CHAPTER THIRTEEN

POST–WORLD WAR II SERVICE — HISTORICAL PERSPECTIVE

13

INTRODUCTION

13.1 Repatriation benefits for operations involving the armed forces of Australia since World War II have not been made on the same basis as for operations in World Wars I and II. This difference is based on the reasoning that, unlike World Wars I and II, subsequent conflicts have not involved formal declarations of war requiring mass mobilisations of troops. With the exception of service by national servicemen in Vietnam and areas of South-East Asia, deployments have comprised permanent members of the Australian armed forces who receive remuneration as compensation for serving in particular types of overseas deployments. Conflicts have also been in localised areas outside Australia, making it easier to define the area of operations.

13.2 Chapter 10 provides an overview of the eligibility requirements for access to the disability and service pensions under the *Veterans' Entitlements Act 1986* (VEA). That chapter includes the current definitions of terms used to define the types of service under the VEA.

13.3 This chapter outlines the development of the legislative framework, including the terms that have governed the provision of repatriation benefits since World War II.

13.4 This development had its genesis in the 'incurred danger' test of World War II and the need for a means of determining the nature of service performed by Australian forces on operational deployments after that conflict. The initial process used from the end of World War II was 'allotment for duty', based on

service in an operational area during a promulgated period of conflict. This ensured that entitled service personnel were administratively documented as having rendered operational service.

13.5 The nature of operational service became more complicated in the post-war period and new terminology was progressively introduced to categorise the various types of service, including peacekeeping service, hazardous service, defence service and warlike and non-warlike service. These classifications eventually replaced allotment for duty as a determinant for entitlements under the VEA.

ALLOTTED FOR DUTY

13.6 The term 'allotted for duty' first appeared in the *Repatriation Act 1920* in 1950[53] with the extension of benefits under the Act to members of the Australian armed forces serving in Korea and Malaya. The term was not defined in the original legislation. It was used again in the *Repatriation (Far East Strategic Reserve) Act 1956* (FESR Act) but remained undefined. The term 'allotted for special duty' was used in the *Repatriation (Special Overseas Service) Act 1962* (SOS Act) and was also not defined.

13.7 The significance of allotment for duty is that a person who is allotted for duty in an operational area has rendered operational service and is thereby entitled to a more generous regime of pension entitlements (Creyke and Sutherland 2000, part 5B.02).

13.8 Service covered under the FESR Act and, initially, service covered under the SOS Act, were performed by permanent members of the armed forces who had access to superannuation benefits; therefore, it was considered that service pension income support was not required. This was explained by the Minister for Repatriation, the Hon R Swartz, on the introduction of the SOS Bill in 1962, when he stated:

> The application of Division 5 in Part II of the *Repatriation Act* is not being extended for the same reasons as it was not extended to the strategic reserve in 1956, and accordingly service pension will not be payable. This is because the nature of the service is generally not the same as was service in the two World Wars and because members of the permanent forces now have available to them the benefits of the *Defence Forces Retirement Benefits Act*.[54]

13.9 The type of service required for allotment is explained in a 1965 Cabinet decision, which stated:

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[53] *Australian Soldiers' Repatriation Act No. 34* of 1950.
[54] Australia, House of Representatives 1962, *Debates*, vol. HR37, p. 2817.

> That the Services be directed that allotment for 'special duty' should only be made at a time when the personnel are exposed to potential risk by reason of the fact that there is a continuing danger from activities of hostile forces or dissident elements …[55]

13.10 This direction was made by Cabinet as a consequence of its adoption of a recommendation made by an interdepartmental committee, comprising representatives of the Prime Minister's Department, the Treasury and the Departments of Housing and Repatriation, set up to examine the principles on which eligibility for war service home loans was determined. The interdepartmental committee considered that there was a need for a clear directive from the Cabinet about the factors to be taken into account by the armed services in making allotments for special duty if uniformity was to be maintained between the services.

13.11 The Government appears to have had no difficulty in providing qualifying service entitlements for service in Korea and the most intense period of the Malayan Emergency between 1950 and 1957. However, it was not until 1968 that qualifying service benefits were extended to those allotted for special duty in a special area under the SOS Act that covered operations in Vietnam, the Malaya–Thailand border, the Malay Peninsula, Singapore, and areas of Borneo during Confrontation. The principal reason for this service not being accorded qualifying service status at the time of those operations was that the risk to personnel involved was not initially assessed to be as great as that experienced in earlier wars. The comparison of this type of service with that rendered in the two World Wars illustrates an attempt, however flawed, to adopt consistent criteria in determining what service would provide access to service pension benefits.

13.12 The next, and better, attempt to adopt a principle consistent with that which applied in World Wars I and II in conferring qualifying service benefits is illustrated in the second reading speech by the Minister for Repatriation, Senator McKellar, for the 1968 SOS Bill, in which he said:

> The second amendment that the Bill proposes is to extend eligibility for service pensions to those who have served on special service under the *Repatriation (Special Overseas Service) Act*. The government believes that the nature of the special service, which is similar to theatre of war service in earlier wars, justifies the recognition of its intangible effects in the future.[56]

13.13 With the introduction of the VEA in 1986, the term 'allotted for duty' was defined in s.5 (12) as follows:

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[55] Cabinet Decision 1048 of 7 July 1965.
[56] Australia, Senate 1968, *Debates*, vol. S38, p. 985.

> 5 (12) In this Act, a reference to a person, or a unit of the Defence Force, that was allotted for duty in an operational area shall be read as a reference to a person, or unit of the Defence Force
>
> (a) that was so allotted for duty in accordance with administrative arrangements applicable in the part of the Defence Force in which the person was serving, or of which that unit was formed, as the case may be; or
>
> (b) that is, by an instrument in writing signed by the Minister for Defence, deemed to have been allotted for duty in an area described in item 4 or 8 in Schedule 2 during the period of hostilities specified in that item.[57]

13.14 In 1990, the VEA was amended to counter the effect of the Federal Court's decisions in *Repatriation Commission and Doessel* (1990)[58] and *Repatriation Commission and Davis* (1990)[59] and clarify the meaning of allotment. These court decisions construed the phrase 'allotted for duty' as being equivalent to 'posted for duty'. The effect of such a construction was that all service personnel who entered an operational area would have had access to the full suite of VEA benefits, including qualifying service entitlements, irrespective of the task they were required to perform or the purpose of their presence in the area.

13.15 The explanatory memorandum to the amending Act stated that:

> The concept of 'allotment for duty' is a special one which was developed to cater for and identify service which attracted Repatriation benefits. It has been developed in respect of service undertaken in response to the war-like situations that have arisen since World War II and in respect of which there has [*sic*] been no formal declarations of war by Australia.[60]

13.16 Allotment was:

> … firstly, a distinct administrative arrangement separate from the normal 'posting' process which governs the movement of Defence Force personnel and, secondly, an administrative arrangement for the specific purpose of determining whether a person's service was sufficiently hazardous to entitle the person to benefits under the Principal Act.[61]

13.17 The term 'allotted for duty' is now defined in section 5B (2) of the VEA and specifically requires that:

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[57] Deemed allotment was a concept introduced in the VEA to cover service in the Vietnam operational area by crew of logistical support vessels. Until the VEA, the ships that entered the operational area were not allotted. Deemed allotment gave the crew of these ships access to the VEA, including qualifying service benefits such as the service pension.
[58] (1990) 95 ALR 704, 21 ALD 107.
[59] (1990) 94 ALR 621, 19 ALD 506.
[60] Veterans' Affairs Legislation Amendment Bill 1990, Explanatory Memorandum, p. 35.
[61] *Ibid*.

- service while allotted must be performed in one of the operational areas described in Schedule 2 during the time so prescribed; and
- the person or unit must be allotted for duty by written instrument issued by the Defence Force (Items 1–8 of Schedule 2) or Vice Chief of the Defence Force (Items 9–14 of Schedule 2) or Minister for Defence (deemed allotted in Vietnam) for use by the Repatriation Commission in determining a person's eligibility under the VEA.

PEACEKEEPING SERVICE

13.18 Members of the Australian Defence Force (ADF) and state and federal police forces have been involved in United Nations peacekeeping operations since 1947. Peacekeeping is an operation involving military and police personnel, without powers of enforcement, to help restore and maintain peace in an area of conflict with the consent of all parties.

13.19 In 1981, the *Repatriation Act 1920* was amended to provide a disability pension and related benefits for peacekeeping service as an Australian member or as a member of the Australian contingent of a peacekeeping force serving outside Australia on or after 2 November 1981. A peacekeeping force was one designated by the Minister for Defence in the Gazette. In 1982, coverage under the *Repatriation Act 1920* was extended retrospectively to peacekeeping service since the end of World War II. It appears that the extension was on the grounds of equity.

13.20 Special cover was provided under the *Repatriation Act 1920* for peacekeeping service because it was realised that existing provisions for peacetime service would not cover ADF members if they did not have the requisite three years effective full-time service. A further explanation of effective full-time service and the reason for the three-year provision are provided at paragraph 13.29. It was also recognised that police contingents had no cover under the *Repatriation Act 1920* but had, in the past, been provided with repatriation cover in times of conflict.

13.21 Although peacekeeping service is now included as non-warlike service under the Defence classification system, a separate definition of peacekeeping service remains under the VEA because the Defence classification does not cover police members. It should be noted that peacekeeping service is not qualifying service for the service pension.

13.22 The term 'peacekeeping service' is now defined in s.68 (1) of the VEA and means service with a peacekeeping force outside Australia.

HAZARDOUS SERVICE

13.23 Hazardous service was introduced into the legislation for the first time in 1986 and was intended to apply to service that could not properly be regarded as peacekeeping service, but which attracted a similar degree of physical danger. Hazardous service is not specifically defined in the VEA, but is referred to as service determined by the Minister for Defence to be hazardous service on the basis that the Minister is best-placed to receive detailed advice concerning the service under consideration, which might be very sensitive. Determinations for hazardous service have been made in respect of service in the Gulf of Iran and Gulf of Oman (1986 to 1989), assistance with Kurdish refugees (1991), naval operations in the Gulf (1991 and 1996), Iran (1991), Afghanistan (1991), Mozambique (1994), Rwanda (1994), Haiti (1994) and the former Yugoslavia (1997).

13.24 Hazardous service provides consideration of disability pension claims using the more generous reverse criminal standard of proof. The VEA does not allow hazardous service to apply before 7 December 1972, because repatriation benefits only applied to those who served in a war or warlike conflict up until that point. Hazardous service is not qualifying service for the purposes of the service pension. No hazardous service determinations have been made since 1997, when the VEA adopted the Department of Defence classifications of warlike and non-warlike service. Non-warlike service includes provisions for service regarded as hazardous.

DEFENCE SERVICE

13.25 The nature of the coverage under the VEA, and therefore entitlements that members of the ADF in peacetime are eligible to receive, is largely dependent on the period of time during which they served. Three distinct periods exist:

- prior to 7 December 1972;
- on or after 7 December 1972 until before 7 April 1994; and
- on or after 7 April 1994.

13.26 It should be noted that defence service as it is referred to in the VEA is defined as continuous full-time service on or after 7 December 1972 until the terminating date, namely 7 April 1994.

Regular Defence Force Service before 7 December 1972

13.27 Members of the ADF who have only peacetime service prior to 7 December 1972 have compensation cover under either the *Commonwealth*

Employees Compensation Act 1930, the *Compensation (Commonwealth Employees) Act 1971* or the *Safety, Rehabilitation and Compensation Act 1988* (SRCA). These Acts are based on a civil compensation model and provide the same compensation cover for military personnel as for all other Commonwealth employees.

13.28 Individuals who only have peacetime service before 7 December 1972 are not eligible for any VEA entitlements, since the *Repatriation Act 1920* had only provided benefits for those who served in a war or warlike conflict up until that point.

Defence Force Service on or after 7 December 1972 and before 7 April 1994

13.29 In September 1973, the *Repatriation Act* was amended to cover full-time service during peacetime in the ADF on or after 7 December 1972 subject to completion of a three-year qualifying period (or earlier if the member was discharged for medical reasons). The three-year qualifying period for eligibility was designed to encourage national service members to re-enlist after their initial two-year term of engagement. This was at a time when the Government was concerned about the dwindling size of the ADF as a result of the abolition of national service. The legislation also provided cover for people who were national servicemen immediately before 7 December 1972 and who completed the period of national service for which they were engaged or appointed, on or after 7 December 1972, and for national servicemen whose service was terminated on or after this date on grounds of invalidity or physical or mental incapacity.

13.30 The extension of cover for defence service under the *Repatriation Act* was also a response to concerns expressed by the courts and the Department of the Army, that the conditions of employment in the ADF differed markedly from civil employment and that a compensation scheme designed for civil employees of the Commonwealth was inadequate.

13.31 Coverage for peacetime service under the *Repatriation Act* continued with the introduction of the VEA. The extension of VEA benefits to peacetime defence service was also subject to the completion of three years of service if the member enlisted on or after 22 May 1986 until 6 April 1994 (exceptions existed if the member was medically discharged). Once qualified, members could claim under both the VEA and the SRCA and coverage was supplemented under a *Defence Act* determination.[62] Appropriate offsetting arrangements were put in

[62] Coverage under the *Defence Act* determination is for severe injury (such as paraplegia, quadriplegia, total blindness or any other injury having a similar effect) and compensation to families of those killed in compensable circumstances.

place so that compensation under the VEA was limited or reduced when compensation was also paid under the SRCA for the same condition.

Regular Defence Force Service on or after 7 April 1994

13.32 The continuation of cover under the VEA for peacetime service was seen as an interim measure, until such time as a military compensation scheme could be established.[63] The Military Compensation Scheme (MCS) was introduced on 7 April 1994. The significance of the MCS was that it removed dual eligibility of compensation coverage under the VEA and SRCA for peacetime defence service by members who enlisted on or after 7 April 1994, by providing compensation under the SRCA only.[64]

13.33 Members of the ADF who only have peacetime service on or after 7 April 1994 are covered under the SRCA component of the MCS and coverage is supplemented under the *Defence Act* determination.

13.34 Individuals with eligible peacetime defence service under the VEA have basically the same access to VEA compensation benefits as those with other forms of service covered under the VEA after World War II, except that disability pension claims are subject to the civil standard of proof.[65] Peacetime defence service does not constitute qualifying service for the service pension.

13.35 In contrast, individuals covered under the *Commonwealth Employees Compensation Act*, the *Compensation (Commonwealth Employees) Act* or the SRCA are covered under a system that is based more on a civil workers' compensation model than on a repatriation model.

WARLIKE AND NON-WARLIKE SERVICE

13.36 Before 1993, the ADF had been involved in a small, though increasing, number of overseas deployments. In each case the financial conditions of service had to be developed separately. Elements of the package had to be negotiated with several external government agencies. Each negotiation was characterised by a 'bidding up' on certain elements of the package. The starting point in negotiations was the level that had been successfully negotiated for the previous deployment. This increased uncertainty and prolonged negotiation, and personnel were often not advised of their conditions of service before their

[63] Veterans' Entitlements Bill 1985, House of Representatives, 16 October 1985.
[64] However, peacetime service members enlisted before 22 May 1986 (and having continually served up to and after 7 April 1994) remained covered under the VEA, as did peacetime service members enlisted on or after 22 May 1986 (who had completed 3 years continuous service by 6 April 1994).
[65] In contrast, those on operational service receive the reverse criminal, or more beneficial, standard of proof.

departure. Moreover, the process led to inconsistent outcomes between deployments.

13.37 These uncertainties and inconsistencies led to a submission to Cabinet sponsored jointly by the Minister for Defence and the Minister for Industrial Relations. Underpinning the submission was the proposition that, if the Government commits the ADF to an overseas deployment, the Government should also determine the major conditions of service applicable to that deployment. The submission sought to establish a framework around which conditions of service could be built. This led to the development of the defined classifications of warlike and non-warlike service. In developing definitions of these forms of service, it was acknowledged that they would be separate from service rendered in Australia or overseas on peacetime tasks.

13.38 In 1993, Cabinet agreed to definitions of warlike and non-warlike service and established a conditions of service framework for ADF personnel deployed overseas. The framework was the result of protracted negotiations between a number of government departments. Fundamentally, the decision transferred the authority to set the conditions of service for overseas deployment from the Departments of Veterans' Affairs, Industrial Relations and the Treasury to the Department of Defence. This centralised process was to ensure simplicity, consistency and flexibility in establishing conditions and enable a timely announcement of benefits for personnel being deployed.

13.39 Application of the framework relies on the Minister for Defence, in consultation with the Prime Minister, making a declaration as to whether a deployment is warlike or non-warlike. The Minister for Defence does not have functional responsibility for some elements of the package endorsed by Cabinet. Notwithstanding this, the framework established by the 1993 Cabinet decision allows the declaration by the Minister for Defence to provide the authority for the relevant external departments to establish the necessary provisions without the need for further justification case by case. This avoids the difficulty that existed before 1993, in the Minister for Defence having to justify to each department the reasons why a particular provision ought to be established.

13.40 The process involved in declaring an overseas deployment as warlike or non-warlike is summarised below.

- The Government decides to conduct an operation or approves a request for ADF participation in an overseas deployment. The request will usually come from the United Nations or other foreign government through the Department of Foreign Affairs and Trade.
- Defence prepares a submission to the Minister for Defence, recommending the deployment be declared warlike or non-warlike. In preparing the submission, Defence considers such factors as the task to be completed, the

warlike and non-warlike definitions, and the military threat assessment, which includes the situational (military) and environmental (health) threats.

- In consultation with the Prime Minister, the Minister for Defence declares the deployment warlike or non-warlike.
- Defence monitors and reviews the nature of service for all ongoing overseas deployments. A formal review is completed every six months or when there is a change to the role of the forces deployed, a rotation of forces or a change in the military threat assessment. The Minister for Defence must approve any change to the warlike or non-warlike status of an overseas deployment.

13.41 The conditions of service that derive from the declaration of the nature of service are based on a requirement to ensure that consistency is established for each deployment and between deployments and that timely advice thereof is given before the forces depart. The conditions of service package is designed to provide:

- adequate death and disability compensation cover;
- compensation for the disabilities and hardships faced when, at government direction, ADF members are placed in direct physical danger or threat situations beyond those normally associated with peacetime service; and
- certain rewards for rendering the particular type of service.

13.42 Service on operational deployments overseas is recognised as being different from that rendered under peacetime arrangements both within Australia and overseas. It is possible, however, for service on an overseas deployment to be rendered under peacetime arrangements. Those situations that do not require a commitment to provide a military response under operational circumstances are peacetime service. An example is the humanitarian assistance provided in Papua New Guinea following the tsunami disaster in 1999. The point is that service overseas does not automatically mean that the service is warlike or non-warlike and thereby attracts the associated package of conditions, including benefits under the VEA.

13.43 Broadly speaking, the conditions of service that attach to warlike service are more beneficial than those attaching to non-warlike service. Under the VEA, warlike service is deemed qualifying service and provides entitlement to the service pension. Exemption from income tax reflects the principle that a government should not require members of an armed force to pay taxation when rendering warlike service at the Government's behest. Warlike service also provides access to enhanced provisions of the Defence Home Owner Scheme.

13.44 In allowing the conditions of service to apply to personnel involved in warlike or non-warlike service, two prerequisites must be met. They are:

- that personnel are part of the forces assigned to fulfilling the warlike or non-warlike tasks; and
- that those personnel are within a defined geographic area.

13.45 In 1997, definitions of warlike and non-warlike service were inserted into the VEA by the *Veterans' Affairs Legislation (Budget and Compensation Measures) Act 1997*, effective from 13 May 1997. A declaration of warlike service by the Minister for Defence accords qualifying service status for service pension purposes under the VEA. Non-warlike service is not qualifying service for service pension purposes.

13.46 The definitions of warlike and non-warlike service are given in Chapter 10.

CONCLUSION

13.47 This chapter has outlined the development of the legislative provisions for repatriation benefits since World War II. The following chapter considers perceived anomalies in eligibility for access to VEA benefits for service over that time.

CHAPTER FOURTEEN

POST–WORLD WAR II ISSUES

14

INTRODUCTION

14.1 The terms of reference of this Review require the Committee to consider perceived anomalies with eligibility for qualifying service and access to benefits under the *Veterans' Entitlements Act 1986* (VEA). In this chapter, the Committee deals with submissions relating to service in the Australian armed services since World War II.

14.2 Other post-World War II eligibility issues, relating to the British Commonwealth Occupation Force (BCOF) in Japan, atomic testing in Australia, counter-terrorism and special recovery (CTSR) operations and British, Commonwealth and allied (BCAL) veterans, are addressed in subsequent chapters.

14.3 During the course of this Review, the Committee received 129 submissions relating to service after World War II. Broadly, submissions sought either:

- access to the VEA for disability compensation and/or qualifying service benefits for certain service currently not covered; or
- qualifying service benefits for certain service for which the VEA currently only provides disability compensation benefits.

FRAMEWORK USED BY THE COMMITTEE IN ASSESSING ANOMALIES

14.4 To deal with claimed post-World War II eligibility anomalies, the Committee needed a means of assessing the nature of service for the particular circumstances that was prospective, consistent and equitable. It was also desirable that such assessment be at least the equal of current best practice and hence in accord with the criteria used today by the Commonwealth Government in determining the nature of service for deployment of the Australian Defence Force (ADF) on military operations.

14.5 The Department of Defence uses a robust process for developing advice to the Government on the nature of service that should apply to a planned ADF operational deployment. The process is based on two classifications of the nature of service: warlike and non-warlike. The warlike and non-warlike classifications have been used for assessing VEA entitlements for the ADF since 1997, and are defined in Chapter 10 of this Report.

14.6 A declaration of warlike service gives access to compensatory payments, such as the disability pension. It is also qualifying service for the service pension and associated benefits. A declaration of non-warlike service gives access to compensatory payments such as the disability pension, but is not qualifying service for service pension and associated benefits purposes. Peacetime service does not provide eligibility for any benefits under the VEA, unless defined under the VEA as 'defence service' between 7 December 1972 and 7 April 1994. Defence service does not provide entitlement to the service pension but does provide entitlement to the disability pension, with disability pension claims determined applying the civil standard of proof.

14.7 In determining the nature of service for an approved operation, the Department of Defence uses three primary factors: the mission, the rules of engagement and the threat to ADF personnel.

14.8 The mission describes the task and provides guidance on the likely nature of action required. Warlike operations are those military activities where the application of force is required to pursue specific military objectives, such as a declared war, conventional combat operations against an armed adversary and peace enforcement operations in support of diplomatic efforts to restore peace between belligerents. Non-warlike operations are activities short of warlike activities where there is a risk associated with the assigned tasks; they include hazardous operations such as mine clearance, weapons inspections, service protected or assisted evacuations, and peacekeeping operations to help restore and maintain peace in an area of conflict with the consent of all parties. In the absence of a declaration of warlike or non-warlike service, peacetime service applies. Peacetime service includes all routine operations such as training,

conducting exercises or 'showing the flag' of the defence forces in time of peace on a full-time and continuous basis.

14.9 The rules of engagement authorise the application of, and limitations on, the use of lethal force to achieve an assigned mission. In warlike operations, the application of lethal force is authorised, within defined parameters, to achieve the mission. In non-warlike operations, the application of force is limited to self-defence.

14.10 The level of threat is implicit in the definitions of warlike and non-warlike service. In warlike operations there is an expectation of casualties, whereas in non-warlike operations casualties could occur but are not expected.

Modifications to Current Criteria for Determining the Nature of Service used by the Committee

14.11 A deficiency in the current Defence classification system is that it applies only to service outside Australia. The Committee believes that this is anachronistic, particularly given Australia's extant defence strategy as articulated in the White Paper, the increasing concern for our offshore territories, and the likely ubiquitous nature of 21st century conflict as exemplified by the International Coalition Against Terrorism. Therefore, the Committee has decided to acknowledge this deficiency by ignoring the location of the service, in Australia or overseas, in addressing the claimed anomalies.

14.12 Additionally, the Committee considers that the criteria for assessing the level of threat are not well articulated in the current process. It can be argued from the Defence definitions that the nature of service and subsequent level of conditions of service relate solely to the level of military threat expected during an operation and the consequential expectation of battle casualties. However, it can also be argued that casualties could be expected from extreme climate, disease or horrific circumstances likely to cause psychological trauma. The Committee concludes that this vagueness in current policy is best addressed by using in its deliberations the terms 'operational' and 'environmental' threat, as defined by the Department of Defence's Military Threat Assessment process, for the purposes of assessing the prospect of casualties in the circumstances of the claimed anomalies.

Application of the Framework

14.13 The criteria used by the Committee to assess claims for eligibility for warlike service were as follows:

- the mission was to pursue a specific military objective;
- the application of force was authorised; and

- the operational threat was such that there was an expectation of battle casualties.

14.14 The criteria used by the Committee to assess claims for eligibility for non-warlike hazardous service were as follows:

- the military activity was above the hazard of normal peacetime duty;
- the application of force, if applicable, was limited to self-defence; and
- the operational threats were such that battle casualties were not expected but environmental casualties could occur.

14.15 The criteria used by the Committee to assess claims for eligibility for non-warlike peacekeeping service were as follows:

- service was with a United Nations or similar peacekeeping force;
- the application of force was limited to self-defence; and
- the operational threats were such that battle casualties were not expected but environmental casualties could occur.

14.16 Service that did not meet the warlike or non-warlike criteria was deemed to be peacetime service.

SCOPE OF CHAPTER

14.17 Because of the many issues raised in relation to post-World War II service, this chapter is divided into the following parts:

Part 1 — Korea;

Part 2 — Malayan Emergency, 1948–60;

Part 3 — Royal Australian Navy (RAN) service with the Far East Strategic Reserve (FESR), 1955–71;

Part 4 — Malay–Thai border and Malaya/Singapore, 1960–64;

Part 5 — Indonesian Confrontation, 1962–66;

Part 6 — north-east Thailand including Ubon, 1962–68;

Part 7 — Vietnam, 1962–73;

Part 8 — other service in South-East Asia;

Part 9 — reclassifying peacekeeping service as warlike service;

Part 10 — reclassifying specific hazardous service as warlike service;

Part 11 — establishing access to the VEA for specific peacetime service; and

Part 12 — providing VEA coverage for all peacetime service.

PART 1 — KOREA

Background

14.18 Following the 1950 attack by North Korea on South Korea, a United Nations multinational force fought on behalf of South Korea until an armistice was agreed in July 1953. After the armistice, the countries involved in the conflict, including Australia, maintained forces in South Korea to monitor and oversee the cease-fire. Once the armistice had been in force long enough to be shown to be effective, Australia, together with Britain, Canada and New Zealand, began to take steps to withdraw forces. The reduction of the Australian forces began on 15 March 1956, with the main body of troops arriving back in Australia on 5 April 1956. The four Commonwealth nations agreed, after discussions with the United States, to leave a residual Commonwealth force in place to help maintain the international composition of the forces in Korea (DOD–DVA 1997).

Access to the VEA

14.19 Veterans of the Australian armed services who were allotted for duty and served in the operational area of Korea from 27 June 1950 to 19 April 1956 have operational and qualifying service that provides access to disability compensation benefits and the service pension. The operational area of Korea is specified as the area of Korea, including the waters contiguous to the coast for a distance of 185 kilometres (100 nautical miles) seaward from the coast.[66]

14.20 Members of the Australian armed services serving in the demilitarised zone (DMZ) of Korea after 19 April 1956 have operational service under the VEA entitling them to disability compensation benefits, but this service is not qualifying service. Service outside the DMZ after 19 April 1956 is peacetime service and does not give access to the VEA.

Summary of Submissions

14.21 The Committee received six submissions concerning service in Korea. The issues raised were:

- service on HMAS Vengeance, whilst allotted for duty in Korea in 1954, should be regarded as qualifying service;
- service at Kure in Japan as part of the British Commonwealth Forces Korea (BCFK) should be regarded as qualifying service; and

[66] Item 1 of Schedule 2 of the VEA outlines the prescribed operational area.

- service in Korea, not including service in the DMZ, after 19 April 1956 should be regarded as operational and qualifying service.

Discussion of Issues and Conclusions

Service by HMAS Vengeance in 1954

14.22 Submissions claimed that service on HMAS Vengeance in 1954 should be qualifying service due to the nature of the service, which was to transport No 77 Squadron from Japan to Australia.

14.23 HMAS Vengeance was allotted for duty in Korea. However, the ship never entered the operational area of Korea, having been diverted to Japan to transport No 77 Squadron back to Australia. Consequently, although the ship was allotted for duty in the operational area of Korea within the timeframe, the crew do not have qualifying service under the VEA because the ship never entered the operational area. However, in 1998, the Defence Force issued an instrument assigning HMAS Vengeance for service in Japan, giving operational service under s.6D of the VEA for the period 27 October 1954 to 3 December 1954 and, consequently, access to VEA compensation benefits for the service.

14.24 In considering whether service on HMAS Vengeance is qualifying service, the Committee has examined whether the service meets the current warlike criteria by assessing the service against the mission, rules of engagement and threat levels. The Committee finds that:

- the task of transporting No 77 Squadron from Japan to Australia was an administrative task in support of operations in Korea but was not for the pursuit of any specific military objective related to the Korean conflict;
- there is no evidence to suggest that HMAS Vengeance was authorised or required to use force to complete the task; and
- there is no evidence that HMAS Vengeance was under any threat that would lead to an expectation of casualties.

14.25 The Committee concludes that service on HMAS Vengeance transporting No 77 Squadron from Japan to Australia was not warlike service and therefore cannot be regarded as qualifying service.

Recommendation

The Committee recommends that no change be made to the eligibility provisions under the VEA for service on HMAS Vengeance in 1954.

Service at Kure in Japan as Part of the British Commonwealth Forces Korea

14.26 One submission was received about members of BCFK in Japan, which argued that this service should be qualifying service as it was in direct support of forces in Korea.

14.27 Service in BCFK Headquarters at Kure in Japan is not considered qualifying service because individuals did not serve, nor were they allotted for duty, in the operational area of Korea. However, this service is considered operational service under s.6D of the VEA, giving access to disability compensation benefits.

14.28 In assessing whether service at BCFK Headquarters could be regarded as qualifying service, the Committee has applied the criteria for warlike service and finds that there is no evidence to suggest that service in BCFK Headquarters:

- was related to the pursuit of military objectives;
- involved tasks for which the use of lethal forces was authorised or required; and
- was under a level of threat at which there would be an expectation of casualties.

14.29 The Committee concludes that service in BCFK Headquarters was not warlike service and should not provide access to qualifying service benefits under the VEA.

Recommendation

The Committee recommends that no change be made to the eligibility provisions under the VEA for service in Kure, Japan as part of BCFK.

Service in Korea, Not Including the Demilitarised Zone, after 19 April 1956

14.30 Submissions claimed that service in Korea after 19 April 1956, outside the DMZ, should be regarded as operational and qualifying service because the conditions under which personnel served were no different from conditions before that date.

14.31 The Committee notes that members of the Australian armed services who served in Korea, excluding the DMZ, after 19 April 1956 do not currently have any coverage under the VEA.

14.32 The Committee accepts that such service after 19 April 1956 may have been no different from some service before that date, at least after the armistice in July 1953, but this is because the retention of repatriation benefits after the armistice was based on political, not operational considerations. In this regard, the Committee notes that the Cabinet delayed the withdrawal of special benefits for service in Korea because:

- there was concern that withdrawal of these benefits would amount to a breach of contract, because a large number of Army personnel had been enlisted specifically for service in Korea and the conditions under which they enlisted included benefits (such as repatriation benefits, income tax exemptions and operational deferred pay) that were not available for other service in the regular Army; and
- Canada had experienced difficulties in finding replacements in Korea following its decision to withdraw special benefits for service after the armistice.

14.33 The end date for operational and qualifying service in Korea therefore appears to have been based largely on concerns about the effect that a withdrawal of entitlements would have on the ability to maintain a presence in Korea, rather than on the nature of the service rendered.

14.34 The Committee has nevertheless assessed service after 19 April 1956 outside the DMZ against the warlike and non-warlike criteria. The Committee notes that a joint review by the departments of Defence and Veterans' Affairs in 1996 (DOD–DVA 1997) concluded that service in Korea after April 1956, outside the DMZ, should not be operational service because Cabinet had decided on 7 March 1956 that:

> The actual tasks performed by members of the Australian forces within South Korea were considered non-operational and according to the information available, would not have involved a degree of risk significantly over and above that of normal peacetime duties. Casualties would generally not be expected in South Korea while the Armistice remained in place.

14.35 Additionally, the Committee was unable to confirm the rules of engagement after 19 April 1956, but it assumes that because the 'service had returned to normal peacetime duties',[67] the rules of engagement would not be comparable to those applicable for warlike service.

[67] 'Withdrawal of Special Benefits Granted Members of the Forces Korea (and Japan) and Conditions of Service Applying Thereto', Minute from Chairman, Repatriation Commission to the Minister for Repatriation, 21 February 1956 in DOD–DVD (1997).

14.36 Therefore, the Committee concludes that service in Korea outside the DMZ after 19 April 1956 was not warlike or non-warlike in nature and should remain peacetime service.

Recommendation

The Committee recommends that no extension of access to the VEA be made for service in Korea after 19 April 1956 that was outside the demilitarised zone.

PART 2 — MALAYAN EMERGENCY, 1948–60

Background

14.37 On 16 June 1948, the Malayan Government declared a state of emergency in response to an insurgency instigated by the Communist Party of Malaya and related racial tensions between ethnic Malays and the Chinese minority. Britain, as the colonial power until independence in 1957, requested military assistance from Australia and other Commonwealth countries. In May 1950, No 38 Squadron deployed to Kuala Lumpur and in July, No 1 Squadron also deployed to Malaya, operating out of Tengah on Singapore Island (Gration 1994).

14.38 In 1955, Australia joined New Zealand and Britain in forming the FESR, also known as the Commonwealth Strategic Reserve, based in Malaya. On 1 April 1955, Australia announced that it would contribute to the forces engaged in the emergency with an infantry battalion group, naval ships (which were deployed in Malayan waters from July 1955), a fighter wing of two squadrons, a bomber squadron and an airfield construction squadron (Gration 1994).

Access to the VEA

14.39 Under the VEA, to be eligible for qualifying service for the period of the Malayan Emergency, a member of the Australian armed services must have been allotted for duty and have served in the operational area of Malaya in the period 29 June 1950 to, and including, 31 August 1957. The operational area is defined as 'the area of Malaya including the waters contiguous to the coast for a distance of 18.5 kilometres seaward from the coast'.[68]

[68] Item 2 of Schedule 2 of the VEA outlines the prescribed operational area.

14.40 Service solely in Singapore in the period 29 June 1950 to 31 August 1957 is considered operational service, providing access to the disability pension, but not qualifying service for the service pension.

14.41 Service in the territories of the countries then known as the Federation of Malaya and the Colony of Singapore from 1 September 1957 until the end of the Malayan Emergency on 31 July 1960 is both operational service and qualifying service for those allotted for duty and serving in the operational area.

Summary of Submissions

14.42 The Committee received five submissions on this matter, which argued that some Royal Australian Air Force (RAAF) operations from Singapore in 1956 should be deemed qualifying service on the basis that members were allotted for duty in the operational area of Malaya (but never entered the operational area) during the relevant 1950–57 period.

Discussion of Issues and Conclusions

14.43 The VEA provides that qualifying service was only rendered if an Australian armed services member was allotted for duty in the operational area of Malaya in the period from 29 June 1950 and 31 August 1957 *and* actually served in that operational area during that period. Singapore was not part of the operational area, because personnel stationed there were not involved in counter-terrorist operations in connection with the Malayan Emergency. In respect of the RAAF in Singapore, the requirement to have been allotted and to have served in the operational area of Malaya was intended to ensure that qualifying service was only accorded to those who undertook operational flights into the operational area. Those who did not enter the operational area of Malaya have operational service only under s.6D of the VEA, giving access to disability compensation benefits.

14.44 In assessing whether service in Singapore was warlike for the purpose of determining if it should be qualifying service, the Committee found that those who did not undertake sorties into the operational area were not exposed to a level of threat from activities in the operational area.

14.45 The operational task in Singapore was to provide support to operations in Malaya; it was not related to the pursuit of any specific military objectives in Singapore. Communist activities were being undertaken in Singapore; however, the Australian Government was determined not to become involved in the suppression of riots and communist activities. Under these conditions, the Committee believes that, while casualties could have occured, they were not expected and, although some personnel were armed, this was for self-defence

only and hence the rules of engagement for Singapore were not comparable to those of personnel who undertook operations in the operational area of Malaya.

14.46 The Committee concludes that service in Singapore from 29 June 1950 to 31 August 1957 was not warlike.

Recommendation

The Committee recommends that no change 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.

PART 3 — RAN SERVICE WITH THE FAR EAST STRATEGIC RESERVE, 1955–71

Background

14.47 As stated in paragraph 14.38, Australia joined New Zealand and Britain in forming the FESR, based in Malaya, in 1955. On 2 July 1955, RAN service in the FESR commenced. This followed a Cabinet decision in June 1955, that after joint sea–air exercises with units of the RAN and Royal New Zealand Navy in the Malayan Area, HMAS Arunta and HMAS Warramunga should remain as part of the newly formed force. Therefore, on 2 July 1955, these two ships began a six-month tour of duty as the first of the RAN contribution to FESR. Some 13 Australian vessels saw service with FESR for various periods during the Malayan Emergency (Gration 1994).

Access to the VEA

14.48 Under the VEA, to be eligible for qualifying service for naval service with FESR, persons must have served in a prescribed operational area whilst allotted, for example, as part of the response to the Malayan Emergency during the period 2 July 1955 to 31 July 1960, or as part of the Indonesian Confrontation. Under the Act, naval service with FESR from 31 July 1960 until 27 May 1963, whilst assigned for service in the operational area comprising the territory of Singapore and the country then known as the Federation of Malaya, is operational service only.

Summary of Submissions

14.49 The Committee received three submissions regarding RAN service with FESR. These argued that all RAN service with FESR for the period 1955 to 1971

should be classified as qualifying service irrespective of the period served or the nature of the operations that were conducted.

Discussion of Issues and Conclusions

14.50 The Committee does not accept the claim that merely serving with FESR should be qualifying service. Rather, access to the VEA must be related to the nature of the service. In assessing whether service as part of FESR, excluding service currently regarded as qualifying service under the VEA, meets the criteria for warlike service and consequently qualifying service, the Committee finds that:

- other RAN activities as part of FESR were essentially to display a presence in the South-East Asian region and did not constitute military activities with the purpose of pursuing specific military objectives akin to warlike service; and
- there were no active rules of engagement and no expectation of casualties.

14.51 The Committee concludes that, with the exception of service in the FESR already covered under the VEA, the mission, rules of engagement and level of threat relating to service in the FESR do not satisfy the criteria for warlike service.

Recommendation

The Committee recommends that no change be made to the eligibility provisions under the VEA in relation to RAN service in FESR.

PART 4 — MALAY–THAI BORDER AND MALAYA/SINGAPORE, 1960–64

Background

14.52 Although the Malayan Emergency officially ended on 31 July 1960, operations against communist terrorists continued along the Malay–Thai border, with members of the Australian armed services serving on a rotational basis with New Zealand, British and Malayan defence forces until 1966. The last known record of operations on the Malay–Thai border by the Australian Army was in December 1964. RAAF operations continued, with No 2 Squadron ceasing operations in June 1965 and No 5 Squadron recording its last sortie in March 1966 (Gration 1994, p. 55).

Access to the VEA

14.53 Under the VEA, to be eligible for qualifying service as part of operations on the Malay–Thai border, persons must have served in a prescribed operational area whilst allotted for duty from 1 August 1960 to 16 August 1964.[69] Additionally, some members may have eligibility for qualifying service on the Malay–Thai border if they served in the operational area during Confrontation.[70]

14.54 Between the end of the Malayan Emergency and the beginning of Confrontation, those assigned for service in Malaya/Malaysia and Singapore have operational service giving access to disability compensation benefits and application of the reverse criminal standard of proof for disability pension claims.

Summary of Submissions

14.55 The Committee received six submissions relating to service during the period of Malay–Thai border operations. The arguments raised were:

- that RAAF service flying sorties over the Malay–Thai border should be allotted service; and
- that service in Singapore and Malaysia during 1962 and 1963 should be considered qualifying service.

Discussion of Issues and Conclusions

RAAF Service Flying Sorties over the Malay–Thai Border

14.56 One submission argued that operational sorties by the RAAF over the Malay–Thai border should be allotted service for the purposes of the VEA, particularly service by crews of No 2 Squadron involved in supply and leaflet drops. Submissions also argued that it is inequitable that Army air dispatch personnel, who flew in the RAAF aircraft, have qualifying service on such operations, when the RAAF aircrew do not.

14.57 The Committee notes that the current allotment instrument for the Malay–Thai border includes only Army units and is the result of a recommendation in the Mohr Report. For individuals to be granted qualifying service, they need to have been part of an allotted unit listed in the instrument for service on the Malay–Thai border and demonstrate that they actually served within the operational area. The allotment certificate includes Army air dispatch units who were in the RAAF transport aircraft and whose tasks were literally to

[69] Item 5 of Schedule 2 of the VEA outlines the prescribed operational area.
[70] Item 7 of Schedule 2 of the VEA outlines the prescribed operational area.

push or throw supplies out of the aircraft to 28 Commonwealth Brigade units on operations in the border region.

14.58 After consultation with the Department of Defence, the Committee is satisfied that No 2 Squadron was indeed involved in supply and leaflet drops over the Malay–Thai border during the period of conflict. Because the aircrews' operational activity was on the same aircraft as the air dispatchers, the Committee believes that the aircrew of No 2 Squadron who flew on these missions faced similar risks, and therefore should be retrospectively allotted for service and provided full entitlements under the VEA.

Recommendation

The Committee recommends that the aircrew of No 2 Squadron be retrospectively allotted for service on the Malay–Thai border, with entitlement to qualifying service and other benefits under the VEA.

Service in Singapore and Malaysia during 1962 and 1963

14.59 Submissions claimed that units were allotted for service in Malaya and Singapore after the end of the Malayan Emergency on 31 July 1960 until 27 May 1963 under the *Repatriation (Far East Strategic Reserve) Act 1956 (*FESR Act) and that, as they were allotted for service, they should have qualifying service under the VEA.

14.60 The Committee understands that, under the FESR Act, service in FESR from 1 September 1957 to 27 May 1963 provided disability compensation only. Under the VEA, service in Singapore and Malaya as part of FESR during the Malayan Emergency is qualifying service but service after the end of the Malayan Emergency is not (unless the service was in operations on the Malay–Thai border).

14.61 The Committee found that ADF members stationed in Singapore and Malaya in 1962 to 27 May 1963, even though allotted, did not participate in operations during a period of conflict and therefore should not be regarded as having qualifying service. There has been no substantive evidence presented to the Committee to suggest that warlike missions were undertaken during this period, except for service on the Malay–Thai border. Moreover, no evidence has been presented to suggest that such operations involved active rules of engagement with the authorisation to use lethal force, or to indicate that such activities would have had a level of threat that entailed an expectation of casualties.

14.62 The Committee therefore concludes that no justification can be found to provide qualifying service for service in Malaya and Singapore between the end of the Malayan Emergency and 27 May 1963, outside of operations on the Malay–Thai border. The Committee reaches this conclusion notwithstanding that some units may have been allotted, but did not serve, in the Malay–Thai border region.

Recommendation

The Committee recommends that no change 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.

PART 5 — INDONESIAN CONFRONTATION, 1962–66

Background

14.63 The Indonesian Confrontation between Malaysia and Indonesia, hereafter referred to as Confrontation, started in 1962 and included FESR operations on behalf of Malaysian interests in Sarawak, Sabah, and Brunei against small but frequent cross-border incursions by the Indonesians. Indonesia also attacked the Malay Peninsula in August 1964 with a small number of regular troops and parachutists and a new state of emergency was declared in Malaysia. The 3rd Battalion Royal Australian Regiment (3RAR), which had replaced the 2nd Battalion Royal Australian Regiment (2RAR) in August 1963, was called into action and together with New Zealand and Malaysian troops captured or killed most of the Indonesian troops. In February 1965, 3RAR and a Special Air Service (SAS) squadron were sent to Borneo at the request of the Malaysian Government. 3RAR was replaced in April 1966 by the 4th Battalion Royal Australian Regiment (4RAR). No 3 and No 77 Squadrons, already deployed at Butterworth, were brought to a state of combat readiness.

14.64 Confrontation ceased with President Sukarno's fall in 1965, and a peace treaty between Malaysia and Indonesia was ratified in Jakarta on 11 August 1965.

Access to the VEA

14.65 Under the VEA, to be eligible for qualifying service during Confrontation, persons must have served in the operational area (comprising

Malaysia, Brunei and Singapore) whilst allotted for duty during the period 17 August 1964 to and including 30 September 1967.[71] However, service in Brunei or the Borneo territories of Sabah or Sarawak between 8 December 1962 and 16 August 1964 is also qualifying service.[72]

Summary of Submissions

14.66 The Committee received 11 submissions that argued for coverage or improved coverage under the VEA for defence service during Confrontation. The four issues raised were:

- service in Malaysia during October and November 1963 with No 3 and No 77 Squadrons should be qualifying service because the squadrons were on air defence alert;
- service in Darwin during 1964 with 81 Wing RAAF should be qualifying service because the service was associated with Confrontation;
- service on HMAS Moresby and HMAS Diamantina should be qualifying service for activities around Borneo and the Malay Peninsula during Confrontation; and
- patrols on the western border of Papua New Guinea (PNG) during Confrontation should be qualifying service.

Discussion of Issues and Conclusions

Service in Malaysia during October–November 1963 with No 3 and No 77 Squadrons

14.67 Submissions stressed that No 3 and No 77 Squadrons were put on air defence alert status in Butterworth during October and November 1963 in response to threats from Indonesia during Confrontation.

14.68 The Committee notes that, although no other submissions were received from members of the other services, the issue of VEA coverage for service in Malaysia before 17 August 1964 is an important one that needs further consideration. The Committee's view is that, in considering the issue of No 3 and No 77 Squadrons, it should review service as it applies not only to the RAAF, but also to the broader defence force deployed during Confrontation.

14.69 Even though No 3 and No 77 Squadrons have disability pension coverage under the VEA for service in Malaya or Singapore for the period 1 August 1960 to 27 May 1963, that service is not qualifying service.

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[71] Item 7 of Schedule 2 of the VEA outlines the prescribed operational area.
[72] Item 6 of Schedule 2 of the VEA outlines the prescribed operational area.

14.70 The mission of No 3 and No 77 Squadrons indicates that they were placed on heightened alert in response to a military threat from Indonesia. The Unit History for No 77 Squadron states that on 7 October 1963 the squadron 'took over the dawn to dusk alert from 3 Squadron who were brought up to two minute readiness during the week-end'. This alert state is said to have continued for one month, with a dawn-to-dusk air defence alert at Butterworth, by both squadrons on rotation, with two fighters on an alert state of five minutes. Under these circumstances, the Committee can infer that the mission of the squadrons was such that they were positioned to pursue specific military objectives if directed. Under such arrangements, where the squadrons were on full alert, it is assumed that the rules of engagement would have authorised the use of lethal force.

14.71 The Committee also considers that the level of threat that existed for No 3 and No 77 Squadrons in October and November 1963 would have been at a level that would be classified as warlike service using contemporary standards. Indonesia's air strike capability before 17 August 1964 was such that it became necessary for RAAF squadrons to be on air defence alert status from dawn to dusk; Royal Air Force (RAF) fighter squadrons were also on dusk-to-dawn alert. In addition:

> Australian gunners were despatched to Malaysia in two capacities: field batteries and in the light anti-aircraft role. Because of the threat of Indonesian air attack on Malaysian territory, 110 Light Anti-Aircraft Battery … was deployed to Butterworth in early June 1964 to provide security for the squadrons based there in conjunction with the RAF Regiment. (Dennis and Grey 1996, p. 309)

14.72 Furthermore, the fact that the Commonwealth Government in April 1964 granted permission for 3RAR to be used against any Indonesian incursions into Malaysia provides additional evidence of Indonesian attack capabilities before 17 August 1964.

14.73 The Committee considers that, as the Federation of Malaysia was formed on 16 September 1963 and the threat from Indonesia and the activities undertaken by the ADF in response to the threat began almost immediately, justification exists to amend the date in Column 2, Item 7 of Schedule 2 of the VEA to 16 September 1963. This will have the effect of providing access to the VEA for the disability compensation and qualifying service benefits.

14.74 In applying its framework for assessing perceived anomalies, the Committee concludes that the mission, rules of engagement and level of threat existing for No 3 and No 77 Squadrons were such that, under current standards, their service would be declared warlike for the purposes of the VEA from 16 September 1963. Furthermore, the Committee concludes that other service in

Malaysia in relation to Confrontation from that date should be regarded as warlike.

Recommendation

The Committee recommends that operational and qualifying service 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.

Service in Darwin during 1964 with 76 Squadron 81 Wing RAAF

14.75 Submissions argued that 76 Squadron from 81 Wing at Williamtown, New South Wales, was deployed to Darwin during Confrontation and, due to their armed two-minute alert status, should be granted qualifying service. Submissions claimed that, whilst in Darwin, Sabre fighters were fully armed, fitted with long-range drop tanks, and placed on continuous operational readiness alert of two minutes to scramble. During these alerts, the pilots were strapped in from first light until stand-down after dark, ejection seat safety pins were removed and ground crew were stationed at each aircraft. The submissions added that, because of rapid dehydration in the heat, aircrews were rotated at 30-minute intervals. It was argued that this continued for several weeks, and that squadrons performing similar operations at Butterworth and Singapore are covered under the VEA.

14.76 Darwin is not considered under the VEA to be part of the declared area of operations and, because 76 Squadron did not enter the operational area during Confrontation, members of that unit do not have qualifying service under the VEA.

14.77 The Committee has been informed that 76 Squadron was ordered, on 5 September 1964, to deploy to RAAF Base Darwin on 8 September to defend Darwin against potential air attack by Indonesian bomber forces based in Timor. Indonesia had threatened to attack any base from which British air forces attacked Indonesia during Confrontation, and Darwin was offered by the Australian Government as a base for RAF operations if required. The squadron aircraft were armed with air-to-air missiles and cannons loaded with high explosive ammunition. Before departure from Williamtown, all pilots were briefed on the rules of engagement and air defence procedures to be employed, because on arrival in Darwin the squadron was to be brought immediately to a high state of air defence readiness — 2 aircraft on 2 minutes, 4 aircraft on 5 minutes and the rest of the squadron on 15 minutes to scramble. 76 Squadron staged through Alice Springs where the cannon were armed, and on arrival in

Darwin the squadron achieved and maintained the above readiness levels for several weeks, after which the alert status was reduced, and the deployment was reduced from squadron level to flight (half squadron) level. It remained at this level for the duration of Confrontation, although the air defence alert was not resumed after that initial period of tension in early September 1964 and normal squadron training was conducted.

14.78 The mission of 76 Squadron, to defend Darwin against identified Indonesian bomber aircraft, was warlike in nature. The rules of engagement — to use lethal force if ordered by the radar conroller to do so — also meet the criteria for warlike service. The high state of air defence readiness indicates that a high level of perceived threat existed, also meeting the criteria for warlike service. On the basis of the information available to the Committee, a declaration of warlike service for the period that 76 Squadron was on a high state of air alert readiness appears justified. However, the Committee has been unable to substantiate whether the mission of 76 Squadron was as described — an actual operational task and therefore warlike service — or a peacetime contingency plan to defend Darwin in case of an escalation of hostilities. The Committee concludes that further research is required by the Department of Defence to ascertain whether the mission of 76 Squadron meets the criteria required to be declared warlike service.

Recommendation

The Committee recommends that the Department of Defence review the nature of service of 76 Squadron in Darwin during Confrontation in September 1964.

Service on HMAS Diamantina and HMAS Moresby

14.79 Submissions argued that HMAS Diamantina served in the South-East Asian region, including in areas of conflict, and that its crew's service should therefore be recognised as qualifying service. Submissions added that the fact that personnel serving with the ship were not allotted for service as part of a conflict should not disqualify them from having their service recognised as qualifying service.

14.80 With regard to HMAS Moresby, submissions claimed that the ship was engaged in operations that were classified as secret. Moreover, the nature of these secret operations should make the ship's personnel eligible for qualifying service.

14.81 The issue of qualifying service for HMAS Diamantina during Confrontation was considered as part of the Mohr Report (Mohr 2000, pp. 4-6), which found:

> The HMAS Diamantina was a ship used largely for scientific research and carried a crew of CSIRO officers to carry out studies such as hydrological and zooplankton sampling. During Confrontation the Diamantina made a number of voyages around the South East Asian region.

14.82 The Department of Defence advises that HMAS Moresby was also a hydrographic and survey vessel. Its service within the operational area of Confrontation (four days in Singapore between 29 October and 1 November 1965) was not in connection with operations, as the ship was used mainly for scientific purposes. Therefore, personnel serving in these ships do not have access to the VEA.

14.83 The Committee is satisfied that the previous review thoroughly investigated the service of HMAS Diamantina and that the ship, although it entered the operational area, did not have a mission to pursue military objectives in connection with Confrontation. The Committee also believes that there is no evidence to suggest that HMAS Diamantina had active rules of engagement allowing the use of lethal force or that the level of threat was such that there was an expectation of casualties. Given the similar circumstances of HMAS Moresby, the Committee concludes that these two ships did not render warlike service in connection with Confrontation. Moreover, as the roles of Diamantina and Moresby were to conduct scientific research and surveying respectively, the Committee concludes that the classification of non-warlike service under the VEA would not be appropriate.

Recommendation

The Committee recommends that no change be made to the eligibility provisions of the VEA for service by HMAS Diamantina or HMAS Moresby during Confrontation.

Patrols on the Western Border of Papua New Guinea

14.84 Three submissions claimed that patrols on the border between PNG and Irian Jaya (West New Guinea) during Confrontation resulted directly from Confrontation. The submissions point out that a medal was awarded for PNG service at the time.

14.85 Australia's military role in PNG was to help build the country's armed forces and PNG's ability to defend itself. In 1951, the Pacific Islands Regiment

(PIR) was formed; it consisted mainly of Australian officers and non-commissioned officers, with PNG other ranks. As part of its role, PIR conducted border patrols.

14.86 The Committee understands that the medal awarded for border patrols in PNG was the Australian Service Medal (ASM) with clasp PNG. The Department of Defence advises that although the ASM is awarded for non-warlike service, the term 'non-warlike' has a meaning specific to the medal's regulations: for the purposes of the award it is interpreted to mean 'not warlike'. This means that the medal can be awarded for peacetime operational service that the Department of Defence considers difficult or special enough to deserve recognition. Therefore, the award of the ASM cannot be seen as linking service to benefits under the VEA. The Committee is also aware of the Government's policy, which states:

> The eligibility for medals and benefits are considered entirely separately and will remain so under a Coalition Government.[73]

14.87 Service in New Guinea during Confrontation is not recognised under the VEA as operational service during a period of conflict. Therefore, those who served do not have access to the VEA for either disability compensation or qualifying service pension.

14.88 In assessing whether the service was warlike or non-warlike, the Committee found that the PIR covered harsh and rugged terrain in patrols that lasted from two weeks to more than a month at a time. Training required PNG nationals, who had no tradition of such requirements, to negotiate language and cultural barriers. The patrols were part of training to create a self-reliant PNG defence force, and not connected to operations in Confrontation, despite Indonesia's control of West New Guinea. As a result, the task did not involve a defined military activity required to pursue a specific military objective outside of a peacetime environment.

14.89 Additionally, no evidence was presented to suggest that the rules of engagement were such that individuals on border patrols were authorised or required to use force to complete their task. The Committee accepts that during such patrols, members carried live ammunition, but this was only for personal protection against natural hazards. Consequently, this does not demonstrate warlike or non-warlike service. Similarly, there is no evidence to suggest that individuals on border patrols were under any threat that would lead to either an expectation of casualties or to situations where casualties could occur, as needs to be established for either warlike or non-warlike service.

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[73] Media Release, Wilson Tuckey MP, 27 September 1995, p. 4

14.90 Therefore, the Committee concludes that service on patrols on the western border of PNG was peacetime service and does not fulfil the criteria for a warlike or non-warlike service classification.

Recommendation

The Committee recommends that no change be made to the eligibility provisions of the VEA for service in PNG during the period of Confrontation.

PART 6 — NORTH-EAST THAILAND INCLUDING UBON 1962–68

Background

14.91 On 31 May 1962, Australia deployed No 79 Squadron and a support contingent to Ubon in Thailand to improve that country's deficient air defences and to maintain its territorial integrity as part of the South-East Asia Treaty Organisation (SEATO). The squadron was placed on an operational footing on arrival to meet an immediate response if called upon. However, it quickly became apparent that such an eventuality was unlikely and no aircraft were actually placed on air defence alert.

Access to the VEA

14.92 Under the VEA, service in certain operations in north-east Thailand (including Ubon) during the period from 31 May 1962 to 24 June 1965 inclusive is considered operational service only, giving access to VEA disability compensation benefits, but not qualifying service. However, under the Act, service in certain operations in the same area between 25 June 1965 to 31 August 1968, when the squadron and support contingent was withdrawn, is warlike service.

Summary of Submissions

14.93 The Committee received 12 submissions concerning service in the Australian armed services in Thailand and Ubon. The submissions proposed:

- that service by RAAF members in Ubon, Thailand from 1962 to 1965 be regarded as qualifying service; and
- that service on Exercise Ramasoon in Thailand in 1968 be regarded as qualifying service.

Discussion of Issues and Conclusions

Service by RAAF in Ubon, Thailand from 1962 to 1965

14.94 The Committee received 11 submissions from veterans who claimed that their service at Ubon, from 1962 to 1965, should be qualifying service. They argued that all service personnel who served at Ubon should be treated equally, in terms of repatriation benefits, because service before 25 June 1965 was similar to service after that date. They contended that there was a threat to Ubon at the time because of communist activity on the Laos–Thailand border and because of the role of the Ubon base in support of United States air operations against North Vietnam. Submissions added that conditions at RAAF Base Ubon were arduous, secretive and dangerous, that at times members were placed on full alert and issued with small arms and live ammunition, and that trenches were dug, in response to the potential threat from communist forces crossing from Laos.

14.95 In reaching a decision as to whether service at RAAF Base Ubon before 25 June 1965 was warlike, the Committee reviewed the circumstances under which service there between 1965 and 1968 was granted warlike status. In 1965, a perception of increased threat to allied forces in Thailand emerged as a result of the United States' escalation of the Vietnam War through the bombing campaign against North Vietnam and its insurgent forces in Laos and Cambodia. In response, the task of 79 Squadron was changed after 25 June 1965, when it was ordered to maintain continuous air defence alert status during daylight hours, for the period from 25 June 1965 until its eventual withdrawal on 31 August 1968. There is no record of any RAAF engagements of hostile aircraft, although many scrambles were ordered against unidentified aircraft, but it is clear that on 25 June the level of threat was considered to have risen to one similar to that of warlike service. Under those conditions, the rules of engagement were at a level where the application of lethal force was authorised and casualties would have been expected.

14.96 However, the Committee is not convinced that service before 25 June 1965 warrants a warlike service classification, because the level of threat before that date was different from that which existed after. In making this assessment, the Committee paid particular attention to the findings of the Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955–75 (the Mohr Report; Mohr 2000).

14.97 The Mohr Report reflected comprehensive research, and stated that, during the period 1962–1965, the squadron based at Ubon was authorised to take immediate armed action against aircraft attacking Thailand, but that no aircraft were placed on an air defence alert. This implies that the level of threat

was more benign than that which existed after 24 June 1965. Under such circumstances, the Committee believes that the level of threat would meet the non-warlike criterion; that is, 'casualties could have occurred but were not expected' and the rules of engagement were for self-defence.

14.98 Finally, the Mohr Report concluded that, for the period 1962–1965:

> … although uncomfortable and entailing hazards greater that [*sic*] service in Australia in peacetime, [service at Ubon] was not of such a nature that it could be classified 'warlike'. (Mohr 2000, pp. 6-5)

14.99 The Committee concludes that no injustice or anomaly has been created by not granting warlike status to service at Ubon for the period 31 May 1962 to 24 June 1965 because that service was not warlike.

Recommendation

The Committee recommends that no change be made to the eligibility provisions of the VEA for RAAF service at Ubon for the period 31 May 1962 to 24 June 1965.

Service on Exercise Ramasoon in Thailand in 1968

14.100 During Australia's military involvement in South-East Asia, several Australian and multinational exercises were conducted throughout the region. One such exercise in 1968 was Exercise Ramasoon, a SEATO command post exercise to test communications between the forces of SEATO member countries. The Australian forces participating in the exercise were designated Snowgum Force. They were based at Yasothon and used only for purposes associated with Australian participation in the exercise. Some members of this group seek qualifying service on the basis that they served in a warlike area of operations and on the basis that they received the Australian Active Service Medal (AASM) 1945–75 with Clasp 'Thailand' and the Returned from Active Service Badge.

14.101 The Committee is aware that some members received the medal and badge, despite the exercise not having been declared warlike. The Department of Defence advises that these awards for service on Exercise Ramasoon were probably made in error, and that the service should more properly attract the ASM 1945–75 with Clasp 'South-East Asia'. The ASM 1945–75 recognises service in certain areas in South-East Asia other than warlike service during the period 1955 to 1989.

14.102 Although the AASM 1945–75 has been awarded for service in Exercise Ramasoon, the Committee notes the Government's policy that entitlements to

medals and to benefits should be considered separately. If an error has been made in the award of the AASM 1945–75 for Exercise Ramasoon, this is a matter for the Department of Defence to follow up.

14.103 Service as part of Exercise Ramasoon does not currently provide access to the VEA, because members were not allotted for duty in an operational area under the VEA.

14.104 The Committee understands that the Repatriation Commission asked the Department of Defence for a warlike service determination for Exercise Ramasoon on 4 January 2001. The classification of this service as warlike was refused, because the exercise involved neither the pursuit of military objectives nor active operations against an enemy, as a warlike definition requires.

14.105 The Committee concludes that, given the circumstances surrounding Exercise Ramasoon, warlike service was not rendered as part of the exercise. In principle, the Committee holds that forces involved in any peacetime exercise, regardless of the area of the exercise and the presence or otherwise of forces undertaking warlike or non-warlike service, are engaged in peacetime service.

Recommendation

The Committee recommends that no change be made to the eligibility provisions of the VEA for service on Exercise Ramasoon in Thailand in 1968.

PART 7 — VIETNAM 1965–72

Background

14.106 Australia's military commitment to the then Republic of Vietnam (or South Vietnam) began in July 1962 with the arrival of 30 advisers constituting the Australian Army Training Team Vietnam (AATTV). As the conflict escalated, so too did pressure for an increased Australian commitment. By June 1964, the AATTV had expanded to 80 advisers. No 35 Squadron RAAF was also committed to the area in 1964 and the first major Army force, 1st Battalion, Royal Australian Regiment (1RAR), arrived in 1965.

14.107 In March 1966, the Government announced that 1RAR would be relieved by a taskforce of two battalions, plus supporting units, to operate in the coastal province of Phuoc Tuy. In 1968, the taskforce was expanded to include a third infantry battalion, bringing the strength of Australian forces in Vietnam to 8300 personnel. The RAAF presence included No 2 Squadron, based at Phan Rang, and No 35 Squadron based at Vung Tau. Helicopters from No 9 Squadron

were also based at Vung Tau and operated with the taskforce. The RAN involvement included a guided missile destroyer, a clearance diving team and sea transport convoys between Australia and Vietnam. The withdrawal of Australian troops was announced in December 1972 and the withdrawal was completed early in 1973 (Gration 1994, p. 61).

14.108 The bulk of the Australian forces had been withdrawn from South Vietnam in early 1972, although members of the Australian Embassy Guard Platoon remained in Saigon until mid-1973 to provide security for the embassy and its staff. Additionally, RAAF personnel were engaged in the evacuation of refugees and transportation of Red Cross and other relief supplies during March and April 1975.

Access to the VEA

14.109 Defence Force members allotted for duty in the operational area of Vietnam for the period 31 July 1962 to 11 January 1973 inclusive have both operational and qualifying service.[74]

14.110 Additionally, service in the Defence Force in South Vietnam from 12 January 1973 to 29 April 1975 is regarded as warlike service, giving both operational and qualifying service. Also, crew on RAN ships that travelled to Vietnam in a logistic support role were deemed to have been allotted for duty in the operational area, giving them both operational and qualifying service. Both RAN and merchant navy crew who served on HMAS Jeparit and HMAS Boonaroo during voyages to Vietnam in a logistic support role have operational and qualifying service; RAN crew serving on these ships whilst they were merchant vessels have both types of service. Service on HMAS Vampire and HMAS Quickmatch in Vietnam in January 1962 is operational service, but not qualifying service.

Summary of Submissions

14.111 The Committee received eight submissions relating to service in Vietnam. Three issues were raised concerning the granting of qualifying service for service in South Vietnam:

- visits by HMAS Vampire and HMAS Quickmatch to Vietnam in the period 25–29 January 1962;
- refuelling of ships in the operational area by HMAS Supply in 1963; and

[74] Items 4 and 8 of Schedule 2 of the VEA outline the prescribed operational areas.

- service rendered by ADF personnel in United States ships in South Vietnamese waters before Australia's military involvement in South Vietnam in 1962.

14.112 The Committee also received submissions concerning the exclusion from the Nominal Roll of Vietnam veterans who served in Vietnam after 1973. These veterans already have entitlement to warlike service under the VEA. The Committee considers this matter to be outside its terms of reference. The Departments of Defence and Veterans' Affairs are responsible for the compilation of the Nominal Roll. Submissions on this matter have been referred, in the first instance, to the Department of Defence for consideration.

Discussion of Issues and Conclusions

Visits by HMAS Vampire and HMAS Quickmatch, 25–29 January 1962

14.113 Submissions claimed that service on visits by HMAS Vampire and HMAS Quickmatch to South Vietnam over the period 25–29 January 1962 was rendered in a war zone and such service should therefore be qualifying service. In assessing whether such service was warlike and therefore qualifying service, the Committee found that, at the time of the visits, no military campaign was being undertaken by ADF personnel in South Vietnam. The visits occurred before Australia's formal military involvement on 31 July 1962 and were goodwill visits as part of the ships' duties with FESR. The visits were clearly non-operational and not significantly different from any other goodwill port visit conducted at the time, including visits made to Hong Kong, Singapore and Subic Bay (in the Philippines) in the same month. There was, however, an element of increased risk because of the internal situation in South Vietnam at the time. Given this, the Government accepted a recommendation of the 1997 Defence–DVA Review that the visits be classified as hazardous service, and subsequently classified them operational for the purposes of the VEA.

14.114 The circumstances surrounding the visits by these ships were reviewed in both the 1997 Defence–DVA Review and in the 2000 Mohr Report. Both reviews determined that no case existed for qualifying service under the VEA. The Committee sees no justification for overturning the findings of the two previous reviews. Australia had no commitment to the active pursuit of objectives against an identified enemy in Vietnam at the time, despite any consideration the Government might have been giving to a possible future commitment of forces. Moreover, there were no active rules of engagement and the level of threat was not one in which there was an expectation of casualties. Under these circumstances, the Committee does not consider that service with

HMAS Vampire and HMAS Quickmatch was warlike, and therefore concludes that the service was not qualifying service.

Recommendation

The Committee recommends that no change 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.

Refuelling of Ships in the South Vietnam Operational Area by HMAS Supply in 1963

14.115 Two submissions argued that, during May 1963, HMAS Supply took part in Exercise Sea Serpent, a multinational maritime exercise conducted under the auspices of SEATO. On 3 May 1963, in the course of the exercise, HMAS Supply replenished the Royal Thai Ship Pin Klao and United States Ship Baur, near the South Vietnamese island of Dao Phu Qui. The submissions argued that, because the refuelling occurred in the South Vietnam area of operations, HMAS Supply should have been allotted and service on the ship recognised as qualifying service.

14.116 The Committee understands that HMAS Supply came under the control of the Commander-in-Chief, Far East Station, who was the director of Exercise Sea Serpent. This officer had no operational control over activities in Vietnam, but continued to exercise control over HMAS Supply whilst she operated in the South Vietnam area of operations during the exercise. In other words, HMAS Supply was on an exercise that happened to take her into the South Vietnam area of operations on 3 May 1963. The mission of HMAS Supply did not involve the application of force to pursue specific military objectives in respect of operations in Vietnam; nor was she in direct operational or logistic support of Australia's activities in South Vietnam. Furthermore, there is no evidence that HMAS Supply was in any situation in which the level of threat was such that there was an expectation of casualties.

14.117 Given that the ship was involved only in exercises, the Committee concludes that service on HMAS Supply in Vietnamese waters on 3 May 1963 as part of Exercise Sea Serpent was not warlike and therefore cannot be regarded as qualifying service. Additionally, the Committee concludes that the service did not meet the criteria for non-warlike service.

Recommendation

The Committee recommends that no change 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.

Service by ADF personnel in United States Navy ships in South Vietnamese waters before Australia's involvement in Vietnam in 1962

14.118 One submission was received by a member of the RAN who claimed that he 'cross decked' to a United States Navy ship in 1961 for a period of one month. The member argued that, during this time, battle alarms were sounded, the ship went into action to assist ground forces in Vietnam, and the ship remained in South Vietnamese waters for several days. On the basis of this service, the claimant argued that the operational area and period of the Vietnam War be amended to have his service declared qualifying service.

14.119 The Committee understands that, in 1955, the Commonwealth Government considered the South-East Asian region to be of great strategic importance to the defence of Australia. As a consequence, Australia became involved in many agreements and treaties, such as FESR, SEATO and the Australia, New Zealand and the United States (Pacific Security) Treaty (ANZUS). As part of exercises under these treaties, defence force personnel often served with foreign units, including 'cross decking' with foreign naval ships. 'Cross decking' involved the exchange of naval personnel between ships serving in the South-East Asian area and did not necessarily involve only ships of the FESR; for example, RAN personnel 'cross decked' with United States and French ships. The essential purposes of 'cross decking' were training and individual development through exposing RAN personnel to various foreign naval ship experiences. This was usually done under local arrangements between ships' captains and sanctioned by the Commander-in-Chief, Far East Station. Accordingly, 'cross decking' was not an operational requirement and did not require approval from the Commonwealth Government.

14.120 In assessing whether the service was warlike or non-warlike, the Committee notes that, according to the submission, the claimant was removed from operational tasks in the ship and assigned to safety duties during the operational activity. This action demonstrated that the ship's captain also considered that the cross-deck exchange should not be related in any way to the warlike actions of the ship. Under these circumstances, the issue is whether a member's presence at, rather than participation in, warlike operations of a

foreign warship, for a brief period in unforeseen and unavoidable circumstances, is a ground for qualifying or operational service. The Committee believes that such circumstances should not constitute either qualifying or operational service.

14.121 The Committee concludes that routine 'cross decking' exchanges by RAN personnel during international naval exercises in 1961 were peacetime service.

Recommendation

The Committee recommends that no change 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.

PART 8 — OTHER SERVICE IN SOUTH-EAST ASIA

Background

14.122 Following the end of Confrontation on 11 August 1966, Defence Force units continued to train and 'work up' for service in South Vietnam and in other parts of South-East Asia. In 1971, a new defence agreement, the Five Power Defence Arrangement (FPDA), was negotiated to include Malaysia, Singapore, Australia, New Zealand and the United Kingdom. It was agreed that Singapore and Malaysia would be responsible for their own defence and that Australia, New Zealand and the United Kingdom would consult within the FPDA about a response to any threat of external attack on Malaysia and Singapore.

14.123 With the disbandment of FESR in 1971, a headquarters was established by Australia, New Zealand and the United Kingdom (ANZUK) to command their combined forces in Malaysia and Singapore. After the disbandment of the ANZUK force in 1975, Australia maintained its defence presence in the region, primarily through RAAF units at Butterworth. In February 1988, the Minister for Defence announced there was to be a reduction in the RAAF presence at Butterworth, which continued progressively through 1989. In December 1989, Chin Peng, the leader of the Malaysian Communist Party, signed a peace accord with the Malaysian Government, leading to further reductions in the Australian forces.

Access to the VEA

14.124 Service in South-East Asia after the end of Confrontation, other than in the Vietnam War, is peacetime service only. Consequently, access to the VEA may be gained only for disability compensation, for service from 7 December 1972 to 7 April 1994.

Summary of Submissions

14.125 Submissions to the Review on this matter concerned service rendered in Malaysia and Singapore by 4RAR and 8RAR immediately following the cessation of Confrontation on 11 August 1966, and to service in Butterworth with the FPDA and ANZUK until 30 December 1989. This encapsulates peacetime service rendered in South-East Asia after Confrontation to the signing of the peace accord between Chin Peng and the Malaysian Government in December 1989.

14.126 Submissions relating to service by 4RAR and 8RAR in Malaysia and Singapore immediately after Confrontation sought access to the VEA, including recognition of qualifying service. In support of their claim, authors drew upon the findings of the Mohr Report (Mohr 2000, pp. 5-8) that:

> Army and RAAF personnel on the posted strength of units located on the Malay Peninsula, including Singapore … during the period from 17 August 1964 to 30 September 1967 inclusive, ie, the period of confrontation defined in Item 7 of Schedule 2 to the VEA 1986, … be allotted retrospectively so that they become eligible for full repatriation benefits and appropriate medals entitlement.

14.127 Submissions were also received from personnel who served in Rifle Company Butterworth and as Airfield Defence Guards. The submissions claim that the patrolling of the Butterworth base with live ammunition was carried out because of the threat from communist terrorists and should therefore be granted qualifying service under the VEA.

Discussion of Issues and Conclusions

Service by 4RAR and 8RAR in Malaysia after the End of Confrontation

14.128 The Mohr Report recommended extension of VEA coverage to Army and RAAF units located on the Malay Peninsula (including Singapore) during Confrontation until 30 September 1967, the date the area ceased to be an operational area. The intention was to bring those units into line with RAN units that already had VEA and medals entitlements. The Mohr Report considered

that service in the Army and RAAF during Confrontation was also directly related to warlike operations in the area (Mohr 2000, pp. 5-8).

14.129 As part of the Australian forces committed to Confrontation, 4RAR was allotted for duty in Malaysia, arriving in Sarawak in April 1966. The unit conducted operations there until 11 August 1966 when the conflict ended with the signing of the Treaty of Bangkok. The battalion was then redeployed to Malacca for peacetime duties, after which reinforcements joined the regiment. Those members of 4RAR who served in Borneo during Confrontation have full entitlements under the VEA because they were involved in warlike operations in connection with Confrontation. However, those who made submissions to the Review were reinforcements who did not join 4RAR in Malaysia until after its move to Malacca when Confrontation had ended. Even though the Malay Peninsula remained an operational area until 30 September 1967, no units were allotted to the area after 14 September 1966, the date of which coincides with the withdrawal of 4RAR from Borneo and its move to Malacca.

14.130 In considering whether the service of 4RAR in Malacca was warlike. the Committee notes that the official Army history states:

> At the conclusion of 'Confrontation' in early September the bases occupied by 4RAR were handed over to 3 Royal Malay Regiment (3 RMR). By 10 Sep 66, 4RAR was completely relocated to Malacca … 1967 provided peacetime soldiering at its best.[75]

14.131 In this regard, the Committee understands that the tasks of 4RAR in Malacca were garrison duties and jungle warfare training.

14.132 The fact that Malaysia remained an operational area until 30 September 1967 does not mean that all units that served in the operational area up until that time were regarded as having eligible service under the VEA, because the VEA also requires that a person be allotted for duty in the operational area. Allotment demonstrated that the person was engaged in activities connected with a warlike operation or state of disturbance. The Committee understands that the 30 September 1967 cut-off date under the VEA was the day before the date of commencement of Statutory Rule 1967, No. 134, which repealed the Special Area Regulation deeming the area as operational, and was the date 4RAR returned to Australia. It appears that 4RAR was not allotted to any operation on the Malay Peninsula after 12 August 1966 but remained a contingent force for redeployment on operations if hostilities resumed, which they did not.

14.133 The service by 8RAR, which replaced 4RAR, mainly involved exercises and 'work up' for a tour in South Vietnam.

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[75] Department of Defence official website, www.defence.gov.au/army/4RAR/history2.html – Unit history p. 2

14.134 The Committee concludes that service in 4RAR and 8RAR on the Malay Peninsula after the end of Confrontation was peacetime service and does not meet either the warlike or the non-warlike service criterion.

Recommendation

The Committee recommends that no change be made in the VEA eligibility provisions for service in 4RAR or 8RAR in Malaysia after the end of Confrontation.

Butterworth

14.135 Because of a residual presence of communist terrorists under the leadership of Chin Peng in Malaysia, and the continued presence of two RAAF fighter squadrons and support forces at Butterworth, the Commonwealth Government decided to assist in base security by deploying an infantry company known as Rifle Company Butterworth (RCB) to the base in 1970. The RCB was deployed to be a ready reaction force to counter any major insurgency at the base.

14.136 The RCB's tasks were infantry training and after-hours patrolling of the perimeter of the base, thereby contributing to base security in conjunction with the Malaysian security forces, the RAAF Airfield Defence Guards and RAAF Police dogs. Its rules of engagement were protective only. Although there is no doubt that the RCB was involved in armed patrolling to protect Australian assets, it is clear that training and the protection of Australian assets are normal peacetime garrison duties.

14.137 Essentially, the prime aim of the FPDA was to provide regional security and stability, and forces were pre-positioned to do so. These included RAN fleet units. However, like the activities of FESR forces not involved in warlike conflicts such as the Malayan Emergency and Indonesian Confrontation, the activities of forces assigned to ANZUK were peacetime operations and training, without active rules of engagement, military objectives, or threat from enemy action.

14.138 No evidence was found that service in South-East Asia currently established as peacetime service should be considered warlike. No operational area was prescribed, no specific armed enemy threat was present and there were no rules of engagement to pursue specific military objectives. Although the service occurred overseas, it could equally well have been performed as part of peacetime activities in Australia. The Committee understands that peacetime service, whether rendered in Australia or overseas, can at times be arduous and even hazardous. However, on its own, this is not enough to warrant its consideration as operational or qualifying service for benefits under the VEA.

14.139 The Committee concludes that neither warlike nor non-warlike service was rendered in Malaysia or Singapore immediately following the cessation of Confrontation on 11 August 1966, or subsequently in Butterworth under the FPDA or ANZUK.

Recommendations

The Committee recommends that no further action be taken in respect of peacetime service:

- at Butterworth after the cessation of Confrontation; and
- with ANZUK after the cessation of Confrontation.

PART 9 — RECLASSIFYING PEACEKEEPING SERVICE AS WARLIKE

Background

14.140 The multinational peacekeeping force has been a feature of international diplomacy since World War II. Such forces involve military and police personnel to help maintain peace in areas of conflict. The personnel are volunteered by different countries with the consent of the host governments and usually with the consent of other parties directly involved.

14.141 Peacekeeping operations can be performed under hazardous circumstances in which members of the peacekeeping force can be subject to direct or indirect harm. For example, this form of service is often rendered in arduous conditions overseas, where members may experience unfamiliar cultural and environmental factors (e.g. poor infrastructure, government instability, armed conflict between belligerents, and climatic and health hazards). However, experiencing such hazardous circumstances does not necessarily equate to warlike service, since warlike service involves military activities in which the application of force is authorised to pursue specific military objectives, the use of lethal force is authorised and there is an expectation of casualties.

Access to the VEA

14.142 As mentioned in Chapter 10, a member of a peacekeeping force is defined in the VEA as a person who has served outside Australia as an Australian member, or as a member of an Australian contingent, of a peacekeeping force (defined as a force raised for peacekeeping, observing or

monitoring that has been designated a peacekeeping force by the Minister). Many peacekeeping forces since 1947 are covered by the VEA. Service by Australian police in designated peacekeeping forces (e.g. Cyprus) is also covered. Under the Act, peacekeeping service in a peacekeeping force gives access to disability compensation benefits and the application of the reverse criminal standard of proof to disability pension claims. Peacekeeping service is not qualifying service for the purposes of the service pension and associated benefits. Peacekeeping forces that have included an Australian contribution are listed in Schedule 3 of the VEA.

14.143 Peacekeeping service is included as non-warlike service under the Defence classification system that was adopted in determining VEA entitlements from 1997. Since that time, peacekeeping service by the ADF has been classified as non-warlike service. However, the separate definition of peacekeeping service remains in the VEA because the Defence classification does not cover civilian police.

Summary of Submissions

14.144 The Committee received five submissions on peacekeeping service. These argued for the following service to be classified as warlike:

- all peacekeeping operations identified in Schedule 3 of the VEA;
- the United Nations Military Observer Group India Pakistan (1965–66) (UNMOGIP); and
- the Australian civilian police force members in United Nations peacekeeping operations.

Discussion of Issues and Conclusions

Reclassification of All Peacekeeping Operations

14.145 The Australian Peacekeepers and Peacemakers Association requested a reclassification of peacekeeping service, and argued that the current definition does not appropriately reflect the nature of this service.[76] The Association's submission stated that peacekeeping forces are continually exposed to forces with hostile intent. Moreover, peacekeepers are operating in an environment that has inherent dangers, under malevolent circumstances, and under threat of belligerent tactics or actions. Belligerent actions can be instigated by one or more defined or undefined, armed or unarmed factions, and at times in a civil war situation. Additionally, the submission argued that peacekeeping duty can

[76] Submission 1264.

involve being exposed to malignant or belligerent intentions, such as kidnapping and hostage situations; can be performed subject to ambush, intimidation, crossfire and mine warfare, including suicide bombing; and can involve witnessing atrocities and murder while restrictive rules of engagement deny the mandate to intervene.

14.146 The Association argued that peacekeeping service should be covered under Schedule 2 of the VEA, which relates to the determination of operational areas, and that the inclusion of peacekeeping service in Schedule 2 makes such service qualifying service under s.7(A) of the VEA, provided that the ADF member was allotted for duty. In effect, the Association is requesting that peacekeeping service be regarded as qualifying service.

14.147 In reaching its conclusions and forming its recommendations, the Committee also decided that practical considerations did not allow for the consideration of each and every peacekeeping operation. Instead, the Committee has approached the task by examining the nature of peacekeeping operations in the broader sense and applying the framework to determine whether the service was warlike and therefore constitutes qualifying service.

14.148 The Committee agrees that peacekeeping service can at times be hazardous and involve arduous conditions as described in the submissions. Peacekeepers encounter physical and emotional hardships. However, warlike service involves a mission to pursue a specific military objective in which the application of lethal force is authorised. Peacekeeping forces do not perform such service.

14.149 Normally, the peacekeeping force plays the part of an objective and impartial third party that helps to create and maintain a cease-fire or form a buffer zone between conflicting sides. Peacekeeping operations do not involve the same level of enforcement or rules of engagement that apply to military service in warlike operations. Nor is there a level of threat to peacekeepers in which casualties are expected, as there is in warlike service, despite isolated incidents where members are subjected to dangers and hazards.

14.150 On this basis, the Committee concludes that there is no justification for recommending that all peacekeeping service be regarded as warlike service.

Recommendation

The Committee recommends that no change be made to the eligibility provisions of the VEA for peacekeeping service.

14.151 Nonetheless, it is evident that there are former members of specific peacekeeping forces who want their service classified as warlike. In these instances, submissions have provided examples of specific instances and tasks, and stated the authors' belief that their service was similar to warlike service. Such submissions were presented by members of UNMOGIP and are considered below on their individual merits.

United Nations Military Observer Group India Pakistan

14.152 India and Pakistan became independent in August 1947. Under the partition provided by the Indian Independence Act of 1947, Kashmir was free to accede to incorporation into India or Pakistan. Its union with India became a matter of dispute between India and Pakistan and fighting broke out later that year.[77] UNMOGIP was deployed in January 1949 to supervise the cease-fire in the State of Jammu and Kashmir. The Australian commitment began in October 1950. UNMOGIP's functions were to observe and report, investigate complaints of cease-fire violations and submit its findings to each party and to the Secretary-General of the United Nations.[78]

14.153 Since 1947, hostilities have occurred sporadically between India and Pakistan, most notably in 1965 and again at the end of 1971. The original mandate and functions of UNMOGIP have remained to this day. However, Australia's contingent was withdrawn progressively in 1985, with the last members returning to Australia in December of that year.[79]

14.154 Submissions argued that warlike service status should be awarded to service in UNMOGIP for the period August 1965 to January 1966, which covers the second India–Pakistan war over Kashmir. Members explained that, as observers, they were exposed to the full impact of the war, with only troops directly involved facing greater exposure to harm. The observers also commented that they became de facto intelligence officers, frequently moved to forward company locations and were subjected to fire from small arms, mortars, field and medium artillery and, on occasions, air attack including the use of napalm.

14.155 Using the framework for defining warlike service, the Committee concludes that there is no justification for declaring service with UNMOGIP for the period August 1965 to January 1966 to have been warlike. For the service to be deemed warlike, the application of force must have been authorised in the pursuit of specific military objectives. In the case of UNMOGIP, there was no

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[77] www.un.org/Depts/DPKO/Missions/unmogip/unmogipB.htm
[78] *Ibid.*
[79] Report of the Senate Standing Committee on Foreign Affairs, Defence and Trade. *United Nations Peacekeeping and Australia*. May 1991, p. 16.

such authorisation. As indicated in submissions, UNMOGIP observers were unarmed and their mission was to monitor the cease-fire process. While the Committee recognises the inherently hazardous nature of their service, it is clear that the service was not warlike in nature, in that they did not face an enemy; nor were they given active rules of engagement permitting use of lethal force.

Recommendation

The Committee recommends that no change be made to the eligibility provisions of the VEA for service with UNMOGIP.

Police Serving on United Nations Operations

14.156 Since 1964, Australian police officers have served as part of United Nations missions, multinational forces and truce monitoring groups, details of which operations are shown in Table 10.1 in Chapter 10. In all, it is estimated 1871 police officers have volunteered and served in 2453 tours of duty in 11 international missions. Three officers have been killed whilst on operations.[80] Submissions to the Committee requested better recognition, through better coverage under the VEA, for the services rendered and dangers faced by police officers serving in United Nations operations.

14.157 The joint submissions of the Police Federation of Australia and the United Nations Civilian Police Association of Australia (UNCIVPOL) argued that police serving on United Nations operations have suffered from the effects of their duties, which were performed unarmed and under circumstances of extreme danger in locations of squalor and non-existent hygiene, and without the benefit of the ancillary services that accompany military units.[81] The submissions added that police officers have been subjected to civil war, air attack, minefields, snipers and crossfire; have been taken hostage, threatened with death and taken 'prisoner of war'; and have been stoned, spat upon, assaulted and insulted.

14.158 The submissions further contended that increased demands are being placed on civilian police, whose unique experience and training in the maintenance of internal law and order is often viewed as more helpful than the skills of the military. Both the Police Federation of Australia and UNCIVPOL requested that the VEA be reviewed, and sought legislative amendments to provide full coverage making Australian police eligible for qualifying service for appropriate missions. Moreover, these submissions also stated that there must

[80] Submission 2464
[81] *Ibid*.

be a separate part in the VEA dedicated wholly to Australian police serving in United Nations operations, to acknowledge and deal with the specific requirements of veterans of overseas policing operations under the United Nations.

14.159 The Committee acknowledges that police serving as peacekeepers play an important role in fulfilling the Commonwealth Government's responsibilities for peacekeeping within the wider international community, and that police serving on United Nations operations sometimes experience greater hazards and risks than those associated with their service in Australia. However, the Committee sees no justification in deeming the service of police in United Nations operations to be warlike service conferring full entitlements under the VEA.

14.160 Warlike service involves a mission to pursue a specific military objective in which the application of lethal force is authorised. Police service in United Nations operations does not involve the same level of enforcement or rules of engagement that apply to military service. It involves observer and other duties to help restore and maintain peace in an area of conflict with the consent of all parties. Therefore, it clearly cannot be deemed warlike service. The award of qualifying service to military personnel for service performed alongside police is made because the military personnel were deployed to undertake warlike activities, beyond those expected of civilian police, as part of their mission to pursue a military objective under active rules of engagement.

14.161 The Committee also notes that, irrespective of whether United Nations peacekeeping operations are performed by police officers or by ADF members, entitlements under the VEA are the same. Advice from the Australian Federal Police is that, in addition to coverage under the VEA, police officers are also covered by their state, territory or Commonwealth superannuation and workers' compensation schemes. In this regard, the range of entitlement options available to police officers, should they be injured, become sick or suffer some disability as a result of their United Nations duties, is comparable to that available to ADF personnel who serve in similar situations.

14.162 The Committee concludes that civilian police service in United Nations operations should not be considered warlike service under the VEA. The VEA is principally an Act for ADF veterans, and the inclusion of a specific part for police service would be outside the principles of the Act. Moreover, because police serving on United Nations operations are peacekeepers, operating in a peacekeeping capacity and not as police officers per se, they are already covered under the Act and the addition of a specific part for their service would serve no additional purpose in terms of extra coverage. In the light of these arguments,

the Committee believes that police service in United Nations operations should remain peacekeeping service.

Recommendation

The Committee recommends that no change be made to the eligibility provisions of the VEA for police involved in peacekeeping service.

PART 10 — RECLASSIFYING SPECIFIC HAZARDOUS SERVICE AS WARLIKE SERVICE

Background

14.163 A declaration of hazardous service can only have effect in respect of service since 1972. Disability pension claims for a member of the ADF with hazardous service are determined subject to the 'reverse criminal' standard of proof; however, such service is not deemed qualifying service for the purposes of service pension and associated benefits. Since 1997, any service that would previously have been classed as hazardous service is now declared non-warlike service. Non-warlike operations are activities short of warlike activities; they include hazardous operations, such as mine avoidance and clearance, weapons inspection, service protected or assisted evacuations, and peacekeeping activities. In these operations, the application of force is limited to self-defence and casualties could occur but are not expected.

Access to the VEA

14.164 Non-warlike service under the VEA is defined in s.5C (1) as service in the ADF of a kind determined in writing by the Minister for Defence to be non-warlike service.

Summary of Submissions

14.165 The Committee received two submissions about service in Operation Habitat, which provided relief through medical and humanitarian support to displaced Kurdish refugees in Iraq and Turkey in 1991. Operation Habitat is considered to have been hazardous service for the purposes of the VEA, but submissions argued that it should be reclassified as warlike service.

14.166 One submission stated that the humanitarian aid operation to Kurdish refugees was deemed hazardous service before the operation began, but that the security situation later deteriorated. After 3 June 1991, all military movements within the area of operations were conducted in pairs and the entire contingent

carried its weapons in the loaded state, with amended orders for opening fire in the event of a threat or hostile action endangering life. Additionally, it is claimed that there were constant threats from the presence of land mines and Pershmerga, Iraqi Army, Iraqi police and secret police. The submission also stated that there was no civil authority, and that base camp defences were developed for added protection on 2 June 1991.

14.167 Another submission contended that, as the situation deteriorated, the contingent was informed that members would be given full entitlements, including the service pension (qualifying service), in acknowledgment of the escalation of threat during their operation. Recognition of qualifying service did not occur. Members received the ASM. One submission also contended that the award of the ASM, and not the AASM, should not prevent the award of qualifying service, because the United Nations Transition Assistance Group in Namibia (UNTAG) 1989–1990 was awarded the ASM and deemed to have qualifying service.

Discussion of Issues and Conclusions

Service with Operation Habitat

14.168 It is evident to the Committee that Operation Habitat was a humanitarian aid relief effort to the Kurds in northern Iraq. Personnel involved in the operation did not have specific rules of engagement to actively pursue military objectives. The rules of engagement were defensive only. A comparison with UNTAG is not appropriate because the two operations were conducted under different operational circumstances.

14.169 The Committee considers that, although a military commander might have made certain assurances to members on Operation Habitat, this is no reason to accord qualifying service, particularly when such assurances would have been inaccurate and not in accordance with government policy. The Committee therefore concludes that Operation Habitat was not warlike service and that the current assessment of this service as hazardous service is appropriate.

Recommendation

The Committee recommends that no change 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.

PART 11— ESTABLISHING ACCESS TO THE VEA FOR SPECIFIC PEACETIME SERVICE

Background

14.170 Under government policy, in the absence of a declaration of warlike or non-warlike service, peacetime service applies. Those situations that do not require a commitment to provide a military response under operational circumstances can be peacetime service and it is possible for service on an overseas deployment to be rendered as peacetime service.

14.171 Peacetime service can at times be demanding, uncomfortable and stressful (e.g. humanitarian aid operations to overseas countries as a result of a natural disaster), but it is not rendered in operational circumstances involving the pursuit of military objectives.

Access to the VEA

14.172 ADF members involved in peacetime activities are only covered specifically under the VEA if they have 'defence service' (see Part 12 of this chapter). Instead, these individuals are covered under the *Safety, Rehabilitation and Compensation Act* 1988 (SRCA). The SRCA provides compensation (including medical treatment) for conditions that are accepted as related to service, and uses the civil standard of proof.

Summary of Submissions

14.173 The Committee received 44 submissions regarding military operations by groups in peacetime. The authors of these submissions claimed that their service has been above and beyond that required for the classification of peacetime service and that therefore their service should be considered warlike or non-warlike for the purposes of the VEA. The Committee has grouped the submissions into 11 categories:

- submarine special operations;
- submarine service in peacetime;
- covert intelligence gathering and covert signals operations;
- service in major peacetime accidents;
- post-World War II bomb and mine clearance;
- improvised explosive device disposal;
- service in United Nations mine clearance training;

- service on HMAS Mermaid and HMAS Paluma;
- service on HMAS Supply during the French nuclear tests in the Pacific;
- service in Australia in support of an overseas conflict; and
- service in the Berlin Airlift.

Discussion of Issues and Conclusions

Submarine Special Operations

14.174 During the period 1978 to 1992, some RAN submarines were fitted with special intelligence equipment and were deployed regularly in areas to the north and west of Australia.

14.175 Some submissions argued that certain submarine operations between 1978 and 1992 should be declared warlike service, because they were specifically authorised and acknowledged as 'warlike'. Submissions added that special operations were conducted in a threat environment where overwhelming force could have been expected if the submarine had been detected. The information provided to the Committee indicated that these operations were covert and therefore the Committee is unable to explain fully in this Report the nature of the tasks that were being performed.

14.176 The Committee believes that, because of the classified nature of submarine special operations, the assessment of whether service in those operations meets the current warlike definition can only be made by the Department of Defence. During the Review, the Committee deliberated extensively about the nature, warlike or otherwise, of such operations with the authors of the submissions and senior Defence officials. Advice from the Department of Defence indicates that, at this point, there is no evidence to suggest that warlike service status would be, or should have been, applied to submarine special operations.

14.177 The Committee has come to the view that submarine special operations conducted from 1978 to 1992 were not warlike. However, they appear to satisfy the criteria for non-warlike service and this would better reflect the operational and environmental threat faced in submarine special operations.

Recommendations

The Committee recommends that:

- service on submarines during special operations is not warlike service for the purposes of the VEA; and

- service on submarines during special operations be deemed non-warlike hazardous for the purposes of the VEA.

Peacetime Submarine Service

14.178 The Committee also received submissions from submariners regarding peacetime service. Submissions argued that submarine service can be distinguished from normal peacetime defence service, in that it is more arduous, hazardous and dangerous, and because submariners endure poor working conditions. The Submarine Association stated that its own health study revealed a high percentage of members suffering psychological disorders, hearing defects, diabetes, skin damage, respiratory conditions, alcohol problems, bowel and digestive problems and various forms of cancer that may have eventuated from submarine service. Submissions held that, for these reasons, peacetime submarine service should be deemed hazardous service.

14.179 The Committee believes that there is no justification in deeming peacetime submarine service to be non-warlike hazardous service, because these operations do not expose individuals or units to a degree of hazard above and beyond that of peacetime service. Peacetime submarine operations are conducted to train crew for specific eventualities; they involve no specified rules of engagement and no identified military objectives.

14.180 The Committee accepts that working on submarines in peacetime can be both physically and emotionally demanding, and notes that this is recognised by the special Submarine Allowance, which is paid in recognition of additional skills, stresses and hazards that are not adequately covered in the salary structure. In addition to this allowance, peacetime submarine service is covered under the provisions of the SRCA and its predecessors.

14.181 Representations were also made to the Minister for Veterans' Affairs in 2001, seeking a health study. The diversity of submariners presents difficulties for the conduct of a scientifically valid study. As submariners have a wide range of ages and diverse service backgrounds, it would be difficult to establish a control group for a health study. The Government rejected the request, but discussions have been opened at departmental level to address the concerns. The Committee considers this request to be outside the terms of reference of this Review, and is therefore unable to make further comment.

Recommendation

The Committee recommends that service on submarines in peacetime not be covered under the VEA.

Personnel Involved in Covert Intelligence Gathering or Covert Signals Operations

14.182 Covert activities are difficult to examine because they are classified. Furthermore, because of the nature of covert activities it is difficult to estimate the frequency and extent to which these types of activities occur, or are acknowledged to exist by Government.

14.183 The Committee received four submissions from individuals who claimed they were involved in covert activities during peacetime. Submissions argued that covert operations performed during peacetime should be considered warlike or non-warlike hazardous service under the VEA.

14.184 Because of the work's sensitive nature, individuals making claims could not detail the nature of activities undertaken in order for the Committee to make a balanced judgement. Therefore, the Committee is not in a position to comment or make recommendations. The Committee believes that only the Department of Defence can make the appropriate assessment of these activities.

Recommendation

The Committee recommends 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.

Major Peacetime Accidents

14.185 Submissions were received which argued that ADF personnel sometimes face such hazards in peacetime that their service in those circumstances should be declared qualifying service under the VEA. Submissions detailed how, from time to time, ADF members are involved in major catastrophic peacetime military training disasters and sustain serious injuries, as occurred in the collision between HMAS Melbourne and HMAS Voyager on 10 February 1964 and in the Black Hawk helicopter accident in 1996. One submission requested that a process be established, immediately after an accident occurs, to have the accident declared as if it had happened on war service and thus deemed qualifying service.

14.186 It is clear that major peacetime accidents do not fit the criteria of warlike service, because of the lack of a specific military objective requiring the use of

lethal force against an enemy. Such accidents cannot therefore be classified as warlike service under the VEA.

14.187 The Committee also holds that major peacetime accidents cannot be classed as non-warlike hazardous service. To meet the requirements of non-warlike service, an activity must be short of a warlike operation, there must be a risk associated with the assigned tasks and the use of force, if applicable, must be limited to self-defence. Even in major peacetime operations in which there may be a risk associated with the assigned tasks, it is clear that the operations involve training and that no specified military objectives are being pursued. Therefore, there is no justification for classifying such operations as non-warlike hazardous for the purposes of the VEA.

14.188 Additionally, the Committee holds the view that, in fairness, no distinction should be made between major peacetime service accidents and peacetime service accidents involving a smaller number of individuals.

Recommendation

The Committee recommends that service during which personnel are injured or killed as a result of peacetime accidents is not warlike or non-warlike hazardous service under the VEA.

Post-World War II Bomb and Mine Clearance

14.189 Submissions highlighted that work in PNG and certain Pacific islands on World War II explosive ordnance took place up until 1970 and suggested that the threat and intent imposed by wartime explosive ordnance cannot be changed by a declaration of an end to hostilities. Submissions claimed that personnel employed in the task of rendering safe wartime explosive ordnance after the official declaration of the end of hostilities do not have qualifying service. This is the case even though they were employed to do the same tasks as individuals between 1945 and 1947, who have qualifying service. Submissions further stated that the risk of personal injury continued when they were working on ordnance disposal after World War II, and that the risk had increased because ordnance had been exposed to the tropical elements for a long period of time.

14.190 The Committee notes that qualifying service may be granted for 180 days post-war bomb and mine clearance or minesweeping where the award of the General Service Medal or Naval General Service Medal with appropriate Clasp has been made. However, as mentioned in paragraph 12.31, the Committee believes that such service was not qualifying service either according

to the World War II test nor according to the current test of warlike service, and it proposes no change to the provisions, which have already provided qualifying service benefits for this group. Hence, the Committee finds that the rendering safe of wartime explosives in peacetime is not warlike service.

14.191 Although the Committee feels that it cannot justify classifying the rendering safe of wartime explosives in peacetime as warlike service, this service can be declared non-warlike hazardous in certain circumstances where the degree of hazard is above and beyond normal peacetime duty, such as mine clearance. Further, the Committee is aware that the disposal of explosive ordnance is performed as part of normal peacetime service.

14.192 The Committee has been unable to determine whether the task to dispose of post-World War II explosive ordnance in PNG and the Pacific Islands up until the 1970s was above the degree of hazard normally associated with explosive ordnance disposal during peacetime and therefore non-warlike hazardous service, or performed as part of normal peacetime service. From the information available, the Committee believes tasks associated with the location, clearing and disposal of enemy wartime explosives ordnance would meet the criteria required to be declared non-warlike hazardous. Other tasks requiring the disposal of wartime explosive ordnance under controlled conditions appear to be peacetime in nature. The Committee concludes that only the Department of Defence can assess whether the task of disposing of enemy wartime explosive ordnance in PNG and the Pacific islands meets the required criteria to be declared non-warlike hazardous service.

Recommendation

The Committee recommends that the Department of Defence review the activities of defence service personnel who located, cleared and disposed of enemy wartime ordnance in PNG and the Pacific islands, with a view to making a determination on such activities as non-warlike hazardous service.

Improvised Explosive Device Disposal

14.193 Since the early 1970s, Army improvised explosive device disposal (IEDD) personnel have been involved extensively in the disposal of criminal and terrorist explosive devices within Australia. These tasks require personnel to approach suspicious objects and render them safe. Army IEDD personnel were seen as necessary until police force members could be trained and equipped to assume this role, and were used in such instances as:

- the 'Mr Brown' extortion attempt on Qantas in 1971;

- the Hilton bombing in 1978; and
- the Albury bookshop multiple bombing in 1982.

14.194 Several submissions were received from and on behalf of personnel engaged in IEDD operations. Submissions explained that IEDD personnel have performed extremely dangerous tasks since 1971, protecting the Australian community from improvised explosive devices set by extremists and criminal elements. Submissions stated that IEDD operations should be recognised for qualifying service because of their inherent danger, the unpredictable nature of improvised explosive devices, and the contribution of IEDD personnel to public safety over and above the requirements of peacetime service. Submissions indicated that IEDD operations cannot be described as normal peacetime activity because personnel are placed in immediate danger as a result of extremist and criminal acts of violence that are beyond the capacity of civil powers to resolve.

14.195 The Committee believes that, although such activities are highly hazardous and unpredictable, it is normal for these activities to be conducted in an area that has been cleared and secured by the civilian police. Under these circumstances the activities are not being conducted in a warlike environment and therefore warlike service does not apply. However, IEDD activities are also conducted as part of counter-terrorist operations. In Chapter 17, the Committee recommends that counter-terrorist operations be declared warlike or non-warlike where they meet the relevant criteria. The Committee notes that although counter-terrorist operations mainly involve members of the Special Air Service Regiment, specialist personnel from other units assigned to these operations, including IEDD personnel, must be included in any declaration of warlike or non-warlike service.

14.196 The Committee considers that, even though IEDD personnel are highly trained, no amount of training can fully cater for the unpredictable nature of improvised explosive devices and the inherent possibility of harm to the personnel. This leads to IEDD work being extremely specialised, as well as hazardous and beyond that expected in peacetime. In addition, IEDD personnel, clearing such devices from city business districts and similar areas, are put directly into harm's way in situations in which their work must be done quickly and effectively to minimise disruption to commercial and community activities and maintain public safety. In such instances, the Committee believes that there is an increased risk of casualties.

14.197 The Department of Defence is currently conducting a review, part of the terms of reference of which require the review to determine whether some service in Australia can be deemed warlike or non-warlike. As outlined in the

introduction to this chapter, the Committee believes that there is scope for such declarations.

14.198 The Committee concludes that ADF members involved in IEDD operations should be retrospectively provided with non-warlike hazardous service under the VEA from the time of the first IEDD operation.

Recommendation

The Committee recommends that:

- service by ADF IEDD personnel in IEDD incidents be deemed non-warlike hazardous service under the VEA; and
- as recommended at Chapter 17, this service be declared warlike or non-warlike in conjunction with other Defence Force elements conducting counter-terrorist operations.

United Nations Mine Clearance Training Team

14.199 In May 1989, the Office of the Coordinator for United Nations Humanitarian and Economic Assistance asked the Commonwealth Government to send a team of landmine clearance experts to participate in a landmine-awareness training program in Pakistan as part of Operation Salam. An Australian service contingent (ASC) commenced in July 1989 as part of the United Nations Mine Clearance Training Team (UNMCTT). This contingent remained in Pakistan until 7 June 1991.

14.200 As a result of a further United Nations request, the Minister for Defence approved the entry of ASC UNMCTT into Afghanistan for the monitoring of de-mining operations. ASC UNMCTT monitoring operations began on 8 June 1991. On 25 September 1992, it was determined that ASC UNMCTT operations in Afghanistan from 8 June 1991 would be hazardous service for the purposes of the VEA. Service as part of ASC UNMCTT in Pakistan before 8 June 1991 is considered peacetime service.

14.201 One submission describes hazards faced by training teams serving in Pakistan before 8 June 1991: they were threatened with shooting, their commanding officer's car was hit by a bullet and a live landmine was found on their training area. The submission added that it is inequitable to accord hazardous service to one group of individuals involved in UNMCTT who went into Afghanistan and not provide the same coverage to those in Pakistan when the groups performed similar tasks.

14.202 For service to be considered non-warlike hazardous service under the VEA, the activity must involve a degree of hazard above and beyond that of normal peacetime duty, and it must be an activity in which casualties could occur but are not expected. The ASC UNMCTT activity in Pakistan does not meet these criteria, as the contingent was operating in a humanitarian rather than a military role. UNMCTT members in Pakistan were appointed as 'civilian consultants on a country assignment' under United Nations staff rules. The role of UNMCTT in Pakistan was to assist in a landmine-awareness training course aimed at teaching Afghans to recognise and avoid landmines and other dangerous ordnance, by training them to recognise and mark minefields, artillery rounds and booby traps. Although the Committee is aware that such service may have been arduous at times, this would have resulted mainly from specific cultural and environmental factors in that particular region and not from the nature of the UNMCTT task per se. Moreover, as noted throughout this Report, peacetime service can be demanding, uncomfortable and stressful without being non-warlike service.

14.203 It is also evident to the Committee that the task in Pakistan before 8 June 1991 differed from the task undertaken in Afghanistan after that date. Advice from Defence indicates that UNMCTT operations into Afghanistan involved monitoring by the ASC of de-mining operations. These operations were particularly hazardous because ASC UNMCTT operated in many unmarked, mined areas and alongside Afghans to assess the thoroughness and procedural correctness of the de-mining activity. In these circumstances, the activity had a military objective and entailed a risk of casualties. Members in Afghanistan also faced cultural and environmental dangers as a direct result of the Soviet withdrawal two years earlier and subsequent civil unrest between factional groups.

14.204 The Committee concludes that, because the ASC UNMCTT task in Pakistan was primarily to conduct training and different from UNMCTT tasks in Afghanistan after 8 June 1991, the activity was peacetime service and should not be considered non-warlike hazardous service under the VEA.

Recommendation

The Committee recommends that service with UNMCTT in Pakistan before 8 June 1991 not be deemed non-warlike hazardous service under the VEA.

Service on HMAS Mermaid and HMAS Paluma

14.205 On 16 September 1999, Australian military forces were committed to East Timor for warlike service. For an ADF member to have warlike service in

this operation, they must have been allotted and have served in East Timor. Service declared warlike service for the purposes of the VEA includes operations Faber, Stabilise, Warden and Tanager.

14.206 Because of the different tasks and different rules of engagement of ADF members in East Timor, some members are considered to have peacetime service. Those whose service is regarded as peacetime service include, but are not limited to, ADF members training East Timorese and crews of RAN ships assigned for surveying.

14.207 Submissions explained that during October 2000, HMAS Mermaid and HMAS Paluma were deployed to survey ports and beach landing sites in East Timor. They worked constantly ashore and in the area of operations for one month, surveying Dili, Hera, Tenu, Karabela, Betano, Oekussi and Com. During this time, the ships were not 'force assigned' but remained under Maritime Headquarters operational authority. The crews operated under peacetime conditions of service, and therefore when they were required to go ashore they did so unarmed. Submissions argued that service by these crews was not considered qualifying service because their ships were not assigned to the United Nations force, even though the crew members entered the area of operations. Other units in the area at the same time, such as Landing Craft Heavy units, were allotted and their members received VEA entitlements.

14.208 The Committee believes that it must be cautious in commenting on the operational circumstances surrounding ADF service in East Timor, particularly as the operation is a current one with attendant security aspects.

14.209 Nonetheless, it appears from submissions presented that HMAS Mermaid and HMAS Paluma took part in, or were in direct support of, operations in East Timor. This was the case even though they were not allotted to the main force. It is evident that this situation can be considered anomalous and may be cause for retrospective allotment. Moreover, the Committee believes that there is scope within the procedures currently used by the Department of Defence to review this situation as part of its procedure of regularly assessing current operations. This matter could also be subject to further investigation by the current Defence Nature of Service Review.

Recommendation

The Committee recommends that the Department of Defence further review service with HMAS Mermaid and HMAS Paluma in East Timor during 2000.

Service on HMAS Supply during the French Atomic Tests

14.210 In 1973, the French conducted atmospheric nuclear tests at Moruroa Atoll. HMAS Supply provided logistical support to Royal New Zealand Navy ships in the vicinity of the tests. Service on HMAS Supply is considered peacetime service.

14.211 One submission argued that service by RAN members on HMAS Supply during the French nuclear tests should be regarded non-warlike hazardous service because the service was dangerous and because of the precedent set by the New Zealand Government in awarding repatriation benefits and the New Zealand Special Service Medal to individuals who served in similar circumstances.

14.212 The task of HMAS Supply was to provide logistical support, through refuelling and the like, to HMNZS Otago and HMNZS Canterbury, which were monitoring the tests. The task performed by HMAS Supply was not within a defined operational area or period of conflict. Under such circumstances, the Committee believes that it cannot justify deeming service on HMAS Supply to be non-warlike hazardous service, as the operation did not expose crew members to a degree of hazard above and beyond that of peacetime service.

14.213 The Committee is aware that the New Zealand Government awarded repatriation benefits and a New Zealand Special Service Medal to personnel involved with nuclear tests. However, recognition by a foreign government of the service of its defence forces is a matter for that government and such decisions do not necessarily influence the Commonwealth Government. Moreover, the Committee considers that service on HMAS Supply must be considered using the same criteria as it has used for all other ADF service that has been the subject of submissions.

Recommendation

The Committee recommends that no change be made to the treatment of service with HMAS Supply during the French nuclear tests in the Pacific in 1973.

Service in Australia in Support of an Overseas Conflict

14.214 One submission claimed that service in the ADF in Australia in support of forces in South Vietnam should be recognised in the same way that similar service was recognised in Australia during World War II. The argument extended to claiming that a medal should be awarded for service in Australia during the Vietnam War, citing as precedents the award of the Australia Service Medal 1939–45 and the War Medal for service in Australia during World War II.

The award of medals is outside the terms of reference for this Review and the Committee makes no comment on such awards. In regard to the argument that World War II veterans are covered under the VEA for providing logistical support for overseas operations, the Committee does not consider this to be a basis for providing similar coverage for logistical support provided in Australia during the Vietnam War. Service by World War II veterans who remained in Australia in a support role and who were not directly engaged in operations against the enemy provides only disability compensation cover under the VEA. At the time, no other scheme existed to provide cover for service-related injury, disease or death. While service rendered in Australia during the Vietnam War may have been similar to some service in Australia during World War II, compensation cover is already available through the SRCA and it predecessor legislation. The Committee sees no merit in providing compensation cover through two schemes.

14.215 More importantly, the Committee has considered service in Australia during the Vietnam War having regard to the framework and found that the mission, rules of engagement and level of threat were not such that a declaration of either warlike or non-warlike service can be justified.

Recommendation

The Committee recommends that service in Australia after World War II in logistical support of an overseas operation, of itself, is not warlike or non-warlike hazardous service.

The Berlin Airlift

14.216 The Berlin Airlift took place between mid-1948 and mid-1949, as a response by the Western allies to the blockade of West Berlin by the then Soviet Union. The Soviets denied access along all the rail, road and water routes upon which the city depended. The Soviets also denied power deliveries from the power plants in the sector they occupied, depriving West Berlin of most of its electricity. Along with other Western allied forces, RAAF aircrew were involved in the Berlin Airlift, organised to fly food and other supplies into West Berlin and transport some people out of the area.

14.217 A small number of submissions relating to the Berlin Airlift sought qualifying service. Submissions argued that the service was performed in the environment of the Cold War and was dangerous, stressful, arduous and hazardous. Aircrews were required to meet demanding schedules in overloaded aircraft that were constantly harassed by Soviet aircraft and experienced the hazards of bad weather. During the course of the Review, it has been brought to

the Committee's attention that some 180,000 flights were made to carry about 1,500,000 tons of stores into Berlin. There were about 50 fatalities, one of whom was an Australian, during Airlift operations.

14.218 The aircrew involved in the Berlin Airlift were serving on a humanitarian aid operation, and not an operation that was authorised to pursue a military objective, such as in a declared war where lethal force was allowed and casualties were expected. Therefore, the Committee does not consider that such service was warlike.

14.219 However, the Committee holds the view that it may be possible to recognise the Berlin Airlift as non-warlike hazardous service under the VEA. This view is based on the belief that the hazardous nature of this activity, which was to fly sorties into West Berlin using three air corridors over the Soviet-occupied sector that surrounded the city, was beyond that of peacetime service. The Committee is also aware that such operations encompassed constant threats to allied forces from extreme weather conditions and from Soviet fighter planes, which were monitoring the air corridors for breaches. In addition, it was common for hundreds of sorties to be operating within these air corridors every day. Under such circumstances, the level of threat would be such that casualties could occur, and this is demonstrated in the number of fatalities. The Committee is also aware that the level of threat at the time of the Berlin Airlift would have been considerable, given the heightened tensions in the early phases of the Cold War.

Recommendation

The Committee recommends that service by members of the RAAF directly involved in the Berlin Airlift be deemed non-warlike hazardous service under the VEA.

PART 12 — PROVIDING VEA COVERAGE FOR ALL PEACETIME SERVICE

Background

14.220 Until 1972, ADF members with peacetime service only were covered under the *Commonwealth Employees Compensation Act 1930* or the *Compensation (Commonwealth Employees) Act 1971.*

14.221 In 1973, the Whitlam Government made available compensation benefits under the *Repatriation Act 1920* for 'defence service' under peacetime

conditions, on or after 7 December 1972. Coverage for those with 'defence service' only after 7 December 1972 continued with the enactment of the VEA in 1986 (see Chapter 10). However, this was viewed as a temporary measure, until such time as a military compensation scheme was introduced. The Military Compensation Scheme (MCS) was introduced on 7 April 1994, and ADF members with peacetime service only after 7 April 1994 are no longer covered by the VEA but by the SRCA.[82] ADF members with peacetime defence service between 7 December 1972 and 7 April 1994 have compensation coverage under both the VEA and SRCA (or its predecessor legislation), although offsetting provisions apply where a condition is accepted under both Acts. The offsetting provisions result in a limitation of the VEA disability pension payment where the person also received other compensation payments for the same disability.

14.222 Individuals with defence service under the VEA have basically the same access to VEA compensation benefits as those with other forms of service, except that disability pension claims are subject to the civil standard of proof. They are entitled to compensation in the form of medical treatment, disability pension and associated allowances for conditions that are accepted as related to their service. Defence service does not constitute qualifying service for service pension and related eligibility purposes.

Summary of Submissions

14.223 The Committee received five submissions from individuals who served in peacetime only (and are not covered under the VEA) but want their service deemed defence service under the VEA. The following groups presented arguments requiring specific consideration:

- regular ADF members involved in peacetime service in Australia and overseas before 7 December 1972; and
- regular ADF members serving for extended periods in peacetime before 7 December 1972 or after 7 April 1994.

14.224 Submissions from regular ADF members involved in peacetime service in Australia or overseas argued that individuals serving before 7 December 1972 should receive the same level of treatment, by qualifying for VEA entitlements, as those who served in peacetime on or after 7 December 1972. Submissions outlined the inequity of recognising some who served in peacetime while not

[82] VEA coverage for peacetime defence service after 7 April 1994 is only available to those who enlisted before the enactment of the VEA on 22 May 1986 and served continuously until after 7 April 1994.

recognising others. According to submissions, this is the case, even though individuals who are eligible to receive VEA entitlements performed the same tasks as those not receiving them.

14.225 Submissions also claimed that those serving in areas outside Australia on peacetime service, such as in the then Territory of PNG, are not eligible for any VEA entitlements. Submissions stated that these individuals experienced dangers and hardships, such as poor accommodation; inadequate bathing facilities; risk of illness; a harsh environment where flash floods, hot conditions and hostile tribal groups existed; and the risk of contracting diseases such as malaria, dengue fever, amoebic dysentery and skin disorders.

14.226 Another submission claimed that high levels of stress were experienced during service as part of an Australian survey unit in PNG. 'Payback killings' of locals and foreigners occurred, and ADF personnel were advised that they would be at risk of such a killing if, for example, they ran over a local whilst driving. If this were to occur, ADF personnel were advised not to stop but to return to base to be immediately returned to Australia.

14.227 Submissions from long-term ADF members indicated that certain individuals have had extended periods of peacetime service ranging from 20 to 40 years. These individuals explained that long-term service in the military requires commitment and dedication, and that an amendment to the VEA should be made to extend coverage to long-serving members with only peacetime service, irrespective of when or where they served. These submissions suggested that an inequitable situation has occurred because individuals with only defence service under peacetime conditions on or after 7 December 1972 and before 7 April 1994 have access to VEA entitlements irrespective of their length of service.[83]

Discussion of Issues and Conclusions

14.228 In reaching conclusions and recommendations on this matter, the Committee did not use the framework for the assessment of perceived anomalies, as it is not directly applicable in this instance because the Committee is not being asked to review the nature of tasks rendered. In assessing whether to provide these groups with VEA coverage, the Committee took into account:

- the political context in which the decision was made to extend the repatriation system to those serving in peacetime on or after 7 December 1972;
- the intent of the VEA regarding peacetime coverage; and

[83] Those serving in peacetime on or after 7 December 1972 generally must serve continuously for three years to qualify for VEA entitlements.

- the recommendations handed down in *The Review of the Military Compensation Scheme* (the Tanzer Report; Department of Defence 1999).

Political Context

14.229 It is evident that political circumstances had a significant impact on the extension of repatriation benefits to peacetime service in 1972. With the end of Australia's commitment to the Vietnam War and the end of compulsory national service, the extension of the *Repatriation Act 1920* to provide repatriation benefits for peacetime defence service was an attempt by Government to retain former national servicemen in an all-volunteer force and encourage further enlistments at a time when overall ADF numbers were expected to fall if appropriate incentives were not put into place. Coverage under the VEA was subject to the ADF member having completed three continuous years of service, although an exception was made for those discharged on medical grounds before the completion of that period. The three-year provision was meant to encourage members to complete their initial three-year term of engagement.

14.230 Whether the VEA should extend to peacetime coverage was considered in the Toose Review (Toose 1975). Reporting early in the operation of the new peacetime provision, Toose concluded that, although the extension was a departure from the basic concept of the Australian repatriation system, it was appropriate in view of the substantial difference between defence force service and civilian government employment. The extension of the repatriation system to peacetime service was reviewed when the VEA was introduced in 1986.

Intent of VEA and Tanzer Review

14.231 In 1985, when the Veterans' Entitlements Bill was introduced, the Government foreshadowed the development of a Military Compensation Scheme (MCS) to cover all peacetime service. In the second reading speech on the introduction of the Bill in the House of Representatives, it was stated that:

> It had been the Government's intention that VEB coverage should not extend to future Defence Force enlistees. This would not have affected any other compensation entitlements that may be available such as under the Compensation (Commonwealth Government's Employees) Act. While it is considered that in general there is no basis for maintaining repatriation entitlements for peacetime service, the Government accepts that there is a case for continuing repatriation entitlements for new enlistees in respect of any hazardous defence service in which they have been engaged. The Government will also be considering further the development of a new Defence Force compensation package outside the Repatriation system.[84]

[84] Hansard, House of Representatives, 16 October 1985, p. 2181.

14.232 Consequently, the VEA continued coverage for peacetime service after 22 May 1986, but only in respect of enlistments after that date until a military compensation scheme was introduced. The *Military Compensation Act* was introduced on 7 April 1994 and with it the MCS. The VEA also contained provisions to cover peacetime enlistees for service before 7 April 1994, but which occurred on or after 7 December 1972, for the duration of their service, provided the period of service was continuous.

14.233 The proposed new MCS, which is being developed as a result of recommendations made in the Tanzer Report, will cover all service by members of the ADF after the effective date of commencement of the legislation. This will 'mothball' the VEA for future service, except for situations declared by the Government such as a major declared war, while those currently eligible will retain their entitlements. The Tanzer Report recommended that the new MCS apply to all military service, both in Australia and overseas, and provide a better focus on specific military service requirements and take a more integrated approach towards the management of safety, rehabilitation, resettlement and compensation. The new MCS will apply prospectively and there will also be a continuation of access to the service pension for warlike service.

Committee's Considerations

14.234 The Committee is sympathetic to the arguments presented by regular ADF personnel involved in peacetime service in Australia and overseas before 1972 and regular ADF personnel serving for extended periods in peacetime. However, the Committee concludes that there is no solid justification to extend VEA entitlements to these two groups.

14.235 The Committee has come to this conclusion taking into account the following factors:

- the underlying principle of the repatriation system is that compensation is provided to veterans for the effects of service in wars or conflicts, or warlike or non-warlike service;
- the decision to extend repatriation benefits to peacetime service was an improvised and temporary measure intended to solve a 1972 problem;
- for those who have not served in operational circumstances, disability compensation coverage is already available under Commonwealth employees' compensation legislation for peacetime service before 1972; and
- the extension of the VEA would conflict with the recommendation handed down in the Tanzer Report and undermine government intentions regarding the new MCS.

Recommendation

The Committee recommends that there be no extension of current VEA coverage for peacetime defence service.

14.236 The Committee holds the view that, in principle, VEA eligibility should only be available for service rendered as warlike or non-warlike service. In the case of certain peacetime activities, submissions have been received by the Committee arguing that the VEA should be extended to groups that have conducted specific tasks, which are perceived by the authors as being worthy of such coverage. Such groups included those previously outlined in this chapter, along with veterans of the British Commonwealth Occupation Force in Japan (Chapter 15), Australian participants in British atomic testing in Australia (Chapter 16), ADF personnel engaged in counter-terrorist and special recovery training (Chapter 17), and some British, Commonwealth and allied veterans (Chapter 21).

CHAPTER FIFTEEN

BRITISH, COMMONWEALTH OCCUPATION FORCES IN JAPAN

15

INTRODUCTION

15.1 The Committee's terms of reference require it to consider perceived anomalies in eligibility for access to benefits under the *Veterans' Entitlements Act 1986* (VEA) that have been raised by veterans of the British Commonwealth Occupation Force (BCOF) in Japan.

15.2 Former members of BCOF do not have qualifying service under s.7A of the VEA. The prescribed 'period of hostilities' for World War II ended on 29 October 1945 and the first component of the BCOF contingent did not arrive in Japan until February 1946. However, service in BCOF up to 1 July 1951 is classified as operational service under s.6A of the VEA. This classification extends eligibility for treatment and the disability pension for injury or disease sustained during this service.

15.3 This chapter will examine the issues raised in submissions to the Committee regarding service with BCOF, and will:

- provide an overview of the history of BCOF;
- provide a summary of issues raised in submissions;
- discuss qualifying service eligibility;
- discuss exposure to radiation;
- apply the Committee's framework for determining the nature of service;

- provide conclusions; and
- make recommendations.

HISTORICAL OVERVIEW

15.4 BCOF comprised elements drawn from the armed forces of Australia, the United Kingdom, New Zealand and India. This was the first time that Australians were involved in the military occupation of a sovereign nation that Australia had defeated in war.

15.5 The initial area allocated to BCOF covered the prefectures of Hiroshima and Yamaguchi. This was subsequently expanded to include the prefectures of Shimane, Tottori and Okayama on the island of Honshu and those of Kagawa, Ehime, Kochi and Tokushima on Shikoku.

15.6 The primary objective of BCOF was to enforce the terms of the unconditional surrender that had ended the war in September 1945. BCOF was required to maintain military control, and to supervise the demilitarisation of the country and the dismantling of the remnants of Japan's war infrastructure.

15.7 The main body of Australian troops arrived in Japan on 21 February 1946, some seven months after the atomic bombs were dropped on Hiroshima and Nagasaki. The Australian contingent of BCOF was made up of members of the Australian Imperial Force, the Permanent Defence Force and the Interim Forces. The Army was responsible for the Hiroshima Prefecture, while the Air Force element was stationed at Bofu in the Yamaguchi Prefecture. The naval shore establishment was located at the former Japanese naval base at Kure.

15.8 From June 1947, BCOF numbers began to decline from a peak of over 40,000 service personnel from the four Commonwealth countries. By the end of 1948, BCOF was composed entirely of Australians. The force was effectively dismantled during 1951, as responsibilities in Japan were handed over to the British Commonwealth Forces Korea.

15.9 There is no consistent information available showing the exact number of Australians who served in BCOF, but current estimates by the Department of Veterans' Affairs (DVA) indicate that about 17,000 were involved.

15.10 Seventy-seven deaths were recorded among the Australian contingent. There was, however, no loss of life as a result of a direct hostile action by Japanese forces. One death was listed as due to an 'explosion on ammunition barge', while two were attributed to 'mine explosion'. One third of the deaths were due to motor vehicle accidents. The remainder were attributed to various other causes.

SUMMARY OF SUBMISSIONS

15.11 The Committee received about 170 submissions on matters relating specifically to perceived anomalies in accessing benefits under the VEA for service in BCOF. A significant number advocated an extension of eligibility for the Repatriation Health Card — For All Conditions (Gold Card). Others focused more generally on the issue of qualifying service, and, by extension, eligibility for associated benefits, including the Gold Card. However, some submissions argued against extending qualifying service.

15.12 Arguments presented in support of granting qualifying service eligibility to BCOF veterans revolved mainly around the following issues:

- recruitment advertisements led veterans to believe that service with BCOF would entitle them to full repatriation benefits;
- claims were made that the Governor-General declared that BCOF service was active service;
- BCOF was formed and deployed as a combat force;
- duties performed, including weapons disposal and destruction, guarding prisoners and quelling civil disobedience, were hazardous;
- the civilian population was hostile and there was occasional firing of weapons at BCOF members by members of the Japanese forces;
- a significant number of veterans died on BCOF service; and
- many veterans were exposed to harmful levels of radiation.

15.13 Those submissions that opposed the grant of qualifying service argued, in essence, along the following lines:

- the period of hostilities defined in the VEA for World War II service ended on 29 October 1945;
- the first Australian members of BCOF arrived in Japan in February 1946, some four months after the end of hostilities, and therefore did not incur danger from hostile enemy forces. Consequently, BCOF members do not meet the current qualifying service requirements for the grant of the service pension for World War II service; and
- to grant qualifying service to BCOF in this circumstance would undermine a key principle of the repatriation system; that is, special recognition of those who incurred danger from a hostile enemy.

15.14 The issues raised in submissions regarding eligibility for the Gold Card are discussed in Chapter 22.

QUALIFYING SERVICE ELIGIBILITY

15.15 Two issues raised by BCOF veterans in support of their claim to have their service recognised as qualifying service for the service pension are the recruitment advertisements and the declaration by the Governor-General that BCOF service was active service.

15.16 The advertisements were the subject of an inquiry by the Deputy Ombudsman (Defence Force) in 1991. In a reply to the Deputy Ombudsman, the Deputy President of the Repatriation Commission implied that the advertised promise of repatriation benefits was being honoured:

> There is no distinction between those members of the BCOF who enlisted prior to 1 July 1947 and any other member of the Australian Defence Force who enlisted during World War II. These members are entitled to the same benefits under the same conditions as any other member serving during World War II.
>
> It should be noted that, from the records available in this Department, veterans enlisting in the Australian Imperial Force prior to 1 July 1947, were still required to enlist 'for the duration of the present war and a period of 12 months thereafter'.
>
> Under the *Repatriation Act* at the time there was a requirement for a member of the forces to have served in a 'theatre of war' before entitlement to a Service Pension could be conceded. This requirement applied to all members of the Australian Imperial Force.
>
> After 1 July 1947, enlistment was either as a permanent member of the Australian Defence Force or as a member of the Interim Forces. This latter service required an enlistment for a period not exceeding two years. These members were not entitled to the same benefits as those veterans who enlisted during World War II. As the dates of these enlistments would have been well after the advertisements you referred to and the response to the Senate question, then such service is not relevant to your enquiry.
>
> … Under the [VEA] members of the BCOF who enlisted prior to 1 July 1947 and served in Japan are eligible for compensation pension [*sic*] as veterans with Operational Service i.e., their eligibility for compensation is determined under the more generous benefit of doubt provisions.
>
> To be eligible for Service Pension a veteran must have rendered qualifying service during a 'period of hostilities' and incurred danger from hostile forces of the enemy.

15.17 The periods of hostilities as defined in section 35 of the VEA are:

> … World War II from its commencement to and including 29 October 1945.

15.18 The Deputy Ombudsman advised the complainant in this case that:

> [The Deputy Ombudsman was] unable to conclude that DVA's actions have been other than in accordance with the legislation and that there is no more that [he] can do on [the complainant's] behalf.

15.19 The claim that BCOF service was 'active service' arose from declarations by the Governor-General that the occupation of Japan was 'active service' in accordance with the provisions of s.4 (1) of the *Defence Act 1903* in force at the time.

15.20 The Department of Defence has previously considered this claim, and determined that the wording used in s.4 of the *Defence Act 1903* defined 'active service' only for the purpose of invoking discipline under the Imperial *Army Act 1881.* Army regulations and orders that existed at the time for Army service within Australia could not be applied to service overseas unless the Governor-General made such a declaration under s.4. A similar provision was not required for Royal Australian Navy (RAN) or Royal Australian Air Force (RAAF) personnel, as both the *Naval Discipline Act* and the *Air Force Act* already had application during overseas service by those personnel. Section 4 of the then *Defence Act* does not invoke eligibility for any benefits under repatriation legislation. There was a separate definition of active service in the *Repatriation Act 1920*, with no relationship to the definition in the *Defence Act.* '

EXPOSURE TO RADIATION

15.21 The main body of Australian troops arrived in Japan on 21 February 1946, some six months after the atomic bombing of Hiroshima and Nagasaki. DVA's long-standing position is that the level of radiation had fallen to acceptable levels by the time the Australian BCOF contingent arrived in Japan. This stance is based on advice from the Australian Radiation Protection and Nuclear Safety Agency and its predecessors.

15.22 The claims that the level of radiation had an adverse effect on the health of BCOF personnel cannot be addressed by the Committee. However, the Committee has been made aware of ongoing discussions between the Repatriation Commission and the Returned & Services League of Australia on this matter.

15.23 No health study of BCOF veterans has ever been undertaken. In December 2000, the then Minister for Veterans' Affairs advised the BCOF Executive Council that the small number of surviving BCOF veterans would limit the value of a health study.

APPLYING THE COMMITTEE'S FRAMEWORK

15.24 Other issues raised in submissions concern the nature of BCOF service, in that the mission, rules of engagement and level of threat were all of a warlike nature. Chapter 14 of this Report details the framework applied by the Committee to determine if the nature of a particular service should be reclassified. In essence, the framework complies with the current guidelines approved by the Government and used by Defence to classify the nature of service for overseas operational deployments as either warlike or non-warlike.

15.25 It is important to note that the current guidelines enable Defence authorities to review the nature or type of service during deployment, once the situation in the area of operations is known. This may result in the nature of service being upgraded or downgraded from the declaration made before deployment. This differs from the procedures used prior to 1994, in which the nature and conditions of service were determined after deployment.

15.26 In this context, the Committee concludes that, for service to be reclassified as warlike service, the service must involve:

- authorisation of the application of lethal force to pursue a specific military objective; and
- a level of threat where there would be an expectation of casualties.

15.27 In the interests of fairness and equity, the Committee has applied these criteria to information that would have been available to decision makers before the deployment of the Australian BCOF contingent, and during the period of deployment.

Was the Application of Force Authorised to Pursue a Specific Military Objective?

15.28 The primary objective of BCOF was to enforce the terms of the surrender on the enemy. A feature of the Japanese capitulation was that it rested upon the obligation placed on the Japanese people by the Emperor to abide by the surrender arrangements. At the time, there was considerable uncertainty as to whether the Japanese would actually obey the Emperor's call. The Australian contingent arrived in Japan fully armed to contend with this uncertainty.

15.29 BCOF was required to maintain military control and to supervise the demilitarisation of the country and the dismantling of the remnants of Japan's war infrastructure. To this end, Australian Army and RAAF personnel were involved in locating and securing military stores and installations. Warlike materials were destroyed and other equipment was kept for use by BCOF or returned to the Japanese. Japanese civilians under Australian supervision

carried out the destruction or conversion to civilian use of military equipment. Regular patrols and road reconnaissances were initiated and carried out in the Australian area of responsibility as part of BCOF's general surveillance and enforcement duties.

15.30 The RAN component of BCOF was responsible for patrolling the Inland Sea to prevent both smuggling and the illegal immigration of Koreans to Japan. In this task they were assisted by the RAAF, whose aircraft tracked suspect vessels. RAAF squadrons also flew surveillance patrols over each of the prefectures in the BCOF zone, to help locate leftover weapons and ordnance.

15.31 From the very beginning of government-to-government negotiations about the occupation of Japan, the purpose of BCOF was to ensure Japanese compliance with the terms of the surrender, if necessary by the use of force. To this end, the principal Australian component, the 34th Infantry Brigade, was organised at war establishment and equipped as a combat force (Wood 1998, p. 235).

15.32 In outlining the task of BCOF in January 1946, General Northcott, the first Commander-in-Chief, stated that:

> Our role in Japan is to play our part in winning the peace which is just as important as the task we had in winning the war … We have to take over the occupation of a large area in southern Japan called the Hiroshima Prefecture. It is an area stiff with armaments, coastal defences, ammunition works, naval workshops and so on. The whole area is to be demilitarised and we have to do it. We have to supervise the Japanese who will do the labour and see that they do not put anything over us. It is a man-sized job and it will take us time to complete it. Another most important task, which is the object of this force, is to occupy this country and to show to the Japanese what it means to enjoy the personal freedom we know but of which they have not the slightest understanding. (Bates 1993, p. 66)

15.33 The nature of service in BCOF and the associated hardships changed over time. In June 1947, families of servicemen began to arrive and a township was established in Hiroshima that included chapels, a school staffed by Australian teachers, a shop and a cinema. Most non-Australian BCOF troops departed from Japan in 1947: first the Indians, then the British and finally the New Zealanders, in May 1948. The main responsibilities of BCOF were diminished in 1948 when its area of responsibility was reduced to the confines of Kure-Iwakuni. In 1948, Australia also began to reduce its force. The military contribution was cut to one battalion, one RAAF squadron and one RAN ship. By mid-1949, only 2630 Australians were serving with BCOF.

Were Casualties Expected?

15.34 There was a reasonable expectation before deployment that BCOF would encounter military insurrection and/or civil disturbance. In a letter to Prime Minister Chifley in early 1947, Defence Minister John Dedman wrote:

> … it is important to bear in mind that, when the Occupation Forces went to Japan, there was no guarantee that they might not be involved in military operations arising from civil disturbance and insurrection. (Wood 1998, p. 234)

15.35 In planning for these contingencies, it was reasonable to expect casualties.

CONCLUSIONS

15.36 The Committee does not support the view, raised in some submissions, that hostilities continued until the date of the Japanese Peace Treaty on 28 April 1952 and that service with BCOF was therefore during a state of declared war. BCOF was a unique operational deployment in the country of a surrendered enemy.

15.37 Nor does the Committee agree that the 'misleading' recruiting advertisements and the declaration under s.4 of the *Defence Act*, that the occupation of Japan was 'active service', provide grounds to extend qualifying service eligibility.

15.38 However, the Committee believes that the nature of BCOF service, as determined under the assessment provisions detailed in Chapter 14 of this Report, does justify reclassifying BCOF service up to and including 30 June 1947 as warlike service. The Committee concludes that service with BCOF would have been declared warlike service in 1946, had such a definition then existed and the full circumstances of that particular time been known.

15.39 The first component of BCOF arrived in Japan in February 1946, well after the formal cessation of the period of hostilities on 29 October 1945. It was raised for an occupation task and cannot be seen as carrying out a mop-up operation after cessation of hostilities. While BCOF service occurred during a technical state of declared war, it was not a continuation of World War II but a separate operation to occupy and pacify Japan.

15.40 It is clear that the role of BCOF, in the early stages, was to enforce the peace and that the use of force to do so was authorised. At the time of deployment, there was some uncertainty about possible Japanese actions. It was in this context that planners structured BCOF to enable it to engage in conventional combat operations against an armed adversary.

15.41 The Committee feels that if Defence were to undertake a prospective assessment of the nature of service for a similar operation today, such service would be declared warlike on the basis that:

- the role of BCOF was to enforce the terms of the surrender of the enemy and to 'play [its] part in winning the peace … in an area stiff with armaments, coastal defences, ammunition works, naval workshops' (Bates 1993, p. 66);
- there was a reasonable expectation before deployment that BCOF would encounter military insurrection and/or civil disturbance; and
- the application of force was authorised to enforce the peace and, as a consequence, there was an expectation of casualties.

15.42 The Committee also believes that, in accordance with current Defence processes, the nature of service would have been reviewed and downgraded in June 1947, when most of the force left Japan. In August 1947, most of the families of remaining servicemen arrived and a township was established; this indicates a clear-cut downgrading of the threat by the appropriate authorities. Therefore, the Committee believes that from this time the nature of service was non-warlike peacekeeping service: the threat of an uprising or revolt by Japanese military forces had passed, but work was still being undertaken that would equate to the extant definition of peacekeeping.

RECOMMENDATIONS

The Committee recommends that service with BCOF be declared:

- warlike from 21 February 1946 to 30 June 1947; and
- non-warlike from 1 July 1947 to 30 June 1951, inclusive.