Veterans’ Affairs Legislation Amendment (Miscellaneous Measures) Bill 2013

Michael Klapdor
Social Policy Section

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Date introduced: 12 December 2013
House: House of Representatives
Portfolio: Veterans’ Affairs
Commencement: On Royal Assent

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation
When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/
History of the Bill

The provisions in the Veterans’ Affairs Legislation Amendment (Miscellaneous Measures) Bill 2013 (the Bill) were contained in the Veterans’ Affairs Legislation Amendment Bill 2012 (the previous Bill). The previous Bill was introduced into the 43rd Parliament on 27 June 2012. It was passed by the House of Representatives on 22 August 2012 and introduced in the Senate on the same day. However, the previous Bill had not passed the Senate when the Parliament was prorogued on 5 August 2013 and, as a result, it lapsed. The Appendix to this Bills Digest provides information about the existence of a ‘Privilege Bill’ which contains some of the same provisions as are in this Bill.

The material in this Bills Digest is largely based on that produced for the previous Bill.²

Purpose of the Bill

The purpose of the Bill is to:

• amend the Australian Participants in British Nuclear Tests (Treatment) Act 2006 (BNTT Act)³ and the Veterans’ Entitlements Act 1986 (VEA)⁴ so that the payment of travel expenses for treatment may be approved by the Repatriation Commission before or after the travel has been undertaken; clarify provisions relating to advance payments for travel expenses; and make minor clarifying amendments

• amend the Military Rehabilitation and Compensation Act 2004 (MRCA)⁵ and the VEA to allow for special assistance or benefits under these Acts to be extended to those who would not otherwise be eligible by way of a legislative instrument made by the Military Rehabilitation and Compensation Commission or Repatriation Commission, respectively, rather than by regulation

• amend the VEA to extend the application of debt recovery provisions to cover legislative instruments made under the VEA

• rename the War Precautions Act Repeal Act 1920⁶ the ‘Protection of Word ‘Anzac’ Act 1920’

• amend the Defence Service Homes Act 1918⁷ to extend entitlement for benefits under this Act to Australian Defence Force (ADF) members who were on board HMAS Canberra as part of Operation DAMASK VI between 13 January 1993 and 19 January 1993

• amend the MRCA to clarify that various references to written determinations are legislative instruments and to replace references to ‘disallowable instrument’ with ‘legislative instrument’

• amend the MRCA to replace references to telephone and pharmaceutical allowances with references to payments of the ‘MRCA Supplement’

• amend the Social Security Act 1991 (SSA)⁸ to correct references to sections of the VEA

• amend the VEA to correct references to sections of the SSA in regards to eligibility for attendant allowance and

• amend the VEA to align definitions of various forms of maintenance income with those contained in the A New Tax System (Family Assistance) Act 1999.⁹

The amendments proposed by the Bill are primarily technical in nature: adding flexibility for the payment of some veterans’ benefits, extending coverage, making definitions consistent across social security and veterans’ affairs legislation, improving debt recovery coverage and correcting errors.

Background—Veterans’ Affairs legislation

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

- **VEA**, which provides for those who undertook operational service, peacekeeping service and hazardous military service, and/or peacetime military service from 7 December 1972 up to 6 April 1986
- **Safety, Rehabilitation and Compensation Act 1988 (SRCA)**, which provides coverage for illness, injury or death arising from military service undertaken from 3 January 1949 to 30 June 2004 and
- **MRCA**, which provides coverage for illness, injury or death arising from military service undertaken from 1 July 2004.

The **BNTT Act** provides for eligible nuclear test participants to receive treatment and testing for cancer. From October 1952 to October 1957, British atomic weapons detonation tests were conducted at Monte Bello Islands off the west coast of Western Australia and at Emu Field and Maralinga in South Australia. Participants eligible for assistance under this scheme include defence force personnel, public servants and civilian contractors.

Committee consideration

**Senate Selection of Bills Committee**

The Selection of Bills Committee determined at its meeting of 11 December 2013 that the Bill not be referred to Committee for inquiry and report. The previous Bill was not referred to Committee for inquiry, either.

**Senate Standing Committee for the Scrutiny of Bills**

At the time of writing this Bills Digest the Senate Standing Committee for the Scrutiny of Bills had not commented on the Bill. The Committee had no comments on the previous Bill.

**Parliamentary Joint Committee on Human Rights**

The Parliamentary Joint Committee on Human Rights considers that the Bill does not appear to give rise to human rights concerns. The previous Bill was also considered to be compatible with human rights.

**Statement of Compatibility with Human Rights**

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.

**Financial implications**

The measures are expected to have no financial impact.

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11. There is some overlap of coverage between the VEA and the SRCA and the MRCA respectively. For example, a person may have an entitlement to coverage under the VEA and the MRCA at the same time. In such cases a person may choose which coverage they want to receive. Where a person makes such a choice, this may also lead to offsets against entitlements under the other Act. For further background, see L Buckmaster, Veterans’ Affairs and Other Legislation Amendment (Miscellaneous Measures) Bill 2010, Bills digest, 22, 2010–11, Parliamentary Library, Canberra, 2010, accessed 22 January 2014.
17. The Statement of Compatibility with Human Rights can be found at page iii of the Explanatory Memorandum to the Bill.
Key issues and provisions

Travel for treatment

The Bill proposes amendments to the BNTT Act and the VEA to clarify that payments for travel expenses for the purposes of treatment can be approved by the Repatriation Commission before or after the travel has been undertaken and that payments can be made in advance.19

Veterans’ Affairs legislation provides for payment of expenses to eligible persons that are incurred by the person, and his or her attendant, for travel undertaken to obtain treatment. For example, subsection 110(1) of the VEA provides:

Where a veteran, or a dependant of a deceased veteran, travels, with the approval of the Commission, for the purpose of:

(a) obtaining treatment;

(b) restoration of his or her health; or

(c) being fitted with surgical aids or appliances or artificial replacements;

the veteran, or the dependant, as the case may be, is, subject to this section and to such conditions as are prescribed, entitled to be paid such travelling expenses, in connection with that travel, as are prescribed.

Similarly, subsection 19(1) of the BNTT Act provides that:

If:

(a) an eligible person travels for the purpose of obtaining treatment; and

(b) the Commission approves the travel; and

(c) such conditions as are prescribed are satisfied;

the person is entitled to be paid such travelling expenses, in connection with the travel, as are prescribed.

For the purposes of the BNTT Act, treatment is defined in section 4 as treatment of malignant neoplasia (cancer) and includes testing.

As can be seen above, reimbursement for treatment-related travel expenses is dependent on approval from the Repatriation Commission.20

At present, both statutes provide for the Repatriation Commission to authorise an advance payment on account of the travelling expenses that a person is expected to become entitled to be paid. In the event that the amount of the advance paid exceeds the amount of travelling expenses that are actually payable to the person in respect of that travel, the person is liable to repay an amount equal to the excess to the Commonwealth.21 The Bill clarifies processes for approval and authorisation by the Repatriation Commission of travel for treatment for eligible veterans, nuclear test participants and their attendants by providing that such approval or authorisation may be given before or after the travel has been undertaken. This is provided for with the insertion of:

• proposed subsection 19(2A) in the BNTT Act (inserted by item 2) and

• proposed subsection 110(2A) in the VEA (inserted by item 57).

19. The Repatriation Commission is responsible under the VEA for granting pensions, allowances and other benefits, providing treatment and other services, and the general administration of the VEA. The Commission sets policies for the programs of care, compensation and commemoration. The Department of Veterans’ Affairs (DVA) provides administrative support to the Commission and implements its policies. See Repatriation Commission, Annual report 2012–13, DVA, Canberra, 2013, accessed 22 January 2014.
20. Subsection 180(2), VEA.
21. Section 20, BNTT Act and subsection 110(5), VEA.
This change will most likely be seen as beneficial by eligible veterans, nuclear test participants and their attendants, given that it will clarify that there is flexibility in the process for obtaining approval and authorisation for treatment-related travel expenses. Of some concern though, is that the Veterans’ Entitlements Regulations 1986 set out strict rules about how much travelling allowance is to be paid to a person.\textsuperscript{22} In calculating the amount payable, for example, paragraph 9(5)(c) of the Regulations emphasises the desirability of using the cheapest form of suitable transport for the travel. The danger is that a person will undertake travel without knowledge of these rules and expend an amount which will not be approved for full reimbursement by the Repatriation Commission.

**Special assistance**

Section 106 of the VEA and section 424 of the MRCA provide for the payment of special assistance or benefits that would not otherwise be available under either Act. The provisions allow for regulations to be made prescribing the circumstances under which the payments will be made. At the time of writing this Bills Digest no relevant regulations have been made in respect of the MRCA.

However, the Veterans’ Entitlements (Special Assistance) Regulations 1999 provide that the Repatriation Commission may grant special assistance to certain pensioners in the form of \textit{crisis payments}.\textsuperscript{23} A crisis payment is a ‘one-off’ payment which can be made in a number of circumstances, for example, to assist new and existing clients in financial hardship when they are released from lawful custody of at least 14 days duration.\textsuperscript{24} Similarly, crisis payments can be made to persons who are forced to leave their home and establish a new one due to, for instance, fleeing domestic violence or in the event of a house fire.\textsuperscript{25}

The Bill enables special assistance under both the VEA and the MRCA in circumstances, and subject to conditions, to be set out in a legislative instrument, rather than by regulation. It does this by:

- omitting the word ‘prescribed’ from \textbf{subsection 106(1)} of the VEA and substituting ‘prescribed in a legislative instrument made by the [Repatriation] Commission for the purpose of this subsection’ (\textbf{Item 55})\textsuperscript{26} and

- omitting the phrase ‘prescribed by the regulations’ from \textbf{subsection 424(1)} of the MRCA and substituting ‘prescribed in a legislative instrument made by the [Military Rehabilitation and Compensation] Commission for the purposes of the subsection’ (\textbf{Item 23}).

The Government states that this will ‘enable special assistance to be provided in a more timely manner’\textsuperscript{27}.

A regulation is a form of legislative instrument, that is, an instrument in writing that is of a legislative character, and that is, or was, made in the exercise of a power delegated by the Parliament.\textsuperscript{28} Section 216 of the VEA and section 440 of the MRCA provide for the making of regulations by the Governor-General. The amendments in items 23 and 55 are necessary to allow for legislative instruments to be made other than by the Governor-General. Although both regulations and the legislative instruments arising from these amendments are disallowable instruments, the proposed legislative instruments will not require any action by the Governor-General.\textsuperscript{29} Given that special assistance is, by its nature a crisis payment, the amendments will allow for new classes of circumstances requiring the making of such payments to be specified as and when they are identified.

**Debt recovery arrangements**

The Bill amends the VEA to ensure that debt recovery arrangements apply to all relevant provisions of the VEA and its regulations and legislative instruments. As set out in the Explanatory Memorandum:

\begin{itemize}
  \item \textsuperscript{22} Veterans’ Entitlements Regulations 1986, accessed 22 January 2014.
  \item \textsuperscript{23} Veterans’ Entitlements (Special Assistance) Regulations 1999, accessed 22 January 2014. Regulation 3 of the Veterans’ Entitlements (Special Assistance) Regulations 1999 defines a \textit{crisis payment} as being a payment under those Regulations.
  \item \textsuperscript{24} Regulation 5 of the Veterans’ Entitlements (Special Assistance) Regulations 1999.
  \item \textsuperscript{25} Regulation 6 of the Veterans’ Entitlements (Special Assistance) Regulations 1999.
  \item It should be noted that the Repatriation Commission already has the power to make legislative instruments, for example, under subsection 45UIC(6) of the VEA, to specify the special circumstances for a top up of pension bonus.
  \item \textsuperscript{27} Explanatory Memorandum, op. cit., p. 3.
  \item \textsuperscript{28} Section 5, Legislative Instruments Act 2003, accessed 24 January 2014.
  \item \textsuperscript{29} Under section 16A of the Acts Interpretation Act 1901, references to the Governor-General in Acts are to be read as referring to the Governor-General acting on the advice of the Executive Council. This is a formal process which requires a number of administrative actions, so it is unsuitable where a legislative instrument needs to be made to respond to an emergency situation.
\end{itemize}
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.\(^30\)

The Bill amends paragraph 205(1)(a) of the VEA by replacing the current reference to ‘a provision of this Act or of the Regulations’ with a reference to ‘this Act, the regulations or another legislative instrument under this Act’ (item 59).

This amendment would, for example, mean that special assistance provided as a result of a legislative instrument made under the VEA (discussed above) would be subject to debt recovery arrangements.

**Renaming of the War Precautions Act Repeal Act 1920**

Items 62–67 of the Bill propose to rename the War Precautions Act Repeal Act 1920 as the ‘Protection of Word ‘Anzac’ Act 1920’ and repeal inoperative provisions in the Act. The War Precautions Act Repeal Act 1920 empowers the Governor-General to make regulations to protect the word Anzac.\(^31\) The Protection of Word ‘Anzac’ Regulations set out prohibitions on the use of the word Anzac, particularly in any manufacture, trade or business, without the permission of the Minister for Veterans’ Affairs. Use of the term for geographical purposes, such as naming roads or parks is also prohibited in most circumstances.\(^32\) The new title of the Act will correspond to its current purpose and inoperative provisions in the statute will be removed (items 64–67).

**Other provisions**

The other provisions proposed in the Bill are technical in nature: clarifying existing provisions, making definitions consistent across social security and veterans’ affairs legislation and correcting errors.

**Differences from the previous Bill**

The amendments to the Income Tax Assessment Act 1997\(^33\) which were included in the previous Bill are not contained in the current Bill. The amendments exempted from income tax those reimbursements made under the Veterans Pharmaceutical Reimbursement Scheme and for treatment and testing for cancer of eligible nuclear test participants.\(^34\)

According to the Department of Veterans’ Affairs (DVA), the items in the previous Bill amending the Income Tax Assessment Act 1997 were not included in this Bill as ‘advice was received from Treasury that the proposed amendments were not necessary as the nature of the payments was such that they were to be regarded as tax exempt’.\(^35\) This is at odds with the usual practice of listing specific payments made under the SSA and the VEA as being exempt from income tax in Part 2-15 of Chapter 2 of the Income Tax Assessment Act.

In addition, this Bill does not amend subparagraph 8(8)(y)(viii) of the SSA as was proposed by the previous Bill. Paragraph 8(8)(y) of the SSA lists specific payments under veterans’ affairs legislation that are to be excluded from the income test (relevant for determining rates of pensions and other social security payments). This amendment would have added bereavement payments paid under section 98AA of the VEA to the list of income not included in the social security income test. The rationale for this omission is unknown.

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34. Department of Veterans’ Affairs, ‘Veterans’ Pharmaceutical Reimbursement Scheme’, Department of Veterans’ Affairs website, accessed 24 January 2014.
35. Correspondence with the Department of Veterans’ Affairs, 23 January 2014.
Appendix

Contents of the ‘Privilege Bill’ of the 44th Parliament

Some items in this Bill (the proposed amendments to the War Precautions Act Repeal Act 1920) were also contained in the Veterans Affairs Legislation Amendment Bill 2013, the Privilege Bill introduced by the Prime Minister with the opening of the 44th Parliament on 12 November 2013. It is a tradition of the House of Representatives, following the Governor-General’s speech to members and senators but before the speech is reported to the House, for the Prime Minister to present an uncontroversial Bill. The presentation of this Bill, known as the ‘privilege’ or ‘formal’ Bill, is ‘an assertion of the House’s independence from the executive arm of government and of its rights with respect to the order and conduct of its business and proceedings’.37

The tradition follows that of the United Kingdom Parliament where ‘the practice of presenting a bill in the House of Commons without immediately addressing the sovereign’s causes for the calling of Parliament has been traced as far back as 1558 and became established by resolution of the House in 1604’.38 In Australia, the standing orders of the House of Representatives provide that ‘Before the Governor-General’s Speech is reported some formal business shall be transacted and the Prime Minister may announce his or her ministry’.39 While the Bill is read a first time and the second reading made an order of the day for the next sitting, the Bill will remain the last item of government business on the Notice Paper throughout the parliamentary session with the Bill lapsing at prorogation or dissolution.40 During the first few decades of the Australian Parliament, the Privilege Bill was passed into law on 12 occasions. Since 1945, however, debate has not been resumed on the Privilege Bill though its provisions may be incorporated into another piece of legislation and passed, as has occurred with items 62–67 of the Bill.41

38. Ibid.
40. Ibid.
41. House of Representatives Standing Committee on Procedure, op. cit.