

CHAPTER NINETEEN

WAR WIDOW/ER'S PENSION ELIGIBILITY

19

INTRODUCTION

19.1 This chapter examines issues raised in submissions relating to access to the war and defence widow/er's pension.¹¹² Issues related to the adequacy of this pension and the income support supplement are discussed in Chapters 29 and 30.

19.2 Section 13 of the *Veterans' Entitlements Act 1986* (VEA) enables a tax-free, non means-tested war widow's pension to be paid to the widow of a veteran if:

- the veteran's death is accepted as related to eligible war service;
- the veteran died as a result of an injury or disease that is accepted as related to eligible war service;
- the veteran was in receipt of, or entitled to receive, the extreme disablement adjustment (EDA), the special rate disability pension or an increased pension under VEA s.27(1-8) (double amputees) at the time of death; or
- the veteran was a prisoner of war (POW).

19.3 For widows of veterans falling within the last two categories, no claim is required and the war widow's pension is paid automatically upon the veteran's death. Where the veteran dies as a result of an injury or disease that is accepted as related to eligible war service, a claim is required so that this factual issue can

¹¹² For ease of reading, the term 'war widow' is used hereafter in this chapter. This includes war widowers (who became eligible for pensions in 1991) and defence widows and widowers eligible for payments under provisions outlined in the VEA.

be verified. A claim is also required where the question of whether the veteran's death was service-related must be determined.

19.4 The VEA also makes provision for payment of orphan's pensions to the children of veterans in one of the above categories if the children are under 16, or over 16 but under 25 and in full-time education.¹¹³

19.5 Similar provisions exist in s.70 of the VEA covering the payment of the defence widow's pension and orphan's pension resulting from the death of members of the forces serving on peacetime service between 7 December 1972 and 7 April 1994, members of the forces with hazardous service on or after 7 December 1972 or members of a peacekeeping force.

19.6 Section 11 of the VEA defines a 'dependant' as the widow or widower of a veteran, member of the Defence Force or member of a peacekeeping force. Section 5E(1) defines a 'widow' as the partner of a man before he died or a woman legally married to a man before he died. A 'widower' is the partner of a woman before she died or a man legally married to a woman before she died. This means that a person who was divorced from a veteran at the time of the veteran's death is not a dependant of the veteran.

19.7 Section 86 of the VEA enables the provision of health care benefits to widows entitled to a war/defence widow's pension and orphans entitled to an orphan's pension through the Repatriation Health Card – For All Conditions (Gold Card).

HISTORY

Basic Eligibility Provisions

19.8 The war widow's pension was introduced in 1914 with the enactment of the *War Pensions Act 1914*. The pension was paid to the widow of a veteran who was killed on, or as a result of, service abroad during World War I. There was initially a requirement, removed in 1915, that the widow must have been financially dependent on the veteran. The war widow's pension was extended in 1916 to cover service in Australia.

19.9 In 1916, the war widow's pension was also extended to de facto widows who were recognised as wives and were dependent on the veteran at the time of

¹¹³ A pension under the VEA is not payable to a child over 16 and under 25 who is in full-time education if that child is receiving Commonwealth education assistance such as youth allowance, ABSTUDY or payment under the Veterans' Children Education Scheme, or an income support payment under the *Social Security Act*, such as a disability support pension.

the event that caused the veteran's incapacity or death. In 1973, all de facto war widows became eligible for this pension.

19.10 Limited free medical treatment was extended to war widows in 1924. Further medical treatment benefits were granted in 1959, and in 1973 war widows were issued with a treatment card, which was the forerunner of the Gold Card.

19.11 In 1936, provision was made for the automatic grant of the pension to widows of veterans receiving a special rate pension or double amputee veterans (and in 1958 to those widows of such veterans who would have been entitled to payment but for the veteran's earlier death). From the second reading speech by Senator A J McLachlan, it appears that this provision was introduced as an act of generosity for the families of veterans most disabled as a result of their service.¹¹⁴ It also appears that there were financial considerations in limiting the provision to these widows.¹¹⁵ Additionally, the Government considered that this extension of benefits was 'a big departure from the generally accepted principles of war pensioning and any additional departures cannot be countenanced'.¹¹⁶

19.12 In 1991, the war widow's pension was extended automatically to include the widows of veterans entitled to the EDA at the time of the veteran's death and, in 1992, to widows of POWs .

19.13 In 1996, the war widow's pension was extended to widows of veterans who died from a condition that had already been accepted as service-related, without the need to establish whether the particular veteran's death was service-related. In introducing the amendments, the then Minister for Veterans' Affairs, the Hon Bruce Scott MP, stated that the provision was being introduced as part of the Government's 1996 election undertaking to make the system for claiming pensions simpler. He stated that the system, as it then existed, required a claim to be lodged and the re-establishment of a connection with eligible service, which was not always possible and could be time consuming. He stated that the amendments would remove the uncertainty and reassure the veterans concerned and their families that support would be available to the widow where the veteran died from a condition previously accepted as service-related.¹¹⁷

19.14 The domestic allowance was introduced in 1947 as an additional payment for widows with children under 16. This was widened in 1950 to include all war widows over 50 and, in 1951, to include permanently unemployable war widows regardless of age. The domestic allowance was

¹¹⁴ Australia, Parliament 1935, *Debates*, vol. 148, p. 2415.

¹¹⁵ *Ibid*, pp. 2457 and 2459.

¹¹⁶ *Ibid*, p. 2459.

¹¹⁷ Australia, House of Representatives 1996, *Debates*, vol. HR206, pp. 1099–1100.

increased to the equivalent of \$24 per fortnight in 1964. From 1986 it was paid to all war widows, becoming a non-indexed component of the war widow's pension. The allowance has not been increased since 1964, except for an adjustment in 2000 with the introduction of the Goods and Services Tax. The rate is now \$25 per fortnight.

19.15 The war/defence widower's pension was introduced in 1991 and is payable on the same basis as the war/defence widow's pension.

Remarriage Provisions

19.16 When the war widow's pension was introduced in 1914, a war widow could not continue to receive the war widow's pension after she remarried. There was much debate in Parliament on this issue when the *War Pensions Bill 1914* was being considered. In 1916, provision was made to enable a war widow to continue to receive her pension for two years after remarriage. This was considered a reasonable period in which to expect the new husband to assume responsibility for the support of the woman concerned.¹¹⁸ The *Financial Emergency Act 1931* removed the two-year pension continuation provision, which meant that there was no continuation of pension on remarriage. An allowance was introduced in 1926 for war widows who remarried, were again widowed and were without adequate means of support, but no further provision was made for remarried war widows until 1950. At that time, a remarriage gratuity was introduced, providing a payment equivalent to one year's pension upon a war widow's remarriage.

19.17 The VEA made no provision for the remarriage gratuity, but did provide for the continuation of the war widow's pension to those who remarried after the effective date of commencement of the legislation (22 May 1986). The transitional provisions enabled war widows who had remarried between 28 May 1984 and the commencement of the VEA to have their war widow's pension reinstated, subject to the deduction of any remarriage gratuity received. The 1984 date was the day before the then Minister for Veterans' Affairs, Senator the Hon Arthur Gietzelt, announced his original proposal for pensions to be continued only if remarriage occurred after the commencement of the VEA.¹¹⁹ The remarriage provisions were the Government's response to recommendations made in 1983 by the Advisory Committee on Repatriation Legislation Review, which recommended that:

- the war widow's pension should not cease on marriage or remarriage where this occurred after the date of commencement of the proposed VEA; and

¹¹⁸ Toose (1975), citing *Hansard*, Vol. 86, pp. 8279 and 8289.

¹¹⁹ *Hansard*, Senate, 29 May 1984, p. 2054.

- a widow who remarried and had her war widow's pension cancelled prior to the commencement of the proposed VEA, but who was again widowed or divorced, should be eligible for reinstatement of the war widow's pension. (Keys 1983, p. 38)

19.18 The Advisory Committee's rationale was that recent amendments to superannuation legislation, including that applying to members of the Australian armed services, did not require a widow's pension to be cancelled on remarriage and allowed reinstatement of benefits previously lost on remarriage to those who were again widowed or where other special circumstances existed. It also noted that compensation legislation for widows on the death of Commonwealth Government employees was in the form of a lump sum with no provision for repayment of part of the lump sum on remarriage. The Advisory Committee concluded that:

... it is inequitable that a war widow should be disadvantaged compared to other compensation widows in having her pension cease on remarriage. Further, the legislation should not in any way prevent a woman entering a bona fide domestic relationship with another person and still retain her pension. (Keys 1983, p. 37)

19.19 A loophole in the VEA, which unintentionally allowed some widows who remarried before 28 May 1984 to have their pension reinstated, was removed in 1988.

19.20 In 1994, the Hon Professor Peter Baume recommended no change to the remarriage provisions, stating that:

Given the time that has passed since the legislation was amended, the deliberate government policy at the time to restrict the Widow's Pension, the lump sums paid to remarried widows, and policy considerations of retrospectivity, we consider it inappropriate to alter this situation. (Baume 1994, p. 114)

19.21 However, the Government announced in the 2001 Budget that provision would be made for the reinstatement of the war widow's pension to those who had lost the pension on remarriage before 28 May 1984. This followed continuing pressure for reinstatement to these widows, including comments made by the Human Rights and Equal Opportunity Commission in 1997¹²⁰ and an initiative by the British Government in 1995 to restore war widow's pensions to those who had been widowed a second time. In introducing the amending legislation, the Minister for Veterans' Affairs, the Hon Bruce Scott MP, pointed to the fact that the 1986 provisions to enable continuation of the war widow's pension following remarriage only if it occurred after 28 May 1984 had created

¹²⁰ Human Rights and Equal Opportunity Commission, No. H96/68, 69, 70 & 71, 22 April 1997.

two classes of widows, and that the intent of the 2001 changes was to provide equality of treatment for widows who remarried.¹²¹

19.22 Widows who did not receive a war widow's pension prior to remarriage had no pension to reinstate and did not benefit from the removal of the bar on continued eligibility for the pension on remarriage. Additionally, the VEA does not enable a widow to lodge a claim for, or be granted, a war widow's pension after remarriage (or marriage in the case of a partner who was living with a veteran in a marriage-like relationship at the time of the veteran's death). This is because a 'dependant' under the VEA does not include a widow who remarries or marries.

PURPOSE OF THE WAR WIDOW'S PENSION

19.23 It is clear that the pension was originally intended only for the widows of those veterans who had died as a result of their service. This is supported by statements made in Parliament at the time the pension was introduced in 1914. In the second reading speech in the House of Representatives on the War Pensions Bill 1914, the Assistant Minister for Defence, Mr Jensen, stated that the first principle of the Bill was that:

... pension is to be provided for the nearest dependent [*sic*], and for his children if he is married, of any officer or soldier who by reason of the war meets with his death.¹²²

19.24 This was reinforced by the Defence Minister, Senator George Pearce, who stated in his second reading speech for that Bill that:

One of the saddest spectacles in the past has been to see men who have been willing to risk their lives in the defence of the country left destitute and the dependants of men who have laid down their lives for their country having to live on charity ... It would be an eternal disgrace to this young and rich Commonwealth if any of the relatives of those who are going to war had to beg for a living. We desire in this bill to make such modest provision as will keep the wolf from the door of any of those who are unfortunately bereaved of their breadwinners ... The bill also provides for a pension for any man who is disabled or incapacitated so that he cannot earn his living or a living for his wife and family or others dependent on him.¹²³

19.25 The primary intent of the war widow's pension has remained unchanged and is illustrated in the words of the Minister for Veterans' Affairs in

¹²¹ Australia, House of Representatives 2001, *Hansard* Vol. HR10, p. 28813.

¹²² Australia, Parliament 1914, *Debates*, vol. XXIV, p. 1896.

¹²³ Australia, Parliament 1914, *Debates*, Vol. LXXVI, p. 2098.

his second reading speech on the introduction of the Veterans' Affairs Legislation Amendment (2001 Budget Measures) Bill 2001:

The war widow's pension was established to compensate Australian women whose husbands died on active duty or from war-caused injuries or illnesses following their return from service.¹²⁴

19.26 While eligibility was originally intended to provide for widows of veterans where there was a connection between the veteran's death and service, this was extended to cover the widows of veterans most affected by their service-related disabilities; that is, those who were entitled to the special rate or EDA or who had been POWs.

19.27 The Committee considers that there are two broad categories of widows for whom the war widow's pension is, and should be, intended. First, it is compensation to widows for the loss of a partner resulting from eligible service or service-related disability. Second, it is a payment to the widows of veterans badly disabled through service, irrespective of whether the veteran died as a result of eligible service or service-related disability.

SUMMARY OF SUBMISSIONS

19.28 The Committee received 169 submissions about various issues related to war widows' entitlements, including the adequacy of the war widow's pension and the income support supplement that are discussed in Chapters 29 and 30. The main issues raised relating to access to the war widow's pension were extension of that pension and/or the Gold Card to:

- widows of veterans regardless of whether the veteran's death was service-related;
- widows of veterans in receipt of, or entitled to, the intermediate rate at the time of the veteran's death;
- widows of veterans who married another person after the veteran's death but who never claimed or received the war widow's pension before that marriage; and
- widows who were divorced from a veteran before the veteran's death.

19.29 The Committee also received one submission calling for the grant of a second war widow's pension to a widow of two veterans who meets all the other eligibility requirements.

¹²⁴ Australia, House of Representatives 2001, *Hansard*, Vol. HR10, p. 28813.

DISCUSSION OF ISSUES AND CONCLUSIONS

Automatic Grant of the War Widow's Pension and/or Gold Card to Widows of Veterans Regardless of Whether the Veteran's Death is Related to Eligible Service under the VEA

Comments Made in Submissions

19.30 In common with arguments for extension of other benefits, submissions on this issue argued that war widows' benefits should be provided in recognition of the service performed by a veteran. They implied that this pension should be provided as a right to the widows of all persons with eligible service covered under the VEA.

19.31 Many of these submissions were made by widows whose claims were refused because the veteran's death was not considered to be service-related. The submissions argued that an automatic grant would mean that widows would not have to go through the stress of the claims process to establish eligibility. Some of these submissions referred to what they saw as more favourable treatment of widows of veterans who died from smoking-related conditions. Others disagreed with the conclusion reached in the Statements of Principles (SOPs) concerning factors that indicated a connection between the veteran's death and his service, or expressed concern about the effects of interpretation of the eligibility provisions of the VEA by the courts and other determining authorities. Some referred to what they perceived as the 'lottery' of war widow's pension grants.

19.32 Additionally, a number of submissions raised difficulties in dealing with Centrelink and expressed the view that the Department of Veterans' Affairs (DVA) should administer all entitlements provided to veterans and their families. Those making this proposal stated that they believed DVA provided a better service than Centrelink, because the DVA culture showed a greater appreciation and respect for veterans' issues. Submissions also argued that VEA benefits do not carry the welfare stigma attached to social security benefits.

Committee's Views

19.33 The war widow's pension is intended to provide compensation for loss of a partner as a result of eligible service or because a person is the widow of a veteran who was severely affected by service. It was never intended solely to be recognition for the veteran's service or the widow's support to the veteran.

19.34 The Committee has examined the argument that the war widow's pension should be available automatically to all widows because some have

experienced difficulties in having a veteran's death accepted as service-related. The Committee does not agree that the claims determining system is harsh. In fact, the information available to the Committee illustrates that the opposite was true, at least until June 1994. At that time, the VEA was amended to require determining authorities to refer to any SOPs made by the Repatriation Medical Authority in considering whether there was a reasonable hypothesis connecting a veteran's incapacity or death to operational service, or in considering whether they were reasonably satisfied that a connection between disability or death and service existed in the case of a person without operational service.

19.35 In examining the situation before 1994, the Auditor-General's Report concluded that many claims in relation to veterans' deaths were accepted on the basis of an indirect or secondary relationship between the veteran's death and service and were often based on causal links that were very weak by standard epidemiological criteria (Auditor-General 1993, p. 23). The report stated (p. 24) that the take-up rates for the war widow's pension by virtue of service by a veteran in World War II were higher than should be expected so long after war service and that many diseases from which elderly veterans died, and which were accepted as service-related, were common causes of death for the male population in that age cohort (p. 26). The Committee believes that, notwithstanding the changes to the VEA introduced in 1994, the VEA contains generous provisions, by community standards, for the determination of claims for the acceptance of death as related to eligible service under the Act. While this is consistent with the beneficial nature of the VEA, the extension of the war widow's pension to all widows would undermine the principle on which the pension is based.

19.36 The Committee has also considered the argument that all widows of veterans should be entitled to the pension because claims for death due to smoking-related conditions have been given generous treatment when a connection between smoking and service is established. The Committee understands that there have been changes over time in the manner in which smoking-related claims are considered, and that the link with service may often be tenuous. However, the Committee does not consider that the treatment given to some smoking-related claims is a justification for extension of the war widow's pension to all widows.

19.37 The Committee notes that Baume (1994, pp. 113–23) considered that some form of recognition should be provided to all widows of veterans regardless of the cause of death and recommended two additional widow's payments. The modified war widow's payment was proposed where the veteran died predominantly from causes other than service but where war service made a minor contribution. This payment would have an income support component similar to the pension payable under the *Social Security Act*

1991 (SSA), plus a smaller compensation component, and would also attract repatriation health care benefits. Baume also recommended a service widow's pension for widows of veterans whose deaths were not service-related, which essentially meant that any SSA benefits they may be entitled to would be administered by DVA. This pension would not attract repatriation health care benefits. Baume believed that the effect of this would be to bring all veterans' widows under one department, which is focused on the needs of veterans and their dependants.

19.38 The Committee is aware that in recent years an exercise was undertaken for veterans receiving an age pension payable under the SSA and a VEA disability pension, whereby these veterans were given the option of having their age pension administered by DVA but still subject to the provisions of the SSA. There was no monetary benefit to the veteran. The exercise was aimed primarily at providing a better service to those veterans by allowing them to deal with only one government department instead of two. The cost of changing administration could therefore be justified on the ground of the benefit to the veteran. The same could not be said for making a recommendation to transfer administration of SSA pensions of veterans' widows to DVA. Most of these widows would not currently receive any entitlement from DVA. They may or may not receive a better service, and some may regard it as greater recognition while others would not. Additionally, the Committee believes that funds would be better used in providing for DVA's core clients, that is, veterans and war widows.

Committee's Conclusion

19.39 The Committee concludes that it would be contrary to the compensatory principle on which the war widow's pension is based to provide it to all widows irrespective of a connection between the veteran's death and eligible service.

RECOMMENDATION

The Committee recommends that no change be made to the eligibility provisions under the VEA to provide a war widow's pension to the widows of all veterans, regardless of whether the death is related to eligible service.

Automatic Grant of the War Widow's Pension and/or Gold Card to all Widows of Veterans in Receipt of Intermediate Rate at the Time of the Veteran's Death

Comments Made in Submissions

19.40 This claim is based on the level of incapacity of veterans receiving the intermediate rate, which is considered similar to that experienced by veterans receiving the special rate and EDA. Additionally, there was an argument, which was also found in other submissions, about extension of the war widow's pension so that widows do not have to endure the stress and burden of having to make a claim at a time when they are bereaved. Some of these submissions also referred to the fact that the intermediate rate is paid at a higher rate than the EDA, yet is still not considered sufficient for the payment of war widow's pension. On a related matter, some submissions also pointed out that there are intermediate rate veterans who are just as incapacitated as EDA veterans due to their service, but who cannot be granted EDA because it is paid at a lower rate than the intermediate rate.

Committee's Views

19.41 In discussing the automatic grant of the war widow's pension to existing groups (i.e. widows of POWs and widows of veterans who were entitled at the time of their death to the special rate or EDA), Baume stated that those grants are made in recognition of the special contribution and level of disability and suffering experienced by both the veteran and his partner compared to other veterans, and that this was consistent with the principle of generous recognition being accorded to veterans (Baume 1994, pp. 113-4). He recommended retention of existing categories. The Committee agrees with this conclusion.

19.42 The Committee understands that many widows recently bereaved find it difficult to deal with the added stress of making a claim for the war widow's pension. However, the Committee does not consider that this is a sound ground on which to recommend the automatic grant of the war widow's pension to widows of veterans receiving the intermediate rate or, indeed, to other widows. Whether the claims process could be more sensitive to the position of recently bereaved widows and whether DVA could improve its service delivery to those widows is an administrative issue for DVA, not a ground for the automatic grant of the war widow's pension.

19.43 The reason for the automatic grant of the pension to widows of special rate veterans is that these veterans were the mostly severely affected by their service. As a consequence, they are often unable to provide a 'nest egg' for their

partners due to their inability to undertake remunerative work because of their service-related disabilities. The Committee recognises that there are individual variations in the ability of special rate veterans to provide for the future, related to the time the veteran lost his ability to work, his access to superannuation and the amount he was able to save. However, as a group, this inability to provide financial security for their families in the event of their deaths does not apply to veterans receiving the intermediate rate to the same extent as to special rate veterans.

19.44 The Committee notes that the level of service-related incapacity required for veterans to receive the EDA is much higher than the level for eligibility for the intermediate rate. The Committee recognises that a small group of veterans receiving the intermediate rate may have qualified for EDA but cannot receive this pension because it is currently paid at less than the intermediate rate. However, it is clear that, as a group, veterans receiving the EDA have a higher level of service-related incapacity than those receiving the intermediate rate.

19.45 The extension of the automatic grant of pension to the widows of POWs was on the premise that successive governments and the community have for many years recognised that the horrendous conditions endured by POWs warrant special consideration. While not denigrating the service of veterans receiving the intermediate rate who were not POWs, the Committee considers that the rationale used for the extension of war widow's pension to widows of POWs does not apply in the case of widows of veterans receiving the intermediate rate.

Committee's Conclusion

19.46 While widows of veterans receiving the intermediate rate do not qualify for the war widow's pension automatically, they have a right to claim the pension on the basis that the veteran's death was related to eligible service under the VEA. The Committee considers the fact that the VEA enables these widows to make a claim, and to receive the pension where the veteran's death is accepted as related to eligible service, makes adequate provision for most widows of intermediate rate veterans. The Committee acknowledges that some intermediate rate veterans would have been entitled to the EDA at the time of their deaths had they not been receiving the intermediate rate. However, there would be considerable evidentiary difficulties in establishing this, as most veterans aged over 65 (the qualifying age for EDA) and in receipt of the intermediate rate would not have been assessed for disability pension purposes for many years and would not have been assessed under the Guide to the Assessment of Rates of Veterans' Pensions immediately before their death. Thus, the information on which to base a decision that a veteran receiving the

intermediate rate met the EDA criteria at the time of death would be unavailable or inadequate. In any case, the Committee does not consider that the fact that some intermediate rate veterans may have a level of service-related incapacity equal to that of a veteran in receipt of the EDA constitutes a sufficient ground to extend the war widow's pension automatically to widows of all veterans receiving the intermediate rate at the time of the veteran's death.

19.47 The Committee therefore concludes that the war widow's pension should not be granted automatically to all widows of veterans eligible for the intermediate rate because:

- as a group, these veterans are not as severely affected by their service-related disabilities as the veterans whose widows currently have an automatic entitlement to the pension; and
- the provisions of the VEA are already generous in relation to the treatment of claims for the acceptance of a veteran's death as service-related and consequent payment of a war widow's pension.

RECOMMENDATION

The Committee recommends that no change be made to the eligibility provisions under the VEA to automatically grant the war widow's pension to all widows of veterans eligible for the intermediate rate at the time of the veteran's death.

Provision of Access to the War and Defence Widow's Pension to Widows who Remarried but Never Received the War or Defence Widow's Pension

Comments Made in Submissions

19.48 The Committee received a small number of submissions about the loss of the right to claim the war widow's pension after remarriage. The submissions on this issue concern two groups of widows:

- those who did not lodge a claim before remarriage; and
- those who lodged a claim and had it refused before remarriage and are now prevented from testing their eligibility again.

19.49 Submissions concerning those who did not exercise their right to make a claim before remarriage argued that they were not aware of the availability of the pension or that they received poor advice about the possibility of a successful claim, and that they would have been eligible had they made a claim at the time. One of the widows making a submission was the widow of a veteran killed in action in Vietnam, who was not assisted with a claim before her remarriage.

19.50 Submissions concerning those whose claims were refused before their remarriage because the veteran's death was not accepted as service-related argued that they would now have their claims accepted under the current SOPs.

19.51 Some widows stated that they had to marry to support the veteran's children, while others pointed to very difficult first marriages, with the veterans being abusive or requiring considerable care over many years.

Committee's Views

19.52 As mentioned in paragraph 19.22, the remarriage provisions do not assist widows who never claimed a pension for their veteran partner's death before they remarried (or married where the widow was living with the veteran in a marriage-like relationship at the time of the veteran's death). Nor do they assist widows who claimed but were refused a pension before remarriage or marriage. This is because these widows are not regarded as 'dependants' under the VEA and, therefore, there is no statutory authority to pay a pension to them. However, the Committee understands that there is nothing in the VEA that prevents a person, who was married to or in a marriage-like relationship with a veteran, from lodging a claim for a war widow's pension after she has begun to live with another person in a marriage-like relationship after the veteran's death (as opposed to marrying the new partner). The Committee considers that this difference in the right to make a claim is a consequence of the failure to update the VEA to equate marriage-like relationships with marriages, and is not a strong argument for opening up the right to claim the war widow's pension after marriage or remarriage.

19.53 The Committee notes that the VEA has always prevented a person from lodging a claim for a war widow's pension following her marriage to another person after the veteran's death. However, this provision, which was uncontroversial in the past, has become important in recent years because the VEA now provides both for the continuation of pensions regardless of whether a widow marries or remarries and for the reinstatement of the pension to veterans' widows whose pension was cancelled on marriage or remarriage.

19.54 There is a view that the provisions in relation to the right to make a claim after marriage or remarriage are now inconsistent with the provisions

allowing continuation or reinstatement of the pension. The argument is that because marriage to another person after the veteran's death is not a bar to continuing to receive the war widow's pension, or to its reinstatement, there is no logical reason why it should be a bar to making a claim. The Committee sees the logic in this argument, but does not consider the argument is sufficient to justify opening up the right to claim pension to all widows of veterans after marriage or remarriage following the veteran's death.

19.55 The provisions of the VEA enabling continuation of the full war widow's pension after marriage to another person after 28 May 1984 and reinstatement of pensions lost on remarriage before that date were generous measures that recognised that non-economic loss can continue throughout the lifetime of the widow. However, the provisions do not, in the Committee's view, mean that the right to claim should be reopened to those who unsuccessfully exercised their right to claim but now wish to test their eligibility again, or to widows who did not exercise their right to claim before marrying another person after the veteran's death. In the case of the former group, the right to claim has already been exercised and a decision made under the law that stood at the time the claim was made. In the case of the latter group, the Committee is concerned that there are some people, whose veteran partner died as a direct result of service, who have limited financial means, have married another person and are not aware of their right to claim. Some may also be in the position of having been widowed a second time. However, the obligation to make a claim rests with the claimant.

Committee's Conclusion

19.56 The Committee concludes that there should be no change to the current provisions of the VEA that extinguish the right to claim the war widow's pension after marriage to another person subsequent to the veteran's death. The Committee also concludes that the VEA should be amended so that those who enter into a marriage-like relationship after a veteran's death will be treated, in regard to the right to claim the war widow's pension, in the same way as those who marry or remarry after the veteran's death.

RECOMMENDATIONS

The Committee recommends that:

- no change be made to the eligibility provisions under the VEA to extinguish the right to claim the war widow's pension after marriage to another person subsequent to the veteran's death; and

- the VEA be amended so that those war widows who enter into a marriage-like relationship after a veteran's death will be treated, in regard to the right to claim the war widow's pension, in the same way as those who marry or remarry after the veteran's death.

Provision of Access to War Widow's Pension to Widows who were Divorced from a Veteran before the Veteran's Death

Comments Made in Submissions

19.57 A number of submissions were received from women who were married to a veteran for many years, but who divorced and therefore did not qualify for a war widow's pension on the veteran's death. Some of these women have stated that they believed their former husband's service-related disabilities were the cause of the marriage breakdown. Some also stated that they divorced because they were unable to continue in a relationship characterised by abuse, some or all of which was related to the veteran's service-related disabilities, which were often psychiatric. Additionally, submissions were received from ex-wives of veterans, where the veteran initiated divorce proceedings and subsequently remarried. In some of these situations, the second wife but not the first had been able to obtain a war widow's pension. These women argued that they were married to the veteran for a considerable time, cared for the veteran during his worst years and raised children of the marriage. They argued that the length and nature of their relationship with the veteran should entitle them to any war widow's pension that might be payable on the veteran's death.

Committee's Views

19.58 The Committee is sympathetic to the situation of those widows who were divorced from veterans because of difficulties emanating from the veterans' service-related disabilities. While appreciating the position of the widows who made submissions on this issue, the Committee notes that:

- divorce has always terminated a spouse's rights to repatriation benefits, although benefits may still be paid to the children of the marriage;
- there are many reasons for marital breakdown and disentangling the contribution of service-related disabilities to the breakdown may be difficult;

- provision for divorced widows would amplify a problem that already exists in relation to the payment of the war widow's pension to two partners of one veteran;¹²⁵
- there would be insurmountable problems in establishing eligibility, due to evidentiary difficulties that occur because a no-fault divorce system has been in operation since the enactment of the *Family Law Act 1974*;
- assistance is available under the SSA to those who are in financial need and who are unable to work or unable to find work;
- an opportunity exists during property settlement negotiations connected with divorce proceedings to present a claim for apportionment of the proceeds of the marriage; and
- non-custodial parents can be required to make child support payments to custodial parents.

Committee's Conclusion

19.59 For the reasons given above, the Committee concludes that the war widow's and widower's pensions should not be made available under the VEA to former wives and former husbands of veterans.

RECOMMENDATION

The Committee recommends that no change be made to the eligibility provisions under the VEA to enable the war widow's pension to be made available to former wives and former husbands of veterans.

Provision of Multiple War Widow's Pensions to the Same Person

Comments Made in Submission

19.60 The Committee received a submission from a widow who sought a second war widow's pension, having lost the first on remarriage before 28 May 1984, and was subsequently granted a war widow's pension after the second husband's death. The argument for provision of a second pension was that the

¹²⁵ At present, a person married to a veteran and who was separated but not divorced from the veteran at the time of the veteran's death may be eligible for a war widow's pension. In addition, a war widow's pension may be paid to another person who was living with that same veteran in a marriage-like relationship at the time of the veteran's death.

widow had twice lost a husband through service and should be compensated accordingly.

Committee's Views

19.61 The introduction of the remarriage provisions raises the issue of whether a widow may now receive two war widow's pensions. Section 13(9) of the VEA stipulates that a war widow's pension cannot be paid to the widow of a veteran if a pension is already being received after the death of another veteran. Clearly, Parliament's intention has been that two pensions should not be paid and that the remarriage provisions were designed to assist only those who had lost the pension because of remarriage.

Committee's Conclusion

19.62 The Committee concludes that the provisions of the VEA that preclude the payment of two war widow's pensions where a person is twice widowed should be retained.

RECOMMENDATION

The Committee recommends that existing provisions of the VEA that preclude the payment of two war widow's pensions where a person is twice widowed should be retained.

CHAPTER TWENTY

CIVILIANS

20

INTRODUCTION

20.1 This chapter discusses issues raised in connection with the entitlements of civilians under the *Veterans' Entitlements Act 1986* (VEA). Civilian groups have made claims for access to VEA benefits on the basis that they assisted Australia in its efforts during wars or warlike conflicts. Some of these groups worked overseas in areas of conflict where Australian forces were deployed. Most, but not all, were employed by the Commonwealth Government.

20.2 The Australian repatriation system is designed essentially to provide benefits and services to members of the Australian armed services on continuous full-time service in wars, warlike conflicts and peacekeeping operations. However, some members of the Citizen Military Forces and Volunteer Defence Corps on part-time service and some members of the reserve forces can be deemed to be members of the Australian Defence Force (ADF) on full-time service. Additionally, certain civilians are covered by the system.

HISTORY OF CIVILIAN COVER

20.3 Extension of cover to categories of civilians first occurred in 1943, when the War Cabinet approved the provision of benefits to the following groups with service during World War II:

- accredited representatives of philanthropic organisations attached to the Australian armed services;
- Commonwealth employees of the Australian Broadcasting Commission working in field broadcasting units, Department of Home Security employees working as camouflers attached to the Royal Australian Air

Force (RAAF), Department of Information employees working as official war correspondents and photographers, and Department of Civil Aviation employees serving in the RAAF Reserve in forward areas (Toose 1975, p. 718).

20.4 In 1945, the Treasury approved the provision of benefits to Commonwealth employees serving overseas during World War II on special missions where they sustained injury through air accident whilst travelling on duty. A War Cabinet decision the same year provided benefits to New Guinea civilians imprisoned by the Japanese and to dependants of those who died as a result of the Japanese invasion. In 1949, the Treasury approved benefits to telegraphists working for Amalgamated Wireless Australia who were attached to the Royal Australian Navy (RAN) Volunteer Reserve during World War II (Toose 1975, p. 718).

20.5 Subsequent decisions were made with Cabinet or Treasury approval to provide benefits to Commonwealth employees attached to the Australian armed services as official war correspondents, photographers and cinematographers, and accredited representatives of approved philanthropic organisations in the Korean War, the Malayan Emergency, the Indonesian Confrontation and the Vietnam War, and certain canteen staff on RAN ships (Toose 1975, p. 718).

20.6 Initially, these arrangements were not covered by legislation. Benefits, which were in line with those available under the *Repatriation Act 1920*, were provided on an act of grace basis.

20.7 In 1982, the repatriation legislation was amended so that those civilians covered under act of grace provisions were provided with cover under the legislation. This followed a recommendation made by Toose that arrangements in place for those already covered under such provisions be retained, but that they should gain appeal rights in matters of entitlement and assessment that were available to veterans of the Australian armed services. Should such civilians be involved in future wars and warlike conflicts, Toose recommended that they be covered under the repatriation legislation (Toose 1975, p. 128). The Toose Report made no recommendations to provide repatriation benefits for additional categories of civilians. Its focus was on the machinery by which these benefits were provided to existing categories and on concern about the lack of appeal rights under the act of grace arrangements.

20.8 The 1982 amendments made special provision for dependants of civilians who were British subjects resident in Papua New Guinea and were killed by enemy action in World War II, and for civilians detained by the enemy. These provisions were incorporated into the VEA in 1986. The VEA enables death compensation benefits to be provided to the dependants of eligible civilians killed during the invasion of Papua New Guinea. Civilians detained by

the enemy have both operational service, which provides access to the full range of VEA pensions and associated benefits, and qualifying service, which provides access to the service pension and associated benefits.

20.9 The 1982 amendments also enabled all other civilians who had been covered by the act of grace provisions to receive benefits. The amendments allowed civilians to be considered as members of the forces, for the purpose of receiving benefits under the legislation, if they served outside Australia on missions that were considered by the Repatriation Commission to be of special assistance to the Commonwealth. With the enactment of the VEA, the Minister for Veterans' Affairs was given the power to make a determination under s.5(13) (now s.5R), deeming a person or class of persons to be members of the ADF on continuous full-time service for the purpose of the VEA or parts thereof. Determinations were consequently made deeming those groups mentioned above who were covered by the special mission provisions of the repealed Acts. In 2002, the VEA retained the provision allowing the Repatriation Commission to so deem a person involved in a special mission, but only in respect of World Wars I and II. The Committee understands that the Commission rarely exercises its discretionary power and the Committee considers that the provision of a Ministerial discretion in the VEA under s.5R has effectively rendered the special mission provisions redundant.

20.10 The explanatory memorandum to the Repatriation Legislation Amendment Bill 1982 clearly states the purpose of the provisions for civilians:

The amendments proposed ... will have the effect of extending eligibility to persons who were not actually members of the Forces, but were attached to the Forces and served beside members of the Forces. These persons who have previously received Repatriation benefits on an 'Act of Grace' basis are as follows ...

20.11 Determinations under s.5R of the VEA or its predecessor, s.5(13), have been made for the following groups of civilians:

- persons employed by the Commonwealth of Australia who were attached to the Australian armed services and provided services as members of field broadcasting units, as telegraphists, as camoufliers, as war correspondents, as photographers, or as cinematographers in World War II or in an operational area described in Schedule 2, Items 1 to 8 of the VEA (which includes service in Korea; the Malayan Emergency; the Malay–Thai border; Borneo, Singapore, Malaysia and Brunei during Indonesian Confrontation; and Vietnam);
- representatives of approved philanthropic organisations providing welfare services to the Australian armed services during the above conflicts and also between 7 December 1972 and 7 April 1994 (an 'approved philanthropic

organisation' is an organisation specified in the Minister's determination and includes the Red Cross, Salvation Army, YWCA and YMCA);

- canteen staff on RAN ships in an operational area described in Schedule 2, Items 1 to 3 (Korea and the Malayan Emergency);
- other persons who provided service and assistance to the Australian armed services in World War II, such as certain non-uniformed Aboriginal and Torres Strait Islander people who assisted the Australian armed services in northern Australia during World War II;
- merchant mariners who served as part of the crews of HMAS Boonaroo and HMAS Jeparit while the ships were under Navy command; and
- official war artists in East Timor.

SUMMARY OF SUBMISSIONS

20.12 The Review received 31 submissions about access to VEA benefits for various civilians. These submissions can be divided into three main groups:

- World War II groups – Australian Women's Land Army (AWLA) and Civil Constructional Corps (CCC);
- Vietnam groups – civilian surgical and medical teams, mariners serving on MV Jeparit and MV Boonaroo, entertainers and QANTAS aircrew; and
- other civilians.

ISSUES RAISED IN SUBMISSIONS

Australian Women's Land Army

20.13 The Committee received five submissions in relation to benefits for members of the AWLA during World War II and had meetings with two branches of the association representing those women. The main theme of the submissions was that members should be given recognition for their contribution to the war effort through provision of VEA benefits on the same basis as for veterans of the Australian armed services, including the service pension, compensation for injury or disease related to their service and/or the Repatriation Health Card – For All Conditions (Gold Card). Arguments for recognition included:

- work was strenuous and exhausting and performed in all extremes of weather;
- living conditions varied but facilities were often inadequate;

- many former members of the AWLA are now suffering health problems that may be attributed to their service, such as back, hip, knee, ankle and wrist problems; others have died from various types of cancer, which could be related to working in the sun and the use of insecticides;
- AWLA members wore military-like uniforms and were subject to military-like conditions (such as being required to go where and when directed, and only being permitted to leave the AWLA in exceptional circumstances);
- the Standing Orders for Service, Conduct, Discipline, Etc, of members of the AWLA indicate that they had a status similar to members of the women's service auxiliaries; and
- AWLA members were led to believe they were a 'fourth arm' of the women's services and, although the Government was making plans during World War II to raise the status of the AWLA to that of an arm of the women's services, the war ended before anything was formalised.

Civil Constructional Corps

20.14 The Review received one submission relating to recognition of service in the CCC. The submission argued that the CCC was deployed throughout Australia on construction projects and that sometimes those projects were in areas where veterans have qualifying service. It was also argued that members of the CCC were granted re-establishment benefits under the *Re-establishment and Employment Act 1945* and should therefore also be covered under the VEA.

Civilian Surgical and Medical Teams in Vietnam

20.15 The Review received 10 submissions supporting extension of VEA benefits to members of civilian surgical and medical teams in Vietnam, and also met with some individuals and organisations who have sought VEA coverage on the same basis as it has been provided to Vietnam veterans of the Australian armed forces. Claims made in submissions were that:

- the work of the civilian surgical and medical teams was dangerous, hazardous and arduous, and in a war zone without a front line;
- the Mohr Report (Mohr 2000, p. 7-5) recommended that VEA compensation benefits be extended to members of these teams because the teams were integrated with the Australian armed services and performed like functions;
- members of the teams have been awarded the Vietnam Logistic Support Medal (VLSM) and the Australian Active Service Medal (AASM) on the basis that they were integrated into the Australian armed services and this connection should be recognised for the purposes of the provision of benefits under the VEA;

- many members of the teams now suffer from the same disabilities as Vietnam veterans;
- members of the teams have had problems with making claims through Comcare for compensation under the Commonwealth employees' compensation provisions, such as:
 - legal aid is more difficult to obtain than it is for veterans;
 - Comcare delegates do not comprehend war-related conditions and the effects of service in Vietnam on team members;
 - the stigma attached to workers' compensation;
 - Comcare has no expert review board like the Veterans' Review Board;
 - lump sums are not available for conditions such as posttraumatic stress disorder for those covered under the Commonwealth employees' compensation legislation that preceded the *Safety, Rehabilitation and Compensation Act 1988* (SRCA);
 - the civil standard of proof for Comcare claims makes it hard to establish a connection with work in Vietnam when illnesses and diseases have been latent for a long time;
 - there is no framework like the VEA Statements of Principles in the Comcare system for assessing issues of causation and the relationship of claimed conditions to employment; and
 - the Administrative Appeals Tribunal's consideration of Comcare applications is more adversarial than its consideration of VEA applications because private legal practitioners are engaged, whereas the Repatriation Commission uses in-house advocates;
- the work of the civilian surgical and medical teams in Vietnam was at the behest of the Commonwealth Government and was part of an effort to win the 'hearts and minds' of the Vietnamese people; and
- the teams supported the military effort and their work was not unlike the service of nurses in the Australian armed services.

Merchant Mariners serving on MV Jeparit and MV Boonaroo

20.16 The Review received five submissions concerning merchant mariners who served on MV Jeparit and MV Boonaroo on voyages to Vietnam before the ships were commissioned by the RAN. These submissions sought the same access to the VEA as for mariners who served on these ships in voyages to Vietnam under Navy command.

20.17 The main arguments for this claim state that:

- the Mohr Report recommended that all mariners who served on MV Jeparit and MV Boonaroo should have access to VEA benefits because a precedent had been established through the provision of VEA benefits to Australian mariners of World War II and because the Mohr Report concluded that the mariners were performing like functions to the Australian armed services;
- members of the RAN who served as crew members on MV Jeparit can receive full entitlements under the VEA but mariners serving at the same time on the same ship have no VEA coverage;
- mariners working as crew of MV Jeparit and MV Boonaroo after commissioning by the RAN have VEA coverage as eligible civilians, while those serving on these ships while they operated as merchant vessels performed the same tasks, under the same conditions and with the same risks, but have no VEA coverage;
- the ships carried military equipment, supplies and comforts and the merchant navy crew were therefore acting in a support role for the Australian armed services;
- whilst chartered to take supplies to Vietnam, the MV Jeparit was effectively under the control of the Army, in respect of which the chartering had been made;
- some merchant masters of the MV Jeparit were members of the RAN Reserve and therefore the crew could be said to be under the command of the RAN;
- the crew of the MV Jeparit were at risk of harm whilst the ship was moored in Vietnam waters; and
- mariners on MV Jeparit and MV Boonaroo received the VLSM and AASM in recognition of their service.

Entertainers in Vietnam

20.18 The Review received four submissions relating to entertainers in Vietnam and claiming that entertainers should have coverage under the VEA because they:

- operated in a war zone and were exposed to danger;
- assisted the military effort by boosting the morale of the troops; and
- are now suffering conditions similar to Vietnam veterans, such as posttraumatic stress disorder and exposure to defoliants, for which no counselling, health care or other services are available.

20.19 One of the entertainers making a submission was employed to entertain United States forces in Vietnam but states that she entertained Australian troops on her days off. Two submissions concerned members of the South Australian Concert Party, which entertained Australian troops in Vietnam.

QANTAS Aircrew in Vietnam

20.20 One submission was received from a QANTAS aircrew member seeking qualifying service benefits, arguing that QANTAS aircrew flew to and from Saigon on flights chartered by the RAAF. The submission states that the aircrew were assisting the RAAF, which had insufficient aircraft to transport personnel and supplies to and from Vietnam, and that aircrew members received the AASM for their contribution.

Other civilians

20.21 The Committee also received one submission about Australian civilian contractors working for an Australian company on Royal Saudi military aircraft during the Gulf War. The primary concern related to the Gulf War syndrome being suffered by these persons and their exclusion from the Gulf War veterans health study.

20.22 One submission was received from a civilian employed by the Department of Foreign Affairs and Trade working as a civilian negotiator for the peace monitoring group in Bougainville, who sought the same VEA entitlements as members of the Australian armed services performing the same functions.

20.23 One submission was received from a civilian who indicated that he was an employee of the Department of Works who supervised electrical work being undertaken during 1969 by Vietnamese contractors at the civilian hospital in Bien Hoa. The arguments for access to benefits under the VEA included factors such as that he:

- worked in proximity to Viet Cong (enemy) activity;
- worked closely with the Australian and United States military forces in support of the allied effort;
- was in danger due to the lack of effective security at the hospital; and
- was awarded a VLMS and other awards for his work.

20.24 One submission was received in relation to civilians working as a truck drivers and truck-driver trainers during 1971-72, transporting trucks from Vietnam to Cambodia and training drivers for the Cambodian Army.

20.25 Additionally, one of the submissions concerned civilians working for the United States Army and Air Force Exchange Service in Vietnam. This

submission also put a case for other civilians involved in support roles in Vietnam, primarily on the basis that the support roles were vital to the allied effort.

20.26 Two submissions related to civilians who worked overseas in World War II and who seek benefits under the VEA. One was from a British entertainer and the other related to a civilian working with the Tropical Dental Service in New Guinea.

DISCUSSION OF ISSUES AND CONCLUSIONS

The Intention of the VEA Provisions for Civilians

20.27 As stated above, civilians are generally covered under the VEA only if a determination is made by the Minister for Veterans' Affairs under s.5R of the VEA deeming them to be members of the armed forces for the purposes of the Act or parts thereof. The Minister also has the power to determine which provisions of the VEA should apply to a particular individual or group. This is a discretionary provision giving the Minister wide powers. The Committee notes that the attachment of civilians to the Australian armed forces has been the basis on which previous determinations under s.5R have been made. In this regard, the Committee understands that 'attached' has a specific meaning in Australian military parlance. It means:

The placement of units or personnel in an organisation where such placement is relatively temporary. Subject to limitations imposed in the attachment order, the commander of the formation, unit or organisation receiving the attachment will exercise the same degree of command and control thereover as he does over the units and persons organic to his command.¹²⁶

20.28 The Committee understands that, currently, attachment of civilians deployed to an area of operations normally requires that those civilians consent to be subject to the services disciplinary provisions (excluding some offences) and therefore come under the control and command of the commander. Groups who have been attached to the Australian armed services include, for example, accredited members of certain philanthropic organisations approved by the Minister for Defence to operate within the armed services to provide welfare services.

20.29 Many civilians have provided support and services to the Australian armed services without being attached to it. They include civilians contracted by

¹²⁶ Australian Defence Force Publication 101 — Glossary of Terms.

the Australian armed services for various projects and civilian employees of the Department of Defence. Some were Commonwealth Government employees or civilian members of various non-government organisations, who worked in areas of conflict providing humanitarian aid to the civilian population or who were part of a diplomatic effort to restore peace and security. These civilians did not form part of the military effort in the area of conflict and were not attached to the Australian armed services.

20.30 The Committee considers that the VEA was designed primarily to provide benefits for members of the Australian armed services who served in wars, warlike conflicts, and non-warlike operations beyond normal peacetime training. Consequently, although the Minister for Veterans' Affairs has wide discretionary powers under s.5R of the VEA to deem certain people to be members of the Australian armed services for the purpose of access to benefits under that Act, the Committee considers it consistent with the intent of the VEA to restrict such benefits to those who were attached to the services during a war or warlike operations. Generally, attachment also brought those persons under the command and control of the commander of the military unit, formation or organisation to which they were attached. The only civilians who were not attached and for whom a determination should be made under s.5R are those who worked with the Australian armed services and would have been attached had formal attachment arrangements been otherwise made. Claims for access to VEA benefits from groups and individuals making submissions to the Review have been assessed in accordance with this principle. The decision as to what type of benefits should be provided under the VEA to eligible civilians also rests with the Minister. This is quite proper, as the level of coverage provided must depend on an evaluation of the nature of each individual or group's service, taking into consideration the VEA benefits provided to members of the Australian armed services involved in that particular operation.

Consideration of Civilian Groups in World War II

The Australian Women's Land Army

20.31 One of the Government's responses to the serious shortage of rural workers during World War II was the establishment of the AWLA on a national basis. On 27 July 1942, the Minister for Labour and National Service approved that establishment under the Director-General of Manpower. It was envisaged that the AWLA would be constituted under the National Security Regulations but this did not eventuate. The AWLA was to provide labour assistance to the rural industries in the production of food for the Australian armed services and the civilian population, and comprised volunteers who enrolled for continuous rural work (the Army) or casual, seasonal or vacation work (the Auxiliary). At

its peak in September 1943, the AWLA had 2205 members (Hasluck 1970, p. 269).

20.32 Women enrolling in the AWLA were required to work for 12 months continuously or for the duration of the war. This was not required of Auxiliary members (Hasluck 1970, p. 269). The Standing Orders for Service, Conduct, Discipline, Etc, of members of the AWLA stipulated that a member could resign if a relative died or was seriously ill and the member's services were required at home; if the member became seriously ill or suffered continuing ill-health; if the member proved to be unsuited to AWLA duties; or for any other reason considered sufficient by the Deputy Director-General of Manpower. The disciplinary arrangements were more lenient than those applying to members of the Australian armed services. Indeed, there is anecdotal evidence that, in contrast with the women's armed services, there was no strict policing of AWLA members and some continued to explore work opportunities elsewhere (Scott 1986, p. 5). AWLA members received 12 days paid annual leave after completion of 12 months service and the Standing Orders also provided for holiday leave at other times without pay.

20.33 The Standing Orders required farmers or other employers to pay members award or district rates, but no less than 30 shillings per week plus keep, or 50 shillings a week without keep. These rates were also paid whilst members awaited placement after training or were between assignments, with a lesser rate being paid during training at AWLA establishments. AWLA members were required to work no more than award hours or, if there was no award, no more than 48 hours per week. AWLA members were supplied with uniforms, work clothing and equipment.

20.34 The Standing Orders indicate that the farmer employing the AWLA member was obliged to provide workers' compensation insurance cover, while a Commonwealth Government scheme covered members for injuries received whilst travelling to training establishments, to and from assignments, and to and from assignments on paid annual leave.

20.35 The Committee understands that AWLA members are not covered under Commonwealth employees legislation because they were not employed by a Commonwealth agency and they were not paid by the Government whilst working for primary producers.

20.36 Disciplinary provisions were also contained in the Standing Orders. Absence without leave, serious misconduct, inefficiency, unsuitability, or refusal to accept an allotted position or carry out instructions could result in disciplinary action by the Deputy Director-General of Manpower. Disciplinary action could take the form of suspension or dismissal, refusal to extend enrolment, transfer to another place of employment, forfeiture of training or

subsistence allowance or annual leave, or cancellation of any other concession or privilege.

20.37 The Minister for Labour recommended in October 1942 that the AWLA's status be elevated to that of a fourth official women's service, but the ALWA remained under the Director-General of Manpower.

The Civil Constructional Corps

20.38 The CCC was formed in April 1942 consequent upon a War Cabinet decision of March 1942. The CCC was a civilian labour corps. Its members were employed on works undertaken by the Allied Works Council, which had been established in February 1942 by National Security Regulations to carry out works required for war purposes by the Allied forces in Australia and which was under the control of the Director-General of Manpower. Members of the CCC comprised volunteers and persons called up under military impressment. The organisation was under the control and direction of the Director-General of Allied Works, but there was provision for it to be brought under military control and discipline in an emergency. Members of the CCC were paid award rates, and this was on the understanding that no Army entitlements would apply (such as sick leave, dependant's allowances and repatriation benefits). Hasluck (1970) argues that, while the CCC was organised as a civilian labour corps and the War Cabinet had refused to organise it as an Army labour corps, the discipline imposed and the powers given to the Director-General put it in a class removed from normal industrial practice (Scott 1986, pp. 233-5).

Conclusions in Relation to the AWLA and CCC

20.39 The Committee considers that the claims of World War II civilian groups, such as the AWLA and the CCC, seeking access to the VEA in recognition of their contribution to the war effort need to be put in their historical perspective. There is no doubt in the Committee's mind that members of these groups made an important contribution to Australia during World War II. The AWLA and the CCC arose as part of the Government's response to labour shortages that became critical by 1942 as a result of massive recruitment into the Australian armed services after war was declared on Japan. The Manpower Directorate was established on 29 January 1942 under the Minister for Labour and National Service and was endowed with exceptional powers under the National Security (Manpower) Regulations. These gave the Director-General the power to exempt anyone from service in the armed forces and declare certain industries protected, so that a permit was required for any change in employment. In March 1942, regulations were issued to require employers not in protected industries to obtain all labour through National Service officers with whom all unemployed people had to register. The

Government therefore had wide powers to direct people into the armed forces, war industry or civilian industry. The AWLA and CCC were part of this civilian war effort. However, other members of the civilian population were also involved either directly (e.g. those involved in government and semi-government munitions plants, ship-building, aircraft manufacturing and other defence works) or indirectly.

20.40 In regard to the AWLA, the Committee appreciates that many members endured hardships and feel aggrieved that they do not have the status of members of the women's services. The AWLA's name and military-like uniforms and standing orders cannot detract from the fact that members were not subject to military command or military discipline, and that the conditions for leaving the AWLA were much more lenient than those applying to members of the Australian armed services. Additionally, the AWLA's role was not solely to support the military, because its work in agricultural production was also for the benefit of the civilian population.

20.41 The Committee is satisfied that neither the AWLA nor the CCC were attached to the Australian armed services, and considers that the work they did in support of the war effort, as part of a civilian labour corps, did not warrant attachment. On this basis, the Committee concludes that VEA benefits should not be extended to members of the AWLA or CCC who served in that capacity during World War II. The Committee is concerned that many AWLA members are now suffering from ill-health, but that there appears to be no system of compensation currently available to them. The Committee considers that the Government should investigate this further.

Consideration of Civilian Groups in Vietnam

Australian Surgical and Medical Teams in Vietnam

20.42 Teams of civilian doctors and nurses were employed under contract by the then Department of External Affairs as part of Australia's contribution to a South-East Asia Treaty Organisation (SEATO) aid program, to which 14 other countries made a contribution. As Commonwealth Government employees, members of the teams have compensation coverage under the SRCA or its predecessor legislation.

20.43 The purpose of the teams was to:

- render assistance to South Vietnamese doctors and nurses by providing medical aid in South Vietnamese provincial civilian hospitals; and
- provide medical education and training in Western medical techniques to South Vietnamese medical personnel (O'Keefe 1994, p. 367).

20.44 The teams also had a diplomatic role of providing evidence of Australia's concern for its South-East Asian neighbours (O'Keefe 1994, p. 367) and formed part of a strategy to counter communism by winning the 'hearts and minds' of the South Vietnamese people (Gration 1994, p. 67).

20.45 The teams comprised doctors, nurses and occasionally other medical and hospital workers. Approximately 240 doctors and 210 nurses and other medical and hospital workers served on the teams. Tours of duty were generally three to six months for doctors and six months for nurses. However, some nurses spent one year in South Vietnam and many members of the teams returned for a second or third time (O'Keefe 1994). The first team arrived in South Vietnam in October 1964 and the teams continued to work there until December 1972 (O'Keefe 1994). There is evidence that some teams were endangered by enemy action. For instance, a subsidiary team at Le Loi Hospital in Phuoc Le (Baria) was withdrawn in March 1969 due to Viet Cong attacks on the town, and the team at Bien Hoa was also endangered on a number of occasions (O'Keefe 1994, p. 368).

20.46 The Mohr Report recommended that Australian civilian surgical and medical teams operating in Vietnam be deemed, for the purposes of repatriation benefits eligibility, to have performed qualifying service. Justice Mohr made this recommendation because he considered that members of the teams had already been awarded the AASM on the basis that they were employed in Vietnam and were 'integrated with the Australian Defence Force and performed like functions' (Mohr 2000, p. 7-5).

20.47 The Government did not accept Justice Mohr's recommendation, because it considered that there was no evidence that the teams served under military command. The Minister for Veterans' Affairs, the Hon Bruce Scott MP, went on to state the Government's intent regarding coverage for civilians under the VEA (Scott 2000):

By allowing VEA entitlement to a person, or persons, who has *[sic]* not come under the direct command of the Australian Defence Force in warlike operations will undermine the integrity of the VEA and could destroy the ability of the Act to exclusively provide for the men and women of Australia's veteran community.

20.48 The Minister went on to say that if any member of the teams could provide evidence that they did serve under military command, the Departments of Veterans' Affairs and Defence would assess their eligibility to claim benefits under the VEA. In this regard, the Committee notes that a small number of team

members worked for short periods in Army hospitals.¹²⁷ These team members may not have been formally attached to the Australian armed services, but it seems to the Committee that they were the type of people to whom the Minister was referring in his statement, and therefore have a claim.

20.49 The Committee considers that the fact that the AASM was awarded to members of the surgical and medical teams in South Vietnam is not sufficient for a team member to have access to VEA benefits. The AASM is awarded to 'designated civilians' as recognition that they served in a warlike area. The Committee notes that the AASM was awarded to members of the teams in 1997 as a consequence of the award of the Vietnam Logistic Support Medal (VLSM). The VLSM was awarded pursuant to a recommendation made in the Report of the Committee of Inquiry into Defence and Defence Related Awards (CIDA) in 1994. In recommending the award of the VLSM to civilian and surgical and medical teams, CIDA acknowledged that the teams were not under military jurisdiction, nor were they part of Australia's military commitment in Vietnam (Gration 1994, pp. 67-8). CIDA considered the award of the VLSM warranted because it considered that the Australian surgical and medical teams, and other civilian groups who served in Vietnam under government jurisdiction, were part of a Australia's national commitment in support of the military commitment (Gration 1994, p. 68). The AASM was subsequently awarded on the basis that those civilians were integrated into the Australian armed services (Mohr 2000, p 7-2). The statement that they were integrated into the Australian armed services was the basis on which Mohr made his recommendation that the teams be covered under the VEA. Following the release of the Mohr Report, the Minister for Veterans' Affairs stated in Parliament that:

The Australian civilian surgical and medical officers were awarded the AASM on the basis that they were an important part of the Australian aid effort in South Vietnam. They were not bound by military discipline or orders and therefore not under military command.¹²⁸

20.50 Regarding the relationship between the award of the AASM and VEA entitlements, the Committee reiterates the view it has expressed elsewhere in this Report that medals entitlements should not automatically confer VEA entitlements. The AASM was awarded to members of the civilian surgical and medical teams in recognition of their contribution to the aid effort in a warlike area. There is no disputing that the teams served in a warlike area and that they made a significant contribution to the civilian aid effort, but the question in relation to VEA benefits is whether they were attached to the Australian armed

¹²⁷ O'Keefe (1994, p. 164) states that an anaesthetist serving with an Australian civilian surgical and medical team worked for one week at 1 Australian Field Hospital filling a vacancy that occurred because the Army anaesthetist was on leave. The Committee understands that another doctor may also have performed work under similar circumstances.

services. The information available to the Committee indicates that the teams were not attached to the Australian armed services, did not come under military command and were not subject to military discipline. They were not integrated into the Australian armed services in the sense of being attached to it and under its command. Rather, they were part of the civilian effort, as opposed to the military effort, in Vietnam. Their role was to provide aid to the civilian population and, through their work, assist in winning the hearts and minds of the Vietnamese people. They certainly assisted the diplomatic and humanitarian effort in Vietnam, but they were not part of the military effort.

20.51 The Committee is aware that the civilian surgical and medical teams are primarily seeking the service pension and the Gold Card in respect of their service in Vietnam. There have also been some concerns about the ability of the SRCA and its predecessor legislation to provide adequate compensation for illness related to work there. The Committee is aware that the previous Minister for Veterans' Affairs, the Hon Bruce Scott MP, met with representatives of the teams in February 2001 about their concerns and that, subsequently, Comcare met with the Australian Nursing Federation and a representative of the nurses to discuss the management of claims.

20.52 The Committee understands that, as at August 2002, Comcare had received a total of 17 claims from members of the teams. One of the claimants died before his or her claim was determined and the next-of-kin is not pursuing the claim. Of the 16 remaining claims, nine have included posttraumatic stress disorder and, in each case, that condition has been accepted. Some of these claimants have been awarded permanent incapacity lump sums for this condition while others have not, and some claims for a permanent incapacity payment have not been finalised. From the information available to the Committee, it is not readily apparent why permanent incapacity payments have not been made in some cases. The Committee understands that some of the difficulty may be due to medical reporting protocols, agreed upon for consideration of claims for posttraumatic stress disorder, not being adhered to. The Committee understands that one of the agreed protocols was for a second opinion from an expert in posttraumatic stress disorder, where doubt exists about certain aspects of a claim for this condition. The Committee also understands that there is some restriction in relation to the award of lump sum payments, even when permanent impairment is established under the provisions of the SRCA's predecessors applied to some members of the teams. The Committee does not consider that concerns about the civilian compensation provisions are a ground for providing compensatory benefits under the VEA. Nevertheless, it believes that some continuing dialogue between representatives

¹²⁸ Australia, House of Representatives 2001, Question on Notice No 2138, 26 February 2001.

of the teams and Comcare may be necessary to promote awareness of Comcare entitlements and procedures amongst those who have not claimed, and to resolve any remaining difficulties in access to compensation benefits under the SRCA and its predecessors.

20.53 The Committee concludes that the civilian surgical and medical teams were part of the civilian aid effort in South Vietnam, not the military effort. The teams were not attached and under the command of the Australian armed services, and their work did not warrant such an attachment. There may, however, be some members of the teams who were called upon on occasion to relieve or assist Australian armed services doctors and nurses in military medical facilities, and these members already have the opportunity to present their cases for consideration.

Merchant Mariners on MV Jeparit and MV Boonaroo

20.54 MV Jeparit was chartered by the Department of Shipping and Transport on behalf of the Department of the Army in June 1966 to carry equipment and supplies to Vietnam for use by the Australian armed services. The ship was initially crewed by merchant mariners. However, from 11 March 1967 to 10 December 1969, the ship was commanded by a merchant navy commander but had a mixed crew of merchant mariners and naval ratings. During this period, the naval ratings on MV Jeparit came under the command of an RAN officer who was responsible for administration, discipline and the welfare of the ratings. The RAN crew members replaced members of the then Seamen's Union of Australia, who had refused to crew the MV Jeparit, but other merchant navy crew members remained on the ship (Fairfax 1980, p. 171). RAN crew members of the MV Jeparit have had coverage under the VEA since its commencement in 1986 as a result of a government decision to extend VEA entitlements to Australian armed services personnel who served on logistical support vessels that entered the Vietnam operational area.

20.55 On 10 December 1969, the Sydney members of the Waterside Workers' Federation refused to load the MV Jeparit because of the use of non-union labour, and the Government decided to commission the ship to enable it to be loaded and unloaded by RAN personnel. The merchant navy master was granted a commission in the RAN Volunteer Reserve. An RAN detachment remained on the ship, together with 19 merchant mariners (Fairfax 1980, p. 171). The mariners received additional remuneration when in Vietnam waters. The ship made 17 more voyages to Vietnam before it was decommissioned on 11 March 1972.

20.56 MV Boonaroo was chartered by the Government in 1966 to carry military cargo to Vietnam and was commissioned into the RAN in March 1967

after its first voyage. Its second and final voyage to Vietnam was as HMAS Boonaroo and the ship was crewed solely by naval ratings on that voyage, except for two engineer officers appointed to the RAN Reserve (Mohr 2000, pp. 7-10). Since the commencement of the VEA, the RAN crew has been taken to have been allotted for duty.

20.57 The Mohr Report recommended that full repatriation benefits be extended to mariners who served on MV Jeparit or MV Boonaroo during voyages to Vietnam (Mohr 2000, pp. 7-12). Justice Mohr considered that the decision to extend coverage to Australian merchant mariners of World Wars I and II established a principle for later decision makers to apply. His recommendation did not distinguish between mariners who served under RAN command after the ships were commissioned and those who served before commissioning. In relation to mariners who served on the two ships whilst they were operating as merchant vessels, Mohr stated that they were operating in direct support of Australian armed services operations.

20.58 The Government's response to Justice Mohr's recommendation was to deem merchant mariners on HMAS Jeparit from 19 December 1969 to 11 March 1972 and on HMAS Boonaroo from 17 March 1967 to 13 April 1967 during voyages to Vietnam to be members of the Australian armed services through a determination under s.5R(1)(a) of the VEA. These were the periods when these ships were under RAN command. Consequently, the merchant mariners serving on these ships during voyages to Vietnam whilst the ships were operating as merchant vessels have no entitlements under the VEA.

20.59 The media release issued by the Minister for Veterans' Affairs (Scott 2000) gives the reasoning for the Government's decision to restrict VEA coverage to mariners under Navy command:

The merchant seamen in question served on board HMAS Jeparit from 19 December 1969 to 11 March 1972, during the Vietnam War, under Naval command. The extension of VEA to this group is consistent with the general principle that civilians can only be provided Repatriation benefits if they have served under the command of Australia's Defence Force.

20.60 The Committee does not agree with Mohr's view that the VEA coverage of World War II mariners creates a precedent for extension of coverage to mariners who served on MV Jeparit and MV Boonaroo. The VEA specifically makes provision for Australian merchant mariners from World War II. Initially, World War II Australian mariners received compensation benefits only under the *Seamen's War Pensions and Allowances Act 1940* and were subject to less favourable eligibility criteria than applied to members of the Australian armed services. In 1994, compensation for these mariners became available under the VEA under the same conditions that applied to veterans. The service pension

was extended to Australian mariners in 1982, with the eligibility criteria being in line with those applied to veterans of World War II.

20.61 The Report of the Inquiry into the Needs of Australian Mariners, Commonwealth and Allied Veterans and Allied Mariners stated that the compensation benefits were provided to World War II Australian mariners in 1940 on the basis that merchant shipping was a prime and specific target of enemy hostilities and that the conditions under which mariners worked were so different from peacetime conditions as to render them comparable to those of naval personnel (McGirr 1989, p. 12). That report concluded that:

Taking into account conditions of service *and the loss of life*, the Inquiry considers that the range of war time experiences of Australian merchant mariners was comparable with the experience of veterans of the Australian defence forces. (McGirr 1989, p. 31; emphasis added)

20.62 The Committee accepts that the position of mariners on MV Jeparit and MV Boonaroo was similar in some respects to the position of World War II mariners. However, it also differs in several important respects. First, merchant ships in World War II were a primary target of enemy naval forces and raiders tasked with destroying the supply lines of the Allied forces. As a consequence, the loss of life amongst mariners was similar to loss of life in the Defence Force during that conflict, and some mariners became prisoners of war. The Committee acknowledges that MV Jeparit was a potential target whilst moored in Vung Tau harbour or Cam Ranh Bay. However, the ship was not a strategic target as merchant ships were during World War II and there is no evidence provided to the Review of casualties amongst the mariners as a result of hostile action, as occurred against merchant shipping in World War II. Second, World War II mariners had no knowledge of where they would be going until after they cleared the previous port (McGirr 1989, p. 22). In this respect, their service was similar to that of members of the Australian armed forces, who also had no choice in where they served. In contrast, mariners serving on MV Jeparit and MV Boonaroo signed on knowing where the ship was going and the conditions under which they would be required to serve.

20.63 In relation to compensation coverage under the VEA, the Committee notes that mariners on MV Jeparit and MV Boonaroo had workers' compensation cover available to them. The Committee does not consider that the VEA should be used as a vehicle for obtaining additional compensatory benefits when compensation is already provided through another source. Regarding the benefits provided for qualifying service, the Committee believes that the provision of benefits to mariners serving on MV Jeparit and MV Boonaroo must be considered using the same principle that it has applied to consideration of other civilians in support roles: that is, whether the mariners

were, or should have been, attached to and under the command of the Australian armed services.

20.64 The Committee has considered the argument put forward in one submission in relation to MV Jeparit, that the mariner crew were under the charge and control of the Australian armed services because the ship was chartered on behalf of the Australian Army. The Committee does not agree with this argument, which could also be made by the mariners who served on MV Boonaroo. The chartering of a ship is a commercial undertaking. The mariners on MV Jeparit and MV Boonaroo were not placed under military command and hence they could not be ordered by the Australian armed services to crew the ship; nor could military disciplinary action be taken against them for any refusal to do so or for misdemeanours whilst on board. During those voyages, the mariners were under the command of the ships' merchant masters.

20.65 Another argument, specifically in relation to MV Jeparit, was that some of her masters or officers were members of the RAN Reserve and the mariner crew was thus under military command. The Committee understands that, before the MV Jeparit was commissioned by the RAN in December 1969, her masters did not hold commissions in the RAN or branches of the Naval Reserve. While some officers on the ship may have held such a commission, they were not acting in their naval capacity whilst the ship was operating as a merchant vessel.

20.66 The situation of MV Jeparit differed from that of MV Boonaroo, in that the crew of MV Jeparit was a mix of mariners and naval ratings between March 1967 and December 1969. The argument made in submissions is that, during this period, the mariners and naval ratings were performing the same tasks. In this regard, the Committee notes that the fact that RAN ratings were serving on MV Jeparit at all was a consequence of the inability to find sufficient merchant crew to man the vessels, rather than of the Australian armed services requiring mariners to assist in a military operation. The RAN ratings on MV Jeparit were belatedly given access to the full range of benefits under the VEA as a result of a generous decision by the Government in 1986 to cover Australian armed services members who entered the operational area of Vietnam in a logistical support role. The Committee believes that further extending eligibility to civilians who provided logistic support that did not involve them being under the command and control of the Australian armed services goes beyond both the role of the VEA and the intention of the special provisions for civilians.

20.67 Regarding the argument that merchant mariners on MV Jeparit and MV Boonaroo should have VEA coverage because they were awarded the VLSM and AASM, the Committee considers that, as stated elsewhere, the award of medals is not made on the same basis as the conferring of VEA entitlements. The

Committee appreciates that the tasks and objectives of the merchant mariners serving on MV Jeparit and MV Boonaroo and of the RAN ratings on those vessels were essentially the same; that is, the transport of military supplies and equipment. It also recognises that those tasks and objectives did not change when the ships were commissioned by the RAN. The question for the Committee is whether merchant mariners who served on MV Jeparit and MV Boonaroo were in any sense attached to, and under the command of, the Australian armed services. The Committee believes that the answer is that they were not. The Committee is therefore unable to make a recommendation for extension of VEA coverage to them.

Entertainers

20.68 Entertainers of Australian armed services personnel fall into two categories: official entertainers sponsored by the Australian armed services and those who provide entertainment on their own terms. By definition, unofficial entertainers (those not sponsored by the Australian armed services), are not attached to, and under the command of, the Australian armed services and can therefore not be considered eligible civilians for the purpose of access to VEA benefits. Official entertainers are those persons sponsored by the Australian armed services to provide entertainment to Defence Force members, either in Australia or overseas. The Committee understands that the ADF coordinates travel arrangements, provides accommodation and pays allowances to cover meals, outfits and some other incidental expenses. An ADF escort officer is provided who accompanies the entertainment party throughout the tour and assists with preparation of the show. The escort officer is also responsible for the safety of official entertainers, and entertainers are requested to follow any directions given by that officer. Compensation cover for official entertainers is provided through the SRCA (or its predecessors). The Committee has been unable to ascertain enough information about the status of official entertainers in Vietnam to make a recommendation concerning their claim for VEA coverage. In particular, it is not clear whether these entertainers came under military command. The Committee notes that, even if this were so, the VEA provides only the Minister with the power to make a determination under s.5R and that the Minister has the discretion to determine which provisions of the VEA should apply.

QANTAS Aircrew

20.69 The Committee understands that the QANTAS crew have compensation coverage through their workers' compensation arrangements for injury or disease resulting from their work, but what is sought through the request for VEA coverage is the provision of the Gold Card and the service pension.

20.70 The Mohr Report recommended that QANTAS aircrews be provided with designated civilian status leading to the award of the AASM because their work (carrying troops and supplies to Vietnam, mainly to Saigon Airport) put them into the same category as other designated civilians, and because Mohr considered that their work was just as dangerous as service by RAAF aircrews. Subsequently, the AASM was awarded to those aircrew members. As discussed elsewhere, the Committee does not consider that the award of the AASM should confer an automatic right to benefits under the VEA. The position of QANTAS aircrew employed on flights to Vietnam chartered by the RAAF is in many respects the same as the position of mariners who served on MV Jeparit and MV Boonaroo and that of other civilians providing a support role to the Australian armed services under contract. The Committee accepts that, while there were risks involved to the aircrews landing and taking off at Saigon Airport, those crews were not attached to and under the command of the Australian armed services, and neither was there any need for them to be attached. They were providing logistic support under contract to the Government and were subject to the benefits and conditions provided by their employer, as opposed to being attached to a unit of the RAAF subject to military command and discipline.

Other civilians

20.71 The Committee did not have sufficient time to undertake in-depth research into the claims of other civilians. However, the Committee makes the general observation that civilians contracted by the Australian armed services, by a government department or authority, or by a private company that may support Defence Force operations cannot be considered in the same light as Defence Force members and civilians attached to and under the command of the Defence Force. Similarly, as stated in paragraphs 20.29–20.30, the purpose of the VEA is not to provide benefits for public servants and employees of non-government organisations engaged in diplomatic or humanitarian aid in areas of conflict.

RECOMMENDATIONS

The Committee recommends that access of civilians to veterans' benefits under the VEA continue to be based on the principle that provides eligibility only for those who were attached to the Australian armed services and who consequently came under military command of the Australian armed services. Therefore, the Committee recommends that VEA entitlements should not be extended to members of the AWLA, the CCC, the civilian surgical and medical teams in Vietnam, merchant mariners on MV Jeparit or MV Boonaroo in Vietnam waters, entertainers in Vietnam, or QANTAS aircrew who flew in and out of Saigon.

The Committee recommends that further investigation be undertaken into the status of official entertainers in Vietnam.

CHAPTER TWENTY ONE

BRITISH, COMMONWEALTH AND ALLIED VETERANS

21

INTRODUCTION

21.1 The purpose of this chapter is to:

- outline the current entitlements of veterans and World War II mariners of British, Commonwealth and allied (BCAL) countries;
- outline arguments made in submissions for extension of coverage in respect of these veterans and mariners;
- examine the issues raised in submissions, having regard to the principles on which *Veterans' Entitlements Act 1986* (VEA) coverage for these veterans and mariners is based; and
- make recommendations for extension of VEA benefits where the Committee considers that the principles and intent of the VEA provisions for these veterans and mariners have not been met.

21.2 BCAL veterans with qualifying service in certain wars and warlike conflicts in which the Australian armed services were engaged may have access under the VEA to a service pension or a Commonwealth Seniors Health Card (CSHC). World War II mariners who served on certain ships of BCAL countries may also qualify. Additionally, the Repatriation Pharmaceutical Benefits Card (Orange Card) is available to these veterans and mariners if they are 70 years of age or over and have qualifying service during the period of hostilities in World War I or World War II. There are 8397 BCAL veterans issued with the Repatriation Health Card – For Specific Conditions (White Card). These

veterans are covered under agency arrangements between Australia and the country in whose forces they served, whereby treatment for accepted service-related disabilities is provided through the White Card and the Department of Veterans' Affairs (DVA) is reimbursed by the overseas country for the cost of health services provided.

21.3 VEA compensatory pensions and benefits, such as the disability pension, and health care benefits are generally not available to BCAL veterans and mariners. The exception is where a BCAL veteran was domiciled in Australia immediately prior to enlistment and where a BCAL mariner or his dependants were residing in Australia for at least 12 months immediately prior to his entering into the agreement or indenture for service.

21.4 Extension of benefits under repatriation legislation (other than compensatory benefits such as the disability pension and health care benefits) to BCAL veterans and allied mariners occurred gradually over the years. It started in 1975, with the extension of the service pension to those with qualifying service in British and other Commonwealth forces. Subsequently, in 1979, pensioner health benefits (but not repatriation health care benefits) were extended to this group of veterans if they received a service pension. Similar provisions were made in 1980 when the service pension and pensioner health benefits were extended to allied veterans. BCAL mariners of World War I and World War II became eligible for these benefits in 1983. In 1994, the CSHC was introduced, providing concession-rate pharmaceutical benefits. The CSHC is available to Australian and BCAL veterans and mariners with qualifying service who do not receive the service pension or another income support payment and who satisfy an income test. The CSHC provided to veterans and mariners under the VEA is available five years earlier than it is to the general community. On 1 January 2002, the Orange Card was introduced, providing pharmaceutical benefits at the concession rate for BCAL veterans and mariners who have qualifying service in World War II and are 70 years of age or over.

QUALIFYING SERVICE PROVISIONS

21.5 Qualifying service for British and other Commonwealth veterans means service as a member of the defence force established by a Commonwealth country other than Australia during a period of hostilities in a war or warlike operations in which Australian forces were engaged. In addition, these veterans must either have served outside the country in whose forces they served, at a time when they incurred danger from hostile forces of the enemy in that area, or have served within that country and received or been eligible for a campaign medal specified in s.7A(2) of the VEA for that service.

21.6 Qualifying service for allied veterans means service as a member of the defence force of an allied country during a period of hostilities in a war or in warlike operations in which Australian forces were engaged. These veterans must have served outside or within the country in whose forces they enlisted at a time when they incurred danger from hostile forces of the enemy. A person is not regarded as an allied veteran if he served at any time in the forces of a country at war with Australia, or engaged in warlike operations against Australian forces or in forces engaged in assisting or supporting such forces.

21.7 The periods of hostilities in respect of which BCAL veterans may have qualifying service are specified in the VEA as:

- World War I – from 4 August 1914 to 11 November 1918;
- World War II – from 3 September 1939 to 29 October 1945;
- Korea – from 27 June 1950 to 19 April 1956;
- Malaya – from 29 June 1950 to 31 August 1957; and
- warlike operations in an operational area from 31 July 1962 to 11 January 1973, such as service in an operational area during the Indonesian Confrontation or Vietnam War.

21.8 As with Australian mariners, only BCAL mariners of World War II are specifically provided for under the VEA. BCAL mariners have qualifying service if they were detained by the enemy during a period of hostilities or they incurred danger from hostile enemy forces and would have been awarded a campaign medal if they had been a member of the Australian forces. As with allied veterans, a person is not regarded as an allied mariner if he was employed at any time by a country at war with Australia, operated to or from the port of a country at war with Australia, or engaged in trading or providing assistance to a country at war with Australia.

21.9 Since the initial extension of the service pension to British and other Commonwealth veterans in 1975, there have been no extensions of the periods of hostilities to cover conflicts after the Vietnam War.

RESIDENCY PROVISIONS

21.10 The service pension for most BCAL veterans and mariners is subject to a 10-year residency requirement. A concession is made for multiple periods of residency aggregating to more than 10 years where at least one period was no less than five years. An exception to the 10-year residency requirement also exists if the veteran or mariner became permanently incapacitated for work while an Australian resident, provided this was not brought about with a view to obtaining a pension and the person does not have an enforceable claim for

adequate compensation in respect of the permanent incapacity from another source. The residency period is also waived in the case of refugees.

ISSUES RAISED IN SUBMISSIONS

21.11 The main issues raised in submissions from BCAL veterans and mariners were:

- extension of the Repatriation Health Card – For All Conditions (Gold Card) to BCAL veterans and mariners with qualifying service on the same basis as it was extended to veterans of the Australian armed services and Australian mariners who have qualifying service in the period of hostilities in World War II;
- extension of the disability pension and associated compensatory benefits;
- removal of the strictures of the domicile test, which prevents some BCAL veterans who were minors at the time of their enlistment from being considered as Australian veterans under the VEA (which makes a wider range of VEA benefits available to that group); and
- extension of qualifying service benefits to several groups of BCAL veterans presently ineligible.

Extension of the Gold Card to BCAL Veterans and Mariners with Qualifying Service

21.12 The Review received a total of 268 submissions from BCAL veterans and mariners concerning extension of the Gold Card to those with qualifying service at age 70 on the same basis as for veterans of the Australian armed services and World War II Australian mariners. This issue was the subject of the vast majority of submissions from BCAL veterans and mariners. World War II veterans of the British forces were the largest single group that made submissions on this issue. The arguments for provision of the Gold Card to this group are outlined in Chapter 22.

Extension of Disability Pension and Associated Compensatory Benefits

21.13 The arguments in submissions on this issue were similar to those made for extending access to the Gold Card. Submissions were primarily from World War II BCAL veterans. Arguments advanced included the opinion that BCAL veterans should have access to the same entitlements under the VEA as veterans of the Australian armed services in World War II because:

- many have lived in Australia for a long period and have contributed to Australia through work and taxes for longer than they lived in the country of enlistment;
- many have become Australian citizens and should have access as a right of citizenship;
- the denial of access to disability compensation, health care and related benefits to BCAL veterans and mariners constitutes racial discrimination;
- some do not have access to compensation from their country of enlistment, and others receive compensation that is inadequate by Australian standards;
- some countries have provided greater benefits for allied veterans than has Australia (e.g. the United States provides health care benefits for Polish veterans living there); and
- many served in association with Australian units and/or in the defence of Australia.

Domicile Provisions

21.14 The Review received fewer than 10 submissions from World War II BCAL veterans relating to the requirement for BCAL veterans to be domiciled in Australia immediately prior to enlistment in order to have access to the same range of VEA benefits as veterans of the Australian armed services serving in the same conflict. The argument raised in these submissions was that the domicile requirement has disqualified some BCAL veterans who were under 21 years of age at enlistment because the common law on domicile that applied at the time did not allow minors to establish a domicile of choice.

Qualifying Service Benefits for Several Groups of British, Commonwealth and Allied Veterans Presently Ineligible

21.15 A small number of submissions was received from BCAL veterans who currently have no access to benefits available under the VEA to other BCAL veterans. The main issues raised in these submissions related to:

- veterans of the British forces who served only in the United Kingdom and who do not have qualifying service because they received no campaign medal, who argued that they should have qualifying service if they incurred danger from hostile forces of the enemy;
- veterans of the British forces who served in Palestine in the period 1945 to 1948, the Netherlands East Indies (Java) immediately after World War II, Malaya in the period 1948 to 1950, Suez in 1956, and the Falklands, who argued that they incurred equal danger to other veterans of the British

forces who have qualifying service, but are not regarded as having qualifying service because they did not serve in a period of hostilities in a war or warlike operations in which Australian forces were engaged;

- BCAL veterans who served in Malaya between 1 September 1957 and 31 July 1960 and who do not have qualifying service, who argued that they should have their qualifying service eligibility considered on the same basis as veterans of the Australian armed services who are now regarded as having qualifying service if they were allotted for duty in the operational area of Malaya or Singapore during this period; and
- BCAL World War II mariners whose qualifying service eligibility depends on whether their service was of a kind that would have entitled them to a campaign medal if they had been members of the Australian armed services.

DISCUSSION OF ISSUES AND CONCLUSIONS

Extension of the Gold Card and/or Disability Pension and Associated Compensatory Benefits to BCAL Veterans and Mariners with Qualifying Service

21.16 The Committee recognises the contribution made by these veterans and mariners to the conflicts in which Australia was involved. It also appreciates that many of these veterans and mariners have spent most of their lives in Australia and are associated more with this country than the country in whose forces or merchant navy they served. However, the Committee considers that the VEA was designed primarily for veterans of the Australian armed services who served in wars and warlike conflicts and the Commonwealth Government's first priority in the provision of benefits is to its own armed forces. This view is supported by Toose (1975, p. 126), who stated that:

I am strongly of the view that it would be wrong in principle for the Australian Government to undertake responsibility for service-related compensation and associated benefits under Repatriation legislation to British and other allied ex-servicemen. Clearly, the responsibility to compensate allied ex-servicemen for injury or death arising from service in wars or warlike operations must continue to fall to the country in whose Forces the ex-servicemen served.

Because of the welfare elements in the service pension and the provisions already existing in Commonwealth countries, different considerations arise which may make it appropriate that the ex-servicemen of the British Commonwealth should be eligible for the service pension.

21.17 The payment of taxes in Australia has also been used as an argument in some submissions. The Committee notes that any person who earns income in

Australia may be liable to pay tax on that income and that the payment of taxes does not confer a right of access to either VEA benefits or benefits under many other Commonwealth Government programs, such as social security benefits, Medicare benefits or pharmaceutical benefits.

21.18 An argument made in some submissions was that the taking out of Australian citizenship confers on a person the rights available to Australian citizens, including the right of access to benefits under the VEA. The Committee understands that access to compensatory benefits, such as the disability pension and health care benefits, is not premised on a person's citizenship status; it is premised on the country in the armed forces or merchant navy of which the person served. In the Committee's view, the Australian Government is not morally obliged to provide benefits for service in other countries' forces or merchant navies. The Government is morally obliged to provide compensation only to veterans of its own armed forces. It has this obligation as the employer of veterans who served those forces. Furthermore, the Committee considers that the conferring of Australian citizenship does not legally require the Government to provide benefits to BCAL veterans and mariners on the same basis as it provides them to veterans of its own armed forces and Australian mariners because:

- the issuing of a certificate of naturalisation, which is subordinate legislation, cannot legally override the specific terms of an Act of Parliament like the VEA; and
- Australian citizenship provides only the prospective rights of an Australian citizen, not retrospective rights, and the granting of Australian citizenship cannot alter the status of the person that existed prior to the grant (that is, it does not make a BCAL veteran or mariner a veteran of the Australian armed services or an Australian mariner).

21.19 The Committee does not support the argument made in some submissions that exclusion of BCAL veterans and mariners from receiving disability compensation and/or Gold Card benefits amounts to racial discrimination. In coming to this conclusion, the Committee had regard to the Federal Court's decision in *Trau v. Repatriation Commission*. That case concerned an allied veteran who was refused a Gold Card because he was not domiciled in Australia immediately prior to his enlistment. The issue before the court was whether the domicile provisions of the VEA constituted discrimination under the *Racial Discrimination Act 1975* (RDA). It was found by the court that discrimination on the basis of domicile was not discrimination based on race or ethnic origin because the benefit provided under Part V of the VEA (pertaining

to access to repatriation health care benefits) was not a fundamental right protected by the RDA.¹²⁹

21.20 The Committee has also taken note of claims that compensatory benefits like the disability pension are sometimes not available from the country in the forces of which a veteran served and, in cases where they are available, some may be inadequate when compared with VEA compensatory benefits. The Committee does not believe that any unavailability or inadequacy in the benefits provided by another country is a justification for extending access to all VEA benefits to all BCAL veterans and mariners, because the VEA was never intended to be used as a top-up for less generous benefits provided by other countries. Additionally, the Committee considers that compensation is provided to veterans of the Australian armed services under the VEA as part of the Commonwealth Government's responsibility to provide for those in its employ who suffer injury, disease or death due to their eligible service. As an employer, the Commonwealth Government has no such responsibility to BCAL veterans and mariners. Apart from the philosophical difficulty, there would be practical difficulties in determining compensation levels under the VEA for those who already receive compensation from the country with which they served.

21.21 In relation to the argument made by Polish veterans that the United States provides health care for Polish veterans and the Australian Government should do the same, the Committee notes that such benefits are only available if equivalent services are not provided by another government for those veterans. The Committee understands that in many cases Polish veterans are entitled to benefits from the British Government but, in any case, the fact that the United States Government provides health care entitlements to some of these veterans does not create an obligation for the Australian Government to do likewise. The Committee is also of the view that health care in Australia is more affordable than in the United States, with private health care being less expensive and universal basic health care being available through Medicare. Additionally, many BCAL veterans and mariners are entitled to the service pension with its associated pharmaceutical concessions and other fringe benefits, and the Repatriation Pharmaceutical Benefits Card for World War I or II service.

21.22 The Committee considers that the VEA's focus on providing for veterans of the Australian armed forces is quite proper. The provision of income support through the service pension and associated benefits provides for those BCAL veterans and mariners most in need. The Committee accepts the general principle that the Government's responsibility for BCAL veterans and mariners does not extend to providing compensatory benefits, such as the disability pension and health care benefits. The Committee therefore concludes that

¹²⁹ (1998) 54 ALD 376.

extension of VEA disability compensation and health care benefits to all BCAL veterans and mariners is not supportable.

Domicile

21.23 As mentioned in paragraph 21.3, the VEA only provides access to benefits to BCAL veterans on the same basis as to veterans of the Australian armed services if they served during a period of hostilities in a war or warlike operation in which Australian forces were engaged and if they were domiciled in Australia immediately prior to their enlistment. The provision was intended to cover primarily those Australians who were travelling or studying overseas at the time World War II broke out and who could not return to Australia to enlist in the Australian armed services. In the absence of the legal concept of Australian citizenship until 1949, the domicile provision was adopted as a means of determining whether a BCAL veteran could be regarded as an Australian at the time of enlistment.

21.24 The problem raised in submissions relates to the domicile of persons who were under 21 years of age at the time of their enlistment in a BCAL force and who could not establish a domicile of choice. The VEA does not define domicile and hence the law on domicile, as it stood at the time of enlistment, is applied. The *Domicile Act 1982* established uniform rules applying to domicile. Among other things, it lowered the age at which a person could assume a domicile of choice from 21 to 18 years. However, that Act came into effect in 1982 and has no retrospective application. Hence, the common law rules regarding domicile apply in relation to the question of a person's domicile before that time. Under common law, a person could not assume a domicile of choice before the age of 21 years. The domicile of a legitimate child under 21 was taken to be that of his or her father or, if the father was deceased, his or her mother. The domicile of an illegitimate child was that of the mother. This was the case regardless of whether the person was living with his or her father (or mother).

21.25 The Committee considers that BCAL veterans who were under 21 years of age at the time of their enlistment should not be disadvantaged in terms of access to VEA benefits by virtue of a common law rule which holds that they were not adults able to establish a domicile of choice until they reached the age of 21 years. To overcome this common law restriction, a definition of domicile would need to be inserted into the VEA that is specific to that Act. These veterans would still have to satisfy the other requirements of the courts for evidence of the establishment of a domicile of choice in Australia, such as integration into Australian society, residency in Australia and the length of such residency. The Committee notes that there have been very few submissions on this issue. It also appears that some of the veterans who made submissions

might still not be regarded as domiciled in Australia, even if they had a domicile of choice before age 21, because they do not satisfy the factors taken into account in establishing domicile. Consequently, the Committee believes that the change would not affect many veterans.

21.26 The Committee understands that the *Compensation (Japanese Internment) Act 2001*, also administered by DVA, requires a civilian to have been domiciled in Australia immediately prior to his or her internment by the Japanese in World War II if the civilian is to become entitled to the \$25,000 one-off payment. The Committee makes no conclusion about whether its recommendation for the VEA in respect of BCAL veterans should result in a complementary amendment to the other Act.

Qualifying Service Benefits for Several Groups of British Veterans Presently Ineligible

Service Within the Country of Enlistment

21.27 Qualifying service for Commonwealth veterans for service within the country in the forces of which they enlisted has always been linked to the award of a campaign medal, as this was considered to indicate that the service involved operations against the enemy in which the person incurred danger from hostile forces of the enemy.

21.28 Until 1990, no campaign medals were specified in the *Repatriation Act 1920* or the VEA. The Government introduced amendments to the VEA in 1989 to specify the medals that would qualify as campaign medals for World War II. The medals currently specified for World War II are:

- the 1939–45 Star;
- the Atlantic Star;
- the Air Crew Europe Star;
- the Africa Star;
- the Pacific Star;
- the Burma Star;
- the Italy Star;
- the France and Germany Star; and
- any other medal declared by regulations to be a campaign medal in relation to service during the period of hostilities in World War II.¹³⁰

¹³⁰ The Committee understands that no medals have been declared by regulation.

21.29 This was considered necessary to overcome concerns about the Administrative Appeals Tribunal (AAT) decision in the case of *Farrow and the Repatriation Commission*.¹³¹ In that case, the AAT considered that the Defence Medal awarded for service in the United Kingdom was a campaign medal. The Defence Medal was granted to British veterans in respect of three years' home service during the period 3 September 1939 to 8 May 1945. Veterans did not have to be subject to enemy action to qualify and, consequently, the medal is not recognised as a campaign medal for the purpose of determining qualifying service under the VEA.

21.30 The 1989 Inquiry into the Needs of Australian Mariners, Commonwealth and Allied Veterans and Allied Mariners considered similar matters (McGirr 1989, p. 65). That inquiry concluded that provisions to amend the VEA (to specify the campaign medals that would need to have been awarded) were consistent with government policy, which was reflected in the long-standing Repatriation Commission practice of not regarding service in the United Kingdom as qualifying service for Commonwealth veterans.

21.31 The Committee understands that the only British veterans who served within the United Kingdom who are entitled to a campaign medal are aircrew taking part in operations against the enemy who have two months or more service in an operational unit until 8 May 1945, who may receive the 1939-45 Star.

21.32 The Committee believes the same rules should apply for service within as for service outside the country in the forces of which the person served. The Committee therefore considers that those Commonwealth veterans whose service was confined within the country in the forces of which they served during a period of hostilities should have the opportunity to have their qualifying service eligibility considered using the same test that applies for service outside that country. They should not be automatically disqualified because they are not entitled to a campaign medal. The Committee therefore concludes that the VEA should be amended to allow those British and other Commonwealth veterans with service only within the country in the forces of which they enlisted to be considered as having rendered qualifying service if they meet the same requirements as apply for service outside that country; that is, if the person rendered service in connection with a war or warlike operation in which Australian forces were engaged at a time when the person incurred danger from hostile forces of the enemy.

¹³¹ (1989) 16 ALD 728.

Service in War and Warlike Conflicts in which Australian Forces were not Engaged

21.33 The Committee notes that benefits under the VEA for BCAL veterans are specifically intended only for those veterans who served in certain wars or warlike operations in which Australian forces were engaged. The Commonwealth Government has no obligation to provide VEA benefits for veterans involved in other conflicts, in which the Australian armed forces were not engaged.

21.34 The Committee concludes that the service pension and other benefits available under the VEA to BCAL veterans with qualifying service should not be extended to cover service by BCAL veterans in wars or warlike conflicts in which the Australian armed services were not engaged.

Qualifying Service for Commonwealth Veterans Serving in Malaya between 1957 and 1960

21.35 Veterans of the forces of a Commonwealth country who served in Malaya between 1 September 1957 and 31 July 1960 do not have qualifying service because the VEA stipulates that the period of hostilities for those veterans ended on 31 August 1957. The concern raised in submissions is that veterans of the Australian armed services allotted for duty in the operational area of Malaya and Singapore during this period now have qualifying service and that a similar extension of eligibility should be made to BCAL veterans engaged in the same operations.

21.36 The exclusion of BCAL veterans serving in Malaya or Singapore between 1 September 1957 and 31 July 1960 has arisen because the extension of qualifying service benefits to Australian veterans has not flowed on to BCAL veterans. When the service pension was introduced for British and other Commonwealth veterans in 1975, veterans of the Australian armed services only had qualifying service during the Malayan Emergency if they were allotted for duty in the operational area of Malaya from 29 June 1950 to 1 September 1957. Consequently, veterans of the British and other Commonwealth forces serving in that conflict were also regarded as only having qualifying service during this period of the Malayan Emergency (provided that they incurred danger from hostile forces of the enemy).

21.37 In 1975, service by veterans of the Australian armed forces allotted for duty as part of or in association with the Australian contingent in Malaya and Singapore as part of the British Commonwealth Far East Strategic Reserve (FESR) during the period 1 September 1957 to 27 May 1963 was not qualifying service for service pension purposes. Consequently, that benefit was not

extended to their counterparts in the British and other Commonwealth forces. The *Repatriation (Far East Strategic Reserve) Act 1956*, under which veterans of the Australian armed services received benefits, provided only compensatory benefits, such as the disability pension, and it excluded naval service.

21.38 In 1986, qualifying service benefits were extended to most veterans of the Australian Army and Royal Australian Air Force who were allotted for duty in the operational area of Malaya or Singapore between 1 September 1957 and the end of the Malayan Emergency on 31 July 1960. However, no decision was made at that time to make a complementary extension to their counterparts in British and other Commonwealth forces. In 2001, following a recommendation made in the Mohr Report, qualifying service benefits were extended to members of the Royal Australian Navy on sea-going service in the operational area of Malaya as part of the FESR between 1955 and the end of the Malayan Emergency on 31 July 1960. Again, no alteration was made to the period of hostilities to enable British and other Commonwealth veterans with service after 1 September 1957 to qualify. British veterans remained eligible for qualifying service benefits for service during the Malayan Emergency only in respect of service in Malaya during the period from the date of Australia's involvement in 1950 to 1 September 1957, and then only if they could meet the incurred danger test.

21.39 The Committee understands that even if the period of hostilities for British veterans in Malaya and Singapore were extended to 31 July 1960, there is an argument that they would still not have qualifying service because they would fail to satisfy the incurred danger test. The Committee notes that the VEA adopts the World War II definition of qualifying service for all the post-World War II periods of hostilities in which BCAL forces were engaged, rather than the allotment test that was used for veterans of the Australian armed services serving in those conflicts. It appears that the World War II test was adopted for BCAL veterans because it was considered that it would produce the same result, in practice, as the allotment test applied to Australian veterans and that this would be consistent with the original intention of the extension of the service pension to BCAL veterans who served in wars or warlike operations in which the Australian armed services were engaged. It follows, then, that the retrospective classification of service in the Australian armed forces between 1 September 1957 and 31 July 1960 in Malaya and Singapore as qualifying service should in principle also extend to BCAL veterans with similar service. The Committee has not had the opportunity to undertake a detailed examination of whether such service by BCAL veterans was akin to the service of those veterans of the Australian armed services with qualifying service. The Committee considers that further examination of this issue is required. If that examination establishes that the tasks and risks for BCAL veterans were similar

in nature to those of Australian veterans, there would be a case for extending qualifying service to BCAL veterans.

Service by BCAL mariners

21.40 As mentioned in paragraph 21.8, BCAL mariners only have qualifying service in World War II if they:

- were detained by the enemy; or
- had service that would have entitled them to a campaign medal if they had been a member of the Australian armed services and they incurred danger from hostile forces of the enemy.

21.41 The Committee understands that the qualifying campaign medals specified in the VEA generally require a minimum period of service in a specified area during a specified time. It is therefore possible for a BCAL mariner to have incurred danger from hostile forces of the enemy yet not have been in the area concerned for sufficient time to have qualified for a campaign medal if they had been a member of the Australian armed services.

21.42 The Committee considers that the only criterion that should apply to BCAL mariners not detained by the enemy is that they must have incurred danger from hostile forces of the enemy during the period of hostilities in World War II. The linkage of qualifying service to the eligibility criteria for a campaign medal restricts eligibility for some mariners to a specified period of time. The removal of the medals linkage would, in the Committee's view, make the eligibility criteria consistent with those that apply to veterans and Australian mariners.

Effect of Changes to the Qualifying Service Requirements for Veterans of the Australian Armed Services and World War II Australian Mariners

21.43 In Chapter 15, the Committee recommends that service by veterans of the Australian armed services who served with the British Commonwealth Occupation Force (BCOF) in Japan from 21 February 1946 to 30 June 1947 be declared warlike service. If this recommendation is accepted by the Government, those veterans will have qualifying service under the VEA.

21.44 Consistent with the principle that BCAL veterans who served in war or warlike operations in which Australian forces were engaged should be regarded as having qualifying service if their service was the same as that of Australian veterans in those operations, the Committee considers that BCAL veterans serving with BCOF in Japan during the period from 21 February 1946 to 30 June 1947 should be regarded as having qualifying service under the VEA. This will

enable these veterans to receive the service pension and associated benefits on the same basis as other BCAL veterans with qualifying service in other operations after World War II. The Committee understands that this would cover veterans of the British, Indian and New Zealand forces serving with BCOF. The Committee notes that United States forces were also in Japan at the time but not part of BCOF. The tasks of the United States forces varied, but some were performing similar peace enforcement tasks to BCOF. Consequently, the Committee considers that service by those members of the United States forces performing similar peace enforcement tasks to BCOF between 21 February 1946 and 1 July 1947 should be regarded as qualifying service.

RECOMMENDATIONS

The Committee recommends that:

- there be no blanket extension of VEA compensation and health care benefits to all BCAL veterans and allied mariners;
- the VEA be amended to enable a BCAL veteran to be able to establish a domicile of choice in Australia before the age of 21 years, with all other common law tests used in determining domicile continuing to apply;
- the VEA be amended to allow British and other Commonwealth veterans whose only service was within their country of enlistment to be considered as having qualifying service if they meet the same requirements that apply for service outside the country of enlistment;
- the VEA continue to exclude the provision of qualifying service benefits for service in BCAL forces in wars or warlike conflicts in which the Australian armed forces were not engaged;
- the VEA be amended to allow British and other Commonwealth veterans who served in the operational area of Malaya and/or Singapore between 1 September 1957 and 31 July 1960 to be regarded as having rendered qualifying service if their service was the same as that of veterans of the Australian armed services in that operational area during that period;

- the VEA be amended to remove the campaign medal requirement for BCAL mariners, with qualifying service being subject only to whether the mariner was detained by the enemy or incurred danger from hostile forces of the enemy during the period of hostilities in World War II; and
- if the Government accepts the Committee's recommendation to accord warlike and qualifying service to veterans of the Australian armed services serving in Japan with BCOF between 21 February 1946 and 30 June 1947, British and other Commonwealth veterans serving with BCOF in Japan during that period, and United States veterans performing a similar peace enforcement role, be regarded as having rendered qualifying service.

CHAPTER TWENTY TWO

GOLD CARD

22

INTRODUCTION

22.1 The terms of reference require the Committee to examine issues relating to access to benefits under the *Veterans' Entitlements Act 1986* (VEA). Submissions to the Review clearly show that the single most sought-after benefit under the VEA is the Repatriation Health Card – For All Conditions (Gold Card). Out of a total of 2742 submissions, 1316 raised the Gold Card issue either alone or in conjunction with other issues. These figures exclude supplementary submissions.

22.2 The VEA enables the provision of full health care benefits (currently provided through the Gold Card) to certain veterans of the Australian armed forces, World War II Australian mariners, and police involved in peacekeeping operations who have eligible service under the VEA. War widow/ers (referred to hereafter as war widows), the orphaned dependent children of the war widow and the deceased veteran, and a small group of civilians who are regarded as veterans of the Australian armed services for the purposes of the VEA may also qualify. The VEA makes no provision for Gold Card health care benefits to be provided to veterans of other countries' forces or allied mariners, except where those veterans and mariners meet prior domicile or residency requirements that enable them to be treated as if they were veterans of the Australian armed services or World War II Australian mariners. The criteria under which the Gold Card is provided to these groups are outlined in paragraphs 22.28 to 22.31.

22.3 The purpose of this chapter is to:

- examine the submissions to the Review in support of the extension of the Gold Card;
- ascertain the principles by which Gold Card health care benefits should be provided; and
- make recommendations for extension of the Gold Card or other health care assistance where the Committee believes that the principles have not been applied.

HISTORY OF PROVISION OF HEALTH CARE BENEFITS

22.4 Provision of health care benefits for veterans under repatriation legislation has expanded over the years to cover an increasing number of categories. Health care for widows has always been restricted to war widows and certain orphans, with an increasing range of services covered. The following history summarises first the evolution of coverage for specific conditions, and then the evolution of coverage for all conditions.

Health Care Benefits for Specific Conditions Only

22.5 Veterans eligible under the VEA for treatment only for specific conditions are currently provided with a Repatriation Health Card – For Specific Conditions (White Card).

22.6 Treatment, at Commonwealth expense, of injuries and illnesses accepted as related to eligible service in the Australian armed services has been provided under repatriation legislation since the enactment of the *War Pensions Act 1914*. Pre-existing conditions that were aggravated by war service have also been covered.

22.7 Treatment for some specific conditions not accepted as related to eligible service was first provided in 1936, when tuberculosis that was not accepted as service-related attracted both treatment benefits and a war (now disability) pension. In 1973, veterans with theatre of war service (now qualifying service) who suffered from malignant neoplasia (cancer) became entitled to health care benefits for this condition, regardless of whether the condition was related to eligible service. In 1975, this was extended to all veterans whether or not they had theatre of war service (qualifying service). In more recent times, veterans have become entitled under the VEA to health care benefits for posttraumatic stress disorder, regardless of whether the condition has been accepted as related

to eligible service, and Vietnam veterans can also receive treatment for anxiety and/or depression.¹³²

Health Care Benefits for All Conditions

22.8 Persons entitled to health care assistance for all service-related and non service-related disabilities under the VEA are currently provided with a Gold Card.

War Widows

22.9 Limited treatment benefits were extended to war widows, orphans and certain widowed mothers in 1924. In 1959, coverage was extended to include treatment in repatriation general hospitals, outpatient clinics and non-departmental institutions, by private specialists and for travel where necessary. These provisions were extended to defence widows with the extension of the war widow's pension provisions to them in 1972 and to war and defence widowers with the extension of the war widow's pension provisions to them in 1991.

Severely Disabled Veterans

22.10 Health care benefits for all conditions, regardless of whether the conditions were related to eligible service, were introduced in 1943 for veterans in receipt of the 100 per cent general rate or higher rate war pensions. These benefits were not as wide as those provided today, in that certain non service-related conditions were not covered. For instance, treatment for infectious or contagious diseases was not covered until 1973, although veterans required by law to undergo such treatment had been covered since 1963. Treatment for alcoholism and drug addiction was not available until 1972, and treatment for chronic illness requiring prolonged institutional care was not available until 1973 (Toose 1975, pp. 442–3). In 1980, full health care benefits were extended to veterans receiving the disability pension for specific service-related amputations or blindness in one eye. When the extreme disablement adjustment (EDA) was introduced in 1988, these health care benefits were also extended to veterans entitled to that payment.

¹³² Veterans in this context means all members of the Australian armed services with eligible war service, peacekeeping service, eligible defence service from 7 December 1972 to 7 April 1994 and hazardous service after 7 December 1972, as well as World War II Australian mariners and civilians regarded as veterans under the VEA.

Veteran Service Pensioners

22.11 In 1961, repatriation health care benefits for all conditions were extended to veterans of the Australian armed services receiving the service pension and were restricted to those eligible for 'fringe benefits'. At the time, 'fringe benefits', such as pensioner health care benefits, were provided to income support pensioners, such as service pensioners and age pensioners who satisfied a separate means test. This test was similar to the treatment eligibility income and assets test now used in assessing eligibility for the Gold Card for veterans of the Australian armed services receiving a service pension who are under 70 and who do not qualify for a Gold Card on other grounds. It meant that the most needy veteran service pensioners could receive repatriation health care benefits for all conditions. In 1982, health care benefits for all conditions were extended to all World War II veterans of the Australian armed services receiving at least 50 per cent disability pension and any amount of service pension (which is subject to a means test). In 1986, with the enactment of the VEA, this provision was extended to veterans of the Australian armed services who had served in other conflicts.

World War I Veterans

22.12 Extension of health care benefits for all conditions to Australian ex-servicewomen who served in World War I occurred in 1958. In 1973, health care benefits for all conditions were extended to all Boer War and all World War I male veterans.

Prisoners of War

22.13 In 1975, health care benefits for all conditions were extended to all veterans of the Australian armed services and eligible civilians who had been prisoners of war (POWs). In 1980, this provision was extended to Australian mariners who served in World War II and who were detained as prisoners of war.

World War II Veterans of the Australian Armed Services and Australian Mariners with Qualifying Service

22.14 In 1988, health care benefits for all conditions were extended to female veterans of the Australian armed services with qualifying service during the period of hostilities in World War II, irrespective of means. This followed a study by the Department of Veterans' Affairs (DVA) in relation to returned ex-servicewomen of World War II. The extension principally covered nurses on hospital ships and troopships, and in field hospitals outside Australia. An age qualification did not apply to females but the average age of the cohort at the

time was 70 years. The decision was made to extend benefits to ex-servicewomen with qualifying service, as distinct from ex-servicemen, on the basis of the study's findings about the special needs of those women. These included (DVA 1985, pp. 6–7):

- their average age was three years more than their male counterparts;
- they had suffered past disadvantage in terms of lower rates of pay on service;
- they had suffered past disadvantage in relation to eligibility for Defence Service Homes assistance;
- more restrictive provisions had applied to them in the past, in relation to assistance for their dependants; and
- a high proportion of ex-servicewomen lived alone and/or were considered to be in financial need.

22.15 On 1 January 1999, the Commonwealth Government extended health care benefits for all conditions to all veterans of the Australian armed services and Australian mariners with qualifying service during the period of hostilities in World War II who were 70 years of age or older. This was consistent with the 1988 extension in relation to female veterans. In introducing the enabling legislation, the Minister for Veterans' Affairs, the Hon Bruce Scott MP, stated that the Gold Card was intended to provide those veterans and mariners with:

... the certainty and comfort that comes with knowing that their health needs will always be met.¹³³

22.16 Minister Scott's second reading speech indicated that the health of those veterans was a very high priority and reflected a similar extension to World War I veterans 55 years after the end of that conflict. The Minister also stated that the provision of a Gold Card was:

... an important means of recognising the willing sacrifice made by veterans in Australia's time of need and of expressing our profound gratitude for their courage and dedication.¹³⁴

Veterans of the Australian Armed Services with Qualifying Service Post-World War II

22.17 From 1 July 2002, the Gold Card was further extended to veterans of the Australian armed services who served in post-World War II operations and who are 70 years of age or older and have qualifying service. This was an extension of the 1999 provisions and fulfilled a 2001 election commitment. When making

¹³³ Australia, House of Representatives 1998, *Debates*, vol. HR221, p. 4545.

¹³⁴ *Ibid.*

the commitment, the Liberal Party policy statement for that election (Liberal Party of Australia 2001, p. 7) stated that:

The Coalition believes this is an important commitment to those Veterans who served in conflicts after World War II and were exposed to the unique hardships and deprivations of combat.

Pharmaceutical Benefits Only

Commonwealth Seniors Health Card

22.18 The Commonwealth Seniors Health Card (CSHC) was introduced in July 1994. It provides pharmaceutical benefits at the concession rate for those veterans with qualifying service and their partners who do not receive a service or age pension and who have attained pension age. Eligibility depends on taxable income, with the current limits being \$50,000 for singles and \$80,000 for couples, with higher limits applying if there are dependent children or where a couple are separated due to ill health. Pension age for veterans is the qualifying age for a veteran's age service pension. For non-veteran partners, the qualifying age is the same as for the social security age pension. The primary purpose of this benefit is to provide most non-pensioner retirees and persons who do not meet the residency requirements for the age service pension with access to concessional pharmaceuticals and hearing aid concessions.¹³⁵ Retirees and younger veterans who have low incomes already receive pharmaceutical concessions because they are entitled to a Pensioner Concession Card or another health care card.

22.19 While eligibility for the CSHC under the VEA depends on a veteran having qualifying service, those without this service may still receive the CSHC under the *Social Security Act 1991* (SSA). The criteria are the same, except that under the VEA, the CSHC is available to veterans with qualifying service five years earlier than it is to those who receive the CSHC under the SSA.

22.20 Unlike the Gold Card, the CSHC may be provided to British, Commonwealth and allied (BCAL) veterans and World War II BCAL mariners with qualifying service on the same basis as it is provided to veterans of the Australian armed services and World War II Australian mariners.

Repatriation Pharmaceutical Benefits Card (Orange Card)

22.21 On 1 January 2002, the Government extended access to the Repatriation Pharmaceutical Benefits Scheme (RPBS), through the Orange Card, to BCAL

¹³⁵ *Veterans' Affairs Legislation Amendment Act 1994*, No. 78 of 1994, *Explanatory Memorandum*.

veterans and mariners with qualifying service during World Wars I and II who are 70 years of age or over.

THE HEALTH CARE CARD SYSTEM

22.22 Reference has been made above to Gold, White and Orange Cards. It is appropriate to explain these and other cards.

22.23 Before 1979, it was incumbent upon a veteran's general practitioner or dentist to hold an entitlement card for that person, describing the level and/or types of treatment paid for by DVA. In that year, the system was superseded by a card system, with the card to be retained by the veteran or dependant. Eligible persons were issued with a card to be presented by them to a doctor or dentist anywhere in the country to gain free treatment.

22.24 In 1987, a system of four colour-coded cards was introduced in an attempt to assist providers to more easily identify the treatment available to individual cardholders. These were:

- Personal Treatment Entitlement Card (PTEC – Yellow Card), for veterans and mariners eligible for health care benefits for all conditions;
- Specific Treatment Entitlement Card (STEC – White Card), for veterans and mariners eligible for health care benefits for specific conditions;
- Dependant Treatment Entitlement Card (DTEC – Lilac Card), for war/defence widows and eligible dependent children; and
- Service Pensioner Benefit Card (SPBC – Red Card), for veterans of the Australian armed services and Australian mariners receiving the service pension whose income and assets were below the fringe benefit eligibility levels.

22.25 In 1996, the four-card system was changed to a two-card arrangement of Gold Card and White Card. The holders of the PTEC retained their existing entitlements via provision of the Gold Card and STEC holders retained theirs through the White Card. Holders of the SPBC and DTEC moved up to Gold Card status, enabling them to have extended travel assistance when travelling for treatment purposes and access to the wider range of medications available through the RPBS.

22.26 The extension of RPBS benefits to BCAL veterans with World War II qualifying service in 2002 led to the creation of the Repatriation Pharmaceutical Benefits Card (Orange Card).

DVA TREATMENT POPULATION

22.27 The DVA treatment population of White and Gold Card holders is currently 340,716. Of these, 281,448 hold the Gold Card and 59,268 hold the White Card.¹³⁶ The population is mostly aged, with 70 per cent being over 75 years of age. In addition, there are 21,726 BCAL veterans and mariners who hold the Orange Card. The DVA budget for delivery of health services in 2001–02 was \$3.2 billion, second only to DVA's expenditure on pensions at \$5.4 billion (DVA 2002a). The largest area of expenditure was hospital care (37 per cent), followed by general practitioner services (23 per cent), community nursing and veterans' home care (15 per cent), pharmacy (12 per cent), allied health and dental (7 per cent), appliances (3 per cent) and other (3 per cent).¹³⁷

GROUPS CURRENTLY ELIGIBLE FOR THE GOLD CARD

Veterans of the Australian Armed Services and World War II Australian Mariners

22.28 Currently, the Gold Card is provided to the following groups:¹³⁸

- veterans of the Australian armed services and World War II Australian mariners who were POWs;
- veterans of the Australian armed services and World War II Australian mariners eligible for the disability pension at or above 100 per cent of the general rate or an additional amount for specific service-related amputations or blindness in one eye;¹³⁹
- veterans of the Australian armed services and World War II Australian mariners eligible for the disability pension at or above 50 per cent of the general rate who also receive any amount of service pension;
- veterans of the Australian armed services and World War II Australian mariners receiving the service pension who satisfy the treatment eligibility income and assets limits (formerly fringe benefits limits);

¹³⁶ White Card holders include 8397 BCAL veterans. These veterans are covered under agency arrangements between Australia and the country in the forces of which they served, whereby treatment for accepted service-related disabilities is provided through the White Card and DVA is reimbursed by the overseas country for the cost of health services provided.

¹³⁷ Information provided by DVA.

¹³⁸ The VEA makes some provision for certain civilians to be regarded as veterans.

¹³⁹ The VEA also makes provision for the Gold Card to be provided in these circumstances to those persons with eligibility under Part IV, i.e. members of the Australian Defence Force (ADF) and police with peacekeeping service, members of the ADF with peacetime service between 7 December 1972 and 7 April 1994 and members of the ADF who have hazardous service determined by the Minister for Defence pursuant to s.120(7) of the VEA after 7 December 1972.

- recipients of the disability pension for pulmonary tuberculosis granted before 2 November 1978;
- veterans of the Australian armed services and World War II Australian mariners receiving the service pension who are permanently blind in both eyes;
- all World War I veterans of the Australian armed services;
- all returned ex-servicewomen of World War II (that is, those who served in the Australian armed services between 3 September 1939 and 29 October 1945 and who have qualifying service during that period);
- veterans of the Australian armed services and World War II Australian mariners who are aged 70 years or over and have qualifying service during the period of hostilities in World War II; and
- veterans of the Australian armed services who are aged 70 years or over and have qualifying service from post-World War II conflicts.

British, Commonwealth and Allied Veterans and Mariners

22.29 BCAL veterans and World War II BCAL mariners are treated as Australian veterans or mariners for the purpose of eligibility for VEA disability compensation and health care benefits only if they:

- served with a BCAL armed force during a period of hostilities and were domiciled in Australia immediately before enlistment in the BCAL force; or
- served as BCAL mariners during World War II, if they or their dependants were residing in Australia for at least 12 months immediately before entering into the agreement or indenture for sea-going service on a ship registered outside Australia.

War Widows and Other Family Members

22.30 When a veteran dies, the veteran's Gold Card is not transferred to the surviving partner or any other dependant. The only partners and other dependants entitled to the Gold Card are those who fall into the following categories:

- a widow of a veteran who has eligibility for the war or defence widow's pension – in this case the Gold Card also covers dependent children of the deceased veteran (i.e. children who are under 16 or between the ages of 16 and 25 and undergoing full-time education); and
- a child of a deceased veteran whose death was not service related but who had operational service, if the child is not being cared for by the remaining parent, adoptive parent or step-parent.

22.31 Certain dependants have continuing eligibility under the *Repatriation Act 1920*:

- an invalid adult child of a deceased veteran where the veteran's death has been accepted as war-caused, and where the adult child had treatment entitlement before 18 October 1985; and
- a widowed mother or widowed stepmother who was dependent on an unmarried deceased veteran where the veteran's death had been accepted as war-caused, and where the mother or stepmother had treatment entitlement before 18 October 1985.

SUMMARY OF SUBMISSIONS

22.32 The 1316 submissions commenting on some aspect of Gold Card eligibility can be divided into the following groups:

- veterans of the Australian armed services in World War II who do not have qualifying service and do not qualify on other grounds;
- veterans of the Australian armed services who served with British Commonwealth Occupation Forces (BCOF) in Japan;
- veterans of the Australian armed services (other than in World War II) who are 70 years of age or older, regardless of whether they have qualifying service;
- widows of veterans who do not qualify for the war or defence widow's pension;
- partners and carers of veterans;
- disabled adult children of deceased veterans and war/defence widows;
- children of veterans where the children are suffering disability or disease that is claimed to be linked with the veteran's exposure to toxic chemicals whilst on service;
- BCAL veterans and BCAL World War II mariners; and
- civilians, such as members of the Australian Women's Land Army.

ISSUES RAISED IN SUBMISSIONS

Veterans of the Australian Armed Services

World War II Veterans

22.33 The Review received 753 submissions about eligibility for the Gold Card in relation to service in the Australian armed services during World War II. Recognition of service was a prevailing theme in most submissions relating to extension of the Gold Card to all World War II veterans of the Australian armed services who do not qualify under existing provisions. These submissions argued that the Gold Card would be tangible and practical recognition of their contribution to the war effort and would ensure that their health care needs will be met in their later years.

22.34 Due to the recent connection between Gold Card eligibility and qualifying service, many of the arguments for extension of the Gold Card to all veterans of the Australian armed services who served in World War II are the same as those put forward to change the qualifying service provisions, which are mentioned in Chapter 12. Arguments include:

- veterans served where they were sent and had no choice in the matter;
- veterans were retained in Australia because:
 - their special skills were required in Australia (e.g. for training of recruits), or
 - they were required to defend Australia in areas considered vulnerable to attack;
- service by ex-servicewomen in Australia freed the men to serve overseas;
- many veterans consider that their service was dangerous, hazardous, arduous and/or stressful, with some regarding their service as being on a par with, or more dangerous than, the service of those who served in combat areas (e.g. veterans involved in malaria and mustard gas experiments);
- many veterans sacrificed their youth in the service of Australia;
- World War II was a total war involving the whole of the defence forces wherever stationed; and
- the sacrifices of those who helped defend Australia have enabled the freedom and prosperity enjoyed today.

22.35 In addition, submissions pointed to inconsistencies in the application of the qualifying service requirement, which have denied many veterans a Gold

Card under the 1999 extension provisions. These are discussed further in Chapters 11 and 12.

22.36 Some submissions regarding extension of the Gold Card to all World War II veterans drew comparisons between the treatment of World War II veterans and the treatment of World War I veterans. The Gold Card equivalent was extended to all World War I veterans in 1973, 55 years after the end of that conflict, in recognition of the sacrifices they had made and their advanced age. Submissions argued that no distinction was made for World War I veterans on the basis of where the veteran served or what part he played in the war effort. Consequently, it was argued, similar recognition is now due to World War II veterans, with no distinction being made between those who did, and those who did not, have qualifying service.

22.37 Many submissions from World War II veterans also pointed to the increasing need of ageing veterans for health services and held that provision of the Gold Card would relieve concerns about the cost of many services not covered by Medicare but required by many older people. These submissions also pointed to lengthy waiting lists in the public health system.

22.38 World War II ex-servicewomen made the additional claim that the Gold Card would help compensate for their past disadvantages compared to World War II ex-servicemen, such as:

- the lower rates of pay they received;
- their ineligibility for Defence Service Homes assistance until recent years; and
- limited provision under repatriation legislation for their dependants until recent years.

BCOF Veterans

22.39 The Review received 62 submissions about eligibility for the Gold Card in relation to service as a member of the Australian armed services with BCOF in Japan. Arguments made in submissions for extension of the Gold Card to these veterans were the same as those put forward for classifying such service as qualifying service and are discussed in Chapter 15.

Post-World War II Service

22.40 The Review received a small number of submissions in relation to veterans of the Australian armed services with post-World War II service who do not have qualifying service and who sought the Gold Card and/or other qualifying service benefits. These submissions argued that all veterans of the Australian armed services over a certain age (usually over 70 or over 80) should

be provided with a Gold Card. The arguments were similar to those arguments in submissions from Australian World War II veterans who do not have qualifying service. The reasons given by these veterans as to why they should be regarded as having qualifying service are addressed in Chapter 14. The wider issue of whether the Gold Card should be provided purely on age grounds, regardless of the nature of service, is discussed in the present chapter.

Family Members of Veterans of the Australian Armed Services and World War II Australian Mariners

Widows and Widowers who do not Qualify for the War or Defence Widow's Pension

22.41 The Review received 19 submissions seeking extension of the Gold Card to widows of veterans. Some of these submissions were from veterans who had received a Gold Card but whose spouse would not automatically qualify for the war widow's pension and the Gold Card. These veterans suggested that their Gold Card should be transferred to their widows. A prevailing argument for extension of the Gold Card to widows was one of recognition. Widows of veterans claimed that the provision of a Gold Card to them would provide continuing recognition of the veteran's service and would also recognise the care that they provided to the veteran, often over many years. Some widows also referred to their own declining health and the comfort and security that the Gold Card would provide. Others referred to perceived anomalies in decisions relating to war widow's pension eligibility, as the Gold Card for widows is currently linked to eligibility for that pension.

Partners and Dependent Children of Veterans

22.42 The Review received 176 submissions calling for extension of the Gold Card to partners, carers and/or dependent children of veterans. Most submissions seeking a partner's Gold Card were in relation to the partners of veterans receiving the special rate disability pension. To a lesser extent, submissions were received in relation to the partners of veterans receiving the EDA or intermediate rate and others in receipt of a Gold Card. Arguments in submissions included:

- partners and widows have served as unpaid carers for veterans and their own health may have been adversely affected as a result;
- partners and widows should be recognised for having saved the Commonwealth Government money in caring for veterans by, for instance, keeping veterans at home and out of institutions and reducing the need for government-funded home care help;

- assistance currently provided to partners is inadequate;
- partners cannot obtain employment because of the need to care for a veteran; and
- the cost of private health insurance is too high.

22.43 Some submissions from partners of veteran Gold Card holders also pointed out that the value of the Gold Card is diminished where the veteran has a partner and children. These submissions stated that where veterans have a partner and children, no discount is given by health funds on the family rate of health insurance, even though the veterans may not use this health cover because they use their Gold Card instead. Thus, the Gold Card was of little benefit in alleviating the costs of health care to the family in those circumstances, and private health insurance costs were difficult to fund. Where a veteran has a partner but no children, the partner must take out private health insurance as a single person and submissions indicated that this, too, was difficult to fund.

22.44 While many of these submissions suggested provision of the Gold Card, some raised the alternative of providing health cover through the Defence Health Service.

Disabled Adult Children of War Widows

22.45 The Legacy Co-ordinating Council raised the issue of providing the Gold Card to disabled adult children of war widows.¹⁴⁰ The Council argued that the VEA makes no provision for those children but that the *Repatriation Act 1920* did. Legacy's submission suggested that around a thousand people were affected, and argued that most of the war widows caring for disabled adult children were elderly and should not bear this burden alone. Legacy also expressed the concern of these widows about the fate of their children after the widow's death and their wish to ensure that their disabled children would have the security of Gold Card health cover after that event.

Disabled Children of Veterans Exposed to Toxic Chemicals

22.46 The Review received a small number of submissions claiming that some children of veterans suffer disability or disease linked to the veteran's exposure to toxic chemicals during service. The submissions seek monetary compensation and/or health care benefits for the children.

¹⁴⁰ Submissions 1358 and 1358a.

British, Commonwealth and Allied Veterans and Mariners

22.47 The Review received 268 submissions about extension of the Gold Card to BCAL veterans and World War II BCAL mariners with qualifying service on the same basis as it is available to veterans of the Australian armed services and World War II Australian mariners. Most submissions were from veterans who served in the British forces during World War II. Arguments for BCAL veterans and mariners also centred on recognition of service and included:

- BCAL veterans served in operations against the same enemy and for the same cause as veterans of the Australian armed services;
- BCAL veterans served alongside veterans of the Australian armed services;
- some BCAL veterans were based in the Australian region in World War II and contributed towards the defence of Australia;
- many BCAL veterans and mariners have been Australian citizens or residents for many years and have made a contribution to Australia's economy through their work and the payment of taxes;
- not all allied countries provide repatriation benefits to their expatriates;
- the United States has provided health benefits to veterans of the Polish and Czechoslovakian forces who served in World Wars I and II; and
- some BCAL veterans were Australians who had enlisted in the British forces but do not satisfy the domicile provisions that would entitle them to benefits as if they had enlisted in the Australian armed services.

22.48 There were varying proposals in the submissions relating to the issue of a Gold Card to BCAL veterans and mariners. These included:

- extension to all with qualifying service at age 70;
- extension to all with qualifying service and Australian citizenship at age 70;
- extension to all with qualifying service and 10 years residence (as for the service pension) at age 70;
- extension to those in receipt of the service pension only at age 70 (requires qualifying service, 10 years residence and satisfaction of income and assets tests); and
- extension to those with qualifying service and long-term residency in Australia (e.g. 40 to 50 years).

Civilians

22.49 The Review received 31 submissions in relation to VEA coverage for civilians, some of whom were seeking entitlement to the Gold Card. Civilians sought the Gold Card as recognition for the contribution they made. They also

indicated that their health had suffered either due to age or due to their service and that the Gold Card would provide them with the security and comfort of knowing that their health care needs were covered. The Australian Women's Land Army also sought to be regarded as a fourth arm of the women's services with equivalent benefits to veterans of the Australian armed services who served during World War II. Civilian nurses and other civilians who worked in surgical and medical teams in Vietnam under South-East Asia Treaty Organisation arrangements sought the provision of the Gold Card and other VEA benefits on the same basis as they are available to Vietnam veterans.

DISCUSSION OF ISSUES AND CONCLUSIONS

Veterans of the Australian Armed Services

Rationale for Past Extensions

22.50 The Gold Card provides a comprehensive range of health services and recipients are exempt from paying the Medicare levy. It is a valuable benefit and one that is highly prized by the veteran community. While the Gold Card was intended as an administrative device through which health care for all conditions is provided at DVA's expense, its name, colour and the recent extension of access to veterans of the Australian armed services with qualifying service who are 70 or over, appear to have added to the perception that considerable status is accorded to holders by the community.

22.51 An examination of the history behind this benefit reveals no consistent rationale for eligibility. Health care benefits for all conditions were initially only provided as part of the compensation package for veterans significantly affected by their service, such as those receiving disability pension at or above 100 per cent of the general rate. Later, extensions of benefits were made to other groups of veterans of the Australian armed services based on:

- their advanced age and increased need for health care — such as Boer War and World War I veterans;
- the extreme hardship veterans endured during service and its effects on them — such as the hardship suffered by veterans who were POWs;
- the type of service performed, coupled with the level of veterans' income and assets — such as the extension to World War II veterans of the Australian armed services and Australian mariners receiving the service pension who satisfy the treatment eligibility income and assets limits;

- the type of service performed, coupled with their increased need for health care in old age – such as World War II male veterans and all veterans of later conflicts who are 70 or over and have qualifying service;
- recompense for past disadvantage and its lifetime effects – in the case of World War II female veterans with qualifying service; and
- a combination of factors (i.e. type of service, level of service-related incapacity and degree of financial need for assistance) – such as the extension to those receiving the service pension and the disability pension at or above 50 per cent of the general rate.

22.52 A consequence of extensions of Gold Card access based solely on qualifying service is that many veterans who are aged 70 years or over now qualify for assistance with health care costs, regardless of financial or medical needs arising from severe service-related incapacity.

22.53 Although no clear rationale is discernible, it would appear that, initially, the need to provide generous health care cover for veterans who were severely incapacitated by service-related disabilities was the primary factor in providing full health care benefits. These veterans already had an entitlement to health care assistance for service-related disabilities and the Committee believes that the extension of health care to non service-related disabilities was simply intended to further assist those veterans most disabled through service and was made at a time when universal basic health care cover was not available. The Committee understands that it was also recognised at the time that, for treatment purposes, it was often impractical to differentiate between service-related and non service-related conditions where a veteran was severely incapacitated by service.

22.54 Health care benefits were subsequently extended in 1960 to a further category, based on financial need, of veterans with theatre of war service who were wholly or substantially dependent on the service pension. The Committee believes that the inclusion of veterans with theatre of war service only was an attempt to provide greater assistance to veterans who were needy and ‘burnt out’ due to their service in combat. It reflected the view, long held by governments and the community, that those who faced danger from the enemy in wars or warlike operations required greater assistance if they became unemployable or aged prematurely, necessitating early retirement. Although, by this time, a pensioner medical service had been established, the extension of repatriation health care benefits to these veterans can be seen as an acknowledgment by the Government that they required a greater level of health care assistance.

22.55 The 1973 extension of Gold Card benefits to all veterans of the Boer War (who by then would have been over 90 years of age) and World War I veterans

appears to have reflected a change of approach, in that the benefits were provided irrespective of whether the veteran had theatre of war service. While the veterans concerned were all elderly and most had served in a theatre of war, the gravity of the war-related disability and the means of the veteran were not taken into account.

22.56 The extension of full repatriation health care benefits to POWs can be readily understood as a means of providing additional assistance to those veterans who, as a group, suffered excessively during their service. The principle of providing special assistance to Australian veterans who were POWs is long established and widely accepted in the community as justifiable.

22.57 When full health care benefits were extended to female veterans of the Australian armed services who had qualifying service during World War II, it was the first time that qualifying service, regardless of means, was a condition on which the benefit was extended. The information provided in the DVA's study of returned ex-servicewomen of World War II indicated that this extension of health care was not based on recognition of their having qualifying service in a war zone. Rather, the basis for the extension was to compensate ex-servicewomen who had served in theatres of war because, as a group, they were considered by the Government (DVA 1985, pp. 6-7) to have special needs that resulted from past disadvantages, their advanced age and the effects of their service on their state of health and current living and financial circumstances (see paragraph 22.14).

22.58 While the reasons for the provision of Gold Card health benefits to the groups referred to in paragraphs 22.53 to 22.57 have varied, the benefits were provided after careful assessment of the community's obligations to veterans and had regard to the priority groups for the provision of repatriation benefits. There is, for instance, wide acceptance of the view that veterans severely affected by their service, such as special rate and EDA veterans, should have all their health care needs met. Similarly, there is general acceptance of the view that POWs should be compensated for the additional hardships they endured. It has also been established that World War II returned ex-servicewomen are in a position of need due to past disadvantages and should be compensated. Finally, there has been no argument against the provision of health care benefits for veterans in financial need who were 'burnt out' after having endured the rigours of warlike service.

22.59 However, the Committee cannot see such strong justifications for the extension of the Gold Card to all veterans of the Australian armed services and World War II Australian mariners with qualifying service who are 70 or over, irrespective of their financial ability to provide for their own health care for non service-related disabilities. The Committee notes that the means-tested service

pension was originally introduced as a 'burnt-out digger's' pension and that qualifying service has been the criterion for the grant of the pension. It accepts that this group should continue to be provided with additional means-tested benefits as an acknowledgment of the intangible effects of their war experience. However, the recent extensions of Gold Card entitlement irrespective of means have imbued qualifying service with an additional significance – in a sense, it is seen as a reward for serving in a theatre of war. The Committee considers that these extensions of eligibility for the Gold Card were inconsistent with a needs-based approach and are at odds with most past extensions of Gold Card benefits.

Basis on which the Gold Card should be Provided

22.60 The Committee believes that that the primary purpose of provision of the Gold Card is to provide health care benefits to those with eligible service in the Australian armed services who have medical needs due to severe service-related disablement and to veterans in financial need who have qualifying service.

22.61 The Committee does not believe that there are any grounds for providing the Gold Card purely as a reward for, or in recognition of, service in the Australian armed services. The Committee has come to this conclusion after carefully considering the views made in submissions about whether qualifying service should attract a greater range of benefits under the VEA. As the Committee has noted in Chapter 12, since the introduction of the service pension in 1936 there has been a view, widely accepted by successive governments and the community, that those veterans who suffered the rigours of service that exposed them to harm from the enemy in wars or warlike operations have been affected by that service in ways not tangible, and thus should be provided with assistance where they cannot work due to age or disability and do not have sufficient resources to provide a modest standard of living. The assumption that veterans engaged in offensive or defensive operations in a high-threat environment are affected by this service in intangible ways that have prematurely aged them has never been disproved. It is consistent with the beneficial nature of the VEA to provide assistance for this group when they are in need of it through means-tested pensions and the Gold Card health benefits.

22.62 Concerning veterans who already have a Gold Card because they are aged 70 years or over and have qualifying service, the Committee appreciates that it is now not possible to impose a means test on their eligibility for the card. However, on principle, the Committee considers that veterans with qualifying service who have not yet turned 70 and who do not qualify for the Gold Card on other grounds should satisfy some measure of financial need (to be determined the Government) to qualify.

22.63 The Committee considers that the Gold Card should not be extended to veterans who receive a disability pension below 100 per cent of the general rate and do not have qualifying service, even if they are in financial need. However, many of these veterans will benefit from additional income support if the recommendations made in Chapter 30 are accepted by the Government. The Committee believes that the additional income support that many will receive, together with the existing 30 per cent rebate on private health insurance, will assist these veterans considerably with the cost of taking out private health insurance for disabilities not covered by their White Cards, should they need to do so.

Conclusions in Relation to World War II Veterans

22.64 Having regard to the comments above, the Committee considers that eligibility for the Gold Card should be confined to existing groups. However, some World War II veterans of the Australian armed services will become eligible for the Gold Card under existing legislative provisions if the Committee's recommendations relating to qualifying service for World War II are accepted by the Government (see Chapter 12).

Conclusions in Relation to BCOF Veterans

22.65 As with World War II veterans of the Australian armed services, the Committee considers that blanket extension of the Gold Card is not warranted for all veterans of the Australian armed services who served with the BCOF on the grounds of BCOF service only. However, if the Government accepts the Committee's recommendation in Chapter 15 extending qualifying service for BCOF service before 1 July 1947, the Gold Card would be extended to these veterans (who are now all 70 years of age or over). While the Committee considers that qualifying service should not extend to service with BCOF from 1 July 1947 onwards, many veterans with this service who also receive a disability pension will benefit from the Committee's recommendations discussed in Chapter 30.

Conclusions in Relation to Post-World War II Service

22.66 The Committee considers that there are no grounds for extending the Gold Card to all veterans who served in post-World War II operations. Furthermore, it does not consider that the VEA should enable the Gold Card to be provided to post-World War II veterans at the age of 70 solely on the condition that they have qualifying service. As stated earlier, the Committee considers that the Gold Card should be provided to veterans with qualifying service at age 70 if they are in financial need. In the Committee's view, the VEA should be amended so that no further grants of the Gold Card are made at age

70 to veterans with post-World War II qualifying service who are not in financial need. The Government may need to consider an appropriate test of financial need.

Gold Card to Family Members of Veterans of the Australian Armed Services and World War II Australian Mariners

Basis on which the Gold Card or Other Health Care Assistance should be Provided

22.67 The Committee accepts that, in relation to health care assistance for veterans' families, the community's primary responsibility is to war and defence widows and orphaned dependent children. The Gold Card benefits are provided to this group as part of their compensation package for the loss of the veteran as a result of service or because the veteran was severely affected by service. The Committee believes that extension of Gold Card benefits to widows who do not qualify for this pension would be contrary to the compensatory principle.

22.68 In relation to the families of living veterans, the Committee considers that any extension of health care entitlements under the VEA should be based on need. The Committee notes that, in 1975, the Toose Report recommended a widening of the principle on which health care is provided to include the wives and children of veterans in receipt of the special rate or one of the allowances paid to double amputees (Toose 1975, p. 463). This recommendation was not adopted.

22.69 It is evident to the Committee from submissions that, as a group, veterans who receive the special rate or EDA and have dependent children are struggling hardest with health care costs and are in the most need of assistance. As stated earlier, all families of veterans receiving a Gold Card who wish to take out private health insurance must pay the family rate so that their children are covered, even though the veteran has a Gold Card and does not need to utilise private health cover. However, not all of these veterans are in a position of financial need as a result of service-related incapacity that limits their ability to take out private health cover for their families. The Committee accepts that, of all veteran Gold Card holders, special rate and EDA veterans are the veterans most severely affected by their service and are also in financial need. The Committee understands that most of these veterans have income and assets at a

level that qualifies them for an income support pension.¹⁴¹ The Committee considers that some health care assistance is needed to help these veterans with the costs of private health insurance for their children.

Conclusions in Relation to Widows and Widowers who do not Qualify for the War or Defence Widow's Pension

22.70 The Committee appreciates that some widows of veterans, particularly World War II veterans, are now of advanced age, reliant on a social security pension and in need of assistance with health care services not covered by Medicare. However, the Committee considers that provision of the Gold Card, where there is no relationship between the veteran's service and the veteran's death, is not in keeping with the philosophy underpinning the VEA. Many of this group have also sought the war or defence widow's pension, and this is discussed in Chapter 19.

Conclusions in Relation to Partners and Dependent Children of Veterans

22.71 For the reasons set out in paragraph 22.69, the Committee concludes that some health care assistance is warranted for some veterans receiving the special rate, or the EDA, who decide to take out private health insurance for their children. In the case of special rate veterans, this assistance should be provided only where those veterans transfer to the new disability pension structure proposed by the Committee in Chapter 30.

22.72 In considering what type of health care assistance should be provided, the Committee noted that the Gold Card has consistently been provided only to war and defence widows and the dependent children of the widow and the deceased veteran. The Committee proposes that health care assistance should be in the form of a tax-free allowance. While not providing the extent of cover provided by the Gold Card, the Committee considers that this type of assistance will better enable the families of special rate and EDA veterans to access private health insurance.

22.73 The Committee also prefers this option to the suggestion in some submissions that cover be provided under the Defence Health Service, because that service is designed to provide health coverage for serving members of the Defence Force only. Additionally, the payment of an allowance will enable

¹⁴¹ DVA statistics for June 2002 show that 9920 out of 12,510 EDA veterans, and 20,319 out of 26,423 special rate veterans, receive the service pension. The financial status of the remainder is not known. Some of the remainder would not receive the service pension because they do not have qualifying service but are in a similar financial position. Others who do have qualifying service would not be receiving the service pension because their income or assets exceed the pension eligibility limits.

choice of the fund package best suiting the needs of the children and will allow families to change funds as the need arises.

22.74 The Committee suggests that the Government determine the level of health cover for which the allowance is provided, but recommends that the level should be sufficient to assist the family to take out health insurance that includes private hospital cover (to alleviate concerns about delays in providing some treatments through the public health system), doctor of choice and ancillary benefits. The rate of the allowance for this level of health cover should be the difference between the family rate and single rate private health insurance (after taking account of the 30 per cent rebate on private health insurance). This recognises that the families of special rate and EDA veterans with children have the additional expense of family health cover not incurred where there are no dependent children. The allowance should be indexed to take into account increases in private health insurance costs, and should be payable whilst the children remain dependent on the veteran and are able to be covered under a family health insurance policy. The allowance should cease on the veteran's death, when dependent children of special rate and EDA veterans qualify for a Gold Card under existing provisions in the VEA.

22.75 In restricting eligibility for the allowance to those special rate recipients transferring to the proposed new disability pension structure and EDA veterans who have dependent children, the Committee is also aware that a number of partners of special rate and EDA veterans without dependent children experience difficulties. The argument was made in some submissions that the partner had foregone opportunities to engage in paid employment (which could have improved the family's financial position) so that the partner could act as unpaid carer of a severely disabled veteran. There is no data available on the extent to which this has occurred. Submissions also argued that the caring role that partners played had taken a toll on their own health. The Committee was unable to substantiate this because there has been no study of the health of partners of special rate and EDA veterans relative to the health of partners in the community generally, although there is some anecdotal and survey evidence to indicate that many partners of veterans have suffered adverse health effects.¹⁴²

22.76 The Committee does not consider that the health care allowance should be provided to all partners of special rate, intermediate rate or EDA veterans without dependent children, because the problem of having to pay for family rate private health insurance unused by the veteran does not occur in these cases. Additionally, although the extent to which partners of these veterans have

¹⁴² DVA (1998b, p. 69). Forty per cent of Vietnam veterans reported that their partners suffered health problems that they felt may be related to the veteran's service in Vietnam. The most commonly cited problems were stress, anxiety and depression. The findings led to counselling assistance being provided to partners through the Vietnam Veterans' Counselling Service.

foregone employment opportunities or suffered adverse health effects is not known, the Committee's recommendations in Chapter 30 provide extra assistance for partners of special rate and intermediate rate veterans electing to transfer to a pension under the proposed new disability pension structure.

22.77 For instance, the proposed new structure provides a carer's allowance for the partner of a special rate veteran if the partner is under the age of 65 and providing full-time care for the veteran. If granted under the age of 65, the carer's allowance can continue past that age where the partner is still providing full-time care for the veteran. The care allowance recognises that such partners have foregone the opportunity to undertake paid work and accumulate retirement benefits in order to care for a veteran who is severely disabled through service. The allowance would be paid in lieu of a social security carer's allowance and would be paid at a higher rate than that allowance.

22.78 Additionally, partners of special rate and intermediate rate veterans and their children electing to transfer to the proposed new disability pension structure will be entitled to non-economic loss compensation in acknowledgment of the physical and emotional effects of living with a veteran who is severely incapacitated through service. This additional assistance will improve their financial position and capacity to take out private health insurance should they elect to.

22.79 Partners providing full-time care for a special rate veteran who elects *not* to transfer to the proposed disability pension structure may already be able to access the social security carer's allowance. These families may also benefit from increased income support, if the veteran does not have qualifying service, as a result of the Committee's recommendation to exempt all disability pensions as income for social security purposes.

Conclusions in Relation to Disabled Adult Children of War Widows

22.80 As stated in paragraph 22.31, a disabled adult child of a deceased veteran whose death has been accepted as war-caused, who had a treatment entitlement before 18 October 1985, continues to receive those benefits. This entitlement was one of a raft of entitlements for dependants of veterans that were phased out in the mid-1980s. There were two reasons for this rationalisation. First, a wider range of entitlements had become available to these people through the social security system. Second, an attempt was being made to focus the repatriation system more on veterans. The Committee understands that there are now only 40 disabled adults receiving DVA health care benefits.

22.81 The Committee appreciates that, on the face of it, it seems inequitable that some disabled adult children have DVA health care coverage and some do not. The Committee also understands the arguments put forward that these disabled children are children of veterans and that they will never reach a level of independence achievable by other children of veterans. Conversely, it could be argued that:

- assistance for these disabled persons is already available through other government programs available to all disabled members of the Australian community;
- the trend over the past 20 years has been to concentrate funds in the Veterans' Affairs portfolio on benefits and services for veterans, war and defence widows and orphaned children, as defined in the legislation, with the social security system and other government programs taking care of the needs of other family members; and
- the VEA should not be used as a vehicle to rectify deficiencies perceived in assistance provided through other government programs.

22.82 The Committee notes the concerns of the Legacy Co-ordinating Council and War Widow's Guild for some elderly war widows who are struggling financially and personally to care for severely and permanently disabled adult children of veterans. A wide range of community support systems, including the social security system, and state and local government community health and personal support programs, is available to assist these disabled persons and their carers. The Committee understands that the adequacy of such support mechanisms is part of a broader community issue of the difficulties faced by widowed full-time carers and their severely disabled adult dependants. The Committee has not been able to investigate the needs of this particular group of carers and their adult disabled dependants, but it considers that the concern brought to its attention is worthy of examination by the Government and recommends accordingly.

Conclusions in Relation to Disabled Children of Veterans Exposed to Toxic Chemicals

22.83 The Committee notes that special arrangements are in place under the Vietnam Veterans' Children Support Program to provide health care assistance for the children of Vietnam veterans where those children have been diagnosed with spina bifida manifesta, cleft lip, cleft palate, adrenal gland cancer or acute myeloid leukaemia. These arrangements were put in place as a result of the findings of the Vietnam Veterans' Health Study. The study did not establish that there was a causal link between these conditions in children and the service of the parent in Vietnam, but it did find a higher prevalence of these conditions in

the children of Vietnam veterans compared to children in the general community.

22.84 The Committee understands that DVA has initiated some research into paternally mediated birth defects and that further research is being proposed. The Committee had neither the time nor the resources to assess whether there was a causal link between a veteran's exposure to toxic chemicals and disability or disease in his children. Consequently, the Committee is unable to make a recommendation on this issue, but notes that the issue is being examined by DVA through properly conducted research.

British, Commonwealth and Allied Veterans and Mariners

Basis on which the Gold Card or Other Health Care Assistance should be Provided

22.85 The Gold Card has not previously been provided to BCAL veterans and mariners because it is regarded as a compensation benefit and has thus been limited to veterans of the Australian armed services. The only exception has been for those BCAL veterans domiciled in Australia immediately before their enlistment and BCAL mariners who meet prior residency provisions, who are treated under the VEA as if they had enlisted in the Australian armed services or had been Australian mariners.

22.86 The arguments relating to the provision of the Gold Card and other compensatory benefits under the VEA to BCAL veterans and mariners are discussed in Chapter 21.

22.87 As mentioned in Chapter 21, the Committee considers that the Commonwealth Government, as an employer, has a responsibility to consider first the needs of veterans of its own armed forces and their families. As with other members of the Australian community, BCAL veterans and mariners have access to benefits through Medicare and may be eligible for a 30 per cent government rebate on private health insurance. In addition to these benefits, BCAL veterans and mariners may receive a service pension and Pensioner Concession Card benefits or a CSHC five years earlier than the community norm. They may also qualify for repatriation pharmaceutical benefits through the Orange Card where they have World War II qualifying service and are 70 years of age or over. The Committee is also aware that an extension of the Gold Card to these veterans would be problematic, in that some of these veterans already receive health care benefits for conditions related to their service from the country in the forces or merchant navy of which they served.

Conclusions in Relation to British, Commonwealth and Allied Veterans and Mariners

22.88 The Committee considers that issues concerning BCAL veterans and mariners hinge on the more central question of whether they should have access to VEA compensation benefits on the same basis as veterans of the Australian armed services. This is discussed further in Chapter 21. The Committee concludes that extension of the Gold Card to all BCAL veterans and mariners irrespective of their connection with Australia prior to their service is not supportable.

Civilians

Basis on which the Gold Card or Other Health Care Assistance should be Provided

22.89 The Committee notes that submissions from civilians generally seek to have access to the same benefits under the VEA as veterans of the Australian armed services who served in the conflict in which those civilians were involved. Arguments put forward by some of these groups (e.g. the Australian Women's Land Army) held that, failing the provision of access to all benefits, they should receive a Gold Card in recognition of their service, the possible effects of that service on their health and their need for assistance with the costs of health care.

22.90 As discussed earlier in this chapter, the Committee does not consider that the Gold Card should be provided purely in recognition of a type of service that a veteran performs. Similarly, the Committee does not consider that a Gold Card should be a means of providing recognition of service by civilians during a conflict in which Australian armed services were involved. Any extension of the Gold Card to civilians hinges on the broader question of whether particular civilian groups should have access to the VEA, which is discussed in Chapter 20.

Conclusions in Relation to Civilians

22.91 The Committee therefore concludes that the Gold Card should not be provided as a form of recognition to civilians assisting Australia's efforts in a conflict in which the Australian armed services were engaged, and that only civilians who meet the test outlined in Chapter 20 should be regarded as veterans for the purpose of assessing eligibility for the Gold Card and other benefits under the VEA.

RECOMMENDATIONS

The Committee recommends that:

- the Gold Card not be provided to veterans purely as recognition of service in the Australian armed services;
- the Gold Card not be extended to further categories of World War II veterans of the Australian armed services; however, should the Government accept the Committee's recommendations in relation to qualifying service for World War II service (see Chapter 12), veterans of the Australian armed services so gaining qualifying service should be entitled to the Gold Card;
- the Gold Card not be extended to all veterans of the Australian armed services for service with BCOF in Japan; however, should the Government accept the Committee's recommendations in relation to the classification of certain BCOF service as warlike, veterans of the Australian armed services with this service prior to 1 July 1947 should be entitled to the Gold Card;
- the Gold Card not be extended to further categories of post-World War II veterans without qualifying service;
- the VEA be amended so that there will be no further grants of the Gold Card to post-World War II veterans of the Australian armed services at age 70 on the basis of their having rendered qualifying service, unless the veteran satisfies some measure of financial need;
- the Gold Card not be extended to all widows of veterans and the VEA continue to provide the Gold Card only to widows eligible for a war or defence widow's pension;
- the VEA be amended to enable assistance with private health insurance to be provided for the dependent children of veterans entitled to the special rate disability pension who transfer to the proposed new disability pension structure outlined in Chapter 30, or EDA, through the provision of a tax-free health care allowance, indexed to the Consumer Price Index, if the family takes out private health insurance;
- the Government examine the needs of war widows and others caring for severely disabled adult orphans of veterans and the adequacy of existing support systems to meet those needs;
- the Gold Card not be extended to all British, Commonwealth and allied veterans and mariners or to those of them with qualifying service; and
- access to the Gold Card not be extended to civilians who do not qualify as veterans under existing provisions of the VEA.