



Veterans' Affairs Legislation Amendment (International Agreements and Other Measures) Bill 2008

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Date introduced: 19 March 2008

House: House of Representatives

Portfolio: Veterans' Affairs

Commencement:

There are various commencement dates for different schedules and sections in this Bill and these are set out in the Table in **Clause 2** of the Bill.

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

This Bill provides for amendments to various sections in the *Veterans' Entitlements Act 1986* (VEA), the *Military Rehabilitation and Compensation Act 2004* (MRCA) and also the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* (APBNTTA). The amendments are to provide for:

- the use of the Consolidated Revenue Fund to provide coverage for the health treatment costs of allied veterans while these costs are reimbursed from the country for whom the allied veteran served,
- the alignment of income and asset tests provisions in the VEA with the like provisions in the *Social Security Act 1991* (SSA),
- the extension of the period of time that Commonwealth or Federal police officers involved in protecting or guarding the British nuclear test program site at Maralinga are covered by the APBNTTA,
- the updating of references in the VEA to the application of legislative instruments with the *Legislative Instruments Act 2003* (LIA),
- the addressing of anomalies in the *Military Rehabilitation and Compensation Act 2004* (MRCA) to ensure wholly dependent partners receive the correct amount of war widows' or widowers' pension (WWP) and that incapacitated members of the Australian Defence Force (ADF) receive the correct rate of compensation, and
- some minor technical amendments to the VEA and the MRCA.

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Background

Schedule 1 – Veterans' Entitlements Act 1986

Part 1 – International agreements

Background

Australia has international agreements with other allied countries for the provision of income support payments to veterans who served in the armed forces of an allied country but are now resident in Australia. The most common form of income support provided to allied veterans is the service pension. This means an allied veteran with qualifying war service can be paid a service pension under the VEA, so long as they are a legal resident of Australia and have the requisite qualifying service.¹

However, the responsibility for service related health and compensation needs of allied veterans, or any non-Australian veteran, rests with the country in whose armed forces they served. This is why allied veterans, who otherwise have the requisite war service, do not gain access to the Gold Card in Australia. Allied veterans can access the Orange Card providing access to subsidised medicines under the Repatriation Pharmaceutical Benefits Scheme.

For allied veterans, under agreements with each of the allied countries, treatment for accepted war/service caused medical conditions or disability may be provided, but the treatment that is covered under an agreement may vary between individuals and between countries. It is common that the allied country only provides coverage for an accepted war or service caused/related illness or injury. The coverage provided by the Gold Card in Australia for Australian service personnel, being for all conditions, whether service related or not, is rarely provided by allied countries. Also, for the accepted service related condition, the health coverage by the allied country may not be the same as is provided to Australian veterans/service personnel.

Coverage of allied veterans' service related health costs

It is common for allied veterans to be issued with a White Card, which only provides specified coverage for an illness/injury, which is accepted by the country for whom they served.² Costs for treatment provided are then recovered from the country for whom the veteran served. The amendments to the VEA presented in **Schedule 1** are to allow the

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1. Qualifying service for the service pension is essentially war service or service designated as warlike.
 2. A White Card is issued to ex-service personnel who are eligible for treatment under agreements between the Australian Government and New Zealand, Canada, South Africa and the United Kingdom for disabilities accepted as war-caused by their country of origin. Services available to these veterans may be different from those available to Australian veterans.

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coverage of the costs for allied veterans to be provided out of the Consolidate Revenue Fund, while the reimbursement is sought and obtained from the country for whom the allied veteran served. The amendments do not change the process of cost recovery; just allow the use of the Consolidated Revenue Fund to cover the costs while these costs are recovered from the veterans' service country.

Part 2 – Amounts excluded from income

Background

The amendments in **Part 2** of **Schedule 1** of the Bill are to align the income test provisions in the VEA with those in the SSA. There has been a long-standing practice of aligning like provisions in the SSA and the VEA. This close alignment ensures consistency and equity between payments that are paid for the same purposes; that is income support. A common example is the age pension provided under the SSA and the service pension provided under the VEA. The service pension is identical to the age pension in terms of income and asset testing and payment rates. The only difference between the service pension and the age pension is the service pension is available five years earlier than the age pension, recognising the extra stresses and strains of veterans' war service. In all other respects the service pension and the age pension are identical, reflecting the aim of ensuring consistency and equity between like payments.

The income support payments provided under the VEA that have their means testing arrangements (income and assets tests) aligned with the income support payments provided under the SSA are the service pension, the partner service pension, the invalidity service pension and the income support supplement. The like income support payments provided under the SSA using the same income and asset testing are the age pension, the disability support pension, the widow B pension and the parenting payment – single.

If this alignment of income and asset test provisions is not maintained, then there will be amounts that may be included as income for one payment but not for the like payment in the other act, resulting in differences in rates paid.

Payments of approved scholarships

Part 2 of Schedule 1 proposes to amend the VEA to exempt as income under the income test, payments of an approved scholarship applied to means tested income support payments under the VEA. Approved scholarships are already not regarded as income under the income test applied under the SSA.³

3. Dr Kim Jackson, Higher Education Support (Transitional Provisions and Consequential Amendments) Bill 2003, *Bills Digest No. 57, 2002-03*, Parliamentary Library, Canberra, 10 November 2003. <http://www.aph.gov.au/library/pubs/bd/bd03-04n.htm>

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The VEA is also to be amended to exempt as income disability expense maintenance, as is currently the case in the SSA. Disability expense maintenance is provided by a non-custodial parent to a custodial parent for expenses arising directly from a physical, intellectual or psychiatric disability; or a learning difficulty of an individual, or a child of the individual. To be exempt as income, the disability expense maintenance must be received from a parent of the child or the partner or former partner of a parent of the child.

Part 3 – Rental income forgone

Background

Provisions to prevent people from depriving themselves of property or income, in order to obtain a pension, date back to the *Invalid and Old-age Pensions Act 1909*. Initially, the sanction was disqualification from receipt of a pension altogether. This situation applied until the introduction in 1976 of an income only means test. Under the then new provisions, where a person deprived themselves of income in order to qualify for a pension, or for a higher rate of pension, the disposed of income continued to be deemed as income. The value of a deprived asset is usually maintained for 5 years, while deprived income can be maintained indefinitely.

There are now like deprivation provisions for both the income and assets tests in the SSA and the VEA. Again, the provisions are kept in alignment to ensure equity of treatment between payments provided for the same purpose, being means tested income support. The amendments to the VEA in **Part 3 of Schedule 1** are to align the VEA deprivation of rental income provisions with those existent in the SSA. The result will be for the VEA, that where a person chooses to not receive rental income, or receive a lesser amount of rental income from a family member, this is not to be considered as deprivation of income, as is currently the case for the SSA.

Part 4 – Assets disregarded for assets test

Part 4 of Schedule 1 proposes to add to the list of disregarded assets in the VEA two items that are currently disregarded assets under the assets test applied under the SSA. These two are native title rights and interest and amounts received from the Mark Fitzpatrick Trust.

The Mark Fitzpatrick Trust was established by the then Government in 1989 with a grant of \$13.2 million to provide special financial assistance to people with medically acquired HIV infection and AIDS, their dependants and carers. Legislation to exempt income from the Mark Fitzpatrick Trust from the income test applied under the SSA was passed in

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1992.⁴ Legislation to exempt payments from the Mark Fitzpatrick Trust as assets from the assets test under the SSA was passed in 1996.⁵

The amendments proposed for the VEA in respect of native title rights and interests are about the counting of these rights and interests for the purposes of the assets test. Any value, rights or interest held by a person, or a group or community of which the person is a member, are to be disregarded.

Part 5 – Minor amendments

As set out in the Explanatory Memorandum,⁶ the amendments to the VEA presented in **Part 5** are minor and technical so really are legislative housekeeping in nature.

Part 6 – Technical amendments, including amendments relating to legislative instruments

Introduction

The amendments to the VEA presented in **Part 6** largely arise from the passage of the *Legislative Instruments Act 2003* (LIA).⁷ The LIA updated provisions for the use of and application of legislative instruments previously contained in the *Acts Interpretation Act 1901* (AIA). As stated in the Explanatory Memorandum, the amendments are to update the VEA with the proper wording, references and requirements for the use of legislative instruments, as required by the LIA.⁸

Legislative instruments and parliamentary disallowance

The references to legislative instruments in the amendments in **Part 6**, generally means that these instruments will be disallowable instruments, that is, subject to parliamentary disallowance. Part 5 of the LIA refers to parliamentary scrutiny of legislative instruments.⁹ Unless the instrument is one specifically exempted by being listed in section

4. Social Security Legislation Amendment Bill 1992, *Bills Digest No. 131, 1991-92*, Parliamentary Library, Canberra, 2 April 1992.
http://parlinfoweb.parl.net/parlinfo/view_document.aspx?ID=3385&TABLE=BILLSDBGS

5. Social Security Legislation Amendment Act (No. 1) 1996.

6. Explanatory memorandum, p. 6.

7. Moira Coombs, Legislative Instruments Bill 2003, *Bills Digest No. 26, 2003-04*, Parliamentary Library, Canberra, 9 September 2003.
<http://www.aph.gov.au/library/pubs/bd/2003-04/04bd026.htm>

8. Explanatory memorandum, p. 7.

9. Section 37 of the *Legislative Instrument Act 2003* states in part that the purpose of Part 5 'is to facilitate the scrutiny by the Parliament of registered legislative instruments and to set out the

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44 of the LIA, or in the regulations allowed by section 44 of the LIA, references to legislative instruments are disallowable by parliament.¹⁰ The other way a legislative instrument may not be subject to parliamentary disallowance is by way of the enabling act specifically stating the instrument is not subject to parliamentary disallowance. The legislative instruments references in the proposed amendments to the VEA in **Part 6** of the Bill are not ones that are listed in either section 44 of the LIA, or in the regulations referenced in section 44. Neither is there any part of the Bill stating that any legislative instrument to be referred to in the VEA are to be a disallowable instrument. Therefore the amendments in the Bill placing references to legislative instruments in the VEA are to be disallowable by parliament.

Legislative instruments and the VEA

Historically, the SSA has not made extensive use of legislative instruments. The VEA has made some use of legislative instruments, especially for the major policy application and guidelines hanging off the VEA, like the Guide to the Assessment of Rates of Pensions, commonly referred to as the GARP¹¹ and also the Statements of Principles (SoP).¹²

Generally, both the VEA and the SSA are acts which set out qualification to payments and benefits for persons in the legislation, not in attached regulations and guidelines. There has been a long-standing general practice that the matters describing qualification in the VEA, SSA and similar legislation should be set out in legislation passed by parliament, rather than in attached instruments or regulations. However, there has been some use of legislative instruments more recently for the SSA. Some examples are the *Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Act 2005*¹³ and also the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007*.¹⁴

circumstances and manner in which such instruments, or provisions of such instruments, may be disallowed, as well as the consequences of such disallowance’.

10. Moira Coombs, Legislative Instruments Bill 2003, *Bills Digest No. 26, 2003-04*, op. cit., clause 42.

Department of the Senate, *Odgers' Australian Senate Practice – Eleventh Edition*, Canberra, Australia, 2004, pp. 327-328. <http://www.aph.gov.au/senate/pubs/odgers/index.htm>

11. The GARP provides guidelines to be used when assessing a claim for a disability pension and applying various degrees of impairment for different conditions and severity of conditions.
12. SoPs are determined by the Repatriation Medical Authority (RMA). SoPs set out the factors which cause certain medical conditions. SoPs determine what factors could cause a medical condition that is the subject of a claim. SoPs are used in determining liability for injuries, diseases and deaths under both the VEA and the MRCA.
13. Dale Daniels and Peter Yeend, Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Bill 2005, *Bills Digest No. 70, 2005-06*,

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Legislative instruments favoured by administrators

Legislative instruments can be favoured by administrators as they are more easily updated or changed than provisions in an Act, which require amending legislation to be tabled by way of a bill, to be read three times with the opportunity for debate and to be voted on by the parliament.

Comment

There are numerous provisions in the VEA where the wording empowers the Minister or another person or body to 'write guidelines', to 'define' or 'describe' an item, or to 'declare' or 'determine' a matter for the purposes of the VEA. Many of the amendments to the VEA in **Part 6** refer to these provisions.. It also appears that, for the most part, these provisions currently provide that the declaration, determination etc are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 2003*. This being so, these instruments are presumably also legislative instruments by virtue of paragraph 6(d)(i) of the LIA. The amendments in **Part 6** will change the wording relating to these particular instruments to put beyond doubt that they are legislative instruments and thus generally subject to the LIA disallowance scheme mentioned earlier in this Digest.

Schedule 2 – Australian Participants in British Nuclear Tests (Treatment) Act 2006

The provisions presented in **Schedule 2** of the Bill are to amend the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* (APBNTTA).¹⁵ Arising from scientific evidence, the amendments are to extend the period for which Commonwealth and Federal Police are to be considered a nuclear test participant at Maralinga from 30 April 1965 to 30 June 1988. This will give such police officers access to coverage for cancer screening and cancer treatment under the APBNTTA.

Parliamentary Library, Canberra, 6 December 2005.
<http://www.aph.gov.au/library/pubs/bd/bd05-06n.htm>

14. Peter Yeend and Coral Dow, Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007, *Bills Digest No. 2, 7 2007-08*, Parliamentary Library, Canberra, 13 August 2007. <http://www.aph.gov.au/library/pubs/bd/bd07-08n.htm>
15. Peter Yeend and Amada Biggs, Australian Participants in British Nuclear Tests (Treatment) Bill 2006, *Bills Digest No. 31, 2006-07*, Parliamentary Library, Canberra, 6 October 2006. <http://www.aph.gov.au/library/pubs/bd/bd06-07n.htm>

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Comment

Given the length of time such police officers would have spent in the nuclear test areas, probably more than the shorter periods the original participants spent, it is sensible that these officers are covered by the APBNTTA health screening and treatment benefits.

Schedule 3 – Military Rehabilitation and Compensation Act 2004

Schedule 3 presents several changes to the *Military Rehabilitation and Compensation Act 2002* (MRCA).¹⁶ The Explanatory Memorandum explains these amendments as correcting minor errors and anomalies in the MRCA.¹⁷

Main provisions

Schedule 1 – Veterans' Entitlements Act 1986

Part 1 – International agreements

Items 1 and 2 inserts new provisions into section 199 of the VEA. Section 199 in the VEA is the general appropriation section describing amounts that are to be paid out of the Consolidated Revenue Fund.¹⁸ **Item 3** alters section 203 of the VEA, which currently empowers the Governor General to enter into agreements with overseas countries, to

16. Jennifer Nicholson, *Military Rehabilitation and Compensation Act 2002*, *Bills Digest No. 112, 2003-04*, Parliamentary Library, Canberra, 25 March 2004.
<http://www.aph.gov.au/library/pubs/bd/2003-04/04bd112.htm>

17. Explanatory memorandum, p. 21.

18. **Section 199 – Appropriation**

The Consolidated Revenue Fund is appropriated to the extent necessary for the payment of:

- (a) pensions granted under Part II, III, IIIA or IV; and
- (b) medical and other treatment services provided under Part V; and
- (c) allowances and other pecuniary benefits granted under this Act, being allowances and benefits the rates or amounts of which, or the maximum rates or amounts of which, are fixed by this Act; and
- (d) assistance or benefits granted under section 106 that are of a similar nature to pensions referred to in paragraph (a), to services referred to in paragraph (b) or to allowances or benefits referred to in paragraph (c); and
- (e) payments made under Part VIIAB, and payments and benefits made under regulations made under that Part.

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empower the Minister to enter into such agreements. **Items 4 and 5** omit words from paragraph 203(a) of the VEA. The words are the 'the same' and also 'as are granted in that country', which refers to agreements about the same assistance. By omitting these words, it provides the Minister with the power to make agreements on benefits and assistance, whether they are the same benefits or assistance as provided in Australia or not. This recognises that in some cases the benefits provided to allied veterans are different to that provided to the same veteran with the same service and medical condition in Australia. Some allied countries do not provide the same level of health cover but these amendments in **Items 4 and 5** will still allow the making of an agreement.

Part 2 – Amounts excluded from income

Item 7 inserts a new paragraph into section 5H of the VEA, being the income definitions section of the VEA. This new paragraph will describe payments of an approved scholarship as not being income under the income test definitions. **Item 8** does likewise to section 5H of the VEA to describe disability expenses maintenance as not being income in section 5H.

Part 3 – Rental income forgone

Item 9 amends section 48 of the VEA, being the deprivation of income section. **Item 9** provides that the deprivation of income provisions of section 48 are not to apply to reduced or foregone rental income received from a family member.

Part 4 – Assets disregarded for assets test

Items 10 and 12 amend section 52 of the VEA, being the assets test description section. These amendments will exclude as an asset the value of any native title rights and interests. **Item 11** amends section 52 of the VEA to exclude as an asset any amounts received from the Mark Fitzpatrick Trust. Notwithstanding that the Explanatory Memorandum incorrectly describes **item 11** as referring to native title rights and interests; **item 11** in the Bill actually refers to the Mark Fitzpatrick Trust.

Part 6 – Technical amendments, including amendments relating to legislative instruments

As discussed earlier in this Digest, most of the amendments in Part 6 appear to be designed to put beyond doubt that various existing disallowable instruments contained in the VEA are legislative instruments under the LIA. As such, the amendments seem to more in the way of clarification than any substantive legal change. The following illustrate some of particular instruments that are dealt with by the amendments.

Items 25 and 26 amend section 5C of the VEA, the eligibility related definitions section. Sub-section 5C(5) refers to the declaration of a class of visas by the Minister.

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Items 27, 28, 31, 32 and 35, 36, 37, 39, 40 and 41 refer to the Repatriation Commission's powers to declare what is, or is not, an income stream product for the application of the income and assets tests.

Item 38 inserts a new sub-section 5JBA(5A) into the VEA requiring that the Repatriation Commission's in writing declaration of the payment factor is now to be a legislative instrument. This is more rigorous than the current declaration whereby there is no requirement that the declaration is a legislative instrument.

Items 29, 30, 33 and 34 refer to the Repatriation Commission's power to declare when an actuarial certificate is in force. Actuarial certificates refer to examining if an investment is a complying product for the application of some concessional provisions in the income and assets tests.

Items 42 and 43 present amendments to the provisions in the VEA that refer to the GARP.¹⁹ The degree of impairment provided by the GARP is used to set the rate of disability pension and also access to the higher disability pension rates like the Special rate (commonly referred to as the T&PI rate),²⁰ the Intermediate rate²¹, or the Extreme Disablement Adjustment (EDA)²² rate. Where the impairment is assessed as being 70 per cent or more, then the T&PI rate, or the Intermediate rate or the EDA rate may be paid. **Items 42 and 43** will amend section 29 of the VEA, so that changes can be made to the GARP by the Repatriation Commission and approved by the Minister and the changes will be a legislative instrument.

Items 44 and 45 amend sections 37AA and 45AA respectively of the VEA, which require the Repatriation Commission²³ to spell out the circumstances in which persons can be assessed as being permanently incapacitated for work and if they vary those circumstances, how it is varied.

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19. The GARP (Guide to the Assessments of the Rate of Pension) provides guidelines to be used when assessing a claim for a disability pension and applying various degrees of impairment for different conditions and severity of conditions, op. cit.
 20. Special rate disability pension is more commonly known as the Totally and Permanently Incapacitated disability pension (T&PI). T&PI disability pension is payable where the veteran has a 70% or more disability (using the assessment used for the General Rate) and is unable to work for at least 8 hours a week.
 21. Intermediate rate pension is payable where the person has a 70% or more disability (using the assessment for the General Rate) and is unable to work for at least 20 hours a week.
 22. The EDA rate of disability pension is only for persons aged 65 or more and are not qualified to the T&PI rate or the Intermediate rate. As the person is not of working age, an inability to work test is not applied, rather an impact of disability on lifestyle test is applied, requiring 70 medical points or more and at least 6 out of 7 lifestyle points.
 23. Repatriation Commission.

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Item 46 amends the VEA in regards to the declarations by the Minister for the opening and closing of access to the Retirement Assistance for Sugarcane Farmers (RASf). The RASf essentially allows for the transfer of farm interests by a sugarcane farmer to family members and to not have this transfer regarded in the income or assets test assessments for the service pension.

Items 47 to 63 refer to proposed amendments to the VEA to change what are currently sections in the VEA that empower the Minister to make declarations in writing, or in a disallowable instrument, about the application of the income and/or assets tests. Some examples are 'what is a private company', or 'what is a trust', or 'what are acceptable business deductions from income'. The amendments are like the other amendments in **Part 6** and update the references in the VEA to the LIA.

Items 64 to 66 amend section 52ZZZQ of the VEA, which provides powers to form Statements of Principles (SoP).²⁴ SoPs are used in determining liability for injuries, diseases and deaths under both the VEA and the MRCA. In order for a claim to succeed at least one of the SoP factors must be related to service.

Item 68 amends section 88A of the VEA which empowers the Repatriation Commission to determine that class of veterans can be provided with specified health treatment.

Item 69 amends various sub-sections in section 90A of the VEA which empowers the Repatriation Commission to determine principles setting out when health treatment may be provided to an eligible person as a private patient. Currently the Minister has to approve these principles and such approval is a disallowable (and legislative) instrument.

Items 80 and 81 refers to amendments to section 180A of the VEA, which empowers the Repatriation Commission to make decisions about eligibility to a payment for a claim or class of claims, even though the SoP would not provide for a granting of the claim.

Items 82 to 84 amend section 196B of the VEA which refers to the powers of the RMA to make a SoP, to revoke an existing SoP and to make a new SoP. Section 196B currently requires that these SoP decisions of the RMA are to be in writing. The amendments will clarify that these decisions is legislative instruments. **Item 85** removes the current section 196D of the VEA which requires that the RMA SoP decisions are a disallowable instrument. The RMA SoP determinations will need to be in writing and will be a legislative instrument. The amendments also specify that RMA SoP determinations are to take effect from the date the decision is notified in the Commonwealth Gazette, not from the date the determination as a legislative instrument is registered on the legislative instruments register.

24. SoPs are determined by the Repatriation Medical Authority (RMA), op. cit.

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Item 86 provides several transitional provisions, for the proposed amendments in **Part 6**, describing how various decisions under the VEA affected by these amendments are to take effect.

Schedule 2 – Australian Participants in British Nuclear Tests (Treatment) Act 2006

Australian Participants in British Nuclear Tests (Treatment) Act 2006

Item 2 inserts a new sub-section into section 5(3) of the APBNTTA. The definition of a nuclear test participant in the APBNTTA is to be expanded to include a Commonwealth or a Federal police officer present in the Maralinga nuclear test area from 1 May 1965 to 30 June 1988. To meet the definition of a ‘nuclear test participant’ under the APBNTTA means the person may have access to the provision of the cancer screening and treatment benefits of the APBNTTA.²⁵

Item 3 is a transitional provision providing for coverage of treatment under the APBNTTA where the treatment commenced before the commencement of **Schedule 2** (Royal Assent) and after 19 June 2006. Likewise **Item 4** is a transitional provision providing coverage for travel costs for treatment inside the same dates as specified in **Item 3**.

Schedule 3 – Military Rehabilitation and Compensation Act 2004

Part 1 – Definition of disease

Schedule 3 presents amendments to the MRCA.

Item 1 amends the formatting of the definition of disease in section 5 of the MRCA. The definition of disease in the MRCA was meant to be identical to the definition of disease in the VEA but an unintended formatting error means it currently could provide a different definition. The **Item 1** amendment will replace the disease definition in the MRCA with the same definition as is in the VEA.

Part 2 – Effect of days worked on compensation

Item 2 amends the definition of the number of days in section 196 of the MRCA, to recognise that some persons may have worked for more or less than 5 days a week, when working out the numbers of days of entitlement to compensation. Currently, the

25. Peter Yeend and Amada Biggs, Australian Participants in British Nuclear Tests (Treatment) Bill 2006, *Bills Digest No. 31, 2006-07*, op. cit.

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calculation of the number of days of compensation entitlement may provide for an incorrect result in cases where persons worked for more than or less than 5 days a week.

Part 3 – Weekly compensation for wholly dependent partners

Item 3 amends sub-section 234(5)(a) of the MRCA to amend references to the rate of WWP used to calculate a payment rate of compensation, where a partner of a deceased member chooses to receive weekly payments of compensation. The current references to the rate of WWP paid under the VEA do include the rate of WWP but not the whole of the amount paid to WWP recipient. As a part of the WWP rate, there is included a separate pension supplement amount, agreed by the then government with the Democrats in their Goods and Service Tax (GST) agreement that commenced from 1 July 2000. The pension supplement amount is the amount of the then one-off increase in the pension rate (4 per cent) provided as a one-off compensation to pensioners for the inflationary impact of the introduction of the GST.²⁶ Thereafter, this extra pension supplement amount has been separately indexed twice a year to the Consumer Price Index (CPI) and is paid in addition to the base rate of WWP. The base rate of WWP is indexed to both movements in the CPI and to movements in Male Total Average Weekly Earnings, whichever provides the greater increase. The amendments will mean that where a calculation of the weekly payment rate of compensation is made based on the WWP rate, the calculation will include references to the both the base WWP rate and also to the pension supplement amount.

Part 4 – Claims for compensation

Items 5 6 and 7 refer to section 322 of the MRCA, which refers to claims for compensation. The amendments propose to limit to one claim, claims for compensation for an illness/injury for a period. The current section 322 allows multiple identical claims for compensation for an illness/injury for a period. Where the claim has some difference, that is for a different illness/injury or for a different period, it will still be accepted.

Concluding comments

The amendments to allow the use of funds from the Consolidated Revenue Fund to cover the cost of health treatment provided to an allied veteran while these costs are recovered from the person's allied country for whom they served seem sensible and should provide improved administration of these arrangements.

26. Lesley Lang, A New Tax System (Compensation Measures Legislation Amendment) Bill 1998, *Bills Digest No. 72, 1998-99*, Parliamentary Library, Canberra, 13 January 1999. <http://www.aph.gov.au/library/pubs/bd/1998-99/99bd072.htm#Contact>

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The other amendments to the VEA to align provisions with the like provisions in the SSA continue a long-standing practise of alignment of like provisions between the two acts.

The amendments to the VEA in Part 6 of Schedule 1 to update the current VEA references to the AIA with the LIA are sensible to ensure the VEA makes the correct legislative instrument references.

The extension of the period of coverage for Commonwealth and Federal police is sensible given that the scientific evidence supports that contamination continued up until 1988. This is consistent with the cancer screening and treatment coverage provided to other nuclear test participants in the APBNTTA.

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