CHAPTER SIXTEEN

BRITISH ATOMIC TESTS

16

INTRODUCTION

16.1 The Review's terms of reference require the Committee to consider perceived anomalies in eligibility for access to benefits under the *Veterans' Entitlements Act 1986* (VEA) raised by Australian participants in the British atomic weapons testing program in Australia.

16.2 Involvement by members of the Australian armed services in the British atomic weapons tests is not eligible defence service under the VEA because it occurred during peacetime service in Australia before 7 December 1972. These members of the Australian armed services do not, therefore, qualify for access to the VEA by virtue of their participation in the tests. They do, however, have compensation coverage under the *Safety, Rehabilitation and Compensation Act 1988* (SRCA) or its predecessors.

16.3 The Committee has received 160 submissions regarding the British atomic tests. Submissions argue for compensation coverage under the VEA through the hazardous service provisions in Part IV. A small number of submissions also seek qualifying service to give access to the service pension. Most of the submissions are from former Defence Force personnel. A small number of submissions have been received from civilian personnel who were involved in the tests.

16.4 Some submissions referred to the fact that the United States accepts 22 cancers, on a presumptive basis, as related to the service of its atomic test participants (i.e. service in the tests and the claimant having the disease is sufficient for compensation and health care to be provided). The argument was that Australia should follow suit. Other submissions referred to a study in New Zealand in 1990. The mortality study of 528 veterans of the atomic tests

conducted on Christmas Island indicated that participants may have an increased rate of leukemia.

16.5 As the Committee was examining entitlements under the VEA, the focus of the examination was on the submissions about the service of former Defence Force personnel in the tests. However, compensation coverage of civilian participants is covered in paragraphs 16.108 and 16.109.

16.6 Under the VEA, coverage as hazardous service would provide the following entitlements for those included:

- entitlement to claim for the disability pension and for their dependants to claim the war widow's or orphan's pension under the generous standard of proof known as the 'reverse criminal' standard of proof;
- entitlement to the Repatriation Health Card — For Specific Conditions (White Card) for accepted disabilities;
- access to the Repatriation Health Card — For All Conditions (Gold Card) subject to the VEA criteria being met (e.g. where the rate of disability pension is above 100 per cent); and
- entitlement to the White Card for malignant neoplasm and posttraumatic stress disorder, irrespective of whether the condition is accepted as caused by that service.

16.7 In examining perceived anomalies raised in submissions, this chapter will:

- provide a historical overview of the British atomic tests;
- provide some background on previous reviews and studies;
- discuss current compensation arrangements available to participants;
- provide a summary of the submissions received by the Committee;
- analyse the claims for hazardous service;
- discuss civilian involvement;
- discuss concerns about access to compensation; and
- make conclusions and recommendations.

THE TESTS

16.8 Between October 1952 and October 1957, a number of British atomic weapons tests were conducted in Australia at Monte Bello Islands, off the west coast of Western Australia, and at Emu Field and Maralinga in South Australia. Table 16.1 summarises the tests conducted in Australia. The Committee notes that the accuracy of the kilotonnages (explosive yields) shown in the table have

been questioned in a number of submissions. The Committee did not pursue these claims. Minor trials were also conducted at Emu Fields and Maralinga between 1953 and 1963. There were also British tests (involving hydrogen bombs) at Christmas and Malden Islands in the Pacific Ocean, but Australians were not involved.

Table 16.1
List of British atomic tests in Australia

Location	Operation	Date/s	Kilotonnes
Monte Bello Islands	Hurricane	2 October 1952	25
Emu Field	Totem	15 October 1953	10
		27 October 1953	8
Monte Bello Islands	Mosaic	16 May 1956	15
		19 June 1956	60
Maralinga	Buffalo	27 September 1956	15
		4 October 1956	1.5
		11 October 1956	3
		22 October 1956	10
Maralinga	Antler	14 September 1957	0.9
		25 September 1957	5.67
		9 October 1957	26.6

Source: Cross (2001, p. 208)

16.9 The Australian tests enabled the United Kingdom to develop nuclear fission bombs and, later, nuclear fusion or hydrogen bombs. The tests occurred with the full cooperation of the Commonwealth Government. Both Australian and British personnel were involved in the tests and those involved included military and civilian participants. The Department of Resources and Energy published an official history of the tests in 1985 (Symonds 1985).

PREVIOUS REPORTS AND STUDIES

Royal Commission

16.10 In response to growing concerns about the safety standards observed during the conduct of the British atomic tests, the Commonwealth Government established a Royal Commission in 1984. The terms of reference required the Royal Commission to have particular regard to members of the Australian Defence Force and civilians at the test sites. These personnel included Royal Australian Navy (RAN) personnel in the vicinity of the tests at Monte Bello Islands and Royal Australian Air Force (RAAF) personnel, including decontamination teams, involved in atomic-cloud sampling and tracking operations. The Royal Commission presented 201 conclusions and made seven

recommendations (Milliken 1986, Appendix 1). The two main recommendations relating to compensation were:

- **Recommendation 1**. The benefits of the *Compensation (Commonwealth Government Employees) Act 1971*, including the shifting of the onus of proof from the claimant to the Commonwealth, should be extended to include not only members of the armed forces who are at present covered by the Act, but also civilians who were at the test sites at relevant times, and Aborigines and other civilians who may have been exposed to the 'Black Mist'.
- **Recommendation 2**. To assist the Commissioner for Employees' Compensation in the performance of the additional duties recommended in Recommendation 1, a national register of nuclear veterans, Aborigines and other persons who have been exposed to the 'Black Mist' or exposed to radiation at the tests should be compiled.

16.11 The other five recommendations related to the clean-up of the test sites at Maralinga and Emu Field and the controlling of access to the unsafe areas of the Monte Bellos. There were also recommendations regarding the British Government's bearing the cost of the clean-up and regarding compensation for traditional Aboriginal owners of lands for the loss of use of those lands as a result of the tests.

The Donovan Report

16.12 Concern about possible health effects of the atomic tests on the Australian participants resulted in a survey being carried out by the Department of Health in 1983. Its report, *Health of Atomic Test Personnel* (Donovan et al 1983), often referred to as the Donovan Report, consisted of two parts. The first part was an analysis of the answers given to a questionnaire sent to all identifiable participants and the second part was an analysis of the causes of death on the certificates of those who had died. The main aim of the survey was to identify any associations between atomic test program involvement and subsequent illness. From an analysis of various records, the Donovan Report identified more than 15,300 Australians who were involved in the tests.

16.13 In reviewing the Donovan Report, the Royal Commission stated that the health study was a valid and useful survey to investigate the claims of dramatically increased incidence of cancers and infertility. However, because of the difficulties of self-reported illnesses and activities, and the large number of participants who were not exposed to radiation, definite conclusions could not be drawn. The results in the report showed that there was no significant increase in illness or death, but could not provide a clear answer as to whether there was some increase in either. The Royal Commission stated that the conclusions of the survey should have been more balanced, drawing attention to the possibility of

no effect, but also accepting that it was not possible to say that there was no radiation-induced illness or mortality (McClelland 1985, vol. 2, p. 605). The Royal Commission concluded that, because of the paucity of relevant information on which the Donovan Report was based, the report could not be regarded as an adequate epidemiological study of the health of atomic test personnel (McClelland 1985, p. 30).

Development of a Nominal Roll

16.14 On 16 July 1999, the Government announced development of a nominal roll and conduct of a cancer incidence and mortality study of atomic test participants. The compilation of the nominal roll was a prerequisite for the commencement of the study.

16.15 The Department of Veterans' Affairs (DVA) has completed a nominal roll of participants involved in the tests. The roll has been compiled from information from the Donovan Report and Department of Defence records, including ship lists of the RAN ships involved, Routine Orders from Army units known to have been involved, and identified RAAF squadrons and squadron members. Documents prepared previously for the purposes of listing participants in the tests, and other documents provided by the various 'nuclear veteran' associations, were also examined for any additional names.

16.16 The names on the roll have also been checked against the list compiled by J R Maroney in the Australian Radiation Laboratory document, 'Personal monitor records from exposure to beta and gamma radiation during engagement in the program of British nuclear weapons tests in Australia', dated 10 December 1984.

16.17 The preliminary nominal roll has categories for civilian personnel, defence service personnel, and Indigenous people. For the purposes of the roll, an 'Australian atomic participant' is someone who was present, either working or as a visitor, in at least one of the testing areas whilst a test or tests were conducted in that area, or who was there within a two-year period after the explosions.

16.18 The current version of the roll contains 15,406 names, comprising 8035 Defence Force personnel, and 7371 civilians, including 25 Indigenous persons. The Defence Force breakdown by service is 1624 Army, 3024 Air Force and 3387 Navy.

Cancer and Mortality Study

16.19 DVA and the Department of Defence are taking the lead on the study into the death rate and incidence of cancer among test participants.

16.20 The study will not report on individuals, but will match data with national cancer registers and death certificates. The information obtained will provide a comparison of the number of atomic test and control group participants who have died since the tests and the number who have suffered from cancer. The stated purpose of the study is to allow the Government to decide if current compensation arrangements are sufficient. An independent scientific advisory committee made up of individuals with considerable scientific expertise is overseeing the study.

16.21 A consultative forum, which includes members of ex-service organisations representing the interests of nuclear test participants, has been established to ensure that there is communication between the test participants and the team responsible for undertaking the cancer and mortality study.

16.22 The Committee was advised by DVA that, as part of the study, DVA would be reconstructing dosage estimates for the tests. The Committee was advised by one of the submission authors that this would be a very complex, but achievable, task.

16.23 The study will not be completed until the latter part of 2003.

CURRENT COMPENSATION ARRANGEMENTS

Safety, Rehabilitation and Compensation Act

16.24 The *Safety, Rehabilitation and Compensation Act 1988* (SRCA) applies to employees of the Commonwealth, including current and former members of the Australian Defence Force (ADF). Claims can be made for any injury or illness that the employee believes is a result of his or her employment or service in the ADF. Generally, claims under the SRCA are determined under the civil standard of proof; that is, it must be more probable than not that the injury is related to the member or former member's service before it can be determined that the Commonwealth is liable to pay compensation for an injury of illness. Similar arrangements apply in the case of claims for the death of a member or former member.

16.25 For a claim for a disease to be successful under the SRCA, the following criteria must be met:

- there must be evidence of a properly diagnosed medical condition; and
- the employment of the employee (member of the armed services, in this case) must have made a material contribution to the contraction (or to the aggravation, acceleration or recurrence) of the disease.

16.26 However, under section 7(1) of the SRCA, if an employee (including a member or former member of the ADF) has been engaged in work with the Commonwealth involving exposure to certain substances, including ionising radiation, and the employee subsequently suffers from a disease that is characteristic of exposure to that substance, then it will be taken that the employee's employment materially contributed to the cause of the disease, unless the contrary can be established by the Commonwealth. The *Compensation (Commonwealth Government Employees) Act 1971*, which preceded the SRCA, contained similar provisions. These provisions effectively applied a 'reverse onus of proof' on the Commonwealth in relation to liability under the Act in the circumstances described, a fact acknowledged by the Royal Commission in the first of its recommendations.

16.27 Section 7(1) of the SRCA (and the predecessor s.30 of the 1971 Act) has been applied to claims for disease or death related to exposure to ionising radiation from the tests only where:

- it has been established that the member was at a test site at the time of, or after, a test was carried out there;
- it has been confirmed that the member was actually exposed to a dose of ionising radiation at the test site; and
- the member has suffered from a disease that is characteristic of exposure to ionising radiation.

16.28 The major difficulty that atomic test participants have had in satisfying these requirements has been in providing evidence that they were exposed to a dose of ionising radiation. Less frequently, claims have failed because claimants were not at the test sites at the required times (or, if documentary evidence did not record their presence, they were not able to prove that they were there), or because they claimed for conditions not recognised as characteristic of exposure to ionising radiation.

16.29 In determining the question of whether evidence existed of exposure to a dose of ionising radiation, the Military Compensation and Rehabilitation Service (MCRS), until recently, has relied upon records held by the Department of Industry, Science and Resources (DISR), now with the Department of Education, Science and Training (DEST). The records used by DISR since the mid-1980s were:

- a 1982 United Kingdom Ministry of Defence document titled 'Overseas Defence Nuclear Experimental Programmes Citizens of Australia (Provisional Issue)'; and

- a 1984 Australian Radiation Laboratory document titled 'Personal monitor records from external exposure to beta and gamma radiation during engagement in the program of British nuclear weapons tests in Australia'.

16.30 These documents are lists of participants in the tests, with dosage levels recorded against the names of some of the participants.

16.31 If a participant's name did not appear on the lists, or if no dosage level was recorded against his or her name, the requirement to be exposed to ionising radiation was considered by MCRS not to have been met and the provisions of s.7(1) were considered to be inapplicable. Until recently, MCRS believed that very few claims would meet the requirements of s.7(1), because of the inability to meet all three requirements in paragraph 16.27, above.

16.32 Where s.7(1) is ultimately considered inapplicable, the claim has been determined under the general disease provisions of s.14 of the SRCA, which basically require a material contribution by the employment to the disease. This question would have been considered under the civil standard of proof, with the onus on the claimant. Under this test, very few claimants have been able to show ionising radiation exposure and a link between that exposure and the disease claimed.

16.33 As a result, only a small percentage of claims made under the SRCA by participants in the tests have been successful.

16.34 The lists relied upon by DISR (now DEST) have been criticised by atomic test participants' representatives, who are members of the consultative forum for the cancer and mortality study. The criticisms have been that the records are incomplete, are based on inadequate and incomprehensive testing at the time, and are not exhaustive of all possible exposure types.

16.35 As a result of these criticisms, the MCRS has recently changed its policy for considering whether s.7(1) applies to claims for diseases possibly caused by exposure to ionising radiation. Where a member's exposure cannot be confirmed from the lists held formerly by DISR/DEST (copies are now with DVA), the claim is not immediately rejected. The MCRS now allows claimants the opportunity to provide, for consideration, other evidence of exposure to radiation. However, it should be noted that the member's presence at the test site is not alone sufficient for s.7(1) to apply. Further, MCRS also requires physical or documentary evidence that establishes the probability that the member was actually exposed to ionising radiation.

16.36 It is worth pausing here to refer again to the Royal Commission's recommendation to shift the onus of proof for atomic test claims from the claimant to the Commonwealth. Many submissions to the Committee argued that successive governments have failed to implement this recommendation.

This view has probably been based on misconceptions about the recommendation. One misunderstanding has been that the recommendation meant an acceptance of claims on a presumptive basis (i.e. that participation in the tests and contraction of a radiation-related cancer would be sufficient for a claim to be accepted). Another misconception is that the onus of proof being on the Commonwealth entails a reverse criminal standard of proof, similar to that in the VEA for operational service. Onus and standards of proof are different legal terms, although they are related.

16.37 Careful reading of the recommendation suggests that the Commission was aware of the provisions of s.30 of the *Compensation (Commonwealth Government Employees) Act 1971* (now s.7(1) of the SRCA). The Commission was, in fact, recommending that those same provisions, which applied to members of the armed services, be extended to 'civilians who were at the test sites at relevant times, and Aborigines and other civilians who may have been exposed to the Black Mist'. This is very different from recommending a presumptive approach to claims or recommending that a reverse criminal standard of proof be applied to claims.

16.38 In 1989, the Government extended the SRCA to civilians, including Aborigines who were at the test sites, and probably felt that it had adequately implemented the recommendation.

16.39 It is possible, and some have stated, that the Royal Commission intended something other than the strict meaning of the words used in the recommendation, or that the recommendation was poorly considered by the Commission. However, that can only be conjecture.

The Special Administrative Scheme

16.40 Defence Force personnel also have access to the Special Administrative Scheme and an Act of Grace Scheme, both of which are administered by DEST. The Special Administrative Scheme was announced on 4 September 1989. The decision to begin the scheme was based on the results of a study, undertaken by the United Kingdom's National Radiological Protection Board (NRPB) and published in 1988, of the health of British participants in the atomic tests. The study showed a possible increase in the risk of test participants developing multiple myeloma and leukaemia (other than chronic lymphatic leukaemia). The British Government then extended its war pensions scheme to cover British participants who suffered from these conditions. As the activities of Australian and British personnel at the sites were similar, the Commonwealth Government decided to introduce a scheme to cover Australian participants.[85]

[85] Australia, Senate 2001, *Hansard*, Question on Notice No. 3625, 12 February 2002.

16.41 With the publication of a follow-up NRPB study in December 1993, the British Government decided to accept new claims only where leukaemia (other than lymphatic leukaemia) had developed in the first 25 years after participation in the atomic tests. Advice to DVA from the United Kingdom is that these reports did not causally link development of those conditions to ionising radiation exposure and the policy is not an acknowledgment that those present at the tests were exposed to harmful levels of ionising radiation. The accepted service link is purely presence at the test sites.[86] On 10 February 1995, the Commonwealth Government announced changes to the Special Administrative Scheme to reflect these later findings. The scheme now provides payment of compensation to those Australian participants in the atomic tests (and to the dependants of those participants in death cases) who developed leukaemia (other than chronic lymphatic leukaemia) in the first 25 years after participation.[87] The type of compensation is based on the SRCA provisions.

Common Law Claims

16.42 Since the conclusion of the British atomic testing program, at least 79 common law actions against the Commonwealth have been instituted by ex-servicemen, former Commonwealth employees and employees of Commonwealth contractors. Many of the cases before the courts have been discontinued or withdrawn. The Commonwealth has won all of the five cases heard by the courts, with the exception of one matter in which the New South Wales Supreme Court held that, although there was no causal connection between illness and radiation exposure, the member had been discharged with anxiety disorder and fear of radiation was recognised.[88]

Act of Grace Scheme

16.43 The Act of Grace Scheme enabled plaintiffs with common law actions, issued and served on the Commonwealth in 1988 and up to 4 September 1989, to have their cases assessed on their merits outside the court system. It was a short 'window of opportunity' for some common law applicants to have their claims resolved quickly under the SRCA.

[86] Australia, Senate 2001, *Hansard*, Question on Notice No. 395, 19 August 2002.
[87] Australia, Senate 2002, *Hansard*, Question on Notice No. 3625, 12 February 2002.
[88] Australia, Senate 2002, *Hansard*, Question on Notice No. 3865, 27 September 2001.

SUBMISSIONS

Submissions Summary

16.44 Many issues and claims were raised in submissions. The main ones are described below, grouped by broad topic.

Hazardous and Warlike Service

16.45 Arguments about the nature of the tests included:

- the testing of atomic test weapons was hazardous and exposed individuals to ionising radiation and toxic chemicals and other risks beyond normal peacetime duties, causing high levels of disease and death amongst participants;
- the tests were conducted in undue haste with immature technology, inadequate understanding of the science and poor planning and management;
- the tests were conducted with inadequate safety provisions in place and insufficient knowledge of the risks involved;
- health physics teams were inexpert, and the various test management and safety committees, including the Australian safety committee, were ill-informed and negligent;
- Australian members of the armed services were used as 'guinea pigs' in the tests (i.e. they were deliberately exposed to radiation, or at the very least those in charge had little regard for their safety, especially if test outcomes were likely to be jeopardised);
- participants have suffered chromosomal damage as a result of their exposure to ionising radiation and there have been second and third generation effects;
- the nature of the tests, the extent of radiation exposures and the shortcomings in safety management of the tests have been deliberately hidden from the Australian public;
- the whole Australian population was at risk of some level of exposure through fallout;
- the service was in the context of the Cold War and was warlike in nature; and
- civilians were also exposed to risk through their involvement at the test sites during and after the explosions.

16.46 One submission[89] also claimed that:

- hydrogen bombs were tested;
- at least four 'dirty' bombs were tested; and
- parallel research programs, involving nerve gas and radiation in water supplies, were carried out.

Compensation Arrangements

16.47 Several submissions criticised successive governments for failure to implement the first two recommendations of the Royal Commission, for compensation and the nominal roll.

16.48 Most submissions highlighted difficulties in having claims for compensation for exposure to ionising radiation during the tests accepted under the SRCA and its predecessors. These submissions referred to what they described as unreasonable reliance upon inadequate lists of dosage levels held by the bureaucracy, the lack of any adequate follow-up health studies, and problems in obtaining evidence of exposure to radiation.

16.49 Some submissions strongly argued that the denials of successive governments and the bureaucracy, of the risks incurred and damage done to individuals involved in the tests, have been a deliberate attempt to contain the potential costs of compensation to participants.

Records

16.50 Claims have also been made in relation to the documentation of the tests that:

- record keeping at the time was poor for secret operations;
- operational instructions and safety guidelines were written after the events;
- documents in the National Archives of Australia (NAA) relating to the tests are difficult and costly to obtain;
- important documents about the nature of the tests are held by British authorities and these are not available publicly;
- critical documents have 'gone missing' from official records, and key records of dosage levels received by individuals have been tampered with; and
- there has been a deliberate campaign within the Australian and British bureaucracies to withhold, destroy or amend key documents.

[89] Submission 2567.

Nominal Roll

16.51 Several submissions also raised:

- concerns about the completeness and accuracy of the nominal roll of participants; and
- fears that the cancer and mortality study results might be diluted by the inclusion of many participants who were present before, but not during and after, tests or who were not in units engaged in the actual tests.

Statements of Principles

16.52 Some submissions canvassed issues relating to the Statements of Principles (SOPs) produced by the Repatriation Medical Authority regarding cancers, and the hurdles that the SOPs might pose if VEA coverage were extended to the test participants. The concerns included:

- that the SOPs were inadequately researched;
- that the Repatriation Medical Authority inadequately interpreted various reports and ignored particular exposure issues;
- that the SOPs did not recognise that cancers caused by radiation exposure can metastasise as cancers of other types; and
- that there would be considerable evidentiary difficulties for individuals in showing they had radiation exposures to the levels required in the SOPs.

Royal Commission

16.53 Several submissions were critical of the Royal Commission, claiming that it:

- was not given all the information held by the bureaucracy about the tests;
- gave insufficient weight to individuals' submissions and relied heavily on the evidence of experts and officials;
- focused mainly on the issues of the clean-up of the contaminated areas and little on the health of the personnel involved; and
- failed to make adequate recommendations relating to compensation for participants.

Committee Investigation

16.54 Some submissions focused on technical details about the materials used in the tests. The Committee was unable to validate this material scientifically.

16.55 The Committee was also unable to investigate and comment upon claims about missing, inaccessible, concealed or doctored records, and many of the claims about breaches or lack of precautions taken during the tests.

16.56 Given the Committee's terms of reference, its major focus was on the nature of the service performed by ADF members, with a view to assessing that service against the criteria it has developed for assessing questions of access to the VEA.

Summary of the Participants' Position

16.57 It is appropriate to quote selectively from the submissions in order to summarise the position of the participants and their organisations. The quotes indicate the participants' strong sense of injustice about the treatment they have received in the past:

> Millions of dollars spent by the Government in attempts to gain information to use in their own defence and to continue stalling for time.
>
> It would not have to cost a fraction of the money spent on the above for the Government to acknowledge it was hazardous service (as it was) for those service personnel who were exposed to ionising radiation during the British nuclear weapons tests in Australia and allow them full veteran status and qualifying service under the *Veterans' Entitlements Act*.
>
> But it would have been an admission perhaps that detonating atomic bombs in Australia involved some risks and hazards not just for the service personnel involved but also for the whole population of the country.[90]
>
> Since the service of Nuclear Veterans was unique and not what anyone would call normal peace time service and involved exposure of them to the possibility of diseases not yet fully understood by any of the medical world other than some specialists and perhaps radiologists or oncologists (radiogenic disease) it seems only right that they should be covered by special act and given a treatment card of any colour that indicates to doctors that they have been exposed to ionising radiation and may require specialist treatment.[91]
>
> The failure of the Australian Government to properly protect the servicemen concerned with the British Atomic Tests and the very real danger of inhalation or ingestion of radio-active particles show that the concept of 'hazardous service' must surely apply here.
>
> The provisions of the *Veterans' Entitlements Act* are the only ones which properly cover the special needs of atomic test veterans.[92]

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[90] Submission 278a.
[91] *Ibid*.
[92] Submission 2567.

> From beginning to end the whole affair of the British Atomic Tests in Australia has been a litany of lies, deliberate deception, misinformation and half-truths as part of a policy aimed at keeping the truth concerning the effects of the British atomic tests from the personnel concerned. All governments since the time of the tests, no matter their political persuasion have consistently refused to accept responsibility for the people who took part in the tests and subsequent illnesses suffered by them or their families.
>
> The concept of 'no hazard' has been shown to be completely untenable. There was a very real hazard indeed for those closely associated with the tests.[93]
>
> This Association has never sought large compensation from the Australian Government. We have only sought to come under the provisions of the *Veterans' Entitlements Act* because of service we consider to have been 'hazardous'.
>
> All we seek is natural justice.[94]
>
> Involvement in the UK experimental testing of nuclear weapons is not a simple matter of judging whether the participants were engaged in '*service which exposes individuals or units to risks above normal peacetime training and duties*.' The lack of involvement of the Australian Government in the deployment, tasks and safety of the participants, the nuclear contamination risks accepted by the UK in achieving a rapid thermo-nuclear capability and no competent follow up of the health of the Australian participants needs more than a simple declaration that this service was 'hazardous'. This atmosphere began before the tests commenced and still continues, half a century later.[95]
>
> Australian servicemen were provided on loan to an experimental nuclear weapon test programme under the control of another country without prior scientific examination, independent advice or assessment of the potential dangers that could occur.[96]

Arguments Made in Submissions

Hazardous Service

16.58 Submissions argued that involvement in the British testing of nuclear weapons was hazardous and exposed individuals to greater risks than normal peacetime duties.

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[93] Submission 2567.
[94] *Ibid*.
[95] Submission 1123.
[96] *Ibid*.

16.59 Participants claimed that they were exposed to many hazards, including radiation, chemicals (including beryllium, mercury, arsenic, dioxins and nerve agents), and biological hazards. Other hazards mentioned included ultraviolet radiation, smoking, alcohol, dust inhalation, asbestos, workplace accidents in remote areas and, at times, insufficient access to medical treatment. All these causative factors, submissions claimed, have well-documented medical outcomes and are beyond the hazards associated with peacetime service.

16.60 Many submissions claimed that extensive and hazardous radioactive pluming, distributed explosively by many of the weapons and affecting future test construction sites, was ignored or not discovered until work in contaminated areas had been completed, resulting in high levels of cancer deaths amongst participants.[97]

16.61 Several submissions stated that lack of experience with experimental weapons at all levels, health physics being an unknown science and operational directors being willing to take shortcuts, all resulted in a program fraught with ionising radiation hazards for participants. The submissions claimed that aircrews gathered dust from fallout clouds with no protection or measuring instruments, that ground crews removed fallout dust collection equipment and cleaned contaminated aircraft without protection, that divers entered the sea to recover contaminated equipment with no protection, that re-entry and recovery parties carried out their tasks without protective clothing, and that individuals worked in areas that should have been declared contaminated.

16.62 Several submissions claimed that whilst on service with the RAN at Monte Bello immediately after the nuclear explosions, participants were not provided with protective clothing when recovering equipment and drank water from evaporation processes that concentrated contamination caused by the tests. A similar claim was also made about contaminated water and food supplies at Maralinga and Emu Field.

16.63 A few submissions claimed that Australian aircraft used in fallout and cloud sampling during Operation Hurricane and Operation Totem did not carry gamma ray detection equipment, and that the aircrew did not wear protective clothing or film badges, or carry dosimeters (Symonds 1985, pp. 166–73 and Appendix 9.1). No preparations were made for decontamination of the aircrew or the aircraft. Instruction was not provided on the decontamination of individuals or aircraft, the use of film badges, dosimeters or protective clothing, or other matters of radiobiological safety (McClelland 1985, pp. 101–6, 135).

16.64 One submission highlighted a letter by Rear Admiral A D Torlesse, the operational commander for Operation Hurricane, of 20 September 1951. The

[97] Submission 1123.

Royal Navy letter seems to suggest that 'unreasonable safety restrictions' should not prevent the achievement of the full purpose of the trial. The letter (Symonds 1985, p. 36) states:

> … radiological safety must be one of the chief concerns of the Naval Commander, but, equally evident, some degree of risk must be run by some people if we are to achieve the full purpose of the trial … As Naval Commander I must expect to have to order or approve the acceptance of some degree of risk. This is customary Service obligation, but it is performed in the knowledge that the Admiralty accept liability for those killed or injured on duty. I want to be certain that the same applies to all who take part in Operation Hurricane, whether or not they are volunteers for any or all of their duty.

16.65 Submissions further stated that at the time of the tests there were no detailed plans for contamination distribution or measurements taken of contamination levels at construction sites; nor were there any safety procedures for plant machinery operating under these conditions. The submissions use statements made in an issue paper on the Maralinga Rehabilitation Project in 1996 to emphasise the extremely hazardous nature of dust-raising activities carried out without any form of protection during the tests:

> The risks to site personnel of handling soil and debris contaminated with plutonium requires strict adherence to detailed work plans and a regime of safety procedures. This involves greater controls on worker activities than would be customary for a major earthworks construction project. To minimise the risk of inhaling contaminated dust, plant operators working in contaminated areas will be housed in cabins in a controlled environment with air supplied through a high quality filtration system. Personnel working in radioactive areas will be required to attend medical examinations and undergo lung monitoring.[98]

Compensation Arrangements

16.66 Submissions from organisations referred to difficulties experienced in seeking compensation under existing arrangements. They stated that very few claims by their members for radiation-related diseases and illnesses have been accepted by government agencies. Submissions claim that the lack of success in making claims has increased the likelihood of posttraumatic stress disorder and other disorders.

[98] Submission 1123, citing Department of Primary Industries and Energy, Issue Paper No. 3, *The Maralinga Rehabilitation Project*, August 1996.

Availability of Records

16.67 Submissions raised concerns about the availability of records providing details of levels of radiation exposure. A number of submissions claimed that some records have been lost (e.g. the records of the hospital at Maralinga), while the records from at least two of the military units involved in the high-risk tasks of re-entry and recovery have been removed from the consolidated list of dosages. One submission claimed that a hidden archive of 3000 documents about the conduct of the tests in Australia, their safety and health implications, and the policy of that era has been discovered recently. The submission stated that only nine of these documents have been released.[99]

16.68 Some submissions referred to records being tampered with and evidenced this through the presence on files of information that could not have been known at the ostensible time of writing. Some referred to the high cost and difficulty of accessing records held in archives and the lack of availability of records held in the United Kingdom. Other submissions claimed that records on dosage levels of ionising radiation are inadequate. Submissions argued that these records are vital to an understanding of the health of nuclear test participants.

Nominal Roll

16.69 Some submissions expressed concerns that the nominal roll of atomic test participants prepared by DVA may be too inclusive in its categorisation of participants. Their fear is that the roll includes many individuals who were only at the test sites before the tests were conducted and many others who were hundreds of kilometres away from the explosions, and that this may 'dilute' the incidence of mortality and cancer in the subject group. Several submissions sought a definition of those 'potentially exposed to radiation.'

Statements of Principles

16.70 The Returned & Services League of Australia has pointed out that, even if coverage were provided under the VEA using the more generous 'reverse criminal' standard of proof, claimants would still have difficulty satisfying the SOPs because of the radiation exposure level required by the SOPs and other evidentiary difficulties.

[99] Submission 2567.

ANALYSIS OF HAZARDOUS SERVICE CLAIMS

16.71 Chapter 14 sets out the framework used by the Committee to assess perceived anomalies in the eligibility provisions of the VEA for service after World War II. The framework uses the definitions of warlike and non-warlike service agreed by Cabinet in 1993, when it established the current classification system for the types of service, and used in determining access to VEA benefits since 1997. Within that framework, warlike operations are those military activities 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.

16.72 The non-warlike classification includes hazardous service, which is defined as an activity more hazardous than normal peacetime duty. It should be noted that the current classifications apply only to service outside Australia. Under the framework developed by the Committee for assessing access to VEA benefits, the definitions are applied to service both within Australia and overseas. Under the Committee's framework, to satisfy the eligibility requirements for non-warlike hazardous service, all the following tests must be met:

- the military activity is more hazardous than normal peacetime duty;
- the application of force, if applicable, is limited to self-defence; and
- the threat to members is such that casualties might occur but are not expected.

Was the Activity More Hazardous than Normal Peacetime Service?

The Royal Commission

16.73 The claims made in submissions to the Committee cover a wide range of issues related to hazardous service. The Committee did not have the time or resources to complete an independent investigation of all issues. In determining whether participation in the atomic tests was more hazardous than normal peacetime service, the Committee has considered the report of the 1984 Royal Commission, which (despite its alleged shortcomings) is the only source of an authoritative independent evaluation of the evidence of hazard.

16.74 The report holds that the Commonwealth Government was placed in a position where it was forced to accept British assurances on the safety aspects of the tests without any critical examination by its own scientists. Further, the Commonwealth Government willingly accepted the British view that, by the

terms of its agreement with the United States, the United Kingdom was prevented from providing information on, or allowing Australian participation in, technical aspects of the tests (McClelland 1985, p. 7).

16.75 The Royal Commission concluded that the policy on exposure to radiation laid down for participants in all major trials, the code of practice for application of the policy, and the maximum radiation doses specified, were reasonable and compatible with the international recommendations applicable at the time. However, the Royal Commission also concluded that there were departures, some serious and some minor, from compliance with the prescribed radiation protection policy and standards during the test program and that the exposure of participants to radiation in the program has increased the risk of cancer amongst 'nuclear veterans'.

16.76 It is worth repeating here some of the findings of the Royal Commission on the particular tests. While some of the findings are challenged by participants, they support a view that hazards existed at the time.

Operation Hurricane

16.77 The Royal Commission found convincing the recurring evidence, given by servicemen who were at the Hurricane test in positions close to the site of the explosion, that decontamination procedures were tediously and thoroughly carried out after a person had entered an active area.

16.78 The evidence to the Royal Commission from servicemen aboard the Royal Navy and RAN vessels did not disclose breaches of health and safety regulations that would have allowed those personnel to be exposed to radiation beyond the limits set at the time. The Commission's report observed that the quick action taken to decontaminate HMAS Koala following the salvage of landing craft was evidence of the concern to ensure that appropriate radiation protection procedures were instituted promptly after an unplanned incident. However, the divers involved in the recovery of landing craft and also in the recovery of moorings after the explosion were exposed to the risk of ingesting contaminated seawater while performing their duties.

16.79 In regard to RAAF operations at Hurricane, the Royal Commission concluded that aircrew of the Lincoln aircraft should have been supplied with radiation monitoring devices and been given instructions as to the behaviour, when in the cloud or contaminated aircraft, of these devices. According to the Commission, the failure to provide this equipment and instruction was negligent. Ground crew of the RAAF squadrons involved should have been similarly equipped.

Operation Totem

16.80 The Royal Commission found that the radiological safety procedures for Operation Totem, including decontamination, were well planned and executed. However, the Commission concluded that it could not exclude the possibility that some unplanned incidents occurred, including the loosening or removal of respirators by participants in the forward areas.

16.81 The Commission found that aircrews for Operation Totem should have been included in the general radiological safety planning for the operation. It was negligent to allow aircrew to fly through the Totem 1 cloud without proper instructions and without protective clothing. As in Operation Hurricane, ground crew and aircrew of the Lincoln aircraft at Totem 1 should have been supplied with radiation monitoring devices and instructed in their use, and failure to do this was negligent.

16.82 Those crew members who travelled with a Centurion tank on its journey from Emu Field to Puckapunyal were exposed to radiation. No crew members wore film badges for any part of the journey, and the Royal Commission was therefore unable to determine their level of exposure.

Operation Mosaic

16.83 The Royal Commission concluded that the precautions taken for the health and safety of the servicemen at Mosaic were generally adequate.

16.84 The Commission believed that all possible efforts were made to limit the exposure of the crew of HMS Diana to radiation from fallout. Those below deck would have received only minimal or background levels of radiation, and those above deck and exposed to fallout were wearing protective clothing and film badges and had their doses recorded.

Operation Buffalo

16.85 The Royal Commission concluded that the radiological and physical safety arrangements for participants during the Buffalo nuclear tests were well planned and sound. Security was strictly policed during the major tests but was relaxed afterwards. Unplanned incidents and exposures may have occurred during this time. Breaches of the safety regulations may also have occurred when participants loosened or discarded respirators.

16.86 The Commission found that there were no recorded cases of participants receiving doses above the higher integrated dose set down in the radiological safety regulations for the Buffalo tests, but acknowledged that the existing records of radiation doses might be incomplete and inaccurate.

Operation Antler

16.87 The Royal Commission concluded that the Antler series of tests was clearly better planned, organised and documented than any of the previous series, but was not entirely without unplanned incident.

Committee's Views

16.88 From the information contained in the findings of the Royal Commission, it is the view of the Committee that some of the activities conducted by armed services personnel during the nuclear tests exposed individuals to a degree of hazard above and beyond that of normal peacetime service. The Committee has not had time or resources to determine which activities meet this criterion, but the evidence is overwhelming that some, if not many, of the activities undertaken in the course of the test program were unsafe.

16.89 The fact that the areas of Maralinga and Emu Field were the subject of considerable clean-up operations after the tests, and that areas of Monte Bello are still considered by the Commonwealth to be hazardous to people 50 years after the tests, is further support for the view that exposure to radiation occurred.

Was the Application of Force Limited to Self-defence?

16.90 The framework used by the Committee to determine non-warlike hazardous service includes a test on the application of force, if applicable. In the case of the British atomic test program, the test is inapplicable because ADF members were not required to apply force. Security arrangements at the tests were mainly civilian functions. Defence Force members may have been required in some cases to provide protection by patrolling a perimeter around the test sites to prevent illegal entry and/or sabotage. Naval personnel on ships at the Monte Bello trials were also required to prevent incursions into designated 'no-go' zones. However, these facts are not crucial to the non-warlike test under consideration.

16.91 One submission to the Committee referred to the *Defence (Special Undertakings) Act 1952* as significant to the case for warlike service. Under that Act, a special defence undertaking is defined as work that is being carried out, or is to be carried out, whether within or without Australia, for or in relation to the defence of Australia.[100]

16.92 Under the Act, the atomic test sites were declared prohibited areas for the purposes of a special defence undertaking. A person was not to be in, enter

[100] Submission 2567.

or fly over a prohibited area, unless they were a holder of a permit. A person who was in, or in the vicinity of, a prohibited area and was reasonably suspected of having committed an offence under the Act could have been apprehended without warrant, by or under the direction of the officer in charge of the prohibited area. The Act provided powers of arrest to defined Commonwealth officers and constables. The powers of arrest did not extend to the Defence Force.

16.93 The existence of this Act, with its sweeping powers, is not relevant to the issues the Committee has to consider. It merely enforced the secrecy that surrounded the tests, and its existence or provisions do not lend any weight to the argument that the tests were military operations.

Committee's Views

16.94 The particular requirement for non-warlike hazardous service that application of force be limited to self-defence is not applicable to, but does not disqualify, service in the British atomic testing program.

Were Casualties Likely to Occur?

16.95 The Royal Commission found that the policy on exposure to radiation laid down for participants in all the major trials, the code of practice for application of the policy and the maximum radiation doses specified were reasonable and compatible with the international recommendations applicable at the time. However, it found that exposure to radiation as participants in the test program had increased the risk of cancer among 'nuclear veterans'.

16.96 The Commission found that the measures taken before and at the time of the tests for protecting persons against exposure to the harmful effects of radiation, based as they were on the concept that any dose below a certain level was 'safe', must be regarded as inadequate in the light of later radiation protection standards.

16.97 The Commission also found that operation of the 'need to know' principle and the minimal amount of information given to participants had been a factor contributing to participants' concerns and fears regarding possible consequences of their experiences at Maralinga. Although participation in the tests had increased the risk of cancer to those participants who were exposed to radiation, the Commission was unable to quantify the probable increase.

16.98 The above findings of the Royal Commission are sufficient to confirm that the threat to personnel was at least such that casualties might occur. The risks arising from radiation produced in the atomic explosions and from the presence of the toxic chemicals used in the tests, coupled with the inadequacies

of some of the controls over the tests, give sufficient grounds to believe that casualties could have occurred. Statements at the time recognised the risk to humans.

Committee's Views

16.99 The Committee believes that service in the British atomic tests meets the tests of the framework and therefore can justifiably be declared non-warlike hazardous service under the VEA. The Committee recommends this action.

16.100 The British atomic test series was an unparalleled event in Australia's history, in which Australians were exposed to unusual risks from ionising radiation and toxic materials. On the basis of what is now known about the risks of cancers from ionising radiation, and the inadequacies of some of the precautions taken in the conduct of the tests, individuals were put at risk of contracting disease through their exposure in the tests. The findings of the Royal Commission support this conclusion.

16.101 Members of Australia's armed services were required to be present at the tests. They had no choice; they were not volunteers for the tests.

16.102 The recognition of non-warlike hazardous service by the members involved in the tests should be regarded as a *one-off extension of the VEA*. Apart from involvement in wars, other conflicts and overseas deployments, it is difficult to conceive of another Australian military operation in the 20th century comparable to the tests' scale and risk of harm to individuals.

16.103 The concerns of the participants in the British atomic tests have been a long-standing issue. There has been an inadequate response by successive governments over many decades. It is a sad fact that the recognition of the unusual hazards faced by the participants has not led to prompt action to ensure a more appropriate compensation arrangement with ready access, given the nature of the hazards.

16.104 The Committee understands that if the service is declared non-warlike hazardous under s.5C(1) of the VEA, as opposed to hazardous under s.120(7), amendment of the VEA would not be required to give effect to the Committee's recommendation, should it be accepted by Government. However, if the Government believes that legislation is required to enable a declaration of non-warlike service to have effect for these participants, then the legislation should be amended accordingly.

16.105 The Committee supports the commission of a cancer and mortality study of nuclear test participants, but is concerned about the time it is planned to take to complete the study. As a number of veterans at public meetings have remarked, 'By the time they complete the study, none of us will be left.' It is in

the interests of the participants and Government for the study to proceed as a matter of urgency, with the questions of exposure levels and records availability to be researched as part of the study.

16.106 This recommendation, if accepted and enacted, would provide the Defence Force atomic test participants at least with immediate DVA health care cover for all cancers and for posttraumatic stress disorder while any compensation claims are being determined.

16.107 The Committee believes that it is inappropriate to declare service in the British atomic tests to have been warlike because that service does not meet the criterion of being an activity required to pursue specific military objectives, such as a declared war or conventional combat operations against an armed adversary.

CIVILIAN PARTICIPANTS

16.108 The Committee's recommendation relates only to Defence Force members, but it is aware that civilians were involved in the British atomic test program as employees of the Government and of private contractors. In addition, pastoralists and Aboriginal people may have been exposed to radiation through fallout from the tests.

16.109 The Committee believes that, while compensation has been provided in the past to some civilians under various schemes, coverage under the VEA is not appropriate for civilians. The only exception should be if a civilian meets the tests of attachment to, and being under the command of, the Defence Force, as outlined in Chapter 20. It is more appropriate that the civilians be covered under existing compensation schemes for Commonwealth employees and private sector workers.

ACCESS TO COMPENSATION

16.110 If the Committee's recommendation to extend non-warlike hazardous service to Defence Force atomic test participants is accepted by the Government, the Committee is aware that several significant obstacles would remain for these participants to gain access to compensation under the VEA, despite the beneficial provisions of that Act. These issues are discussed below.

Evidence of Exposure

16.111 Although some records exist of dosage levels received by individuals during the tests, those records have been widely criticised as incomplete and inadequate. The testing of participants for radiation exposure at the time has

also been criticised as inadequate. The Royal Commission acknowledged that existing records of radiation doses were possibly incomplete and inaccurate. The MCRS has now accepted that the two lists of individuals' exposure levels are problematic, and is giving claimants an opportunity to present other evidence of exposure. However, test participants will face continuing difficulties in providing evidence of exposure.

16.112 The Committee understands that, as part of the cancer and mortality study, the possibility of estimating dosages for each of the tests and associated activities following the tests is being examined. Such an exercise, if viable and successfully conducted, could provide the foundation for individuals to make claims of exposure based on their position or placement during and after test explosions. The Committee suggests that this work should proceed as part of the cancer and mortality study.

16.113 The only other means of resolving exposure issues is to adopt the presumptive approach used in the United States. The Committee believes that a fully presumptive approach for compensation would be contrary to the principles and features of the repatriation system and the Committee cannot recommend this approach.

Access to Records

16.114 Responsibility rests with the Department of the Prime Minister and Cabinet for access to the records and information, held at the NAA, of the 1984 Royal Commission into British atomic tests in Australia. The Committee understands that in 1985, under the provisions of the *Archives Act 1983*, the Prime Minister authorised the accelerated release of the records of the Royal Commission to coincide with the tabling in Parliament of the Commission's report. Most of the records were made publicly available at the time, except:

- Cabinet records not tendered in an exhibit before the Commission;
- British Government originated records not cleared for release by that government;
- records in personal record collections;
- records that would have been exempt under s.33 of the *Archives Act 1983*, had they related to an open access period; and
- records that would be exempt under the *Freedom of Information Act 1982.*

16.115 The test participants remain concerned that not all the records of the Royal Commission were released in the public release program of the mid-1980s, and that other government documents were not supplied to the Royal Commission. Their concern is that these documents contain material, pertaining to the radiation exposure of individuals, that might assist with compensation

claims. Until all the relevant records in Australia are open for public access, suspicions of a deliberate cover-up will remain. It is difficult for researchers to identify documents that contain valuable and relevant information about exposures. If they can identify a series of documents as possibly relevant, they must then apply for public access in accordance with the provisions of the *Archives Act 1983*. This involves an assessment by the relevant agency, usually the Department of Defence, of the security implications of the documents before a decision can be made to make the documents available for public access. There is a cost to the researcher for obtaining access.

16.116 The Government might wish to reactivate the early release program of the mid-1980s to ensure access to the Royal Commission series and other documents in the NAA relating to the tests. This may assist the participants in seeking just consideration of their compensation claims.

16.117 The test program records held in the United Kingdom may continue to be of concern to the participants. The Commonwealth Government cannot ensure access to those records because they are not under its control, but has approached the British Government within the past few years about access to them. The Committee understands that the British Government has indicated its willingness to consider allowing access to documents on particular allegations or issues as they arise in the public arena; the Committee recognises that the Commonwealth Government is probably unable to take this matter further.

Statements of Principles

16.118 The Committee also notes that, even if coverage for non-warlike hazardous service were provided under the VEA, allowing a more generous standard of proof and liability provisions, there remain would concerns about the ability of atomic test participants to make successful claims. To resolve issues of causation, it is therefore important that the cancer and mortality study and the exposure estimate reconstructions for nuclear test participants be completed quickly.

Who is a Participant?

16.119 The Committee notes that there will be difficulties in defining who is an atomic test participant in legislation enacting its recommendation, but cannot resolve this issue. Clearly, the cancer and mortality study will help define groups that may have been involved in the tests and have potentially been exposed to radiation. The Government should therefore expedite the study, including by providing any necessary additional funding.

16.120 The Committee is aware that certain members of the armed services would claim that they were potentially exposed to radiation from the tests other than at the test sites; for example, Navy personnel who recovered equipment at Monte Bello, the aircraft maintenance crews who cleaned contaminated aircraft that had flown through the mushroom clouds and the members who were exposed to the contaminated tank sent to Puckapunyal after the tests.

16.121 From the submissions received, and discussions with DVA and atomic test veterans' associations, the Committee believes that the definition of a participant should exclude those personnel on duty at the test sites before the first test at that location who departed before the tests occurred. In the absence of any better information, the definition should include all personnel at the sites during, immediately after and within six months of the completion of the tests. The definition should also include those personnel outside the test sites involved in the transport, recovery, maintenance and cleaning of vessels, vehicles, aircraft and equipment used at the test sites. These groups should be included under the declaration of non-warlike hazardous service, if that recommendation is accepted.

CONCLUSIONS

16.122 The Committee believes that the British atomic test series was a unique, extraordinary event in Australia's history. Atomic devices were exploded in Australia, with Australian forces potentially exposed to levels of radiation beyond what would today be considered safe levels. By common sense and by any reasonable measure, service in the test operations must be regarded as involving hazards beyond those of normal peacetime duties.

16.123 There is evidence that members of Australia's armed services were placed in danger from ionising radiation and other toxic materials used in the test program, and natural justice for these members is long overdue. The Commonwealth Government should provide these members of Australia's armed services with compensation coverage under the VEA.

16.124 The Committee considers that service with the British atomic tests should be assessed as non-warlike hazardous service for the purposes of the VEA. A declaration of non-warlike hazardous service would provide the ADF personnel who participated in the testing program with, at least, immediate and free health care for all cancers and for posttraumatic stress disorder whilst claims for compensation are made and determined under the VEA.

16.125 The Committee notes the development of a nominal roll of Australian atomic test participants. While it appears that many of the people whose names are on the preliminary roll may have left test sites prior to any tests being

undertaken, the Committee also notes advice from DVA that the Department is aware of concerns about the accuracy of the roll and that work is continuing to refine it further. The Committee also notes that a proposal for reconstruction of dosage estimates is being considered. These matters need to proceed quickly and Government should assist with additional resources if necessary. The Government should also consider thoroughly addressing the concerns of the atomic test participants about access to records.

RECOMMENDATION

The Committee recommends that:

- participation by Australian Defence Force personnel in the British atomic tests be declared non-warlike hazardous and the legislation be amended to ensure that this declaration can have effect in extending VEA coverage; and
- the Government move quickly to finalise the cancer and mortality study.

CHAPTER SEVENTEEN

COUNTER–TERRORIST OPERATIONS

17

INTRODUCTION

17.1 The terms of reference require the Committee to consider perceived anomalies in eligibility for access to benefits under the *Veterans Entitlements Act 1986* (VEA) that might be raised by Australian service personnel engaged in counter-terrorist (CT) and special recovery (SR) training. The Committee received 21 submissions on this issue. All submissions received are from members of the Special Air Service Regiment (SASR) and concern CT training and operations. As no submissions have been received on SR training and operations that involve the recovery of personnel or equipment of a sensitive nature from an overseas location, the Committee has decided not to consider this aspect of SASR training.

17.2 The Committee notes that although CT and SR training mainly involves members of the SASR, specialist personnel from other units and services throughout the Australian Defence Force (ADF) may, depending on the situation, be assigned to these operations. Although the Committee has focused on the involvement of the SASR, the critical role of other elements of the ADF (e.g. helicopter aircrew, clearance divers and improvised explosive device disposal (IEDD) personnel) must be included in any recommendations that might arise from these considerations.

17.3 In September 2002, two new CT units were formed at Holsworthy Barracks in Sydney; these units have the capability to respond to national security threats. The Incident Response Regiment (IRR) and the east coast-based Tactical Assault Group (TAG) are highly trained soldiers with the skills to deal with terrorist incidents. The IRR will respond to chemical, biological,

radiological, nuclear or explosive incidents both domestically and in support of Australian forces deployed overseas in a high-threat environment. The special forces TAG is an elite unit able to deploy at short notice to respond to a terrorist incident, such as a hostage siege. The east coast-based TAG was raised within the 4th Battalion (Commando) Royal Australian Regiment, with additional personnel support from the Royal Australian Navy (RAN). This second TAG complements the existing TAG, which is part of the SASR in Western Australia. These recent changes to the structure of the CT response force also mean that any recommendations should include these personnel.

17.4 This chapter will consider perceived anomalies in eligibility for access to benefits under the VEA raised by SASR personnel engaged in CT training, and will:

- outline the development of the SASR CT capability;
- report on the Committee's visit to the SASR;
- give an overview of the training required to become a member of the SASR;
- provide information on the SASR remuneration package;
- provide details of the access requirements for benefits under the VEA; and
- discuss submissions received by the Committee.

DEVELOPMENT OF THE SASR CT CAPABILITY

17.5 One of the submissions contains a brief history of the formation and development of the SASR CT capability, and it is convenient to draw from that submission.[101]

17.6 The Sydney Hilton bombing on 13 February 1978 was the catalyst for the Commonwealth Government to initiate an urgent review of security procedures to combat the threat of international terrorism.

17.7 The anti-terrorist agencies (the Federal Police and the Australian Security Intelligence Organisation) were placed on heightened alert and a Protective Services Coordination Centre was established. The Prime Minister proposed the establishment of a Standing Advisory Committee on Commonwealth State Cooperation for Protection against Violence, which would be primarily responsible for the coordination and funding of various organisations involved. He also directed that police forces around Australia absorb the CT role. However, a study by Sir Robert Mark, at that time recently retired from the London Metropolitan Police, concluded that this was a task for 'sophisticated soldiery' and should not be given to the police but rather to the

Army. Sir Robert's advice was further strengthened by the Ironbark Report, written by Colonel John Essex-Clark, in which he advised the urgent formation of a special CT force within the Army.

17.8 In August 1978, it was proposed to allocate the task of raising, training and sustaining the CT force to the SASR. The force was to be called the TAG and was to be commanded by the Commanding Officer SASR. On 3 May 1979, the Government approved the raising of a dedicated CT force in the SASR. On 31 August 1979, final authorisation was given for the raising of the TAG. The tasks allocated to the group included:

- the neutralisation, including capture, of terrorist groups, which might include snipers, hijackers, kidnappers, bombers or assassins, and the neutralisation of aircraft or ships;
- the recovery of hostages and property held by terrorists; and
- the recovery of buildings and installations held by terrorists.

17.9 The training began officially in March 1980 and the force became fully operational in the following May. In July 1980, the SASR was directed to develop an offshore (maritime) capability, concerned primarily with retaking Bass Strait oil rigs in the event of terrorist capture. These operations were to be handled by a dedicated water operations team. The CT capability was a mixed blessing for the SASR. On the one hand, it provided realistic training and an operational commitment. The regiment received weapons, equipment and facilities that until then it had not been able to acquire, and gained a great sense of purpose. On the other hand, development of the capability had a highly disruptive effect. Those soldiers not involved in the CT training resented the attention being given to it, and it was hard to maintain the integrity of other elements of the regiment, because staff were continually required to reinforce the TAG. To address this staffing problem, assistance was sought from the RAN's Clearance Diving Teams, and 17 Navy personnel were placed under operational control of the SASR from 4 August 1980 (Horner 1989, p. 430).

17.10 By November 1980, the development of the CT squadron was complete, with two CT forces (land and water) whose secondary roles were in support of each other. A 12-month tour of duty in the CT squadron was planned, although Team One was on line for seven months plus three months of initial training. The squadron was on very short notice to move for incidents anywhere in the world. All members were issued with a pager (which was constantly tested) and were not permitted to move outside pager range. This placed a huge burden on all members and their families, and elevated stress levels significantly. Major training activities were conducted in all states of Australia under the auspices of

[101] Submission 1651.

the Standing Advisory Committee on Commonwealth State Cooperation for Protection against Violence, and other agencies. Most of these activities involved hostage/siege situations in aircraft, oil rigs and any building that could be acquired for these purposes.

17.11 In 1984, in response to the pressure placed on manpower to maintain the operational squadron as well as the other commitments of the force, the SASR decided to change the reinforcement of the operational CT squadron from one of an entire squadron handover to a trickle system. This method remained until 1987, when the method of squadron handover was reinstated.

17.12 At about the same time that the trickle system was introduced, it was recognised that there was a need for a further squadron to be operational for SR tasks. These types of operations included elements of the entire squadron being on short notice to react to incidents outside Australia, such as early insertion for reconnaissance and path finding for other ADF units. The SR squadron had to maintain a similar operational role, using the now familiar techniques employed for counter-terrorism, in order to undertake tasks for which the CT squadron could not be released. The operational CT squadron priority was still needed to counter threats to mainland Australia and offshore assets and territories.

VISIT TO SWANBOURNE AND DEMONSTRATION

17.13 The nature of SASR training is highly classified. After gaining the appropriate security clearances, the Committee visited the SASR at Swanbourne in Perth. During the visit, the Committee received a briefing from officers of the SASR and was given a demonstration of some aspects of the activities of the force, including a highly realistic demonstration in the 360-degree firing range at the base.

17.14 This briefing and graphic demonstration gave the Committee an idea of the highly dangerous nature of the training undertaken. The Committee was also shown other facilities and the natures of a great many exercises were explained to it. The visit, combined with the submissions and evidence provided to the Committee, gave a significant insight into the nature of the work of the CT force.

SASR TRAINING

17.15 In common with the submission of the SASR Support Group, the Committee believes it is unnecessary to set out in detail the nature of service with the SASR. It is summarised in some of the submissions and captured in detail in a number of the impact statements that form an attachment to the

Support Group's submission.[102] It is helpful, however, to draw from the submissions.

17.16 Once accepted into the SASR after a rigorous selection process, members are given training in the skills of a patrol member. These include basic skills of bushcraft and patrolling, parachuting, weapon handling, demolitions, survival, medical diagnosis and treatment, radio communications and, in addition, members' individual troop skills of water operations, free-fall parachuting or vehicle-mounted operations. Apart from these skills, all members rotate through CT duties, which require additional training in small arms, close-quarter battle, sniping, explosive entry of buildings, aircraft and maritime structures, hostage handling and high-speed vehicle manoeuvres. Members are also required to maintain the highest levels of personal physical fitness.

17.17 Submissions point to certain skill areas to demonstrate the difference between routine military training and the activities undertaken in counter-terrorism training:

- *Explosives*. During operational counter-terrorism training activities, explosives are detonated within one metre of soldiers, explosives (with detonators connected) are carried by soldiers who ride on the outside of motor vehicles travelling at high speed, and there is minimum supervision during detonation. In order to emphasise the danger in this activity, one submission points to the incidence of injuries, including loss of fingers.
- *Firearms*. During operational counter-terrorism training activities, up to six soldiers operate in extremely confined spaces in a 360-degree range, using live ammunition. Soldiers regularly shoot from behind and over the top of other soldiers. Although the activity is supervised, control is extremely limited because of the speed at which the soldiers operate. Safety distances and controlling parameters are also extremely limited. Distracting features are introduced into the environment, including grenades and tear gas, and some operations are conducted in total darkness. These factors all serve to increase the risk of injury. One submission records that there have been injuries sustained in these activities and it is said that a death occurred.[103]
- *Gas*. During CT training activities, soldiers are regularly exposed to large amounts of tear gas in very confined spaces. The gas can be so thick that soldiers operate in zero visibility. Gas permeates clothing and respirators are not always totally effective. In addition to tear gas, coloured smoke is regularly used as part of combat tactics. One submission concludes by saying that the effects of long-term exposure to tear gas and smoke have not

[102] Submission 1272.
[103] Submission 809.

been ascertained and suggests that a health study is needed; such a study is sought in the submissions.

17.18 The above statements are not comprehensive but do indicate the highly dangerous nature of the training carried out by the group.

SASR REMUNERATION

17.19 The ADF pay structure comprises a basic salary supplemented by work-related allowances. The basic salary, determined by the Defence Force Remuneration Tribunal (DFRT), compensates members for peacetime work. Like other work-related allowances, Special Action Forces Allowance, also set by the DFRT, is paid in recognition of work requirements that cannot be remunerated adequately in the ADF pay structure. The allowance includes a qualification and skill element and a disability element. The former acknowledges the significant levels of additional skill that must be acquired and maintained, while the latter acknowledges the hazard and stress associated with the Special Forces environment, which includes CT and SR training and readiness.

17.20 In considering the training of SASR members, the Committee sought advice from the Department of Defence. The Department has advised that in 1979 the Committee of Reference for Defence Force Pay decided that Parachutist Pay would be discontinued for members of the SASR and replaced by a more widely based Special Air Service Allowance. The new allowance took into account the special environment and stress associated with the work of the Special Forces. In 1980, the Committee of Reference noted that the Special Forces CT teams set up in 1979 required unprecedented standards of skill and excellence, and a decision was made to replace the Special Air Service Allowance with the new Special Action Forces Allowance. The Committee of Reference recommended that the rates for the Special Action Forces Allowance include an amount for CT training and skill.

CURRENT REQUIREMENTS FOR ACCESS TO VEA BENEFITS

17.21 For access to VEA benefits, SASR members are subject to the same criteria as other ADF members. Current compensation coverage for SASR members is determined by an individual's enlistment date:

- For continuous full-time service between 7 December 1972 and 7 April 1994 of three years or more, or less if discharged on medical grounds,

compensation coverage is provided under the VEA and the *Safety, Rehabilitation and Compensation Act 1988* (SRCA) or the *Compensation (Commonwealth Employees) Act 1971,* with offsetting provisions where compensation is awarded under both Acts for the same condition.

- For service after 7 April 1994, with full-time service following enlistment before 22 May 1986, the dual entitlement set out above also applies.
- For service after 7 April 1994, with enlistment after 22 May 1986, compensation coverage is provided under the SRCA only, supplemented by severe injury adjustment or additional benefits provided by a determination made under the *Defence Act 1903,* unless the individual also has operational service (e.g. Afghanistan or East Timor) where the VEA also applies (i.e. dual eligibility exists). Such operational service is not an issue here.

CONSIDERATION OF THE SUBMISSIONS

Summary of Submissions

17.22 Submissions received by the Committee raise three substantive claims:

- that all fully qualified operational members of the SASR should be eligible for the service pension, or alternatively that social security legislation include a provision similar to that in the VEA to prevent their disability pension being considered under the income test;
- that service in the SASR should be declared hazardous or non-warlike service, whichever is appropriate for the purposes of the VEA, so that members would have an election to claim under either the Military Compensation Scheme (MCS) or the VEA; and
- that an inquiry should be established into the health, needs and circumstances of former members of the SASR, in particular those who served with the CT and SR teams, to identify the long-term effects of that service.

Eligibility for Service Pension

17.23 The first claim seeks a recommendation that fully qualified operational members of the SASR be eligible for the service pension, or alternatively that the disability pension be disregarded in the income test under the social security legislation. It is obvious from the inclusion of alternatives in the claim that the concern is primarily a perceived discrimination between SASR personnel who have qualifying service and those who do not. The SAS Support Group's submission states that this issue is central to its concerns. This statement is

backed up by an illustration comparing the positions of a veteran with qualifying service and an ex-trooper without qualifying service, who has to seek his income support assistance from the social security system where his special rate pension is counted as income. In Chapter 30 of this Report, the Committee has concluded that there should be a restructuring of benefits, part of which involves the elimination of the discrimination that this complaint concerns. Thus, the central concern underlying this submission has been met.

17.24 The SAS Support Group submission proceeds to analyse the conditions that must be satisfied before an entitlement to the service pension arises. Most of this analysis concerns the 'incurred danger' test that applied until the end of World War II. That test is, accordingly, of no relevance to service personnel in the SASR. From the end of World War II to 1994, the relevant test is properly described as the 'allotment' test. To qualify for a service pension, a member of the ADF must have been allotted for duty in an operational area and to have served in that area. This test is more fully discussed in Chapter 13.

17.25 Since 1994, a member of the ADF is entitled to a service pension only if the member has rendered warlike service, which is defined in the VEA as service in the Defence Force of a kind determined by the Minister for Defence to be warlike service.

17.26 Accordingly, only those SASR members who were allotted for service in operations and served in those operations, or who rendered warlike service after 1994, would be entitled to a service pension. While there have been some submissions made to the Committee complaining of anomalies in the allotment test, they relate to the manner in which the test has been applied and do not present an argument for the replacement of that test by another one. Since 1994, the warlike service test has applied. The Committee has been impressed with the level of general satisfaction in the veteran community with this test and the corresponding desire to see it maintained. Again, the Committee sees no reason to consider changing this test, which seems to be an appropriate criterion for determining entitlement to the service pension, although the Committee has, as set out in Chapter 14, modified the test in its consideration of perceived anomalies and used it to assess service since World War II. The modification recommended by the Committee is that the current geographical limit of 'service outside Australia' be removed. This modification has no impact on the submissions made in respect of service in CT forces but has relevance to the recommendations of the Committee on CT force entitlements made under the VEA.

17.27 Therefore, it will only be those members of the CT forces who have been allotted for operational duty and served in that duty or who have rendered warlike service who would be entitled to a service pension. The submission

from SAS Support Group argues that there has to be an appropriate test for modern circumstances. The Committee is of the view that the warlike service test (with modification) satisfies the description of a test for modern circumstances, is one with which the veteran community is satisfied and has not been the subject of any serious challenge in submissions before the Committee. It follows that the Committee is not prepared to recommend a change to eligibility for the service pension to include members of the SASR who do not qualify under the existing criteria.

CT Service as Hazardous or Non-warlike Service

Current Entitlements

17.28 It has already been pointed out that members of CT forces who have served between the commencement of the CT capability in 1978 and 1994 already have dual entitlement and there is no need to declare that their service in the SASR is hazardous or non-warlike in order to give them that entitlement. However, a declaration that the service of those persons is hazardous will have an effect on the standard of proof required under the VEA. Accordingly, the Committee approached its consideration of this submission on the basis that those members who have dual entitlement at the present time seek a declaration that the service was hazardous in order to secure the more beneficial standard of proof.

17.29 It has also been pointed out that members who entered the CT force after 7 April 1994 and who had enlisted after 22 May 1986 do not have entitlements under the VEA. The argument put in the submissions is that the Committee should recommend that the Minister for Defence declare CT training, and maintenance of CT readiness, as non-warlike or hazardous service so that those members who have rendered service after 7 April 1994 would be eligible under the VEA as well as the MCS.

17.30 Where the SASR is deployed overseas on an operation, such as to Afghanistan, it does so pursuant to a declaration from the Minister for Defence, in accordance with the 1993 Cabinet decision, that the service is either warlike or non-warlike and members deployed will be entitled to coverage under the VEA. The 1993 Cabinet decision does not, however, cover operational service within Australia.

CT Training

17.31 On completion of initial selection and testing, as outlined in paragraphs 17.15 to 17.18, SASR members are posted to a squadron and undergo further training to develop their skills and teamwork. Basically, the SASR is divided

into four squadrons — one on line, one off line, one war squadron and one in training. The training squadron is made up of those who have passed the initial selection and testing, and are training to become operational members of the SASR. The war squadron is specially trained for more traditional wartime activities, and the two other squadrons are specialist CT squadrons.

Readiness

17.32 When a CT squadron goes on line, its members must maintain a readiness to deploy at short notice, about four hours. Its members are at all times required to be within pager distance of the base and must be able to respond within the required time. While the squadron is on line, it is regularly tested on its ability to meet the requirements of contingency plans. That is, it engages in training exercises that mirror, as far as possible and under rigorous safety and management regimes, the conditions that are likely to apply when a contingency develops, such as terrorists holding hostages. A squadron will normally be kept on line for six months before rotating with the off-line squadron. When a CT squadron goes off line, it continues to carry out training to maintain skills, fitness, teamwork and so on.

Callout

17.33 Once a terrorist crisis occurs, the CT force is required to increase its state of readiness as the situation develops. If the authorities consider that the situation may be beyond the capabilities of civilian authorities, they will request the assistance of the CT force. With the approval of the Commonwealth Government, the Chief of Defence Force will direct the CT force to deploy to the area of the incident. If the situation then develops to a point where it is clear that the civilian authorities cannot resolve the problem, the situation will be formally handed over to the CT force to resolve.

17.34 The theme underlying most submissions is that service in the CT force in Australia ought to be distinguished from peacetime military training on two fundamental grounds. First, it is such hazardous service that it could not properly be categorised as training, and, second, although there is an initial period of training, the service is mainly concerned with the maintenance of operational readiness for hazardous tasks that lie ahead.

17.35 The submission that training and maintenance of readiness prior to any callout or declaration by the Minister for Defence should be warlike or non-warlike strikes at the philosophy underlying the VEA and the maintenance of the distinction between peacetime training and operational service. This distinction is, as the Committee understands it, at the heart of the VEA; apart

from the anomalous period between 1972 and 1994, peacetime training per se has never received coverage under the VEA.

Service in Australia

17.36 It has been submitted that, in the past, non-warlike or hazardous service has only been declared for service outside Australia in support of, or in preparation for, peacekeeping or peace monitoring services. This is because, so the submission runs, military authorities have consistently taken the position that service within Australia could not be considered to be non-warlike or hazardous. If so, counter-terrorism activities within Australia fail to qualify. According to the argument, this is inconsistent with the intention of the legislators and, in particular, with a statement by the then Minister for Defence, the Hon Kim Beazley MP, in 1985:

> [I]n addition to peacekeeping requirements, a definition related to hazardous service ought also to be brought into legislation … a vast array of activities are conducted in peacetime by the defence forces which ought not of themselves to attract particular attention in repatriation legislation because the problems confronted are not really all that different from those encountered by sections of the civil community, nevertheless there are a substantial number of areas of service activity to which that doesn't apply … my inclination would be to err on the side of being supportive of the role performed by the services in the situations which they find themselves in some of their training activities and very much more specifically than that, in some of the activities that they undertake in situations which as far as the general community is concerned, are abnormally hazardous.[104]

17.37 Reference was also made to Senator Gietzelt, who said on the following day:

> I would imagine that if, for example, an international incident of terrorism were to take place on an offshore oilrig and we require combat troops to handle that situation, that would be without any doubt hazardous service …[105]

17.38 Finally, reliance was placed on the statement of Senator Missen, some weeks later:

> [W]hat might be designated as hazardous service had been yet to be decided … in some circumstances it might be possible to define it by generic description of service (e.g. parachuting duties) … at other times on the basis of service with a specific defence force group (e.g. service with a

[104] Submission 809.
[105] *Ibid*.

special air service regiment), or description of particular incidents (e.g. neutralising an unexploded device).[106]

17.39 Two things can be drawn from these statements. First, the Government at the time had not yet determined what criteria should be adopted by the Minister in making the relevant determination. Second, what were under consideration were activities that were not encountered in civilian life and would be regarded by the general community as abnormally hazardous. The degree of generality in these statements is obvious, but the references to terrorist incidents perhaps give some hint of what the legislators had in mind.

17.40 In the opinion of the Committee, there is nothing in the VEA that supports the proposition that non-warlike or hazardous service can only be rendered outside Australia. In the context of recent terrorist attacks, the Australian community has been put on notice that incidents such as the Bali bombing, or much worse, may occur in this country, and the Committee can see no reason why CT activities, in the event of such an attack, should not be declared to be warlike service.

International Responsibilities

17.41 One submission advances the argument that, because Australia is under an international obligation to prevent terrorism, in part, by having CT and SR forces at readiness 24 hours a day, the forces that are maintained in that state of readiness should be regarded as on non-warlike or hazardous service. It is, of course, pointed out that while being held in readiness the force continues to engage in hazardous training and readiness maintenance. The Committee does not doubt that the Government is concerned to take all appropriate action in compliance with its domestic and international obligations to counter terrorist attacks, but does not consider that such compliance provides the slightest support for the proposition that has been advanced.

Health Survey

17.42 Submissions argue that a study is required to ascertain the long-term effects of service with the SASR. The submissions argue that death and disablement figures are very high for the SASR and the physical, mental and emotional stresses endured by SASR members are greater then those of any other ADF group. Submissions state that in a 20-year period between 1979 and 1998, 2346 personnel served in SASR. During that time, 25 soldiers have been killed and 770 have been injured (35 seriously) with disability ratings of either 'permanent partial' or 'permanent full'. These statistics indicate a 32.8 per cent

[106] *Ibid*.

injury rate for personnel serving in SASR. Also, Dr Judy Ford's report of chromosome damage from exposure to CS gas among 10 SASR members sampled was provided to the Committee. The study showed that six of the ten had chromosome damage.[107] Issues of family relationships and lifestyle also needed to be examined in the health study.

17.43 The Department of Veterans' Affairs has recently advised the Minister that it would be difficult to conduct a scientifically valid health study of such a diverse group. The Minister has announced that she accepts this advice. The Department has suggested that the Minister invite the SAS Association to nominate conditions not already covered by the Statements of Principles for further investigation by the Repatriation Medical Authority or to identify aspects of service requiring closer examination of their causal significance. The Committee considers that the call for a health survey is outside its terms of reference and is a matter for the Government to decide.

CONCLUSIONS

17.44 It should be emphasised that SASR personnel are entitled to coverage under the MCS during their periods of training and only become entitled to coverage under the VEA in the operational circumstances referred to above. Underlying their submissions is the claim that the *Military Compensation Act 1994* (through the MCS) is not as generous as the VEA and for that reason the VEA should encompass CT training. The Committee regards the distinction between the two pieces of legislation as sound and considers that it would be a mistake to create exceptions by, for instance, extending the ambit of the VEA beyond the bounds within which it has always been contained, except for the anomalous period from 1972 to 1994.

17.45 The submissions argue that SASR training is much more hazardous than other training and that it should be treated as operational. Obviously, questions of degree arise in fixing the dividing line between what is operational training and what is not. The search for that line may be not only difficult, but also a cause of major discontent within the ADF. Although part of the training of the SASR, and in particular the CT squadrons, is clearly hazardous, and there have been deaths and injuries, it must be accepted that hazardous military training exists outside the SASR. There are other areas of military training that are extremely hazardous, such as training for combat pilots, submariners, parachutists and clearance divers. Although all care is taken to avoid accidents, deaths caused through service accidents in the period 1990–2001 for each service were 6 for the RAN, 25 for the Army and 15 for the Royal Australian Air Force.

[107] Submission 1272.

No doubt, those making submissions would hold that SASR training is much more hazardous than training in those areas. Whether or not that is so, the point is that many areas of military training are hazardous and have never been regarded as operational service or hazardous service for the purposes of the VEA. As noted above (paragraph 17.19, the Special Action Forces Allowance includes a qualification and skill element and a disability element. The former acknowledges the significant levels of additional skill that must be acquired and maintained, while the latter acknowledges the hazard and stress associated with the Special Forces environment, which includes CT training and readiness.

RECOMMENDATIONS

The Committee recommends that SASR training not be declared non-warlike or hazardous service.

The Committee recommends that geographical limitations be excluded so that the Minister can declare ADF operations, including CT operations, in or outside Australia as warlike or non-warlike where they meet the relevant criteria.

CHAPTER EIGHTEEN

PRISONERS OF WAR

18

INTRODUCTION

18.1 This chapter seeks to determine any potential anomalies arising from the $25,000 ex-gratia payment to World War II prisoners of war (POWs) of the Japanese (POWs (J)).

18.2 The chapter will refer to the major issues arising from submissions to the Committee in order to examine potential anomalies concerning compensation payments for non-POWs (J), and in particular World War II prisoners of war in Europe (POWs (E)) and prisoners of war in Korea (POWs (K)). Submissions, studies, and, in particular, government intent when introducing the payment were all considered in reaching conclusions and recommendations.

POW BENEFITS

18.3 Since World War II, the community and successive Australian governments have recognised that veterans of the armed forces of Australia who were POWs deserve special repatriation benefits. Apart from the resettlement benefits, disability pension and associated allowances available to other veterans, a number of special benefits have been provided to POWs over the years. Special benefits under the *Veterans' Entitlements Act 1986* (VEA) include:

- the Repatriation Health Card — For All Conditions (Gold Card);
- exemption from financial limits for dental treatment;
- automatic acceptance of ulcers, hepatitis B, anxiety state, depression and strongyloidiasis as war-caused;

- automatic grant of war widow/er's pension to the widow upon the death of the POW;
- funeral benefit; and
- exemption from residential aged care fees.

18.4 From 1952 to 1973, POWs (J) were eligible for compensation from the Enemy Property Trust Fund, comprising proceeds from the sale of Japanese assets, enabling POWs (J) and their widows to receive a maximum payment of £102. Also in 1952, a prisoners-of-war trust fund was established by the Government to provide payments of up to £250 per person to all POWs who needed financial assistance. Payments from the trust fund ended in 1977. In addition, POWs (E) who were interned in concentration camps also received compensation payments, in the form of a $10,000 lump sum payment, in 1997.

Background

18.5 In the 2001 Budget, the Government announced that an ex-gratia payment of $25,000 would be made to all surviving POWs (J), civilians interned by Japan during World War II and the surviving widow/ers (hereafter referred to as war widows) of former POWs (J). The payment was tax free and excluded from the income and assets tests used in calculating social security and VEA payments. Two legislative elements were enacted to provide for this payment:

- the payment to veteran POWs and their dependent widows under the VEA was made through the Veterans' Entitlements (Compensation — Japanese Internment) Regulations 2001, provided for under s.106 (Special Assistance) of the VEA; and
- the payment to Australian citizens and their widows, and to the widows of veteran POWs where the widow was not eligible for payment under the Veterans' Entitlements (Compensation— Japanese Internment) Regulations 2001, was made under the *Compensation (Japanese Internment) Act 2001.*

18.6 The payment was intended to acknowledge the unique hardship and suffering endured by those Australians who were held captive by Japan in World War II.[108] These people were considered a special group because of:

- the limited protection of POWs (J) under the Geneva Convention;
- lack of access of the International Red Cross (IRC) to POW (J) camps;
- the forced, slave-labour projects on which prisoners had to work (such as the Thai–Burma railway);

[108] The Hon Bruce Scott, Minister for Veterans' Affairs, Second Reading Speech, House of Representatives, 22 May 2001.

- the starvation and brutal treatment endured at the hands of their captors;
- the forced marches, such as the notorious death march from Sandakan to Ranau, during which more than 2000 Australian and allied POWs died; and
- their high mortality rate (some 36 per cent) compared to other POWs.

18.7 Consequently, it was felt by the Government that over 22,000 POWs (J) had experienced particular hardships and suffered extreme ordeals that distinguished them from other POWs.[109] In this respect, Australia followed initiatives similar to those taken by the United Kingdom, Canada and New Zealand for their POWs (J). In February 2001, British POWs (J) were awarded £10,000 in compensation payments in recognition of the terrible conditions endured by civilians and servicemen held captive by the Japanese. This payment was not passed on to any other POWs.

18.8 According to official statistics, approximately 8591 Australian military personnel were captured by German and Italian forces during World War II, and 29 Australians were captured in the Korean War. At 25 July 2002, the Department of Veterans' Affairs had client details relating to 1310 POWs (E) and 16 POWs (K).

SUMMARY OF SUBMISSIONS

18.9 The Committee received 15 submissions from POWs (E), POWs (K) and their war widows. One submission from the Ex-Prisoner of War Association of Australia is supported by the personal testimonies of 39 POWs (E), four POWs (K) and 15 widows of POWs (E). Arguments presented in the submissions in support of compensation payments for POWs (E) and (K) were:

- POWs (E) were emaciated upon being freed but had recovery time in the United Kingdom before returning to Australia, and therefore did not receive the same level of public exposure and sympathy upon their repatriation as POWs (J), who appeared more emaciated;
- POWs (E) experienced similar levels of deprivation to POWs (J);
- POWs (K) experienced similar levels of deprivation to POWs (J);
- widows of POWs (E) and POWs (K) have experienced similar hardships to widows of POWs (J); and
- there is stigmatisation of POWs (E) and POWs (K) in the community because they did not receive the payment.

[109] Senator the Hon Amanda Vanstone, Second Reading Debate, Senate, 24 May 2001.

POWs (E) Did Not Receive the Same Level of Public Exposure as POWs (J) upon their Repatriation to Australia

18.10 It has been argued that neither the Government nor the community fully appreciated the circumstances of POWs (E), as those POWs did not receive public exposure comparable to POWs (J). Submissions noted that POWs (E) were liberated long before POWs (J) and recuperated to some extent in the United Kingdom before returning to Australia. The Ex-Prisoners of War Association explained that this would have resulted in POWs (E) appearing suntanned and physically fit, because they were able to regain much of their body weight and lost their haggard appearance, in contrast to POWs (J) who returned home straight from the camps.

POWs (E) Experienced Similar Levels of Deprivation to POWs (J)

18.11 Submissions argued that POWs (E) experienced similar levels of deprivation to POWs (J), with the German and Italian forces systematically flouting many articles of the Geneva Convention and only recognising some of the convention's provisions when it was convenient to do so.

18.12 Submissions argued that Australian POWs (E) endured mistreatment and many breaches of the Geneva Convention. The instances most commonly noted were lack of appropriate medical care and facilities; inadequate diet; inappropriate washing facilities; sleeping quarters infested with lice and vermin; being confined in small spaces without toilet facilities, food and water whilst being transported; physical abuse from their captors; forced marches; slave labour; being shot or abused when caught trying to escape; and being shackled. In addition, POWs (E) were subjected to the extreme cold of European winters while lacking rations. The Ex-Prisoners of War Association of Australia contended that many breaches of the Geneva Convention varied between regions, while other breaches relating to security, rations, medical matters, transport and shackling were more systematic and clearly the policy of the German High Command.

18.13 Lack of appropriate medical care and facilities in the camps was also a problem for many POWs (E). One submission held that POWs (E) experienced similar health problems to POWs (J). It was argued that the incidence of dysentery, malnutrition, nerves and ulcers led to similarities between the conditions of POWs (E) and POWs (J). The Ex-Prisoners of War Association argued that many POWs (E) suffered significant weight loss in the camps.

18.14 Submissions also quantified the extent of relief provided to POWs (E) by the IRC. It is argued that while parcels were received only sporadically and

often not for months on end, they contained items that provided relief, such as food, blankets and medical provisions.

POWs (K) Experienced Similar Levels of Deprivation to POWs (J)

18.15 Several submissions explained that POWs (K) experienced similar levels of deprivation to POWs (J). The two most prominent issues to emerge were the mistreatment of POWs (K) at the hands of the North Korean forces, and the fact that the enemy was not a signatory to the Geneva Convention, which may have compounded mistreatment.

18.16 Submissions outlined how, as a result of their captivity, POWs (K) were subjected to lengthy solitary confinement; repeated threats of death; constant interrogation and starvation; physical and psychological abuse; lack of medical treatment; non-recognition of rank; lack of protective clothing and rations; poor accommodation; and an almost total lack of communication with home and family.

Widows of POWs (E) and POWs (K) Have Experienced Hardships

18.17 Submissions indicated that widows experienced hardships and difficulties in providing care to returned POWs (E) and POWs (K) — the need for care affected marriages and the quality of life both of the widows and the returned POWs. The Ex-Prisoners of War Association of Australia argued that the payment to widows of only POWs (J) has divided war widows, who have historically received the same entitlements.

Stigmatisation of POWs (E) and POWs (K) in the Community

18.18 Finally, the Ex-Prisoners of War Association of Australia held that compensation payments restricted to POWs (J) have led to claims of discrimination against, victimisation of and loss of prestige by POWs (E) and POWs (K). Submissions to the Committee stated that all POWs, regardless of their classification, have in the past been treated equally, as when health care benefits for all conditions were extended, and when the Statements of Principles (SOPs) were promulgated. It was argued that recognising only POWs (J) and their widows for the $25,000 payment shows a lack of compassion and understanding by deeming the service of 8622 POWs (E) and 29 POWs (K) less worthy of consideration.

DISCUSSION

General Observations

18.19 The Committee understands that POWs, irrespective of the theatre of war, are likely to suffer many detrimental effects as a result of their captivity. It is both justified and expected that the special circumstances and difficulties encountered by POWs be recognised. Successive governments have provided POWs with additional benefits to those received by other groups covered by the VEA (see paragraph 18.3 for a list). Special benefits of this nature are designed to assist both the repatriated POW and his carer in the provision of care. The need for these special benefits being awarded to POWs has been widely recognised within the community.

18.20 Any decision about extending the $25,000 payment to non-POWs (J), however, requires an examination of the intent of its provision to POWs (J). The payment was ex gratia; it was not intended as an additional benefit to all POWs. In May 2001, the then Minister for Veterans' Affairs, the Hon Bruce Scott, indicated that the special one-off payment was in response to the 'hardship and suffering endured by those Australians who were held captive by Japan during World War II'.[110] In addition, and in response to questions outlining why payment was to be made only to POWs (J) and not to POWs (E), Senator the Hon Amanda Vanstone responded:

> [T]hey [POWs (J)] experienced a particular hardship. Those people suffered fairly unique ordeals, and that is clearly shown by the difference in death rates. The POWs that were interned in [sic] Japan had a death rate of 36 per cent, whereas those that were interned in Europe had a rate of three per cent.[111]

18.21 Hence, the underlying intention of the $25,000 payment was to compensate a group that experienced unique hardships and suffering. The Committee believes that any extension of the payment to any other group should be consistent with the original intent outlined by the Government.

Health Study

18.22 The United States is the only country to have conducted comparative and comprehensive health studies into POWs from Europe, the Pacific, Korea and Vietnam. These studies found that most of the 95,532 American POWs (E) were held captive for about one year and approximately one per cent died, a death rate equivalent to that of Australian POWs (E) (USDVA 1980, p. 31).

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[110] The Hon Bruce Scott, Minister for Veterans' Affairs, Second Reading Speech, House of Representatives, 22 May 2001.

Among the 34,648 American POWs (J), the average internee spent about three years in captivity and 37 per cent died (USDVA 1980, p. 33), a rate similar to that of Australian POWs (J). The number of Australian POWs (K) is not large enough to provide a valid sample for that group, but the average American POW (K) spent about two years in captivity and 38 per cent of the 7140 American POWs died in captivity (USDVA 1980, p. 35). Most of the American POW (K) deaths occurred before August 1951. There is no reason to believe that the conditions experienced by Australian POWs (K) during captivity differed substantially from those experienced by American POWs, given that they were held in the same camps for the same period.

18.23 The United States studies found that POWs (E) were often ill on repatriation but did not exhibit the same degree and type of chronic health problems as other POW groups. For instance, POWs (J) and POWs (K) experienced an unusually high number of problems due to infectious diseases and were hospitalised twice as often as POWs (E) (Beebe 1981, p. 36). Additionally, the studies showed that POWs (J) and POWs (K) experienced an increased mortality rate in the 13 years after repatriation, while POWs (E) did not. POWs (J) and POWs (K) were also significantly more disabled and suffered from an unusually high number of health problems due to infectious and parasitic diseases, compared both to control groups and to American POWs (E) (Beebe 1981, pp. 36–7).

18.24 With the exception of American POWs (E), the average time in captivity for American POWs was similar to that of Australian POWs. Additionally, the mortality rates for American POWs (E) and POWs (J) are similar to those for Australian POWs. The Committee considers that aspects of these American studies are applicable to Australian POW experiences in Japan, Europe and Korea. The similarities between the American and Australian mortality rates also suggest that specific cultural and environmental factors affected the experiences of POWs, largely according to whether they were detained in Japanese, Korean or European camps. More importantly, the studies indicate that such factors, specific to the experiences of POWs (J) and (K), significantly affected the health and mortality rates of those groups, whilst in POW camps and upon repatriation, in comparison to POWs (E).

Treatment

POWs (E)

18.25 The experience of POWs (E) can be divided into three distinct phases: in transit camps, in permanent camps in Europe and during the period 1944–45.

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[111] Senator the Hon Amanda Vanstone, Second Reading Debate, Senate, 24 May 2001.

There is evidence that the treatment of POWs (E) during the first and third phases was particularly hard. During these phases, POWs (E) at times experienced brutality, starvation and death marches, and suffered from some of the diseases that affected POWs (J). However, it is difficult to generalise the treatment of POWs (E) during the middle (and longest) phase of captivity because treatment varied significantly depending on rank and conditions in particular camps.

18.26 Germany and Italy were signatories to the Geneva Convention and, while breaches of the convention were widespread in many transit camps, permanent camps were generally in better condition. Similarly, the IRC operated in European POW camps and was able to provide relief through the distribution of medical supplies and food parcels. In 1941, the Australian Red Cross received £4,360,000, of which £3,069,000 was spent to service POWs (E). Conversely, the distribution of food parcels to POWs (J) was refused by the Japanese Government (Loffman 1995).

POWs (K)

18.27 The experience of United Nations POWs (K) can also be divided into three distinct phases: July 1950 to February 1951; March to October 1951; and November 1951, when the Korean Armistice negotiations had begun to make progress, until repatriation in 1953. Treatment of POWs (K) during the first and second phases of captivity was extremely harsh and affected by cultural differences. During these two phases it is reported that 38 per cent of all American POWs (K) died, along with the only Australian to succumb. During the third period, conditions fluctuated with the armistice negotiations. During these phases, POWs received limited medical supplies and were marched through snowstorms without adequate clothing. Food, when it was available, was scarce, and prisoners were frequently beaten, kicked, shot and kept in solitary confinement. Sleeping quarters were overcrowded, unheated and infested with vermin. Segregation by rank and ethnicity was used to break down the chain of military command, and soldiers were subjected to a propaganda program (Anderson et al 1981, pp. 17–18).

18.28 The early transit camps were particularly harsh. At 'Death Valley', near Pukchin, 40 per cent of the camp's 2000 inmates died within the first three months (USDVA 2001, p. 2). In 'The Valley', 500–700 of the 1000 internees perished before a permanent camp was reached (USSD 1981, p. 22). There is an account of an Australian POW (K) being beaten and spending 45 days in a one-metre square, two-metre deep hole in the ground with two other airmen, one of whom later died (Adam-Smith 1992, p. 579). Another Australian POW (K), who was initially held in a packing crate with two other POWs, spent a total of 90 days undergoing intense interrogation (Pears and Kirkland 1998, p. 219). Other

Australians were held in bamboo cages and forced to squat on up-ended tree stumps; they were not allowed to stretch their legs and were beaten if caught doing so. Many prisoners died from neglect and malnutrition. American studies indicate that American POWs (K) experienced weight losses of 40–50 per cent, which are similar to those experienced by POWs (J) (Beebe 1981, p. 36). The fact that the North Korean forces were not signatories to the Geneva Convention and excluded the IRC from accessing their camps may further indicate systematic mistreatment of POWs (K).

CONCLUSIONS

POWs (E)

18.29 On the basis of the principles outlined in paragraph 18.20, which underpinned the Government's decision to grant an ex-gratia payment of $25,000 to POWs (J), the Committee believes that no such payment should be made to Australian POWs, civilian detainees and internees who were held by the German–Italian forces during World War II, or to their surviving widows. The Committee considers that such a payment would not fulfil the principles elucidated when the ex-gratia payment to POWs (J) was legislated.

18.30 The $25,000 payment to POWs (J) was not intended to be an additional benefit to all POWs. It was based on the unique suffering and hardships of POWs (J), which included their limited protection under the Geneva Convention, lack of access to IRC assistance, forced labour, starvation, brutal treatment, subjection to forced marches and 36 per cent mortality rate in captivity.

18.31 The experiences of POWs (J), as a group, included abuses arising from cultural differences and environmental circumstances and perpetrated systematically by their Japanese captors. While there is evidence of breaches of the Geneva Convention by the German and Italian forces in World War II, hardship and suffering was not a systematic feature of European POW camps. The Committee acknowledges that individual POWs (E) suffered great hardship. However, the treatment of POWs (E) varied significantly with time of capture, place of capture, conditions within particular POW camps, rank and service type, and access to the IRC. This treatment would have had an impact on the mortality rates of POWs (E), which are significantly lower than those of POWs (J).

18.32 The differences in treatment in captivity between POWs (E) and POWs (J) are reflected in their death rates while prisoners. Moreover, studies of

American POWs (E) and (J) after repatriation show higher mortality rates and rates of long-term health effects among the latter group.

18.33 The Committee therefore holds that the principle supporting the Government's one-off payment to POWs (J) cannot be extended to support such a payment to POWs (E), as the experiences of the latter group were, on the whole, not of the same nature.

POWs (K)

18.34 On the basis of the principles outlined in paragraph 18.20, which underpinned the Government's decision to grant an ex-gratia payment of $25,000 to POWs (J), the Committee believes that an ex-gratia payment should be paid to all Australian POWs who were held by the North Korean forces during the Korean War, or to their surviving widows. It is apparent that such a payment would fulfil the principles elucidated when the ex-gratia payment to POWs (J) was legislated.

18.35 The Committee believes there is significant evidence that the treatment and circumstances experienced by POWs (K) as a group were similar in a number of ways to those experienced by POWs (J). Similarities existed in the impact of cultural and environmental differences on POW treatment. In particular, POWs (K) were not granted protection under the Geneva Convention, the North Korean forces failed to appoint a 'protecting power', and the IRC was excluded from camps. These factors contributed to the harsh treatment of POWs (K) and the high death rates they experienced, particularly evident among American POWs. There are also indications that mistreatment of POWs (K), on the whole, was more systematic than that accorded to POWs (E) and comparable to the abuses experienced by POWs (J).

18.36 In addition, studies demonstrate that death rates and rates of long-term illness have been similar between American POWs (K) and POWs (J), and that rates for both exceed those of American POWs (E). The brutality and hardships experienced by most American POWs (K) would, on balance, be comparable to those experienced by Australian POWs (K).

18.37 Therefore, it is the Committee's view that an extension, of the $25,000 one-off payment to POWs (J), to POWs (K) would be consistent with the original principle supporting payment to POWs (J). This payment should be made to all surviving POWs (K) and to surviving widows of POWs (K).

RECOMMENDATIONS

The Committee recommends that an ex-gratia payment not be extended to surviving POWs (E) and interned civilians held captive by the German–Italian forces during World War II or to the surviving widows of those who have died.

The Committee recommends that an ex-gratia payment be extended to all surviving Australian POWs (K) held captive by the North Korean forces during the Korean War and to the surviving widows of those who have died.