



Veterans' Affairs and Other Legislation Amendment (Miscellaneous Measures) Bill 2010

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Glossary

Abbreviation	Definition
APBNTTA	<i>Australian Participants in British Nuclear Tests (Treatment) Act 2006</i>
AFP	Australian Federal Police
APS	Australian Protective Services
MRCA	<i>Military Rehabilitation and Compensation Act 2004</i>
RMA	Repatriation Medical Authority
SRCA	<i>Safety Rehabilitation and Compensation Act 1988</i>
SMRC	Specialist Medical Review Council
SoP	Statements of Principles
VEA	<i>Veterans' Entitlements Act 1986</i>

Veterans' Affairs and Other Legislation Amendment (Miscellaneous Measures) Bill 2010

Date introduced: 30 September 2010

House: House of Representatives

Portfolio: Veterans' Affairs

Commencement: Sections 1–3, items 1–41 and 45–48 of Schedule 1 on the day of Royal Assent; items 42–44 of Schedule 1 on the day after the Royal Assent.

Links: The links to the [Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bills home page, or through <http://www.aph.gov.au/bills/>. When bills have been passed they can be found at the ComLaw website, which is at <http://www.comlaw.gov.au/>.

Purpose

The purpose of the Veterans' Affairs and Other Legislation Amendment (Miscellaneous Measures) Bill 2010 (the Bill) is to amend various statutes relating to veterans' affairs and military rehabilitation to give effect to several minor changes to veterans' assistance and entitlements. The most notable changes include:

- enabling certain Australian Protective Service officers to be defined as 'nuclear test participants' and hence become eligible for cancer testing and treatment
- clarifying that a 'war-caused' or 'defence-caused' injury or disease may be compensated under the *Veterans' Entitlements Act 1986* (VEA) even if the injury or disease has been aggravated, or materially contributed to, by Defence service under the *Military Rehabilitation and Compensation Act 2004* (MRCA)
- providing that the Specialist Medical Review Council must review both versions of the Statements of Principles applicable to the same injury, disease or death, and
- clarifying that the Specialist Medical Review Council may review a decision of the Repatriation Medical Authority to not amend a Statement of Principles.

The Bill also includes various other amendments intended to correct or clarify aspects of existing legislation related to veterans' assistance and entitlements. This Bills Digest will focus only on the notable changes listed above.

Australian participants in British nuclear tests

The purpose of the amendments to the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* (APBNTTA) contained in this Bill is to expand the definition of a 'nuclear test participant' in the APBNTTA to include members of the Australian Protective Service (APS) from 1984 to 1988.

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The role of the APS is to provide protective and custodial services for and on behalf of the Commonwealth. Functions of the APS include:

- protecting Commonwealth property or the property of a foreign country or international organisation
- protecting certain Commonwealth officers and their families
- protecting internationally protected persons, and
- provision of custodial services at immigration detention centres.¹

The Commonwealth provides for the payment of testing and treatment of cancer for participants in British nuclear tests conducted in Australia in the 1950s. This provision was originally introduced with the passage of the APBNTTA.² These arrangements were later extended to cover members of the Commonwealth or Australian Federal Police (AFP) performing guard duties at Maralinga from 1 May 1965 to 30 June 1988.³

The Maralinga test site was also guarded by officers of the APS from 1984 to 1988. However, from 20 October 1984, APS officers were not members of the AFP and were not covered by the *Australian Federal Police Act 1979*.

The amendments in this Bill will describe APS officers performing guard duties at Maralinga from 20 October 1984 to 30 June 1988 as a 'nuclear test participant'. This means that they will become eligible for cancer testing and treatment paid for by the Commonwealth under the APBNTTA.

This change will ensure there is equity of access to cancer screening and cancer treatment for officers involved in guarding the Maralinga test site.

Aggravation of war-caused or defence-caused injury or disease

There are three main Acts that provide for compensation and coverage of a war or defence service injury, disease or death. They are the:

- *Veterans' Entitlements Act 1986* (VEA)
- *Safety Rehabilitation and Compensation Act 1988* (SRCA), and
- *Military Rehabilitation and Compensation Act 2004* (MRCA).

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1. Information about the history of the APS can be found in J Norberry, *Australian Protective Service Amendment Bill 2002*, Bills digest, no. 152, 2001-2002, viewed 13 October 2010, <http://www.aph.gov.au/library/pubs/bd/2003-04/04bd015.htm>.
 2. P Yeend and A Biggs, *Australian Participants in British Nuclear Tests (Treatment) Bill 2006*, Bills digest, no. 31, 2006-07, Parliamentary Library, Canberra, 2006, viewed 12 October 2010, <http://www.aph.gov.au/library/pubs/bd/2006-07/07bd031.htm>
 3. P Yeend, *Veterans' Affairs Legislation Amendment (International Agreements and Other Measures) Bill 2008*, Bills digest, no. 103, 2007-08, Parliamentary Library, Canberra, 2008, viewed 12 October 2010, <http://www.aph.gov.au/library/pubs/bd/2007-08/08bd103.htm>

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Coverage of each Act

There is some overlap of coverage between the VEA and the SRCA and the MRCA respectively. For example, a person may have an entitlement to coverage under the VEA and the MRCA at the same time. In such cases a person may have to choose which coverage they want to receive. Where a person does choose, this may also lead to offsets against entitlements under the other act. Broadly these acts provide for:

- VEA—operational service, peacekeeping service and hazardous military service, peacetime military service from 7 December 1972 up to 6 April 1986,
- SRCA—illness/injury/death from military service from 3 January 1949 up to and including 30 June 2004, and
- MRCA—illness/injury/death occurring on military service from, on, or after 1 July 2004.

The coverage for service personnel for illness/injury/death was, for a long time, only provided for by the VEA. The VEA, having its origins in repatriation legislation and the original *War Pension Act 1914*, is primarily a war service compensation and repatriation act. This contrasts with much of the service undertaken by members of the defence force in more recent times, which is mostly peacetime service. The issue of coverage can be complicated because often this peacetime service is interspersed with peacekeeping service, with hazardous peacekeeping service, and also with war-like (qualifying) service. For this non war-like service, the VEA does not work like a modern workers' compensation act—it is much more of a war-like service compensation and repatriation act.

The introduction of the SRCA was an attempt to fill in the gaps in VEA coverage, especially in respect of peacetime service. The SRCA was constructed more like a modern workers' compensation act and its benefits were primarily to provide workers' compensation type coverage. The focus was more on weekly compensation replacing lost wages and payment of medical and rehabilitation services to facilitate a return to work.

However, the VEA, the SRCA and the MRCA still exist and there needs to be appropriate arrangements for persons who have an entitlement under more than one act at the same time. That is, there needs to be arrangements to ensure that service personnel and their dependants are not penalised. Nevertheless, they should not be able to claim compensation from more than one source.

The amendments to the VEA in Part 5 of this Bill are intended to ensure that, where a person is qualified for coverage under the VEA for an illness/injury, the entitlement to that VEA coverage is not compromised, even though the illness/injury may have been aggravated, or materially contributed to, by service also covered by the MRCA.

This change will ensure service personnel (or their dependants) who have an entitlement to coverage under both the VEA and the MRCA at the same time are not penalised.

Statements of Principles

A person may make a claim under the VEA or the MRCA on the grounds that their illness/injury was caused by, or related to, their service. The main form of assistance claimed under the VEA is the Disability Pension. In addition, a claim may be made for a War Widow's/er's Pension, on the grounds that the death of a partner was due to an illness/injury arising from service.

Statements of Principles

The Statements of Principles (SoP) are legislative instruments that set out the factors which are accepted as the cause of certain medical conditions.⁴ SoPs are determined by the Repatriation Medical Authority (RMA). SoPs describe what factors could cause a medical condition that is the subject of a claim. In order for a claim to succeed at least one of the SoP factors must be related to service.

There are two SoPs for each condition, one for warlike, non-warlike and operational service, and one for other eligible service. This is because the different types of service attract different standards of proof for determining claims.

Changing a Statement of Principles

SoPs are registered on the Federal Register of Legislative Instruments (FRLI) and tabled in both Houses of the Australian Parliament. Each SoP contains the date on which it takes effect. The SoPs remain law unless either House of the Australian Parliament disallows them,⁵ the sun-setting provisions of section 50 of the *Legislative Instruments Act 2003* apply, or they are revoked by the RMA.

Veterans, serving and former members of the Australian Defence Force (ADF), eligible dependants, ex-service organisations, the Repatriation Commission or the Military Rehabilitation and Compensation Commission can request the RMA to make a new SoP, if one does not already exist, or to review a SoP if they believe that there is additional information available.

Repatriation Medical Authority

The RMA is an expert medical body that compiles the SoP. The RMA consists of a Chairperson and four other Members. The Minister for Veterans' Affairs appoints all members on a part-time basis

4. Department of Veterans' Affairs, *Statements of Principles*, viewed 12 October 2010, http://www.dva.gov.au/pensions_and_compensation/Pages/sops.aspx

5. Section 42 *Legislative Instruments Act 2003*.

and at least one member must have at least five years experience in the field of epidemiology. The role of the RMA is to:

- determine whether there is sound medical-scientific evidence that links particular kinds of injury, disease or death with war or defence service, and
- reflect the causal links in legally binding SoPs.

The RMA does not review or have any role in assessing an individual's claim for benefits.

Specialist Medical Review Council

The SMRC is an independent statutory body that can be established to review a SoP that has been written by the RMA. The SMRC is independent of the Repatriation Commission, the Military Rehabilitation and Compensation Commission (MRCC) and the RMA. SMRC are selected for the purposes of each specific review of a SoP that is before the SMRC. The SMRC must consist of at least three and not more than five members appointed by the Minister. To be appointed as a member the person must be a registered medical practitioner, or medical scientist, with a least 10 years experience and be nominated by colleges or similar bodies (such as the College of Physicians).

In conducting a review of a SoP, a SMRC will take into consideration all of the information that was available to the RMA and any relevant written submissions that the applicant for review or other eligible persons, organisations or experts in a relevant field may provide.

The SMRC does not deal with individual applications for disability pensions or any other compensation, but decides whether it would have made a different decision than the RMA, on the basis of the same medical-scientific information.⁶

Purpose

The amendments to the VEA presented in **Part 7** of the Bill are to change the powers of the SMRC in its functions of examining SoPs that have been written by the RMA.

At present, an applicant for a review of a particular SoP by the SMRC may request that only one (rather than both) of the relevant SoPs be reviewed. This can have the effect of causing the SoPs for a particular condition to be unaligned. In order to remedy this situation, the Bill seeks to provide that the SMRC *must* review *both* SoPs when an applicant has requested a review.

The SMRC will also be given the power to review a decision of the RMA on a SoP, where the RMA decided to not change or alter the SoP.

6. Specialist Medical Review Council website, viewed 12 October 2010, http://www.smrc.gov.au/process_of_review.htm

These changes will allow the SMRC more flexibility and more consistency in its role of reviewing a SoP.

Financial implications

The amendments in the Bill minor in nature and will most likely have only a negligible financial impact.

Key provisions

Part 1—Australian participants in British nuclear tests

Item 3 inserts into the definition of a '**nuclear test participant**' in existing section 5 of the *Australian Participants in British Nuclear Tests (Treatment) Act 2006*, a reference to officers in the APS, and also a protective service officer in a department of the Commonwealth.

Part 3—Claims for travel expenses

Items 8, 9 and 10 of the Bill amend the VEA to extend the period in which a claim for travel expenses may be lodged. Claims will be able to be lodged up to 12 months after the event causing the expense occurred, and there is also the flexibility to allow a claim after more than 12 months. In effect this will allow claims retrospectively, that is up to 12 months before Part 3 of the Bill comes into effect, which is to be the date of Royal Assent.

Part 5—Aggravation of war-caused or defence-caused injury or disease

Items 15 to 18 of the Bill amend Section 9A of the VEA. Section 9A of the VEA describes conditions no longer covered by the VEA. The new wording will allow an injury or disease to be still covered by the VEA, even though it may have been aggravated or materially contributed to by service also covered by the MRCA.

Part 7—Statements of Principles

Items 24 to 27 insert provisions into the VEA that will allow the SMRC to review a SoP where the RMA has chosen to not amend a SoP. At present, the VEA only allows the SMRC to review a SoP that is the subject of a review or has been amended by the RMA. The new provisions will allow the SMRC to review a SoP where the RMA decided not to alter a SoP.

Item 28 amends section 196W(3) of the VEA to require the SMRC to review both SoPs when an applicant has requested a review.

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Concluding comments

The changes to legislation presented in this Bill are minor and uncontroversial. They are designed to correct or clarify aspects of existing legislation related to veterans' assistance and entitlements.

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