Chapter 4

Issues and recommendation

4.1 In the main the issues raised by submitters were not related to the operation of the Bills if enacted. Submitters welcomed and supported the provision of health care for the nuclear test participants. Rather, the concerns raised related to the broader policy issue of whether the Bills provide an appropriate response to the needs of those Australians who participated in the British nuclear tests.

4.2 This chapter first reviews the issues raised in relation to the provisions of the Bills. It then considers the other matters raised by submitters: disputes over the dosimetry and cancer and mortality incidence study; ineligibility for veterans' entitlements; and the issue of compensation and recognition. The chapter also presents the committee's conclusions and recommendation.

Provisions of the Bills

4.3 The principal issue raised in relation to the provisions of the Bills concerned the definition of a 'nuclear test participant'. Submitters argued that the definition provided in the Bills excludes certain groups affected by the tests from receiving the proposed health care entitlements.

4.4 Major Alan Batchelor argued that the coverage of the Bills should be extended to include the following:

- Decontamination and maintenance personnel who worked on contaminated aircraft that were based at various RAAF airfields around Australia and flew through fallout clouds at a location outside the test areas.
- The timings for Emu Field do not cover the situation when the Australian Radiation Detection Unit were operating from this base (collecting fallout data) and had to temporarily evacuate the area when it was covered with fallout from the Tadje weapon (dirty bomb salted with cobalt-60).
- Aboriginal incursions into Range Areas, such as the Milpuddie incident, should be identified specifically.[1]

4.5 The RSL was concerned that due to the date and place specifications, the following groups would not be covered by the provisions of the Bills:

1. The maintenance personnel at RAAF Amberley who decontaminated returning aircraft from the test sites. These personnel worked in what were called the “Igloo Hangers” on base and because of their duties

1 Major Alan Batchelor, *Submission 2*, p 13.

were definitely exposed to radiation. As some aircraft were redirected to other bases, maintenance personnel at those bases should also be included.

2. The personnel, both Naval and civilian, who worked on the returning ships in Naval Dockyards and Fleet Bases. The anti-wetting system used by Naval ships of this vintage would not have completely decontaminated these vessels.

3. The personnel, both Army and civilian, who maintained any equipment that the Australian Army utilised during the tests. Again, this equipment would not have been completely decontaminated prior to removal from the sites.[2]

4.6 The Department of Veterans' Affairs (DVA) considered that the above groups would be covered by the legislation:

> The RSL's concerns are unfounded as these groups of personnel are defined as "Participants" and are covered by the new legislation.[3]

4.7 DVA pointed to Section 5(2) which defines as a nuclear test participant a person who 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', being involvement that occurred in specified areas within specified time periods.[4] At the committee's public hearing, Mr John Hodges, National Veterans' Affairs Adviser for the RSL, agreed that DVA's clarification made it clear that the above groups were covered by the provisions of the Bills. However, this had not been apparent from the relevant Explanatory Memorandum.

4.8 Mr Reuben Lette stated that 'British Scientists left the British/Australian Air Base in Adelaide in late 1967. Tests on contaminated material from Maralinga and other areas were still carried out by them until then and burial of contaminated material also happened in 1967'.[5] On this basis, he argued that personnel involved at the sites up until 1967 should be covered by the provisions of the Bills.

4.9 Dr Philip Crouch, Mr Rob Robotham and Dr Geoff Williams raised concerns about members of the Commonwealth Police who served at Maralinga up until 2001 and were likely to have received significant radiation doses as a result of patrolling through areas that were heavily contaminated, particularly with plutonium. They noted that unless members of the Commonwealth Police were present at Maralinga prior to

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2 *Submission 27*, p. 1

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

4 Department of Veterans' Affairs, Answers to Questions on Notice, Friday 3 November, Question 6, p 4.

5 *Submission 19*, p. 1

1965, they would not come within the definition of a 'nuclear test participant' provided in the Bill.[6]

4.10 Dr Crouch explained that the types of activities involved in the patrols would have led to plutonium inhalation and an increased rate of cancer.[7] The committee was advised that around 100-200 officers would have been involved.[8] Mr Robotham considered that the highest risk group, not already covered by the provisions of the Bills, were the Commonwealth Police officers present from 1965 to the mid-1980s:

> The worst aspect of all of this is from 1965 until essentially the mid-eighties, when the nature of that hazard was rediscovered by Australia and steps were taken to advise the Commonwealth police on what to do and not to. Once they took those procedures on board, I believe from the mid-eighties through until 2001, they were really at very little risk.[9]

4.11 DVA representatives commented that concerns about coverage for members of the Commonwealth Police were a 'new issue' which would be considered by the department:

> … police officers who were involved at the time of the studies and through to the two years are incorporated in the study and are on the nominal roll, but I think the proposition being put regarding them and their activities through to reasonably recent times is a new issue, which I think is something we would take out of this hearing and put to our minister as to whether or not there should be a response to that.[10]

4.12 Some submitters also argued that health care entitlements should be extended to cover people not directly involved in conducting the tests. Groups specifically identified included Indigenous people living in or near the test areas, people affected by fall out from the tests and the dependents of those who participated in the tests.[11]

Committee view

4.13 With regard to the circumstances of the Commonwealth Police who served in contaminated areas from 1965 to the mid-1980s and who are not covered by the provisions of the Bills, the committee endorses DVA's proposal to raise this matter with the Minister for response.

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6 *Submission 13*, pp. 5–6 and *Committee Hansard*, 6 November 2006, pp 27-29.

7 *Committee Hansard*, 6 November 2006, p. 29.

8 Dr Geoff Williams, *Committee Hansard*, 6 November 2006, p. 34.

9 *Committee Hansard*, 6 November 2006, p. 38.

10 Mr Mark Sullivan, Secretary, Department of Veterans' Affairs, *Committee Hansard*, 6 November 2006, p. 48.

11 See for example Mr Hess, *Submission 6*; Mr Byrt, *Submission 9*; Mr White, *Submission 25*; Mr Pastakatzis, *Submission 37*.

Other matters

Disputes over the scientific studies

4.14 Numerous submitters to the inquiry critiqued the findings and methods of the Australian Participants in British Nuclear Tests in Australia Dosimetry and Mortality and Cancer Incidence Study. When announcing the health care entitlements encompassed by the Bills, the Hon Mr Billson referred to this study, noting that it had not found 'any link between the increase in cancer rates and exposure to radiation'.[12] Submitters suggested that flaws in the study had resulted in incorrect conclusions, which in turn had been used as the basis for limiting health care entitlements for the nuclear test participants. Dr John Lonergan, a qualified scientist, argued:[13]

> My concerns lie in the areas of scientific methodology underlying the cancer study and the interpretation of results. These aspects are flawed and have been directly responsible for the Government reneging on an earlier decision agreeing in principle to compensating the veterans under the terms of the Veterans Entitlement Act.[14]

4.15 Criticisms of the study included that:

- the nominal roll of participants used to create the sample for the study was deficient;[15]
- the radiation dosages allocated to participants in the study were underestimated;[16]
- the effects of the radiation dosages were underestimated;
- there was insufficient evidence to explain the higher rate of cancer among the nuclear test participants by other, non radiation, causes;[17]

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12 Mr Bruce Billson, Minister for Veterans' Affairs and Minister Assisting the Minister for Defence, *Nuclear Test Participants to Receive Additional Health Care*, Media Release 28 June 2006.

13 Dr John Lonergan OBE, BSc (Hons 1, Physics), MSc (Nuclear Physics), BA (Logic and Philosophy), PhD (philosophical foundations of physics). Formerly RAAF radar mechanic WW11; Defence Research Scientist; Science Adviser to the Navy; Superintending Research Scientist, Dept of Defence; Head, Science Branch, Dept of Education and Science; Deputy Secretary and Acting Secretary, Department of Science; Vice-Chairman, OECD Committee for Scientific and Technological Policy.

14 *Submission 1*, p. 2.

15 Dr John Lonergan, *Submission 1*, p. 2; Major Alan Batchelor, *Submission 2*, pp 12–13; Australian Nuclear Veterans' Association, *Submission 3*.

16 Dr John Lonergan, *Submission 1*, pp 8-11; Major Alan Batchelor, *Submission 2*, pp 4–6; Ms Sue Rabbit Roff, *Submission 10*, pp 6-7.

17 Dr John Lonergan, *Submission 1*, pp 5-7; Assoc Prof Tilman A Ruff, *Submission 33*, p. 3.

- the study assessed the correlation between all cancers experienced by the study population and radiation doses, instead of focussing on the correlation with increased cancer experience;[18]
- the study did not include cancer related deaths in the assessment of cancer incidence in the study population;[19]
- the study focussed on ionizing radiation and did not assess the health impacts of exposure to other substances related to participation in the tests, such as asbestos, beryllium, and highly enriched uranium;[20]
- the study did not address other non-cancer health effects of participation in the tests, such as sterility, defective immune systems;[21]
- due to lack of data, the study did not cover the period prior to 1982 and other studies indicate that the incidence of cancer and cancer deaths among test participants may have been highest then;[22] and
- the study did not include Indigenous People and others exposed to the effects of the tests.[23]

4.16 Detailed information was submitted in support of a number of the above criticisms, particularly in relation to the argument that the ascribed radiation doses were underestimates. For example, Dr Lonergan and Major Batchelor presented evidence that some of the estimates were based on calculations using the wrong time, place and exposure information for certain teams involved in the tests.[24] Dr Lonergan rebutted the size of the assumed resuspension factor used in the dosage estimates, given resuspension factors used in other reports.[25] Submitters also pointed to the deficiencies in the records kept at the time of the tests. The detail of the evidence submitted critiquing the study is not rehearsed in this report. Rather, the committee refers interested readers to the relevant submissions and evidence taken at the public hearing for fuller explanation.

4.17 Submitters also criticised the conduct of the study. They stated that in making assumptions about the radiation doses experienced by the nuclear test participants, the study authors had not involved or taken advice from people familiar with the

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18 Dr John Lonergan, *Submission 1*, pp 2, 5, 6.

19 Major Alan Batchelor, *Submission 2*, p. 11.

20 Major Alan Batchelor, *Submission 2*, pp 7-8.

21 Major Alan Batchelor, *Submission 2*, p 3 and 8; Mr Hess, *Submission 6*, p. 1; Mr Ian Batchelor, *Submission 22.*

22 Major Alan Batchelor, *Submission 2*, pp 11-12; Assoc Prof Tilman A Ruff, *Submission 33*, p. 3.

23 George Dale Hess, *Submission 6*, p. 1; Mr Paul Langley, *Submission 12*; Assoc Prof Tilman A Ruff, *Submission 33*, p. 3; Ms Michele Madigan, *Submission 31*.

24 *Submission 1,* pp 10–11; *Submission 2*, pp 4–6 and *Submission 2a*.

25 Dr John Lonergan, *Submission 1*, p. 9.

operations of the tests, particularly those who had actually been involved.[26] In their view, various errors found in drafts of the report and amendments to data in the published report did not give confidence in the final report findings.[27] Major Alan Batchelor criticised the composition of the research team, suggesting that the study would have benefited from the input of experts in radiation biology and nuclear weapons dynamics.[28]

4.18 Submitters also expressed concern that the study had not been subject to adequate peer review, that inadequate time had been allowed for rigorous assessment of the report and that members of the study Consultative Forum and Scientific Advisory Committee had been sidelined from the review process.[29] Dr Lonergan commented on the short time-frame allowed to review the draft reports:

> Previously sight unseen, it was an impossible task to analyse these long complicated report in what in effect amounted to less than one week. Despite protestations the DVA Project Manager insisted on going ahead.[30]

4.19 The Department of Veterans' Affairs (DVA) expressed confidence in the findings of the reports, stating that the study stood up to scientific scrutiny:

> The Dosimetry Study has been internationally peer reviewed and has been accepted by the scientific community.
>
> The Epidemiological Study is an important piece of research and has been presented at several scientific meetings and is currently going through the process of being developed for publication in relevant journals. The epidemiology study was undertaken according to world best practice for this type of study and was under the auspices of an independent Scientific Advisory Committee.[31]

4.20 DVA explained that in addition to the Scientific Advisory Committee engaged to oversee the study and the Consultative Forum comprising representatives of the ex-service community and involved government agencies, the Dosimetry Report was also peer reviewed by three experts in nuclear physics: Dr John L. Symonds, Chief Scientist (Power & Energy) of the Australian Atomic Energy Commission Research Establishment; Dr Keith Lokan, Australian Radiation Laboratory and Dr Frank Barnaby, nuclear issue consultant to the Oxford Research Group.[32]

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26 Dr John Lonergan, *Submission 1*, p. 9; Major Alan Batchelor *Submission 2*, p. 9.

27 See Dr John Lonergan, *Submission 1*, p. 9; Ms Sue Rabbit-Roff, *Submission 10*, p. 9.

28 Major Alan Batchelor *Submission 2*, p. 9.

29 See Dr John Lonergan, *Submission 1*, pp. 12–14; Major Alan Batchelor, *Submission 2*, p. 4.

30 *Submission 1*, p. 12

31 *Submission 30*, p. 4.

32 Department of Veterans' Affairs, Answers to Questions on Notice, Friday 3 November, Question 11, p 8.

4.21 DVA also noted that although the records kept during the tests were 'by no means complete', the scientific panel responsible for the Dosimetry Study considered there were sufficient numbers to provide a basis for dose estimation.[33]

4.22 Several of the authors of the Dosimetry Report made a submission to the inquiry, in which they stated:

> We are well aware that there have been a number of criticisms of the radiation doses that were calculated for participants, and claims that exposures were underestimated. We stand by our report, but we do not believe that this is the appropriate forum to defend our results. However, should the Committee wish, we would be pleased to supply further information.[34]

4.23 At a public hearing criticisms of the study were discussed with several of the Dosimetry Report authors and with the Chair of the Scientific Advisory Committee, Professor Bruce Armstrong.[35] Clarification was provided on a number of issues. For example, with regard to criticism of the time period covered by the study, Dr Crouch said:

> …I think it is a misunderstanding to say that the group's mortality was not studied before 1982. Mortality, including cancer mortality, was studied right back from when the people were first at the test. In fact there was a two-year lag period, but from two years after their exposure, up until 2001, all of the deaths were included. The 1982 date comes about because cancer registries were not established until about then. There have always been births, deaths and marriages registries, so deaths can always be sorted. But cancer incidence cannot be studied much before about 1982.[36]

4.24 In relation to the exclusion of Indigenous people from the study, Professor Armstrong said that the researchers had 'absolutely no way of getting anything like a census of who they were, where they were and what they were doing'. He elaborated:

> For us to have done something, or for the investigators to have done something, they would have had to have had the identity of all these individuals so that they could then ascertain whether they had died, then get a copy of their death certificate and find out whether they appeared in a cancer registry. A simple census of how many people and where they were would not have been sufficient. It would have had to have been an identified list.[37]

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33 *Submission 30*, p. 4.

34 Dr Philip Crouch, Mr Rob Robotham, Dr Geoff Williams, *Submission 13,* p. 5.

35 *Committee Hansard*, 6 November 2006, pp 29–34 and 40–52.

36 *Committee Hansard*, 6 November 2006, p. 32.

37 Professor Bruce Armstrong, *Committee Hansard,* 6 November 2006, p. 42.

4.25 Professor Armstrong also provided some information about the difficulty of the dose estimation task and the limited records available from radiation exposure badges:

> …there were very few measurements available. That is not the only evidence on which these exposure estimates were made, as you would be aware from the report. A very substantial attempt was made in the dosimetry study to estimate individual exposures based on all the information that we have available about the nature of the tests performed, the distribution of radiation that you would expect both in time and place as a result of that, the nature of that radiation and then the location of groups of men. This is not down to the individual; it is based on the group—where they were and what they were doing at different times in relation to the time at which the detonation occurred. On that basis, my view is that one has a reasonable reconstruction of what the doses probably were. But you are quite right: in terms of actual measurements there are very few.[38]

4.26 The committee is not in a position to validate the scientific arguments made in submissions, or to arbitrate on points of contention. It notes however the concerns raised by submitters regarding the conclusions of the dosimetry and cancer incidence and mortality study. It also acknowledges the difficulty of the task that the study researchers undertook. The committee understands that further research may provide a fuller understanding of the health impacts of Australians' participation in the British nuclear tests. The committee notes that the Dosimetry Report has been peer reviewed and that the Chair of the Scientific Advisory Committee is satisfied with the scientific methodology. The committee is concerned that the Department's conduct of the consultation process has drawn criticism from a range of people and organisations.

Ineligibility for veterans' entitlements

4.27 A number of submitters argued that full coverage under the Veterans' Entitlement Act (VEA) should be extended to military personnel who were participants in the British nuclear tests.[39]

4.28 The Clarke report did not support full VEA coverage for the nuclear test participants through classification of the participation as 'qualifying service'. The review stated:

> …it is inappropriate to declare service in the British atomic tests to have been warlike because that service does not meet the criterion of being an

38 *Committee Hansard*, 6 November 2006, pp 41–42.

39 See for example Australian Nuclear Veterans Association Inc., *Submission 3*; Australian Student Environment Network, *Submission 5*; Mr Adam Wolfenden, *Submission 7*; Friends of the Earth, *Submission 8*; Ms Cate Kyne, *Submission 14*; Pat Mackle, *Submission 15*; Mr Luke Digance, *Submission 17*; Ms Sarah Hoyal, *Submission 21;* MrBreasley, *Submission 24.*

> activity required to pursue specific military objectives, such as a declared war or conventional combat operations against an armed adversary.[40]

4.29 Rather, as discussed in Chapter 2, the review considered it appropriate to recognise participation in the tests as non-warlike, hazardous service. Nearly all submitters called for the Clarke review recommendations to be fully implemented.[41] For most submitters, endorsement of the Clarke review recommendations was based in a view that extension of VEA entitlements would provide just and deserved recognition of the service provided and suffering experienced by the remaining nuclear test participants.

4.30 Submitters also noted that while the provisions of the Bills provide cancer treatment for test participants, there are no provisions for the widows of those already deceased or their dependents and no provisions for compensation. Mr Charles Geshke stated:

> …servicemen lost their lives. The effect was not only on them but on their families, as breadwinners, as fathers to children and all the other things that come with a composite family. There should be some recognition of that. The bill does it, as I see it, in giving diagnosis and treatment. I get that irrespective of whether I was a veteran of nuclear trials or not. The difference is that the widows and the children do not get the benefits.[42]

4.31 Coverage under the VEA would enable eligible participants to make a claim for the disability pension and, should they die from war or defence caused injury or disease, for their widow to claim the war widow's pension.[43] Witnesses to the inquiry emphasised that extension of the VEA to cover nuclear test participants would not require legislative change. Brigadier Kerry Mellor, representing the Regular Defence Force Welfare Association, explained:

> …it is already open to the minister under the Veterans' Entitlements Act to determine that a certain class of people who rendered service can be classified as veterans. So it is very hard to understand why it is necessary to have special legislation to grant entitlement to these people under the Veterans' Entitlements Act when they could easily be determined to be

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40 Report of the Review of Veterans' Entitlements, Chapter 16 – British Atomic Tests, p. 395.

41 See for example, Australian Nuclear Veterans Association Inc., *Submission 3*; Australian Student Environment Network, *Submission 5*; Mr Adam Wolfenden, *Submission 7*; Friends of the Earth, *Submission 8 and 8a*; Ms Cate Kyne, *Submission 14*; Pat Mackle, *Submission 15*; Luke Digance, *Submission 17*; Injured Service Persons Association, *Submission 26;* Womens' International League for Peace and Freedom, *Submission 36*.

42 *Committee Hansard*, 6 November 2006, p. 19.

43 Mr Hodges, National Veterans' Affairs Adviser, Returned and Services League of Australia, described the entitlements afforded by hazardous service classification. See *Committee Hansard,* 6 November 2006, p. 23.

> veterans for the purposes of the act by the minister by administrative action.[44]

4.32 Major Alan Batchelor expressed concern about setting up health care entitlements under a separate Act, outside the Veterans' Entitlement Act:

> Continuation down the present path could involve the proliferation of Bills as each health effect is acknowledged on a piecemeal basis and a complete duty of care responsibility is avoided until there are no longer any veterans.[45]

4.33 The Clarke review noted at the time that the classification of non-warlike hazardous service applied only to service outside Australia.[46] The review used the classification framework also to assess service within Australia. However, it remains the case that the Government has not extended the 'non-warlike service' classification for service within Australia.[47] DVA noted that there is 'no longer any scope for a declaration of "Hazardous" service'. Such declarations have been replaced by 'Non-Warlike Service'. DVA also noted that:

> The VEA has never been extended to include Australian Defence Force peacetime coverage for a specific Occupational Health and Safety (OH&S) exposure or for conditions related solely to environmental threats.[48]

4.34 Mr Rick Johnstone, National President of the Australian Nuclear Veterans' Association, considered that an unprecedented extension of VEA coverage would be appropriate:

> We are told by Minister Billson that never before in history have Australian servicemen and women received benefits under the Veterans' Entitlements Act if they had not had overseas service as, for the purpose of the act, they are not seen as veterans. It is a known fact that nuclear weapons test participants faced far greater hazards than many who went overseas. I suggest that we make history again and make nuclear test participants the very first who have not had overseas service to receive full entitlement under the Veterans' Entitlements Act for hazardous service far beyond that which is normally experienced in normal peacetime service.[49]

4.35 DVA commented that the proposed legislation provides a broader response than that recommended by the Clarke report, as it encompasses civilian contractors

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44 *Committee Hansard*, 6 November 2006, pp 13–14.

45 Major Alan Batchelor, *Submission 2*, p 3.

46 Report of the Review of Veterans' Entitlements, Chapter 16 – British Atomic Tests, p. 389.

47 The Hon Bruce Billson, *House Hansard*, 11 October 2006, p. 142.

48 Department of Veterans' Affairs, Answers to Questions on Notice, Friday 3 November, Question 1, p 1.

49 *Committee Hansard*, 6 November 2006, p. 14.

and APS employees as well as military participants.[50] It should be noted that if nuclear test participants were to be granted non-warlike service classification for the VEA, claims for a disability pension would need to satisfy a factor specified in the relevant Statements of Principles. For example, for cancers with radiation dose factors, evidence of receiving a certain dosage level would need to be shown. DVA observed that for the Statements of Principles for those cancers covered by the recent Dosimetry Study, the dosage levels required for a successful claim are considerably higher than those estimated in the study.[51]

Compensation, justice and recognition

4.36 Most submitters commented on the 'non-liability' framework of the Bills and argued that compensation for participants should also be addressed. Submitters viewed compensation as a long-awaited form of justice and recognition for the test participants. As noted above, a number of submitters also argued that there were flaws in the recent study which found no association between increasing radiation exposure from participation in the tests and increased cancer incidence. These submitters argued that the study had been inappropriately adopted to support the non-liability basis of the Bills.

4.37 Compensation claims in relation to participation in the nuclear tests have been dealt with under different legislation over time. The *Safety, Rehabilitation and Compensation Act 1988* (SRCA) applies to employees of the Commonwealth, including current and former members of the Australian Defence Force. Section 7(1) of the SRCA deals with employees or members of the ADF who have been engaged in work with the Commonwealth involving exposure to certain substances, including ionising radiation. Under this section, if the employee subsequently suffers from a disease that is characteristic of exposure to that substance, then it will be taken that the employee's employment materially contributed to the cause of the disease, unless the contrary can be established.[52] The Clarke report stated that Section 7(1) of the SRCA has been applied to claims for disease or death related to exposure to ionising radiation from the tests only where:

> It has been established that the member was at a test site at the time of, or after, a test was carried out there;
>
> It has been confirmed that the member was actually exposed to a dose of ionising radiation at the test site; and
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> The member has suffered from a disease that is characteristics of exposure to ionising radiation.[53]

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50 Department of Veterans' Affairs, Answers to Questions on Notice, Friday 3 November, Question 1, p 1.

51 Department of Veterans' Affairs, Answers to Questions on Notice, Friday 3 November, Question 2, p 2.

52 See Report of the Review of Veterans' Entitlements, Chapter 16 – British Atomic Tests, p. 377.

53 Report of the Review of Veterans' Entitlements, Chapter 16 – British Atomic Tests, p. 377.

4.38 As an outcome of the McClelland Royal Commission, coverage under a scheme similar to SRCA is now provided to all non-Government employees, pastoralists and Indigenous Australians who were in the test area at the relevant time.[54]

4.39 A Special Administrative Scheme was introduced in 1989, providing compensation to any participants in the tests who subsequently developed multiple myeloma or leukaemia (other than chronic lymphatic leukaemia). The scheme was revised in 1995 to provide compensation where the relevant disease had developed within 25 years of participation in the tests. The scheme is now closed.[55] An Act of Grace scheme also operated for a period from 1988 to 1989 enabling plaintiffs with common law actions to have their cases assessed outside the court system.[56]

4.40 The Clarke report noted that the major difficulty that nuclear test participants experience in making a claim under the SRCA is in providing evidence that they were exposed to a dose of ionising radiation.[57] Between 1996 and 2006 only nine compensation payments have been made to Australian participants in the nuclear tests, all of these under the SRCA.[58]

4.41 Major Alan Batchelor called for a change to the onus of proof in compensation claims:

> When an application for compensation is made by a nuclear test veteran (or his widow), he becomes responsible for proving his presence at a test site, and in the case of aircrew, he was in a contaminated aircraft. As there is no repository where this information is available, the presence of the veterans name on the Nominal Roll should be acceptable and Defence should be responsible for providing or certifying other missing information.[59]

4.42 Submitters argued that classifying participation in the nuclear tests as 'non-warlike' service for the purposes of the VEA would create a substantial improvement with regard to compensation. DVA acknowledged the difference:

> Granting non-warlike service to this group would enable disability compensation claims to be determined under the *Veterans' Entitlements Act 1986* (VEA) using the more generous standard of proof...[60]

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54 Department of Veterans' Affairs, *Submission 30,* p. 2.

55 Department of Veterans' Affairs, *Submission 30*, p. 2.

56 Report of the Review of Veterans' Entitlements, Chapter 16 – British Atomic Tests, p. 380.

57 Report of the Review of Veterans' Entitlements, Chapter 16 – British Atomic Tests, p. 377.

58 Senator Campbell, Answer to Senate Question on Notice no. 2329.

59 Major Alan Batchelor, *Submission 2*, p 13.

60 Department of Veterans' Affairs, Answers to Questions on Notice, Friday 3 November, Question 2, p 2.

4.43 In arguing the case for retrospective compensation, Group Captain (retired) Charles Geschke suggested that 'it is little different to the aircraft fitters exposed to toxic fumes when refurbishing or sealing the F111 fuel tanks'.[61] DVA agreed that there were some similarities between the two groups:

- Both the British Nuclear Tests Study and the Study of Health Outcomes in Aircraft Maintenance Personnel found an increase in the incidence of cancers amongst their respective cohorts without a clear indication of causation.
- Both groups have argued that the circumstances of their employment was more hazardous than that associated with normal peacetime service conditions of employment and should be recognised by a declaration of hazardous or non-warlike service.
- The proposed response to both Studies has recommended that any response should recognise the entire cohort involved including military, APS and third party contractors.
- Neither proposed response recommended access to additional benefits under the Veteran's Entitlements Act 1986 (VEA) as the VEA has never been extended to include peacetime coverage for a specific Occupational Health and Safety (OH&S) exposure or for conditions related solely to environmental threats.
- Rather, both groups have been provided with compensation coverage under the Safety Rehabilitation and Compensation Act 1988 and its antecedent legislation and with non-liability health care for conditions which may be causally related to their respective periods of service.[62]

4.44 However, an ex-gratia payment was made for the F-111 Deseal/Reseal Participants. DVA explained that this payment was "not related to having a personal injury" such as cancer but recognised the "unique working environment associated with the F-111 Deseal/Reseal Programs". Further, DVA commented that the F-111 Study indicated 'that the working conditions might have contributed to a dose-response relationship'.[63] While the findings of the Australian Participants in British Nuclear Tests Study are inconclusive regarding causation, 'they clearly state that there is no dose-response relationship leading to an increased risk of cancer from the most

61 *Submission 11*, p. 2.

62 Department of Veterans' Affairs, Answers to Questions on Notice, Friday 3 November, Question 9, p 6.

63 Department of Veterans' Affairs, Answers to Questions on Notice, Friday 3 November, Question 9, p 6.

likely cause, increased radiation exposure'.[64] DVA also stated that in contrast to the F-111 Deseal/Reseal participants, the employment conditions experienced by the nuclear test participants 'did not involve a constant requirement to work in cramped and confined spaces where the potential carcinogens accumulated'. [65]

Conclusions and recommendation

4.45 The committee recognises the dedicated service given by Australian participants in the British nuclear tests under the authority of the Australian Government and the subsequent significant impact for many on their health and wellbeing.

4.46 The committee appreciates that submitters have taken the opportunity afforded by this inquiry to raise wider policy issues concerning the Government's response to those who participated in the tests. The committee notes the arguments and proposals for alternative forms of entitlement, such as coverage under the VEA and compensation, put forward by many submitters to the inquiry. The committee also notes that such extension of the VEA is unprecedented for peace-time service in Australia.

4.47 The committee notes the dissatisfaction with the response provided by the Bills. In particular, the committee notes the concerns raised by some submitters regarding the veracity of the recent dosimetry and mortality and cancer incidence study, and the proposal that participation in the nuclear tests be declared non-warlike service for the purpose of the VEA.

4.48 While the entitlements provided for under the current Bills do not extend as far as some submitters hoped for, the committee notes that the Bills do provide significant cancer testing and treatment provisions, not only for service personnel but also eligible public service employees and civilian contractors. The committee is conscious not to delay the introduction of the entitlements, which provide progress on this longstanding issue. The committee is also satisfied that the Bills do not preclude other subsequent compensation claims and arrangements. Accordingly the committee recommends that the Bills be passed without delay.

4.49 However, the committee draws to the Government's attention, for consideration and response, the situation of the few hundred Commonwealth Police who served in contaminated areas from 1965 to the mid-1980s. The committee was advised that these officers were at high risk of radiation and increased cancer and are not covered by the provisions of the Bills.

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64 Department of Veterans' Affairs, Answers to Questions on Notice, Friday 3 November, Question 9, p 6.

65 Department of Veterans' Affairs, Answers to Questions on Notice, Friday 3 November, Question 9, p 6.

Recommendation 1

4.50 The committee recommends that the Senate pass the Bills without amendment.

SENATOR DAVID JOHNSTON
CHAIRMAN