Veterans' Affairs Legislation Amendment (2015 Budget Measures) Bill 2015

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House: House of Representatives
Portfolio: Veterans’ Affairs
Commencement: Sections 1–3 on Royal Assent; Schedule 1 on 20 March 2016; Schedule 2 on 1 January 2016 and Schedule 3 the day after 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 the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website.
List of abbreviations

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<td>AAT</td>
<td>Administrative Appeals Tribunal</td>
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<td>Australian Defence Force</td>
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<td>extreme disablement rate</td>
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Purpose of the Bill
The Veterans’ Affairs Legislation Amendment (2015 Budget Measures) Bill 2015 (the Bill) amends the Veterans’ Entitlements Act 1986 (the VEA), the Military Rehabilitation and Compensation Act 2004 (the MRCA) and the Defence Act 1903 (the Defence Act) to:

• expand the range of services available under the Veterans’ Vocational Rehabilitation Scheme (the VVRS); and, make changes to the way certain periods of work undertaken as part of the VVRS, income earned from that work and periods of unemployment affect the rate of Disability Pension and/or Service Pension paid to participants
• create a single path of review for original determinations made under the MRCA and
• allow the Minister of Veterans’ Affairs to amend Regulation 31 of the Defence Force Regulations 1952 so as to provide for the repatriation of the remains of service dependants buried in the Terendak Military Cemetery in Malaysia.

Structure of the Bills Digest
Each of the Schedules in the Bill provides for a discrete measure. Background information and analysis of the main provisions will be provided separately for each Schedule.

Committee consideration
On 13 August 2015, the Senate Selection of Bills Committee decided not to refer the Bill to a committee for inquiry and report.

Policy position of non-government parties/independents
At the time of writing the Digest, the position of non-government parties and independents on the measures proposed by the Bill are not fully known. The Labor Opposition has stated its support for the offer to repatriate the bodies of the Vietnam veterans buried at Terendak War Cemetery in Malaysia and Kranji War Cemetery in Singapore which forms the context for the changes proposed by Schedule 3 but has not publicly commented on the other Schedules.

Financial implications
The Explanatory Memorandum to the Bill sets out the financial implications of the measures as follows:

• Schedule 1—Veterans’ Vocational Rehabilitation Scheme: $0.7 million over four years
• Schedule 2—Reconsideration and review of determinations: a saving of $2.2 million over four years
• Schedule 3—Graves of dependants of member of the Defence Force: $1.8 million over four years.

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.

The Parliamentary Joint Committee on Human Rights considered in its 25th report that the Bill required no additional comment.

Schedule 1—Veterans’ Vocational Rehabilitation Scheme
Schedule 1 amends the VEA to:

3. Defence Act 1903 (Cth), accessed 5 August 2015.
5. B Shorten (Leader of the Opposition) and D Feeney (Shadow Minister for Veterans’ Affairs), Labor welcomes the decision to offer repatriation for Vietnam war dead, media release, 25 May 2015, accessed 5 August 2015.
7. The Statement of Compatibility with Human Rights can be found at page iii of the Explanatory Memorandum to the Bill.
• expand the range of services available under the Veterans’ Vocational Rehabilitation Scheme (VVRS) and
• make changes to the way periods of work undertaken as part of the VVRS, income earned from that work and periods of unemployment affect the rate of Disability Pension and/or Service Pension paid to participants.

In his second reading speech to the Bill, Assistant Minister for Defence Stuart Robert described the amendments as ‘enhancements’ to the VVRS as the changes would:

... expand the range of services [available under the scheme] to include medical management and psychosocial services. They will also result in certain special and intermediate rate disability pensioners having a smoother step down in disability pension whilst in the scheme and will encourage veterans to remain or continue in the workforce.9

The changes were announced in the 2015–16 Budget.10

**Background**

The VVRS has been administered by the Department of Veterans’ Affairs since the mid-1990s and was introduced to meet concerns that younger veterans were being accepted as totally and permanently incapacitated for work without being provided with opportunities for vocational rehabilitation.11 It is a voluntary scheme aimed at assisting eligible veterans to find or maintain paid employment. The scheme is intended for former members of the Australian Defence Force (ADF) with qualifying service or those about to leave the ADF—the ADF has its own rehabilitation scheme for serving members. The VVRS is separate to other rehabilitation services provided under schemes such as the **Military Rehabilitation and Compensation Act 2004** (the MRCA) and the **Safety Rehabilitation and Compensation Act 1988** (the SRCA) and veterans cannot undertake vocational rehabilitation under the VVRS concurrently with any other vocational rehabilitation program.12

VVRS services include:

• assistance in assessing and updating a veteran’s skills, job-seeking techniques and interview skills
• assistance to increase hours of work in an existing position, or, where the veteran is having difficulty coping, to manage the situation or look at alternative options
• assistance to find suitable employment before the transition from the ADF to civilian workforce and
• skill development, or assistance in gaining recognition for skills, to assist in finding employment.13

**Who is eligible for VVRS services?**

Eligibility for the VVRS is restricted to those who served in the ADF and have one of following service types recognised under the VEA:

• operational
• peacekeeping
• hazardous
• defence service (generally, at least three years full-time service during the period 7 December 1972 to 6 April 1994) and
• British Nuclear Test Defence Service (in certain periods between 1952 and 1965).14

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13. Ibid.
14. These service types are defined under the VEA. See DVA, Military service coverage under the Veterans’ Entitlements Act, Factsheet DP07, DVA, Canberra, 25 February 2013, accessed 16 July 2015.
Commonwealth and allied veterans and allied mariners who are eligible for an Invalidity Service Pension are also eligible to apply for VVRS services.

The VVRS and VEA payments
While the VVRS is not restricted to those with disability, as a rehabilitation service it is targeted at those with impairments that can affect an individual’s ability to find and/or maintain employment. As such, many VVRS participants may also be in receipt of payments from DVA in respect of their impairment, particularly the veterans’ Disability Pension and the Invalidity Service Pension.

Disability Pension
There are four different categories of Disability Pension payment provided under the VEA, each with different origins and purposes. The payments are not payable concurrently and each has a different payment rate. Eligibility for the different rate category is primarily determined by an individual’s level of impairment arising from an injury or illness linked to their military service. The Disability Pension is a compensation payment and is not means tested nor is it considered taxable income (though it may be offset by other compensation payments). The four categories of Disability Pension are:

- general rate: payable in multiples of ten per cent up to 100 per cent (based on the level of assessed impairment resulting from or aggravated by war or certain defence service)\(^{15}\)
- special rate (also known as Totally and Permanently Incapacitated (T&PI)): for those assessed as having a 70 per cent or higher level of impairment (on the general rate scale) due to their service related condition(s) (or who are or have received the general rate in respect of pulmonary tuberculosis) who are also assessed as being totally and permanently incapacitated because of their service related condition and unable to work at least eight hours a week (some veterans with temporary incapacities may be eligible)\(^ {16}\)
- intermediate rate: for those assessed as having a 70 per cent or higher level of impairment (on the general rate scale) due to service related condition(s) (or who are or have received the general rate in respect of pulmonary tuberculosis) who are assessed as able to work for at least 20 hours a week\(^ {17}\)
- extreme disablement rate (EDA) rate: for those aged 65 years or over and who are assessed as eligible for a disability pension at 100 per cent general rate but not eligible to receive a special rate or intermediate rate pension. The level of incapacity from a war or defence caused condition must be considered extreme—assessing both the medical impairment and lifestyle impact of the incapacity (rather than the work test that applies to the special and intermediate rate).\(^ {18}\)

The payment rates for Disability Pension (including the Energy Supplement), as at July 2015 are:

- general rate: ranging from $53.87 per fortnight (ten per cent) to $469.40 per fortnight (100 per cent)
- special rate: $1,320.50 per fortnight
- intermediate rate: $896.40 per fortnight
- EDA rate: $729.30 per fortnight.\(^ {19}\)

Disability Pension and the VVRS
Special rules apply for recipients of a special or intermediate rate Disability Pension who obtain or remain in employment while participating in the VVRS so that they do not automatically lose eligibility for these Disability Pension rates as a result of not meeting the relevant work tests. Under the current rules, a special or intermediate rate recipient participating in the VVRS will have their pension rate gradually reduced over a seven year period until it reaches the 100 per cent general rate if they engage in paid employment of more than eight hours per week. For the first two years their disability pension is paid at 100 per cent of the general rate plus a percentage of the difference between the general rate and the special or intermediate rate which is determined

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17. Ibid.
by the amount of hours worked. Over the following five years, this rate is reduced by five per cent every six months until it is equivalent to the 100 per cent general rate.

A safety net also applies so that if the combined work and pension income of a VVRS participant is less than the participant’s rate of pension prior to them commencing the scheme, the participant can apply to have their pension rate increased so that it equals the rate of pension on commencement in the scheme. This is to ensure that a Disability Pensioner is not financially penalised for participating in the VVRS.\textsuperscript{20}

As the general and EDA rates are not work-tested, an individual in receipt of one of these rates is unaffected by any employment activity and remains eligible for their normal pension payment rate.

\textit{Invalidity Service Pension}

The Service Pension is a means tested income support payment paid under the VEA to veterans on the grounds of age or invalidity, and to eligible partners, widows and widowers. It is similar to the social security Age Pension and Disability Support Pension payments in that very similar income and assets tests apply and the payment rates are the same. An Invalidity Service Pension can be paid at the same time as the Disability Pension if the veteran meets the eligibility requirements (one is an income support payment for those without adequate means while the other payment is a compensation payment).

To be eligible for the Service Pension the veteran must have qualifying service, meet residency requirements, and either be of Service Pension Age (60 for veterans; 65 for partners/widows) or be permanently incapacitated for work.\textsuperscript{21} Permanently incapacitated for work means:

- permanently blind in both eyes or
- in receipt of or eligible for the special rate of Disability Pension or the Special Rate Disability Pension under the MRCA (a separate payment from that paid under the VEA described above) or
- have a disability, including non-service related disability, that permanently prevents work. This is defined as:
  - disability that results in a combined impairment rating of 40 points or more (using the Guide to the Assessment of Rates of Veterans’ Pensions (GARP))
  - the disability is permanent and
  - the incapacity from the disability alone permanently prevents work of more than eight hours per week.\textsuperscript{22}

\textit{Invalidity Service Pension and the VVRS}

As with the Disability Pension, special rules apply to Invalidity Service Pension recipients who participate in the VVRS so that they do not automatically lose eligibility for the payment even though they may no longer meet the work test. VVRS participants remain on their permanent incapacity eligibility for the Invalidity Service Pension for up to seven years. However, as the Service Pension is means tested, employment income is assessed under the income test. VVRS participants will have 50 per cent of their gross earnings from employment taken into account under the income test for the first two years of any employment.\textsuperscript{23} Over the following five years, the amount of gross earnings taken into account increases by five percentage points for every six months.\textsuperscript{24} After seven years participating in the VVRS, the veteran will have their permanent incapacity eligibility reviewed and they may lose eligibility for the Invalidity Service Pension if they are assessed as being able to work in excess of eight hours a week.\textsuperscript{25}

\textbf{Key issues and provisions}

There are two key changes proposed by Schedule 1. The first is to allow intermediate rate Disability Pension recipients participating in the VVRS to have paid employment of up to 20 hours a week disregarded for the purposes of calculating any Disability Pension rate reduction. This aligns the disregarded work income with the work test that applies to intermediate rate pensioners. Currently, intermediate rate Disability Pensioners have

\textsuperscript{20} Explanatory Memorandum, op. cit., p. 2.
\textsuperscript{21} Qualifying service for Service Pension generally means that the veteran has served in operations against the enemy while in danger from hostile forces of the enemy. DVA, \textit{Service pension overview}, Factsheet IS01, DVA, Canberra, 22 July 2015, pp. 1–2, accessed 16 July 2015.
\textsuperscript{22} DVA, \textit{Age/invalidity service pension}, Factsheet IS44, DVA, Canberra, 12 June 2015, accessed 27 July 2015.
\textsuperscript{23} DVA, \textit{Veterans’ Vocational Rehabilitation Scheme}, op. cit., p. 3.
\textsuperscript{24} Ibid.
\textsuperscript{25} Ibid.
any income from paid employment over eight hours a week used in the calculation of their rate reduction, the same as special rate Disability Pensioners. The amendment will mean that an intermediate rate pensioner participating in the VVRS cannot receive a lower rate of Disability Pension than an intermediate rate pensioner who has not participated in the VVRS. It will actually provide a greater financial incentive for intermediate rate pensioners to participate in the VVRS and to find paid employment as a greater number of hours can be worked, and more income earned, before the veteran’s pension rate is reduced.

The second key change is to set the maximum reduction for a special rate Disability Pensioner, who is participating in the VVRS and in paid work of more than eight hours but less than 20 hours a week, to the intermediate rate rather than 100 per cent of the general rate. Special rate Disability Pensioners participating in the VVRS with less than 20 hours of paid work a week will receive a pension rate calculated under the current method (outlined above) or the intermediate rate, whichever is higher. Again, this is aimed at ensuring a special rate pensioner participating in the VVRS and undertaking less than 20 hours of work a week will not receive a lower rate of pension than an intermediate rate pensioner who is not participating in the scheme.26

Both of these key changes are beneficial to intermediate and special rate pensioners participating in the VVRS and will provide an added financial incentive for veterans to engage with the scheme and the workforce.

The other amendments proposed by the Schedule will include specific references in the VEA to medical management and psychosocial services which will be made available through the VVRS from 20 March 2016; and will ensure periods of unemployment of six months or more will be disregarded in determining different periods of employment used in calculating the amount of income assessed under the Invalidity Service Pension income test for participants in the VVRS. This latter amendment refers to the two year initial period of employment in which only 50 per cent of income is assessed under the income test, and the following five year period in which the percentage of assessed income gradually increases. This will ensure that participants in the VVRS will not have prolonged absences from the workforce treated as part of their employment period.

Main provisions

Item 4 inserts new subsection 24(5A) into the VEA so that the rate of Disability Pension for a special rate pensioner participating in the VVRS and engaged in paid work of more than eight hours a week but less than 20 hours a week is set as the higher of either the intermediate rate or the rate worked out using the formula at subsection 24(5) (which refers to the reduced daily pension amount worked out under section 115D). The rate worked out under this formula is 100 per cent of the general rate plus a percentage of the difference between the general rate amount and the special rate (the exact amount depends on the number of hours worked).

Items 12 and 13 amend the definition of work and pension income rate at section 115A of the VEA to differentiate between the work and pension income rates that are worked out for special rate and intermediate rate Disability Pension recipients respectively. The work and pension income rate is worked out for the purposes of the safety net described above to determine whether the veteran’s combined work and income is more or less than what their Disability Pension rate was at the time they started with the VVRS (the safety net, at section 115E, ensures the veteran cannot get less from their combined earnings and reduced pension rate than their pension rate at commencement). Item 13 adds subsection 115A(2) which sets out the formula for working out an intermediate rate pensioner’s work and pension income rate: the number of hours of paid work which exceed 40 hours a fortnight multiplied by the average hourly rate of pay of the pensioner in that fortnight and added to the rate of pension paid to that veteran in that fortnight. Item 13 also adds subsection 115A(3) which sets out the formula for working out a special rate pensioner’s work and pension income rate: the number of hours of paid work which exceed 16 hours a fortnight multiplied by the average hourly rate of pay of the pensioner in that fortnight and added to the rate of pension paid to that veteran in that fortnight.

Item 14 inserts references to the provision of services for the management of medical conditions and psychosocial services under the VVRS at section 115B of the VEA, which provides for the VVRS to be created by legislative instrument. Subsection 115B(5) sets out what the scheme may provide to eligible veterans but does not limit the powers of the Repatriation Commission to provide non-specified services or assistance. While the insertion of new references to medical management of conditions and psychosocial services into the VEA at new paragraphs 115B(5)(da) and (db) is not necessary for the VVRS to provide such services, the amendments will

make clear that such services are available and aligns with the current listing of available services at subsection 115B(5).

**Item 15** repeals subsection 115D(1) and inserts **new subsections 115D(1) and 115(1A)**. Current subsection 115D(1) applies the rate reduction to intermediate and special rate pensioners who are engaged in paid work of eight hours or more per week while participating in the VVRS. The **new subsection 115D(1)** will mean that the method for calculating the Disability Pension rate reduction set out in section 115D will apply to intermediate rate pensioners who are engaged in paid work of 20 hours or more per week as a result of undertaking a vocational rehabilitation program under the VVRS. **New subsection 115(1A)** will mean that the Disability Pension rate reduction will apply to special rate pensioners who are engaged in paid work of eight hours or more per week as a result of undertaking a vocational rehabilitation program under the VVRS. The amendments will mean that the rate reduction provisions will only apply to intermediate rate pensioners participating in the VVRS who are working hours in excess of the current work limit for eligibility for the intermediate rate.

**Item 16** repeals and replaces the definition of *taper amount* in subsection 115D(7). This is a consequential change made as a result of **Item 15** so that the taper rate component of the formula used to calculate the pensioner’s rate reduction (at subsections 115D(2) and (3) of the VEA) accounts for the increased number of hours an intermediate rate pensioner can work before their pension is reduced.

**Item 17** inserts **new subsection 115G(2A)** into the VEA so that periods of six months or more where no paid work is undertaken will not be taken account of in working out the initial two-year period or the subsequent six-month periods over the following five years that are used to determine what proportion of gross income is included in the income test for the Invalidity Service Pension where a veteran is participating in the VVRS. As described above, VVRS participants who undertake paid work have only half of their gross income assessed under the income test for the Invalidity Service Pension for the first two years of work. After those two years, the percentage of income not assessed under the income test decreases by five per cent for every six months of work (after seven years of work all income is assessed). The amendment will mean that where a veteran does not undertake paid work for at least six months, the calculation of the initial two year period and the five year period after that will be paused, and that time not in paid work will be disregarded. For example, if a veteran commenced paid work in January, after undertaking a VVRS rehabilitation program, but then has to stop work in April and is unable to return to work until November, their seven month period not working will be disregarded and they will be treated as having only used up three months of their initial two-year period.

**Schedule 2—Reconsideration and review of determinations**

Schedule 2 will create a single review pathway for original determinations made under the *Military Rehabilitation and Compensation Act 2004* (the MRCA), removing the option for internal reconsideration by the Military Rehabilitation and Compensation Commission (MRCC) and allowing only for review by the Veterans’ Review Board (VRB).

**Background**

The MRCA, which provides compensation and other benefits for current and former members of the Australian Defence Force (ADF) who suffer a service injury or disease (and for the dependents of some deceased members of the ADF), allows claimants to seek a review of certain ‘original determinations’ made under the Act. Original determinations, defined at section 345 of the MRCA are determinations made by the MRCC or the Chief of the Defence Force, usually in relation to eligibility for compensation or the level of compensation payable to a claimant. Currently, there are two pathways open to a claimant for the review of original determinations: an internal reconsideration by another delegate of the MRCC or a review by the VRB. Claimants who are dissatisfied with the reconsideration by the MRCC or the review by the VRB can apply to the Administrative Appeals Tribunal (AAT) for a further review. If a claimant chooses to seek reconsideration by the MRCC they are not able to then seek a review by the VRB.

The two pathways provide different review processes: the Review of Military Compensation Arrangements suggested that the VRB path ‘can be seen as a lengthy and daunting process’ but the MRCC process does not offer legal aid at the AAT. 27 The AAT can award costs to successful claimants who have chosen the MRCC

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reconsideration pathway but not to claimants who pursued the VRB pathway (but claimants who sought review by the VRB can access legal aid where it relates to operational service). Both pathways have different time limits for the lodgement of applications and for subsequent actions.

The Review found that there was broad support to simplify the appeals process by removing the MRCC pathway and directing all appeals to the VRB, as is proposed by Schedule 2. However, the Review recommended that internal reconsideration be retained, but as part of a single pathway. The single appeal pathway would involve internal reconsideration by the MRCC first, then the VRB process, and then the AAT. The Review stated that it believed this single pathway would create a faster and less costly process and the internal reconsideration component was key to achieving these goals: 'The Committee believes that reconsideration by the MRCC should be the first step in the review process. This would help ensure the quality of decisions that are considered by the VRB and reduce VRB workloads and costs'.\(^28\) The Review held that an initial reconsideration by the MRCC, as the first step in the appeals pathway, would align with the review process under the VEA.\(^29\)

**Key issues and provisions**

The Explanatory Memorandum to the Bill claims that the amendments give effect to the Review of Military Compensation Arrangements recommendation for a single appeal process.\(^30\) However, while implementing Recommendation 17.1 of the Review for a single appeal path, the proposed amendments ignore Recommendation 17.2 for internal reconsideration by the MRCC to be the first step in this review process.\(^31\) Instead, the proposed amendments will remove internal reconsideration by the MRCC from the appeals process altogether so that review by the VRB becomes the first tier of the single appeal pathway.

While ex-service organisations are supportive of the move to a single pathway, many have previously stated their support for an internal reconsideration component to be included as part of this appeals process. In their response to the Review of Military Compensation Arrangements, the Returned & Services League stated that it supported an internal review system (subject to the proper resourcing and staffing of the Review Teams) as did the Australian Peacekeeper and Peacemaker Veterans’ Association.\(^32\) In his second reading speech, Assistant Minister for Defence Stuart Robert stated that the changes had ‘very strong support’ from the veteran and ex-service community.\(^33\) It is unclear whether the ex-service organisations changed their position on internal reconsideration during the consultation process undertaken by DVA.

The main issue for the proposed single pathway will be ensuring the VRB review process is not as lengthy or daunting for claimants as the current process is perceived to be. Case management and conferencing may go some way to addressing these issues, as will adequate financial support for the VRB.

**Main provisions**

**Items 1–4** remove references to reconsideration and there being ‘2 possible paths’ in the reconsideration and review process for original determinations made by the MRCC at section 344 of the Military Rehabilitation and Compensation Act 2004 (the MRCA). Section 344 is a simplified outline of the provisions for reconsideration and review of determinations in the MRCA.

**Items 7–8** remove references to a claimant initiating a reconsideration of determinations and the provisions which provide for claimants to request a reconsideration of an original determination made by the MRCC or the Chief of the Defence Force at section 349 of the MRCA.

**Schedule 3—Graves of dependants of members of the Defence Force**

Schedule 3 amends the Defence Act 1903 (the Defence Act) to expand the regulation making power under paragraph 124(1)(qba) to authorise under Regulation 31 of the Defence Force Regulations 1952, the repatriation

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28. Ibid., p. 221.
29. Ibid., p. 238.
33. S Robert, op. cit.
of the remains of eight service dependants buried at Terendak Military Cemetery in Malaysia, if requested to do so by their families.

**Background**

The Terendak Military Cemetery is located within a Malaysian military base, the Terendak Camp, on the coast of the Malacca Straits, approximately 21 kilometres north of Malacca. Terendak Camp was built by the United Kingdom, Australia and New Zealand during 1957–59 to house the 28th Commonwealth Infantry Brigade. The first units moved into the camp in 1959.

Units of the brigade based in Terendak were involved in Borneo during the Indonesian Confrontation from 1963–66 and some casualties from that campaign are buried in the cemetery at Terendak. Some Australian and New Zealand casualties from the Vietnam War were also flown to Terendak and buried there. The remains of 24 Vietnam veterans are buried at Terendak as well as three other Australian servicemen (one who died during the Malayan Emergency and two who died during operational accidents) and eight service dependants. The remains of one other Australian Vietnam veteran are buried in Kranji War Cemetery in Singapore. Terendak Military Cemetery also contains a number of graves of British and Commonwealth troops and their dependants who died during the 28th Commonwealth Infantry Brigade’s occupation of the camp, and a number of service personnel who were moved from outlying cemeteries and reburied in Terendak. The camp was vacated by the Brigade and handed over to the Malaysian Army on 28 March 1970.

Until 21 January 1966, it was Australian Government policy that the remains of service personnel who died in war were to be buried in war cemeteries close to where they died. The families of some soldiers killed in Vietnam prior to the policy change had sought approval to have the remains returned to Australia and some of these families were forced to pay to have the remains repatriated. In announcing the new policy, that the government would provide for the bodies of all servicemen who died overseas to be returned to Australia ‘where this is practicable and if next-of-kin request that this be done’, Acting Minister for Defence, Alan Hulme, stated that the families of those soldiers already killed in Vietnam and who had paid to have their bodies returned to Australia would be reimbursed. The Acting Minister also stated that permission would not be given for those already buried overseas to be returned to Australia.

After a public campaign by the Vietnam Veterans Association of Australia—‘Operation Bring Them Home’—and other ex-service organisations, and long-running negotiations between the Australian and Malaysian governments, the Australian Government announced in May 2015 that it would repatriate the remains of the 25 Australian Vietnam veterans buried overseas, where this was the wish of the deceased’s family. As the Terendak Military Cemetery is difficult to access—within a large Malaysian military base and requiring special permission to visit—the Australian Government also extended the offer to repatriate remains to the families of the other three Australian servicemen and eight service dependants buried there.

**Main issues and provisions**

Currently, paragraph 124(1)(qba) of section 124 of the *Defence Act* provides for the Governor-General to make regulations providing for or in relation to the provision, maintenance and execution of work in connection with the graves of persons who have died while on service as members of the Defence Force or as result of service as members of the Defence Force. Under Regulation 31 of the *Defence Force Regulations 1952*, the Director of

34. DVA, *Terendak*, DVA website, 1 October 2014, accessed 5 August 2015.
38. Ibid.
40. A Hulme (Acting Minister for Defence), *Bodies of servicemen to be returned to Australia*, media release, 21 January 1966, accessed 5 August 2015.
41. Ibid.
43. The Minister for Veterans’ Affairs has administrative responsibility for this paragraph under the Administrative Arrangements Order.
War Graves (the Office of Australian War Graves) may arrange for the repatriation of remains of a member of the Defence Force who has died while on service. However, the section does not provide for regulations to be made in relation to the graves of service dependants.

Items 1–6 of Schedule 3 amend the Defence Act at paragraph 124(1)(qba) to allow for a regulation to be made in relation to the provision, maintenance and execution of work in connection with the graves of dependants of members of the Defence Force on service located in the Terendak Military Cemetery. This will permit a regulation to be made allowing the Office of Australian War Graves to repatriate the remains of these service dependants if requested by their family members.