

2008-2009-2010

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**VETERANS' AFFAIRS LEGISLATION AMENDMENT
(2010 BUDGET MEASURES) BILL 2010**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Veterans' Affairs,
The Honourable Alan Griffin MP)

Table of Contents

Outline and Financial Impact	ii
1 Short Title	iv
2 Commencement	iv
3 Schedule(s)	iv
Schedule 1 - Service relating to British nuclear tests	1
Schedule 2 - Service on submarine special operations	8
Schedule 3 - Service in Thailand	13
Schedule 4 - Domicile	16
Schedule 5 - Effect of widows and widowers entering into de facto relationships	18

VETERANS' AFFAIRS LEGISLATION AMENDMENT (2010 BUDGET MEASURES) BILL 2010

OUTLINE AND FINANCIAL IMPACT

Outline

The Bill will give effect to a number of Veterans' Affairs 2010 Budget measures that will:

- create a new category of service eligibility under the *Veterans' Entitlements Act 1986* to be known as British nuclear test defence service;
- reclassify certain submarine special operations between 1978 and 1992 as operational and qualifying service;
- reclassify certain service in Ubon in Thailand as qualifying service;
- lower the age of domicile of choice from 21 to 18 for the purposes of the *Veterans' Entitlements Act 1986*; and
- cease eligibility for war widow or war widower pension for widows and widowers who enter into a de facto relationship prior to claiming the war widow or war widower pension.

Schedule 1 - Service relating to British nuclear tests

The amendments made by Schedule 1 will create a new category of eligible service under the Veterans' Entitlements Act to be known as 'British nuclear test defence service'. Defence Force members with British nuclear test defence service will be eligible for benefits equivalent to those available to members with non-warlike or hazardous service under the Veterans' Entitlements Act.

Schedule 2 - Service on submarine special operations

The amendments made by Schedule 2 reclassify certain submarine special operations that were undertaken in the period between 1978 to 1992 as operational and qualifying service.

Schedule 3 - Service in Thailand

The amendments made by Schedule 3 will reclassify service in Ubon in Thailand between 31 May 1962 and 27 July 1962 inclusive as 'qualifying service'.

Schedule 4 – Domicile

The amendments made by Schedule 4 will lower the age of domicile of choice from 21 to 18, for the purposes of the Veterans' Entitlements Act.

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

The amendments made by Schedule 5 will cease eligibility for war widow or war widower pension for widows and widowers who enter into a de facto relationship prior to claiming the war widow or war widower pension. It will also cease eligibility for a widow or widower who is in a de facto relationship at the time of the veteran or member's death and who would otherwise have been automatically granted war widow or war widower pension.

**Financial Impact Statement
(Total Fiscal Impact)**

Schedule 1 - Service relating to British nuclear tests

2009-10	2010-11	2011-12	2012-13	2013-14
\$0.1 m	\$5.7 m	\$5.3 m	\$6.2 m	\$7.0 m

Schedule 2 - Service on submarine special operations

2010-11	2011-12	2012-13	2013-14
\$0.8 m	\$2.1 m	\$3.2 m	\$5.0 m

Schedule 3 - Service in Thailand

2010-11	2011-12	2012-13	2013-14
\$0.7 m	\$0.6 m	\$0.6 m	\$0.7 m

Schedule 4 – Domicile

2010-11	2011-12	2012-13	2013-14
\$0.2 m	\$0.2 m	\$0.2 m	\$0.2 m

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

2010-11	2011-12	2012-13	2013-14
-\$0.1 m	-\$0.3 m	-\$0.4 m	-\$0.6 m

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

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 provisions of this 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:

'British Nuclear Test 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*;

'Safety, Rehabilitation and Compensation Act' means the *Safety, Rehabilitation and Compensation Act 1988*;

'Veterans' Entitlements Act' means the *Veterans' Entitlements Act 1986*;

Schedule 1 – Service relating to British nuclear tests

Overview

The amendments made by Schedule 1 will create a new category of eligible service under the Veterans' Entitlements Act to be known as 'British nuclear test defence service'. Defence Force members with British nuclear test defence service will be eligible for benefits equivalent to those available to members with non-warlike or hazardous service under the Veterans' Entitlements Act.

Background

Service Eligibility under the Veterans' Entitlements Act

The Veterans' Entitlements Act provides eligibility for pensions, treatment and other benefits on the basis of the type of service that the veteran or Defence Force member has rendered. The three main types of service are "operational service" which includes non-warlike service, "qualifying service" and "defence service".

Service regarded as "operational service" provides eligibility for disability and war widow and war widower pensions, treatment and other benefits and the more generous reverse criminal standard of proof is used to determine pension claims. Operational service is overseas service within defined areas and dates in a time of war or during warlike or non-warlike operations. Operational service also grants "veteran" status under the Veterans' Entitlements Act.

"Qualifying service" provides eligibility for service pension and associated benefits. Post Second World War qualifying service generally requires the person to have been allotted for duty and have served in an operational area listed in Schedule 2 of the Veterans' Entitlements Act or to have rendered warlike service.

The other main category of service, "defence service" provides eligibility for disability and war widow and war widower pensions, treatment and other benefits. Broadly, "defence service" is peacetime service of three years or more in the Defence Force between 7 December 1972 and the commencement of the *Military Compensation Act 1994* on 7 April 1994, and any period of hazardous service.

Pension claims relating to defence service only are determined on the balance of probabilities, unless the member has peacekeeping service or hazardous service, in which case the generous "reverse criminal" standard of proof is applicable.

British Nuclear Tests in Australia

A series of British nuclear weapons tests were conducted in Australia at Monte Bello Island, off the coast of Western Australia, and at Emu Field and Maralinga in South Australia between October 1952 and October 1957. Minor trials were also conducted at Emu Field and Maralinga between 1953 and 1963.

Both Australian and British personnel were involved in the tests and those involved included military and civilian participants.

Workers compensation coverage for participants who were, at the time, members of the Australian Defence Force or the Australian Public Service is provided under the Safety, Rehabilitation and Compensation Act and its predecessors.

In 1986, the Government created a Safety, Rehabilitation and Compensation Act-like administrative scheme to provide compensation coverage to civilians, including pastoralists and indigenous persons who were at the test sites. This scheme is still open to claimants. The test participants also had access to a Special Administrative Scheme and an Act of Grace Scheme, both administered by the then Department of Science, Education and Training.

In 2006, the Government enacted the British Nuclear Test Treatment Act to provide free testing and treatment for cancer for both military and non-military personnel who participated in the tests and related activities.

Explanation of the changes

As part of the 2010 Budget, a new category of eligible service is to be created under the Veterans' Entitlements Act to provide former Australian Defence Force members who participated in the British nuclear tests and related activities, with eligibility for benefits equivalent to those that are available to members with non-warlike or hazardous service.

In addition, pension claims relating to "British nuclear test defence service" are to be determined under the more generous standard of proof of the "reasonable hypothesis" test under sections 120 and 120A of the Veterans' Entitlements Act.

"British nuclear test defence service" is a distinct new category of service and is not non-warlike or hazardous service although the benefits it will attract are equivalent to those for non-warlike, hazardous service or defence service.

To achieve this, British nuclear test defence service will be incorporated into Part IV of the Veterans' Entitlements Act and amendments will be made to sections 120 and 120A to ensure that pension claims relating to British nuclear test defence service are determined on the more generous reverse criminal standard of proof, the reasonable hypothesis test.

British nuclear test defence service will be incorporated into Part IV of the Veterans' Entitlements Act by:

- including 'British nuclear test defence service' in the definition of 'defence service' in Part IV (**item 4** of this Schedule);
- including members with British nuclear test defence service in the definition of 'member of the Forces' in Part IV (**item 5** of this Schedule); and
- applying Part IV of the VEA to members with British nuclear test defence service. This requires a new subsection 69B at **item 6** of this Schedule that will also define the criteria a member must meet to have rendered British nuclear test defence service.

By incorporating British nuclear test defence service into Part IV of the VEA, members will become eligible for:

- disability and war widow and war widower pension under Part IV,
- treatment under Part V by virtue of section 81 of Part V;
- allowances and other benefits under Part VI by virtue of section 96 of Part VI;
- rehabilitation under Part VIA;
- Veterans' Children Education Scheme under Part VII; and
- Veterans' Supplement under Part VIIA.

Explanation of the items

Item 1 inserts the term “British nuclear test defence service” in section 5, the index of definitions.

Item 2 inserts in subsection 5Q(1A), a definition of “British nuclear test defence service” as having “the same meaning as in Part IV” of the Veterans' Entitlements Act.

Items 3 to 5 amend subsection 68(1). Subsection 68(1) defines the various terms used in Part IV.

Item 3 inserts in subsection 68(1), a definition of “British nuclear test defence service” as having “the meaning given by subsections 69B(2), (3) and (4)”.

Item 4 repeals the subsection 68(1) definition of “defence service” and substitutes a new definition that incorporates the existing definition and includes ‘British nuclear test defence service’.

For the purposes of Part IV of the Veterans' Entitlements Act, new subsection 68(1) defines “defence service” as being service, but not peacekeeping service, of the following types:

- continuous full-time service rendered as a member of the Defence Force on or after 7 December 1972 and before 7 April 1994 (referred to as the “terminating date” being the commencement date of the *Military Compensation Act 1994*);
- continuous full-time service rendered by a person immediately before the commencement of the Veterans' Entitlements Act that continued for a term that expired after the terminating date and before the earlier of the expiration of that term, the expiration of an extended term or the lawful termination of the service of the person;
- hazardous service before or after the terminating date;
- British nuclear test defence service.

Item 5 is a consequential amendment to the definition of “member of the Forces” in subsection 68(1) to include a reference to new section 69B (being inserted by **Item 6** of this Schedule).

Item 6 inserts new section 69B at the end of Division 1 of Part IV of the Veterans' Entitlements Act.

Subsection 69B(1) provides that Part IV applies to a person who has rendered British nuclear test defence service.

Subsection 69B(2) provides that a person will have rendered “British nuclear test defence service” if the person was a member of the Defence Force in a nuclear test area at any time during:

- if the area was within 10 kilometres of main beach on Trimouille island on the Monte Bello Archipelago – the period from the beginning of 3 October 1952 to the end of 19 June 1958; or
- if the area was within 25 kilometres of the Totem test sites at Emu Field – the period from the beginning of 15 October 1953 to the end of 25 October 1955; or
- if the area was within 40 kilometres of any of the Buffalo or Antler test sites near Maralinga – the period from the beginning of 27 September 1956 to the end of 30 April 1965.

Subsection 69B(3) provides that a person will have rendered “British nuclear test defence service” if the person was a member of the Defence Force and involved in the transport, recovery, maintenance or cleaning of a vessel, vehicle, aircraft or equipment that was contaminated as a result of its use in a nuclear test area, being involvement that occurred at any time during:

- if the area was within 10 kilometres of main beach on Trimouille island on the Monte Bello Archipelago – the period from the beginning of 3 October 1952 to the end of 19 July 1956; or
- if the area was within 25 kilometres of the Totem test sites at Emu Field – the period from the beginning of 15 October 1953 to the end of 25 November 1953; or
- if the area was within 40 kilometres of any of the Buffalo or Antler test sites near Maralinga – the period from the beginning of 27 September 1956 to the end of 30 May 1963.

Subsection 69B(4) provides that a person will have rendered “British nuclear test defence service” if the person was a member of the Defence Force and, at a time during the period from 3 October 1952 to 31 October 1957 flew in an aircraft of the Royal Australian Air Force or the Royal Air Force that was at the time:

- used in measuring fallout from nuclear tests conducted in the area described in subsection 69B(2); and
- was contaminated by the fallout.

Items 7 to 11 amend sections 120 and 120A of the Veterans' Entitlements Act. Sections 120 and section 120A provide for the application of the reasonable hypothesis standard of proof when determining pension claims relating to operational service, peacekeeping service and hazardous service.

The amendments to sections 120 and 120A apply the reasonable hypothesis standard of proof for determining claims relating to "British nuclear test defence service".

Item 7 is a formatting amendment to paragraph 120(2)(b) to link the paragraph with new paragraph 120(2)(c) (as inserted by **Item 8** of this Schedule).

Item 8 inserts new paragraph 120(2)(c) which provides that pension claims made in relation to incapacity due to injury or disease or for the death of a member must relate to British nuclear test defence service that has been rendered by the member.

Item 9 inserts a reference to "British nuclear test defence service" in Note 1 to subsection 120(2).

Item 10 inserts new subparagraph 120A(1)(b)(iii) to include a reference to "the British nuclear test defence service rendered by a member of the Forces". Thus, section 120A, applying the more generous reverse criminal standard of proof, will apply to any claim under Part IV that relates to British nuclear test defence service.

Item 11 inserts a reference to "British nuclear test defence service" in Note 2 to subsection 120A(1).

Item 12 amends paragraph 120B(1)(b) by inserting the words "and British nuclear test defence service" after the words "hazardous service". Thus section 120B, applying the less generous civil standard of proof, will not apply to a claim under Part IV that relates to British nuclear test defence service.

Item 13 inserts a reference to "British nuclear test defence service" in Note 2 to subsection 120B(1).

Item 14 makes a technical amendment to subparagraph 180A(2)(b)(iii).

Item 15 amends paragraph 180A(2)(b) by adding a new subparagraph (iv) to include British nuclear test defence service. This means that a determination by the Repatriation Commission under subsection 180A(2) will apply in respect of pension claims relating to British nuclear test defence service.

Item 16 amends Note 1 to subsection 180A(2) to include references to a "member of a Peacekeeping Force", a "member of the Forces" and "British nuclear test defence service", all of which are defined in section 5Q(1A).

Item 17 amends subparagraph 180A(3)(b)(ii) by inserting the words "and British nuclear test defence service" after the words "hazardous service". Thus a determination by the Repatriation Commission under section 180A, applying the less generous civil standard of proof, will not apply to a claim that relates to British nuclear test defence service.

Item 18 amends Note 1 to subsection 180A(3) to include references to a “member of the Forces” and “British nuclear test defence service”, both of which are defined in subsection 5Q(1A).

Item 19 inserts a new paragraph 196B(2)(caa) after paragraph 196B(2)(c). New paragraph 196B(2)(caa) provides that a Statement of Principles determined under subsection 196B(2) setting out the factors that must exist before it can be said that a reasonable hypothesis has been raised connecting the injury, disease or death, with the circumstances of the service, will apply to British nuclear test defence service rendered by members of the Forces.

Item 20 amends Note 2 in subsection 196B(2) to include references to British nuclear test defence service and new paragraph 196B(2)(caa).

Item 21 amends paragraph 196B(3)(b) by inserting the words “and British nuclear test defence service” after the words “hazardous service. This amendment means that a Statement of Principles determined under subsection 196B(3) setting out the factors that must exist before it can be said that, on the balance of probabilities, an injury, disease or death, is connected with the circumstances of the service, will not apply to British nuclear test defence service rendered by members of the Forces.

Item 22 amends Note 2 to subsection 196B(3) to include references to a “member of the Forces” and “British nuclear test defence service”, both of which are defined in section 5Q(1A).

Item 23 is an application provision to make it clear that the amendments to the Veterans' Entitlements Act contained in this Schedule apply for the purposes of determining a person's eligibility on or after 1 July 2010, the commencement of this Schedule, for entitlements under the Veterans' Entitlements Act.

Although subsections 20(1) and (2) of the Veterans' Entitlements Act enable the Repatriation Commission to grant pensions under Part II or Part IV up to three months earlier than the date of the claim, no claims will be payable prior to 1 July 2010, the commencement date for these amendments. This is because subsection 20(3) overrides this general rule by providing that nothing in section 20 empowers the Repatriation Commission to approve the payment of a pension from the date before the person became eligible to be granted the pension. This date, for the purposes of claims resulting from British nuclear test defence service, is 1 July 2010. Thus 1 July 2010 is the earliest date from which the Commission can approve the payment of pension if:

- the claim was lodged before 1 July 2010; or
- the claim was lodged up to three months after 1 July 2010.

Item 24 makes provision for transitional arrangements in relation to Statements of Principles. These transitional arrangements will ensure that the appropriate Statements of Principles will apply to British nuclear test defence service without the need to amend each Statement of Principles.

Subitem 24(1) provides that the transitional provisions deal with the effect on and after 1 July 2010, the commencement of this Schedule, of Statements of Principles that were in force under section 196B of the Veterans' Entitlements Act immediately before 1 July 2010.

Subitem 24(2) provides a Statement of Principles made under subsection 196B(2) or 196B(11) of the Veterans' Entitlements Act, has effect as if a reference to operational service, peacekeeping service or hazardous service included a reference to British nuclear test defence service. This means Statements of Principles made under subsection 196B(2) or 196B(11) will be used to determine pension claims relating to British nuclear test defence service.

Subitem 24(3) provides that a Statement of Principles made under subsection 196B(3) or 196B(12) of the Veterans' Entitlements Act, has effect as if a reference to eligible war service (other than operational service) or defence service (other than hazardous service) excluded British nuclear test defence service. This means Statements of Principles made under subsection 196B(3) or 196B(12) will not be used to determine pension claims relating to British nuclear test defence service.

Subitem 24(4) makes it clear that item 24 does not prevent a legislative instrument from amending or revoking a Statement of Principles that was in force under section 196B of the Veterans' Entitlements Act immediately before 1 July 2010, the commencement of this Schedule.

Schedule 2 – Service on submarine special operations

Overview

The amendments made by Schedule 2 reclassify certain submarine special operations that were undertaken in the period between 1978 to 1992 as operational and qualifying service.

Background

Eligibility for pensions, treatment and other benefits under the Veterans' Entitlements Act depends on the type of service that the veteran or Defence Force member has rendered. The three main types of service are "operational service", "qualifying service" and "defence service".

Service regarded as "operational service" provides eligibility for disability and war widow and war widower pensions, treatment and other benefits and the more generous reverse criminal standard of proof is used to determine pension claims. Operational service is overseas service within defined areas and dates in a time of war or during warlike or non-warlike operations. Operational service also grants "veteran" status under the Veterans' Entitlements Act.

"Qualifying service" provides eligibility for service pension and associated benefits. Post Second World War qualifying service generally requires the person to have been allotted for duty and have served in an operational area listed in Schedule 2 of the Veterans' Entitlements Act or to have rendered warlike service.

Persons with "defence service" will generally have the same access to disability and war widow and war widower pensions, treatment and other benefits as those with operational service, except that pension claims will be subject to the civil standard of proof. On that basis a pension will only be granted if the Repatriation Commission, in deciding the claim, is able to do so to its "reasonable satisfaction".

Persons with operational service under the Veterans' Entitlements Act are also eligible for subsidised home loan advances under the Defence Service Homes Act.

Relevant submarine special operations service between 1978 and 1992 currently attracts dual eligibility under both the Safety Rehabilitation and Compensation Act and under the Veterans' Entitlements Act as "defence service". As such, under the Veterans' Entitlements Act, claims for pension relating to this service, are currently determined on the civil standard of proof and not the more generous reverse criminal standard of proof.

All persons who served on the relevant submarine special operations were awarded, or were eligible to be awarded, the Australian Service Medal with Clasp 'SPECIAL OPS'.

Explanation of the changes

As part of the 2010 Budget, certain submarine special operations will be reclassified as operational and qualifying service under the Veterans' Entitlements Act.

This will provide eligibility for all pensions and associated benefits under the Veterans' Entitlements Act and will mean that disability and war widow and war widower pension claims relating to this service will be determined on the more generous reverse criminal standard of proof.

The amendments provide (in new section 6DB) that the service will be regarded as "operational service" if a member of the Defence Force rendered continuous full-time service during the period from 1978 to 1992 and was awarded, or eligible to be awarded, the Australian Service Medal with Clasp 'SPECIAL OPS'.

A similar amendment to section 7A will provide that the service will be qualifying service.

As a consequence of the inclusion of the certain submarine special operations as operational and qualifying service under the Veterans' Entitlements Act there is a need for consequential amendments to both the Safety, Rehabilitation and Compensation Act and the Defence Service Homes Act.

Eligibility under the Safety Rehabilitation and Compensation Act will be retained for claims made before the commencement of the amendments in this Schedule, that is claims made under the Safety Rehabilitation and Compensation Act before 1 July 2010. Eligibility under the Safety Rehabilitation and Compensation Act will cease for new claims relating to the relevant submarine special operations on and from the commencement of the amendments in this Schedule, 1 July 2010. This means that any compensation payable under the Safety Rehabilitation and Compensation Act prior to the commencement of this Schedule, including claims lodged before the commencement of this Schedule and determined after the commencement of this Schedule, will continue to be payable and may be offset against any subsequent disability pension payable under the Veterans' Entitlements Act.

The Defence Service Homes Act will be amended to provide eligibility under that Act for members with the relevant submarine special operations service.

Explanation of the items

Part 1 – Veterans' Entitlements Act 1986

Item 1 inserts new Table Item number "4B" into the table in section 6. Section 6 provides a general outline of the provisions (sections 6A to 6F) which set out the criteria for service periods and locations that are to be regarded as operational service.

New Table Item number 4B provides that the criteria for operational service for service on submarine special operations is set out in new section 6DB.

Item 2 inserts new section 6DB. New section 6DB provides that service rendered during a period of continuous full-time service by a member of the Defence Force will be operational service when the following conditions are met:

- the period of service started on or after 1 January 1978 and ended on or before 31 December 1992; and
- the service was submarine special operations; and
- the Defence Force member:
 - has been awarded the Australian Service Medal with Clasp 'SPECIAL OPS' for the service; or
 - was eligible to be awarded the Australian Service Medal with Clasp 'SPECIAL OPS' for the service; or
 - would have been eligible to be awarded the Australian Service Medal with Clasp 'SPECIAL OPS' for the service if the member had not already been awarded the medal for other service.

Item 3 amends section 7A by inserting new subparagraphs 7A(1)(a)(v) and (vi). Section 7A sets out the criteria that are to be met before a person will be regarded as having rendered qualifying service.

New subparagraph 7A(1)(a)(v) provides that a member of the Defence Force has rendered qualifying service where the service was continuous full-time service on submarine special operations carried out at some time during the period from 1 January 1978 to 31 December 1992 for which the person was awarded, or eligible to be awarded the Australian Service Medal with Clasp "SPECIAL OPS".

New subparagraph 7A(1)(a)(vi) provides that a member of the Defence Force has rendered qualifying service where the service was continuous full-time service on submarine special operations carried out at some time during the period from 1 January 1978 to 31 December 1992 for which the person would have been eligible to be awarded the Australian Service Medal with Clasp "SPECIAL OPS" if the person had not already been awarded the medal for other service.

Item 4 amends paragraph 85(4B)(b) to include a reference to new subparagraphs 7A(1)(v) and (vi). This amendment will ensure that, upon turning 70, an eligible person is able to receive treatment for any injury suffered or disease contracted.

Item 5 inserts an application provision to be applied to the amendments made by Part 1 of this Schedule.

The amendments will apply for the purposes of determining the eligibility of the person for entitlements under the Veterans' Entitlements Act on or after 1 July 2010, the commencement of the amendments made under Part 1.

Although subsections 20(1) and (2) of the Veterans' Entitlements Act enable the Repatriation Commission to grant pensions under Part II or Part IV up to three months earlier than the date of the claim, no claims will be payable prior to 1 July 2010, the commencement date for these amendments. This is because subsection 20(3) overrides this general rule by providing that nothing in section 20 empowers the

Repatriation Commission to approve the payment of a pension from the date before the person became eligible to be granted the pension. This date, for the purposes of claims resulting from the reclassification of submarine special operations service, is 1 July 2010. Thus 1 July 2010 is the earliest date from which the Commission can approve the payment of pension if:

- the claim was lodged before 1 July 2010; or
- the claim was lodged up to three months after 1 July 2010.

Part 2 – Safety, Rehabilitation and Compensation Act 1988

Item 6 amends subsection 5(10) to include a reference to the subsection being subject to the provisions of new subsection 5(10D) (inserted by **Item 7** of this Part).

Subsection 5(10) provides, subject to subsections 5(10A), (10B) and (10C), that the Safety, Rehabilitation and Compensation Act does not apply in relation to service of a member of the Defence Force in respect of which provision for the payment of pension is made by the Veterans' Entitlements Act or the *Papua New Guinea (Members of the Forces Benefits) Act 1957*.

Item 7 inserts new subsection 5(10D). New subsection 5(10D) provides that the Safety, Rehabilitation and Compensation Act will continue to apply to claims for compensation that are lodged before the commencement of the amendments (made by Part 2 of this Schedule) that arose out of service that is taken under section 6DB of the Veterans' Entitlements Act to be operational service.

Item 8 inserts an application provision to be applied to the amendments made by Part 2 of this Schedule.

The amendments will apply for the purposes of determining the eligibility of the person for compensation under the Safety, Rehabilitation and Compensation Act on or after 1 July 2010, the commencement of the amendments made under Part 2.

Part 3 – Defence Service Homes Act 1918

Item 9 amends the definition of "Australian soldier" in subsection 4(1) of the Defence Service Homes Act. An "Australian soldier" is one of the categories of persons eligible for subsidised home loan under that Act.

Paragraph (gd) of the definition of "Australian soldier" provides that the definition will include a member of the Defence Force whose first service began on or before 14 May 1985; and who is taken under section 6E of the Veterans' Entitlements Act to have rendered operational service.

Subparagraph (gd)(ii) of the definition is amended to include in the definition of "Australian soldier", a reference to those persons who have operational service under new section 6DB of the Veterans' Entitlements Act (inserted by **Item 2** of Part 1 of this Schedule).

Item 10 inserts an application provision to be applied to the amendments made by Part 3 of this Schedule.

The amendments will apply for the purposes of determining the eligibility of the person for a subsidised advance under the Defence Service Homes Act on or after 1 July 2010, the commencement of the amendments made under Part 3.

Schedule 3 – Service in Thailand

Overview

The amendments made by Schedule 3 will reclassify service in Ubon in Thailand between 31 May 1962 and 27 July 1962 inclusive as 'qualifying service'.

Background

Two of the main types of service eligibility under the VEA are 'operational service' and 'qualifying service'. 'Operational service' is provided for in sections 6 to 6F and Schedule 2 of the VEA. Briefly, 'operational service' provides eligibility for disability pension, treatment and other benefits under the Veterans' Entitlements Act and claims for disability pension are determined using the more generous reverse criminal standard of proof.

'Qualifying service' provides eligibility for service pension under Part III and associated benefits under the VEA. Qualifying service is provided for in section 7A of the VEA and includes service in operational areas as described in Schedule 2.

'Operational areas' listed in Schedule 2 of the VEA are applicable to both 'operational service' by virtue of section 6C and 'qualifying service' by virtue of subparagraph 7A(1)(a)(iii).

In accordance with subparagraph 6D(1)(a)(iii) of the VEA, service in North East Thailand (including Ubon) during the period from 31 May 1962 to 24 June 1965 is currently "operational service". Service in North East Thailand (including Ubon) during the period from 25 June 1965 to 31 August 1968 is the subject of a determination that the service is "warlike" and is therefore both 'operational service' and 'qualifying service' in accordance with section 6F and paragraph 7A(1)(a)(iv) respectively of the VEA.

Explanation of the changes

As part of the 2010 Budget, service in Ubon in Thailand from 31 May 1962 to 27 July 1962 inclusive is to be re-classified as 'qualifying service' due to the potential risk from the activities of hostile forces and dissident elements. The reclassification of this service to qualifying service will provide members with eligibility for service pension and associated benefits. Service in Ubon in Thailand from 31 May 1962 to 27 July 1962 will retain its current operational service status.

It should be noted that the qualifying service reclassification is limited to service in Ubon and does not extend to service in other parts of North East Thailand during that period as the circumstances justifying the reclassification applied only to those serving in Ubon at that time. Service in other parts of North East Thailand during this period will remain operational service.

The provisions dealing with service in Ubon and North East Thailand are also being consolidated into the Veterans' Entitlements Act. This will involve the revocation of the warlike service determination for the period 25 June 1965 to 31 August 1968 and the inclusion of this service in Schedule 2 of the Veterans' Entitlements Act. This will mean that the relevant provisions concerning the classification of all service for Ubon and North East Thailand are contained within the Veterans' Entitlements Act. A consequential amendment is also required to the Defence Service Homes Act to continue eligibility under that Act for members previously eligible by virtue of the warlike service determination. Warlike service gives both operational and qualifying service under the Veterans' Entitlements Act.

Explanation of the items

Defence Service Homes Act 1918

Item 1 amends the definition of ***Australian Soldier*** in subsection 4(1) of the Defence Service Homes Act. The definition of ***Australian Soldier*** in subsection 4(1) is amended by inserting a reference to new items 3A and 3B of Schedule 2. This will continue eligibility under the Defence Service Homes Act for those members whose eligibility under that Act was previously dependant on:

- subparagraph 6D(1)(a)(iii) for the period 31 May 1962 to 27 July 1962 which is being amended by **item 3**; or
- the Warlike service determination that will be revoked upon the commencement of this Schedule. Operational service status for this service will be continued through new item 3B of Schedule 2.

Veterans' Entitlements Act 1986

Item 2 amends paragraph 5B(2)(b) to insert references to new items 3A and 3B of Schedule 2. This means that the Vice Chief of the Defence Force will sign the ***allotted for duty*** written instruments in relation to:

- service in Ubon in Thailand between 31 May 1962 and 27 July 1962 inclusive; and
- service in North East Thailand (including Ubon) between 25 June 1965 and 31 August 1968 inclusive.

Items 3 to 5 amend subsection 6D(1). Section 6D provides operational service status for certain periods of post Second World War service in certain locations.

Subparagraph 6D(1)(a)(iii) is amended by **Item 3** that replaces the reference to the start date of "31 May 1962" with a reference to the start date of "28 July 1962" for service in North East Thailand (including Ubon). The amendment is a consequence of the amendment (being made by **Item 6** of this Schedule) that inserts a reference to service in Ubon only in Schedule 2 of the Veterans' Entitlements Act.

Item 4 inserts new subparagraph 6D(1)(a)(iv) which provides that service in North East Thailand, not including Ubon, will be regarded as operational service for the period from 31 May 1962 to 27 July 1962. The amendment is a consequence of the amendment (being made by **Item 6** of this Schedule) and will ensure that operational service status will be retained for service by members in North East Thailand who were not located in the Ubon province.

Item 5 inserts a Note to subsection 6D(1) that refers to service in Ubon during the period from 31 May 1962 to 27 July 1962 being operational service because section 6C and item 3A of Schedule 2 will be applicable.

Item 6 adds two new items to Schedule 2 of the Veterans' Entitlements Act. New item 3A adds service in Ubon in Thailand between 31 May 1962 and 27 July 1962 inclusive to the list of operational areas in Schedule 2. New item 3B adds service in North East Thailand (including Ubon) between 25 June 1965 and 31 August 1968 inclusive to the list of operational areas in Schedule 2. By adding these items to Schedule 2, service in these areas is, for the purposes of the Veterans' Entitlements Act, operational service by virtue of section 6C and qualifying service by virtue of subparagraph 7A(1)(a)(iii). New item 3B of Schedule 2 will provide operational service for the period currently covered by a warlike service determination that is to be revoked upon the commencement of this item.

Item 7 is an application provision to make it clear that the amendments made by items 2 to 6 apply for the purposes of determining a person's eligibility for entitlements under the Veterans' Entitlements Act on or after 1 July 2010, the commencement date for this Schedule.

Commencement

Clause 2 provides that the amendments in Schedule 3 commence on 1 July 2010.

Schedule 4 – Domicile

Overview

The amendments made by Schedule 4 will lower the age of domicile of choice from 21 to 18, for the purposes of the Veterans' Entitlements Act.

Background

Under the Veterans' Entitlements Act, British, Commonwealth and allied veterans may be eligible for pensions and other benefits, if they have eligible service with a Commonwealth or allied defence force and if they had Australian domicile immediately prior to their enlistment in that defence force. This policy was intended to cover those Australians who were travelling or studying overseas at the time World War Two broke out and who could not return to Australia to enlist in the Australian Defence Force.

In the absence of the legal concept of Australian citizenship until 1949, the domicile concept was adopted as a means of determining whether a British, Commonwealth and allied veteran could be regarded as an Australian at the time of enlistment. However, persons under 21 at the time of their enlistment in a Commonwealth or allied defence force could not establish a domicile of choice (independent domicile), as the common law rules that applied at that time meant that a person could not assume a domicile of choice before the age of 21. Until the age of 21, a person's domicile would have been dependent on the domicile of the father, or if the father is deceased, the domicile of the mother. The *Domicile Act 1982* has since lowered the age at which a person can claim independent domicile from 21 to 18 years of age. However, this Act does not apply to circumstances that occurred before the commencement of the Act and thus the common law rules continue to apply in those circumstances.

Explanation of the changes

As part of the 2010 Budget, the age of domicile of choice (independent domicile), for the purposes of the VEA, will be lowered from 21 to 18 years of age. All other common law domicile rules will still need to be met, such as integration into Australian society and residency in Australia, including intention to reside and length of residency.

This will enable those veterans who were between 18 and 20 and unable to nominate Australia as their domicile of choice to gain eligibility under the Veterans' Entitlements Act for their service in a British, Commonwealth or allied defence force, as Australian veterans providing they meet the other domicile and service eligibility requirements.

Explanation of the items

Item 1 inserts an entry for "domiciled" in the index of definitions in section 5.

Item 2 adds an entry for *domiciled* in section 5Q(1) advising that *domiciled* has a meaning affected by section 11B.

Item 3 adds a note at the end of subsection 6A(1) advising that section 11B may affect a person's domicile immediately before appointment or enlistment.

Item 4 adds a note at the end of subsection 6C(2) advising that section 11B may affect a person's domicile immediately before appointment or enlistment.

Item 5 inserts new section 11B at the end of Part I of the Veterans' Entitlements Act. New subsection 11B(1) provides that, for the purposes of the Veterans' Entitlements Act, a person is taken to have been capable of having an independent domicile at a time before 1 July 1982 if the person had turned 18 at or before that time.

A note at the end of this new subsection advises that subsection 8(1) of the *Domicile Act 1982* has a similar effect for a time occurring on or after 1 July 1982.

New subsection 11B(2) makes it clear that new subsection 11B(1) has effect despite any rule of law to the contrary. This means that the common law rule that applied before 1 July 1982, requiring a person to be 21 before they could have an independent domicile, does not apply for the purposes of the Veterans' Entitlements Act. Instead, subsection 11B(1) applies for the purposes of the Veterans' Entitlements Act making an independent domicile possible from the age of 18.

Item 6 adds a note at the end of subsection 53D(2) advising that section 11B may affect a person's domicile immediately before appointment or enlistment.

Item 7 adds a note at the end of subsection 80(2) advising that section 11B may affect a person's domicile immediately before appointment or enlistment.

Item 8 is an application provision to make it clear that new section 11B of the Veterans' Entitlements Act applies for the purposes of determining a person's eligibility on or after 1 July 2010 for entitlements under that Act.

Commencement

Clause 2 provides that the amendments in this Schedule commence on 1 July 2010.

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

Overview

The amendments made by Schedule 5 will cease eligibility for war widow or war widower pension for widows and widowers who enter into a de facto relationship prior to claiming the war widow or war widower pension. It will also cease eligibility for a widow or widower who is in a de facto relationship at the time of the veteran or member's death and who would otherwise have been automatically granted war widow or war widower pension.

Background

Under the Veterans' Entitlements Act, war widow or war widower pension is payable to compensate the widow or widower of a veteran or member of the Defence Force who has died as a result of war service or defence service.

A war widow or war widower pension can be claimed by a person who was legally married to, or who was in a de facto relationship with, a veteran or member immediately before the veteran or member's death.

Under the current provisions of the Veterans' Entitlements Act, a widow or widower is not eligible for the war widow or war widower pension if the widow or widower has married or remarried before claiming the war widow or war widower pension. However, also under the current provisions, a widow or widower remains eligible for a war widow or war widower pension even if the widow or widower enters into a de facto relationship prior to claiming the war widow or war widower pension.

Also, in certain circumstances the widow or widower is not required to make a claim and the war widow or widower pension will automatically be payable from the day after the death of the veteran or member. Automatic grant of war widow or war widower pension is dependant upon a veterans' status as an ex-prisoner of war or the rate of disability pension the veteran or member was receiving immediately prior to the death of the veteran or member.

Explanation of the changes

As part of the 2010 Budget, widows or widowers of a veteran or member who enter into a de facto relationship will be treated, for the purposes of eligibility for a war widow or war widower pension, in the same manner as a widow or widower who married or remarried.

Widows or widowers who enter into a de facto relationship before claiming the war widow or war widower pension, will no longer be eligible for war widow or war widower pension. This will include the spouse of a veteran or member who is separated but not divorced from the veteran or member and who enters into a de facto relationship with a third party, and is in that de facto relationship at the time of the veteran or member's death. The loss of eligibility is permanent and will not be

reinstated if the de facto relationship ends. This measure will result in equal treatment of widows or widowers regardless of whether the new relationship is a marriage or a de facto relationship.

This measure will not affect any current war widow or war widower pension entitlement nor will it affect pension entitlement if the widow or widower marries, remarries or enters into a de facto relationship after claiming the pension.

Explanation of the items

Item 1 removes the reference to “marriage-like relationship” as being located in section “11A” from the section 5 (index of definitions).

The amendments to section 11A made by the *Same-Sex Relationships (Equal Treatment in Compensation Laws – General Law Reform) Act 2008* replaced that term with references to the “de facto relationship” of the couple.

Items 2 and 3 amend the definition of “dependant” in subsection 11(1) by replacing the reference to the exclusion of the widow or widower who marries or “re-marries” with a reference to a widow or widower who marries or “re-marries or enters into a de facto relationship”.

A new Note 4 is also added to the definition of “dependant” to refer to the criteria set out in section 11A that are used by the Repatriation Commission in forming “an opinion as to whether 2 people are living together in a de facto relationship”.

Items 4 to 6 amend subsection 13(8). Subsection 13(8) provides that a pension is not payable to the widow or widower of a veteran where the widow or widower has married or re-married before claiming the pension.

The amendments made by **Items 4 to 6** include references to a dependant of a deceased veteran who has entered into a de facto relationship. These amendments cease eligibility for a widow or widower of a deceased veteran who enters into a de facto relationship.

Items 7 to 9 amend subsection 70(11). Subsection 70(11) provides that a pension is not payable to the dependant of a deceased member of the Forces who married or re-married before claiming the pension.

The amendments made by **Items 7 to 9** include references to a dependant of a deceased member of the Forces who has entered into a de facto relationship. These amendments cease eligibility for a widow or widower of a deceased member of the Forces who enters into a de facto relationship.

Item 10 is an application provision to make it clear that the amendments made by this Schedule will apply to claims for pension payable under Parts II and IV of the Veterans' Entitlements Act and for the payment of pension under section 13A of the Act in relation to veterans or members who die on or after the commencement of the Schedule.

Commencement

Clause 2 provides that the amendments made by this Schedule will commence on 1 October 2010. The amendments will apply to claims for war widow or war widower pension made on or after 1 October 2010 and will apply to automatic grants of war widow or war widower pension where the veteran or member's death occurs on or after 1 October 2010.