



Veterans' Affairs and Other Legislation Amendment (Miscellaneous Measures) Bill 2009

Peter Yeend
Social Policy Section

Contents

Glossary	3
Purpose.....	4
Background.....	4
Schedule 1–Amendments.....	4
Part 1–Australian participants in British nuclear tests.....	4
Comment	5
Part 5–Aggravation etc. of war-caused or defence-caused injury or disease	5
Background	5
Coverage of each Act	5
Comment	6
Part 7–Statements of Principles	6
Purpose	8
Background	6
Statements of Principles	7
Repatriation Medical Authority.....	7
Specialist Medical Review Council.....	8
Changing a Statement of Principles	7
Comment	8
Main provisions	9
Schedule 1–Amendments.....	9
Part 1–Australian participants in British nuclear tests.....	9
Australian Participants in British Nuclear Tests (Treatment) Act 2006.....	9
Part 5–Aggravation etc. of war-caused or defence-caused injury or disease	9
Veterans’ Entitlements Act 1986.....	9

Part 7–Statements of Principles	9
Veterans’ Entitlements Act 1986.....	9
Concluding comments	10



Glossary

Abbreviation	Definition
APBNTTA	<i>Australian Participants in British Nuclear Tests (Treatment) Act 2006</i>
AFP	Australian Federal Police
APS	Australian Protective Services
MRCA	<i>Military Rehabilitation and Compensation Act 2004</i>
RMA	Repatriation Medical Authority
SRCA	<i>Safety Rehabilitation and Compensation Act 1988</i>
SMRC	Specialist Medical Review Council
SoP	Statements of Principles
VEA	<i>Veterans' Entitlements Act 1986</i>

Veterans' Affairs and Other Legislation Amendment (Miscellaneous Measures) Bill 2009

Date introduced: 25 November 2009

House: House of Representatives

Portfolio: Veterans' Affairs

Commencement: On the date of Royal Assent except for **Items 42 to 44** in **Schedule 1** which are to commence from the day after the date this Act receives Royal Assent or from 1 July 2010, whichever is the later.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

To amend various Acts to give effect to several minor changes to veterans' assistance and entitlements.

Background

Schedule 1–Amendments

Part 1–Australian participants in British nuclear tests

The purpose of the amendments to the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* (APBNTTA) in this Bill is to change the definition of a 'nuclear test participant' in the APBNTTA. The definition is to be expanded to include members of the Australian Protective Services (APS) from 1984 to 1988.

The Commonwealth provides for the payment of screening and testing for cancer and also for the treatment of cancer for participants in the British nuclear tests conducted in Australia in the 1950s. The coverage was originally provided for with the passage of the APBNTTA.¹ The coverage of the cancer and treatment arrangements was later extended

1. P Yeend and A Biggs, *Australian Participants in British Nuclear Tests (Treatment) Bill 2006*, Bills digest, no. 31, 2006-07, Parliamentary Library, Canberra, 2006, viewed 2 February 2010 <http://www.aph.gov.au/library/pubs/bd/2006-07/07bd031.htm>

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to members of the Commonwealth or Australian Federal Police (AFP) performing guard duties at Maralinga from 1 May 1965 to 30 June 1988.²

The Maralinga test site was also guarded by officers of the APS from 1984 to 1988. However, from 20 October 1984 APS officers were not members of the AFP and were not covered by the *Australian Federal Police Act 1979*.

The amendments in this Bill will describe APS officers performing guard duties at Maralinga from 20 October 1984 to 30 June 1988 as a 'nuclear test participant' and they will therefore receive the benefit of having any cancer screen testing and treatment paid for under the APBNTTA.

Comment

This is beneficial legislation that will ensure there is equity of access to cancer screening and cancer treatment for officers involved in guarding the Maralinga test site.

Part 5—Aggravation etc. of war-caused or defence-caused injury or disease

Background

There are three main Acts that provide for compensation and coverage of a war or defence service injury, disease or death. They are the:

- *Veterans' Entitlements Act 1986* (VEA)
- *Safety Rehabilitation and Compensation Act 1988* (SRCA), and
- *Military Rehabilitation and Compensation Act 2004* (MRCA)

Coverage of each Act

There is some overlap of coverage between the VEA and the SRCA and the MRA respectively. For example, a person may have an entitlement to coverage under the VEA and the MRCA at the same time. In such cases a person may have to choose which coverage they want to receive. Where a person does choose, this may also lead to offsets against entitlements under the other act. Broadly these acts provide for:

VEA – Operational service, peacekeeping service and hazardous military service. Peacetime military service from 7 December 1972 up to 6 April 1986,

SRCA - Illness/injury/death from military service from 3 January 1949 up to and including 30 June 2004, and

2. P Yeend, *Veterans' Affairs Legislation Amendment (International Agreements and Other Measures) Bill 2008*, Bills digest no. 103, 2007-08, Parliamentary Library, Canberra, 2008, viewed 2 February 2010 <http://www.aph.gov.au/library/pubs/bd/2007-08/08bd103.htm>

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MRCA - Illness/injury/death occurring on military service from on or after 1 July 2004.

The coverage for service personnel for illness/injury/death was for a long time only provided for by the VEA. The VEA, having its origins in repatriation legislation and the original *War Pension Act 1914*, is primarily a war service compensation and repatriation act. This contrasts with much of the service undertaken by members of the defence force in more recent times, which is often and mostly peacetime service. The issue of coverage gets complicated as often this peacetime service gets interspersed with peacekeeping service, with hazardous peacekeeping service, and also with war-like (qualifying) service. For this non war-like service, the VEA does not work like a modern workers' compensation act – it is much more of a war-like service compensation and repatriation act.

For too long, too much reliance was placed in the VEA alone to provide for service personnel and their dependants. The SRCA attempted to fill in the gaps in VEA coverage, especially in respect of peacetime service. The SRCA was constructed more like a modern workers' compensation act and its benefits were primarily to provide workers' compensation type coverage. The focus was more on weekly compensation replacing lost wages and payment of medical and rehabilitation services to facilitate a return to work.

However, the VEA, the SRCA and the MRCA still exist and there needs to be appropriate treatment for persons who have an entitlement under more than one act at the same time. Service personnel and their dependants should not be penalised, but nor should they be able to double-dip.

The amendments to the VEA in Part 5 of this Bill are to ensure that where there is a qualification to coverage under the VEA for an illness/injury, the entitlement to that VEA coverage is not compromised even though the illness/injury has been aggravated or materially contributed to by service also covered by the MRCA.

Comment

This legislation is beneficial legislation and will ensure service personnel (or their dependants) who have an entitlement to coverage under both the VEA and the MRCA at the same time are not penalised.

Part 7–Statements of Principles

Background

A person may make a claim under the VEA or the MRCA that their illness/injury was caused by or related to their service. The main form of assistance claimed under the VEA is the Disability Pension, but a claim may also be made for a War Widow's/er's Pension, that the death of a partner was due to an illness/injury arising from service.

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Statements of Principles

The Statements of Principles (SoP) are legislative instruments that set out the factors which are accepted as the cause of certain medical conditions.³ SoPs are determined by the Repatriation Medical Authority (RMA). SoPs describe what factors could cause a medical condition that is the subject of a claim. In order for a claim to succeed at least one of the SoP factors must be related to service.

There are two SoPs for each condition, one for warlike, non-warlike and operational service, and one for other eligible service. This is because the different types of service attract different standards of proof for determining claims.

Changing a Statement of Principles

SoPs are registered with the Federal Register of Legislative Instruments (FRLI) and tabled in both Houses of the Australian Parliament. Each SoP contains the date on which it takes effect. The SoPs remain law unless either House of the Australian Parliament disallows them,⁴ or they are revoked by the RMA.

Veterans, serving and former members of the Australian Defence Force (ADF), eligible dependants, ex-service organisations, the Repatriation Commission or the Military Rehabilitation and Compensation Commission can request the RMA to make a new SoP, if one does not already exist, or to review a SoP if they believe that there is additional information available.

Repatriation Medical Authority

The RMA is an expert medical body that compiles the SoP. The RMA consists of a Chairperson and four other Members. The Minister for Veterans' Affairs appoints all members on a part-time basis and at least one member must have at least five years experience in the field of epidemiology. The role of the RMA is to:

- determine whether there is sound medical-scientific evidence that links particular kinds of injury, disease or death with war or defence service, and
- reflect the causal links in legally binding SoPs.

The RMA does not review or have any role in assessing an individual's claim for benefits.

3. Department of Veterans' Affairs, *Statements of Principles*, viewed 3 February 2010 http://www.dva.gov.au/pensions_and_compensation/Pages/sops.aspx

4. M Coombs, *Legislative Instruments Bill 2003*, Bills digest, no. 26, 2003-04, Parliamentary Library, Canberra, 2003, viewed 9 February 2010 <http://www.aph.gov.au/library/pubs/bd/2003-04/04bd026.htm>

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Specialist Medical Review Council

The SMRC is an independent statutory body that can be established to review a SoP that has been written by the RMA. The SMRC is independent of the Repatriation Commission, the Military Rehabilitation and Compensation Commission (MRCC) and the RMA. SMRC are selected for the purposes of each specific review of a SoP that is before the SMRC. The SMRC must consist of at least three and not more than five members appointed by the Minister. To be appointed as a member the person must be a registered medical practitioner, or medical scientist, with a least 10 years experience and be nominated by colleges or similar bodies – such as the College of Physicians.

In conducting a review of a SoP, a SMRC will take into consideration all of the information that was available to the RMA and any relevant written submissions that the applicant for review or other eligible persons, organisations or experts in a relevant field may provide.

The SMRC does not deal with individual applications for disability pensions or any other compensation, but decides whether it would have made a different decision than the RMA, on the basis of the same medical-scientific information.

Purpose

The amendments to the VEA presented in **Part 7** of the Bill are to change the powers of the Specialist Medical Review Council (SMRC) in its functions of examining SoPs that have been written by the Repatriation Medical Authority (RMA). At present, where a SMRC is set up to examine a SoP they can only review that part of the SoP that is the subject of a review. The SMRC currently does not have the power to examine the other part of the same SoP, which can lead to inconsistencies of application of a SoP. The SMRC will also be given the power to review a decision of the RMA on a SoP, where the RMA decided to not change or alter the SoP.

Comment

This is beneficial legislation. The amendments presented will allow the SMRC more flexibility and more consistency in its role of reviewing a SoP.

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Main provisions

Schedule 1–Amendments

Part 1–Australian participants in British nuclear tests

Australian Participants in British Nuclear Tests (Treatment) Act 2006

Item 3 inserts into the definition of a nuclear test participant officers in the APS and also a protective service officer in a department of the Commonwealth.

Part 3–Claims for travel expenses

Items 8, 9 and 10 extend the period in which a claim for travel expenses may be lodged. Claims will be able to be lodged up to 12 months after the event causing the expense occurred and there is also the flexibility to allow a claim after more than 12 months. In effect this will allow claims retrospectively, that is up to 12 months before Part 3 of the Bill comes into effect, which is to be the date of Royal Assent.

Part 5–Aggravation etc. of war-caused or defence-caused injury or disease

Veterans' Entitlements Act 1986

Items 15 to 18 propose to amend section 9A of the VEA. Section 9A of the VEA describes conditions no longer covered by the VEA. The new wording will allow an injury or disease to be still covered by the VEA, even though it may have been aggravated or materially contributed to by service also covered by the MRCA.

Part 7–Statements of Principles

Veterans' Entitlements Act 1986

Items 24 to 27 proposes to insert provisions that will empower the SMRC to review a SoP where the RMA has chosen to not amend a SoP. At the moment the current VEA provisions only empower the SMRC to review a SoP that is the subject of a review or has been amended by the RMA. The new provisions will allow the SMRC to review a SoP where the RMA decided not to alter a SoP.

Item 28 proposes amendments to section 196W(3) of the VEA to empower and also require the SMRC to review all the contents of a SoP, even though only part of the SoP were the subject of a review.

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Concluding comments

The changes to legislation presented in this Bill are minor and in all cases beneficial. The most notable changes have been discussed in this Digest.

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