

AUSTRALIAN VETERANS AND DEFENCE SERVICES COUNCIL INCORPORATED

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Issues Arising from the Clarke Review

AVADSC welcomes the commitment to give further consideration to issues of the Clarke Review.

Australian Participants in British Nuclear Tests

AVADSC made representations to the then Prime Minister that the hazards experienced by the Australian Participants in British Nuclear Tests have been disregarded and the loss of confidence in the government processes have allowed an inadequate Dosimetry Report to lead to a flawed Mortality and Cancer Incidence Report. It is in the interests of both the veterans and respect for the institution of government to take acceptable measures to re-examine the content and findings of both reports and the flow-on to a Government response to Recommendation 45 of the Clarke Review Report.

Below is a copy of the letter forwarded to the Hon John Howard MP on this matter. Its content continues to be relevant to the AVADSC position on Recommendation 45 of the Report of the Review of Veterans' Entitlements chaired by the Honourable John Clarke QC:

"I write to you to express the dissatisfaction within the ex-Service community membership of The Australian Veterans and Defence Service Council (AVADSC) at the outcome of the Australian Participants in British Nuclear Tests in Australia, Dosimetry and Mortality and Cancer Incidence Study. In order to make it clear to you what is the source of this dissatisfaction I shall lead you through the important matters that have preceded the latest development in the Government's handling of the Australian participants' representations.

Recommendation 45 of the Report of the Review of Veterans' Entitlements chaired by the Honourable John Clarke QC was:

'Participation by Australian defence force personnel in the British atomic tests be declared non-warlike hazardous and the legislation be amended to ensure that this declaration can have effect in extending VEA coverage.'

The Government response was:

'Accept in principle – the Government will respond positively to the needs of those affected by the British Atomic Test programme when the outcomes of the Australian Participants in the British Nuclear Test programme – Cancer Incidence and Mortality Study are available.'

Recommendation 46 of the Clarke Report was:

'The Government move quickly to finalise the cancer and morbidity study.'

The Government response was:

'Accepted - This study is expected to be released in late 2004.'

It is reasonable to infer from the Government response that should the report of the study demonstrate that Australian participants were exposed to hazards through exposure to radiation doses beyond acceptable levels their service would be brought within the provisions of the Veterans' Entitlements Act 1986 (VEA). Although this does not amount to the defined criterion of 'qualifying service', participation in the tests would have the same effect and would bring service as a participant in the British Nuclear Test Programme to entitlements under the VEA.

How exposure to radiation doses is treated in the study and the levels of exposure reported are therefore critical to the outcome envisaged in the Government response to recommendation 45 of the Clarke Review Report. In the event there were two parts to the Report of the Australian Participants in British Nuclear Tests in Australia: 'Dosimetry', presented by a committee chaired by Mr M. Carter, and 'Mortality and Cancer Incidence' presented by a committee chaired by Mr. Richard Gunn of the School of Population Health and Clinical Practice, University of Adelaide. Clearly the content and findings of the Dosimetry part would influence how the Government would regard the nature of the Nuclear Test service, carrying as it did a commitment in principle to extend VEA coverage to these Australian defence force personnel.

At a meeting of the Consultative Forum on 27 April 2006 in the Dept. of Veterans' Affairs Building, Woden, Canberra, the two reports were presented. This Council had a representative. The two reports were not seen by the forum members until about one week before what was intended to be the valedictory meeting. This was a hopelessly inadequate time for any reasonable consideration of the reports.

It is relevant to the confidence in the quality and integrity of the way radiation dose levels were treated in the Dosimetry Report and the positions taken by the Consultative Forum, to provide a brief outline of the qualifications and standing of just a few of the members of the Consultative Forum and protagonists of the line being pursued by AVADASC.

Dr Lonergan OBE, BSc (Hons1 Physics), MSc(Nuclear Physics), BA(Logic and Philosophy), PhD(philosophical foundations of physics) was a radar mechanic in the RAAF in the Second World War; later a Defence Research Scientist; Science Adviser to the Navy; Superintending Research Scientist, Department of Defence; Head Science Branch, Department of Education and Science; Deputy Secretary and Acting Secretary, Department of Science; Vice-Chairman, OECD Committee for Scientific and Technological Policy.

Major Batchelor MBE, AMIET, psc had a practical involvement in the planning and conduct of engineering infrastructure and recovery operations as required by the Atomic Weapons Research Establishment in a Forward Area contaminated by four previous nuclear tests and was present for the testing on three weapons. He has undertaken more than six years of intensive research of Royal Commission documentation held in the National Archives, Canberra. He has attended more than 30 international working groups in the USA and Australia many relevant subjects, notably Nuclear Operations and Chemical and Biological Operations.

Ms Munslow-Davies is a Bachelor of Science, a qualified nurse and a long time researcher for a nuclear veterans' association.

During the, what was at times, heated discussion the Dosimetry report was roundly and soundly criticised. The scientific and mathematical deficiencies of the Report were represented by Dr Lonergan with the result that the quality and integrity of the way radiation dose levels were treated were rejected by members of the Consultative Forum. In the light of this criticism the reporting scientists undertook to re-write the report. Further, the re-written report was to be submitted within a fortnight, that is, by 10 May but the DVA chairman of the meeting would not let the members of the forum see the redraft or play any role in its interpretation with the outcome that Dr Lonergan did not see the final reports until they were posted on the internet.

Even though the dosimetry analysis was reworked later submissions by competent and experienced members of this forum continue to give reason to question the assessment of radiation doses received by Australian participants. Criticisms include the failure to take note of evidence given of exposures to dose rates, which were far in excess of what was reported in the

Dosimetry report and discrepancies in the incidence of radiogenic cancers.

These serious flaws in the dosimetry study and the way dosimetry theory was applied to the evidence of the actual operations meant that many dosages were underestimated, some by extremely large factors. As a result the dosages considered by the epidemiologists in the Mortality and Cancer Incidence study could not lead to an outcome that, with high probability, ionising radiation was responsible for many or indeed most of the excess cancers in the veteran cohort when compared with the non-exposed cohort of the general population. The epidemiologists, using the flawed dosage data presented by the Dosimetry report, could not be expected to come to the correct conclusion. Using speculation rather than scientific methodology they sought other reasons for the incidence of cancers.

There has clearly been a knock-on from a flawed Dosimetry Study to a flawed Mortality and Cancer Incidence Report to a failure to recognise the cause of medical conditions and denial of VEA coverage to these Australian defence force personnel who participated in the British Nuclear Test Programme. This has arisen because of the conflict between the methodology and assessment of the Australian Participants in British Nuclear Tests in Australia, Dosimetry and Mortality and Cancer Incidence Study and the evidence provided and positions taken by the members of the Consultative Forum.

This has affected an understanding of the hazards to which defence people had been exposed. There has been a failure in the study process to establish unqualified agreement on the ingredients for a determination whether those who participated in the British Nuclear Tests in Australia should be brought within the provisions established by the VEA as envisaged by the Report of the Clarke Review and accepted in principle by the Government.

I note that the Report of the Standing Committee on Foreign Affairs, Defence and Trade on the Australian Participants in British Nuclear Tests (Treatment) Bill 2006 and the Australian Participants in British Nuclear Tests (Treatment) (Consequential Amendments and Transitional Provisions) Bill 2006 recognised that there were wider policy issues concerning the Government's response to those who participated in the tests and that the Bills do not preclude other subsequent compensating claims and arrangements. This recognition was in the light of submissions that highlighted the inadequacies of the Dosimetry Report and the failure to provide compensation for Australian Defence Force participants in these tests.

In the interests of progressing the authority for the non-liability treatment for all cancers, irrespective of the causation, to all Australian military and civilian personnel who participated in the British Nuclear Tests in Australia, the Standing Committee proceeded to recommend passage of the Bill to enactment, having made the observations in the previous paragraph. This left unresolved the submissions dealing with the inadequacies of the Dosimetry Report and its flow-on effect on the Mortality and Cancer Incidence Study and the way this influences decisions whether to provide compensation for Australian Defence Force participants in these tests.

In the light of the continuing dispute over the assessments in the Dosimetry Report it is clear that the veteran community will not be satisfied with the outcome. The compounding effect of both flawed reports has denied Australian defence force personnel access to entitlements that were envisaged in the Clarke Review Report and inferred by the Government response to Recommendation 45.

In order to settle this harmful perception that the hazards experienced have been disregarded and the loss of confidence in the government processes that have allowed an inadequate Dosimetry Report to lead to a flawed Mortality and Cancer Incidence Report it is in the interests of both the veterans and this Government to take acceptable measures to re-examine the content and findings of both reports and the flow-on to a Government response to Recommendation 45 of the Clarke Review Report.”

The United Kingdom and New Zealand have recognised the experience and the effects of exposure to radiation during these tests. These countries have moved to remedy conditions beyond what is available to Australian veterans of the British nuclear tests.

The benefits sought by the AVADSC community on behalf of Australian veterans of the British nuclear tests go beyond the treatment of cancers and importantly seek provision for widows and children in the same way that benefits are available for those with Qualifying Service.

It is recommended that the government should not rely on the findings of the flawed Mortality and Cancer Incidence Report and should give effect to the clear evidence that Australian servicemen were exposed to levels of radiation that have caused death and disabilities that have impacted on the veterans and their families.

Also an aspect of these issues was the time it took to reach an outcome on such matters as the Australian Participants in British Nuclear Tests in Australia, Dosimetry and Mortality and Cancer Incidence Study. This led to the reasonable perception that entitlements should take account of the time taken by government and its agencies to reach decisions to give effect to entitlements such as were envisaged in the Clarke Review Report. There are other similar situations warranting adjustment beyond the three months' retrospectivity provision in legislation.

Gold Card for Service Men and Women of the Second World War, Who Do Not Have Qualifying Service

This is a difficult issue because of the perceived cost of providing this access to medical and health services. There are anomalies such as:

- Those of the 1st Armoured Division and the 2nd Division who relied solely on their service in Western Australia for access to the Gold Card and deployed to and from Western Australia by sea meet the conditions of entitlement through Qualifying Service while those who travelled by land do not;
- Those service men and women who travelled from Tasmania by sea meet the conditions of entitlement through qualifying service even if their later service was confined to mainland areas of Australia and did not carry a Qualifying Service while those who travelled by air do not;
- Many experienced aircrew serving as flying instructors were not released for service in operational areas because they were considered indispensable to the training role.

It is relevant that First World War service men and women who did not have access to the Gold Card through meeting the criteria of qualifying service were granted the Gold Card in 1973, 55 years after the end of hostilities in the First World War. In 2006, 61 years after the end of the Second World War a similar gesture has not been made to service men and women who do not meet the criteria of qualifying service even though in the Second World War the theatre of operations came closer to Australia than in the First World War in a way that there were even attacks on the Australian mainland thereby generating perceptions of Australian mainland theatres of operations.

Many of those who do not have an entitlement to the Gold Card through Qualifying Service would nevertheless have access to age pensioner medical services. For this reason it cannot be seen that the Gold Card access for those service men and women of the Second World War, who do not have access to the Gold Card through Qualifying Service is going to impose an unacceptable demand on Commonwealth funds or medical services. Perhaps it is a question of the incidence of the costs amongst government departments but if there is the will to make a gesture of recognition there would be administrative processes to make the adjustment.

The award of the Gold Card to these people is more a gesture of recognition of their commitment to serve their country at a time when such a commitment was important to national cohesion and the mainstream national effort. They made the commitment and where they served was determined by the incidence of unit deployments. At this stage in their lives the gesture of recognition is important for the peace of mind for veterans of the Second World War, a well-recognised factor in mental health and wellbeing.

It is recommended that government should study the real cost to budget of providing for the peace of mind of this group of service men and women as a gesture of recognition.

Other Issues

Although not covered by the Terms of Reference there is a feeling amongst some member associations of AVADSC that this review could present an opportunity to re-examine those issues not accepted by the Clarke Review. As the review progresses submissions could be sought on whether there is a strong feeling amongst members of the veteran community on aspects of the original Clarke Report that rejected the case made by veterans.

I McL Crawford
Rear-Admiral Retd
President