THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

VETERANS’ AFFAIRS AND OTHER LEGISLATION AMENDMENT
(MISCELLANEOUS MEASURES) BILL 2009

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Veterans’ Affairs,
The Honourable Alan Griffin MP)
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VETERANS’ AFFAIRS AND OTHER LEGISLATION AMENDMENT (MISCELLANEOUS MEASURES) BILL 2009

OUTLINE AND FINANCIAL IMPACT

Outline

The Bill will give effect to a number of minor measures and amendments that correct or clarify existing legislation. The minor measures and other amendments in the Bill will:

- extend nuclear test participant eligibility to certain Australian Protective Service officers for the period 20 October 1984 to 30 June 1988;
- enable Defence Service Homes Insurance to pay a State Emergency Service levy to the New South Wales State Government;
- extend from three months to twelve months, the period within which claims for certain travel expenses may be lodged;
- make provision for the serving of notices under both the Veterans’ Entitlements Act 1986 and the Military Rehabilitation and Compensation Act 2004;
- make it clear that a war-caused or defence-caused injury or disease remains compensable under the Veterans’ Entitlements Act even if the injury or disease has been aggravated, or materially contributed to, by Defence service under the Military Rehabilitation or Compensation Act;
- enable the Specialist Medical Review Council to review both versions of the Statements of Principles applicable to the same injury, disease or death;
- clarify that the Specialist Medical Review Council may review a decision of the Repatriation Medical Authority to not amend a Statement of Principles;
- correct the Veterans’ Entitlements Act to enable the payment of a pension to the dependant of a veteran who had been a prisoner of war during operational service under the Veterans’ Entitlements Act, where the veteran died on or after the commencement of the Military Rehabilitation and Compensation Act;
- ensure that certain lump sum payments of compensation under the Military Rehabilitation and Compensation Act 2004 must be paid into a bank account maintained by the compensation recipient;
- correct errors to remove redundant provisions, clarify a formatting error and correct cross references; and
- enable a Victoria Cross recipient to receive a Victoria Cross allowance under the Veterans’ Entitlements Act and a Victoria Cross allowance or annuity from a foreign country.

Financial Impact

The amendments have a nil or negligible financial impact.
Veterans’ Affairs And Other Legislation Amendment (Miscellaneous Measures) Bill 2009

Short Title
Clause 1 sets out how the Act is to be cited.

Commencement
Clause 2 provides a table that sets out the commencement dates of the various items of Schedule 1 to the Act.

Schedules
Clause 3 provides that each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

This explanatory memorandum uses the following abbreviations:

‘Australian Participants in British Nuclear Tests (Treatment) Act’ means the Australian Participants in British Nuclear Tests (Treatment) Act 2006;

‘Defence Service Homes Act’ means the Defence Service Homes Act 1918;

‘Military Rehabilitation and Compensation Act’ means the Military Rehabilitation and Compensation Act 2004;

‘Social Security Act’ means the Social Security Act 1991;

‘Veterans’ Entitlements Act’ means the Veterans’ Entitlements Act 1986;
Schedule 1 - Amendments

Part 1 – Australian participants in British nuclear tests

Amendments of the Australian Participants in British Nuclear Tests (Treatment) Act 2006

Overview

Amendments to the Australian Participants in British Nuclear Tests (Treatment) Act will extend nuclear test participant eligibility to certain Australian Protective Service officers for the period 20 October 1984 to 30 June 1988 inclusive.

Background

The Australian Participants in British Nuclear Tests (Treatment) Act provides treatment and testing, for cancer (malignant neoplasia) for eligible nuclear test participants. The dates of eligibility for the purposes of being a nuclear test participant are based on the periods of testing in each of the locations and the period afterwards during which contamination may still have been present.

The Veterans’ Affairs Legislation Amendment (International Agreements and Other Measures) Act 2008 extended the nuclear test participant eligibility dates for members of the Commonwealth Police, now Australian Federal Police, who were responsible for patrolling the exclusion zone at Maralinga throughout the testing period and who continued patrolling the area until 2001.

The extension of the period of eligibility was supported on the basis that scientific evidence has shown that contamination exposure at Maralinga continued until 1988, after which a program of radiation safety advice and regular radiation monitoring commenced.

On that basis nuclear test participant eligibility was extended to those members of the Commonwealth or Australian Federal Police who were at Maralinga during the period from 1 May 1965 to 30 June 1988. The amendments were included in the Veterans’ Affairs Legislation Amendment (International Agreements and Other Measures) Act 2008.

During that same period Australian Protective Service (APS) officers were also involved in patrolling Maralinga. For most of that time the APS officers were part of either the Commonwealth or Australian Federal Police and are therefore covered under the amendments to the Act made by the Veterans’ Affairs Legislation Amendment (International Agreements and Other Measures) Act 2008.
However, for the period from 20 October 1984 to 30 June 1988, the APS were not part of the Australian Federal Police and were not covered by the *Australian Federal Police Act 1979*. On 20 October 1984, protective service officers were transferred from the Australian Federal Police to the then Department of Local Government and Administrative Services. From 25 September 1987, APS officers were covered by the *Australian Protective Service Act*.

The effect of those changes meant that for the period 20 October 1984 to 30 June 1988, APS officers were not included in the definition in subsection 5(3A) of a “nuclear test participant” for the purposes of the Australian Participants in British Nuclear Tests (Treatment) Act.

**Explanation of the changes**

The amendments made by this Part amend the definition of “nuclear test participant” in subsection 5(3A) of the Australian Participants in British Nuclear Tests (Treatment) Act to include a person who was a protective service officer or a special protective service officer within the meaning of the *Australian Protective Service Act 1987* or who was located within a Department of the Commonwealth.

Furthermore, protective service officers or special protective service officers who claim within 6 months of the commencement of the amendments and who are subsequently determined to be a ‘nuclear test participant’ will be able to be reimbursed for cancer treatment costs and travel expenses incurred on or after 19 June 2006 and prior to the commencement of the amendments.

**Explanation of the items**

**Items 1** and **2** make technical amendments to paragraph 5(3A)(b) and subparagraph 5(3A)(b)(ii).

**Item 3** inserts two new subparagraphs at the end of paragraph 5(3A)(b). Subsection 5(3A) defines certain persons who may be regarded as a “nuclear test participant” for the purposes of the Act.

New subparagraph 5(3A)(iii) amends the definition of “nuclear test participant” by including a protective service officer, or a special protective service officer, within the meaning of the *Australian Protective Service Act 1987* who was at any time during the period from the beginning of 1 May 1965 to the end of 30 June 1988 present in the Maralinga nuclear test area.

New subparagraph 5(3A)(iv) amends the definition of “nuclear test participant” by including a protective service officer, or a special protective service officer, in a Department of the Commonwealth who was at any time during the period from the beginning of 1 May 1965 to the end of 30 June 1988 present in the Maralinga nuclear test area.
**Item 4** is a transitional provision to provide for the reimbursement of certain cancer treatment costs. Item 4 provides that the Repatriation Commission may approve, under subsection 13(1) of the Australian Participants in British Nuclear Tests (Treatment) Act, treatment for cancer for a person that was provided before the commencement of this item but on or after 19 June 2006, where the person makes a claim under the Australian Participants in British Nuclear Tests (Treatment) Act within 6 months after the commencement of this item and the Commission determines under the Australian Participants in British Nuclear Tests (Treatment) Act, that the person is an eligible person because of new subparagraph 5(3A)(iii) or (iv).

Subitem 4(2) makes it clear that subitem 4(1) has effect despite subsection 13(2) of the Australian Participants in British Nuclear Tests (Treatment) Act. Subsection 13(2) would otherwise limit the reimbursement of treatment costs to those costs incurred in the last three months.

**Item 5** is a second transitional provision to provide for the reimbursement of certain travelling expenses associated with cancer treatment for the newly eligible group. Item 5 applies to travel undertaken before the commencement of this item, but on or after 19 June 2006, for the purpose of obtaining treatment for cancer by a person who makes a claim under the Australian Participants in British Nuclear Tests (Treatment) Act within 6 months of the commencement of this item for a determination that the person is an eligible person under the Australian Participants in British Nuclear Tests (Treatment) Act and the Commission determines that the person is an eligible person under the Australian Participants in British Nuclear Tests (Treatment) Act because of new subparagraph 5(3A)(b)(iii) or (iv). The item also applies to travel undertaken by a person who accompanied, as an attendant (carer), an eligible person described above.

Subitem 5(2) provides that if a claim for travelling expenses is made under the Australian Participants in British Nuclear Tests (Treatment) Act by a person eligible because of new subparagraph 5(3A)(b)(iii) or (iv) within 6 months after the commencement of this item, the Repatriation Commission may approve or authorise the travel for the purposes of section 19 of the Australian Participants in British Nuclear Tests (Treatment) Act. Subsection 21(2) of the Australian Participants in British Nuclear Tests (Treatment) Act is disregarded for the purposes of this item. Under normal circumstances, subsection 21(2) would restrict claims for travelling expenses to claims made within 12 months of the travel having been undertaken. The item also enables the Repatriation Commission to determine a claim for travelling expenses in relation to travel for an attendant accompanying an eligible person.

**Commencement**

Clause 2 provides that items 1 to 5 commence on the day the Act receives Royal Assent.
Part 2 – Payments for State Emergency Services

Amendments of the Defence Service Homes Act 1918

Overview

These amendments will enable Defence Service Homes Insurance to pay a State Emergency Service levy to the New South Wales State Government. The levy will be collected from Defence Service Homes Insurance policyholders.

Background

The Defence Service Homes (DSH) Insurance Scheme is provided for under the Defence Service Homes Act. The DSH Insurance Scheme exists to serve members of Australia’s veteran and defence community, war widows and war widowers and dependants through the provision of home insurance services.

In 2008 the NSW Government introduced a levy to be paid by insurance companies and local government councils to contribute to the costs of State Emergency Service expenditure. The State Emergency Service refers to the volunteer organisation authorised by the New South Wales State Emergency Service Act 1989. The levy will be collected from policy holders and then paid to the NSW Government by DSH Insurance. Under section 38G of the DSH Act, Defence Service Homes Insurance pays a similar Fire Services Levy to the NSW and Victorian Fire Brigades. The new State Emergency Services levy commenced on 1 July 2009.

As section 114 of the Constitution prevents States imposing taxes on the Commonwealth without the consent of Parliament, these amendments provide legislative authority for DSH Insurance to pay the new State Emergency Services levy to the New South Wales Government, but does not subject the Commonwealth to State law.

Explanation of the items

Item 6 inserts a new section 38GA after section 38 of the Defence Service Homes Act. New subsection 38GA(1) provides that the Commonwealth may make payments to the State or a State authority, where under a law of a State, a person carrying on in that State, the business of insuring against the risk of loss of, or damage to, property is liable to make payments to the State or a State authority to assist in meeting the cost of the State Emergency Service of the State.

New subsection 38GA(2) limits the amount of the payment under section 38GA to no more than the amount that the Commonwealth would be liable to pay under the law of the State, if that law applied to the Commonwealth.
Item 7 amends subparagraph 40(4)(a)(ii) of the Defence Service Homes Act by inserting a reference to new “section 38GA” after the reference to “section 38G”. Section 40 of the Defence Service Homes Act provides for the Defence Service Homes Insurance Account. By including a reference to new section 38GA in subparagraph 40(4)(a)(ii), the Commonwealth may pay the New South Wales State Emergency Service levy from funds held in the Defence Service Homes Insurance Account.

Commencement

Clause 2 provides that items 6 and 7 commence on the day the Act receives Royal Assent.

Part 3 – Claims for travel expenses

Amendments of the Veterans’ Entitlements Act 1986

Overview

These amendments will extend, from three months to twelve months, the period within which claims for certain travel expenses may be lodged.

Background

Under the Veterans’ Entitlements Act, an eligible person may be paid travelling expenses incurred in obtaining treatment. The time limit for claiming travel expenses for treatment is 12 months. This period can be further extended if the Commission considers there are exceptional circumstances. Section 110 and subsection 112(3) provide for travel expenses for treatment.

Under the Veterans’ Entitlements Act, travel expenses are also paid for a person, and where necessary an attendant (carer), in the following circumstances:

- to meet with the Commission or a delegate of the Commission in relation to a claim or review – subsections 132(1),(2) and (9);
- to attend a medical examination or investigation in relation to a claim or review – subsections 132(1) and (2);
- to give evidence or produce documents in relation to a claim or review – subsections 132(3) and (4);
- to attend a hearing by the Veterans’ Review Board in relation to a review – subsections 132(5), (6) and (9);
- to attend before the Administrative Review Tribunal in relation to a review – subsections 132(7) and (8);
- to obtain documentary medical evidence for a review by the Veterans’ Review Board – section 170B;
- to obtain documentary medical evidence to be submitted to the Specialist Medical Review Council – section 196ZO.
Under the existing arrangements, the time limit for submitting a claim for travel expenses in the above circumstances is 3 months and there are no exceptional circumstance provisions available to extend this period.

**Explanation of the changes**

These amendments extend the time limit for the lodgement of a claim for non-treatment related travel expenses from three months to 12 months. This will align the time limit with that available for travel expenses for obtaining treatment.

The amendments also introduce to each of the non-treatment travel categories, a further extension to the 12 month time limit for exceptional circumstances, as currently exists for travel expenses for obtaining treatment.

**Explanation of the items**

**Item 8** repeals paragraph 132(11)(e) and substitutes a new paragraph. Section 132 provides for travel expenses for a claimant or person likely to be affected by a review under section 31 of the Veterans’ Entitlements Act to be paid travel expenses:

- within Australia, to attend, at the request of the Commission or the Commission’s delegate, a discussion in relation to the claim or review; and
- within or outside Australia, to attend, at the request of the Secretary or Commission, a medical appointment related to the claim or review.

New subparagraph 132(11)(e)(i) provides that a claim for travel expenses under section 132 must be made within 12 months of the completion of the travel. New subparagraph 132(11)(e)(ii) provides that, in relation to a claim for travel under section 132, if the Commission thinks that there are exceptional circumstances that justify extending the time period for claiming for such travel, then the time period is extended for such further period as the Commission allows.

**Item 9** repeals paragraph 170B(5)(b) and substitutes a new paragraph. Section 170B provides for travel expenses within Australia for a Veterans’ Review Board applicant, and where necessary an attendant (carer), to be paid travel expenses for travel undertaken to obtain relevant documentary medical evidence for the review.

New subparagraph 170B(5)(b)(i) provides that a claim for travel expenses under section 170B must be made within 12 months of the completion of the travel. New subparagraph 170B(5)(b)(ii) provides that, in relation to a claim for travel under section 170B, if the Commission thinks that there are exceptional circumstances that justify extending the time period for claiming for such travel, then the time period is extended for such further period as the Commission allows.

**Item 10** repeals paragraph 196ZO(5)(b) and substitutes a new paragraph. Section 196ZO provides for travel expenses within Australia for an applicant, and where necessary an attendant, to be paid travel expenses for travel undertaken to obtain relevant documentary medical evidence that was submitted the Specialist Medical Review Council.
New subparagraph 196ZO(5)(b)(i) provides that a claim for travel expenses under section 196ZO must be made within 12 months of the completion of the travel. New subparagraph 196ZO(5)(b)(ii) provides that, in relation to a claim for travel under section 196ZO, if the Commission thinks that there are exceptional circumstances that justify extending the time period for claiming for such travel, then the time period is extended for such further period as the Commission allows.

**Item 11** is an application provision that makes it clear that the amendments made by items 8 to 10 of Part 3 of Schedule 1, apply only in relation to travel that is completed on or after the commencement of those items. This rule applies regardless of whether the travel commenced before, on or after that commencement date.

**Commencement**

Clause 2 provides that items 8 to 11 commence on the day the Act receives Royal Assent.

**Part 4 – Giving of notices or other documents**

**Overview**

The amendments provide for the serving of notices or other documents under the Veterans’ Entitlements Act and the Military Rehabilitation and Compensation Act.

**Background**

A recent Federal Court decision highlighted the absence of provisions within the Veterans’ Entitlements Act and the Military Rehabilitation and Compensation Act that set out the requirements for the service of written notices or other documents under each of the Acts.

The court found that there were no provisions in the Veterans’ Entitlements Act that specified how a person was to be served with a written notice. As a consequence section 28A of the *Acts Interpretation Act 1901* was applicable in the circumstances of the case.

Section 28A of the *Acts Interpretation Act 1901* provides that a document may be served on a person by sending it by prepaid post to the person’s residential address last known to the person who was serving the document.

**Explanation of the changes**

The amendments to the Veterans’ Entitlements Act and the Military Rehabilitation and Compensation Act will enable a number of entities under each Act, to specify in writing, the manner in which a notice or other document may be given to a person.

In relation to the Veterans’ Entitlements Act, the new provisions will be applicable only where the existing provisions do not specify the manner of serving notices or other documents. The new provisions will apply to all serving of notices and other documents under the Military Rehabilitation and Compensation Act.
The new provisions will apply to notices or other documents issued by the relevant Commission, the Department or an officer of the Department or Commission, the person’s service chief or certain statutory bodies under the Veterans’ Entitlements Act or the Military Rehabilitation and Compensation Act.

**Explanation of the items**

**Amendments of the Military Rehabilitation and Compensation Act 2004**

**Item 12** inserts new section 408A. New subsection 408A(1) is applicable to any provision of the Military Rehabilitation and Compensation Act that requires a notice or other document to be given to a person by the:

- Military Rehabilitation and Compensation Commission; or
- Veterans’ Review Board; or
- person’s service chief.

Subsection 408A(1) requires that the notice or other document must be given in accordance with section 28A of the *Acts Interpretation Act 1901* or in a manner approved in writing by the relevant body or relevant person being either the:

- Military Rehabilitation and Compensation Commission; or
- Principal Member of the Veterans’ Review Board; or
- person’s service chief.

Subsection 408A(2) provides that the section will not limit the *Electronic Transactions Act 1999*. The effect of subsection 408A(2) is that section 408A will not override any of the provisions of the *Electronic Transactions Act 1999* and will not impact on any of the existing exemptions for the Military Rehabilitation and Compensation Act that are provided in the *Electronic Transactions Regulations 2000*.

**Amendments of the Veterans’ Entitlements Act 1986**

**Item 13** inserts new section 129A. New subsection 129A(1) is applicable to any provision of the Veterans’ Entitlements Act that requires a notice or other document to be given to a person by the:

- the Secretary, the Department of Veterans’ Affairs, an officer of the Department or the Repatriation Commission; or
- Veterans’ Review Board; or
- Repatriation Medical Authority; or
- Specialist Medical Review Council;

where the provision does not specify how the notice or other document is to be given.
Subsection 129A(1) requires that the notice or other document must be given in accordance with section 28A of the *Acts Interpretation Act 1901* or in a manner approved in writing by the relevant body or relevant person being either the:

- Repatriation Commission; or
- Principal Member of the Veterans’ Review Board; or
- Chairperson of the Repatriation Medical Authority; or
- Convenor of the Specialist Medical Review Council.

Subsection 129A(2) provides that the section will not limit the *Electronic Transactions Act 1999*. The effect of subsection 129A(2) is that section 129A will not override any of the provisions of the *Electronic Transactions Act 1999* and will not impact on any of the existing exemptions for the Veterans’ Entitlements Act that are provided in the *Electronic Transactions Regulations 2000*.

**Item 14** is an application provision which provides that the amendments made by the items in Part 4 will be applicable to notices or other documents given on or after the commencement of the amendments.

**Commencement**

Clause 2 provides that items 12 to 14 commence on the day the Act receives Royal Assent.

## Part 5 – Aggravation etc. of war-caused or defence-caused injury or disease

**Amendments of the Veterans’ Entitlements Act 1986**

**Overview**

These amendments make it clear that a war-caused or defence-caused injury or disease remains compensable under the Veterans’ Entitlements Act even if the injury or disease has been aggravated, or materially contributed to, by Defence service under the Military Rehabilitation and Compensation Act.

**Background**

The VEA provides compensation for war-caused or defence-caused injuries or diseases incurred during service covered by the Veterans’ Entitlements Act. Broadly, the Veterans’ Entitlements Act applies to overseas service during wars and conflicts, including certain peacekeeping service, prior to 1 July 2004. It also provides compensation for defence-caused injuries for certain persons who served in the Defence Force between 7 December 1972 and 6 April 1994.
The Military Rehabilitation and Compensation Act came into effect on 1 July 2004. The Military Rehabilitation and Compensation Act applies to all permanent and reserve members of the Australian Defence Force, cadets and cadet instructors for defence service rendered on and after 1 July 2004.

The Military Rehabilitation and Compensation Act provides treatment, rehabilitation and compensation for those who suffer an injury or contract a disease as a result of service rendered on or after 1 July 2004. The legislation also provides compensation to dependants of those who die or who have been severely injured as a result of service rendered on or after 1 July 2004.

From 1 July 2004, the Military Rehabilitation and Compensation Act replaced the military compensation arrangements derived from the Veterans’ Entitlements Act, the Safety, Rehabilitation and Compensation Act 1988, the Military Compensation Act 1994 and the Defence Act 1903 for all eligible persons. Existing entitlements under these Acts relating to service before 1 July 2004 are not affected.

With the commencement of the Military Rehabilitation and Compensation Act on 1 July 2004, it was intended that, where a person is incapacitated by a war-caused or defence-caused injury or disease, and is entitled to compensation for that incapacity under the Veterans’ Entitlements Act, and that initial war-caused or defence-caused injury or disease is aggravated, or materially contributed to, by service that occurs on or after the commencement of the Military Rehabilitation and Compensation Act, then a pension is payable under the Veterans’ Entitlements Act for the initial war-caused or defence-caused injury or disease and the person may choose whether any additional compensation payable, due to aggravation or material contribution, is paid under either the Veterans’ Entitlements Act or the Military Rehabilitation and Compensation Act.

To achieve this intention, new section 9A and 70A were inserted into the Veterans’ Entitlements Act 1986 by the Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004. However, the existing provisions have proven to be ambiguous and have been interpreted by some in such a way as to prevent an initial war or defence-caused injury or disease from being accepted under the Veterans’ Entitlements Act where that injury or disease has subsequently been aggravated, or materially contributed to, by service on or after 1 July 2004.

**Explanation of the changes**

The amendments to sections 9A and 70A of the Veterans’ Entitlements Act make it clear that compensation remains payable under the Veterans’ Entitlements Act for the original war-caused or defence-caused component of an injury or disease that is subsequently aggravated or materially contributed to by Defence service on or after 1 July 2004. The member has the option of electing to make a claim under the Veterans’ Entitlements Act or the Military Rehabilitation and Compensation Act for the component of the injury or disease that has been aggravated or materially contributed to by service on or after 1 July 2004.
Explanation of the items

**Item 15** amends subsection 9A(2) by omitting the words “An injury or disease of a veteran that has been aggravated, or materially contributed to, by service is taken not be war-caused if”. These words are replaced with the following words “If an injury or disease of a veteran has been aggravated, or materially contributed to, by service, the aggravation or material contribution is taken not to be war-caused if”.

This amendment makes it clear that it is only the component of the injury or disease that has been aggravated, or materially contributed to, by service rendered on or after 1 July 2004 that may, under certain circumstances, be considered to be not a war-caused injury or disease. The member may choose whether to claim the aggravation or material contribution component of the incapacity under either the Veterans’ Entitlements Act or the Military Rehabilitation and Compensation Act. Liability for an initial war-caused injury or disease is retained under the Veterans’ Entitlements Act.

**Item 16** makes a technical amendment by inserting “MRCA” after the words “after the”. The provision refers to the ‘commencement date’ but for clarity and consistency with related provisions, should refer to the ‘MRCA commencement date’.

**Items 17 and 18** insert a new note after note 1 at the end of subsection 9A(2). New note 2 makes it clear that compensation remains payable under the Veterans’ Entitlements Act for the original war-caused injury or the original war-caused disease.

**Item 19** amends subsection 70A(2) by omitting the words “An injury or disease of a member of the Forces, or any other member or former member of the Defence Force, that has been aggravated, or materially contributed to, by service is taken not be defence-caused if”. These words are replaced with the following words “If an injury or disease of a member of the Forces, or any other member or former member of the Defence Force, has been aggravated, or materially contributed to, by service, the aggravation or material contribution is taken not to be defence-caused if”.

This amendment makes it clear that it is only the component of the injury or disease that has been aggravated, or materially contributed to, by service rendered on or after 1 July 2004 that may, under certain circumstances, be considered to be not a defence-caused injury or disease. The member may choose whether to claim the aggravation or material contribution component of the incapacity under either the Veterans’ Entitlements Act or the Military Rehabilitation and Compensation Act. Liability for an initial defence-caused injury or disease is retained under the Veterans’ Entitlements Act.

**Item 20** inserts a new note 1A after note 1 at the end of subsection 70A(2). New note 1A makes it clear that compensation remains payable under the Veterans’ Entitlements Act for the original defence-caused injury or the original defence-caused disease.
**Commencement**

Clause 2 provides that items 15 to 20 commence on the day the Act receives Royal Assent.

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**Part 6 - Dependants of veterans who were prisoners of war**

**Amendments of the Veterans’ Entitlements Act 1986**

**Overview**

These amendments correct a flaw in the Veterans’ Entitlements Act that prevented the payment of a pension to the dependant of a veteran who had been a prisoner of war, where the veteran died on or after 1 July 2004, the commencement date of the Military Rehabilitation and Compensation Act.

**Background**

Under section 13(2A) of the Veterans’ Entitlements Act, the Commission is, upon the death of a veteran who had been a prisoner of war during a period of operational service, liable to pay a pension to a dependant of the veteran. In these situations, the dependant is generally the widow of the veteran and the pension is a war widow pension payable under paragraph 30(1) of the Veterans’ Entitlements Act. Furthermore, where the Department has sufficient information about the widow’s circumstances, the pension is payable automatically, without the need for a claim.

The *Military Rehabilitation and Compensation (Consequential and transitional Provisions) Act 2004*, amended the Veterans’ Entitlements Act with the intention of preventing a pension being payable to the dependant of a deceased veteran who had been a prisoner of war during a period of operational service that occurs on or after 1 July 2004, the date of commencement of the Military Rehabilitation and Compensation Act. Dependants of persons with service under the Military Rehabilitation and Compensation Act are to receive compensation under that Act.

The amendment did not achieve the policy intention as it inadvertently provided that the Commission is not liable to pay a pension to a dependant of a veteran who was a prisoner of war in respect of the veteran’s death, if the death occurred on or after the commencement of the Military Rehabilitation and Compensation Act.
This effectively prevented the payment of a war widow pension in respect of any deceased veteran who had been a prisoner of war during a period of operational service under the Veterans’ Entitlements Act (pre-1 July 2004) and who died after 1 July 2004. The provision was also misguided in its reference to the date of death of the veteran who had been a prisoner of war. Under section 13(2A) of the Veterans’ Entitlements Act, the veteran’s death does not need to be related to service for the veteran’s dependant to be eligible for a pension. The reference should have been to the timing of the veteran’s status as a prisoner of war. A pension is intended to be payable under the Veterans’ Entitlements Act to the dependant of a deceased veteran, if the veteran’s status as a prisoner of war is the result of operational service prior to the commencement of the Military Rehabilitation and Compensation Act. If a deceased person’s prisoner of war status is the result of operational service after the commencement of the Military Rehabilitation and Compensation Act, the person’s dependant will be eligible for compensation under that Act.

Explanation of the items

Item 21 amends paragraph 13(2A)(c) of the Veterans’ Entitlements Act by inserting after the word “time” the following phrase “before 1 July 2004”. This amendment makes the pension entitlement for a dependant reliant upon the timing of the deceased veteran’s prisoner of war status and gives effect to the original intention of the provision.

Item 22 repeals subsection 13(2AA). The amendment made by item 21 means that subsection 13(2AA) is no longer necessary as the date of the veteran’s death is not germane to the issue of pension liability.

Commencement

Clause 2 provides that items 21 and 22 commence on the day the Act receives Royal Assent.

Part 7 – Statements of Principles

Amendments of the Veterans’ Entitlements Act 1986

Overview

These amendments to the Veterans’ Entitlements Act clarify the review rights of the Specialist Medical Review Council in relation to a decision by the Repatriation Medical Authority to not amend a Statement of Principles.

The amendments will also provide for the Specialist Medical Review Council to be able to review both versions of the Statements of Principles that are applicable to the same injury, disease or death in the circumstances where it has been asked to review some or all of the contents of one of those Statement of Principles.
**Background**

The Repatriation Medical Authority (RMA) is a body of eminent medical-scientific experts who determine on the basis of sound medical-scientific evidence Statements of Principles in respect of injury, disease or death that can be linked to operational service rendered by veterans, peacekeeping service rendered by members of the Peacekeeping Forces, or hazardous service rendered by members of the Forces.

The Statement of Principles list the factors that must, as a minimum, be present, and must be related to service, for a causal relationship to be established between an injury or illness and service. Statement of Principles are used in determining liability for injuries and diseases under both the Veterans' Entitlements Act and the Military Rehabilitation and Compensation Act.

Under the Statement of Principles regime, two Statements are determined for each condition. This is because different types of service attract different standards of proof for determining claims. One Statement sets out the factors that must as a minimum exist and which of those factors must be related to service before it can be said that a reasonable hypothesis has been raised connecting the injury or disease with service. This Statement is used when determining claims for warlike, non-warlike and operational service. A second Statement sets out the factors that must exist and which of those factors must be related to service before it can be said that, on the balance of probabilities, an injury or disease is connected with service. This Statement is used when determining claims for other eligible service.

The Specialist Medical Review Council (SMRC) is an independent statutory body whose functions include reviewing the contents of Statements of Principles or a decision of the RMA not to determine such a Statement. The SMRC reviews all the information that was available before the RMA in relation to the making or not of a statement of principles for an injury or disease.

When requesting a review by the Specialist Medical Review Council of a Statement of Principles, many applicants request that both Statements of Principles be reviewed. However, in some circumstances, the applicant requests that only one of the Statements of Principles be reviewed. This can result in the Statements of Principles for a condition being unaligned and is administratively cumbersome to remedy.

The provisions of the Veterans' Entitlements Act that are relevant to the role of the Specialist Medical Review Council, do not expressly support the ability of the Specialist Medical Review Council to review a decision by the RMA to not amend a Statement of Principles following a review by the RMA.

However this contradicts those provisions of Part XIA that are relevant to the RMA which clearly provide for the RMA to issue a statement in the circumstances where a decision has been made not to amend a Statement of Principles following an investigation.
**Explanation of the changes**

The following amendments will allow the Specialist Medical Review Council to review both Statements of Principles that relate to a particular condition if an applicant has requested a review of only one of the Statement of Principles.

The other amendments will provide that the Specialist Medical Review Council may review a decision of the Repatriation Medical Authority to not amend a Statement of Principles and will also correct a couple of minor drafting errors that were included in the original legislation.

**Explanation of the items**

**Item 23** amends section 196J. Section 196J provides that the Repatriation Medical Authority must notify either the Repatriation Commission or the Military Rehabilitation and Compensation Commission within 14 days of a decision not to make or not to review a Statement of Principles.

Subsection 196J(1) is amended by including a reference to a decision “or not to amend” a Statement of Principles.

**Items 24 and 25** amend section 196K. Section 196K is applicable in the circumstances where the Specialist Medical Review Council is conducting a review of a Statement of Principles or a decision by the Repatriation Medical Authority not to determine a Statement of Principles in respect of a particular kind of injury, disease or death or a decision by the Repatriation Medical Authority not to carry out an investigation in respect of a particular kind of injury, disease or death.

Under the section the Repatriation Medical Authority is required to provide the Specialist Medical Review Council with all of the information it had when it made the relevant decision.

**Item 24** inserts new paragraph 196K(ba) which provides that a decision of the Repatriation Medical Authority not to amend a Statement of Principles in respect of a particular kind of injury, disease or death is one which is reviewable by the Specialist Medical Review Council and will require the Repatriation Medical Authority to provide all of the relevant information it had when it made that decision to the Specialist Medical Review Council.

**Item 25** amends paragraph 196K(e) to include a reference to a decision of the Repatriation Medical Authority “not to amend” a Statement of Principles.

**Items 26 to 30** amend section 196W. Section 196W sets out the functions of the Specialist Medical Review Council.

**Item 26** inserts new paragraph 196W(2)(ba) which provides that the Specialist Medical Review Council must review a decision of the Repatriation Medical Authority not to amend a Statement of Principles in respect of a particular kind of injury, disease or death if a request has been made under section 196Y.
Item 27 amends paragraph 196W(2)(d) to include a reference to a decision of the Repatriation Medical Authority “not to amend” a Statement of Principles.

Item 28 inserts new subsection 196W(3A). New subsection 196W(3A) will be applicable in the circumstances where the Specialist Medical Review Council has been asked to review some or all of the contents of a Statement of Principles.

The new subsection provides that Specialist Medical Review Council must also review the other Statement of Principles that is in force and is applicable to the same kind of injury, disease or death,

Items 29 and 30 are consequential amendments that relate to the insertion of new subsection 196W(3A) and replace references in paragraphs 196W(4)(a) and (c) and paragraphs 196W(5)(a) and (b) to the review of “the Statement of Principles” with references to the review of “either or both of the Statements of Principles”.

Item 31 amends paragraph 196Y(1)(e) to include a reference to a decision of the Repatriation Medical Authority “not to amend” a Statement of Principles.

Items 32 to 35 amend section 196ZB. Section 196ZB provides that the Specialist Medical Review Council must publish a notice in the Gazette as soon as possible after it has been asked under section 196Y to conduct a review.

The notice is to specify the date on which the Specialist Medical Review Council will hold its first meeting for the purposes of the review; and the date by which all submissions must have been received by the Council.

Item 32 amends paragraph 196ZB(1)(a) to remove a reference to a review of a decision of the Repatriation Medical Authority “to make” a Statement of Principles. The reference is redundant as section 196Y does not provide for such a request to be made.

New paragraph 196ZB(1)(aa) includes a reference to a review by the Specialist Medical Review Council of “a decision of the Repatriation Medical Authority not to amend a Statement of Principles”.

Items 33 and 34 amend paragraph 196ZB(1)(a). The paragraph is amended to include a reference to a review of a decision of the Repatriation Medical Authority “not to amend” a Statement of Principles.

Paragraph 196ZB(1)(a) is also amended for the purposes of clarification to include a reference to the Statement of Principles having been made “in respect of a particular kind of injury, disease or death”.

Item 35 amends paragraph 196ZB(1)(b) to remove the redundant reference to “a review of” some or all of the contents of a Statement of Principles. The reference is redundant as the review by the Specialist Medical Review Council is previously referred to in subsection 196ZB(1).
**Item 36** is an application provision.

Subclause 35(1) is applicable to the amendments made by Items 22, 23, 24, 25, 26, 30 and 32. It provides that the amendments made by those items will be applicable to decisions made on or after the commencement of the amendments not to amend a Statement of Principles.

Subclause 35(2) is applicable to the amendments made by Items 27, 28 and 29. It provides that the amendments made by those items will be applicable in relation to requests for review made on or after the commencement of those items.

**Commencement**

Clause 2 provides that items 23 to 36 commence on the day the Act receives Royal Assent.

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**Part 8 – Other amendments**

**Overview**

The amendments in this Part make minor and technical amendments to the Military Rehabilitation and Compensation Act and clarify arrangements for the payment of certain lump sum compensation under the Military Rehabilitation and Compensation Act. The amendments will also enable a Victoria Cross recipient to receive a Victoria Cross allowance or annuity under both the Veterans’ Entitlements Act and from a foreign country.

**Explanation of the changes**

**Items 42 to 44** will protect the inalienable status of certain lump sum compensation payments under the Military Rehabilitation and Compensation Act and the interests of compensation recipients. New provisions will enable the Military Rehabilitation and Compensation Commission to specify, by legislative instrument, the circumstances under which a person’s compensation must be paid into an account with a bank, or a foreign corporation that takes money on deposit, that is maintained by the compensation recipient. This account may be an account that is maintained by the compensation recipient jointly or in common with another person.

It is intended that the legislative instrument will refer to the following types of lump sum compensation payable under the Military Rehabilitation and Compensation Act:

- lump sum permanent impairment compensation, including interest, payable under subsections 79(1) and (2);
- lump sum permanent impairment compensation payable under section 80;
- lump sum incapacity compensation payments payable under section 138;
• lump sum compensation for wholly dependent partners payable under subsection 234(1)(a) or subparagraph 234(1)(b)(i);
• [lump sum] compensation payments for wholly dependent partners under section 242, the amount of which is specified under section 243;
• [lump sum] compensation for certain eligible young persons under section 251, the amount of which is specified under section 252;
• [lump sum] compensation for certain eligible young persons under section 255, the amount of which is specified under section 256;
• [lump sum] compensation for other dependants under section 262, the amount of which is specified under section 263; and
• [lump sum] funeral compensation under section 266, where the compensation is payable to the dependant of the deceased member.

**Items 45 to 48** modify the rules relating to the payment of Victoria Cross allowance under section 103 of the Veterans’ Entitlements Act. Upon commencement of these amendments, a Victoria Cross recipient will be able to receive Victoria Cross allowance under the Veterans’ Entitlements Act and a Victoria Cross allowance or annuity from a foreign country. Under the existing legislation, a person is not eligible for a Victoria Cross allowance under the Veterans’ Entitlements Act if the person is entitled to be paid, a Victoria Cross allowance or annuity by a foreign country. In relation to the similar United Kingdom Victoria Cross allowance, the existing policy disadvantages veterans as it denies them access to the Veterans’ Entitlements Act allowance if the veteran is also entitled to, but not necessarily receiving, the United Kingdom allowance. The Veterans’ Entitlements Act Victoria Cross allowance is greater than the United Kingdom Victoria Cross allowance. The amendments will also exclude the foreign allowance or annuity from the veterans’ entitlements and social security income tests. The foreign allowance or annuity will be treated as income for the purposes of the financial hardship rules under the Veterans’ Entitlements Act.

**Explanation of the items**

**Amendments of the Military Rehabilitation and Compensation Act 2004**

**Items 37 and 38** repeal paragraph (a) of the note at the end of subsection 234(1) and subsection 234(6).

Early drafts of the Military Rehabilitation and Compensation Bill 2004 provided for a higher lump sum death benefit for deaths accepted as related to warlike service than for deaths related to non-warlike or peacetime service. However, following a recommendation from the Foreign Affairs Defence and Trade Legislation Committee, this distinction was removed from the Bill and the lump sum benefit is paid at the higher rate for all compensable deaths. Paragraph (a) of the note to subsection 234(1) and subsection 234(6), which were provisions associated with the subsequently abolished differential treatment of compensable deaths, were inadvertently left in the Military Rehabilitation and Compensation Act.
**Item 39** repeals paragraph 339(3)(b) of the Military Rehabilitation and Compensation Act and substitutes a new paragraph.

The original subsection 339(3) was intended to be identical in effect and operation to subsection 120B(3) of the *Veterans’ Entitlements Act 1986*. However, the text of the final clause was incorrectly indented, making it appear to apply only to paragraph 339(3)(b), whereas in the *Veterans’ Entitlements Act 1986*, the final clause applies to both paragraph 120B(3)(a) and 120B(3)(b) of that Act.

The new paragraph clarifies the effect of the subsection, making it clear that it operates in the same way as subsection 120B(3) of the *Veterans’ Entitlements Act 1986*, namely, that both the material before the decision-maker and the Statement of Principles or determination of the Commission must uphold the contention that the injury, disease or death of the person is, on the balance of probabilities, connected with the person’s service.

**Items 40** and **41** amend subparagraphs 417(c)(i) and 420(4)(b)(i) of the Military Rehabilitation and Compensation Act respectively to correct incorrect references. The provisions refer to “Subdivision C of Division 2 of Part 4 of Chapter 4 (compensation where superannuation received)”, but should refer to “Subdivision D of Division 2 of Part 4 of Chapter 4”.

**Items 42** and **43** amend section 430 of the Military Rehabilitation and Compensation Act to enable the Military Rehabilitation and Compensation Commission to specify, by legislative instrument, the circumstances under which a compensation payment must be made to the credit of an account with a bank or a foreign corporation that takes money on deposit, and that account must be maintained by the compensation recipient.

**Item 42** adds a sentence to the end of subsection 430(1) to make it clear that subsection 430(1) is subject to new subsection 430(3A).

**Item 43** inserts new subsections 430(3A), (3B) and (3C) after subsection 430(3).

New subsection 430(3A) means that if the circumstances specified under new subsection 430(3C) exist in relation to a person, the person’s compensation must be paid to the credit of an account with a bank, or a foreign corporation that takes money on deposit. This includes a bank or foreign corporation in a foreign country.

New subsection 430(3B) states that the account referred to in new subsection 430(3A) must be nominated by the compensation recipient. The account must be maintained by the compensation recipient and may be an account maintained by the compensation recipient jointly or in common with another person.

New subsection 430(3C) provides that the Military Rehabilitation and Compensation Commission may make a legislative instrument that specifies the circumstances under which new subsection 430(3A) will apply necessitating the payment of the person’s compensation to the credit of an account with a bank, or a foreign corporation that takes money on deposit.
Item 44 is an application provision. This clause makes it clear that the amendment made by item 43 applies only in relation to amounts that are payable on or after the commencement of item 43. This means that the amendment made by item 43 cannot affect any amounts of lump sum permanent impairment compensation that are paid before 1 July 2010.

Amendment of the Social Security Act 1991

Item 45 inserts new subparagraph 8(8)(y)(via) after subparagraph 8(8)(y)(vi) of the Social Security Act. Subsection 8(8) of the Social Security Act lists amounts that are exempt income for the purposes of the social security income test. By virtue of new subparagraph 8(8)(y)(via), a Victoria Cross allowance or annuity paid by a foreign country will be exempt income for the purposes of the social security income test.

Amendments of the Veterans’ Entitlements Act 1986

Item 46 inserts new paragraph 5H(8)(fb) before paragraph 5H(8)(g) of the Veterans’ Entitlements Act. Subsection 5H(8) of the Veterans’ Entitlements Act lists amounts that are exempt income for the purposes of the veterans’ entitlements income test. By virtue of new subparagraph 5H(8)(fb), a Victoria Cross allowance or annuity paid by a foreign country will be exempt income for the purposes of the veterans’ entitlements income test.

Item 47 inserts a new paragraph after paragraph 52Z(3A)(e) of the Veterans’ Entitlements Act. New paragraph 52Z(3A)(f) requires that a Victoria Cross allowance or annuity paid by a foreign country is to be counted as income in the application of the financial hardship rules.

Item 48 repeals subsection 103(3). Subsection 103(3) provided that Victoria Cross allowance under the Veterans’ Entitlements Act is not payable to a veteran for any period in respect of which the veteran is entitled to be paid, by a foreign country, an allowance or annuity in respect of that decoration. The repeal of this subsection will enable a veteran to receive Victoria Cross allowance under the Veterans’ Entitlements Act and a Victoria Cross allowance or annuity from a foreign country.

Commencement

Clause 2 provides that:

- items 37 to 41 commence on the day this Act receives Royal Assent;
- items 42 to 44 commence on the later of, the day after this Act receives Royal Assent, and 1 July 2010; and
- items 45 to 48 commence on the day this Act receives Royal Assent.