



Veterans' Affairs Legislation Amendment (2010 Budget Measures) Bill 2010

Peter Yeend
Social Policy Section

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Glossary

Abbreviation	Definition
DSHA	<i>Defence Service Homes Act 1918</i>
DP	Disability Pension
MRCA	<i>Military Rehabilitation and Compensation Act 2004</i>
SRCA	<i>Safety Rehabilitation and Compensation Act 1988</i>
SP	Service Pension
VEA	<i>Veterans' Entitlements Act 1986</i>
WWP	War Widow's/er's Pension

Veterans' Affairs Legislation Amendment (2010 Budget Measures) Bill 2010

Date introduced: 26 May 2010

House: House of Representatives

Portfolio: Veterans' Affairs

Commencement: Schedules 1 to 4 from 1 July 2010, Schedule 5 from 1 October 2010 and all other sections apart from these from the date of Royal Assent.

Links: The [links](#) to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bills page, 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

To amend the *Veterans' Entitlements Act 1986* (VEA), the *Safety Rehabilitation and Compensation Act 1988* (SRCA) and the *Defence Service Homes Act 1918* (DSHA), to give effect to several 2010–11 Budget initiatives affecting veterans and their dependants and also members of Australia's Defence Forces.

Background

Schedule 1—service relating to British nuclear tests

2010-11 Budget initiative

The Government announced in the 2010 Budget an enhancement of assistance for some participants involved in nuclear tests conducted by the British government in Australia in the 1950s.¹ The proposal is to classify the service of nuclear test participants, who were also members of the Australian Defence Force, as non-warlike or hazardous peacekeeping service. Hitherto, nuclear test participation has not been ascribed a service classification in the VEA and as a result participants were not provided with assistance under the VEA. Rather, participation in the British nuclear tests has been covered by military and civilian workers compensation arrangements. For members of the Australian Defence Force this is coverage by the SRCA.

1. Australian Government, *Budget measures: budget paper no. 2: 2010-11*, Commonwealth of Australia, Canberra, 2010, p. 301, viewed 26 May 2010, <http://www.budget.gov.au/2010-11/content/bp2/html/index.htm>

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To describe the nuclear test service for members of the Australian Defence Force as non-warlike or hazardous peacekeeping service will provide them with access to some assistance under the VEA. This will mainly include access to the Disability Pension (DP) for illnesses/injuries arising from that service and to War Widow's/er's Pension (WWP) for surviving partners, where the death of the service person is attributable to that service.

Cost and numbers affected

The financial impact statement attached to the Bill provides cost estimates of \$0.1 million in 2009–10, \$5.7 million in 2010–11, \$5.3 million in 2011–12, \$6.2 million in 2012–13 and \$7.0 million in 2013–14. This is a total of \$24.3 million over five years.² The Government estimates that potentially 2700 surviving defence force personnel will benefit from the initiative.³

British nuclear tests in Australia

There have been claims of adverse health and associated outcomes by the British nuclear test participants made against the government for many years. A brief background on the British nuclear tests conducted in Australia and participants can be seen in the Bills Digest for the *Australian Participants in British Nuclear Tests (Treatment) Bill 2006*.⁴

There have been a series of studies and reports on adverse health outcomes that the participants rely upon to support their claims that their health has been severely adversely affected and also that of their families. There was even a Royal Commission in 1985.⁵ Some description and discussion of the health studies and reports and also previous government inquiries can be seen in the Bills Digest for the *Australian Participants in British Nuclear Tests (Treatment) Bill 2006*.⁶

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2. Explanatory Memorandum, p. iii, viewed 1 June 2010, <http://parlinfo.parlInfo/search/display/display.w3p;adv=yes;db=:group=:holdingType=:id=:orDerBy=customrank;page=0;query=Content%3Aveterans%20Dataset%3AbillsCurBef,billsCurNotBef;querytype=:rec=0;resCount=Default>
 3. A Griffin (Minister for Veterans' Affairs and Defence Force Personnel), *\$36 million to implement recommendations of the Clarke Review of veterans' entitlements*, media release, Canberra, 11 May 2010, viewed 1 June 2010, http://minister.dva.gov.au/media_releases/2010/may/VA021.pdf
 4. P Yeend, *Australian Participants in British Nuclear Tests (Treatment) Bill 2006*, Bills digest, no. 31, 2006-07, Parliamentary Library, Canberra, 2006, viewed 26 May 2010, <http://www.aph.gov.au/library/pubs/bd/2006-07/07bd031.htm>
 5. J R McClelland, Report of the Royal Commission into British Nuclear Tests in Australia, Canberra, November 1985.
 6. P Yeend, *Australian Participants in British Nuclear Tests (Treatment) Bill 2006*, op. cit.

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Nuclear test participants

The Nominal Roll of Australian participants in the British Atomic Tests Program conducted in Australia from 1952 – 1963 contains 16 716 names. The names on the Roll are in the following categories:

- Navy – 3268
- Army – 1657
- RAAF – 3201 and
- 8590 civilians, including 10 indigenous people.⁷

Of the total number of British nuclear test participants, 8126 (or 48.6 per cent) were Australian military personnel.

Hazardous peacekeeping service

Part IV of the VEA provides for the classification of peacekeeping service for members of the Defence Force. Classification of 'Hazardous Service' provides for access to the DP provided under Part IV of the VEA for illnesses/injuries arising out of the service. It also allows for access to the WWP provided (under Part II of the VEA), to surviving partners of a person whose death is accepted as being caused/attributed by their hazardous service. Such classification also allows access to a health treatment card (White Card) for the medical condition/s accepted as being caused/attributed by their hazardous service. For those with a significant impairment arising from the hazardous service (that is, with an impairment of 70 per cent or more), there is also access to the Gold Card, providing coverage for all medical conditions.

Previous assistance for nuclear test participants

For a long time, Governments have considered that because the illness/injuries/death suffered by participants in the British nuclear tests occurred in peacetime they should be covered by workers' compensation arrangements that apply to public servants generally. For example, Senator the Hon. Nick Minchin has said in answer to a question on notice:

No disability pension paid by DVA would be paid for illnesses relating to atomic testing. Atomic testing is not service covered by the Veterans' Entitlements Act 1986.

7. N Minchin (Minister for Industry, Science and Resources), Answer to a Question on Notice, Question No. 3625, Senate, *Debates*, 22 August 2001, pp. 26 428–26 431, viewed 26 May 2010, <http://www.aph.gov.au/hansard/senate/dailys/ds220801.pdf>

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Therefore, all pensions paid by DVA are for conditions arising from service other than atomic testing.⁸

In 2006, the Howard Government extended coverage for cancer testing and treatment to British nuclear test participants.⁹ This was done in response to the recommendation of the 2003 Clarke Review of veterans' entitlements.¹⁰ In announcing that the government would provide for free testing and cancer treatment for nuclear test participants, the then government emphasised that the measure was not an admission that they accepted there was a link between increased cancer rates and any exposure to radiation.¹¹

Clarke Review of veterans' entitlements

On 8 February 2002, the then Minister for Veterans' Affairs, the Hon Danna Vale, MP announced the establishment of an independent committee to examine veterans' entitlements.¹² The Committee became known as the Clarke Review after the Committee's Chair, the Hon John Clarke, QC. The Clarke Review report was released in January 2003¹³ and the Howard Government provided its response to the Clarke Review in March 2004.¹⁴

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8. N Minchin (Minister for Industry, Science and Resources), Answer to a Question on Notice, Question No. 3625, op. cit.
 9. P Yeend, Australian Participants in British Nuclear Tests (Treatment) Bill 2006, op. cit.
 10. J Clarke, *Report of the review of veterans' entitlements*, report commissioned by the Minister for Veterans' Affairs, Canberra, 2003, viewed 26 May 2010, http://www.dva.gov.au/pensions_and_compensation/pensions_and_rates/clarke_review/Pages/report.aspx
 11. B Billson, (Minister for Minister for Veterans' Affairs and Minister Assisting the Minister for Defence), *Nuclear test participants to receive additional health care*, media release, Canberra, 28 June 2006, viewed 26 May 2010, <http://parlinfo.parlInfo/search/display/display.w3p;adv=yes;db=;group=;holdingType=;id=;orderBy=customrank;page=0;query=Content%3Anuclear%20Content%3Abillson%20Date%3A01%2F01%2F2006%20%3E%3E%2031%2F12%2F2006%20Dataset%3Apressrel;querytype=;rec=4;resCount=Default>
 12. D Vale (Minister for Veterans' Affairs and Minister Assisting the Minister for Defence), *Independent committee to review veterans' entitlements*, media release, Canberra, 8 February 2002, viewed 1 June 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FFNV56%22>
 13. J Clarke, Report of the review of veterans' entitlements, op. cit.
 14. J Howard (former Prime Minister), *Additional benefits for veterans, government response to the Clarke Report*, media release, Canberra, 2 March 2004, viewed 26 May 2010, <http://parlinfo.parlInfo/search/display/display.w3p;adv=yes;db=;group=;holdingType=;id=;orderBy=customrank;page=0;query=AuthorSpeakerReporter%3Ahoward%20Content%3Aclark>

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Clarke Review recommendations

In its terms of reference, the Clarke Review was specifically asked to examine the claims by British nuclear test participants and consider what would be appropriate assistance by government. The Clarke Review recommended the accreditation of participation in the nuclear tests for Defence Force staff as 'non-warlike hazardous service'.¹⁵

Some 2160 submissions were made to the Clarke Review with a majority of the submissions urging that participation in the British nuclear tests should be classified as 'non-warlike hazardous service', and, as such, they would be as covered by Part IV of the VEA. Most of the submissions were from former Defence Force personnel.¹⁶ A small number of submissions also sought classification of participation in the British tests as 'qualifying service' for the service pension. This is the same as war or warlike service and would basically have allowed access to the Service Pension (SP) and also to the Gold Card for those aged 70 or above. This proposal was not supported by the Clarke Review and it did not recommend that the British nuclear test participation be classified as being the same as 'qualifying service', or war service.

Howard Government response to the Clarke Review recommendation about nuclear test participation

Essentially, the Howard Government rejected the Clarke Review recommendation to accord Defence Force personnel involved in the nuclear testing with accreditation as being involved in non-warlike hazardous service. However, while the Howard Government chose not to change the service classification of defence personnel involved in the British nuclear testing, it made a loose commitment to meeting these personnel's needs in other ways. The Prime Minister reported that:

The Government also had decided to respond positively to the needs of those affected by the British Atomic Test programme when the outcomes are available of the Australian Participants in the British Nuclear Test Programme – Cancer Incidence and Mortality Study.

The Government will continue to provide special recognition and comprehensive assistance to those who have served Australia in times of war, at personal risk of injury or death from an armed enemy.

[e%20Date%3A01%2F03%2F2004%20%3E%3E%2001%2F04%2F2004%20Dataset%3Apre
ssrel:querytype=:rec=1;resCount=Default](#)

15. Ibid., p. 399.

16. Ibid., p. 371.

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In keeping with this approach, we have accepted the Clarke Report's recommendation that there be no change in the incurred danger test for Qualifying Service. However, we reject the view that this test has been interpreted too narrowly.¹⁷

Governments have been reluctant to accredit peacetime service as either war service or non-warlike hazardous service under the VEA

There were several submissions made to the Clarke Review to have various forms of peacetime military service accredited as either warlike or non-warlike hazardous service under the VEA.¹⁸ Some of these claims included special submarine operations to the north and west of Australia, personnel involved in covert intelligence gathering or covert signals operations and also major peacetime accidents, like the Black Hawk helicopter accident of 1996. Generally, the Clarke Review recommended that peacetime service should not be accredited as service under the VEA. The exception to this was service that included mine clearing, bomb disposal and improvised explosive device clearance. Some of the Clarke Review recommendations, that some mine clearing and bomb disposal work post World War Two (WWII) in the South Pacific be accredited, was accepted by the Howard Government. This was provided for with the *Veterans' Entitlements (Clarke Review) Act 2004*.¹⁹

Civilian nuclear test participants not covered by this measure

As stated above, only those British nuclear test participants who were also members of the Australian Defence Force will gain access to the VEA assistance under this proposed initiative. This is in accordance with the Clarke Review recommendation.²⁰ The 8 590 civilian nuclear test participant personnel are not covered.

Comment

The accrediting of participation in the British nuclear testing for Australian Defence Force personnel as hazardous service in the VEA does break new ground for coverage of ordinary peacetime military service. This sort of service is not normally covered in the VEA, rather ordinary peacetime service is normally covered by military service compensation arrangements, that is coverage by the SRCA or the *Military Rehabilitation and Compensation Act 2004* (MRCA). This may set a precedent for other ordinary

17. J Howard (former Prime Minister), Additional benefits for veterans, government response to the Clarke Report, op. cit.

18. J Clarke, *Report of the Review of Veterans' Entitlements*, January 2003, op. cit., part 9, pp. 334–340.

19. P Yeend, *Veterans' Entitlements (Clarke Review) Bill 2004*, Bills digest, no. 134, 2003-04, Parliamentary Library, Canberra, 2004, viewed 26 May 2010, <http://www.aph.gov.au/library/pubs/bd/2003-04/04bd134.htm>

20. J Clarke, *Report of the Review of Veterans' Entitlements*, January 2003, op. cit., p. 399.

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peacetime military service to be provided with coverage under the VEA, which was not recommended by the Clarke Review.²¹

There is still the issue of coverage for civilian personnel involved in the tests. All nuclear test participants (civilian and military) were provided for with the benefit of coverage for cancer screening and treatment in 2006.²²

Schedule 2—Service on submarine special operations

Introduction

The Government announced in the 2010–11 Budget that it will accredit submarine special operations conducted in the period 1978 to 1992 as warlike service.²³ Accreditation as warlike service will provide Australian military personnel involved in such service with access to the SP from age 60 and also access to a Gold Card from the age of 70 years.

Cost and numbers affected

The financial impact statement attached to the Bill provides cost estimates of \$0.8 million in 2010–11, \$2.1 million in 2011–12, \$3.2 million in 2012–13 and \$5.0 million in 2013–14.²⁴ This is a total of \$11.1 million over four years and the Government estimates up to 890 former submariners will benefit.²⁵

Clarke Review examination of submarine special operations

The Clarke Review received some 44 submissions seeking to have various forms of peacetime military service classified in the VEA as either as warlike service or non-warlike service.²⁶ One of the types of peacetime service examined was submarine special operations.²⁷

In the late 1970s to the early 1990s, some Royal Australian Navy (RAN) submarines, filled with special intelligence equipment, were regularly deployed in areas to the north and west of Australia. Submissions to the Clarke Review claimed that the special operations were conducted in an environment in which overwhelming force could have

21. J Clarke, *Report of the Review of Veterans' Entitlements*, January 2003, op. cit., p. 359.

22. P Yeend, *Australian Participants in British Nuclear Tests (Treatment) Bill 2006*, op. cit.

23. Australian Government, *Budget measures: budget paper no. 2: 2010-11*, op. cit., pp. 301-302.

24. Explanatory Memorandum, p. iii, op. cit.

25. A Griffin (Minister for Veterans' Affairs and Defence Force Personnel), \$36 million to implement recommendations of the Clarke Review of veterans' entitlements, op. cit.

26. J Clarke, *Report of the review of veterans' entitlements*, Canberra, 2003, op. cit., pp. 342-354.

27. *Ibid.*

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been expected if the submarine had been detected. The Clarke Review commented that the operations were covert and they were unable to elaborate further on the nature of the tasks performed. The Clarke Review found that due to the classified nature of the operations, the assessment of the service and whether it met the warlike definition could only be made by the Department of Defence. The Review reported that it had deliberated extensively about the nature of the operations with the authors of submissions and senior Defence officials and concluded that there was no evidence to substantiate a description of the special operation service as warlike. As a result the Clarke Review recommended that the service be classified as non-warlike hazardous service.²⁸ This classification would have generally provided access to the DP for illnesses/injuries arising from that service and to WWP for surviving partners, where the death of the service person is attributable to that service. This is the same classification of service that has been proposed by the Government for the nuclear test participants who were members of the Australian Defence Force—see Schedule 1 of the Bill.

Peacetime service as warlike service

As said above, the Clarke Review received 44 submissions to have various forms of peacetime military service to be accredited as either 'warlike' or 'non-warlike hazardous service' under the VEA. These claims included personnel involved in covert intelligence gathering or covert signals and also major peacetime accidents like the Black Hawke helicopter crash of 1996. Generally, the Clarke Review did not recommend that peacetime service should be accredited as warlike service under the VEA.²⁹ The major exception to this was the recommended accreditation of some peacetime mine clearing and bomb disposal work post WWII in the South Pacific which was provided for with the *Veterans' Entitlements (Clarke Review) Act 2004*.³⁰

While accreditation as warlike service for mine and bomb clearance work does show that some peacetime service has been recognised as warlike service for the VEA it is exceptional. Generally, governments have not wanted to have peacetime service recognised as warlike or non-warlike service in the VEA, as it would then diminish the special recognition given to the special service provided for in the VEA. This view was emphasised in then Prime Minister John Howard's press release when announcing the Government's responses to the Clarke Review recommendations:

The Government will continue to provide special recognition and comprehensive assistance to those who have served Australia in times of war, at personal risk of injury or death from an armed enemy.

28. Ibid.

29. Ibid., p. 359.

30. P Yeend, *Veterans' Entitlements (Clarke Review) Bill 2004*, op. cit.

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In keeping with this approach, we have accepted the Clarke Report's recommendation that there be no change in the incurred danger test for Qualifying Service. However, we reject the view that this test has been interpreted too narrowly.³¹

Governments have considered that illness/injuries and also death having their origins in military peacetime activities should be covered by workers' compensation arrangements, as applies to public servants generally.

Is the risk of danger the same as actual danger?

War, and warlike service, involves action against an armed hostile enemy force in a time of conflict. Section 7A of the VEA describes qualifying service.³² It essentially refers to risk and dangers incurred while a service person was engaged in service during a period of hostilities from a hostile enemy force. The proponents of the submarine special service insist that, had they been detected, they were at great and overwhelming risk and danger. However, the detail of the special submarine service has not been made public due to the apparently 'top secret' nature of its operations. Nor has there been any publicity relating to its operations, such as might be expected if it had engaged in any conflict with, or discovered any covert operations by, other forces or nations. Therefore, the Government's decision implies acceptance that the risks the operations ran should be given the same recognition as warlike service. This is even though the submarine operations were not during a period of hostilities against an armed enemy force, hitherto a requirement for the classification of war and warlike service. This budget initiative might therefore set a precedent for the accreditation of other claims relating to dangerous peacetime military service.³³

31. J Howard (former Prime Minister), Additional benefits for veterans, government response to the Clarke Report, op. cit.

32. 7A Qualifying service

(1) For the purposes of Parts III and VA and sections 85 and 118V, a person has rendered qualifying service:

(a) if the person has, as a member of the Defence Force:

(i) rendered service, during a period of hostilities specified in paragraph (a) or (b) of the definition of *period of hostilities* in subsection 5B(1), at sea, in the field or in the air in naval, military or aerial operations against the enemy in an area, or on an aircraft or ship of war, at a time when the person incurred danger from hostile forces of the enemy in that area or on that aircraft or ship.

33. J Clarke, *Report of the review of veterans' entitlements*, Canberra, 2003, op. cit., p. 359.

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Schedule 3—Service in Thailand

The Government announced in the 2010–11 Budget the proposal to change the recognition of service status for Australian Defence Force personnel who served at the Ubon airbase in Thailand from 31 May to 27 July 1962.³⁴ The government budget paper refers to ‘new evidence’ and states that personnel ‘were on a heightened state of alert to respond to a perceived imminent threat from hostile forces’ during this period. The service is proposed to be recognised as warlike service or qualifying service. Currently the service at Ubon in this period is recognised as non-warlike or operational service. The current non-warlike (operational service) categorisation provides some assistance under the VEA, mainly access to the DP for illnesses/injuries arising from that service and to WWP for surviving partners, where the death of the service person is attributable to that service. The change of the service classification to warlike service (qualifying service) will, in addition, provide access to the SP and access to the Gold Card for those aged 70 or more.

Cost and numbers affected

The financial impact statement attached to the Bill provides cost estimates of \$0.7 million in 2010–11, \$0.6 million in 2011–12, \$0.6 million in 2012–13 and \$0.7 million in 2013–14.³⁵ This is a total of \$2.6 million over four years and the Government estimates up to 220 personnel will benefit.³⁶

Ubon service

In May 1962, in the belief that communist forces were intending to invade Thailand from Laos, Australia, as a partner in the American led South East Asian Treaty Organisation (SEATO), deployed a Royal Australian Air Force (RAAF) Sabre fighter squadron No. 79 to Ubon in Thailand. The deployment was aimed at improving the country’s deficient air defences and to maintain its territorial integrity. Britain and New Zealand also made shorter-term contributions to Thai national security.

The directive to the Squadron when it was first deployed set out its operational role as follows:

- a. Self defence.
- b. In defence of Thailand when instructed by the Air Board.

34. Australian Government, *Budget measures: budget paper no. 2: 2010-11*, Commonwealth of Australia, Canberra, op. cit., p. 302.

35. Explanatory Memorandum, p. iii, op. cit.

36. Australian Government, *Budget measures: budget paper no. 2: 2010-11*, Commonwealth of Australia, Canberra, op. cit., p. 302.

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c. If requested by the Thai authorities through COMUSMACTHAI, or his nominated deputy to intercept aircraft attacking with weapons Thai territory or forces within Thailand, in the event of attack without warning, when prior reference to the Air Board is not practicable.

Directive c. above gave the squadron an immediate active role. The squadron was placed on an operation footing on arrival to provide an immediate response if called upon but it soon became apparent that such an event was unlikely and no aircraft were actually placed on air defence alert. In mid-1963, the Thai Air Force requested assistance from 79 Squadron in the identification and interception of any intruding aircraft. Negotiations soon defused the crisis, and most SEATO contingents had left by March 1963. Australian defence authorities preferred withdrawal too, but the Cabinet decided there were political benefits in continuing a joint deployment with American forces.

The threat positions in South East Asia began to change in mid-1964. North Vietnam and the Viet Cong were close to over-running South Vietnam and Chinese MIG-17s were based in Hanoi, within range of Thailand and these aircraft were later augmented or replaced by MIG 19s and MIG 21s. From April 1965 the United States (US) Air Force stationed squadrons of F-4C Phantoms at Ubon to participate in the air bombardment of North Vietnam, and No. 79 Squadron was absorbed in June of that year into an integrated air defence system covering Thai territory, with specific responsibility for protecting the Ubon airbase and surrounding area from communist retaliation. By late 1967, operating restrictions on No. 79 Squadron were proving irksome to the US Air Force, which considered the space occupied by the RAAF at Ubon could be better utilised. American impatience was heightened from February 1968 when Russian-built IL-28 bombers moved to bases within easy striking distance of Thai territory. In March 1968, the Cabinet decided that the Australian presence had outlived its usefulness. The Sabres were released from alert status on 26 July 1968 and the squadron was fully withdrawn by the end of August 1968.

During its six-year tour in Thailand, the unit had lost two aircraft to accidents but were never engaged in combat.

Current classification of north-east Thailand service

Under the VEA, service in north-east Thailand (including Ubon) from 31 May 1962 to 24 June 1965 inclusive is classified as operational service. Operational service categorisation provides some assistance under the VEA, mainly access to the DP for illnesses/injuries arising from that service and to WWP for surviving partners, where the death of the service person is attributable to that service. Service in certain operations in the same area from 25 June 1965 to 31 August 1968, when the squadron and support contingent were withdrawn, is classified as qualifying service. Qualifying service provides the same assistance under the VEA as operational service but also provides access to the SP and the Gold Card for those aged 70 or more.

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Clarke Review consideration of Ubon service

The Clarke Review examined service in north-east Thailand including RAAF service in Ubon 1962 to 1968.³⁷ Submissions were made to the Clarke Review that all service in Ubon from 1962 to 1965 should be classified as qualifying service claiming that all service personnel at Ubon should be treated equally. The claim was that service prior to 25 June 1965 was similar in nature to the service after that date.

The Clarke Review concluded that Ubon service prior to 25 June 1965 should not be classified as qualifying service and should remain as operational service. The Review referred to the preceding examination of the Ubon service by the Mohr Review of 2000.³⁸ Mohr said that while the service in Ubon prior to June 1965 was uncomfortable and entailed greater hazards than peacetime service in Australia, it was not of such a nature that it could be classified as 'warlike service'.³⁹

Comment

The proposed reclassification of RAAF Ubon service from 31 May to 27 July 1962 covers only a very short period. It still leaves the substantive period of Ubon service prior to June 1965 as operational service; that is from 28 July 1962 to 24 June 1965. The main claim put to the Clarke Review was that all Ubon service should be treated as the same, that is, it is a claim for equity of treatment. However, the reason that all Ubon service is not treated the same is because there were periods of different service engagement, risk and danger.

There will probably be pressure from RAAF service personnel for the period of Ubon service still classified as operational service to be classified as qualifying service. This is the nature of the problem experienced by former service personnel – one group sees another group gain a classification (higher) than the one they currently have and they consider it unfair as it does not give them the same recognition of their service as that which has been conferred on others. This process has been going on since 1914. The result is the patchwork quilt of recognition of different service in different ways in the VEA.

37. J Clarke, *Report of the review of veterans' entitlements*, Canberra, 2003, op. cit., pp. 322-324.

38. R Mohr, *Review of Service Entitlement Anomalies South East Asian Service 1955-75*, Canberra, February 2000, viewed 2 June 2010, [http://parlinfo.parlInfo/search/display/display.w3p;adv=yes;db=;group=;holdingType=;id=;orDerBy=customrank;page=0;query=Title%3A%22asian%20service%22%20\(Date%3A01%2F01%2F2000%20%3E%3E%20\)%20Dataset%3Acatalog;querytype=;rec=0;resCount=Default](http://parlinfo.parlInfo/search/display/display.w3p;adv=yes;db=;group=;holdingType=;id=;orDerBy=customrank;page=0;query=Title%3A%22asian%20service%22%20(Date%3A01%2F01%2F2000%20%3E%3E%20)%20Dataset%3Acatalog;querytype=;rec=0;resCount=Default)

39. *Ibid.*, p. 6-5.

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Schedule 4–Domicile

Under the VEA, persons who have British, Commonwealth or allied service may be eligible for payments and assistance if they were a ‘domicile’ of Australia prior to enlistment, for example, a young person normally resident in Australia, who was temporarily absent overseas when they enlisted. With there being no concept of Australian citizenship prior to 1949, the domicile concept was used but this referred only to persons who could exercise a domicile of choice and that choice was only open to persons aged 21 or more. So a 19 year old Australian person, who was temporarily overseas, could not claim to be an Australian domicile, as they were not aged 21 or more at the time of their enlistment.

The amendments to the VEA in Schedule 4 provide for changes to reduce that age from age 21 down to age 18. This accords with the fact that the *Domicile Act 1982*, has lowered the independent age down from age 21 to age 18.

Cost

The financial impact statement attached to the Bill provides cost estimates of \$0.2 million in 2010–11, \$0.2 million in 2011–12, \$0.2 million in 2012–13 and \$0.2 million in 2013–14.⁴⁰ This is a total of \$0.8 million over four years.

Schedule 5–Effect of war widows and widowers entering into de facto relationships

Introduction

A WWP can be claimed by a partner of a veteran or eligible member of the Australian armed services. However, under current WWP claiming provisions, where a former partner of a veteran (or qualified service person) remarries after the death of their veteran (or qualified service person) partner, and the remarriage occurred before they claimed WWP, they cannot qualify for WWP. Likewise, where a former partner of a veteran (or qualified service person) has remarried at the time of death of their former veteran (or qualified service person) partner, they too cannot qualify for WWP.

The amending provisions presented in Schedule 5 of the Bill are to align these WWP claiming provisions to also refer to de facto partners, rather than is currently only to married partners.

40. Explanatory Memorandum, p. iii, op. cit.

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Member of a couple in the Veterans' Entitlements Act 1986

The VEA defines a person who is a 'member of a couple' as a person who is a partner of a person to whom they are legally married to or in a de facto relationship⁴¹, so married and de facto couples have the same status in the VEA.

This aligning of the de facto provisions with the marriage provisions is consistent with other definitions of a member of a couple and also a partner in like legislation. For example, provisions in the *Social Security Act 1991* (SSA) give the same treatment and accord the same status to de facto partnerships as they do to legally married partnerships. Also, the use of the term de facto aligns the VEA with the requirements of the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Bill 2008*.⁴²

Cost

The financial impact statement attached to the Bill provides cost estimates of \$0.1 million in 2010–11, \$0.3 million in 2011–12, \$0.4 million in 2012–13 and \$0.6 million in 2013–14.⁴³ This is a total of \$1.4 million over four years.

41. Section 5E sub-section 2 - Member of a couple—general

(2) A person is a member of a couple for the purposes of this Act if:

(b) all of the following conditions are met:

(i) the person is living with another person, whether of the same sex or a different sex (in this paragraph called the partner);

(ii) the person is not legally married to the partner;

(iii) the person and the partner are, in the Commission's opinion (formed as mentioned in section 11A), in a de facto relationship;

(iv) the person and the partner are not within a prohibited relationship.

42. M Neilsen, K Magarey, E Karlsen, P Yeend, D Daniels, L Rayner, *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Bill 2008*, Bills digest, no. 44, 2008–09, Parliamentary Library, Canberra, 2008, viewed 2 June 2010, <http://www.aph.gov.au/library/pubs/bd/2008-09/09bd044.htm>

43. Explanatory Memorandum, p. iii, op. cit.

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Main provisions

Schedule 1—service relating to British nuclear tests

Item 2 inserts the term '*British nuclear test defence service*' into subsection 5Q(1A) of the VEA as being a service having the same meaning as in Part IV of the VEA. Part IV of the VEA is titled 'Pensions for members of Defence Force or Peacekeeping Force and their dependants' and contains the provisions for the provision of DP and WWP. It should be noted the definition proposed to be inserted contains the words 'defence service', so it will only refer to nuclear test participants who were also members of the Australian Defence Force.

Items 3 to 5 further define '*defence service*' in subsection 68(1) of the VEA and specifically include 'British nuclear test defence service'.

Item 6 proposes the insertion of a **new section 69B** into the VEA, which contains descriptions of the service (places, dates and areas) to be classified as 'British nuclear test defence service'.

Items 8 to 22 generally add 'British nuclear test defence service' to various provisions in the VEA that refer to specific types of service and definitions of service.

Schedule 2—Service on submarine special operations

Part 1—Veterans' Entitlements Act 1986

Item 2 proposes to insert a new section 6DA into the VEA which contains what service will be described as 'operational service'. Operational service essentially allows access to assistance under Part IV of the VEA, that is, the DP and the WWP. The **new section 6DA** relates to the period from 1 January 1978 to 31 December 1992 and also refers to the attainment of prescribed service medals and clasps to meet the requirements for submarine special operations.

Item 3 presents amendments to section 7A of the VEA which contains the provisions referring to qualifying service. The new provisions for 7A contain the same description as those in **new section 6DA** in reference to dates of service and the attainment of service medals and clasps. Qualifying service essentially provides access to the SP in the VEA and also indirectly to qualification to a Gold Card for those aged 70 or more.

Part 2—Safety, Rehabilitation and Compensation Act 1988

There are several separate statutes that a member (or former member) of the armed services can access for compensation. The main ones are the VEA, the SRCA and the MRCA. There are provisions in each of these acts to provide for situations of dual entitlement or concurrent entitlement. That is to ensure persons are not able to double-dip.

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The provisions presented in **Part 2 of Schedule 2** are to amend the SRCA to ensure that where a person accesses an entitlement under the VEA, the appropriate access to entitlement under the SCRA is affected to prevent double-dipping. The MRCA is not included as it refers to illness/injuries and deaths for service on or after 2004, whereas the SRCA can refer to service prior to 1998.

Schedule 3—Service in Thailand

Items 3 to 5 amend subsection 6D(1) of the VEA. Subsection 6D(1) describes operational service for certain periods of post World War Two service in certain locations. **Item 3** amends the start date for the service from 31 May 1962 to 28 July 1962 for service in North East Thailand (including Ubon). **Item 4** inserts new subparagraph 6D(1)(a)(iv) to create a new category of qualifying service in North East Thailand (not including Ubon) from 31 May 1962 to 27 July 1962.

Item 6 amends Schedule 2 of the VEA. Schedule 2 refers to and describes operational service areas for the VEA. The amendments in **Item 6** adding these definitions in Schedule 2 will also indirectly add these items to the description of qualification service.

Schedule 4—Domicile

Items 1 and 2 inserts a definition of *'domiciled'* in the VEA. **Item 5** inserts a **new section 11B** of the VEA which describes domicile referring to a person aged 18 years or more before 1 July 1982.

Schedule 5—Effect of war widows and widowers entering into de facto relationships

Items 4 to 6 amends subsection 13(8) of the VEA to cease eligibility for a widow/er of a deceased veteran where the person enters into a de facto relationship. **Items 7 to 9** amend the VEA to make reference a widow/er of a deceased veteran who marries or enters a de facto relationship.

Concluding comments

The amendments to the VEA presented in this Bill are generally beneficial.

The allowing of British nuclear test participation service for defence force personnel to be recognised as operational service in the VEA will be welcomed by ex-service personnel. Nuclear test participants who were not members of Australian Defence Force but were civilians will probably feel aggrieved they were not accorded the same benefit under the VEA.

The recognition of special submarine service as warlike service is quite unprecedented for normal peacetime service. It may encourage other dangerous peacetime service to be

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given the same accreditation. It could be argued that it also says the potential risk of danger is now seen as the same as actual exposure to danger.

There have been representations to government for the recognition of RAAF Ubon service as warlike service for many years. The main grievance occurs as different periods of Ubon service get different accreditation under the VEA and the complainants feel that it was all similar service and should all be recognised as the same type of service. The reason different periods of service in Ubon get different treatment is because there were periods of different service engagement, risk and danger. The period being added to qualifying service is small being from 31 May 1962 to 27 July 1962.

The changes to the WWP eligibility provisions with the adding in of references to de facto relationships that are to be treated the same as married relationships is consistent with other Commonwealth legislation.

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