



**VIETNAM VETERANS
ASSOCIATION OF AUSTRALIA**

**SUBMISSION TO THE REVIEW COMMITTEE OF THE
VETERANS' ENTITLEMENT ACT**

**Part 2
ELIGIBILITY UNDER THE VEA**

17 April 2002

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ELIGIBILITY UNDER THE VEA – VVAA SUBMISSION

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ELIGIBILITY UNDER THE VEA – VVAA SUBMISSION

Introduction

Two eligibility avenues There are two avenues through which members of the Australian Defence Force (ADF) may claim benefits. The first avenue is the Veterans' Entitlements Act 1986 (VEA 1986), and the second the Safety, Rehabilitation and Compensation Act 1988 (SRCA 1988) or Military Compensation Rehabilitation Scheme 1994.

VEA 1986 The basis for eligibility under the VEA is that the claimant must have undertaken operational service in war-like or non war-like circumstances as defined and promulgated by the Department of Defence for incorporation into the VEA, or non-operational Defence Service between 1972 and 1994. It is important to note that while it determines eligibility, administers and delivers the benefit, the Department of Veterans' Affairs does not define eligibility.

SRCA 1988, MCRS 1994 Eligibility under the SRCA is reserved for those who serve in time of peace in the ADF up until 1994 when all were covered under MCRS, this included peace and war-like service. This results in 'workers compensation' like benefit for service that involves training for war – an inherently dangerous occupation - and significant numbers of deaths and injuries arise from such training.

The distinction Since Federation, Australians and Australian legislation have always considered wartime service and peacetime service differently and this paper contends that this is a proper view.

Wartime service (and this paper examines the often problematic multiplicity of definition) has, since the early days of Federation, attracted benefits and beneficial standards of proof that do not accrue to those who perform peacetime service.

Changes to legislation Changes to the legislation which applies to veterans and Service personnel have historically derived either from review by the Department of Veterans' Affairs and consultation with the veteran community (eg introduction of the VEA 1986) or as a result of legal precedents where decisions of the delegate have been contested or appealed in the courts.

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Aim of the Paper

Scope of the paper Service, ex-service personnel and their dependants are permitted to claim benefits under the VEA 1986, if they are eligible under the criteria identified within the VEA 1986. It is therefore necessary to define that eligibility in a manner that is consistent and equitable.

Aim The aim of this paper is to:

1. Trace the historical development of eligibility criteria.
2. Examine the distinctions between:
 - (a) eligible war service;
 - (b) operational Service;
 - (c) qualifying service;
 - (d) continuous full-time service;
 - (e) Allotted to duty as an individual or member of a Unit;
 - (f) the incurred danger criteria; and
 - (g) hazardous service.
3. Consider warlike and non-warlike categories of service; and
4. Make conclusions and recommendations based on those findings.

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Aim of the Paper, Continued

**Discussion
topics**

The following topics are discussed in the remainder of the paper:

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ELIGIBILITY UNDER THE VEA – VVAA SUBMISSION

World War One (WW1)

Background Prior to WW1, the Defence Force consisted of the Naval and Military Forces of the Commonwealth. They were divided into Permanent and Citizen Forces. There was a small permanent Army and a Navy.

Following the outbreak of hostilities in August 1914, an Australian Imperial Force (AIF) was raised. Women served with the Army as members of the Army Medical Corps Nursing Service, and most of them served overseas.

Some personnel served overseas and some served in Australia, mainly on continuous full-time service.

Eligible war service Eligible war service is recognised where a member served as a member of the Defence Force who rendered continuous full time service:

- (a) in Australia during the period 4 Aug 1914 to 1 Sep 1921¹
- (b) outside Australia whilst on operational service, during the period 4 Aug 1914 to 1 Sep 1921.

A member of the Defence Force, with a period of operational service shall be considered as having operational service for standard of proof for any other WW1 service in Australia, while rendering continuous full-time service².

Significant issues arising All though all had eligible war service, some also had operational service.

Operational service during WW1 was overseas service.

Benefits available for those with operational service was extended to apply to their eligible war service within Australia.

There was a clear recognition that operational service extended beyond the cessation of hostilities. This acknowledged that the requirement for a further period of service after the truce when there was still danger from the enemy while the cleanup of the battlefields, mines, demolition of unexploded ordnance and similar activities were undertaken.

¹ VEA ss7(1)(a) and 7(1)(b)

² VEA ss 6(1)(d)

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World War Two (WW2) and Immediate Post War Period

Background

At the time that war was declared on 3 Sep 1939, the Armed Forces consisted of the Permanent Forces and the Citizen Forces. On 15 Sep 1939 it was announced that the Second Australian Imperial Force would be enlisted for service either at home or abroad. Following the establishment of the AIF, the structure of the Defence Force was:

The Royal Australian Navy	The Australian Army	The Royal Australian Air Force
Permanent Naval Force	Permanent Military Force (PMF)	Permanent Air Force
Citizen Naval Force	Citizen Military Force (CMF)	Citizen Air Force
Naval Reserve Force	Active Citizen Military Force	
Naval Volunteer Reserve Force	Australian Imperial Force (AIF)	

Service in the CMF was also known as service in the Militia. The Army, Navy and Air Force raised women's' forces and nursing services which were attached to all three arms of the Defence Force.

Eligible war service

A member of the Defence Force with operational service was considered as having operational service for standard of proof for any other WW2 service in Australia (including Northern Territory and adjoining islands) and the Torres Strait Islands, while rendering full time service, providing the criteria were met. This is comparable to the WW1 conditions of eligibility.

Continued on next page

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World War Two (WW2) and Immediate Post War Period, Continued

**Eligible war
service,
continued**

Simplistically, eligible war service was recognised where the member rendered service:

- (a) as a member of the Defence Forces on continuous full time service inside Australia during the period 3 Sep 1939 to 1 Jul 1951 where the person was injured or contracted a disease as a result of enemy action.
- (b) as a member of the Defence Forces on continuous full time service outside Australia whilst on operational service overseas and for which differing periods of individual service applied;
- (c) as a person to whom the Act applies, only for the periods while employed by the Commonwealth, on a special mission outside Australia;
- (d) as an eligible civilian who was killed during the invasion of the Territory of Papua or the Territory of New Guinea during WW2 as a result of action by the enemy or who was detained by the enemy, for the period for which they were detained;
- (e) as a member of the Defence Forces on continuous full time service inside Australia in the prescribed parts of the Northern Territory between 19 Feb 1942 and 12 Nov 1943,
- (f) within Australia as a person on operational service in such circumstances as could be treated as service in actual combat against the enemy (examples include the submarine attack on Sydney Harbour, the prison camp breakout at Cowra;
- (g) certain Torres Strait Islanders;
- (h) mariners; and
- (i) members of the Interim Forces who were enlisted, appointed, re-engaged or re-appointed to the Defence Force for a term of not more than 2 years or was appointed with a unit of the Defence Force for a term of not more than two years on or after 1 Jul 1947 and before 1 Jul 1949.

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World War Two (WW2) and Immediate Post War Period, Continued

**Significant
issues arising**

All had eligible war service; some had operational service – a principle carried through from WW1.

Operational service during WW2 was mainly overseas, although some operational service in Australia was recognised during specific periods and at specific locations.

Benefits for operational service was extended to eligible war in Australia, another principle carried forward from WW1.

In the transitional period from the end of WW2 to the start of the Australian Permanent Forces there was a period of service known as the Interim Forces, which, provided certain criteria were met, qualified as eligible war service but not for the purposes of obtaining the Service Pension.

Operational Service is qualifying service for Service Pension.

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Korea

Background On 25 Jun 1950 North Korea invaded South Korea. On 27 Jun 1950 the United Nations (UN) Security Council recommended assistance to South Korea. On 29 Jun 1950 HMAS BATAAN and HMAS SHOALHAVEN were placed at the disposal of the UN. 77 Squadron Royal Australian Air Force in Japan was placed on alert and went into action on 2 Jul 1950.

Defence personnel who served in Korea were members of the Permanent Military Forces (PMF). The area was defined for operational service from and including 19 Jun 1950 until 18 Apr 1956.

The operational area of the Korean conflict included the waters contiguous to the coast of Korea for a distance of 185 kilometres seaward from the coast. The area of Japan, including its coastal waters, was excluded from this definition.

By 30 Jun 1956 only 80 Australian signals personnel remained in Korea, and after 18 April 1956 their service was deemed not to be operational but normal peacetime service, removing eligibility under the VEA.

Service by military observers in the De-Militarised Zone (DMZ) is considered to be beyond normal peacetime duties and consequently is classified as operational service but it does not qualify the individual for Service Pension.

Allotted for duty The concept of allotment for duty was introduced, whereby the individual or unit is defined as falling within the definition of the operational area geographically and chronologically and therefore being entitled to the operational level of pension entitlement and fulfilling the qualifying service criteria for the Service Pension. Allotment for duty is not the same as the normal Defence Force posting procedures.

Operational service for Korea Operational service for Korea is defined as continuous full time service outside Australia as a member or as a member of a unit allotted for duty in the operational area applicable to the Korean conflict during the period that area was an operational area.

Continued on next page

ELIGIBILITY UNDER THE VEA – VVAA SUBMISSION

Korea, Continued

**Significant
issues arising**

Operational service is now defined in a different way to that which applied during WW1 and WW2, with the requirement for the member to be allotted for duty, and serve in the operational area on a full time basis.

“Allotment for duty” instruments are implemented as a cross-departmental tool.

Specific rules for operational service include definition of the area seawards from the coast.

Post-conflict duty in the DMZ is maintained as operational but does not itself confer eligibility for the Service Pension.

The concept of “war service” is not associated with this regional conflict.

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Japan

Background

The British Commonwealth Occupation Force (BCOF) Japan was formed after the formal surrender of Japan. BCOF service commenced on 13 Feb 1946 and continued until 1 Jul 1951 and is classified as operational service.

Section 6 extended operational service to include a person, who, “as a member of the Defence Force, or a member of a unit of the Defence Force that was assigned for service in Japan at any time during the period from and including 28 Apr 1952 to and including 19 Apr 1956” This only applies if the member or the member’s unit is included in a written instrument issued by the Defence Force.

Operational service

As a result of a review of anomalies, legislation was enacted to entitle, among others, those who service with the BCOF to operational service for the purposes of pension and treatment. BCOF service in Japan was from 3 Jan 1949 to 30 Jun 1951 inclusive.

With effect 13 May 1997, the definition of operational service was revised to incorporate the terms “warlike” and “non-warlike”. Both applied to operational service, but while warlike service is qualifying service for the award of the Service Pension, non-warlike service is not qualifying service. This is discussed in more detail under the heading Warlike and Non Warlike Service on page 16.

Significant issues arising

The cut-off date for operational service in BCOF for service in Japan is 1 Jul 1951.

This service is not qualifying service.

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Malaya, Malaysia, Singapore and Borneo

Background

The British Army in Malaya from 16 Jun 1948 was involved in a guerrilla war with the Malayan Communist Part led by Chin Peng. This became known as the “Malay Emergency”. Australia became involved from 29 Jun 1950 when Numbers 1 and 38 Squadrons of the Royal Australian Air Force were sent to Malaya. Although some members of the Australian Army were in Malaya from 1950, the Army was not sent to Malaya in force until 1955. The Repatriation Act 1920 was amended in 1950 to recognise this service.

In 1956 the Repatriation (Far East Strategic Reserve) Act 1956 was passed to provide benefits for member of the Defence Force who served in Malaya with or in connection with the British Commonwealth Far East Strategic Reserve. The Act came into effect on 1 Sep 1957, the day that the Federation of Malayan states became an independent country.

In 1962 the repatriation (Special Overseas Service) Act 1962 was passed to provide benefits for members of the Defence Force who served outside Australia on special service. The Act included the Federation of Malaya as one of these special areas.

Following rebellion in the Borneo states of Sarawak, North Borneo (Sabah) and Brunei, the Federation of Malaysia was formed, including Malaya, Singapore, Sarawak and Sabah. The Act included those areas where Australia was subsequently involved in the “Confrontation” with Indonesia.

Allotment for duty procedures continued for this area of service.

The duration of operational service in the Malaya, Malaysia, Singapore and Borneo areas is similar to that of the Korean war. Australian Defence Force (ADF) members assigned for service in Singapore in support of the Malayan Emergency during the period 29 Jun 1950 to 31 Aug 1957 inclusive are classified as having been on operational service, however such service is not deemed to be qualifying service for the award of the Service Pension.

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ELIGIBILITY UNDER THE VEA – VVAA SUBMISSION

Malaya, Malaysia, Singapore and Borneo, Continued

**Significant
issues arising**

Different Acts relate to operational service at different locations and periods of time for ADF service in the South East Asian area with qualifying service for Service Pension.

Service in Singapore between 29 Jun 1950 and 31 Aug 1957 is classified as operational service (non-warlike) for Repatriation benefits, but is not qualifying service for Service Pension.

Service in Singapore or the Federation of Malaya between 1 Aug 1960 and 27 May 1963 is operational service (non-warlike) for Repatriation benefits, but is not qualifying service for Service Pension.

Sub-section 13(6) of the VEA provides for claims in respect of death or incapacity to be accepted in limited circumstances where the person served outside Australia in non-operational areas and were injured by hostile action on or after 31 Jul 1962.

The original provision was introduced into the Repatriation (Special Overseas Service) Act 1962 at the time that TOP SECRET operations were conducted in Kalimantan (Indonesian Borneo) during the period of confrontation with Indonesia. As Indonesia was not included in the operational area, it was considered necessary to provide coverage rather than alert the Indonesian government to these covert operations. This provision still exists in the VEA 1986.

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Vietnam

Background

On 24 May 1962 the Minister for Defence announced that military instructors would be sent to the Republic of Vietnam. The first “advisors”, members of the newly formed Australian Army Training Team Vietnam or AATTV, arrived in Jul 1962 and deployed with US advisory units. Their numbers were doubled in 1964 and a RAAF Transport Squadron was committed.

In 1965 Australia’s first major commitment of combat troops was announced. The Navy became involved in Feb 1967 when clearance divers went into operations.

Schedule 2 defines the operational area as the southern zone of Vietnam and waters up to 185.2 km from the shore of Vietnam, not including land or waters forming part of Cambodia or China for the period 31 Jul 1962 to 11 Jan 1973. This is qualifying service for Service Pension.

The Minister also determined that service in Vietnam between 12 Jan 1973 and 29 Apr 1975 is warlike service that is qualifying service for Service Pension.

HMAS VAMPIRE and HMAS QUICKMATCH visited Saigon from 25 to 29 Jan 1962 and as that visit involved a risk above that expected from normal peace-time service, it has been classified as operational service that is not qualifying service for Service Pension.

From 1 Jan 2001, merchant mariner crews of HMAS BOONAROO (17 Mar 1967 to 13 Apr 1967) and HMAS JEPARIT (19 Dec 1969 to Mar 1972) are to be treated as members of the Defence Force rendering continuous full-time service for the periods indicated. This is qualifying service for Service Pension

Certain members of the Defence Force visited Vietnam on staff visits, staff and equipment inspections, public relations, familiarisation, welfare visits attaché duties and the like. Others included are members of the RAN who crewed MV JEPARIT when this vessel was not a Navy vessel, members of various RAAF units and aircrew of the RAAF detachment, Sanglely Point.

Continued on next page

ELIGIBILITY UNDER THE VEA – VVAA SUBMISSION

Vietnam, Continued

**Background,
continued**

The service documents of these people should indicate that they have been deemed to be on full time service and/or deemed to be allotted for duty in an operational area. Advice from the relevant Service should be obtained. Qualifying service will depend upon the specific circumstance and advice should be sought.

Vietnam also introduced the concept of “port to port” service.

Independent concert parties or entertainers are NOT covered by veterans’ legislation, neither are journalists working for newspapers, Australians working as civilians for the United States Army, civilian medical teams not under the command of the Australian military or the staff of the Australian Embassy (excepting guards).

**Operational
service**

Vietnam war service during the period 31 Jul 1962 to 11 Jan 1973 is determined to be warlike service and thus is qualifying service for Service Pension.

The Review of Service Entitlements in respect of South East Asian Service 1945-1975 (Mohr Review) later extended qualification as warlike (and thus qualifying service for Service Pension) to service in Vietnam for the period 12 Jan 1973 to 29 Apr 1975 inclusive.

**Significant
issues arising**

With the introduction of the warlike and non-warlike classifications, the definition of entitlements for future deployments becomes more certain and consistent.

The specific operational service of some individuals will require relevant Service advice.

The main periods of service in Vietnam are classified as operational service and are qualifying service for Service Pension.

Continuous full time service in the Defence Force within a gazetted operational area when allotted for duty remains the standard for eligibility. The incurred danger criterion also continues.

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Thailand

Background Service in north-east Thailand, including UBON, during the period 31 May 1962 to 24 Jun 1965 inclusive is classified as operational service but does not count as qualifying service for Service Pension.

Service in north-east Thailand, including UBON, during the period 25 Jun 1965 to 31 Aug 1968 inclusive, as a part of a unit listed on a Ministerial Determination is operational service classified as warlike, and is consequently qualifying service for Service Pension.

Significant issues arising Allotment for continuous full time service in an operational area remains the standard.

The period that corresponds to support for the Vietnam war is determined to be operational, warlike and qualifying service. Other service is operational, non-warlike and non-qualifying.

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Warlike and Non Warlike Service

Background A prospective amendment to the VEA was introduced in 1993. This related to approval for a new Department of Defence classification system to determine the conditions of service to apply, prospectively to the deployment of forces. The new system was based on the concepts of “warlike” and “non-warlike” service. Service that is warlike and non-warlike will be operational service and although warlike service is qualifying service for Service Pension, non-warlike service is not.

Warlike service Covers those military activities where the application of force is authorised to pursue specific military objectives and there is an expectation of casualties. These operations can encompass but are not limited to:

- (a) a state of declared war;
- (b) conventional combat operations against an armed adversary; and
- (c) peace enforcement operations which are military operations in support of diplomatic efforts to restore peace between belligerents who may not be consenting to intervention and may be engaged in combat activities. Normally but not necessarily always they will be conducted under Chapter VII of the UN Charter, where the application of all necessary force is authorised to restore peace and security or other like tasks.

Non-warlike service This covers those activities short of warlike operations where there is a risk associated with the assigned tasks(s) and where the application of force is limited to self-defence. Casualties could occur but are not expected. These operations encompass but are not limited to:

- (a) **Hazardous.** Activities exposing individuals or units to a degree of hazard above and beyond that of normal peacetime duty such as mine avoidance and clearance, weapons inspection and destruction, Defence Force aid to the civil power, Service protected or assisted evacuations and other operations requiring the application of minimum force to effect the protection of personnel or property, or other like activities.

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ELIGIBILITY UNDER THE VEA – VVAA SUBMISSION

Warlike and Non Warlike Service, Continued

Non-warlike
service,
continued

- (b) **Peacekeeping.** Operations involving military personnel, without powers of enforcement, to help restore and maintain peace in an area of conflict with the consent of all parties. These operations can encompass but are not limited to:
- activities short of peace enforcement where the authorisation of the application of force is normally limited to minimum force necessary;
 - activities such as the enforcement of sanctions in a relatively benign environment which expose individuals or units to “hazards” as described above;
 - military observer activities with the task of monitoring cease-fires, redirecting and alleviating cease-fire tensions, providing “good offices” for negotiations and impartial verification of assistance or cease-fire agreements and other like activities; and
 - activities that would normally involve the provision of humanitarian relief.
-

ELIGIBILITY UNDER THE VEA – VVAA SUBMISSION

Namibia

Background

Service in Namibia relates to service in an area comprising the UN Mandated Territory of Namibia and the area of land extending 400 km outward from the borders of Namibia into the adjoining countries of Angola, Zambia, Zimbabwe, Botswana and South Africa, including Walvis Bay during the period 18 Feb 1989 to 10 Apr 1990 inclusive.

Significant issues arising

Service in Namibia during the defined period and within the defined boundaries is deemed to be operational, warlike and therefore qualifying service.

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Persian Gulf

- Background** “Persian Gulf” service is defined as service during the period 2 Aug 1990 to 9 Jun 1991 inclusive within:
- Bahrain, Oman, Qatar, Saudi Arabia, The United Arab Emirates and the Island of Cyprus;
 - the sea areas contained within the Gulf of Suez, the Gulf of Aqaba, the Red Sea, the Gulf of Aden, the Persian Gulf and the Gulf of Oman;
 - the sea area contained within the Arabian Sea north of the boundary as nominated in Schedule 2 of the VEA 1986; and
 - the sea area contained within the Suez Canal and the Mediterranean Sea east of 30 degrees east.

This service is operational, warlike and qualifying service for Service Pension.

Service in the area comprising Iraq and Kuwait for the period 23 Feb 1991 to 9 Jun 1991 inclusive is defined as operational, warlike and qualifying service.

Individual service personnel who served in the Gulf region may be individually allotted for duty.

Significant issues arising The majority of service personnel who served in this conflict were RAN and RAAF personnel although individual army personnel are included.

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Cambodia

Background Service in Cambodia is defined as service in the area comprising Cambodia and areas in Laos and Thailand that are not more than 50 km from the border with Cambodia during the period 20 Oct 1991 to 1 Oct 1993.

Significant issues arising Service in Cambodia occurred as a part of a UN deployment and has been deemed to be warlike operational service under Item 12 of VEA Schedule 2. It is qualifying service for the purposes of the Service Pension.

Members of the ADF were on continuous full time service in an operational area, allotted for service.

ELIGIBILITY UNDER THE VEA – VVAA SUBMISSION

The Former Yugoslavia

Background This service is defined as service in the area comprising the former Yugoslavia during the period 12 Jan 1992 to 24 Jan 1997 inclusive. It is deemed to be operational, warlike service, which is qualifying service for the purposes of the Service Pension.

Operational service during periods commencing in 1999 and involving Operations AGRICOLA, ALLIED FORCE and JOINT GUARDIAN are deemed to be non-warlike operational service, which does not qualify for Service Pension.

Significant issues arising Determined as operational and qualifying service under Item 13 of VEA Schedule 2 for members of the ADF on continuous full time service within the defined area and who were allotted for service.

ELIGIBILITY UNDER THE VEA – VVAA SUBMISSION

Somalia

Background Service in the area comprising Somalia during the period 20 Oct 1992 to 30 Nov 1994 inclusive is deemed to be operational and qualifying service.

Significant issues arising Determined as operational and qualifying service under Item 14 of VEA Schedule 2 for members of the ADF on continuous full time service within the defined area and who were allotted for service.

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East Timor

Background East Timor has not yet been listed in VEA Schedule 2. It includes service in the area of operations that comprises East Timor and the sea area that on 16 Sep 1999 was the territorial sea of Indonesia adjacent to East Timor.

Operational service was determined for:

- Operation STABILISE 16 Sep 1999 to 23 Feb 2000 - warlike
 - Operation FABER 19 Jun 1999 to 15 Sep 1999 - non-warlike
 - Operation FABER 16 Sep 1999 to 23 Feb 2000 - warlike
 - Operation WARDEN 16 Sep 1999 to 10 Apr 2000 - warlike
 - Operation TANAGER 20 Feb 2000 to current - warlike
 - Operation SPITFIRE 6 Sep 1999 to 19 Sep 1999 - non-warlike
-

Significant issues arising VEA Schedules 2 and 3 have not yet been amended to define service in East Timor. There are operations that are warlike and others that are not warlike. This adds a level of complexity when establishing a veteran's eligibility.

The criteria that warlike service is qualifying service for the purposes of the Service Pension, and that non-warlike service does not create eligibility for Service Pension continues to be observed.

ELIGIBILITY UNDER THE VEA – VVAA SUBMISSION

Hazardous Defence Service

Background Certain activities within a peace-time, Australian (Defence Service) environment may be identified either before or after the fact, as hazardous. There have been a number of incidents where either single or multiple deaths have occurred because of this hazard – that is, the risk of danger was realised. There is no provision for this type of service.

Training for war is in itself a dangerous occupation, and should be acknowledged as such. There is no provision for proper treatment of this outcome.

Derived entitlements Death, injury or illness arising from such hazardous service should not deliver an entitlement to Service Pension, as it is neither operational nor warlike.

It should however attract a beneficial standard of proof, with claims assessed in accordance with the Reasonable Hypothesis principle.

Income support pension should be administered by DVA and disability benefits should NOT be used to calculate the income support pension.

Mechanics Under the VEA s120(7) the Minister may determine by an instrument in writing that certain service is hazardous service for the purposes of S120. This determination may be made in advance, or in retrospect. The mechanism therefore exists to properly assess, administer and deliver a beneficial standard of proof for death, injury or illness incurred through training for war within a peacetime environment.

Such determinations may be listed in a third schedule, possibly numbered as 3A within the VEA.

ELIGIBILITY UNDER THE VEA – VVAA SUBMISSION

Conclusions

Definitions remove un- certainty and apply standards

The definitions of “warlike”, “non-warlike” and “peacetime” service have removed uncertainty in regard to the status of specific service. This removes the opportunity for anomalies to occur, and permits timely and consistent decisions to be made.

The application of further conditions continues to provide a yardstick by which operational service may be measured. These conditions include:

- membership of the ADF or being a civilian determined by the Minister to be eligible;
- continuous full time duty;
- service in an operational area’
- allotment for duty; and
- port to port provisions

There is a need for a further definition of “Hazardous Defence Service” to enable death, injury or illness incurred in particularly dangerous training to be properly administered.

Tables

Table 1 – Analysis of Schedules VEA Schedules 2 and 3 commencing on page 27 shows the way that Australian and overseas service has been allocated in terms of eligibility. Table 2 – Activity Not Scheduled commencing on page 30 is a list of operations that have not yet been made a part of Schedules 2 or 3.

Restriction of Service Pension to those incur- ring danger from the enemy

The link between warlike service and qualifying service for the purposes of entitlement to the Service Pension restricts the award of the Service Pension to those who are deemed to have incurred danger from the enemy, maintaining historical integrity.

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ELIGIBILITY UNDER THE VEA – VVAA SUBMISSION

Conclusions, Continued

**Application of
the beneficial
standard of
proof**

The VVAA concludes that death, injury or illness arising from the following types of service should be assessed under the Reasonable Hypothesis standard of proof:

- Operational, warlike, qualifying service;
 - Operational non-warlike, non-qualifying service;
 - Peacekeeping, non-warlike and non-qualifying service as listed in VEA Schedule 3.
 - Hazardous service which does not qualify for Service Pension
-

ELIGIBILITY UNDER THE VEA – VVAA SUBMISSION

Table 1 – Analysis of Schedules VEA Schedules 2 and 3

Information from Determinations and Schedules 2 & 3																		
Dates	Conflict/War/Svce	Schedule No	Eligible war Svce	Operational Svce	Qualifying Svce	Warlike Svce	Non-Warlike Svce	Defence Svce	Peacekeeping Svce	Hazardous Svce	Svce Inside Aust	Svce Outside Aust	Continuous Full time Svce	Allotted for Duty Period of Hostilities	Incurring Danger from			Notes
4 Aug 1914 to 1 Sep 1921	WW 1 (1) Svce outside Aust	2	X	X	X							X	X	X	X			4 Aug 14 to 11Nov 1918
4 Aug 1914 to 1 Sep 1921	WW 1 (2) Svce inside Aust	2	X								X		X	X				
3 Sep 1939 to 23 Apr 1952	WW 2 (1) Op Svce Outside Aust	2	X	X	X							X	X	X	X			3 Sep 39 to 29 Oct 1945 Svce outside Aust
On/After 1 Jul 1947	WW 2 (2) Interim Forces	2	X								X		X	X				Interim Forces
3 Sep 1939 to 28 Apr 1952	WW 2 (3) Op Svce Inside Aust	2	X	X	X									X	X			Operational Svce inside Aust
3 Sep 1939 to 28 Apr 1952	WW 2 (4) Eligible War Svce	2	X								X		X					Eligible Svce inside Aust
29 Jan 1947	Security Council Commission Balkans	3					X		X			X	X					
25 Aug 1947	Committee of Good Office	3					X		X			X	X					
26 Nov 1947	UN -Special Commission- Balkans	3					X		X			X	X					
1 Jan 1949	UN -Commission- Korea	3					X		X			X	X					
1 Jan 1949	UN –Mil Observer Group India & Pakistan	3					X		X			X	X					
28 Jan 1949	UN –Commission Indonesia	3					X		X			X	X					
27 Jun 1950 to 19 Apr 1956	UN- Korean War	2		X	X	X						X	X	X	X	X		
29 Jun 1950 to 31 Aug 1957	Malaya Conflict	2		X	X	X						X	X	X	X	X		
1 June 1956	UN -Truce Supervision Organisation	3					X		X			X	X					
1 Sep 1957 to 31 Jul 1960	Federation of Malaya/Colony of S'pore	2		X	X	X						X	X	X	X	X		
1 Aug 1960	UN –Operations in the Congo	3		X			X		X			X	X					

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Information from Determinations and Schedules 2 & 3																		
Dates	Conflict/War/Svce	Schedule No	Eligible war Svce	Operational Svce	Qualifying Svce	Warlike Svce	Non-Warlike Svce	Defence Svce	Peacekeeping Svce	Hazardous Svce	Svce Inside Aust	Svce Outside Aust	Continuous Full time Svce	Allotted for Duty Individual/Unit	Period of Hostilities	Incurred Danger from Enemy	Notes	
29 Oct 1991 to 7 Oct 1993	Cambodia	2		X	X	X						X	X	X	X	X		
27 Jun 1991	UN – Mission for the Referendum in Western Sahara	3					X		X			X	X					
18 May 1992	UN - Cambodia – Aust Police contingent to UN Transitional Authority	3					X		X			X	X					
12 Jan 1992 to 24 Jan 1997	The Former Yugoslavia	2		X	X	X						X	X	X	X	X		
20 Oct 1992 to 30 Nov 1994	Somalia	2		X	X	X						X	X	X	X	X		
27 Mar 1994	UN - Mozambique - Aust Police contingent	3					X		X			X	X					
21 Sep 1994	Bougainville – ADF Support to a Peacekeeping force for the Peace conference	3					X		X			X	X					
10 Oct 1994	Haiti - Aust Police contingent to the Multi-national force	3					X		X			X	X					

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Table 2 – Activity Not Scheduled

Information taken from Ministerial Determinations Date(s)	Information taken from Ministerial Determinations Conflict/War/Service	Schedule No	Eligible war Service	Opal Service	Qualifying Service	Warlike Service	Non-Warlike Service	Defence Service	Peacekeeping service	Hazardous Service	Service Inside Australia	Service Outside Australia	Continuous Full time Service	Allotted for Duty Individual/Unit	Period of Hostilities	Incurred Danger from Enemy	Notes
8 Oct 1993 to 4 Oct 1999	Cambodia & areas of Laos & Thailand not more than 50 kilometres from the border – Op Banner			X			X					X	X				Bruce Scott 21 Jun 2000
5 Jul 1997 to 14 Jul 1997	Cambodia – Op Vista			X			X					X	X				Bronwyn Bishop 23 Dec 97
25 Jul 1997 to 12 May 1997	Tech Survey Team- Liberville (Gabon) & Pointe Noire & Brazzaville (Congo)			X			X					X	X				Bronwyn Bishop 23 Dec 97
13 Feb 1997 to 12 May 1997	UN Observer mission Guatemala			X			X					X	X				Bronwyn Bishop 23 Dec 97
On/After 20 Nov 20 Nov 1997	UN Truce Monitoring Group Bougainville/ Buka Is			X			X					X	X				Bronwyn Bishop 23 Dec 97
On/After 17 Feb 1998	Gulf area (as described in Determination - Op Pollard			X			X					X	X				Bronwyn Bishop 6 Mar 98
On/After 1 May 1998	Peace Monitoring Group Bougainville Buka Is & PNG Territorial Waters - Op Bel Ici 2			X			X					X	X				Bronwyn Bishop 13 May 98
25 Feb 1999 to 10 Jun 1999 On/After 28 Feb 1999	Yugoslavia, Albania, Macedonia Op Agricola Op Agricola			X			X					X	X				Bruce Scott 24 Aug 99 Bruce Scott 14 Apr 99
On/After 18 Mar 99	Multi-national Maritime Interception Force, The Gulf Op Damask			X			X					X	X				Bruce Scott 30 Apr 99
On/After 13 May 1999	Iraq, Saudi Arabia & Kuwait Op Bolton			X			X					X	X				Bruce Scott 11 Aug 99
On/After 29 Sep 1999	No Fly Zone / Iraq, Saudi Arabia & Kuwait - Op Southern Watch			X			X					X	X				Bruce Scott 29 Jun 2000
15 Apr 1999 to 3 Jun 1999	Yugoslavia, Albania, Macedonia, Adriatic Sea & NATO bases in Italy - Op Allied Force			X			X					X	X				Bruce Scott 24 Aug 99

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Information taken from Ministerial Determinations Date(s)	Information taken from Ministerial Determinations Conflict/War/Service	Schedule No	Eligible war Service	Opal Service	Qualifying Service	Warlike Service	Non-Warlike Service	Defence Service	Peacekeeping service	Hazardous Service	Service Inside Australia	Service Outside Australia	Continuous Full time Service	Allotted for Duty Individual/Unit	Period of Hostilities	Incurred Danger from Enemy	Notes
On/After 11 Jun 1999	Yugoslavia, Albania & Macedonia - Op Joint Guardian			X			X					X	X				Bruce Scott 24 Aug 99
11 Jun 1999 to 25 Oct 1999	UNAMET East Timor - Aust police			X			X					X	X				Bruce Scott 21 Jun 99
On/After 25 Oct 1999	UNTAET East Timor - Aust police			X			X					X	X				Bruce Scott 25 Oct 99
19 Jun 1999 to 18 Sep 1999	East Timor & Territorial Sea of Indonesia adj - Op Faber			X			X					X	X				Bruce Scott 9 Nov 99
16 Sep 1999 to 28 Feb 2000	East Timor & Territorial sea of Indonesia adj- Op Faber			X	X	X						X	X	X	X	X	Bruce Scott 21 Jun 2000
16 Sep 1999 to 10 Apr 2000	East Timor & the Territorial sea of Indonesia adj - Op Warden			X	X	X						X	X	X	X	X	Bruce Scott 21 Jun 2000
6 Sep 1999 to 19 Sep 1999	East Timor & the Territorial Sea of Indonesia adj			X			X					X	X				Bruce Scott 2 Nov 99
16 Sep 1999 to 23 Feb 2000	East Timor & the Territorial sea of Indonesia - Op Stabilize			X	X	X						X	X	X	X	X	Bruce Scott 21 Jun 2000
On/After 20 Feb 2000	East Timor & the Territorial sea of Indonesia - Op Tanager			X	X	X						X	X	X	X	X	Bruce Scott 18 Feb 2000
On/After 4 Nov 2000	Solomon Island & its territorial sea - Op Trek			X			X					X	X				Bruce Scott 23 Nov 2000
On/After 15 Jan 2001	Ethiopia, Eritrea - Op Pomelo			X			X					X	X				Bruce Scott 28 Feb 2001
On/After 15 Jan 2001	Sierra Leone - Op Husky			X			X					X	X				Bruce Scott 26 Feb 2001

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Recommendations

- Recommendation**
- 2. The VVAA recommends that the Veterans Entitlements Review committee propose that government:**
- (a) retain the definitions and application of warlike and non-warlike service;**
 - (b) retain the eligibility rules as they relate to:**
 - (i) membership of the ADF or being a civilian identified as eligible by the Minister;**
 - (ii) being allotted for continuous full time duty for service within a defined operational area; and**
 - (iii) Port-to-port provisions.**
 - (c) preserve the link between warlike service and qualifying service for the purposes of entitlement to Service Pension;**
 - (d) allocate eligibility in an equitable and consistent way;**
 - (e) ensure that Australian Defence Force Operations are added to Schedule 2 or Schedule 3 in a timely fashion; and**
 - (c) introduce a category of Hazardous Defence Service to attract the beneficial standard of proof.**
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ANNEX A

Qualifying Service – a Discussion

Early recognition of the greater service of veterans

The Australian government, since inception, has recognised the service of its armed forces and in particular, the service of those that served overseas and on active service. Those that served overseas, and on active service, returning to Australia were recognised as having given a greater service. Those that did not return, and their widows, were also recognised as having given more than others. The first substantial legislation enacted in 1920 indicated two classes of benefit.

Qualifying service incorporated into legislation

In 1936 the concept of “qualifying service” was built into the legislation. This remains the term used in legislation to determine who is entitled to the Service Pension. The Veterans’ Entitlement Act 1986 defines qualifying service. The early “burn out” of veterans with qualifying service was recognised when a pension was granted at age 60 years - the old age pension did not commence until age 65 years.

Definition of “veteran” becomes more difficult

The identification of a “veteran” was fairly simple during and following World War I and this did not change much in the early stages of World War II, however once the Japanese attacks on mainland Australia started the definitions became more obscure. The terms “Theatre of War” “Operational Area” “War Service” came into use and the Japanese attack on Sydney harbour really confused the subject in that servicepersons within a short distance of each other geographically, received different recognition and entitlements.

VEA Schedule 2

Post World War II we had B.C.O.F. the Korean War, Malaya, Malaysia and Borneo (Including Confrontation) and Vietnam. The Veterans Entitlement Act 1986, Schedule 2, lists events, times and places that defines qualifying service. There have been no changes to The Veterans Entitlement Act 1986, Schedule 2 since January 1997.

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Qualifying Service – a Discussion, Continued

Review of SEA anomalies	The review of service entitlement anomalies in respect of South East Asian Service 1955-75 completed in the year 2000 reviewed a number of contentious matters, however, while it resolved some it did not satisfy all those that had expectations of a different outcome.
Peacekeeping and hazardous service, Schedule 3	In the early 1980's the Veterans Entitlement Act 1986 made provision for, and defined "Peacekeeping Service" and "Hazardous Service". The Veterans Entitlement Act 1986, in Schedule 3 lists authorised instances of peacekeeping. There have been no changes to The Veterans Entitlement Act 1986 schedule 3 since October 1994.
No schedule for hazardous service	The Veterans Entitlement Act 1986 has no list or schedule to define instances of "Hazardous Service".
Warlike and non-warlike service	In 1997 change took place introducing the terms "warlike service" and "non-warlike service" and these were to be determined in writing by the Minister for Defence. Amendments were made to The Veterans Entitlement Act 1986 to accommodate those terms and the subsequent changes to policy.
Assaults on the VEA by non-veterans	For a number of years there have been attempts by ex-Service and other organisations to obtain entitlements under the Veterans Entitlement Act, in many cases arguments have been put that may, or may not, receive wide support, very few have attempted to put defined amendments to the Veterans Entitlement Act to the government.
Summary	The present review of the Veterans Entitlement Act may, or may not be overdue. There are arguments for and against, and these arguments will be put. Watering down the Veterans Entitlement Act to overcome problems in other legislation may not be the solution. Veterans, and their widows, historically have had support from the Australian Government and general public because they were seen as having given more to the Australian community and were instrumental in preserving our way of life, this should never be devalued.
