used in this instrument.

7 Kind of injury, disease or death to which this Statement of Principles relates

- (1) This Statement of Principles is about intervertebral disc prolapse and death from intervertebral disc prolapse.

Meaning of intervertebral disc prolapse

- (2) For the purposes of this Statement of Principles, intervertebral disc prolapse means:
- (a) protrusion, herniation or rupture of the nucleus pulposus or annulus fibrosis of an intervertebral disc into the vertebral canal of the cervical, thoracic or lumbar spine, causing one or more of the following:
 - (i) local pain or stiffness;
 - (ii) clinical evidence of nerve root compression; or
 - (iii) clinical evidence of spinal cord compression; and

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- (b) excludes bulging of the intervertebral disc and Schmorl's nodes.
- (3) While intervertebral disc prolapse attracts ICD-10-AM code M50.0, M50.1, M50.2, M51.0, M51.1 or M51.2, in applying this Statement of Principles the meaning of intervertebral disc prolapse is that given in subsection (2).
- (4) For subsection (3), a reference to an ICD-10-AM code is a reference to the code assigned to a particular kind of injury or disease in *The International Statistical Classification of Diseases and Related Health Problems, Tenth Revision, Australian Modification* (ICD-10-AM), Ninth Edition, effective date of 1 July 2015, copyrighted by the Independent Hospital Pricing Authority, ISBN 978-1-76007-020-5.

Death from intervertebral disc prolapse

- (5) For the purposes of this Statement of Principles, intervertebral disc prolapse, in relation to a person, includes death from a terminal event or condition that was contributed to by the person's intervertebral disc prolapse.

Note: **terminal event** is defined in the Schedule 1 – Dictionary.

8 Basis for determining the factors

On the sound medical-scientific evidence available, the Repatriation Medical Authority is of the view that it is more probable than not that intervertebral disc prolapse and death from intervertebral disc prolapse can be related to relevant service rendered by veterans or members of the Forces under the VEA, or members under the MRCA.

Note: **relevant service** is defined in the Schedule 1 – Dictionary.

9 Factors that must exist

At least one of the following factors must exist before it can be said that, on the balance of probabilities, intervertebral disc prolapse or death from intervertebral disc prolapse is connected with the circumstances of a person's relevant service:

- (1) having a trauma to the relevant disc within the 24 hours before the clinical onset of intervertebral disc prolapse;
- (2) having a penetrating injury to the relevant disc or adjacent vertebral body, within the 24 hours before the clinical onset of intervertebral disc prolapse;

Note: **penetrating injury to the relevant disc or adjacent vertebral body** is defined in the Schedule 1 - Dictionary.

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- (3) physically carrying or lifting loads of at least ten kilograms, to a cumulative total Load-Factor of at least 300 000, within the five years before the clinical onset of intervertebral disc prolapse;

Note: **Load-Factor** is defined in the Schedule 1 - Dictionary.

- (4) for intervertebral disc prolapse of the cervical spine only:
- (a) using a hand-held, vibrating, percussive, industrial tool for an average of at least 30 hours per week, for a period of at least two years within the ten years before the clinical onset of intervertebral disc prolapse; or
 - (b) flying in high performance aircraft for a cumulative total of at least 1 000 hours within any ten year period before the clinical onset of intervertebral disc prolapse, and where the clinical onset of intervertebral disc prolapse occurs within the 25 years following that period;

Note: **high performance aircraft** is defined in the Schedule 1 - Dictionary.

- (5) driving a motor vehicle for an average of at least 30 hours per week, for a period of at least two years within the ten years before the clinical onset of intervertebral disc prolapse;

Note: **motor vehicle** is defined in the Schedule 1 - Dictionary.

- (6) flying a powered aircraft for a cumulative total of at least 5 000 hours within the ten years before the clinical onset of intervertebral disc prolapse;
- (7) flying in a helicopter as operational aircrew, for a cumulative total of at least 5 000 hours within the ten years before the clinical onset of intervertebral disc prolapse;
- (8) smoking at least ten pack-years of cigarettes, or the equivalent thereof in other tobacco products, before the clinical onset of intervertebral disc prolapse, and where smoking has ceased, the clinical onset of intervertebral disc prolapse has occurred within five years of cessation;

Note: **pack-years of cigarettes, or the equivalent thereof in other tobacco products** is defined in the Schedule 1 - Dictionary.

- (9) having bacterial infection of the relevant disc at the time of the clinical worsening of intervertebral disc prolapse;
- (10) being obese for at least five years within the 25 years before the clinical onset of intervertebral disc prolapse;

Note: **being obese** is defined in the Schedule 1 - Dictionary.

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- (11) having a trauma to the relevant disc within the 24 hours before the clinical worsening of intervertebral disc prolapse;

Note: *trauma to the relevant disc* is defined in the Schedule 1 - Dictionary.

- (12) having a penetrating injury to the relevant disc or adjacent vertebral body, within the 24 hours before the clinical worsening of intervertebral disc prolapse;

Note: *penetrating injury to the relevant disc or adjacent vertebral body* is defined in the Schedule 1 - Dictionary.

- (13) physically carrying or lifting loads of at least ten kilograms, to a cumulative total Load-Factor of at least 300 000, within the five years before the clinical worsening of intervertebral disc prolapse;

Note: *Load-Factor* is defined in the Schedule 1 - Dictionary.

- (14) for intervertebral disc prolapse of the cervical spine only:

- (a) using a hand-held, vibrating, percussive, industrial tool for an average of at least 30 hours per week, for a period of at least two years within the ten years before the clinical worsening of intervertebral disc prolapse; or
- (b) flying in high performance aircraft for a cumulative total of at least 1 000 hours within any ten year period before the clinical worsening of intervertebral disc prolapse, and where the clinical worsening of intervertebral disc prolapse occurs within the 25 years following that period;

Note: *high performance aircraft* is defined in the Schedule 1 - Dictionary.

- (15) driving a motor vehicle for an average of at least 30 hours per week, for a period of at least two years within the ten years before the clinical worsening of intervertebral disc prolapse;

Note: *motor vehicle* is defined in the Schedule 1 - Dictionary.

- (16) flying a powered aircraft for a cumulative total of at least 5 000 hours within the ten years before the clinical worsening of intervertebral disc prolapse;

- (17) flying in a helicopter as operational aircrew, for a cumulative total of at least 5 000 hours within the ten years before the clinical worsening of intervertebral disc prolapse;

- (18) smoking at least ten pack-years of cigarettes, or the equivalent thereof in other tobacco products, before the clinical worsening of intervertebral disc prolapse, and where smoking has ceased, the clinical worsening of intervertebral disc prolapse has occurred within five years of cessation;

Note: *pack-years of cigarettes, or the equivalent thereof in other tobacco products* is defined in the Schedule 1 - Dictionary.

- (19) having bacterial infection of the relevant disc at the time of the clinical worsening of intervertebral disc prolapse;
- (20) being obese for at least five years within the 25 years before the clinical worsening of intervertebral disc prolapse;

Note: *being obese* is defined in the Schedule 1 - Dictionary.

- (21) inability to obtain appropriate clinical management for intervertebral disc prolapse.

10 Relationship to service

- (1) The existence in a person of any factor referred to in section 9, must be related to the relevant service rendered by the person.
- (2) The factors set out in subsections 9(11) to 9(21) apply only to material contribution to, or aggravation of, intervertebral disc prolapse where the person's intervertebral disc prolapse was suffered or contracted before or during (but did not arise out of) the person's relevant service.

11 Factors referring to an injury or disease covered by another Statement of Principles

In this Statement of Principles:

- (1) if a factor referred to in section 9 applies in relation to a person; and
- (2) that factor refers to an injury or disease in respect of which a Statement of Principles has been determined under subsection 196B(3) of the VEA;

then the factors in that Statement of Principles apply in accordance with the terms of that Statement of Principles as in force from time to time.

Schedule 1 - Dictionary

Note: See Section 6

1 Definitions

In this instrument:

being obese means having a Body Mass Index (BMI) of 30 or greater.

BMI means W/H^2 and where:

W is the person's weight in kilograms; and

H is the person's height in metres.

G force means the ratio of the applied acceleration of the aircraft to the acceleration due to gravity, for example, $2G = 2 \times 9.81\text{m/s}^2$.

high performance aircraft means an aircraft capable of generating an acceleration force (G force) of four G or more, during routine, normal operations.

Note: ***G force*** is also defined in the Schedule 1 - Dictionary.

intervertebral disc prolapse—see subsection 7(2).

Load-Factor means $W^2 \times T$, where:

W is the weight of the load lifted or carried in kilograms; and

T is the time the load was lifted or carried in hours.

motor vehicle means a motorised vehicle which imparts vibration to the whole body, such as a car, truck, motor cycle, tractor, jeep, armoured personnel carrier, tank, or a construction vehicle, such as a forklift, bulldozer, crane, steam shovel, backhoe or steam roller.

MRCA means the *Military Rehabilitation and Compensation Act 2004*.

relevant service means:

- (a) eligible war service (other than operational service) under the VEA;
- (b) defence service (other than hazardous service and British nuclear test defence service) under the VEA; or
- (c) peacetime service under the MRCA.

pack-years of cigarettes, or the equivalent thereof in other tobacco products means a calculation of consumption where one pack-year of cigarettes equals 20 tailor-made cigarettes per day for a period of one calendar year, or 7 300 cigarettes. One tailor-made cigarette approximates one gram of tobacco or one gram of cigar or pipe tobacco by weight. One pack-year of tailor-made cigarettes equates to 7.3 kilograms of smoking tobacco by weight. Tobacco products mean cigarettes, pipe tobacco or cigars, smoked alone or in any combination.

penetrating injury to the relevant disc or adjacent vertebral body means piercing of the relevant disc or adjacent vertebral body by objects such as a bullet, knife or needle.

terminal event means the proximate or ultimate cause of death and includes the following:

- (a) pneumonia;
- (b) respiratory failure;
- (c) cardiac arrest;
- (d) circulatory failure; or
- (e) cessation of brain function.

trauma to the relevant disc means a discrete event involving the application of significant physical force, including G force, to the affected intervertebral disc, that causes:

- (a) the development of symptoms and signs of pain and tenderness, and either altered mobility or range of movement of that part of the spine. In the case of sustained unconsciousness or the masking of pain by analgesic medication, these symptoms and signs must appear on return to consciousness or the withdrawal of the analgesic medication; and
- (b) the persistence of these symptoms and signs for a period of at least seven days following their onset, save for where medical intervention for the trauma to the relevant disc has occurred and that medical intervention involves one of the following:
 - (i) immobilisation of that part of the spine by splinting or similar external agent;
 - (ii) injection of a corticosteroid or local anaesthetic into that part of the spine; or
 - (iii) surgery to that part of the spine.

Note: ***G force*** is also defined in the Schedule 1 - Dictionary.

VEA means the *Veterans' Entitlements Act 1986*.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	
exp = expires/expired or ceases/ceased to have effect	reloc = relocated
F = Federal Register of Legislation	renum = renumbered
gaz = gazette	rep = repealed
LA = <i>Legislation Act 2003</i>	rs = repealed and substituted
LIA = <i>Legislative Instruments Act 2003</i>	s = section(s)/subsection(s)
(md) = misdescribed amendment can be given effect	Sch = Schedule(s)
(md not incorp) = misdescribed amendment cannot be given effect	Sdiv = Subdivision(s)
mod = modified/modification	SLI = Select Legislative Instrument
No. = Number(s)	SR = Statutory Rules
	Sub-Ch = Sub-Chapter(s)
	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
<i>Statement of Principles concerning intervertebral disc prolapse (Balance of Probabilities) (No. 44 of 2016)</i>	26 April 2016 F2016L00564	23 May 2016	
<i>Amendment Statement of Principles concerning intervertebral disc prolapse (Balance of Probabilities) (No. 39 of 2020)</i>	28 April 2020 F2020L00497	25 May 2020	

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Schedule 1 – Dictionary – trauma to the relevant disc.....	rs. No. 39 of 2020