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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**VETERANS' AFFAIRS LEGISLATION AMENDMENT (PARTICIPANTS IN BRITISH
NUCLEAR TESTS) BILL 2011**

EXPLANATORY MEMORANDUM

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

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VETERANS' AFFAIRS LEGISLATION AMENDMENT (PARTICIPANTS IN BRITISH NUCLEAR TESTS) BILL 2011

OUTLINE AND FINANCIAL IMPACT

Outline

The Bill will enable the Repatriation Commission to determine, by legislative instrument, additional eligibility criteria for 'British nuclear test defence service' under the *Veterans' Entitlements Act 1986* and 'nuclear test participant' under the *Australian Participants in British Nuclear Tests (Treatment) Act 2006*.

Financial Impact

The amendments have no financial impact.

Veterans' Affairs Legislation Amendment (Participants in British Nuclear Tests) Bill 2011

Short Title	Clause 1 sets out how the Act is to be cited.
Commencement	Clause 2 provides that the Act will commence on the day that it receives the Royal Assent.
Schedules	Clause 3 provides that each Act that is specified in Schedule 1 to this Act is amended or repealed as set out in the applicable items in Schedule 1 and any other item in Schedule 1 to this Act has effect according to its terms.

This explanatory memorandum uses the following abbreviations:

‘Australian Participants in British Nuclear Tests (Treatment) Act’ means the *Australian Participants in British Nuclear Tests (Treatment) Act 2006*; and

‘Veterans’ Entitlements Act’ means the *Veterans’ Entitlements Act 1986*.

Schedule 1 – Amendments

Overview

The Bill will enable the Repatriation Commission to determine, by legislative instrument, additional eligibility criteria for 'British nuclear test defence service' under the Veterans' Entitlements Act and for 'nuclear test participant' under the Australian Participants in British Nuclear Tests (Treatment) Act.

Background

Between 1952 and 1963, a series of British nuclear weapons tests were conducted in Australia on the 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.

The Australian Participants in British Nuclear Tests (Treatment) Act provides that Australian participants in the British nuclear tests (defined as a 'nuclear test participant') are able to receive treatment and testing for malignant neoplasia (cancer) through the Repatriation Commission and the Department of Veterans' Affairs.

Amendments were made to the Australian Participants in British Nuclear Tests (Treatment) Act in 2008 and 2010 to provide extended coverage for members of the Commonwealth Police (now known as the Australian Federal Police) and Protective Service Officers who were responsible for patrolling the exclusion zone at Maralinga throughout the testing period and up to 30 June 1988.

As part of the 2010 Budget, 'British nuclear test defence service' was introduced as a new category of eligible service under the Veterans' Entitlements Act, to provide former Australian Defence Force members who participated in the British nuclear tests program and related activities, with eligibility for benefits equivalent to that given to members with operational or hazardous service.

From 1 July 2010 Defence Force members with 'British nuclear test defence service' were eligible for:

- disability and war widow/ widower pensions under Part IV;
- treatment under Part V;
- Veterans Supplement under Part VIIA;
- allowances and other benefits under Part VI;
- Rehabilitation under Part VIA; and
- the Veterans' Children Education Scheme under Part VII.

The amendments also provided that members with British nuclear test defence service would have claims for compensation determined under the more generous standard of proof, the 'reasonable hypothesis' test as applied under sections 120 and 120A of the Veterans' Entitlements Act.

It has become evident following the receipt of a small number of claims from Defence Force members claiming British nuclear test defence service, that some personnel undertaking the specific tasks of maintaining, transporting or decontaminating aircraft (other than Royal Air Force Canberra aircraft) used in the British nuclear test program should be, but are not currently, eligible under the Veterans' Entitlements Act or the Australian Participants in British Nuclear Tests (Treatment) Act.

Explanation of the changes

The proposed amendments will allow the Repatriation Commission to determine, by legislative instrument, additional eligibility criteria for 'British nuclear test defence service' under the Veterans' Entitlements Act and for 'nuclear test participant' under the Australian Participants in British Nuclear Tests (Treatment) Act.

The amendments will facilitate eligibility under the Veterans' Entitlements Act and the Australian Participants in British Nuclear Tests (Treatment) Act, through enabling the making of a legislative instrument, in respect of these claims and will enable future claims of a similar nature to be dealt with more expediently. This will ensure that any newly found eligible personnel will receive benefits and treatment provided under the respective Acts with the minimum of delay.

The amendments will also provide for:

- modified backdating arrangements to be applicable to persons whose eligibility is provided for through a legislative instrument under new subsection 69B(5) of the Veterans' Entitlements Act; and
- modified backdating arrangements to be applicable to persons whose eligibility is provided for through a legislative instrument under new subsection 5(3D) of the Australian Participants in British Nuclear Tests (Treatment) Act.

Explanation of the items

Australian Participants in British Nuclear Tests (Treatment) Act 2006

Item 1 amends the definition of 'nuclear test participant' in subsection 4(1) to insert a reference to new subsection 5(3C) (inserted by **Item 2** of this Schedule).

Item 2 inserts new subsections 5(3C) and (3D).

New subsection 5(3C) provides that a person is a "nuclear test participant" if the person satisfies the requirements that are specified in a legislative instrument made under new subsection 5(3D) by the Repatriation Commission.

New subsection 5(3D) provides that the Repatriation Commission may specify in a legislative instrument, requirements to be satisfied for a person to be an eligible "nuclear test participant".

Item 3 is a technical amendment to section 32 to insert a reference to subsection (1). The amendment is a consequence of the insertion of new subsection 32(2) (by **Item 4** of this Schedule).

Item 4 inserts new subsection 32(2) which provides that subsection 32(1), referring to the power of the Repatriation Commission to delegate its functions and powers under the Act, is not to apply to the Repatriation Commission's powers under new subsection 5(3D). This means that only the Repatriation Commission can make a legislative instrument under new subsection 5(3D). This function of the Repatriation Commission may not be delegated.

Item 5 is an application provision to provide for the reimbursement of certain cancer treatment costs to a 'nuclear test participant' who has become eligible for treatment because he or she has satisfied the requirements specified in a legislative instrument made under new subsection 5(3D).

Subitem 5(1) provides that the Repatriation Commission may approve, under subsection 13(1) of the Act, treatment for cancer for a person that was provided before the instrument took effect but on or after 19 June 2006:

- if a person has made a claim under the Act before the instrument took effect or within a period of 6 months of the instrument taking effect; and
- the Repatriation Commission has determined that the person is an eligible person because the person has satisfied the requirements of the legislative instrument made under new subsection 5(3D).

Subitem 5(2) makes it clear that subitem 5(1) has effect despite subsection 13(2) of the Act. Subsection 13(2) would otherwise limit the reimbursement of treatment costs to those costs incurred in the three months prior to the date of the claim.

Item 6 is an application provision to provide for the reimbursement of certain travelling expenses associated with cancer treatment for nuclear test participants who become eligible for treatment because he or she satisfied the requirements specified in a legislative instrument made under new subsection 5(3D).

Subitem 6(1) provides that item 6 applies in relation to a person, and the person accompanying that person as an attendant (carer), under the following circumstances:

- the Repatriation Commission makes an instrument under subsection 5(3D) of the Australian Participants in British Nuclear Tests (Treatment) Act;
- the person travelled to obtain treatment or testing for cancer before the instrument took effect but on or after 19 June 2006; and
- the person obtaining the treatment or testing makes a claim for eligibility as a nuclear test participant before the instrument took effect or within 6 months of the instrument taking effect; and
- the person is determined to be an eligible person because of subsection 5(3C).

Subitem 6(2) provides that if a claim for travelling expenses is made by, or in respect of, a person eligible because of a legislative instrument made under new subsection 5(3D) within a period of 6 months after the instrument took effect, the Repatriation Commission may approve or authorise the travel for the purposes of section 19 of the Act.

Subsection 21(2) of the Act may be disregarded for the purposes of these claims. Subsection 21(2) would otherwise restrict claims for travelling expenses to claims made within 12 months of the travel having been undertaken.

Veterans' Entitlements Act 1986

Item 7 is a consequential amendment to the definition of "British nuclear test defence service" in the section 5 - index of definitions.

Item 8 amends the definition of "British nuclear test defence service" in subsection 68(1) to include a reference to new subsection 69B(5) (inserted by **Item 9** of this Schedule).

Item 9 amends the definition of "British nuclear test defence service" in the section 69B by including new subsections (5) and (6).

New subsection 69B(5) provides that a member of the Defence Force will be regarded as having rendered "British nuclear test defence service" if the member satisfies the requirements specified in an instrument made by the Repatriation Commission under new subsection 69B(6).

New subsection 69B(6) provides that the Repatriation Commission may specify in a legislative instrument, the requirements that are to be met for a member of the Defence Force to be regarded as having rendered "British nuclear test defence service".

Item 10 inserts new subsection 213(1A) which provides that subsection 213(1), referring to the power of the Repatriation Commission to delegate its functions and powers under the Act, the regulations and any instrument made under the Act is not to apply to the Repatriation Commission's powers under new subsection 69B(6). This means that only the Repatriation Commission can make a legislative instrument under new subsection 69B(6). This function of the Repatriation Commission may not be delegated.

Item 11 is an application provision relating to the date of effect of a pension claim that has been made on the basis that a person has 'British nuclear test defence service' (within the meaning of new subsection 69B(5)).

It will be applicable to all pension claims made before, on or after the commencement of the amendments being made by this Act.

The effect of the provision is to allow for the pension to be backdated to a date 3 or 6 months prior to the date of the claim for the pension, depending on the type of claim. A claim for disability pension may be backdated 3 months from the date of claim. A claim for war widow's or war widower's pension may be backdated a maximum of 6 months from the date of claim if the person claims within 6 months of the death of the member. Otherwise, the pension may be backdated 3 months from the date of claim.

Subitem 11(1) provides that subsection 20(3) of the Veterans' Entitlements Act will not apply to the grant of such a claim. Under subsection 20(3) of the Veterans' Entitlements Act the Repatriation Commission cannot specify a commencement date for the payment of a pension that is a date before the date that the person became eligible to be granted the pension. This would otherwise mean that a person's claim could not be backdated beyond the date the instrument took effect.

With subsection 20(3) of the Veterans' Entitlements Act not being applicable a pension may be granted to a person with 'British nuclear test defence service' as determined under new subsection 69B(5) from a date 3 or 6 months, whichever is applicable, prior to the date of the claim for the pension. However, a claim will not be backdated beyond 1 July 2010, when eligibility was provided for 'British nuclear test defence service' under the Veterans' Entitlements Act.

Subitem 11(2) provides that for the purposes of subitem 11(1) it will not matter if the claim for was made before, on or after the commencement of the item.

Commencement

Clause 2 provides that Schedule 1 commences on the day this Act receives the Royal Assent.