

**ADDENDUM TO SUBMISSION TO THE SENATE STANDING
COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE**

re

**Inquiry into the Provisions of the Australian Participants in British Nuclear
Tests (Treatment) Bill; andthe (consequential Amendments and
Transitional Provisions) Bill 2006**

By

John P. (Jack) Lonergan

27 October 2006

Brief Explanation for Additional Comments

- The reasons given by the Minister for rejecting coverage under the VEA merit analysis
- The excellence and relevance of the Clarke review needs to be brought to attention
- Several statements made by the Minister in his Second Reading Speech on the Bill need scrutiny

Concerning the Minister's Speech and Media releases

- 6.1** In Para 5.18 of the main submission I dealt with the **Minister's misstatement** to the effect that my concerns about the studies have been responded to. They have not.
- 6.2** **The Minister keeps reiterating the misleading statement that the studies showed no link between cancers and ionising radiation. This, in part, is his justification for renegeing on the Government's "acceptance in principle" of Clarke Review Recommendation number 45 that participation in the tests be determined to be non-warlike hazardous service and that the participants be compensated under the VEA:**
- “**Recommendation 45.** Participation by Australian defence force personnel in the British atomic tests be declared non-warlike hazardous and the legislation be amended to ensure that this declaration can have effect in extending VEA coverage.
- Government Response.** Accepted in principle - the Government will respond positively to the needs of those affected by the British Atomic Test programme when the outcomes of the Australian Participants in the British Nuclear Test Programme - Cancer Incidence and Mortality Study are available”
- 6.3** **The study did not show that there was no link between cancers and ionising radiation.** What it is true to say is that the study claimed not to find a link between cancers and the radiation dosages estimated to have been experienced by the participants. The distinction I am drawing is not a squabble about semantics. It points to a substantive issue. I have presented adequate evidence in my submission to show that, with high probability, ionising radiation was responsible for many (possibly the bulk) of the excess cancers suffered by participants. **Accordingly this escape route used by the Government to renege on their agreement in principle to compensation under the VEA is now shut off.**
- 6.4** Mr Billson also defends the studies from attack by eulogising the **eminent overseas scientists who peer-reviewed the dosimetry report, obviously in contrast with the supposed capabilities of those of us who don't accept it.** In this regard I should add some other material to my response that eminence does not confer infallibility (para 1.5). The report that was considered by the Consultative Forum on 27 April was intended to be the report that would go on to publication. It had been peer-reviewed by the eminent scientists to whom the Minister refers. Following our criticisms (see paras 5.12 to 5.15 in the main submission) passage to the printer was interrupted by extensive revisions. I did not receive a copy of the minutes of the meeting of 27 April till 18 September. I quote directly the first few lines of Attachment 1 to those minutes:

“ Attachment 1 – Responses to Lonergan Comments

These are quick, somewhat cryptic comments intended originally as an aide-memoir for the panel, but since extended. They indicate what we did in response to the comments, or why we did not adopt them.

General Comments

We found these comments very helpful (**by far the most helpful we have had over the course of this project**)." (Note: the emphasis is mine)

6.5 This seems to say something about the relative quality of peer-review by the eminent overseas scientists and of that which we, the local non-eminent persons, provided.

6.6 The Minister also says that this research has been “**cross-calibrated against other records and peer-reviewed internationally to be a world-class body of work**” I am aware of the fact that **Sue Rabbit Roff** of the University of Dundee takes a different view about the quality of the “cross-calibration” done by the local scientists. I understand that she is making a submission to this inquiry. Something about her standing can be gained by reading the *Bills Digest* prepared by Pete Yeend and Amanda Biggs for this bill (pages 5,6). **Sue Rabbit Roff, coming from a different perspective to that of both Alan Batchelor and also myself, has arrived at the same conclusion as we have: the studies are flawed.**

6.7 In a Media Release on 17 October, the Minister said:

- “The Government’s response to the Clarke Review was to **instigate** (my emphasis) the comprehensive study into mortality and cancer incidence and provide an undertaking to respond positively to the study’s findings”

This is factually incorrect and invites the reader to infer a possibly misleading conclusion of one sort or another.

The cancer studies were initiated by Mr Bruce Scott on 16 July 1999 and the Clarke review was begun in February 2002. In Ch 16 the Clarke report comments on the cancer studies.

Mr Billson’s remarks imply that the Clarke report had served its purpose in being responsible for the instigation of the cancer studies and that the Govt attitude would be determined solely by the outcome of these latter studies. Most readers would have taken the Govt’s “agreement in principle” to relate to bringing the test participants under the VEA. I am in no position to judge but perhaps Mr Billson is right and the Govt spoke with forked tongue at the time and most of us fell for it. But I hope this was not the case..

The Clarke Review, the VEA, and the Minister’s views thereon

6.8 The Clarke review is one of the most thorough, comprehensive, rigorous and fair investigations of veterans’ rights ever conducted in Australia. No person, politician or otherwise, should discount its conclusions lightly or on mere whim. The Minister has an “out” if the studies showed conclusively and uncontroversially that ionising radiation did not cause cancers and other disabilities. That is not the case. So compensation under the VEA should still be on the agenda.

6.9 The three members of the review committee were

- **The Hon John Clarke QC, Chair.** He had done National Service in 1954, then two years in the Sydney University Reserves regiment. He did a Law degree and was called to the Bar in 1959. In 1983 he was appointed a judge of the NSW Supreme

Court. Between 1987 and 1997 he was a member of the Court of Appeal. After retiring he has been active in the law as Acting Judge, mediator and arbitrator.

- **Air Mashal Douglas Riding** – fighter pilot and flying instructor from 1963; service in Vietnam, receiving the DFC; afterwards, senior posts in Australia at home and abroad; finally Vice-Chief of the Defence Force.
- **Dr David Rosalky**; doctorate in nuclear physics; extensive experience in government administration : Commonwealth Dept of Finance, Canadian Treasury Board, Senior Private Secretary to PM Malcolm Fraser, then Secretary of ACT Chief Minister’s Dept, then Sec Dept of Workplace Relations, Sec Dept of Family and Community Services; finally Visiting Fellow ANU.

6.10 The review was based on the following premise:

The Government, in expression of the nation’s debt of gratitude, shall provide a beneficial level of compensation and support to veterans and their dependants for incapacity or death resulting from service in the armed forces during times of war or of conflict or in warlike and non-warlike operations.

6.11 In relation to participation in the UK nuclear tests, the conclusions reached were these:

- **The series of British atomic tests were a unique, extraordinary event in Australia’s history. Atomic devices were exploded in Australia, with Australian forces potentially exposed to levels of radiation beyond what would today be considered safe levels. By any reasonable, commonsense measure, service in connection with the tests must be regarded as involving hazard beyond that of normal peacetime duties...The committee considers that service with the British atomic tests should be assessed as non-warlike hazardous service for the purposes of the VEA (paras 42 et seq, Executive Summary).**

6.12 The above conclusions were reached in the light of

- a historical overview of the tests in the full context of all service following WWII.
- background on previous reviews and studies
- current compensation available to participants
- development of a legislative framework for compensation that would be “prospective, consistent and equitable”
- submissions received
- analysis of the claims for hazardous service
- civilian involvement
- concerns about access to compensation.
- **Specific analysis and comparisons among such activities as all service post WWII, peacekeeping, hazardous service, warlike and unwarlike service, improvised explosives device disposal, the Berlin airlift, special submarine operations, counter-terrorist and special recovery operations.**

6.13 Chapter 16 of the Report, comprising 36 pages of analysis, is devoted to the issues identified above. Of particular interest is the examination of the

adequacy and fairness of the avenues of compensation available at the time – the Safety, Rehabilitation and Compensation Act (SRCA), the Special Administrative Scheme, Common Law Claims, Act of Grace Scheme. Of like interest is the analysis of Hazardous Service and its potential application here. It is against all this background analysis, the criteria summarised in 6.10 above and the judgment summarised in 6.11 that the Clarke Committee made its recommendation.

6.14 The Minister's counter argument to all of this as expressed in his second reading speech is just this:

- “The idea of non-warlike hazardous service had never been granted for service within Australia, That still is the case today”
- “Furthermore, the Australian nuclear test participants will have continued access to existing statutory workers compensation schemes such as the SRCA and the administrative scheme administered by the Dept of Employment and Workplace Relations”
- He had satisfied the needs of a constituent in his electorate in full by getting him free treatment for cancer; nothing more is required.

6.15 The upshot is that the Minister is fully satisfied with free health care and, for anything else, the victim only has recourse to schemes that the Clarke Committee considered inadequate and that certainly do not satisfy the criteria of para 6.10 above. As far as this aspect of their work is concerned the Clarke inquiry into it was a waste of time and effort if the Minister has his way.

Conclusions re the Clarke Review, the VEA, and the Minister's views thereon

6.16 In the normal course of events I would endeavour to draw together the threads above and synthesise a conclusion from them. On this occasion I beg to be excused from doing so.

John P (Jack) Lonergan
27 Oct 2006