

EXPLANATORY STATEMENT

Australian Participants in British Nuclear Tests (Treatment) Act 2006 (Participants in British Nuclear Tests – Extension of Eligibility) Instrument 2012

EMPOWERING PROVISION

Subsection 5(3D) of the *Australian Participants in British Nuclear Tests (Treatment) Act 2006*, (the Act).

PURPOSE

The purpose of the attached instrument (R8/2012) is to establish another class of person who is a nuclear test participant for the purposes of the Act. Nuclear test participants are eligible for testing for and treatment of malignant neoplasia.

The instrument sets out the requirements a person must satisfy in order to be a nuclear test participant under subsection 5(3C) of the Act. Generally speaking, the requirements are as follows:

- the person must have been involved in the transport, recovery, maintenance or cleaning of an aircraft contaminated by nuclear fallout as a result of its use in a nuclear test.
- the person's involvement must have been at a time during a specific period and in relation to a specific nuclear test (within Australia).
- at the relevant time the person must have been a member of the Australian Defence Force, an employee of the Commonwealth or a contractor.
- the person was, at the relevant time, an Australian resident.

It is not necessary that the contaminated aircraft was in the relevant nuclear test area, merely that it was contaminated by a nuclear test in that area. Any equipment on or attached to the contaminated aircraft is taken to be part of the aircraft.

CONSULTATION

Not directly but claims have been received from people seeking to be covered by the Act for being involved with contaminated aircraft during a

relevant period. Direct consultation in respect of the instrument was not undertaken because it may have caused delays and exacerbated any anguish currently being experienced by claimants.

Human rights implications

The attached legislative instrument does engage an applicable right or freedom. It relates to the right to social security. The right to social security requires, among other things, the right to a minimum essential level of benefits for all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

In the 1950's and 1960's members of the Defence Force, Commonwealth employees and Commonwealth contractors performed work in connection with British nuclear tests in Australia. In particular these workers recovered, transported and cleaned aircraft that had been contaminated in the nuclear tests.

As a result of being in contact with contaminated material it may be that the relevant personnel develop health conditions e.g. malignant neoplasia.

The attached instrument enables the personnel in question to obtain health care for malignant neoplasia. It is not necessary that a link needs to be established between the malignant neoplasia and the person's work in connection with the British nuclear tests.

This benefit would be in accordance with Australia's social security obligations under the International Covenant on Economic, Social and Cultural Rights.

The UN Committee on Economic Social and Cultural Rights has stated that qualifying conditions for benefits must be reasonable, proportionate and transparent.

The attached legislative instrument appears to satisfy these criteria. The qualifying conditions for obtaining the benefit are prescriptive, not discretionary, and presume a link between the hazardous work and the disease of malignant neoplasia without the worker needing to prove that link in order to obtain the benefit of treatment.

Conclusion

The legislative instrument in question is compatible with human rights because it complements the right to social security (health care) and the

qualifying conditions it imposes on the grant of the relevant benefit are considered appropriate in the circumstances.

Repatriation Commission
Rule-Maker

DOCUMENTS INCORPORATED-BY-REFERENCE

No.

FURTHER EXPLANATION

Attachment A.

Attachment A

Items	Explanation
1.	sets out the name of the instrument.
2.	provides that the instrument commences on the day after the day it is registered on the Federal Register of Legislative Instruments.
	The Note indicates that the Repatriation Commission may approve treatment for people covered by the attached instrument where it was provided on or after 19 June 2006 and a claim was made before the instrument took effect or within 6 months of it taking effect.
3.	is a definition section.
4.	sets out the requirements a person must satisfy in order to be a nuclear test participant under subsection 5(3C) of the Act namely: <ul style="list-style-type: none"> <li data-bbox="384 1025 1337 1196">• the person was involved in the transport, recovery, maintenance or cleaning of an aircraft that was contaminated as a result of its use in a nuclear test conducted in a nuclear test area, being involvement that occurred at any time during: <ol style="list-style-type: none"> <li data-bbox="467 1227 1315 1352">(i) if the area was the Monte Bello Islands area—the period from the beginning of 3 October 1952 to the end of 19 July 1956; or <li data-bbox="467 1384 1326 1509">(ii) if the area was the Emu Field area—the period from the beginning of 15 October 1953 to the end of 15 May 1956; or <li data-bbox="467 1541 1326 1666">(iii) if the area was the Maralinga area—the period from the beginning of 27 September 1956 to the end of 30 May 1963; and <li data-bbox="384 1697 1337 2069">• the person was, at that time: <ol style="list-style-type: none"> <li data-bbox="467 1765 1235 1805">(i) a member of the Australian Defence Force; or <li data-bbox="467 1836 1126 1877">(ii) an employee of the Commonwealth; or <li data-bbox="467 1908 1337 2069">(iii) a person who, under a contract with the Commonwealth, provided construction, maintenance or support services relating to the conduct of nuclear tests in that nuclear test area during that period; and <li data-bbox="384 2101 1198 2141">• the person was, at that time, an Australian resident.

To avoid doubt, the aircraft in question does not have to have been in the nuclear test area at the time it was contaminated. Further, the reference to the aircraft includes any equipment on or attached to the aircraft.