2004-2005-2006

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN PARTICIPANTS IN BRITISH NUCLEAR TESTS (TREATMENT) BILL 2006

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Veterans' Affairs,
The Honourable Bruce Billson MP)

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OUTLINE AND FINANCIAL IMPACT

Outline and Financial Impact

The Bill will give effect to the Government's decision to provide non-liability treatment of, and testing for, malignant neoplasia (cancer) for eligible Australian participants of British nuclear tests. Treatment will be provided through the Repatriation Commission and the Department of Veterans' Affairs.

Date of Effect

The Bill commences on the day after it receives the Royal Assent.

Financial Impact

Year	Net Outlays
2006-07	$4.2m
2007-08	$3.4m
2008-09	$3.8m
2009-10	$4.4m

Overview

The Bill will give effect to the Government's decision to provide non-liability treatment of, and testing for, malignant neoplasia (cancer) for eligible Australian participants of British nuclear tests. Treatment will be provided through the Repatriation Commission and the Department of Veterans' Affairs.

Background

Between 1952 and 1963, a number of British nuclear weapons tests were conducted in Australia at Monte Bello Islands, off the west coast of Western Australia, and at Emu Field and Maralinga in South Australia. The tests occurred with the full co-operation of the Commonwealth Government. Both Australian and British personnel were involved in the tests and those involved included military and civilian personnel.

Workers compensation for participants who were, at the time, members of the Australian Defence Force or the Australian Public Service is provided under the *Safety, Rehabilitation and Compensation Act 1988* (SRCA) and its predecessor, the *Compensation (Commonwealth Government Employees) Act 1971*. In 1986, the Government created a SRCA-like administrative scheme to provide compensation coverage to civilians, including pastoralists and Aborigines who were at the test sites. The test participants also had access to a Special Administrative Scheme and an Act of Grace Scheme, both administered by the Department of Science, Education and Training.

A Mortality and Cancer Incidence Study of Australian Participants in British Nuclear Tests in Australia was completed in May 2006.

Australian participants in the British nuclear tests will be able to receive treatment and testing for malignant neoplasia through the Department of Veterans' Affairs. The commencement date for treatment eligibility will be three months prior to the lodgement date of the claim or 19 June 2006, the date of the Government's decision, whichever is the later.

Treatment provided to eligible persons will be consistent with that provided to veterans and former members with malignant neoplasia as provided for under subsection 85(2) of the *Veterans' Entitlements Act 1986* (VEA).

Background (Cont.)

As the provision of treatment for malignant neoplasia under this Bill is to be provided consistently with the provision of treatment available for malignant neoplasia under the VEA, many of the provisions in the Bill are based on, and similar to, provisions of the VEA or the more contemporary *Military Rehabilitation and Compensation Act 2004* (MRCA) as many of the MRCA provisions were based on provisions of the VEA. This is particularly evident in relation to the provisions dealing with the provision of treatment and offences relating to the provision of treatment.

The need to maintain a consistent offence and penalty regime in relation to the provision of treatment is important in protecting the integrity of the health care arrangements and the operation of the current health card system.

Persons eligible for treatment for malignant neoplasia under the Bill will have access to extensive health care services including:

- chiropractic and osteopathic services;
- community nursing;
- dental services;
- GP services;
- hospital care;
- occupational therapy;
- optometrical services;
- pharmaceutical benefits;
- physiotherapy;
- podiatry;
- psychology.
- rehabilitation appliances; and
- residential care.

Eligible persons will also be entitled to testing for malignant neoplasia, regardless of whether or not the person has been diagnosed with malignant neoplasia.

Clauses

Part 1 - Preliminary

Clause 1 Clause 1 sets out how the Act is to be cited.

Clause 2 Clause 2 provides that the Act commences on the day after it receives the Royal Assent.

Clause 3 Clause 3 provides that the Act extends to every external Territory.

Clause 4 Clause 4 defines a number of terms for the purposes of the Bill.

Clause 5 Clause 5 gives the meaning of a ***nuclear test participant***, and defines a ***nuclear test area***. There are a number of different circumstances that can occur for a person to be regarded as a ***nuclear test participant***. Subclause 5(1) provides that, a person is a ***nuclear test participant*** if the person:

- was present in the Monte Bello Islands nuclear test area at any time between 3 October 1952 and 19 June 1958 inclusive, and who was, at that time, a member of the Australian Defence Force, or an employee of the Commonwealth, or a person who, under a contract with the Commonwealth provided construction, maintenance or support services relating to the conduct of nuclear tests in a nuclear test area and who was, at that time, an Australian resident; or

- was present in the Emu Field nuclear test area at any time between 15 October 1953 and 25 October 1955 inclusive, and who was, at that time, a member of the Australian Defence Force, or an employee of the Commonwealth, or a person who, under a contract with the Commonwealth provided construction, maintenance or support services relating to the conduct of nuclear tests in a nuclear test area and who was, at that time, an Australian resident; or

Clause 5 (Cont.)

- was present in the Maralinga nuclear test area at any time between 27 September 1956 and 30 April 1965 inclusive, and who was, at that time, a member of the Australian Defence Force, or an employee of the Commonwealth, or a person who, under a contract with the Commonwealth provided construction, maintenance or support services relating to the conduct of nuclear tests in a nuclear test area and who was, at that time, an Australian resident.

Subclause 5(2) provides that a person is a ***nuclear test participant*** if the person was involved in the transport, recovery, maintenance or cleaning of a vessel, vehicle, aircraft or equipment that was contaminated as a result of its use in a nuclear test area. The person's involvement in such activities had to have occurred in one of the following locations, during the specific dates associated with that area:

- Monte Bello Islands nuclear test area between 3 October 1952 and 19 July 1956 inclusive; or
- Emu Field nuclear test area between 15 October 1953 and 25 November 1953 inclusive; or
- Maralinga nuclear test area between 27 September 1956 and 30 May 1963 inclusive.

The person must also, at that time, have been a member of the Australian Defence Force, or an employee of the Commonwealth, or 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 and have been, at that time, an Australian resident.

Subclause 5(3) provides that a person is a ***nuclear test participant*** if they meet all of the following criteria:

- the person flew in an aircraft of the Royal Australian Air Force or the Royal Air Force at any time between 3 October 1952 and 31 October 1957; and

- at the time the person flew in the aircraft, the aircraft was used in measuring fallout from nuclear tests conducted in a nuclear test area; and

Clause 5 (Cont.)

- the aircraft was contaminated by the fallout; and
- the person was a member of the Australian Defence Force and an Australian resident.

As defined in subclause 4(1), ***Australian resident*** has the same meaning as in section 5G of the VEA.

Subclause 5(4) sets out, in a table, the definitions for each ***nuclear test area***. The table in subclause 5(3) provides that:

- the ***nuclear test area*** for the Monte Bello Islands Area is the area within 10 kilometres of Main Beach on Trimouille Island in the Monte Bello Archipelago;
- the ***nuclear test area*** for the Emu Field Area is the area within 25 kilometres of the Totem test sites at Emu Field;
- the ***nuclear test area*** for the Maralinga Area is the area within 40 kilometres of any of the Buffalo or Antler test sites.

Clause 6

Clause 6 provides for the procedures for making claims etc.

Subclause 6(1) provides that, for the purposes of this Act, a claim or application is taken to have been made, or a document is taken to have been given, in accordance with this clause if it is made, or given, in accordance with procedures determined by the Secretary of the Department of Veterans' Affairs, under subclause 6(2).

Subclause 6(2) provides that the Secretary may determine the procedures for making claims and applications, and lodging documents. Any such determination is a legislation instrument for the purposes of the *Legislative Instruments Act 2003*.

Part 2 – Treatment of malignant neoplasia

Division 1 – Eligibility to be provided with treatment

Clause 7

Clause 7 sets out the eligibility criteria for a person to be provided with treatment for malignant neoplasia under the Act.

Subclause 7(1) provides that a person is eligible to be provided with treatment under this Act if the person is a nuclear test participant and an Australian resident.

Subclause 7(2) provides that a person is not eligible to be provided with treatment under this Act if the person is eligible to be provided with the treatment under Part V of the *Veterans' Entitlements Act 1986* (VEA). This means that if a person is a ***nuclear test participant*** and a veteran or former member eligible for treatment for malignant neoplasia under Part V of the VEA, then the treatment is provided under Part V of the VEA.

Subclause 7(2) also provides that a person is not eligible to be provided with treatment under this Act if liability for the person's treatment has been accepted under the *Safety, Rehabilitation and Compensation Act 1988* (SRCA) or any law relating to workers' compensation.

Finally, subclause 7(2) provides that a person is not eligible to be provided with treatment under this Act if liability for treatment for the person's malignant neoplasia has been accepted under the administrative scheme that was established in 1986 for compensation relating to British nuclear tests in Australian and for which the Minister administering Part II of the SRCA is responsible.

Clause 8

This clause means that a person must make a claim in order for a determination to be made as to whether the person is an eligible person for the purposes of this Act and therefore eligible for treatment of, and testing for, malignant neoplasia. The claim must be made in accordance with the procedures determined by the Secretary under clause 6.

Clause 9

Clause 9 provides that if a claimant wishes to withdraw their claim, they must do so in writing, before the Commission has determined their claim. If a claimant withdraws their claim, they may make another claim at a later date. The written withdrawal of the claim must be in accordance with the procedures determined by the Secretary under clause 6.

Under subclause 4(1), ***Commission*** means the Repatriation Commission continued in existence by section 179 of the VEA.

Clause 10

Clause 10 provides that the Commission is to determine claims made under clause 8 and must give the claimant written notice of the determination.

The note at the end of subclause 10(1) provides that a decision by the Commission to reject a claim is reviewable under Part 4 of this Act.

Clause 11

Subclause 11(1) enables the Commission to revoke a determination that a person is an eligible person for the purposes of this Act if the Commission later becomes satisfied that the information used by the Commission to make the determination was false in a material particular.

A note at the end of subclause 11(1) provides that such a revocation of a determination is reviewable under Part 4 of this Act.

Subclause 11(2) means that the Commission must give to the person whose determination it has revoked, written notice of the revocation.

Division 2 – Provision of treatment

Clause 12

Clause 12 provides for the provision of treatment.

Under subclause 4(1), ***treatment*** means treatment (within the meaning of subsection 80(1) of the VEA) of malignant neoplasia and includes testing.

Testing is defined in subclause 4(1) as conducting a recognised medical test to identify malignant neoplasia (whether or not the person being tested has already been tested for, or diagnosed with, malignant neoplasia), but does not include conducting a test that replicates an existing community wide government screening program.

Subclause 12(1) provides that the Commission may arrange for the provision of treatment for eligible persons.

Under subclause 4(1), an ***eligible person*** is defined as a person, who, under clause 7, is eligible to be provided with treatment under this Act.

Subclause 12(2) provides that, subject to subclause 13, the Commission is not taken to have arranged for the provision of treatment for a person unless the treatment was provided, either in accordance with arrangements made by the Commission under this Act, or in circumstances in which and in accordance with the conditions subject to which, the treatment may be provided under this Act; or the Commission approved the provision of the treatment before the treatment was given, or began to be given, as the case may be.

Clause 13

Clause 13 deals with the approval of treatment that has already been provided. This will cover treatment given in the period of up to 3 months before the date of lodgement of a claim under clause 8 of this Act, but not for any treatment provided any earlier than 19 June 2006.

Subclause 13(1) provides that the Commission may approve the provision of treatment for a person that was provided or commenced to be provided, without the prior approval of the Commission if the person is an eligible person and the Commission is satisfied that it would be proper for the Commission to approve the provision of the treatment after it had been provided or had commenced to be provided.

Clause 13 (Cont.)

Subclause 13(2) states that the Commission must not approve the provision of treatment that was provided more than 3 months before the person made a claim under clause 8 in relation to the person being an eligible person. This provision ensures that the Commission cannot accept financial liability for treatment provided any earlier than 3 months before the person lodges a claim for eligible person status under this Act.

Under subclause 13(3), the Commission is taken to have arranged the provision of treatment approved under this section.

Subclause 13(4) states that the Commission may reimburse an eligible person for an amount paid for treatment that was provided to the person if that treatment is subsequently approved under this section.

Clause 14

Clause 14 deals with limits on the provision of treatment.

Subclause 14(1) makes it clear that the Commission is under no obligation to provide treatment outside Australia. It also stipulates that nothing in the Act confers a right on a person to receive treatment outside Australia.

Subclause 14(2) provides that, subject to subclause 11(1), nothing in the Act confers a right on a person to be provided with treatment for malignant neoplasia by the Commonwealth or by the Commission other than to the extent provided for in this Act.

Clause 15

This provision enables the Commission to enter into arrangements necessary for the provision of treatment under this Act. This includes entering into arrangements with a public or private hospital or other institution for the provision of care and welfare for persons eligible under this Act.

Under subclause 4(1), ***hospital or other institution*** includes a residential care service (within the meaning of the *Aged Care Act 1997)*, a medical centre, an outpatient clinic or a rehabilitation establishment.

Clause 16

This clause deals with the application and modification of the Treatment Principles. The Treatment Principles, in Force under section 90 of the VEA, are a disallowable instrument for the purposes of the *Legislative Instruments Act 2003*. Modification of the Treatment Principles used under the VEA may be necessary for the application of such Principles to this Bill as treatment under this Bill is restricted to treatment for malignant neoplasia and is available for a different class of persons than those eligible under the VEA.

Subclause 16 (1) means that the Treatment Principles, which may be modified under this section, are binding on the Commission in its exercise of its powers and discretions under this Act.

Subclause 16(2) enables the Commission to prepare written modifications of the Treatment Principles. The modified Treatment Principles will then apply for the purposes of this Act.

Subclause 16(3) stipulates that the modifications prepared under subclause 16(2) are to set out the circumstances and conditions that will apply to the provision of treatment for eligible persons under this Act.

Subclause 16(4) provides that the modifications may also provide for matters such as whether Commission approval of the treatment is required, whether Commission approval is required before or after the giving of the treatment and where the treatment may be provided.

Subclause 16(5) provides that the modifications may also specify treatment that will not be provided.

Subclause 16(6) specifies that the Commission may, at any time, prepare written variations or revocations of the modifications.

Subclause 16(7) provides that for a modification, variation or revocation to have effect, the instrument making the modification, variation or revocation must be approved, in writing, by the Minister.

Subclause 16(8) stipulates that a modification, variation or revocation of the Treatment Principles, approved by the Minister is a legislative instrument made by the Minister on the day on which the modification, variation or revocation is approved.

Clause 17

Clause 17 deals with the application and modification of the Repatriation Private Patient Principles. The Repatriation Private Patient Principles, in force under section 90A of the VEA, are a disallowable instrument for the purposes of the *Legislative Instruments Act 2003.* Modification of the Repatriation Private Patient Principles used under the VEA may be necessary for the application of such Principles to this Bill as treatment under this Bill is restricted to treatment for malignant neoplasia and is available for a different class of persons than those eligible under the VEA.

Subclause 17 (1) means that the Repatriation Private Patient Principles, which may be modified under this section, are binding on the Commission in its exercise of its powers and discretions under this Act.

Subclause 17(2) enables the Commission to prepare written modifications of the Repatriation Private Patient Principles. The modified Repatriation Private Patient Principles will then apply for the purposes of this Act.

Subclause 17(3) stipulates that the modifications prepared under subclause 17(2) are to set out the circumstances in which treatment provided under this Act to eligible persons is to be provided to such persons as private patients.

Subclause 17(4) provides that the modifications may also provide for matters such as whether Commission approval of the treatment provided to persons as private patients is required, whether Commission approval is required before or after the treatment has been given, or commenced to be given, to persons as private patients and where the treatment to persons as private patients may be provided.

Subclause 17(5) specifies that the Commission may, at any time, prepare written variations or revocations of the modifications.

Subclause 17(6) provides that for a modification, variation or revocation to have effect, the instrument making the modification, variation or revocation must be approved, in writing, by the Minister.

Subclause 17(7) stipulates that a modification, variation or revocation of the Treatment Principles, approved by the Minister is a legislative instrument made by the Minister on the day on which the modification, variation or revocation is approved.

Clause 17 (Cont.)

Subclause 17(8) provides that treatment is to be taken to be provided to a person as a private patient if:

- the treatment is provided to the person as a private patient of a hospital, for the purposes of the *Health Insurance Act 1973*; or
- the treatment is provided by a medical specialist to whom the person has been referred but is not provided at a hospital.

Clause 18

This clause deals with the application and modification of an approved pharmaceutical scheme. Under the VEA, an approved pharmaceutical scheme is provided for in section 91. Modification of an approved pharmaceutical scheme used under the VEA may be necessary in the application of an approved pharmaceutical scheme under this Bill as treatment under this Bill is restricted to treatment for malignant neoplasia and is available for a different class of persons than those eligible under the VEA.

Subclause 18(1) means that an approved pharmaceutical scheme, that may be modified under this section, applies to the provision of pharmaceutical benefits required for the treatment of eligible persons under this Act. Subclause 4(1) defines ***approved pharmaceutical scheme*** as an approved scheme within the meaning of clause 91 of the VEA, that is in force.

Subclause 18(2) enables the Commission to prepare written modifications of an approved pharmaceutical scheme. The modified approved pharmaceutical scheme will then apply for the purposes of this Act.

Subclause 18(3) stipulates that the modifications prepared under subclause 18(2) may specify classes of eligible persons for whom, and circumstances under which, pharmaceutical benefits will not be provided.

Subclause 18(4) specifies that the Commission may, at any time, prepare written variations or revocations of the modifications.

Subclause 18(5) provides that for a modification, variation or revocation is to have effect, the instrument making the modification, variation or revocation must be approved, in writing, by the Minister.

Subclause 18(6) stipulates that a modification, variation or revocation of the Treatment Principles, approved by the Minister, is a legislative instrument made by the Minister on the day on which the modification, variation or revocation is approved.

Part 3 – Travelling expenses

Clause 19

Subclause 19 (1) provides that if an eligible person travels for the purpose of obtaining treatment, and if the Commission approves the travel and if such conditions as are prescribed are met, then the person is entitled to be paid such travelling expenses for that travel, as are prescribed.

Subclause 19(2) provides that, similar to subclause (1), if an attendant travels with an eligible person, and if the Commission approves the travel and if such conditions as are prescribed are met, then the attendant is entitled to be paid such travelling expenses for that travel, as are prescribed.

Subclause 19(3) makes it clear that travelling expenses are not payable in respect of travel outside Australia.

Clause 20

Subclause 20(1) enables the Commission to pay expected travelling expenses in advance where the Commission is satisfied that it is appropriate to do so under the circumstances.

Subclause 20(2) further requires that, if an amount of advanced travelling expenses exceeds the amount that was actually payable, then the excess amount is to be repaid to the Commonwealth.

Subclause 20(3) makes it clear that the Commonwealth may recover in a court of competent jurisdiction an amount that a person is liable to pay to the Commonwealth under subclause 20(2).

Clause 21

Subclause 21(1) means that a person must put in a claim, in accordance with the procedures determined by the Secretary under clause 6, for a determination as to whether the person is entitled to be paid travelling expenses.

Subclause 21(2) provides that a claim for travelling expenses must be made within 12 months after the completion of travel or if the Commission thinks that there are exceptional circumstances involved, then the Commission may extend that period further.

Clause 22

Clause 22 allows a person to withdraw a claim for travelling expenses at any time before the Commission has determined the claim without preventing them from making another claim.

Clause 23

This clause stipulates that the Commission is to determine claims for travelling expenses made under clause 21.

A note at the end of clause 23 points out that rejected claims for travelling expenses are reviewable under Part 4 of this Act.

Part 4 – Review of decisions

Division 1 – Review by Commission

Clause 24

Clause 24 deals with requests for review of Commission determinations. The review rights under the Bill are modelled on the review rights available under the VEA.

Paragraph 24(1)(a) provides that if a claimant is dissatisfied with a decision of the Commission in relation to a claim under clause 8 that the person is an eligible person for the purposes of this Act, the person may ask the Commission to review the decision.

Paragraph 24(1)(b) provides that a claimant who is dissatisfied with a decision of the Commission in relation to a claim, under clause 11, revoking a determination that the person is an eligible person for the purposes of this Act, may ask that the Commission review the decision.

Paragraph 24(1)(b) provides that a claimant who is dissatisfied with a decision of the Commission in relation to a claim, under clause 21, that the person is entitled to be paid travelling expenses may ask that the Commission review the decision.

Subclause 24(2) requires that a request for a review under subclause 24(1) must be made within 3 months of the claimant being notified of the decision. The request must also be made in accordance with the procedures determined by the Secretary under clause 6.

Clause 25

This clause deals with reviews of decisions by the Commission.

Subclause 25(1) provides that if a proper request is made for a review of a decision made by the Commission under this Act, the Commission must review the decision and affirm the decision or set the decision aside.

Subclause 25(2) stipulates that the Commission must substitute a new decision if it sets aside the initial decision.

Subclause 25(3) means that a person cannot review a decision, if that person, as a delegate of the Commission made the decision under review.

Clause 26

Clause 26 requires that, when reviewing a decision under this Division, the Commission must make a written record of its decision and the written record must include information on:

- the Commission's findings on material questions of fact;
- the evidence or other material on which the findings were based; and
- reasons for the Commission's decision on the review.

Clause 27

This clause requires the Commission to give to the person who requested the review, a copy of the Commission's review decision and a statement including the information stipulated in subclause 24(2).

Clause 28

Subclause 28(1) makes it clear that a person may withdraw a request for a review under clause 22 at any time before the Commission determines the request. The withdrawal request must be in writing and in accordance with the procedures determined under clause 6.

Subclause 28(2) provides that the withdrawal of a request for a review does not prevent a person from later making another request for a review under this Act.

Division 2 – Review by Administrative Appeals Tribunal

Clause 29

This clause enables a person to make an application to the Administrative Appeals Tribunal for a review of a decision, made upon review by the Commission under clause 25, if the Commission affirms its decision or sets it aside and substitutes another decision.

Part 5 – Administration and Enforcement

Division 1 - General

Clause 30

Subclause 30(1) provides that the functions of the Commission include arranging for the provision of treatment for eligible persons eligible for treatment under this Act and reimbursing travelling expenses under Part 3 of this Act.

A note at the end of the subsection directs the reader to section 180 of the VEA for additional functions of the Commission.

Subclause 30(2) provides that, subject to the control of the Minister, the Commission shall have the general administration of this Act.

Clause 31

This clause makes it clear that, the Commission, in making a decision under this Act, is not bound by technicalities, legal form or rules of evidence and that the Commission shall act according to substantial justice and the merits and all the circumstances of the case. Furthermore, the Commission is required to take into account any problems in relation to the effects of the passage of time, including the effects of the passage of time on the availability of witnesses, and the absence of, or deficiency in, official records.

Clause 32

Clause 32 provides that the Commission may delegate any of its functions or powers under a provision of this Act, or under the regulations or any other legislative instrument made under this Act. The Commission may delegate its functions or powers to:

- a member of the Commission;
- a staff member assisting the Commission; or
- a consultant to, or an employee of a consultant to, the Commission; or
- a person who is engaged under the *Public Service Act 1999* and performing duties in the Department.

Clause 33

Subclause 33(1) enables the Commission to, for the purposes of this Act, give a person a written notice requiring that person to;

- provide the Commission with information the Commission requires; or
- provide a specified staff member assisting the Commission with information the Commission requires; or
- produce to the Commission any documents in the person's custody or control; or
- produce to a specified staff member assisting the Commission, any documents in the person's custody or control; or
- appear before a specified staff member assisting the Commission to answer questions.

Subclause 33(2) makes it clear that a notice may be given to a person employed in or in connection with a Department of the Commonwealth, a State or Territory, or a person employed by any authority of the Commonwealth, State or Territory.

Subclause 33(3) provides that a notice requiring information or the production of documents must specify the period within which the person must comply with the notice and the manner in which the person must comply with the notice.

If further provides that, a notice requiring a person to appear before a specified staff member of the Commission to answer questions, must specify the time and the place that the person must appear before the staff member.

Subclause 33(4) stipulates that the specified time or the specified period in subclause (3) must be at least 14 days after the notice is given.

Subclause 33(5) provides that the Commission may require the information or the answers provided by a person required to appear before a specified staff member assisting the Commission under paragraph 1(c), to be verified by, or given on, oath or affirmation and either orally or in writing.

Subclause 33(6) enables a staff member to whom information or answers are given or verified to administer the oath or affirmation.

Subclause 33(7) makes it clear that if the giving of information, the production of a document or the giving of evidence would contravene a law of the Commonwealth, not being a law of a Territory, then the person is not required to give such information, produce such document or give such evidence.

Clause 33 (Cont.)

A note at the end of this subclause makes it clear that, because of clause 36 of this Act, a law of a State or Territory cannot prevent a person from giving information, producing documents or giving evidence for the purposes of this Act.

Subclause 33(8) provides that this clause binds the Crown in each of its capacities, but does not make the Crown liable to be prosecuted for an offence.

Clause 34

Subclause 34(1) provides that it is an offence to fail to comply with a notice issued under clause 33. The penalty for failing to comply with the notice is 10 penalty units.

Subclause 34(2) provides that an offence under subclause 34(1) is an offence of strict liability.

A note at the end of the subsection directs the reader to section 6.1 of the *Criminal Code* for the meaning of ***strict liability***.

Subclause 34(3) provides that subclause 34(1) does not apply to the extent that the person is not capable of complying with the notice.

A note at the end of the subclause advises that the defendant bears an evidential burden in relation to the matter in subclause 34(3) and directs the reader to subsection 13.3(3) of the *Criminal Code*.

Clause 35

Subclause 35(1) provides that a person is not excused from giving information or evidence, or producing a document or a copy of a document, under clause 32, on the grounds that the information, evidence, the production of the document or production of the copy of the document, might tend to incriminate the person or expose the person to a penalty.

Subclause 35(2) provides that where a person tenders information or evidence that may tend to incriminate the person, that information or evidence is not admissible in evidence against the person in any proceedings, except for proceedings for an offence under section 137.1 or 137.2 of the *Criminal Code* that relates to this Act. Sections 137.1 and 137.2 of the *Criminal Code* deal with offences in relation to false or misleading information and documents.

Clause 36

Subclause 36(1) provides that no law of a State or Territory may prevent a person from giving information, producing documents or giving evidence for the purposes of this Act.

Subclause 36(2) provides that the Secretary or another employee of the Department may provide any information obtained in the performance of his or her duties under this Act to the Secretary of another Department, or to the head of an authority of the Commonwealth, for the purposes of that Department or authority.

Division 3 - Offences

Clause 37

This clause is based on sections 93B of the VEA and 306 of the MRCA and establishes a strict liability offence for tendering false or misleading statements or documents in relation to treatment. The VEA provisions were modelled on provisions of the *Health Insurance Act 1973*.

This strict liability offence is critical to the maintenance of the integrity of the treatment provisions, which necessarily involve a multitude of transactions, billing practices and claims.

This clause also enables a prosecution to be commenced at any time within 3 years after the offence is committed, despite section 15B of the *Crimes Act 1914*, which would normally impose a time limit of 12 months for commencement of prosecution.

Unlike other summary offence provisions such as minor physical offences or speeding offences where the necessary evidence can be gathered within a short period of time, potential offences under this clause may not be identified for some period of time. There is a need for time to gather necessary evidence, to interview and take statements from sick and infirm people who may have been provided with treatment under this Act by offending providers, and to prepare briefs for the relevant authority and lay relevant charges.

Clause 38

This clause establishes an offence applicable to medical service providers, such as persons who render pathology services, where the provider engages in conduct, or omits to engage in conduct, that causes detriment to another practitioner or another person.

Unlike clause 37, this offence is not one of strict liability and the prosecution would bear the evidential onus of establishing the physical as well as the mental elements of the offence.

Subclause 4(1) defines a ***medical service provider*** as a person who is:

- a pathology practitioner; or
- a proprietor of premises at which pathology services are rendered; or
- a proprietor of a hospital or other institution that is not operated by the Commonwealth, a State or a Territory; or
- acting on behalf of a proprietor of such a hospital or other institution.

Clause 38 (Cont.)

Proprietor is defined in subclause 4(1) to mean:

a) in relation to premises – the person, authority or body of persons having effective control of the premises (whether or not that person, authority or body is the holder of an estate or interest in the premises); and

b) in relation to a hospital or other institution – the proprietor (within the meaning of paragraph (a)) of the premises occupied by the hospital or other institution.

This clause is based on section 93D of the VEA and section 307 of the MRCA.

Clause 39

Clause 39 establishes an offence applicable to medical service providers (such as persons who render pathology services) if the medical service provider makes a threat to cause detriment to the practitioner or any other person.

Like clause 37, this offence is not one of strict liability and the prosecution would bear the evidential onus of establishing the physical as well as the mental elements of the offence.

This clause is based on section 93D of the VEA and section 308 of the MRCA.

Clause 40

The clause establishes an offence applicable to medical service providers if the person behaves dishonestly or offers inducements to another person in respect of service to be provided.

Under subclause 4(2), a person engages in conduct ***dishonestly*** if the person engages in conduct and the conduct is dishonest according to the standards of ordinary people and the defendant knows the conduct is dishonest according to the standards of ordinary people.

This offence is not one of strict liability and the prosecution would bear the evidential onus of establishing the physical as well as the mental elements of the offence. This offence is aimed generally at 'kickback' arrangements involving medical service providers (such as persons who render pathology services) and practitioners or other persons with the aim of encouraging the

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Clause 40 (Cont.)

use of their particular pathology service. The standards of honesty are in accordance with the standards of ordinary people and not the particular profession.

Clause 40 is based on section 93D of the VEA and section 309 of the MRCA.

Clause 41

Clause 41 applies to the practitioner who acts dishonestly and asks for, or receives, a benefit for him or herself or for another person such as a family member. The dishonest act is with the intention of influencing treatment provided or to create a belief that it will be influenced.

This offence is not one of strict liability and the prosecution would bear the evidential onus of establishing the physical as well as the mental elements of the offence. The standards of honesty are in accordance with the standards of ordinary people and not the particular profession.

This clause is based on section 93D of the VEA and section 310 of the MRCA.

Clause 42

This offence relates to a pathology provider, who, acting on a request from another practitioner, provides pathology services and makes a payment either directly or indirectly to the requesting practitioner.

Subclause 42(2) makes this offence one of strict liability.

This offence is based on section 93E of the VEA and section 311 of the MRCA.

Clause 43

This offence relates to the provision of pathology services when an arrangement is in place between the pathology practitioner and the requesting practitioner to share the cost of staff or equipment.

This offence is based on section 93E of the VEA and section 312 of the MRCA.

Clause 44

This offence relates to the pathology practitioner providing staff to another practitioner and then that staff member acts for the practitioner and takes pathology specimens.

This offence is based on section 93E of the VEA and section 313 of the MRCA.

Clause 45

This clause is based on sections 93G of the VEA and 314 of the MRCA and reflects the importance of education and counselling of providers who participate in the provision of treatment.

This clause applies to treatment providers who have provided treatment under this Act and who have been counselled by a staff member assisting the Commission with respect to providing treatment under this Act and who make a statement during the counselling.

The statement provided during counselling is inadmissible as evidence against the provider in proceedings prosecuting him or her for an offence listed in subclause (3) unless there is consent or other evidence adduced.

Division 4 – Recovery of amounts paid because of false or misleading statements

Clause 46

Clause 45 provides that if, as a result of making a false or misleading statement, the amount paid under this Act, exceeds the amount (if any) that should have been paid, then the amount of the excess is recoverable as a debt due to the Commonwealth. It must be recovered from the person who made or on who behalf the statement was made or, the estate of that person. The quantum is reviewable but not the decision to recover.

Clause 47

This clause is based on sections 93H of the VEA and 316 of the MRCA. It provides that an amount (the ***principal sum***) is recoverable as a debt due to the Commonwealth from a person or estate under clause 45. A default on payment after agreement has been reached means that interest will be payable.

Interest is payable at the rate prescribed from time to time for the purposes of subsection 129AC(2) of the *Health Insurance Act 1973*.

The interest is recoverable as a debt due to the Commonwealth from the person or estate. The quantum of the amount is reviewable, but not the decision that interest is payable.

Clause 48

The Commission may reduce the amount of any payment that become payable to a person if an amount has previously been paid to the person under this Act and the amount paid exceeds the amount (if any) that should have been paid provided that the person agrees to the reduction.

Part 6 – Miscellaneous

Clause 49

This clause provides that the Consolidated Revenue Fund is appropriated to the extent necessary for the payment of amounts payable for the provision of treatment under this Act. This includes payments for amounts payable by way of reimbursement for treatment under subclause 13(4) of this Act.

The clause further provides that the Consolidated Revenue Fund is appropriated to the extent necessary for the payment of travelling expenses under Part 3 of this Act. This includes reimbursement of, or advances for, travelling expenses.

Clause 50

This clause provides that regulations may be made by the Governor-General that prescribe matters required or permitted to be prescribed by this Act. The clause further provides that regulations may be made by the Governor-General that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.