THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

VETERANS’ AFFAIRS LEGISLATION AMENDMENT
(MISCELLANEOUS MEASURES) BILL 2013

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Veterans’ Affairs,
Senator The Honourable Michael Ronaldson)
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OUTLINE AND FINANCIAL IMPACT

The Bill amends Veterans’ Affairs and other portfolio legislation to give effect to a number of minor measures and amendments that will:

- clarify arrangements for the payment of travel expenses for treatment under the Veterans’ Entitlements Act and the Australian Participants in British Nuclear Tests (Treatment) Act;
- provide for the more timely provision of special assistance by way of a legislative instrument in place of the current arrangement requiring a regulation;
- ensure that the debt recovery provisions will be applicable to all relevant provisions of the Veterans’ Entitlements Act, the regulations and any legislative instrument made under the Veterans’ Entitlements Act;
- make technical amendments to provisions in the Military Rehabilitation and Compensation Act that refer to legislative instruments;
- amend the Military Rehabilitation and Compensation Act to replace obsolete references to pharmaceutical allowance and telephone allowance with references to the MRCA supplement;
- rationalise the maintenance income provisions of the Veterans’ Entitlements Act by repealing the redundant definitions and operative provisions and aligning the remaining definitions with those used in the social security law; and
- make minor technical amendments.

Financial Impact

The amendments have no financial impact.
Veterans’ Affairs Legislation Amendment (Miscellaneous Measures) Bill 2013

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

This Bill is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Bill

Schedule 1 of the Bill makes a number of minor and technical amendments to Veterans’ Affairs legislation and the Social Security Act 1991.

Most of the amendments are technical amendments which do not engage any of the applicable rights or freedoms.

However, the Bill does include some minor amendments which do engage the applicable rights and freedoms. The relevant measure will clarify the arrangements for the payment of travel expenses for persons receiving treatment under the Veterans’ Entitlements Act and the Australian Participants in British Nuclear Tests (Treatment) Act;

Human rights implications

The Bill engages the following human rights:

Right to health

Article 12 of the International Covenant on Economic, Cultural and Social Rights recognises “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.

The amendments to clarify the arrangements for the payment of travel expenses for persons receiving treatment under the Veterans’ Entitlements Act and the Australian Participants in British Nuclear Tests (Treatment) Act ensure that eligible persons will be able to access the health services provided under the Acts.

Conclusion

The Bill is compatible with human rights as the measures which engage human rights do so on the basis that the rights are advanced.
Veterans’ Affairs Legislation Amendment (Miscellaneous Measures) Bill 2013

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

Commencement
Clause 2 provides that the Act commences on Royal Assent.

Schedules
Clause 3 provides that each Act that is specified in Schedule 1 to this Act is amended or repealed as set out in the applicable items in Schedule 1 and any other item in Schedule 1 to this Act has effect according to its terms.

This explanatory memorandum uses the following abbreviations:

‘Acts Interpretation Act’ means the Acts Interpretation Act 1901;

‘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;

‘Family Assistance Act’ means the A New Tax System (Family Assistance) Act 1999;

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

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

‘Social Security (Administration) Act’ means the Social Security (Administration) Act 1999; and

Schedule 1 – Amendments

Overview

The Bill amends Veterans’ Affairs and other portfolio legislation to give effect to a number of minor measures and amendments that will:

- clarify arrangements for the payment of travel expenses for treatment under the Veterans’ Entitlements Act and the Australian Participants in British Nuclear Tests (Treatment) Act;
- provide for the more timely provision of special assistance by way of a legislative instrument in place of the current arrangement requiring a regulation;
- ensure that the debt recovery provisions will be applicable to all relevant provisions of the Veterans’ Entitlements Act, the regulations and any legislative instrument made under the Veterans’ Entitlements Act;
- make technical amendments to provisions in the Military Rehabilitation and Compensation Act that refer to legislative instruments;
- amend the Military Rehabilitation and Compensation Act to replace obsolete references to pharmaceutical allowance and telephone allowance with references to the MRCA supplement;
- rationalise the maintenance income provisions of the Veterans’ Entitlements Act by repealing the redundant definitions and operative provisions and aligning the remaining definitions with those used in the social security law; and
- make minor technical amendments.

Explanation of the items

Australian Participants in British Nuclear Tests (Treatment) Act 2006

The Australian Participants in British Nuclear Tests (Treatment) Act provides for eligible nuclear test participants to receive treatment, including testing, for cancer.

Item 1 is a technical amendment to subsection 19(2) to clarify the payment of the travelling expenses incurred by the attendant by replacing the reference to “the person” with a reference to “the attendant”.

Item 2 amends section 19 which provides for the payment of travel expenses to eligible persons for the expenses incurred by the person and his or her attendant where the travel is necessary in order to obtain treatment.

New subsection 19(2A) clarifies the administrative arrangements for the approval or authorisation of travel undertaken by an eligible person or his or her attendant. The new subsection provides that Repatriation Commission approval or authorisation for the travel may be given before or after the travel has been undertaken.
**Item 3** is a technical amendment to section 20 which provides for the payment of travel expenses in advance.

Paragraph 20(1)(a) is amended to replace the incorrect reference to the person being entitled to the payment of travel expenses under section 20 with the correct reference to the person being eligible for the payment under “section 19”.

**Defence Service Homes Act 1918**

**Item 4** amends paragraph (gb) of the definition of “Australian Soldier” in subsection 4(1) of the Defence Service Homes Act by including a reference to the operational area referred to in Item 15 of Schedule 2 of the Veterans’ Entitlements Act.

The reference in Item 15 of Schedule 2 of the Veterans’ Entitlements Act is to service in an area of the Red Sea north of parallel 20 degrees north latitude during the period from and including 13 January 1993 to and including 19 January 1993 on board *HMAS Canberra* as part of Operation DAMASK VI.

A veteran or Defence Force member defined as being an “Australian Soldier” will be eligible for benefits under the Defence Service Homes Act.

**Item 5** inserts an application provision to be applied to the amendments made by **Item 4** of this Schedule.

The amendments will apply for the purposes of determining the eligibility of the person for benefits under the Defence Service Homes Act on or after the commencement of the amendment made under **Item 4**.

**Military Rehabilitation and Compensation Act 2004**

**Legislative instruments**

The *Legislative Instruments Act 2003* was introduced to set up a consistent system for the registering, tabling, scrutinising and sunsetting of all Commonwealth legislative instruments.

The Act substantially re-enacted those parts of Part XII and section 46A of the Acts Interpretation Act that relate to regulations and disallowable instruments and extended the operation of the Part to all legislative instruments.

The *Legislative Instruments Act 2003* provides a comprehensive regime for Parliamentary scrutiny (via tabling and disallowance mechanisms) of legislative instruments. In regard to tabling, all registered legislative instruments are tabled under a consistent regime.

These amendments to the Military Rehabilitation and Compensation Act are consequential amendments as a result of the enactment of the *Legislative Instruments Act 2003*. 
The amendments made by Items 6, 7, 9, 10, 11, 12, 14, 16, 17, 19, 20, 21, 22 and 24 include amendments which either specify in the references to written determinations and other documents that such documents are legislative instruments or are amendments which omit references to documents as being disallowable instruments under section 46A of the Acts Interpretation Act.

MRCA Supplement

The MRCA Supplement became payable from the 20 September 2009. It replaced the telephone and pharmaceutical allowances that were payable under the Military Rehabilitation and Compensation Act prior to that date.

There are references in sections 65, 211 and 232 that refer to an allowance being payable under the Military Rehabilitation and Compensation Act for a “home phone”.

There is also a reference in section 288 to the payment of an allowance for “pharmaceutical benefits”.

Items 8, 13, 15 and 18 amend sections 65, 211, 232 and 288 respectively to replace the provisions that include references to telephone and pharmaceutical allowances with provisions that include references to payments of the “MRCA Supplement”.

Special Assistance

Section 424 provides the Military Rehabilitation and Compensation Commission with the flexibility to extend special assistance or benefits to persons that would not otherwise be available under the Military Rehabilitation and Compensation Act. Under the existing legislation, special assistance is to be provided by regulation.

Item 23 amends subsection 424(1) to enable the circumstances and conditions for the provision of special assistance to be prescribed in a legislative instrument made by the Military Rehabilitation and Compensation Commission for the purposes of subsection 424(1).

The use of a legislative instrument made by the Military Rehabilitation and Compensation Commission instead of regulations for the provision of special assistance will enable special assistance to be provided in a more timely manner.

Social Security Act 1991

References to “Part IIIA” of the Veterans’ Entitlements Act

Items 25 to 34 are minor amendments to various provisions of the Social Security Act to include a reference to “Part IIIA” of the Veterans’ Entitlements Act.

The payment of the Income Support Supplement under Part IIIA of the Veterans’ Entitlements Act was implemented by amendments included in the Veterans’ Affairs (1994-95 Budget Measures) Legislation Amendment Act 1994 with the payment commencing from 20 March 1995.
Consequential amendments to the Social Security Act were made by subsequent Acts to insert appropriate references to the receipt of an “income support supplement”. However, further consequential amendments to insert the appropriate references to that payment being payable under “Part IIIA” are required.

_Veterans’ Entitlements Act 1986_

_Maintenance income_

Section 5K contains the definitions relevant to the treatment under the Veterans’ Entitlements Act of “maintenance income” in all of the various forms in which it is received. The definitions were mostly relevant to the now repealed income test that applied where additional income support was payable to persons with dependant children. The only terms that continue to be relevant for the purposes of the Veterans’ Entitlements Act are “disability expenses maintenance”, “maintenance” and “maintenance income”.

The Social Security Act has the equivalent of section 5K in section 10 of the Act. Section 10 was repealed and substituted with the section now referring to the Family Assistance Act as the source of the definitions of the terms “disability expenses maintenance”, “maintenance” and “maintenance income”.

**Item 50** repeals and substitutes section 5K with the new section also referring to the Family Assistance Act as the source of the definitions of the same terms.

**Items 35 to 39 and 41 to 44** are consequential amendments to the section 5 (index of definitions) that repeal or amend references to the definitions related to “maintenance” that were located in the repealed section 5K or are now located in new section 5K.

**Item 47** is a consequential amendment to note 1 to the definition of “ordinary income” in subsection 5H(1) to replace a reference to the location of the definition of “maintenance income” as being in section 5K and not in repealed subsection 5K(1).

**Item 52** repeals Division 10 of Part IIIB containing sections 51 and 51A which had provided for the apportionment of “capitalised maintenance income” and the treatment of “in-kind housing maintenance”.

Both those terms are no longer relevant as they applied only for the purposes of providing additional income support for dependant children.

**Items 48 and 49** are consequential amendments to provide for the relocation of the definition of the term “periodic amount” from repealed subsection 5K(1A) to new subsection 5H(13).

_Attendant Allowance_

Section 98 provides for the payment of an attendant allowance to an eligible veteran to assist with the cost of an attendant to help with such things as feeding, washing, dressing and other activities of daily living.
**Item 54** amends subsection 98(4B). Subsection 98(4B) precludes the payment of an attendant allowance where the carer of the veteran is in receipt of a carer payment under Part 2.5 of the Social Security Act.

Subsection 98(4B) also provides that the attendant allowance will not be payable if the carer had been receiving a carer payment before the payment was cancelled or suspended under the social security law or had been reduced to nil under the overpayment and debt recovery provisions.

Paragraph 98(4B)(b) is repealed and substituted. The repealed paragraph had referred to the redundant suspension, cancellation and debt and overpayment recovery provisions in the Social Security Act.

New paragraph 98(4B)(b) provides that attendant allowance will not be payable where carer payment under Part 2.5 of the Social Security Act would be payable to the carer of the veteran apart from that payment being suspended under the social security law or reduced to nil because of action taken under the overpayment and debt recovery provisions of Chapter 5 of the Social Security Act.

**Special Assistance**

Section 106 provides the Repatriation Commission with the flexibility to extend special assistance or benefits to persons that would not otherwise be available under the Veterans’ Entitlements Act.

Under the existing legislation, special assistance is to be provided by regulation.

**Item 55** amends subsection 106(1) by the substitution of the reference to the provision of special assistance being “prescribed” with a reference to the assistance being “prescribed in a legislative instrument made by the Commission for the purposes of this subsection”.

The use of a legislative instrument made by the Repatriation Commission instead of regulations for the provision of special assistance will enable special assistance to be provided in a more timely manner.

**Travelling expenses**

Section 110 of the Veterans’ Entitlements Act provides for the payment of travel expenses to eligible persons for the expenses incurred by the person and his or her attendant where the travel is necessary in order to obtain treatment.

**Item 57** inserts new subsection 110(2A) which clarifies the administrative arrangements for the approval or authorisation of travel undertaken by an eligible person or his or her attendant.

The new subsection 110(2A) provides that Repatriation Commission may give approval under subsection 110(1) or authorisation under paragraph 110(2)(b) before or after the travel has been undertaken.
**Item 56 and 58** are technical amendments to replace the obsolete spelling of “authorizes” with “authorises” in paragraph 110(2)(b) and subsection 110(4).

**Debt recovery**

Section 205 of the Veterans’ Entitlements Act is a general application provision for the recovery of overpayments and debts from any payment made under the Act.

The overpayments can arise as a consequence of a false statement or an omission or on the basis that a payment was not lawfully payable or not authorised. In addition to overpayments and debts incurred under the Veterans’ Entitlements Act, the section lists overpayments made under other Acts or schemes that may be recovered by deductions from payments made under the Act.

Paragraph 205(1)(a) refers to the consequences “of a false statement or representation, or of a failure or omission to comply with a provision of this Act or of the Regulations”.

**Item 59** amends paragraph 205(1)(a) by replacing the reference to “a provision of this Act or of the Regulations” with a reference to “this Act, the regulations or any other legislative instrument under this Act”.

The amendment will ensure that section 205 will be applicable in all possible circumstances to all of the provisions of the Veterans’ Entitlements Act, the regulations and any legislative instrument made under the Veterans’ Entitlements Act.

**Minor and technical amendments**

**Item 40** corrects the section 5 (index of definitions) listing for the locations of the definition of “investment” to refer to subsections “5J(1), (6), (6A) and (6B)”.

**Item 51** inserts a definition of the term “social security law” into subsection 5Q(1). The term is formally defined for the purposes of the Veterans’ Entitlements Act as meaning the Social Security Act, the Social Security (Administration) Act and any other Act that is expressed to form part of the social security law.

**Item 53** is a technical amendment to clarify the operation of subsection 86(5). Subsection 86(5) sets out the circumstances in which a dependant of a deceased veteran or Defence Force member who requires urgent treatment for an injury suffered, or disease contracted will be eligible under the Veterans’ Entitlements Act for treatment in a hospital.

**Item 60** amends the Rent Assistance Module of the Rate Calculator in Schedule 6. A technical amendment to step 6 of the method statement in point SCH6-C13 replaces the reference to ‘0.4’ with a reference to ‘0.5’.
Application and saving provisions

**Item 61** contains the application and saving provisions applicable to the amendments made by **Items 54, 55 and 59**.

**Subitem 61(1)** provides that the amendment made to paragraph 98(4B)(b) by **Item 54** will be applicable to working out if an attendant allowance is payable to a veteran in respect of days that occur on or after the commencement of the amendment.

**Subitem 61(2)** is a savings provision that ensures that those existing regulations that are in force for the purposes of subsection 106(1) immediately before the commencement of **Item 55** will continue to have effect as if they were a legislative instrument made by the Repatriation Commission under subsection 106(1).

**Subitem 61(3)** provides that the amendment to paragraph 205(1)(a) by **Item 59** will be applicable in relation to failures or omissions that occur on or after the commencement of the amendment.

**War Precautions Act Repeal Act 1920**

The *War Precautions Act Repeal Act 1920* provides for the Protection of Word ‘Anzac’ Regulations, but contains no other operative provisions. These amendments will repeal the remaining inoperative provisions and change the name of the Act to the ‘Protection of Word ‘Anzac’ Act 1920’. This will mean that the authority for the Regulations is more readily identifiable.

**Item 62** changes the long title of the Act to ‘provide for the protection of the word ‘Anzac’, and for related purposes’.

**Item 63** changes the short title of the Act to the ‘Protection of Word ‘Anzac’ Act 1920’ and inserts an explanatory note at the end of the item.

**Items 64, 65, 66 and 67** repeal section 2 and sections 11 to 13 and omit some headings that remained in the Act. These provisions and headings are no longer required.