

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

**SENATE FOREIGN AFFAIRS, DEFENCE  
AND TRADE  
LEGISLATION COMMITTEE**

**Veterans' Affairs Legislation Amendment  
Bill (No. 1) 2000  
and  
Veterans' Affairs Legislation  
Amendment (Budget Measures) Bill 2000**

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# REPORT

## The Inquiry

### *Reference of the Bills*

1.1 The Veterans' Affairs Legislation Amendment (Budget Measures) Bill 2000 and the Veterans' Affairs Legislation Amendment Bill (No. 1) 2000 were introduced into the House of Representatives on 29 June 2000. Both Bills propose amendments to the *Veterans' Entitlements Act 1986* (the Act). On the same day, the Senate referred the Bills to the Committee for inquiry and report by 28 August 2000. Subsequently, the Senate extended the deadline for presentation of the report to 30 August 2000.

1.2 The purpose of the inquiry was primarily to give veterans and veterans' organisations an opportunity to comment on the Bills so that issues in relation to the Bills, which were raised in the inquiry, could be taken into account during consideration of the Bills in the Senate.

### *Submissions*

1.3 The inquiry was advertised in the *Australian* on Saturday, 15 July 2000 seeking written submissions by 28 July 2000. In addition, the Committee wrote to veterans' organisations to draw their attention to the two Bills and seeking comments on them. The Committee received 16 submissions, details of which are listed in Appendix 1. The submissions were placed on the Internet.

1.4 Overwhelmingly, the submissions focussed on what their authors considered to be omissions from the Bills rather than the actual content of the Bills. The main issue was the omission from the Bills of repatriation benefits for civilian nurses and surgical teams who worked in Vietnam during the Vietnam War as an aid program organised by the Department of External Affairs.

1.5 The Committee considered submissions focussing on omissions if they were related to one of the subjects of the Bills. With regard to entitlements, the Committee considered those that related to South East Asian service during 1955-75, which was the period and geographical area covered by the Mohr report into service entitlement anomalies. The Committee considered that requests for extension of entitlements for service during the Second World War were too far removed from the Bills to give them serious consideration in this inquiry.

### *Hearings and evidence*

1.6 The Committee conducted public hearings on 14 August 2000 in Parliament House, Canberra. Interstate witnesses gave evidence by telephone link-up. Details of witnesses who gave evidence to the Committee are listed in Appendix 2.

### *Acknowledgement*

1.7 The Committee is grateful to, and would like to thank, the organisations and individuals who assisted with its inquiry.

## Veterans' Affairs Legislation Amendment (Budget Measures) Bill 2000

### *Background to the Bill*

1.8 The Bill gives effect to a range of measures announced in the Budget, including initiatives to respond to the findings of the Vietnam Veterans' Health Study and to recognise properly the service of veterans in a number of conflicts and deployments in South East Asia between 1955 and 1975.

1.9 The 1997 study of the mortality rate of Australian males who had served in the Vietnam War (the Vietnam Veterans' Mortality or Veteran Cohort Study) found evidence of 'excess mortality' among veterans compared with the rest of the Australian male population.<sup>1</sup> In response to the findings of this study and to serious concerns by Vietnam veterans that their health and that of their families had been, and was being, affected adversely by service in Vietnam, the Minister for Veterans' Affairs commissioned a review of the health of Vietnam veterans (the Vietnam Veterans' Health or Morbidity Study).<sup>2</sup>

1.10 The Health or Morbidity Study, like the Mortality or Cohort Study, was conducted by the Repatriation Commission. It took the form of a self-reported health survey of all Vietnam veterans who could be located, their partner(s) and children. The response rate to the survey was 80.1 per cent.<sup>3</sup> Initial analysis of the survey data revealed higher rates of cancer and psychiatric disorder among Vietnam veterans than in the general community. Survey findings pointed also to higher incidences of cancer, genetic abnormality, accidental death and suicide in the children of Vietnam veterans.<sup>4</sup> The study recommended that the data obtained relating to the following three conditions in male veterans be validated 'as a matter of urgency': all cancers (with the exception of non-melanotic skin cancers); motor neurone disease; and multiple sclerosis. The authors of the report called also for urgent validation to identify more accurately the incidence in veterans' children of congenital abnormalities, higher mortality rates and increased incidences of leukaemia, Wilms' tumour and cancer of the nervous system.<sup>5</sup>

1.11 Accordingly, a validation study (the Validation Study) was undertaken for this purpose by the Australian Institute of Health and Welfare. It reported in November 1999 and concluded, *inter alia*, that the incidence of melanoma of the skin and prostate cancer was significantly higher in male Vietnam veterans than in Australia generally; that the children of veterans were much more likely to commit suicide or to die accidentally or through illness than other Australian children; and that the incidence of spina bifida maxima, cleft lip and

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1 Department of Veterans' Affairs (DVA), *Mortality of Vietnam Veterans: The Veteran Cohort Study*, DVA, Canberra, 1997, p. 13.

2 Department of Veterans' Affairs, *Morbidity of Vietnam Veterans: A Study of the Health of Australia's Vietnam Veteran Community: Volume 1: Male Vietnam Veterans Survey and Community Comparison Outcomes*, DVA, Canberra, 1998; *Volume 2: Female Vietnam Veterans Survey and Community Comparison Outcomes*, DVA, Canberra, 1998. The reports were published in April and December 1998 respectively.

3 *ibid.*, vol 1, p. 23.

4 *ibid.*, pp. 40–47, 31–32, 63–64, 64–65.

5 *ibid.*, pp. 10, 11.

cleft palate was higher among veterans' children.<sup>6</sup> The findings of these studies emphasised the continuing and, in many instances, urgent need to address the suffering, both physical and mental, of veterans, their present and former partner(s) and families.

1.12 Preliminary data in the Validation Study also suggested a higher incidence of motor neurone disease and multiple sclerosis. The Minister for Veterans Affairs submitted that should final data, available later in the year 2000, confirm this higher incidence, the Government would 'respond quickly with appropriate assistance'.<sup>7</sup> In evidence, Mr Campbell, the Deputy President, Repatriation Commission, confirmed that such assistance would take the form of additional medical services and care, rather than a pension, as the latter required a scientific medical basis for causation, which is difficult to prove.<sup>8</sup>

1.13 In evidence, the Committee was told that assistance for children of veterans with spina bifida, cleft lip and cleft palate would be provided by the Department of Health and Aged Care, which has been appropriated funds of \$2.8 million over four years 'to make a grant scheme of assistance for their health'.<sup>9</sup> Approximately 50 children with spina bifida and 65 with cleft lip and palate are involved in this scheme. These funds are in addition to assistance for medical services through Medicare. The exact nature of this additional assistance is still being discussed between the Minister for Veterans' Affairs and the Minister for Health and Aged Care.

1.14 In May 1999, following representations from veterans' organisations, the Minister for Veterans' Affairs appointed Major General the Hon R. F. Mohr to conduct a review of possible anomalies in the service entitlements of Australian Defence Force members who had served in South-East Asia between 1955 and 1975. Major General Mohr was asked also to advise on the eligibility for repatriation benefits and service medals of these individuals. 'The Mohr Report',<sup>10</sup> which was presented to the Minister for Veterans' Affairs in February 2000, contained recommendations for reform in keeping with the Government's commitment 'to ensuring veterans received proper recognition for their service to the nation in times of war and conflict'.<sup>11</sup>

1.15 In the Bill, as well as responding to the major physical and mental health exigencies identified by the veterans' health studies, and seeking to address the question of service entitlement anomalies, the Government has attempted to ensure fairer treatment for the recipients of Department of Veterans' Affairs pensions, whose partners receive ABSTUDY payments. It has set out also to align calculation and payment arrangements for certain pensions and allowances, such as the disability pension and the war widow's pension, with those governing the service pension and other income support payments.

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6 Australian Institute of Health and Welfare (AIHW), *Morbidity of Vietnam Veterans: A Study of the Health of Australia's Vietnam Veteran Community: Volume 3: Validation Study*, AIHW, Canberra, 1999, p. xvi.

7 Submission no. 14, p. 1.

8 *Committee Hansard*, p. 24.

9 *Committee Hansard*, p. 25.

10 *Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955-75* (Major General the Hon R F Mohr), Defence Publishing Service, Canberra, 2000.

11 The Hon Bruce Scott, MP, Minister for Veterans' Affairs, Media Release, 9 May 2000.

### *The Provision of Treatment*

1.16 Schedule 1 of the Bill proposes amendments to the Act to ‘extend access to psychiatric assessment and counselling services to certain dependants and former dependants of Vietnam veterans.’<sup>12</sup> In his submission to the Committee, the Minister for Veterans’ Affairs advised that:

While partners and dependent children currently have access to the Vietnam Veterans Counselling Service, proposed legislative changes provide the following expansion of access:

- psychiatric assessments to partners and former partners of Vietnam veterans;
- psychiatric assessments to children and former children of Vietnam veterans, up to their 36<sup>th</sup> birthday;
- counselling through the Vietnam Veterans Counselling Service to former-partners;
- counselling through the Vietnam Veterans Counselling Service to children and former children up to their 36<sup>th</sup> birthday.

The limitation of services to children up to their 36<sup>th</sup> birthday is based on the National Suicide Prevention Strategy data that identifies children between 25 and 35 as most at risk of suicidal and self-harming behaviours. Vietnam veterans’ children as a group are primarily at present in the 22-27 age group with less than 1% over 35 years. A former child includes a child who was a member of the veteran’s household during a step relationship or other dependency that subsequently ceased.

### *The Veterans’ Children Education Scheme (VCES)*

1.17 These amendments in Schedule 2 of the Bill will extend access to the VCES to certain children and former children of Vietnam veterans who would otherwise be ineligible for the Scheme, specifically a child who is identified as being at risk of suicide. The Minister submitted that:

Recognising the correlation between a higher education and a lower risk of self-harm or suicide, an initiative is the expansion of access to the Veterans Children Education Scheme (VCES) to include children and former children of Vietnam veterans who are vulnerable to self harm and suicide. The intention is that this may assist in reducing vulnerability to self-harm or suicide by providing all possible assistance and encouragement for the child to achieve his/her full potential in education or career training. VCES benefits will continue even if the vulnerability to self-harm or suicide diminishes. This new group of eligible children will be identified through specific criteria that will be set out in a disallowable Determination.

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12 *Explanatory memorandum*, p. 1.

### *The Income Test and ABSTUDY Payments*

1.18 The Minister for Veterans' Affairs submitted that the proposed amendments concerning the income test treatment of payments under the ABSTUDY Scheme relate to two issues: 'the first is that ABSTUDY payments will not be assessed as income when assessing a partner's income support payment. The second is that recipients of an ABSTUDY living allowance will be formally excluded from receiving any income support payment under the Veterans' Entitlements Act 1986 ...'.<sup>13</sup> The Minister further submitted that:

The effect of these changes is that ABSTUDY payments will be regarded in much the same way that AUSTUDY and Youth Allowance payments paid by Centrelink are currently treated for income support purposes. Similar changes are being made to social security law.

The rules of the ABSTUDY Scheme preclude a dual payment of a living allowance under the Scheme and income support under the VEA. We have identified no-one who is receiving both payments. The introduction of legislation to preclude the dual payment will formalise the current administrative arrangement and align the provisions with those applying to other education Schemes.

The exclusion of payments under the ABSTUDY Scheme from the calculation of the couple's income removes an anomaly that could, if not corrected, cause a disadvantage to a pensioner partner by including in the couple's income the amount of their partner's ABSTUDY income tested living allowance. We have identified no case where a person is actually suffering this disadvantage at the present time. This is a pro-active amendment that will ensure no-one is disadvantaged in the future.

### *South East Asian Service Entitlement Anomalies 1955—1975*

1.19 In Schedule 4 of the Bill, the Government has responded to the Mohr Report,<sup>14</sup> by extending the range of repatriation benefits available to those who served in South East Asia between 1955 and 1975. In addition, a further 43,000 medals will be awarded for that service.

1.20 Two criteria are to govern eligibility for these benefits: 'operational service' and 'qualifying service'. The former is post-Second World War service entitling a veteran with any disease or injury resulting from that service to claim compensation in the form of treatment and/or a pension. Additional repatriation benefits, principally an income and assets tested service pension, will be available to Australian Defence Force personnel with 'qualifying service' (post-Second World War service in an operational sphere defined in the Act or determined by the Minister for Defence as being 'warlike'). The amendments are aimed at aligning service in South East Asia with the objective criteria employed in determining if the service was 'warlike' or 'non-warlike'.

1.21 In summary, over 2,600 veterans of several conflicts, such as the Malayan Emergency and the Indonesian Confrontation, have been granted 'qualifying service' status i.e. eligibility for full repatriation benefits, including the service pension. An additional 1,500 veterans are eligible, under the rubric of 'operational service', to apply for a disability

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13 Submission no. 14, p. 4.

14 *Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955–75*, op. cit.

pension by virtue of their service during the Malaysian and Indonesian conflicts aboard *HMAS Sydney*, *HMAS Vampire*, *HMAS Parramatta* and *HMAS Yarra*.<sup>15</sup>

1.22 The Committee received submissions seeking to have what their authors regarded as omissions from these additional entitlements added to them. Most submissions focussed on the omission of civilian nurses and surgical teams operating in Vietnam during the Vietnam war. This matter is considered by the Committee later in this report.

1.23 Mr John Bell submitted that medals should be issued to ADF members who volunteered to join the ADF or who were conscripted during the Vietnam War, but who did not serve in Vietnam. He drew a distinction between those who enlisted specifically as a result of the Vietnam War or were conscripted and those who were career members of the ADF. In amplification of his submission, he told the Committee:

I am in no way decrying the service for which medals have been issued. It is my stance that the defence of this country depends on people being willing to throw their hat into the ring on the say-so of the Prime Minister when he or the government determines that a threat to national security exists. At times like that, the people who do throw their hat into the ring knowingly face a substantial risk of serving in war. They may not be sure what that risk is, they may have no idea whether the problem is going to escalate, but once the Prime Minister has determined that a threat exists, I believe it is the duty of Australians to volunteer for military service or to accept conscription notices. So I think those people are more deserving of recognition than people who join the military as a career choice and who serve only in peacetime duties, whether it be in Australia, in Australian territories or elsewhere. I also believe that those who enlist indicate a willingness to fight for the nation, whereas those who remain civilians, unless they are required because of their occupation to remain civilians, do not indicate their willingness.<sup>16</sup>

1.24 Mr Bell also said:

I think some recognition is warranted. I think it is unfortunate that the anomaly has crept in as a result of the implementation of the CIDA report; that in fact peacetime service has been recognised on Australian soil, civilian service in wartime has been recognised on Australian soil, but that those who actually enlisted for the Vietnam War—and I and many others can relate stories of the work we put in actually directly supporting troops or moving equipment, et cetera, in relation to Vietnam—have remained unrecognised.<sup>17</sup>

1.25 The committee considered the arguments put by Mr Bell in support of his claim for recognition of his service in Australia during the Vietnam War in light of his enlistment for the ADF in response to Australia's involvement in the War.

1.26 The Committee remained unconvinced that a distinction could be made between normal career enlistment in the ADF and enlistment or conscription in response to ADF war service overseas. In the 1950s and 1960s, the ADF served overseas in Korea, Malaya, Borneo and then in Vietnam. All members of the ADF who enlisted during those two decades would

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15 A detailed list of the categories of entitlement can be found in the *Explanatory Memorandum*, pp. 9–10.

16 *Committee Hansard*, p. 13.

17 *Committee Hansard*, p. 13.

have done so in the expectation that they were likely to serve in combat areas and, in that respect, they did not differ from people who enlisted specifically to serve their country during the Vietnam War.

1.27 The Committee also does not believe that service in Australia during the Vietnam War for members of the ADF, whatever their reason for enlistment, justifies special recognition by way of a medal. They shared neither the hardships, risks nor the continuing medical problems of those, and their families, who did serve in Vietnam. Undoubtedly, those who remained in Australia made a significant contribution to the war effort and provided support for their colleagues overseas. It is also unfortunate that some members of the ADF, who wanted to serve in Vietnam, were denied the opportunity to do so.

#### *Civilian Nurses and Surgical Teams in Vietnam*

1.28 As part of its SEATO Aid Program, and at the request of the Republic of Vietnam, the Australian Government committed civilian and surgical medical teams to South Vietnam between 1964 and 1972. The teams comprised some 450 individuals (about 120 nurses and approximately 330 doctors, radiographers and other medical personnel). They served in four locations: Long Xuyen, the capital of An Giang Province (October 1964 until the end of 1969); Bien Hoa, the capital of Bien Hoa Province (January 1966 to late December 1972); Vung Tau, where the Australian Task Force was based (between November 1966 and June 1969); and Ba Ria (the capital of Phuoc Tuy Province (October 1968 to April 1969). The teams were charged with providing general medical and surgical treatment to the population of South Vietnam; instructing South Vietnamese medical and paramedical personnel in new techniques and procedures; and engendering goodwill among the local population by treating anyone admitted to a hospital, including enemy servicemen.

1.29 In his report on South East Asian service entitlement anomalies between 1955 and 1975, Major General Mohr recommended 'that Australian Civilian Surgical and Medical Teams operating in Vietnam during the Vietnam War be deemed as performing qualifying service for repatriation benefits'.<sup>18</sup>

1.30 The Commonwealth Government did not implement this recommendation, despite the civilian nurses' argument, on behalf of all team members, to the Mohr Inquiry that they should be eligible for full benefits on three grounds: they assisted the Australian Defence Force (ADF) in wartime. In doing so, they provided assistance to, and served with, an allied country (principally the USA); and they 'incurred danger' from hostile enemy forces during hostilities. Assistance to the ADF was both direct (for example, service in Australian military hospitals), and indirect. (For instance, the teams' medical work made it possible for South Vietnamese doctors and nurses to concentrate on their own duties in military hospitals, while nurses' humanitarian activity in orphanages and POW camps improved relations with the local population.) Their active service with the United States forces on MEDCAP (the Medical Civil Action Program) and their contribution to American military hospitals constituted service with an allied nation which, according to the nurses, was acknowledged

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18 *Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955-75*, op. cit., p. xxiv.

also by their USAID (United States Agency for International Development) identification and ration cards. Both of these activities exposed them to risk.<sup>19</sup>

1.31 The nurses argued also that they assisted the allied war effort by working ‘to establish mutual goodwill—to establish a relationship of confidence and trust with the local people’,<sup>20</sup> a policy prescribed by the then Department of External Affairs, which administered the civilian medical program. In support of their case, the civilian nurses pointed also to the physical and mental health problems that have been, and are being, experienced by team members, some of whom have already died from recognised Vietnam War related conditions. They also pointed out that many team members suffer from diseases which the Department of Veterans’ Affairs has acknowledged as providing eligibility for repatriation benefits.<sup>21</sup>

1.32 The nurses have contended that by incurring danger from the hostile forces of the enemy during hostilities, they performed ‘qualifying service’ as defined in subsection 7A (1) (a) of the *Veterans’ Entitlements’ Act 1986* (VEA 1986), and are therefore eligible for repatriation benefits. There can be no question that the teams were exposed to danger, but the words “incurred danger”, described by the Federal Court as constituting an ‘objective’ rather than a ‘subjective’ test, were accepted as being applicable to members of the Australian Defence Force only. Mr Peter Reece, Head, Compensation Division, Department of Veterans’ Affairs, told the Committee:

We would not dispute any of the evidence contained in their submissions. The critical test at the end of the day is not where they were or what that did or the risk that they involved; it is whether they were under the command of the ADF—that is the law.<sup>22</sup>

1.33 During the hearing, the Committee asked officers from the Department of Veterans’ Affairs to review the evidence given to the Committee by nurses earlier that day. As a result, the Minister for Veterans’ Affairs wrote to the Committee, saying:

My Department advises me that the transcript of the oral evidence presented by witnesses on behalf of the medical teams is consistent with their written submissions. There is no new information which is sufficient to change the Government’s position, that Australian civilians can only be considered for coverage by the VE Act where it can be shown they were serving under the direct control of the Australian Military. While it is asserted that such service was in fact provided, no detailed evidence has been provided that would even satisfy the favourable evidentiary onus in the VE Act. It is for this reason the Government has consistently said that, should anyone be able to claim such a connection, any claim for coverage by the VE Act would be seriously investigated.

There is therefore nothing in the evidence to suggest that the Government’s position needs to be considered further. The Government will therefore not support any amendment along the lines you have foreshadowed.

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19 Submission no. 5, pp. 4–20.

20 Department of External Affairs, *Administrative Arrangements and Guidance Notes for Australian Surgical Teams*, November 1968, quoted in submission no. 5, p. 4.

21 Submission no. 5, p. 25.

22 *Committee Hansard*, p. 15.

1.34 The civilian nurses and surgical teams undeniably made a significant contribution to medical services in those areas of Vietnam in which they served. They did so, however, as an aid program under the administrative control of the Department of External Affairs. They were not under the control of the ADF. Nevertheless, if any member of the civilian medical teams served under the control of the ADF (such as in an Australian field hospital), even for short periods, that person may be eligible for benefits under the Act. Accordingly, the Committee does not believe that any amendment to this area of the Bill is warranted.

#### *The Calculation of Payment of Pensions and Allowances*

1.35 The amendments in Schedule 5 of the Bill will:

change the way grants of and variations to disability and war widows' pensions and attendant allowance, recreational transport allowance, decoration allowance and clothing allowance are calculated for payment. When there is a grant or variation to the rate of pension or allowance rate, the adjustment will be payable from the date of that change. The current system is payday based, under which the amount of disability pension and allowance paid is whatever rate was payable on the day of the payday. The new arrangements will pay the person's actual entitlements accrued over a pension period.<sup>23</sup>

1.36 The Minister for Veterans' Affairs explained that 'when there is a grant or variation to the rate of pension or allowance rate, the adjustment will be payable from the date of that change. The current system is payday based, under which the amount of disability pension and allowance paid is whatever rate was payable on the day of the payday. The new arrangements will pay the person's actual entitlements accrued over a pension period'.<sup>24</sup>

### **Veterans' Affairs Legislation Amendment Bill (No. 1) 2000**

#### *Background to the Bill*

1.37 The Bill 'comprises various measures effecting minor policy changes that enhance operation efficiency, reflect changes in the environment within which services are now delivered, complete consequential amendments, and offer flexibility in making certain applications. Other amendments are best described as legislative housekeeping'.<sup>25</sup>

1.38 The amendments derive also from the Government's decision, following the Black Hawk helicopter accident on 12 June 1996, to increase the benefits available under the Military Compensation Scheme.

#### *The Military Compensation Scheme (MCS)*

1.39 Schedule 1, Part 1 of the Bill contains amendments which incorporate new MCS arrangements into the Act. These changes involve an increase in benefits to Australian Defence Force members who have been severely injured as a result of their service, and to the dependants of those members who have died in compensable circumstances. The MCS, introduced in 1994, provides for compensation to ADF members through the *Safety*

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23 Submission no. 14.

24 Submission no. 14, p. 7.

25 Minister for Veterans' Affairs, submission no. 15.

*Rehabilitation and Compensation Act 1988*, the *Veterans' Entitlements Act 1986* and by means of dual eligibility under both of these Acts. More particularly, it makes possible the payment of an additional lump sum to ADF members who are severely injured while serving and for an additional lump sum payment to the surviving spouse of an ADF member who is killed in compensable circumstances. The amendments will also allow the children of ADF members severely injured or killed in compensable circumstances access to the Veterans' Children Education Scheme.<sup>26</sup>

#### *The Repatriation Medical Authority (RMA)*

1.40 These amendments to the Act (Schedule 1, Part 2 of the Bill) give effect to the recommendations of the Pearce Report<sup>27</sup> relating to the RMA's power to conduct formal reviews of Statements of Principles (SOPs). The RMA's role is to determine whether or not sound medical-scientific evidence exists to link particular kinds of injury, disease or death with war or defence service, and to establish the causal links existing in legally binding SOPs (the medical content of the latter bind decision makers at all levels, including the Repatriation Commission and the Veterans' Review Board). Henceforth, an individual requesting a formal review of an SOP must state the reasons for that review and refer to evidence that he or she perceives was not used by the RMA. The Chair of the RMA will be empowered to refuse to undertake a review if he or she considers that a request is not supported by reference to relevant evidence or is otherwise frivolous or vexatious. The RMA will be entitled to consolidate more than one request for a review instead of having to undertake multiple reviews where it receives more than one request concerning the same condition.<sup>28</sup>

#### *Travelling Expenses*

1.41 Schedule 1, Part 3 of the Bill contains amendments that will allow the Repatriation Commission greater flexibility in granting veterans' claims for travelling expenses where such travel is undertaken to obtain medical treatment or services, and where the Commission is satisfied that the delay in submitting a claim is due to exceptional circumstances. The Commission will be empowered to accept the claim, notwithstanding the fact that it has been submitted after the three month time limit has expired i.e. more than three months after the completion of the travel. The case of a veteran who is required to undergo prolonged medical treatment in an institution and is therefore unable to attend to personal business within the three monthly period is a case in point.<sup>29</sup>

#### *Bereavement Payments*

1.42 According to the Minister for Veterans' Affairs, these amendments under Schedule 1, Part 4 of the Bill:

will indemnify financial institutions against any action, claim or demand in respect of money paid to the surviving partner from the deceased pensioner's account, where that money forms part of the bereavement payment to the surviving partner.

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26 *Explanatory Memorandum*, pp. 1–3.

27 Pearce, op. cit.

28 *ibid.*, pp. 5–8.

29 *ibid.*, p. 10.

The amendment will make the process simpler for bereaved partners, give them quicker access to that part of their bereavement payment and will ensure that financial institutions are given appropriate protection when they release money to the bereaved partner at the request of the department of Veterans' Affairs.<sup>30</sup>

### *The Veterans' Review Board (VRB)*

1.43 The Minister for Veterans' Affairs submitted that:

The changes to the Veterans' Review Board (the Board) in this Bill relate to operational arrangements and do not change the functions or duties of the Board.

The changes will allow an additional configuration of the Board for the exercise of its powers. The Principal Member and a Senior Member, in addition to a Services member, will be able to constitute the Board. Existing configurations include either the Principal member or the Senior Member, but not both.

A 'slip rule' is being introduced to correct an obvious error in a decision or reasons for decision. This is a simple, common sense solution that is available to other administrative review bodies.<sup>31</sup>

### *Powers of Delegation*

1.44 Schedule 1, Part 6 of the Bill contains amendments that will enable the Secretary of the Department of Veterans' Affairs and the Repatriation Commission to delegate, where necessary, relevant powers to people employed outside of the Commonwealth Public Service. This change reflects the Department's move away from being a provider to a purchaser of services. In his submission, the Minister submitted that:

An example where extended delegations would be appropriate is for contracted allied health professionals, such as occupational therapist, to approve the supply of rehabilitation aids under the Rehabilitation Aids Program.

...

Implementation of the new Veterans, Home Care initiative, announced in the last Budget, would similarly be facilitated by use of extended delegations for these contracted to broker services.<sup>32</sup>

1.45 During the hearings, the Committee was told that a 'significant' number of people would be delegated powers under this amendment. All delegations would have to be authorised personally by the President of the Commission (who is also the Secretary of the Department).

### *The Provision of Special Assistance*

1.46 The amendment (Schedule 1, Part 7 of the Bill) will ensure special assistance provided under section 106 of the Act, that has the characteristics of the pensions, allowances

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30 Minister for Veterans' Affairs, submission no. 15.

31 Minister for Veterans' Affairs, submission no. 15.

32 Minister for Veterans' Affairs, submission no. 15.

or benefits provided under the Act, is funded from the Consolidated Revenue Fund.<sup>33</sup> This is a technical amendment to restore a former link between provision of benefit and funding. Mr Reece told the Committee that there are only one or two cases of such emergency relief a year.<sup>34</sup>

#### *The Divestment of Hospitals and other Institutions*

1.47 The amendments contained in Schedule 1, Part 8 of the Bill will remove from the Act outdated references to hospitals, such as Repatriation General Hospitals, and other institutions, which are no longer owned and operated by the Repatriation Commission.<sup>35</sup>

#### *Improvements in the Provision of Treatment: 'Prior Approval'*

1.48 Prior approval for treatment was considered manageable when most treatment was provided by the Commission's hospitals and other institutions. With treatment now outsourced, the Commission is incrementally removing the need for prior approval. The amendments in Schedule 1 Part 9 of the Bill are an increment in that continuing process.<sup>36</sup>

#### *Compensation Measures and A New Taxation System*

1.49 These amendments to the Act (Schedule 1, Part 10 of the Bill) have been introduced as a consequence of the *A New Tax System (Compensation Measures Legislation Amendment) Act 1999*. Under the terms of the latter, and as part of the Government's Tax Reform Package, pension rates rose by 4% from 1 July 2000 to compensate for the effects of the Goods and Services Tax (GST). This increase in pensions and allowances, payable to veterans and their dependants, takes the form of a pension supplement that is added to an individual's maximum basic rate of pension. Sections 45UF, 45UH and 45UI of the Act assist in calculating the amount of pension bonus that is payable to a person. Among the factors considered in calculating the amount of pension bonus payable to an individual is his or her basic rate of pension at the time it is granted. The amendments will ensure that the 4% pension supplement is included when determining an individual's basic rate of pension.

1.50 The amendments also introduce a reform concerning the farmers' income test for the Retirement Assistance for Farmers Scheme. Eligibility for the Scheme is limited to farmers whose income over the three years prior to the transfer of the farm, is less than their maximum basic entitlement for the service pension for the same period. These amendments will ensure that, in calculating a farmer's maximum basic entitlement, the 4% pension supplement is included as part of that calculation. The amendments will help also to ensure that amounts reimbursed by the Department of Veterans' Affairs for medical reports employed in pension claims will increase to compensate for the higher costs of such reports likely to follow the introduction of the GST.<sup>37</sup>

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33 *Explanatory Memorandum*, p. 20.

34 *Committee Hansard*, p. 23.

35 *Explanatory Memorandum*, p. 22. See also submission no. 15 and *Committee Hansard*, pp. 23-24.

36 *Explanatory memorandum*, pp. 25-27 and submission no. 15.

37 *ibid.*, pp. 28-29.

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*Defence Service Homes Act 1918*

1.51 The Act provides for assistance to eligible veterans, other individuals and members of the Australian Defence Force in purchasing a home, specifically the payment of a subsidy on the interest rate on loans granted under the Defence Service Homes Scheme. Since the Westpac Banking Corporation's purchase of the Scheme in 1988, the subsidy has been paid exclusively to the Corporation. In 1999, a new form of subsidised advance was introduced—a Home Support Advance of up to \$10,000 which is designed to assist eligible individuals with home maintenance, modification and repair costs. Home Support Advances can be made to those with an outstanding loan balance of less than \$10,000 under the existing Defence Service Homes Scheme who are unable to obtain a current loan under the Scheme for the required purpose; and to individuals outside the present Defence Service Homes Scheme, such as certain categories of members of the Australian Defence Force, Peacekeeping Force members and widows and widowers of veterans.

1.52 The provision of subsidised Home Support Advances to individuals who are ineligible under the existing Defence Service Homes Scheme has necessitated the creation of alternative loan provider arrangements, following the failure of the Commonwealth and Westpac to reach agreement on the terms that will govern the provision of Home Support Advances.

1.53 These amendments to the *Defence Service Homes Act 1918* (Schedule 2 of the Bill) will remove references to Westpac as the sole provider of Home Support Advances, and make it possible for Home Support Advances to be made by a credit provider other than Westpac, which will continue to administer the Defence Service Homes Scheme.<sup>38</sup>

**Recommendation**

The Committee reports to the Senate that it has considered the provisions of the Veterans' Affairs Legislation Amendment (Budget Measures) Bill 2000 and the Veterans' Affairs Legislation Amendment Bill (No. 1) 2000 and recommends that the Bills proceed.

Senator Sandy Macdonald  
(Chairman)

August 2000



# DISSENTING REPORT

## SENATOR CHRIS SCHACHT AND SENATOR JOHN HOGG

Under the *Veterans' Entitlements Act 1986*, the civilian nurses and surgical teams, who served in Vietnam between 1964 and 1972 as part of Australia's SEATO aid program, are not entitled to benefits under that Act, unless they happened to serve at any time in an ADF field hospital which, according to nurses' representatives in evidence to the Committee, some did.

The nurses and surgical units were under the administrative control of the Department of External Affairs in Vietnam, although they were under South Vietnamese or USAID operational control. They treated South Vietnamese, North Vietnamese and Vietcong soldiers as well as civilians in Vietnamese hospitals. They were often in danger and were advised on arrival in Vietnam that they had a large price on their heads. Apart from that advice, they received virtually no pre-service briefing and were offered no post-service counselling, despite the traumatic conditions under which they operated. Although accommodation was provided, they only received an allowance of nine dollars a day while in Vietnam. They were allowed one week's leave after six months and, according to Ms Dorothy Angell, 'It was very rare for us to have a day off'. It appears from the evidence given by the nurses that the Department of External Affairs, which organised this aid program, were somewhat off-hand in their approach to these medical teams by not giving them the support they deserved.

Undoubtedly, the nurses and surgical teams operated in Vietnam in harsh and often under warlike conditions in which they were often placed in danger. They treated the wounds of both allied and enemy troops as well as the civilian population. As Ms Angell said in evidence: 'We saw some pretty horrific sights. Nothing, absolutely nothing, can prepare anybody for that sort of situation—you have to learn to cope as you go along. It is well documented from all wars that nothing prepares you for what happens in war.' In other words, they were operating under conditions that many of their service medical colleagues were experiencing in Vietnam. Their service in Vietnam was recognised with the award of the Australian Active Service Medal. They have also suffered medical conditions similar to members of the ADF in Vietnam.

In 1999, the civilian nurses and surgical teams put their case for repatriation entitlements to Mr Justice Mohr's review of service entitlement anomalies in respect of South East Asian service 1955-75. In his report dated February 2000, Mr Justice Mohr recommended that they 'be deemed as performing qualifying service of repatriation benefits'. However, the Government did not accept this recommendation and has not extended repatriation benefits to the nurses and surgical units in this proposed legislation.

The Government used the technicality that the nurses and surgical units were not under the control of the ADF, a current prerequisite in the Act, to reject Mr Justice Mohr's recommendation. Although we support the general principle that the Act is for servicemen and women, it is within the authority of government to amend the legislation to provide an exemption where there are compelling reasons to do so. We believe that this is such a case.

These civilian nurses and surgical teams were sent to Vietnam by the Australian Government. They operated in a warlike zone and were often placed in a dangerous environment. They worked for long hours in difficult conditions treating war wounds of allied and enemy soldiers. Although civilians, their service was similar to that of service medical staff. Yet the fact that they were under the administrative control of the Department of External Affairs and the operational control of the South Vietnamese Government and not the ADF prevents them from obtaining the benefits that are available to service medical teams who served in Vietnam.

Members of the civilian nurses and surgical teams are suffering medical conditions similar to those experienced by Australian servicemen and women who served in Vietnam. It is in our view anomalous that they cannot access the repatriation benefits available to those servicemen and women.

**We therefore recommend that the Veterans' Affairs Legislation Amendment (Budget Measures) Bill 2000 be amended to enable the civilian nurses and members of civilian surgical teams, who served in Vietnam between 1962 and 1972, be deemed as performing qualifying service for repatriation benefits.**



**Senator Chris Schacht**



**Senator John Hogg**

## **ADDITIONAL COMMENT**

### **SENATOR ANDREW BARTLETT, AUSTRALIAN DEMOCRATS**

I welcome the improvements which the government has put forward through these Bills. However, whilst supporting the content of the Bills, I am still reserving the right to move amendments or support amendments which may be moved by others.

A handwritten signature in black ink that reads "Andrew Bartlett". The signature is written in a cursive style with a large, prominent initial 'A' and a long horizontal stroke at the end.

Senator Andrew Bartlett

Australian Democrats (Qld)

## APPENDIX 1

### SUBMISSIONS

1. Australian Nuclear Veterans' Association, National President, Mr Rick Johnstone
2. Mr S Lyons
3. Vietnam Veterans Association of Australia, Noble Park Sub-Branch, Mr John Meehan, Welfare and Pensions Officer
- 3A. Vietnam Veterans Association of Australia, Noble Park Sub-Branch, Mr John Meehan, Welfare and Pensions Officer
4. Mr John Bell
- 4A. Mr John Bell
5. Civilian Nurses, Australian Surgical Teams, Vietnam (1964—1972), Ms Dorothy Angell, President
6. Mr Tim Holding MP, Member for Springvale
7. Australia Nursing Federation, Ms Debbie Richards, Federal Industrial Officer
8. Royal Australian Army Service Corps, Mr Paul Curran, Secretary/Editor/Welfare/Pensions Officer
9. Ms Aileen Monck, AO
10. Ms Maureen Spicer
11. Mr Richard Papworth
12. Ms Elizabeth Schofield
13. Mrs Janice Mills
14. Mr Bruce Scott, MP, Minister for Veterans' Affairs
15. Mr Bruce Scott, MP, Minister for Veterans' Affairs
16. Mr Bruce Scott, MP, Minister for Veterans' Affairs

## **PAPPENDIX 2**

### **WITNESSES**

#### **Canberra—Monday 14 August 2000**

Civilian Nurses, Australian Surgical Teams, Vietnam (1964–1972)

Ms Dorothy Angell, President

Australian Nursing Federation

Ms Debbie Richards, Federal Industrial Officer

Mr John Bell

Department of Veterans' Affairs

Ian Campbell, Deputy President, Repatriation Commission

Peter Reece, Division Head, Compensation and Support

Paul Pirani, Branch Head, Legal Services Group

Bill Maxwell, Branch Head, Disability Compensation

Jeanette Ricketts, Acting Branch Head, Income Support

Barry Telford, Branch Head Housing and Aged Care

Narelle Hohnke, Branch Head, Health Services

Kay Grimsley, Branch Head, Hospital, Systems and Younger Veterans

Bruce Topperwien, Executive Officer, Veterans' Review Board