

APPENDIX 5

Definitions

Veterans' Entitlements Act 1986

Defence Force has the same meaning as in the *Defence Act 1903*.

non-warlike service means service in the Defence Force of a kind determined in writing by the Minister for Defence to be non-warlike service.

veteran means:

- (a) a person (including a deceased person):
 - (i) who is, because of section 7, taken to have rendered eligible war service; or
 - (ii) in respect of whom a pension is, or pensions are, payable under subsection 13(6); and
- (b) in Parts III and VIIC also includes a person who is:
 - (i) a Commonwealth veteran; or
 - (ii) an allied veteran; or
 - (iv) an allied mariner.

Note: *Commonwealth veteran*, *allied veteran* and *allied mariner* are defined in this subsection.

warlike service means service in the Defence Force of a kind determined in writing by the Minister for Defence to be warlike service.

5D Injury/disease definitions

- (1) In this Act, unless the contrary intention appears:

disease means:

- (a) any physical or mental ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development); or
 - (b) the recurrence of such an ailment, disorder, defect or morbid condition;
- but does not include:
- (c) the aggravation of such an ailment, disorder, defect or morbid condition; or
 - (d) a temporary departure from:
 - (i) the normal physiological state; or
 - (ii) the accepted ranges of physiological or biochemical measures;

that results from normal physiological stress (for example, the effect of exercise on blood pressure) or the temporary effect of extraneous agents (for example, alcohol on blood cholesterol levels).

incapacity from a defence-caused injury or ***incapacity from a defence-caused disease*** has the meaning given by subsection (2).

incapacity from a war-caused injury or ***incapacity from a war-caused disease*** has the meaning given by subsection (2).

injury means any physical or mental injury (including the recurrence of a physical or mental injury) but does not include:

- (a) a disease; or
- (b) the aggravation of a physical or mental injury.

War-caused injury; war-caused disease; defence-caused injury; defence-caused disease

- (2) In this Act, unless the contrary intention appears:
- (a) a reference to the ***incapacity*** of a veteran ***from a war-caused injury*** or a ***war-caused disease***; or
 - (b) a reference to the ***incapacity*** of a person who is a member of the Forces, or a member of a Peacekeeping Force (as defined by subsection 68(1)), ***from a defence-caused injury*** or a ***defence-caused disease***;

is a reference to the effects of that injury or disease and not a reference to the injury or disease itself.

Note: for ***war-caused injury*** and ***war-caused disease*** see section 9.

periodic payments period means:

- (a) in relation to a series of periodic payments—the period in respect of which the payments are, or are to be, made; and
- (b) in relation to a payment of arrears of a series of periodic payments—the period in respect of which those periodic payments would have been made if they had not been made by way of an arrears payment.

potential compensation payer means a person who, in the Commission's opinion, may become a compensation payer.

receives compensation has the meaning given by subsection (10).

Member of a Peacekeeping Force has the same meaning as in Part IV.

8 War-caused death

- (1) Subject to this section, for the purposes of this Act, the death of a veteran shall be taken to have been war-caused if:
- (a) the death of the veteran resulted from an occurrence that happened while the veteran was rendering operational service;
 - (b) the death of the veteran arose out of, or was attributable to, any eligible war service rendered by the veteran;

- (c) the death of the veteran resulted from an accident that occurred while the veteran was travelling, while rendering eligible war service but otherwise than in the course of duty, on a journey to a place for the purpose of performing duty or away from a place of duty upon having ceased to perform duty;
- (d) in the opinion of the Commission, the death of the veteran was due to an accident that would not have occurred, or to a disease that would not have been contracted, but for his or her having rendered eligible war service or but for changes in the veteran's environment consequent upon his or her having rendered eligible war service; or
- (e) the injury or disease from which the veteran died:
 - (i) was suffered or contracted while the veteran was rendering eligible war service, but did not arise out of that service; or
 - (ii) was suffered or contracted before the commencement of the period, or last period, of eligible war service rendered by the veteran, but not while the veteran was rendering eligible war service;
 and, in the opinion of the Commission, the injury or disease was contributed to in a material degree by, or was aggravated by, any eligible war service rendered by the veteran, being service rendered after the veteran suffered that injury or contracted that disease; or
- (f) the injury or disease from which the veteran died is an injury or disease that has been determined in accordance with section 9 to have been a war-caused injury or a war-caused disease, as the case may be;

Note: The effect of paragraph (f) is that, if the veteran has died from an injury or disease that has already been determined by the Commission to be war-caused, the death is to be taken to have been war-caused. Accordingly the Commission is not required to relate the death to eligible war service rendered by the veteran and sections 120A and 120B do not apply.

but not otherwise.

- (2) Paragraph (1)(a), (b), (c) or (d) does not apply to the death of a veteran if the death:
 - (a) resulted from the veteran's serious default or wilful act; or
 - (b) arose from:
 - (i) a serious breach of discipline committed by the veteran; or
 - (ii) an occurrence that happened while the veteran was committing a serious breach of discipline.
- (3) Subsection (1) does not apply to the death of a veteran if the death of the veteran resulted from the serious default or wilful act of the veteran that happened after the veteran ceased, or last ceased, to render eligible war service.
- (4) Paragraph (1)(c) does not apply:
 - (a) to an accident that occurred while the veteran was travelling on a journey from the veteran's place of duty in a case where the veteran had delayed commencing the journey for a substantial time after he or she ceased to perform duty at that place (otherwise than for a reason connected with the performance of the veteran's duties) unless, in the circumstances of the

- particular case, the nature of the risk of sustaining an injury, or contracting a disease, was not substantially changed, and the extent of that risk was not substantially increased, by that delay or by anything that happened during that delay;
- (b) to an accident that occurred while the veteran was travelling on a journey, or a part of a journey, by a route that was not reasonably direct having regard to the means of transport used unless:
 - (i) the journey, or that part of the journey, was made by that route for a reason connected with the performance of the veteran's duties; or
 - (ii) in the circumstances of the particular case, the nature of the risk of sustaining an injury, or contracting a disease, was not substantially changed, and the extent of that risk was not substantially increased, by reason that the journey, or that part of the journey, was made by that route; or
 - (c) to an accident that occurred while the veteran was travelling on a part of a journey made after a substantial interruption of the journey, being an interruption made for a reason unconnected with the performance of the veteran's duties, unless, in the circumstances of the particular case, the nature of the risk referred to in subparagraph (b)(ii) was not substantially changed, and the extent of that risk was not substantially increased, by reason of that interruption.
- (5) Paragraph (1)(e) does not apply to the death of a veteran from an injury or disease, being injury or disease that has been contributed to in a material degree by, or aggravated by, eligible war service rendered by the veteran, unless the veteran has rendered operational service or the period of the eligible war service rendered by the veteran that so contributed to the injury or disease, or by which the injury or disease was aggravated, was 6 months or longer.
- (6) Despite subsection (1), the death of a veteran is taken not to have been war-caused if the veteran's death is related to the veteran's eligible war service only because:
- (a) in the case of a veteran who had not used tobacco products before 1 January 1998—the veteran used tobacco products after 31 December 1997; or
 - (b) in the case of a veteran who had used tobacco products before 1 January 1998—the veteran increased his or her use of tobacco products after 31 December 1997.

9 War-caused injuries or diseases

- (1) Subject to this section, for the purposes of this Act, an injury suffered by a veteran shall be taken to be a war-caused injury, or a disease contracted by a veteran shall be taken to be a war-caused disease, if:
- (a) the injury suffered, or disease contracted, by the veteran resulted from an occurrence that happened while the veteran was rendering operational service;
 - (b) the injury suffered, or disease contracted, by the veteran arose out of, or was attributable to, any eligible war service rendered by the veteran;

- (c) the injury suffered, or disease contracted, by the veteran resulted from an accident that occurred while the veteran was travelling, while rendering eligible war service but otherwise than in the course of duty, on a journey to a place for the purpose of performing duty or away from a place of duty upon having ceased to perform duty;
 - (d) the injury suffered, or disease contracted, by the veteran is to be deemed by subsection (2) to be a war-caused injury or a war-caused disease;
 - (e) the injury suffered, or disease contracted, by the veteran:
 - (i) was suffered or contracted while the veteran was rendering eligible war service, but did not arise out of that service; or
 - (ii) was suffered or contracted before the commencement of the period, or last period, of eligible war service rendered by the veteran, but not while the veteran was rendering eligible war service;and, in the opinion of the Commission, the injury or disease was contributed to in a material degree by, or was aggravated by, any eligible war service rendered by the veteran, being service rendered after the veteran suffered that injury or contracted that disease;
- but not otherwise.
- (2) For the purposes of this Act, where any incapacity of a veteran was, in the opinion of the Commission, due to an accident that would not have occurred, or due to a disease that would not have been contracted, but for his or her having rendered eligible war service or but for changes in the veteran's environment consequent upon his or her having rendered eligible war service:
 - (a) if that incapacity was due to an accident—that incapacity shall be deemed to have arisen out of the injury suffered by the veteran as a result of the accident and the injury so suffered shall be deemed to be a war-caused injury suffered by the veteran; or
 - (b) if the incapacity was due to a disease—the incapacity shall be deemed to have arisen out of that disease and that disease shall be deemed to be a war-caused disease contracted by the veteran.
 - (3) Paragraph (1)(a), (b), (c) or (d) does not apply to an injury suffered, or disease contracted, by a veteran if the injury or disease:
 - (a) resulted from the veteran's serious default or wilful act; or
 - (b) arose from:
 - (i) a serious breach of discipline committed by the veteran; or
 - (ii) an occurrence that happened while the veteran was committing a serious breach of discipline.
 - (4) Subsections (1) and (2) do not apply to an injury suffered, or disease contracted, by a veteran if the incapacity of the veteran from that injury or disease resulted from the serious default or wilful act of the veteran that happened after the veteran ceased, or last ceased, to render eligible war service.
 - (5) Paragraph (1)(c) does not apply:
 - (a) to an accident that occurred while the veteran was travelling on a journey from the veteran's place of work in a case where the veteran had delayed commencing the journey for a substantial period after he or she ceased to perform duty at that place (otherwise than for a reason connected with the

- performance of the veteran's duties) unless, in the circumstances of the particular case, the nature of the risk of sustaining an injury, or contracting a disease, was not substantially changed, and the extent of that risk was not substantially increased, by that delay or by anything that happened during that delay;
- (b) to an accident that occurred while the veteran was travelling on a journey, or a part of a journey, by a route that was not reasonably direct having regard to the means of transport used, unless:
 - (i) the journey, or that part of the journey, was made by that route for a reason connected with the performance of the veteran's duty; or
 - (ii) in the circumstances of the particular case, the nature of the risk of sustaining an injury, or contracting a disease, was not substantially changed, and the extent of the risk was not substantially increased, by reason that the journey, or that part of the journey, was made by that route; or
 - (c) to an accident that occurred while the veteran was travelling on a part of a journey made after a substantial interruption of the journey, being an interruption made for a reason unconnected with the performance of the veteran's duties, unless, in the circumstances of the particular case, the nature of the risk referred to in subparagraph (b)(ii) was not substantially changed, and the extent of that risk was not substantially increased, by reason of that interruption.
- (6) Paragraph (1)(e) does not apply to an injury suffered, or disease contracted, by a veteran (being an injury or disease that has been contributed to in a material degree by, or aggravated by, eligible war service rendered by the veteran):
- (a) if the aggravation of the injury or disease:
 - (i) resulted from the veteran's serious default or wilful act;
 - (ii) arose from a serious breach of discipline committed by the veteran; or
 - (b) unless the veteran had rendered operational service or the period of eligible war service rendered by the veteran that so contributed to the injury or disease, or by which the injury or disease was aggravated, was 6 months or longer.
- (7) Despite subsection (1), the injury or disease of a veteran is taken not to have been war-caused if that injury or disease is related to the veteran's eligible war service only because:
- (a) in the case of a veteran who had not used tobacco products before 1 January 1998—the veteran used tobacco products after 31 December 1997; or
 - (b) in the case of a veteran who had used tobacco products before 1 January 1998—the veteran increased his or her use of tobacco products after 31 December 1997.