



Cabinet

Minute of Decision

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Amendment to Section 9 of the Veterans' Support Act 2014

Portfolio **Veterans**

On 20 May 2019, Cabinet:

- 1 **noted** that documents prepared following the 2010 review of the Law Commission into the War Pensions Act 1954 recommended that replacement legislation should allow the responsible Minister to make a declaration that a deployment is qualifying operational service at any time before, during, or after a deployment;
- 2 **noted** that in September 2012, the previous government agreed that the Minister could make a declaration at any time before, during, or after a deployment [SOC Min (12) 21/6B];
- 3 **agreed** that it is also the position of this government that the Minister be able to make a declaration at any time before, during, or after a deployment;
- 4 **noted** that section 9 of the legislation that replaced the War Pensions Act 1954, the Veterans' Support Act 2014, allows the responsible Minister to declare that certain deployments are qualifying operational service, and those who took part in them are thus able to access support from Veterans' Affairs;
- 5 **noted** that it has recently become apparent that section 9 of the Veterans' Support Act 2014 does not give the responsible Minister authority to declare service in a deployment qualifying operational service if it took place before the date on which the Veterans' Support Act commenced;
- 6 **noted** that 14 retrospective declarations have been made under section 9 since the Veterans' Support Act 2014 passed into law, and that these currently provide support and entitlements to approximately 675 veterans and their family members;
- 7 **noted** that the Parliamentary Counsel Office has drafted an amendment to section 9 of the Veterans' Support Act 2014 to:
 - 7.1 make legal those retrospective declarations made by the responsible Ministers under this section between 2015 and 2018;
 - 7.2 authorise the responsible Minister to make retrospective declarations in the future;
- 8 **agreed** to add the Veterans' Support Amendment Bill to the 2019 Legislation Programme with a Category 2 priority (must be passed in 2019);

9 **approved** the introduction of the Veterans' Support Amendment Bill [PCO 22145/5.0];

10 **agreed** that the Veterans' Support Amendment Bill be:

10.1 introduced on 28 May 2019;

10.2 progressed through the House as soon as practicable;

10.3 enacted by 30 June 2019.

Michael Webster
Secretary of the Cabinet

Hard-copy distribution:

Prime Minister
Deputy Prime Minister
Minister for Veterans

Proactively Released by the Minister for Veterans

Chair
Cabinet

AMENDMENT TO SECTION 9 OF THE VETERANS' SUPPORT ACT 2014

Proposal

1. I seek Cabinet approval to introduce legislation that will amend section 9 of the Veterans' Support Act 2014, in order to:
 - 1.1 make legal 14 declarations that were made under section 9 between 2015 and 2018, relating to service in deployments before the legislation commenced on 7 December 2014; and
 - 1.2 enable declarations to be made in the future about service in deployments which have already ceased, including those that occurred wholly or partially before the commencement of the Veterans' Support Act 2014.
2. A draft bill accompanies this paper. I propose that this bill is added to the legislative programme and passed with a Category 2 priority.

Executive summary

3. Section 9 of the Veterans' Support Act 2014 (the Act) authorises the responsible Minister to declare deployments that meet certain criteria to be qualifying operational service for the purposes of the Act.
4. The 2014 legislation changed the criteria for qualifying operational service. Those now in force cover a broad range of operational and environmental threats, including non-State actors and security forces. The previous Act had referred only to service in war or emergencies. These were not further defined.
5. Contemporaneous material indicates that the intention was that such declarations of qualifying operational service could be made before, during, or after deployments. The legislation has been interpreted accordingly, and a number of deployments, which had originally been considered against the criteria that applied under previous legislation, have been reassessed under the new criteria now in place to ensure equity and consistency for all who have served. Further such assessments are under way.
6. The Cabinet Committee minute [SOC Min (12) 21/6B] reporting the Government's response to a Law Commission report recommended that the Minister could make a declaration after a deployment. The relevant minute notes the decision of the Cabinet Social Policy Committee that:

The Minister will be able to declare a deployment as qualifying operational service for the purposes of the provision of support under the [Veterans' Support Act] at any time before, during, or after, the deployment.
7. The Committee invited the Minister "to issue drafting instructions to the Parliamentary Counsel Office" to give effect to its decisions. Section 9 of the bill was not, however, drafted to allow the Minister to retrospectively declare a deployment to be qualifying operational service. The omission was not picked up at the time and the relevant provisions of the bill passed through Parliament without any material amendments.

8. Advice has now been received which indicates that the interpretation of section 9 could not be stretched to provide jurisdiction to make declarations in respect of historical (retrospective) deployments (i.e. deployments that have already ceased). There is also a strong indication that section 9 may apply only to deployments that BEGIN after the date the new legislation commenced.
9. Since 2015, Ministers have made 14 retrospective declarations, covering multiple missions and geographical areas. These affect approximately 675 veterans, spouses and family members (including families of service personnel killed in action).
10. Work now under way in Veterans' Affairs – and widely promulgated to veterans – is a continuation of this work. The first tranche of the programme has considered 39 deployments in three geographical areas. It could result in declarations that would extend entitlements to around 1,600 veterans. There are further tranches to be examined which would be likely to create additional entitlements for veterans not currently covered by the legislation.
11. I seek Cabinet agreement to amend the Act to make legal the retrospective declarations which have already been made; and to enable the responsible Minister to make such declarations in the future. This will ensure that all those who served New Zealand in situations where they were put at risk of serious harm are treated equitably.
12. Amending the Act in this way is in line with the Legislation Guidelines (2018), which state (Chapter 12) that retrospection is appropriate if it is intended to “validate matters generally understood and intended to be lawful but that are, in fact, unlawful as a result of a technical error”. No one will be adversely affected by the retrospective provisions.
13. There is unanimous cross-party support for making this amendment to the Veterans' Support Act 2014, and for the necessary legislation to be progressed through the House quickly, as a matter of priority.

Background

14. The Veterans' Support Act was passed in 2014 with multi-party support. It replaced the War Pensions Act 1954.
15. Section 9 of the Veterans' Support Act 2014 authorises the responsible Minister to declare that a deployment of members of the Defence Force may be considered qualifying operational service for the purposes of the Act. Declarations are made on the basis of advice provided to the Minister by the Chief of Defence Force in a report assessing the threats posed to members of the deployment. Those with qualifying operational service have a number of entitlements for support under the Act.
16. The 2014 legislation changed the criteria for qualifying operational service. The criteria now in force cover a broad range of operational and environmental threats, including non-State actors and security forces. The previous Act referred only to service in war or emergencies. These were not further defined.
17. Indications from contemporaneous material are that the new legislation was intended to give access to entitlements to all New Zealand veterans who had served in deployments where they had been at risk of serious harm.
18. The Act has been interpreted accordingly over the past four years. This has meant that a number of deployments, which had originally been considered against the criteria that applied under previous legislation, have been reassessed under the new criteria now in place to ensure equity and consistency for all who have served.

19. In 2015, the Chief of Defence Force requested Veterans' Affairs to consider deployments before 2014 against the criteria in the new Act. This resulted in a former Minister of Veterans' Affairs making 12 retrospective declarations of qualifying operational service between 2015 and 2017. Two further retrospective declarations have been made by me as the current Minister for Veterans.
20. A work programme now under way in Veterans' Affairs – and widely promulgated to veterans – is a continuation of this work. The first tranche of the programme has considered 39 deployments in three geographical areas. It could result in declarations that would extend entitlements to around 1,600 veterans. Based on current uptake, Veterans' Affairs anticipates around 50 veterans, who are not currently able to access services under the Act, would seek immediate support. The number could be greater. There are five remaining tranches in the project involving consideration of another 63 deployments. Further deployments may be identified during the project.
21. As part of the review process, consideration was given to whether the wording of section 9 of the Act could properly be interpreted to cover historical deployments (that is those which had concluded before 7 December 2014, the date on which the Veterans' Support Act 2014 commenced).
22. Advice has now been received which indicates that the interpretation of section 9 could not be stretched to provide jurisdiction to make declarations in respect of historical deployments. There is also a strong indication that section 9 may apply only to deployments that BEGIN after the date the new legislation commenced.

Comment

23. This advice has a number of implications.
24. No further declarations which affect deployments that have already ceased can be made until a decision has been taken as to whether to amend section 9, and any subsequent amendment has been passed into law. Neither can further declarations be made to cover service before 7 December 2014 in deployments which continued after that date, or remain open with personnel still serving on them.
25. The work programme under way in Veterans' Affairs cannot move beyond the review stage, and cannot lead to any new declarations being made unless or until the law specifically authorises the Minister for Veterans to make retrospective declarations that:
 - 25.1 consider factors not covered under previous legislation (for example, non-State actors, security services and environmental threats);
 - 25.2 designate specific deployments, which commenced and/or concluded before 7 December 2014, as having placed members of the Defence Force serving in those deployments before that date at serious risk of harm; and
 - 25.3 result in members of those deployments being entitled to the support and services provided on behalf of New Zealand by Veterans' Affairs.
26. There are three reasons why the matter needs to be addressed quickly.

Reason One

27. The drafting of section 9 to exclude retrospective action is out of step with the original intention of the legislation.

28. The 2010 report of the Law Commission following its review of the War Pensions Act 1954 recommended that the Minister could make a declaration after a deployment had concluded. The Law Commission's report makes no reference to excluding those put into a high-risk situation before commencement of new legislation from the benefits available to those who served in those situations after the new legislation. Para 3.37 states that "the legislation should allow the Minister to make a declaration that a deployment is qualifying operational service at any time before, during, or after the deployment".
29. The Cabinet Committee minute [SOC Min (12) 21/6B] reporting the Government's response to the Law Commission's report also recommended that the Minister could make a declaration after a deployment. The relevant minute notes the decision of the Cabinet Social Policy Committee that:

The Minister will be able to declare a deployment as qualifying operational service for the purposes of the provision of support under the [Veterans' Support Act] at any time before, during, or after, the deployment.

30. The Committee invited the Minister "to issue drafting instructions to the Parliamentary Counsel Office" to give effect to its decisions. Section 9 of the bill was not, however, drafted to allow the Minister to retrospectively declare a deployment to be qualifying operational service. The omission was not picked up at the time and the relevant provisions of the bill passed through Parliament without any material amendments.

Reason Two

31. Now that the problem has been identified, the longer the legislation remains without amendment, the longer many of those who it was intended to benefit will remain unable to access its support. It will perpetuate inequities between veterans who have all served their country in high risk situations.
32. Following his 2017/18 review into the operation of the Veterans' Support Act, Professor Ron Paterson noted that there is considerable disquiet in the veteran community about who qualifies for support. His report stated that he had heard from:

many former service people who, despite many years of service and numerous deployments, still had no qualifying operational service....People raised concerns about inconsistencies between what had and what had not been covered historically. This has resulted in a feeling that, even within the current eligibility rules, some veterans are missing out because of unrecognised operational service.... The list of qualifying operational service has grown in an ad hoc way and there is little confidence... that the list is complete, or that all deployments have been treated equitably.

- 33 Examples of inequities include:

- 33.1 NZDF deployments to Timor Leste, where the declaration made for service "on the Island of Timor Leste" automatically excluded maritime elements whose concurrent deployment met the threshold under a Military Threat Assessment for qualifying operational service.
- 33.2 Of the 15 deployments to the Former Socialist Federal Republic of Yugoslavia, only three have qualifying operational service.
- 33.3 Royal New Zealand Navy deployments to the Middle East in the mid- 2000s are qualifying operational service, but similar missions in the mid-1990s are not.

Reason Three

34. Delay in amending section 9, and thus excluding further retrospective declarations, while leaving in place those already made under this section, presents the following risks to the Government:
- 34.1 It could face a legal challenge or call for judicial review of the declarations already made. Thus far, there have been 14 retrospective declarations, covering multiple missions and geographical areas.
 - 34.2 Approximately 675 veterans, spouses, and family members are currently receiving entitlements covered by these 14 declarations that may be without legal basis (including families of service personnel killed in action).
35. There is also a risk that the Government could be seen to have misled veterans by supporting a project of retrospective review and then failing to take the action needed to make sure that this can be delivered. Since late 2017, this Veterans' Affairs work programme has been widely publicised as a means of "levelling the playing field" for those who have served, and veterans have been invited to nominate past deployments which they feel should be considered against the updated criteria.
36. As Minister for Veterans, I referred to the retrospective deployment review in a speech to the 2018 Royal New Zealand Returned and Services' Association annual conference and, in the 2018 report following the review of the operation of the Veterans' Support Act 2014, Professor Ron Paterson also referred to the deployment review, and commented positively on the fact that it was taking place
37. In short, not only have undertakings been given in the past which may now be of doubtful validity, but expectations have also been created for the future, and the veteran community will be keen to see those expectations delivered on as quickly as possible.

Options to Address the Issue

38. As this matter impacts on the lives of hundreds of former service people, it would be desirable to address it sooner, rather than later, to enable the responsible Minister to make retrospective declarations relating to deployments before 7 December 2014.
39. The amendment to section 9 that would be required does not meet the criteria for inclusion in a Statutes Amendment Bill, according to the Ministry of Justice, because in their view it does not meet the criteria of being a technical amendment, and represents a change in policy (albeit due to a drafting error).
40. Dealing with it as part of the expected full rewrite of the Veterans' Support Act 2014 could mean a delay of two to three years. The risks to the Government, identified above, would remain throughout this time.
41. I therefore recommend that a short bill be brought before Parliament to amend section 9 of the Veterans' Support Act 2014; that this should be a priority 2 bill on the 2019 Legislation Programme; and introduced and progressed as soon as practicable.
42. A draft bill accompanies this paper.

Compliance

43. The bill complies with each of the following:

- 43.1 The principles of the Treaty of Waitangi.
- 43.2 The rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.
- 43.3 The disclosure statement requirements (a disclosure statement has been prepared and accompanies this paper).
- 43.4 The principles and guidelines set out in the Privacy Act 1993.
- 43.5 Relevant international standards and obligations.
- 43.6 The Legislation Guidelines (2018) published by the Legislation Design and Advisory Committee.

Consultation

- 44. There has been departmental consultation on this matter with the Crown Law Office, and the Parliamentary Counsel Office. I have consulted this proposal with the Labour Party, New Zealand First, the Green Party of Aotearoa New Zealand, the National Party, ACT, and Jami-Lee Ross MP, and all parties have expressed their support for the proposal, and for it to be progressed through an accelerated legislative process.

Binding on the Crown

- 45. The Veterans' Support Act 2014 is binding on the Crown, and as such the amendments in the bill will also be binding.

Creating new agencies or amending law relating to existing agencies

- 46. Not applicable.

Allocation of decision making powers

- 47. The bill does not allocate decision making powers between the executive, the courts, or tribunals.

Associated regulations

- 48. The bill does not include any provisions for regulations to be included in the Veterans' Support Act 2014.

Other instruments

- 49. The bill does not include any provision empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments (or both).

Definition of Minister/department

- 50. The Bill makes no changes to the definitions of Minister or department.

Financial Implications

- 51. Provision for veteran entitlements through the Budget process is demand driven. These entitlements are funded through a Benefits or Related Expenses appropriation which is reforecast as the need for adjustment dictates.

Impact analysis

52. The Regulatory Quality Team at the Treasury has determined that the regulatory decisions sought in this paper are exempt from the requirement to provide a Regulatory Impact Assessment as they have no, or only minor, impacts on businesses, individuals, and not-for-profit entities.

Certification by Parliamentary Counsel

53. The bill has been drafted and certified by the Parliamentary Counsel Office in anticipation of Cabinet's approval.

Commencement of legislation

54. The amendment will come into force on the day after the date of Royal assent.

Parliamentary stages

55. In terms of the legislative process, I propose that, pending the outcome of discussions at the Business Committee of the House on 21 May, this would entail either subsequent consideration of the bill by the Social Services and Community Committee for a short period (of around one week), no Committee of the House stage, and, following a second reading, the bill being set down for third reading forthwith without debate; or leave being sought for the bill to not be referred to Select Committee, and for all stages of the bill to be considered together.
56. Should it be referred to the Social Services and Community Committee, I would need to include special instructions for the committee (Standing Orders 287 and 290 refer).

Publicity

57. There is wide interest in the New Zealand veteran community about the ongoing programme of retrospective declarations of qualifying operational service. Should Cabinet agree to the proposed amendment, a communication plan will be developed to reassure veterans that a recently-identified impediment to the programme has been removed and that the review work will continue.

Proactive Release

58. I intend to release this paper in full, apart from any legally privileged material, or other redactions as required under the Official Information Act 1982.

Gender and disability implications

59. The proposed amendments are policy neutral and do not have any gender or disability implications.

Recommendations

60. It is recommended that the Cabinet:

1. **note** that documents prepared following the 2010 review of the Law Commission into the War Pensions Act 1954 recommended that replacement legislation should allow the responsible Minister to make a declaration that a deployment is qualifying operational service at any time before, during, or after a deployment;

2. **note** that the Cabinet Committee minute reporting the Government's response to the Law Commission's report also recommended that the Minister could make a declaration at any time before, during, or after a deployment;
3. **agree** that it is also the position of this Government that the Minister be able to make a declaration at any time before, during, or after a deployment;
4. **note** that section 9 of the legislation that replaced the War Pensions Act 1954, the Veterans' Support Act 2014, allows the responsible Minister to declare that certain deployments are qualifying operational service, and those who took part in them are thus able to access support from Veterans' Affairs;
5. **note** that it has recently become apparent that section 9 of the Veterans Support Act 2014 does not give the responsible Minister authority to declare service in a deployment qualifying operational service if it took place before the date on which the Veterans' Support Act commenced;
6. **note** that 14 retrospective declarations have been made under section 9 since the Veterans' Support Act 2014 passed into law, and that these currently provide support and entitlements to approximately 675 veterans and their family members;
7. **note** that the Parliamentary Counsel Office has drafted an amendment to section 9 of the Veterans' Support Act 2014 to make legal those retrospective declarations made by the responsible Ministers under this section between 2015 and 2018; and would authorise the responsible Ministers to make retrospective declarations in the future;
8. **agree** to add the Veterans' Support Amendment Bill to the 2019 Legislation Programme with a Category 2 priority (must be passed in 2019);
9. **approve** the introduction of the Veterans' Support Amendment Bill;
10. **agree** that the Veterans' Support Amendment Bill be introduced on 28 May 2019;
11. **agree** that the Veterans' Support Amendment Bill be progressed through the House as soon as practicable; and
12. **agree** that the Veterans' Support Amendment Bill be enacted by 30 June 2019.

Hon Ron Mark
Minister for Veterans

Approved for lodging

Departmental Disclosure Statement

The Veterans' Support Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the New Zealand Defence Force (Veterans' Affairs).

The New Zealand Defence Force (Veterans' Affairs) certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

13 May 2019

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Part One: General Policy Statement

The Veterans' Support Act was passed in 2014 and introduced a more modern regime for rehabilitating and supporting veterans who have qualifying operational service.

The 2014 legislation changed the criteria for qualifying operational service. Those now in force cover a broad range of operational and environmental threats. The previous Act had referred only to service in war and emergencies.

Contemporaneous documentation confirms that it was intended that the responsible Minister could make declarations of qualifying operational service before, during, or after deployments. The legislation has been interpreted accordingly, and a number of deployments, which had originally been considered against the criteria that applied under previous legislation, have been reassessed under the new criteria now in place, to ensure equity and consistency for all who have served. Further such assessments are under way.

Advice has now been received which indicates that the interpretation of section 9 could not be stretched to provide jurisdiction to make declarations in respect of historical (retrospective) deployments (i.e. deployments that have already ceased). There is also a strong indication that section 9 may apply only to deployments that BEGIN after the date the new legislation commenced.

Since 2015, Ministers have made 14 historical declarations covering multiple missions and geographical areas. These affect approximately 675 veterans, spouses and family members (including families of Service personnel killed in action).

Work now under way in Veterans' Affairs – and widely promulgated to veterans – is a continuation of this work. The first tranche of the programme has considered 39 deployments in three geographical areas. It could result in declarations that would extend entitlements to around 1,600 veterans. There are further tranches to be examined which would be likely to create additional entitlements for veterans not currently covered by the legislation.

The bill is intended to make legal the historical declarations which have already been made; and to enable the responsible Minister to make such declarations in the future. This will ensure that all those who served New Zealand in situations where they were put at risk of serious harm are treated equitably.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
Report 115 of the Law Commission – A New Support Scheme for Veterans: A report on the Review of the War Pensions Act 1954, May 2010. This report recommends (Chapter 3, para 3.37) the policy which this bill would give effect to.	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	N/A

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

NZDF (Veterans' Affairs) has analysed the bill, and has not identified any aspects of it that are inconsistent with New Zealand's international obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

NZDF (Veterans' Affairs) has analysed the bill, and has not identified any aspects of it that are inconsistent with the principles of the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice has been provided to the Attorney-General by the Crown Law Office. This advice will be available on the Ministry's website at <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/>
<https://www.justice.govt.nz/justice>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

3.4.1. Was the Ministry of Justice consulted about these provisions?

YES

The Ministry of Justice was consulted as to whether the amendment would be appropriate for inclusion in a Statutes Amendment Bill. Their advice was that this would not be appropriate; and the amendment has therefore been drafted as a stand-alone amendment bill.

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?

NO

3.5.1. Was the Privacy Commissioner consulted about these provisions?

NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	NO
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Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
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Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	YES
The retrospective effect of the bill is in line with the Legislation Guidelines (2018), which state (Chapter 12) that retrospection is appropriate if it is intended to “validate matters generally understood and intended to be lawful, but that are, in fact, unlawful as a result of a technical error”. No one will be adversely affected by the retrospective provisions.	

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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Veterans' Support Amendment Bill

Government Bill

Explanatory note

General policy statement

The Veterans' Support Act was passed in 2014 and introduced a more modern regime for rehabilitating and supporting veterans who have qualifying operational service.

The 2014 legislation changed the criteria for qualifying operational service. Those now in force cover a broad range of operational and environmental threats. The previous Act had referred only to service in war and emergencies.

Contemporaneous documentation confirms that it was intended that the responsible Minister could make declarations of qualifying operational service before, during, or after deployments. The legislation has been interpreted accordingly, and a number of deployments, which had originally been considered against the criteria that applied under previous legislation, have been reassessed under the new criteria now in place, to ensure equity and consistency for all who have served. Further such assessments are under way.

Advice has now been received which indicates that the interpretation of section 9 could not be stretched to provide jurisdiction to make declarations in respect of historical (retrospective) deployments (ie deployments that have already ceased). There is also a strong indication that section 9 may apply only to deployments that begin after the date the new legislation commenced.

Since 2015, Ministers have made 14 historical declarations, covering multiple missions and geographical areas. These affect approximately 675 veterans, spouses, and family members (including families of service personnel killed in action).

Work now under way in Veterans' Affairs—and widely promulgated to veterans—is a continuation of this work. The first tranche of the programme has considered 39 deployments in 3 geographical areas. It could result in declarations that would extend entitlements to around 1,600 veterans. There are further tranches to be examined

which would be likely to create additional entitlements for veterans not currently covered by the legislation.

Departmental disclosure statement

The New Zealand Defence Force (Veterans' Affairs) is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at [PPU to insert URL and link] (if it has been provided for publication).

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that the Bill will come into force on the day after it receives the Royal assent.

Clause 3 provides that the Bill amends the Veterans Support Act 2014 (the **principal Act**).

Clause 4 amends section 9 of the principal Act. Section 9 provides for the Minister for Veterans to declare that a particular deployment is operational service for the purposes of the principal Act. Currently section 9 provides for declarations in relation to deployments that are current at the time of the declaration. The amendments to section 9 provide for the making of declarations in relation to ceased deployments (see *new section 9(5A) and (5B)*). A declaration in respect of a deployment that has ceased may be extended (see *new section 9(5C)*). *New section 9(5D) and (5E)* requires the Minister to be satisfied that a declaration in respect of a ceased deployment that replaces another declaration cannot have the effect of reducing the existing entitlements of any person.

Clause 5 provides that no existing declaration made under section 9 is invalid because it is in respect of a deployment that began before the commencement of the Veterans' Support Act 2014 or had ceased when the declaration was made.

Hon Ron Mark

Veterans' Support Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Veterans' Support Amendment Act **2019**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Veterans' Support Act 2014 (the **principal Act**).

4 Section 9 amended (Declarations that deployments are operational service)

After section 9(5), insert:

(5A) The power under subsection (3) includes the power to make a declaration in respect of a deployment that has ceased, whether the deployment began before or after the commencement of this Act.

(5B) In relation to any declaration referred to in **subsection (5A)**,—

- (a) the reports referred to in subsections (1) and (2) may be provided at any time; and
 - (b) subsection (3) applies with any necessary modifications; and
 - (c) subsections (4) and (5) do not apply.
- (5C) The Minister may, by notice in the *Gazette*, extend the period specified under subsection (3)(c) in a declaration referred to in **subsection (5A)** if the Minister is satisfied that the deployment continued to pose a significant risk of harm to members of the deployed force after the expiry of the period.
- (5D) **Subsection (5E)** applies in respect of a declaration (a **replacement declaration**) that—
- (a) is in respect of a deployment that has ceased; and
 - (b) the Minister is satisfied replaces another declaration under this section or a decision under section 70A or 80A of the War Pensions Act 1954 (the **earlier declaration or decision**).
- (5E) Before making a replacement declaration, the Minister must be satisfied that support to which any particular person would, at any time (whenever arising), have been entitled under the Act as a result of the earlier declaration or decision will not be reduced as a result of the making of the replacement declaration.

5 Validation of declarations made in respect of certain deployments

No declaration made under section 9(3) of the principal Act before the commencement of this section is invalid only because 1 or more of the following applies to it:

- (a) it is in respect of a deployment that began before the commencement of the principal Act;
- (b) it is in respect of a deployment that had, when the declaration was made, ceased;
- (c) a report referred to in section 9(1) or (2) was provided to the Minister in relation to the declaration after the deployment had ceased.