THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

VETERANS’ AFFAIRS LEGISLATION AMENDMENT (OMNIBUS) BILL 2017

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be Moved on Behalf of the Government

(Circulated by authority of the Minister for Veterans’ Affairs, The Honourable Dan Tehan MP)
OUTLINE AND FINANCIAL IMPACT

Outline

The Supplementary Explanatory Memorandum to the Veterans’ Affairs Legislation Amendment (Omnibus) Bill 2017 (the Bill) provides a description of amendments to the Bill being made subsequent to its introduction.

The proposed amendments as described below would change the form of the original Bill and if agreed to by the Parliament will be incorporated into the version of the Bill that is enacted.

Amendment (1) provides that Schedule 5A commences the day after Royal Assent.

Amendments (2) and (3) remove the provisions to Schedule 1 of the Bill that would have empowered the Principal Member of the Veterans’ Review Board to dismiss an application for review where the case was frivolous, vexatious, misconceived or lacking in substance, had no reasonable prospect of success or was otherwise an abuse of process of the Board. As a consequence, the application provisions in subitem 8(4) of the Bill will also be removed by this amendment.

Amendment (4) amends the Bill to include a revised Schedule 3 to provide the Minister for Veterans’ Affairs with the power to enter into arrangements with foreign countries in relation to the payment of pensions and the provision of assistance and benefits to persons specified in the arrangement.

Amendment (5) amends the definition of “concessional beneficiary” in the National Health Act 1953 to ensure that DVA clients who are eligible for fringe benefits can access discounted pharmaceuticals.

Amendment (6) amends new section 437A of the Military Rehabilitation and Compensation Act 2004 (as inserted by Item 1 of Schedule 6 of the Bill) to clarify the extent to which the powers and functions of the Minister for Veterans’ Affairs may be delegated under that Act.

Amendment (7) amends the heading to reflect the correct name of the Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006. This is a technical amendment.

Amendments (8), (9) and (10) make technical amendments to the various Transitional provisions to reflect the correct name of the Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006.

Financial Impact

Nil impact
Statement of Compatibility with Human Rights

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

VETERANS’ AFFAIRS LEGISLATION AMENDMENT (OMNIBUS) BILL 2017

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

Amendment (1)

Amendment (1) provides that Schedule 5A commences the day after Royal Assent.

Amendment (1) does not engage any of the applicable rights or freedoms.

Amendments (2) and (3)

Amendments (2) and (3) would amend Schedule 1 of the Bill which proposed to make amendments to the Veterans' Entitlements Act 1986 (VEA) relevant to the operation of the Veterans’ Review Board.

The Veterans’ Review Board (the Board) is a statutory authority whose role is to provide independent merits review of decisions made under the VEA and the Military Rehabilitation and Compensation Act 2004 (MRCA).

The amendment removes new subsection 155(8A) of the VEA which would have provided the Principal Member with the power to dismiss an application to the Veterans’ Review Board for the review of a decision if he or she is satisfied that the application is frivolous, vexatious, misconceived or lacking in substance, has no reasonable prospect of success, or is otherwise an abuse of process. The related application provision for this subsection is also removed as it is not required.

Human rights implications

Amendments (2) and (3) do not engage any of the applicable rights or freedoms.

Amendment (4) – Omit and substitute Schedule 3

Amendment (4) repeals and substitutes Schedule 3 of the Bill. That Schedule had repealed and replaced by section 203 of the VEA and the new Schedule modifies the earlier amendments.

Section 203 provides the Minister for Veterans’ Affairs with the power to enter into arrangements with the governments of countries that are or have been Dominions of the Crown. The arrangements allowed for each of the governments as a party to the arrangement, to act as an agent of the other country for the payment of pensions and the
provision of assistance and benefits to eligible veterans or dependants who were resident in that country.

The existing arrangements concern only those payments and benefits which are payable under the VEA.

New Schedule 3 repeals and replaces section 203 so that arrangements may be entered into which may now cover allied veterans and defence force members with service of the type for which benefits and payments including rehabilitation can be provided by the Repatriation Commission or the Military Rehabilitation and Compensation Commission under the VEA, MRCA, Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 or the Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006.

**Human rights implications**

New Schedule 3 does not engage any of the applicable rights or freedoms.

**Amendment (5) – amends subsection 84(1) (subparagraph (c)(ii) of the definition of concessional beneficiary)**

The amendment amends the definition of “concessional beneficiary” in subparagraph 84(1)(c)(ii) of the National Health Act 1953 by referring to a person who is eligible for fringe benefits under section 53A of the VEA.

**Human rights implications**

*Right to health*

The right to health is contained in article 12 of the International Covenant on Economic, Social and Cultural Rights and refers to the “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.

Amendment (5) affirms this right, as it restores DVA clients’ access to discounted pharmaceuticals.

**Conclusion**

Schedule 5A is compatible with human rights because it promotes access to the right to health.

**Amendment (6) – Amend new paragraph 437A(b) of the Military Rehabilitation and Compensation Act 2004 [Item 1 of Schedule 6]**

The amendment would mean that, if the Minister for Veterans’ Affairs decided to delegate any of his or her functions or powers under the MRCA, he or she would be able to delegate them either to a member of the Military Rehabilitation and Compensation Commission, or an SES employee, or acting SES employee, in the Department of Veterans’ Affairs.

**Human rights implications**

Amendment (6) does not engage any of the applicable rights or freedoms.
Amendments (7) – (10) – technical amendments

Amendment (7), (8), (9) and (10) would update the name of an Act from the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* to the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*.

The name was amended by the *Veterans’ Affairs Legislation Amendment (Budget Measures) Act 2017*. That Act amended the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* to provide people already covered under that Act, British Nuclear Test Participants, as well as Australian veterans of the British Commonwealth Occupation Force and civilians present at a nuclear test area during a relevant period with full health coverage for all conditions. These are technical amendments.

**Human rights implications**

Amendments (7) – (10) do not engage any of the applicable rights or freedoms.

**Conclusion**

The amendments are compatible with human rights.
**NOTES ON CLAUSES**

**Amendment (1)** provides that Schedule 5A commences the day after Royal Assent.

**Amendments (2) and (3)** would amend items 6, (7) and 8(4) of Schedule 1 to remove subsection 155(8A) and the related application provision.

**Amendment (4)** omits and replaces Schedule 3 of the *Veterans’ Affairs Legislation Amendment (Omnibus) Bill 2017* (the Bill). New Schedule 3 provides the Minister for Veterans’ Affairs with the power to enter into an “arrangement” with a foreign country for the payment of pensions and the provision of assistance and benefits to persons specified in the arrangement.

The previous Schedule 3 provided the Minister for Veterans’ Affairs with the power to enter into an “agreement” with a foreign country. The use of the term “agreement” could possibly limit and restrict the nature of such an agreement and might prevent the Minister from entering into an instrument of less than treaty status such as a Memorandum of Understanding (MOU) or some other arrangement.

On the basis that some of the potential arrangements may involve only a few persons and be restricted to the provision of treatment some flexibility is required for the form and type of arrangement that may be entered into under new section 203 of the VEA.

**Amendment (5)** would amend the definition of “concessional beneficiary” in subparagraph 84(1)(c)(ii) of the *National Health Act 1953* by referring to a person who is eligible for fringe benefits under section 53A of the VEA.

This ensures that a person who is eligible for fringe benefits under section 53A of the VEA comes within the definition of a concessional beneficiary and therefore is eligible for discounted pharmaceuticals as a holder of a Pensioner Concession Card.

**Amendment (6)** would amend proposed section 437A of the MRCA so that, instead of the Minister for Veterans’ Affairs being able to delegate any of his or her functions or powers under the MRCA to “a person appointed or engaged under the Public Service Act 1999,” the Minister would only be able to delegate any of his or her functions or powers to “an SES employee, or acting SES employee, in the Department.”

This amendment would ensure that the ability of the Minister for Veterans’ Affairs to delegate his or her functions and powers under the MRCA is appropriately limited to very senior staff within the Department of Veterans’ Affairs.

**Amendments (7), (8), (9) and (10)** would update the name of an Act from the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* to the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*. 
The name was amended by the Veterans’ Affairs Legislation Amendment (Budget Measures) Act 2017. That Act amended the Australian Participants in British Nuclear Tests (Treatment) Act 2006 to provide people already covered under that Act, British Nuclear Test Participants, as well as Australian veterans of the British Commonwealth Occupation Force and civilians present at a nuclear test area during a relevant period with full health coverage for all conditions.