

Appendices to Volume Two

APPENDIX NINE

SUMMARY OF RECOMMENDATIONS — VOLUME TWO

The Committee makes the following recommendations concerning issues relating to eligibility.

CHAPTER 12: WORLD WAR II ISSUES

- 1 There should be no change to the statutory test of qualifying service for veterans of the Australian armed services or Australian mariners serving in World War II. The Committee notes, however, that the 'incurred danger' element of the test has been interpreted too narrowly, in that it does not take sufficient account of a credible risk of harm.
- 2 The *Veterans' Entitlements Act 1986* (VEA) should be amended to deem the following service during World War II as qualifying service during the period of hostilities:
 - Northern Australia
 - north of latitude 14.5 degrees south and islands and waters contiguous to this area, including the Torres Strait Islands, for any period between 7 December 1941 and 7 September 1944 inclusive.
 - Outside Australia
 - any area other than the West Pacific area – 3 September 1939 to 5 May 1945;
 - West Pacific area (except Papua and New Guinea and New Britain before 7 December 1941) – 3 September 1939 to 15 August 1945 – bounded by:
 - in the west, longitude 90 degrees east;
 - in the east, longitude 165 degrees east;

- in the south, latitude 10 degrees south, including Papua and New Guinea; and
 - in the north, by and including the eastern regions of the Asian continent;
 - Papua and New Guinea, including New Britain – 7 December 1941 to 15 August 1945; and
 - in an aircraft engaged in operations against hostile forces or in patrols or reconnaissance over land occupied by hostile forces of the enemy in one of the areas above at the times prescribed above.
- 3 Service during the period of hostilities of World War II that is not deemed to be qualifying service under the VEA should be regarded as being qualifying service only if it meets the statutory test.
 - 4 No change be made to the current provisions in relation to qualifying service after the cessation of hostilities in World War II.
 - 5 Service in Australia north of latitude 14.5 degrees south and islands and waters contiguous to this area, including the Torres Strait Islands, for any period between 7 December 1941 and 7 September 1944 inclusive should be regarded as operational service under the VEA. Operational service should also include service immediately before or after that period of service, as currently applies under s.6A of the VEA for service outside Australia.
 - 6 Where a veteran of the Australian armed services or an Australian mariner has qualifying service in World War II, that veteran or mariner should also be regarded as having operational service.
 - 7 Operational service should also include service immediately before or after that period of service, as currently applies under s.6A of the VEA for veterans with service outside Australia and s.6B of the VEA for Australian mariners with service outside Australia.

CHAPTER 14: POST-WORLD WAR II ISSUES

Korea

- 8 No change should be made to the eligibility provisions under the VEA for HMAS Vengeance in 1954.
- 9 No change should be made to the eligibility provisions under the VEA for service in Kure, Japan as part of the British Commonwealth Forces Korea.
- 10 No extension of access to the VEA should be made for service in Korea after 19 April 1956 that was outside the demilitarised zone.

Malayan Emergency 1948–60

- 11 No change should be made to the eligibility provisions under the VEA for RAAF service in Singapore during the period of the Malayan Emergency from 29 June 1950 to and including 31 August 1957.

RAN Service with the Far East Strategic Reserve 1955–71

- 12 No change should be made to the eligibility provisions under the VEA in relation to RAN service in the Far East Strategic Reserve.

Malay–Thai Border 1962–66

- 13 The aircrew of No 2 Squadron should be retrospectively allotted for service on the Malay–Thai border, with entitlement to qualifying service and other benefits under the VEA.
- 14 No change should be made to the eligibility provisions under the VEA for service in the area of Malaya or Singapore outside the Malay–Thai border region between the end of the Malayan Emergency and 27 May 1963.

Indonesian Confrontation 1962–68

- 15 Operational and qualifying service should be extended for service on or after 16 September 1963 to and including 16 August 1964 for all defence personnel on the posted strength of units located in the operational area of Malaysia.
- 16 The Department of Defence should review the nature of service of 76 Squadron in Darwin during Confrontation in September 1964.
- 17 No change should be made to the eligibility provisions of the VEA for service by HMAS Diamantina or HMAS Moresby during Confrontation.
- 18 No change should be made to the eligibility provisions of the VEA for service in Papua New Guinea during Confrontation.

North–East Thailand including Ubon 1962–68

- 19 No change should be made to the eligibility provisions of the VEA for RAAF service at Ubon for the period 31 May 1962 to 24 June 1965.
- 20 No change should be made to the eligibility provisions of the VEA for service on Exercise Ramasoon in Thailand in 1968.

South Vietnam 1962–73

- 21 No change should be made to the eligibility provisions of the VEA for visits by HMAS Vampire and HMAS Quickmatch to South Vietnam in the period 25–29 January 1962.
- 22 No change should be made to the eligibility provisions of the VEA for the refuelling of ships by HMAS Supply whilst on Exercise Sea Serpent in Vietnamese waters on 3 May 1963.
- 23 No change should be made to the eligibility provisions of the VEA for service rendered by RAN personnel in United States Navy ships in South Vietnam waters before Australia's commitment of forces to the Vietnam conflict on 31 July 1962.

Service in South-East Asia following the End of the Indonesian Confrontation

- 24 No change should be made in the VEA eligibility provisions for service in 4RAR or 8RAR in Malaysia after the end of Confrontation.
- 25 No further action should be taken in respect of peacetime service at Butterworth after the cessation of Confrontation and with ANZUK after the cessation of Confrontation.

Reclassifying Peacekeeping Service as Warlike

- 26 No change should be made to the eligibility provisions of the VEA for peacekeeping service.
- 27 No change should be made to the eligibility provisions of the VEA for service with the United Nations Military Observer Group India Pakistan.
- 28 No change should be made to the eligibility provisions of the VEA for police involved in peacekeeping service.

Reclassifying Specific Hazardous Service as Warlike

- 29 No change should be made to the eligibility provisions of the VEA relating to service providing humanitarian relief to the Kurds as part of Operation Habitat in 1991.

Establishing Access to the VEA for Specific Peacetime Service

- 30 Service on submarines during special operations is not warlike service for the purposes of the VEA.
- 31 Service on submarines during special operations should be deemed non-warlike hazardous for the purposes of the VEA. Service on submarines in peacetime should not be covered under the VEA.
- 32 The Department of Defence should further review the activities of personnel undertaking covert intelligence gathering, or involved in covert signals operations, to determine their operational status for benefits under the VEA.
- 33 Service during which personnel are injured or killed as a result of major peacetime accidents is not warlike or non-warlike hazardous service under the VEA.
- 34 The Department of Defence should review the activities of defence service personnel who located, cleared and disposed of enemy wartime ordnance in Papua New Guinea and the Pacific islands, with a view to making a determination on such activities as non-warlike hazardous service.
- 35 Service by ADF improvised explosive device disposal (IEDD) personnel in IEDD incidents should be deemed non-warlike hazardous service under the VEA.

- 36 Service by improvised explosive device disposal (IEDD) personnel in IEDD incidents should be declared warlike or non-warlike in conjunction with other Defence Force elements conducting counter-terrorist operations.
- 37 Service with the United Nations Mine Clearance Training Team in Pakistan before 8 June 1991 should not be deemed non-warlike hazardous service under the VEA.
- 38 The Department of Defence should further review service with HMAS Mermaid and HMAS Paluma in East Timor during 2000.
- 39 No change should be made to the treatment of service with HMAS Supply during the French nuclear tests in the Pacific in 1973.
- 40 Service in Australia after World War II in logistical support of an overseas operation should not, of itself, be considered warlike or non-warlike hazardous service.
- 41 Service by members of the RAAF directly involved in the Berlin Airlift should be deemed non-warlike hazardous service under the VEA.

Providing VEA Coverage for All Peacetime Service

- 42 There should be no extension of current VEA coverage for peacetime defence service.

CHAPTER 15: BRITISH COMMONWEALTH OCCUPATION FORCE (JAPAN)

- 43 Service with BCOF should be declared warlike from 21 February 1946 to 30 June 1947.
- 44 Service with BCOF should be declared non-warlike from 1 July 1947 to 30 June 1951, inclusive.

CHAPTER 16: BRITISH ATOMIC TESTS

- 45 Participation by Australian defence force personnel in the British atomic tests should be declared non-warlike hazardous and the legislation should be amended to ensure that this declaration can have effect in extending VEA coverage.
- 46 The Government should move quickly to finalise the cancer and mortality study.

CHAPTER 17: COUNTER-TERRORIST AND SPECIAL RECOVERY OPERATIONS

- 47 Special Air Service Regiment training should not be declared non-warlike or hazardous service.
- 48 Geographical limitations should be excluded so that the Minister can declare ADF operations, including counter-terrorist operations, in or

outside Australia as warlike or non-warlike where they meet the relevant criteria.

CHAPTER 18: PRISONERS OF WAR

- 49 An ex-gratia payment should not be extended to surviving POWs (E) and interned civilians held captive by the German-Italian forces during World War II or to the surviving widow/ers of those who have died.
- 50 An ex-gratia payment should be extended to all surviving POWs (K) held captive by the North Korean forces during the Korean War and to the surviving widow/ers of those who have died.

CHAPTER 19: WAR WIDOWS

- 51 No change should be made to the eligibility provisions under the VEA to provide a war widow's pension to the widows of all veterans, regardless of whether the veteran's death is related to eligible service.
- 52 No change should be made to the eligibility provisions under the VEA to automatically grant the war widow's pension to all widows of veterans eligible for the intermediate rate at the time of the veteran's death.
- 53 No change should be made to the eligibility provisions under the VEA to extinguish the right to claim the war widow's pension after marriage to another person subsequent to the veteran's death.
- 54 The VEA should be amended so that those war widows who enter into a marriage-like relationship after a veteran's death will be treated, in regard to the right to claim the war widow's pension, in the same way as those who marry or remarry after a veteran's death.
- 55 No change should be made to the eligibility provisions under the VEA to enable the war widow's pension to be made available to former wives and former husbands of veterans.
- 56 Existing provisions of the VEA that preclude the payment of two war widow's pensions where a person is twice widowed should be retained.

CHAPTER 20: CIVILIANS

- 57 Access of civilians to veterans' benefits under the VEA should continue to be based on the principle that provides eligibility only for those who were attached to the Australian armed services and who consequently came under military command of the Australian armed services. Therefore, VEA entitlements should not be extended to members of the Australian Women's Land Army, the Civil Constructional Corps, the civilian surgical and medical teams in Vietnam, merchant mariners on MV Jeparit or MV Boonaroo in Vietnam waters, entertainers in Vietnam, or QANTAS aircrew who flew in and out of Saigon.

- 58 Further investigation should be undertaken into the status of official entertainers in Vietnam.

CHAPTER 21: BRITISH, COMMONWEALTH AND ALLIED VETERANS

- 59 There should be no blanket extension of VEA compensation and health care benefits to all British, Commonwealth and allied (BCAL) veterans and allied mariners.
- 60 The VEA should be amended to enable a BCAL veteran to be able to establish a domicile of choice in Australia before the age of 21 years, with all other common law tests used in determining domicile continuing to apply.
- 61 The VEA should be amended to allow British and other Commonwealth veterans whose only service was within their country of enlistment to be considered as having qualifying service if they meet the same requirements that apply for service outside the country of enlistment.
- 62 The VEA should continue to exclude the provision of qualifying service benefits for service in BCAL forces in wars or warlike conflicts in which the Australian armed forces were not engaged.
- 63 The VEA should be amended to allow British and other Commonwealth veterans who served in the operational area of Malaya and/or Singapore between 1 September 1957 and 31 July 1960 to be regarded as having rendered qualifying service if their service was the same as that of veterans of the Australian armed services in that operational area during that period.
- 64 The VEA should be amended to remove the campaign medal requirement for BCAL mariners, with qualifying service being subject only to whether the mariner was detained by the enemy or incurred danger from hostile forces of the enemy during the period of hostilities in World War II.
- 65 If the Government accepts the Committee's recommendation to accord warlike and qualifying service to veterans of the Australian armed services serving in Japan with BCOF between 21 February 1946 and 30 June 1947, British and other Commonwealth veterans serving with BCOF in Japan during that period and United States veterans performing a similar peace enforcement role should also be regarded as having rendered qualifying service.

CHAPTER 22: GOLD CARD

- 66 The Repatriation Health Card – For All Conditions (Gold Card) should not be provided to veterans purely as recognition of service in the Australian armed services.
- 67 The Gold Card should not be extended to further categories of World War II veterans of the Australian armed services; however, should the Government accept the Committee's recommendations in relation to qualifying service for World War II service, veterans of the Australian

- armed services so gaining qualifying service should be entitled to the Gold Card.
- 68 The Gold Card should not be extended to all veterans of the Australian armed services for service with BCOF in Japan; however, should the Government accept the Committee's recommendations in relation to the classification of certain BCOF service as warlike, veterans of the Australian armed services with this service prior to 1 July 1947 should be entitled to the Gold Card.
 - 69 The Gold Card should not be extended to further categories of post-World War II veterans without qualifying service.
 - 70 The VEA should be amended so that there will be no further grants of the Gold Card to post-World War II veterans of the Australian armed services at age 70 on the basis of their having rendered qualifying service, unless the veteran satisfies some measure of financial need.
 - 71 The Gold Card should not be extended to all widows of veterans: the VEA should continue to provide the Gold Card only to widows eligible for a war or defence widow's pension.
 - 72 The VEA should be amended to enable assistance with private health insurance to be provided for the dependent children of veterans entitled to the special rate disability pension who transfer to the proposed new disability pension structure, or of veterans entitled to the extreme disablement adjustment, through the provision of a tax-free health care allowance, indexed to the Consumer Price Index, if the family takes out private health insurance.
 - 73 The Government should examine the needs of war widows and others caring for severely disabled adult orphans of veterans and the adequacy of existing support systems to meet those needs.
 - 74 The Gold Card should not be extended to all British, Commonwealth and allied veterans and mariners with or without qualifying service.
 - 75 Access to the Gold Card should not be extended to civilians who do not qualify as veterans under existing provisions of the VEA.

APPENDIX TEN

FINANCIAL IMPLICATIONS: ELIGIBILITY

As required by its terms of reference, the Committee has been conscious of the Government's commitment to responsible economic management. The Committee has taken a principled approach to its deliberations, and having done so, it has then considered the cost implications of its recommendations.

The Committee has recommended changes to address certain anomalies and to facilitate the equitable and efficient administration of the VEA. If accepted by Government, some of the recommendations will have financial implications, which are summarised in the following paragraphs. All cost figures quoted are four-year Budget costs.

WORLD WAR II SERVICE BY AUSTRALIAN VETERANS

In reviewing service during World War II, the Committee has recommended that the VEA be amended to deem as qualifying service any World War II service in Australia north of latitude 14.5 degrees south between 7 December 1941 and 7 September 1944 inclusive. Such service, including service immediately before and after as defined in s.6(a) of the VEA, is to be regarded also as operational service. The change for qualifying and operational service:

- extends the start and end dates for Northern Territory service to 7 December 1941 and 7 September 1944, respectively;
- removes the current three months service requirement for Northern Territory service; and
- extends the service area and times to include parts of Western Australia and Queensland.

The Committee also recommends that, where any veteran or mariner has qualifying service in World War II, his service should also be regarded as operational and s.6(a) or s.6(b) of the VEA should apply to that service.

The Department of Veterans' Affairs (DVA) has estimated the costs of this recommendation at about \$220 million over four years from the start of 2004. This cost is based on about 11,500 veterans gaining qualifying service in the first year. The bulk of the cost is for Repatriation Health Card – For All Conditions (Gold Card) for about 7500 veterans who do not already have a Gold Card on other grounds.

The next largest element of the cost relates to about 9500 of the 11,500 veterans who, with their partners, would be entitled to receive a service pension. These veterans and partners would already be receiving age pensions under the social security system and the net cost of granting service pension entitlement will relate to the cost of exempting disability pension as income for service pension purposes. The Committee believes that much of this net service pension cost has already been included in the Committee's costings of its recommendations in Volume 3 of this Report for a new disability compensation structure and should therefore not be counted twice in the costings of the Committee's recommendations.

A small element of the \$220 million of the estimate by DVA covers the changes to the definition of operational service for World War II, including the proposal that veterans granted qualifying service be considered to also have operational service. The cost arises from additional disability pensions and war widow/er's pensions that would be granted as a result of the application of the more generous 'reverse criminal' standard of proof to operational service claims. The more generous standard of proof would allow the success of some claims that previously failed, or would have failed, using the current civil standard of the proof that applies to claims for veterans without operational service. However, the Department believes that very few fresh claims would be made from this group and the Committee concurs with this assessment.

There is considerable uncertainty about the numbers of surviving World War II veterans who served in the areas and times specified in the Committee's recommendation who would gain qualifying and operational service should the Committee's recommendation be accepted. The Committee believes, from advice it has received and its historical research, that DVA has overestimated the numbers involved and, therefore, the cost of the recommendation. In addition, the Committee has already costed elsewhere much of the additional service pension element. Given this, and based on its much lower estimate of potential veterans gaining qualifying and operational service (5000), the Committee believes that the additional cost of its recommendations in relation to World War II would be more of the order \$100 million over four years.

POST-WORLD WAR II SERVICE

The Committee addressed many issues concerning post-World War II service. The following recommendations would have financial implications:

- That the aircrew of No 2 Squadron be retrospectively allotted for service on the Malay–Thai border from 1 August 1960 to 16 August 1964, giving them qualifying service. Small numbers of veterans are affected, and anticipated four-year costs are \$0.5 million.
- That qualifying service be awarded for service from 16 September 1963 to 16 August 1964 inclusive, for defence personnel on the posted strength of units involved in operations as part of Confrontation. DVA has estimated the cost of this extension at \$25 million based on about 600 veterans gaining entitlement. Based on alternative advice available, the Committee believes that the numbers affected are more likely to be around 350 to 400 and the resulting cost, around \$15 million.
- That service on submarines during special operations be deemed non-warlike hazardous for the purposes of the VEA. The Committee believes that the numbers affected and the cost of this recommendation would be small.
- That the Department of Defence further review the activities of personnel undertaking covert intelligence gathering, or involved in covert signals operations, to determine their operational status for benefits under the VEA. The cost of this would depend upon the outcome of that review and cannot yet be estimated.
- That the Department further review the activities of defence service personnel who located, cleared and disposed of enemy wartime ordnance in Papua New Guinea and the Pacific islands up to the 1970s with a view to making a determination on such activities as non-warlike hazardous service. The Committee believes that, if that review substantiated the need for such a declaration to be made, the numbers affected and the cost would be small.
- That service by Australian Defence Force (ADF) personnel in ‘improvised explosive device disposal’ incidents be declared non-warlike hazardous under the VEA. Costs would depend on the number and nature of incidents declared and the number of members involved, but are expected to be less than \$0.5 million.
- That service by members of the RAAF directly involved in the Berlin Airlift be deemed non-warlike hazardous service under the VEA. The Committee believes that the numbers affected and cost would be small.
- That the Department of Defence further review service on HMAS Mermaid and HMAS Paluma in East Timor during 2000. The cost of this

would depend upon the outcome of that review and cannot yet be estimated.

BRITISH COMMONWEALTH OCCUPATION FORCE

A significant number of submissions argued that service with the British Commonwealth Occupation Force (BCOF) in Japan should be deemed qualifying service. The Committee has accepted certain of these arguments and has recommended access to qualifying service for former Commonwealth veterans of BCOF for service from 21 February 1946 to 30 June 1947. It is difficult to assess the number of veterans affected, because many already have World War II qualifying service. From information provided by DVA, the forecast four-year cost will be around \$10 million for Australian veterans.

The Committee recommends that, if the Government accepts the Committee's recommendation to accord warlike and qualifying service to veterans of the Australian armed services serving in Japan with BCOF between 21 February 1946 and 30 June 1947, British and other Commonwealth veterans serving with BCOF in Japan during that period and United States veterans performing a similar peace enforcement role also be regarded as having rendered qualifying service. The numbers affected by this recommendation are uncertain. The Department advises that the net cost for every additional 1000 British, Commonwealth and allied veterans gaining access to the service pension and Orange Card would be about \$3 million over four years. Based on possible numbers, the Committee believes that the cost will be of a similar order to that for Australian BCOF veterans; that is, about \$10 million.

BRITISH ATOMIC TESTS

The Committee has recommended that participation by Australian armed services personnel in the British atomic tests be declared non-warlike hazardous service under the VEA. There is much uncertainty about the number of Australian armed services members who participated in the tests, making it very difficult to predict the number or outcomes of claims. However, based on advice from DVA, the forecast costs are likely to be approximately \$20 million over four years. The Committee has no better information on which to develop an estimate.

COUNTER-TERRORIST CAPABILITY

In reviewing submissions on counter-terrorist training, the Committee has recommended removal of the current policy requirement, that warlike or non-warlike service must be overseas, in order to allow the Minister for Defence to declare operations anywhere to be warlike or non-warlike. In making this recommendation, the Committee is conscious that the Department of Defence

has responsibility for making a recommendation to the Minister on the nature of service for any particular operation. Therefore, future financial implications will be subject to future operations and decisions that cannot be anticipated.

PRISONERS OF WAR (KOREA)

In reviewing submissions concerning prisoners of war, the Committee has recommended that an ex-gratia payment of \$25,000 be extended to all surviving prisoners of war held captive by the North Korean forces during the Korean War, and to the surviving widows of such prisoners. Based on DVA advice, the forecast one-off cost of this recommendation would be \$0.7 million, including implementation costs.

BRITISH, COMMONWEALTH AND ALLIED VETERANS

A significant number of submissions were received concerning the service of British, Commonwealth and allied (BCAL) veterans. The Committee has recommended that the VEA be amended to:

- enable BCAL veterans to be able to establish a domicile of choice in Australia before the age of 21 years, with all other common law tests used in determining domicile continuing to apply;
- remove the campaign medal requirement for BCAL mariners, with qualifying service being subject only to whether the mariner was detained by the enemy or incurred danger from hostile forces of the enemy during the period of hostilities in World War II; and
- regard British and other Commonwealth veterans who served in the operational area of Malaya or Singapore between 1 September 1957 and 31 July 1960 as having rendered qualifying service if their service was the same as that of veterans of the Australian armed services in that operational area during that period.

The Committee has been unable to ascertain the number of British and other Commonwealth veterans and mariners who might gain eligibility to the VEA or qualifying service through these changes. However, it is anticipated that the numbers will be small and the financial implications will not be significant.

The Committee has also recommended that British and other Commonwealth veterans whose only service was within their country of enlistment be considered as having qualifying service if they meet the same requirements that apply for service outside the country of enlistment. The numbers of British and Commonwealth veterans who would thus gain access to the service pension are difficult to estimate. As mentioned earlier, the Department advises that the net

cost for every additional 1000 British Commonwealth veterans gaining the service pension and Orange Card would be about \$3 million over four years. The Committee believes that the numbers are likely to be small and the cost no higher than \$10 million.

GOLD CARD ELIGIBILITY

Most submissions received by the Committee argued for eligibility for the Repatriation Health Card – For All Conditions (Gold Card). The Committee has made no recommendations for extension of the Gold Card to particular groups of veterans or dependants, except as covered by other recommendations relating to qualifying service extensions. The only recommendation for change that the Committee has made in Chapter 22 is that the VEA be amended so that there will be no further grants of the Gold Card to post-World War II veterans of the Australian armed services at age 70 on the basis of their having rendered qualifying service, unless the veteran is also assessed as being in financial need. The savings from this recommendation are likely to be small in the short term, but significant over the long term.

SUMMARY

The Committee's recommendations in this volume are estimated to have a Budget cost in the order of \$175 million over four years.