

Chapter 3

Provisions of the Bills

Australian Participants in British Nuclear Tests (Treatment) Bill 2006

3.1 The provisions of the Bill are to provide non-liability treatment of, and testing for, malignant neoplasia (cancer) for Australian participants in British nuclear tests conducted at the Emu Field, Monte Bello Islands and Maralinga sites in the 1950s and 1960s.

Who is covered?

3.2 Subclause 7(1) of the Bill establishes that only nuclear test participants are eligible for treatment. Subclause 5(1) sets out who is to be regarded as a nuclear test participant. They are identified as a person who was present:

- in the Monte Bello Islands nuclear test area at any time between 3 October 1952 and 19 June 1958 inclusive;
- in the Emu Field nuclear test area at any time between 15 October 1953 and 25 October 1955 inclusive;
- in the Maralinga nuclear test area at any time between 27 September 1956 and 30 April 1965 inclusive.¹

3.3 In addition to these criterion, Subclause 5(1) requires that a nuclear test participant was a member of the Australian Defence Force, or an employee of the Commonwealth, or a person who, under a contract with the Commonwealth, provided construction, maintenance or support services relating to the conduct of nuclear tests in a nuclear test area and who was, at that time, an Australian resident.

3.4 Subclause 5(2) provides that a person is a nuclear test participant if the person was involved in the transport, recovery, maintenance or cleaning of a vessel, vehicle, aircraft or equipment that was contaminated as a result of its use in a nuclear test area within specified time periods. Subclause 5(3) provides that a person is a nuclear test participant if they meet all of the following criterion:

- the person flew in an aircraft of the Royal Australian Air Force or the Royal Air Force at any time between 3 October 1952 and 31 October 1957; and
- at the time the person flew in the aircraft, the aircraft was used in measuring fallout from nuclear tests conducted in a nuclear test area; and the aircraft was contaminated by the fallout; and
- the person was a member of the Australian Defence Force and an Australian resident.²

1 Explanatory Memorandum, pp. 1–2.

3.5 The Minister for Veterans' Affairs and Minister Assisting the Minister for Defence, the Hon. Bruce Billson, told the House:

We are not only about veterans; we are all about veterans and we are all about the civilians, the public servants and the contractors...It would be a great injustice and an enormous disservice to ignore the reality that it was not only serving members of the Australian Defence Force involved in these tests...³

3.6 Subclause 7(2) of the Bill exempts a person from treatment under the Act if: they are eligible for treatment under Part V of the *Veterans' Entitlement Act 1986* (VEA); liability for the person's treatment has been accepted under the *Safety, Rehabilitation and Compensation Act 1988* (SRCA) or any law relating to workers' compensation; liability for treatment has been accepted under the Commonwealth's 1986 Administrative Scheme.

Entitlements

3.7 The Bill offers the same level of assistance in relation to cancer treatment as under the VEA. This includes travel, community nursing, physiotherapy, medical procedures listed on the MBS, palliative care, pharmaceutical items prescribed for treatment and rehabilitation aids.⁴

3.8 Item 10 establishes the Repatriation Commission as the authority responsible for determining the eligibility of claims for treatment. The provision of treatment under the Bill is broadly based on section 90 of the VEA. This section leaves the identification of the 'Treatment Principles' to the Commission:

The Commission may, from time to time...[set] out circumstances in which, and conditions subject to which, treatment of a particular kind, or included in a particular class of treatment, may be provided under this Part for, or in respect of, eligible persons...

Sub section 90(2) adds:

Without limiting the generality of subsection (1), a document referred to in that subsection may specify kinds or classes of treatment that will not be provided for, or in respect of, eligible persons under this Part, or will not be so provided at places, or in circumstances, specified or described in the document.

2 Explanatory Memorandum, pp. 1–2.

3 Mr Bruce Billson, Minister for Veterans Affairs, Second Reading Speech, Australian Participants in British Nuclear Tests (Treatment) Bill 2006, House of Representatives *Hansard*, p. 142.

4 Department of Veterans' Affairs, *Answers to Questions on Notice*, Friday 3 November 2006, p. 3.

Indeed, modification of the 'Treatment Principles' used for the VEA may be necessary for the provisions of this Bill, given that the Bill is for treatment of a different class of persons than those eligible under the VEA. Unlike the VEA, the only eligibility requirement under the Act is meeting the definition of a 'participant'.⁵

3.9 Division 2 of the Bill deals with the provision of treatment and entitlements. Item 12 empowers the Commission to approve treatment; Item 14 removes from the Commission the obligation to provide treatment or the right to access treatment for an individual other than that approved by the Commission under the Bill.⁶ Items 16 and 17 of the Bill empower the Commission to set out in writing the principles that are to apply under the Bill and to modify these principles without having to amend the Bill in the Parliament. If the Commission wishes to modify the Treatment Principles, these have to be approved by the Minister in writing.

The appeals process

3.10 Part 4 of the Bill deals with the review of decisions made by the Commission. Division 1 empowers the Commission to review its decisions in cases where a claimant is dissatisfied with a decision on his/her eligibility for purposes of the Act or with a decision revoking his/her eligibility.⁷ The Commission must make a written record of its decision detailing its findings on questions of fact, its supporting evidence and the reasons for its decision (Item 26). The Commission must also give the claimant a copy of the review decision (Item 27).

3.11 Part 4, Division 2 enables a person to make an application to the Administrative Review Tribunal if they are unsatisfied with a Commission decision or a review of a decision.

Travel allowances

3.12 Item 19 of the Bill empowers the Commission to cover travel expenses for claimants accessing treatment. Claims are required for these expenses to be covered (Item 21) and it is the Commission that determines the claims (Item 23).⁸

Offences under the Act and recovery of amounts

3.13 Part 5, Item 37 of the Bill contains standard offence provisions for legislation relating to the knowledge of claims for assistance and knowingly providing false or

5 Department of Veterans' Affairs, *Answers to Questions on Notice*, Friday 3 November 2006, p. 2.

6 Peter Yeend and Amanda Biggs, Australian Participants in British Nuclear Tests (Treatment) Bill 2006, Bills Digest No. 31 2006–07, *Parliamentary Library*, Canberra, 6 October, p. 15.

7 Explanatory Memorandum, p. 13.

8 Peter Yeend and Amanda Biggs, Australian Participants in British Nuclear Tests (Treatment) Bill 2006, Bills Digest No. 31 2006–07, *Parliamentary Library*, Canberra, 6 October, p. 16.

misleading information. Items 38 to 44 relate to offences by medical service practitioners servicing under the terms of the Bill.⁹ Many of the offences are based on section 93 of the *Veterans' Entitlement Act (1986)* and sections 306–310 of the *Military Rehabilitation and Compensation Act (2004)*.

3.14 Division 4 of the Bill allows for the recovery of amounts obtained through false or misleading statements. Item 46 states that any amounts recoverable 'must be recovered from the person who made or on whose behalf the statement was made...The quantum is reviewable but not the decision to recover.'¹⁰

Australian Participants in British Nuclear Tests (Treatment) (Consequential Amendments and Transitional Provisions) Bill 2006

3.15 The purpose of this Bill is to provide for consequential amendments to other Acts arising from the *Australian Participants in British Nuclear Tests (Treatment) Bill 2006* (APBNTT). There are seven amendments to four separate Acts.

- Items 1 and 2 amend the *Aged Care Act 1997* (ACA) to enable information relating to the APBNTT to be passed between the Secretary of the Department of Health and Ageing and the Secretary of the Department of Veterans' Affairs.
- Items 3 and 4 clarify that amounts expended or provided under the APBNTT are drawn from the consolidated revenue fund, not subsection 96–10 of the ACA.
- Items 5 and 6 amend the *Income Tax Assessment Act 1997* to ensure that travel expenses covered by the APBNTT are not taxable income.
- Item 7 amends the *National Health Act 1953* (NHA) to ensure that a person receiving treatment under the terms of the APBNTT meets the definition of a repatriation nursing home patient under subsection 40AFA of the NHA.
- Item 8 broadens the definition of a Medicare card under the NHA to include a card issued under the APBNTT.
- Items 9 and 11 amend the NHA definition of a pharmaceutical benefit to include a pharmaceutical benefit provided under the APBNTT.
- Item 12 amends the *Social Security Act 1991* (SSA) to exempt as income payments made under the APBNTT.¹¹

3.16 Schedule 2 of the Bill contains transitional provisions that set the earliest start date for testing or treatment payments under the APBNTT. Payments can begin up to

9 Explanatory Memorandum, p. 21.

10 Explanatory Memorandum, p. 24.

11 Peter Yeend and Amanda Biggs, *Australian Participants in British Nuclear Tests (Treatment) (Consequential Amendments and Transitional Provisions) Bill 2006*, Bills Digest No. 34 2006–07, *Parliamentary Library*, Canberra, 12 October 2006, pp. 2–3.

three months prior to the date of a claim, but not before 19 June 2006 (the date the government made its decision).¹²

Summary

3.17 If passed, the main effect of the Australian Participants in British Nuclear Tests (Treatment) Bill 2006 would be to broaden eligibility for non-liability testing and treatment for cancer. It would include both Defence and non-Defence Force personnel not already eligible under the VEA, the SRCA and the 1986 Administrative Scheme. It also provides for the payment of travel expenses for testing and treatment. The payments are subject to the Repatriation Commission's decision, which are to be based on the VEA's Treatment Principles.

12 Peter Yeend and Amanda Biggs, Australian Participants in British Nuclear Tests (Treatment) (Consequential Amendments and Transitional Provisions) Bill 2006, Bills Digest No. 34 2006–07, *Parliamentary Library*, Canberra, 12 October 2006, p. 3.

