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C A B I N E T M I N U T E

Canberra, 11 August 1986

Decision No. 8431

Submission No. 4159 - Report of the Royal Commission into
British Nuclear Tests in Australia -
Consideration of Recommendation 2

The Cabinet noted that :-

- (a) two substantial lists of persons involved in the tests and possibly exposed to radiation already exist within the Department of Resources and Energy (DRE);
- (b) additional information obtainable is unlikely to add significantly to the present data base;
- (c) much of the information which would be incorporated in any new register is protected by the Epidemiological Studies (Confidentiality) Act from direct disclosure to anyone but the individual concerned; and
- (d) arrangements can readily be made, building on existing practice, to ensure that compensation claimants and the Commissioner for Employees' Compensation can get access to all relevant material held in the Commonwealth's possession.


.../2

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2.

Decision No. 8431(Contd.)

2. The Cabinet agreed that :-
- (a) Recommendation 2 of the Royal Commission's Report not be accepted, on the grounds identified in paragraph one above;
 - (b) when a Commonwealth position on an atomic test related compensation claim is required to be established, all Commonwealth agencies should on request and in consultation with the DRE provide all personal and medical documents relevant to that claim (such material to be used by the Departments of Resources and Energy or Social Security only for the purpose of responding to the compensation claim);
 - (c) the Department of Health should, in consultation with the DRE, prepare for issue to all persons who request access to material held in DRE lists and related material, a statement on health risks of radiation exposure; and
 - (d) the Government statement made in response to Recommendation 2 incorporate a full explanation of the nature of the existing lists and the proposed arrangements outlined above.


Secretary to Cabinet

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C A B I N E T M I N U T E

Expenditure Review Committee

Canberra, 25 July 1986

Decision No. 8093 (ER)

Submission No. 4159 - Report of the Royal Commission into
British Nuclear Tests in Australia -
Consideration of Recommendation 2

The Committee noted that the Submission had no
Budgetary implications in 1986-87 and agreed to defer it for
consideration by Cabinet at a later date.



Committee Secretary

FOR CABINET

Title	REPORT OF THE ROYAL COMMISSION INTO BRITISH NUCLEAR TESTS IN AUSTRALIA - CONSIDERATION OF RECOMMENDATION 2
Minister	Senator the Hon Gareth Evans, QC, Minister for Resources and Energy, and the Hon Neal Blewett, M.P., Minister for Health.
Purpose/Issues	To consider establishment of exposure register and to propose administrative arrangements for providing information to claimants and proposing Commonwealth position in relation to compensation claims arising out of atomic weapons tests as required by Cabinet Decision 7040 of 20 January 1986.
Relation to existing policy	Part of the Government's response to the Royal Commission's Report.
Legislation involved	None
Urgency: Critical/significant dates	Government's response to the Royal Commission's recommendations needs to be considered in the context of the 1986/87 Budget, as two of the related Submissions bring forward new policy proposals.
Consultation: Ministers/Depts consulted	Social Security, Defence, Attorney-General's, Finance and Prime Minister and Cabinet.
Is there agreement?	No. Refer paragraphs 10 to 14 and <u>ATTACHMENT A</u> .
Cost this fiscal year - year 2 - year 3	The DRE will endeavour to carry the additional functions of collecting and making information available to individuals and assisting the Department of Social Security with information for Administrative Appeals Tribunal hearings from within its existing resources.



Implications of proposals	
social	None
economic	None
environmental	None
women	None
employment	None
administrative	Co-ordination of compensation claims from atomic test personnel.
other	None
Wider consultation	
state or foreign governments	None
unions and industry bodies	None
other special interest groups	Nuclear Veterans Associations were represented before the Royal Commission
What general or sectional support can be expected?	None
What criticism is anticipated and how will it be answered?	Some criticism may be expected due to expectations created by Recommendations 1 and 2 of the Royal Commission. Can be answered in terms of impracticability and cost of Commission recommendations, and statutory confidentiality of some existing information.
Timing and handling of announcement of decision	To be considered in conjunction with related submissions which contain new policy proposals for the 1986/87 Budget.

CABINET-IN-CONFIDENCE

3

BACKGROUND

Recommendation 2 states: 'To assist the Commissioner for Employees' Compensation in the performance of the additional duties recommended in Recommendation 1, a national register of nuclear veterans, Aborigines and other persons who may have been exposed to the Black Mist or exposed to radiation at the tests should be compiled'.

2. Cabinet Decision 7040 of 20 January 1986 provided in paragraph (f)(ii) that a Submission be brought forward jointly from the Ministers for Resources and Energy and Health (in consultation with the Minister for Aboriginal Affairs) on a response to Recommendation 2, including arrangements that might be necessary to achieve a restricted release of the data base for the health study of nuclear veterans to the Office of the Commissioner for Employees' Compensation.

3. The proposal for an "exposure register" in Recommendation 2 needs to be read against Recommendation 1 (the subject of a separate Submission from the Minister for Social Security): 'The benefits of the Compensation (Commonwealth Government Employees) Act 1971, including the shifting of the onus of proof from the claimant to the Commonwealth should be extended so as to include not only members of the armed forces who are at present covered by the Act, but also civilians who were at the test sites at the relevant times, and Aborigines and other civilians who may have been exposed to the Black Mist'.

CONSIDERATION OF THE ISSUES

4. The Department of Resources and Energy (DRE) currently holds two lists relevant to this Recommendation. First, as a result of continuing public concerns over the effect of the tests on the health of atomic test personnel, an epidemiological study was

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4

carried out by the Department of Health and the report was tabled in Parliament in 1983. As an integral part of the study the DRE conducted an extensive record search in concert with a nationally advertised notice requesting atomic test personnel to complete a health survey form. The resulting list covers some 8,000 of the total of 15,300 Australians identified as being involved in the tests. The second list, compiled by the Australian Radiation Laboratory, is based on a UK 'medical-in-confidence' listing of radiation exposures.

5. Three considerations support the view that the deployment of staff resources and expenditure of funds on advertising to update the existing lists is not justified:

- (a) the additional information obtainable is unlikely to add significantly to the existing data base;
- (b) on the basis of advice from the Attorney-General's Department the premise assumed by the Royal Commission in identifying the requirement for such a list is not sustained since the reverse onus of proof provisions operate only when a threshold test is satisfied, namely that the illness was caused by radiation; and
- (c) it is believed likely, on the basis of consultations with Aboriginal groups to date, that few Aboriginals will be interested in seeking individual compensation for injury (and may, incidentally, prefer that such compensation be payable to their communities). The deficiency in the coverage of the existing listing so far as Aboriginals are concerned is therefore of minor consequence, particularly as mechanisms are in place for further consultation with Aboriginals on matters arising from the Royal Commission's recommendations.

(Non-Commonwealth Government employees employed as civilians at the test sites, i.e. construction workers, are already included

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CABINET-IN-CONFIDENCE

5

in the health survey listing.)

6. The DRE is generally able to provide the information it holds on an individual to that individual or the Commissioner for Employees' Compensation. In cases where this information was collected for the health survey conducted under the Epidemiological Studies (Confidentiality) Act, by virtue of that Act, the Department can only provide such information to the claimants themselves, and not to the Commissioner for Employees' Compensation: the claimants would pass the information to the Commissioner should they choose to do so. Because of this legislative constraint, the terms of Recommendation 2 cannot strictly be met. Nonetheless, the arrangements outlined permit a useful and practicable approach to meeting the objectives of this Recommendation.

7. In addition to the lists already referred to, the Department has accumulated a substantial holding of documents, held on a computer based retrieval system. This material is presently used in preparing the Commonwealth's position in the defence of common law negligence actions, and in responding to Commissioner's requests under section 20 of the Compensation (Commonwealth Government Employees) Act. The Department would also be in a position to provide copies of these documents and analytical support to the Department of Social Security in preparing the Commonwealth's position in the context of compensation appeals heard before the Administrative Appeals Tribunal. Copies of documents relating to individuals involved in the tests could also be made available directly to those individuals.

8. When a Section 20 Statement on compensation is requested by the Commissioner for Employees' Compensation and for any subsequent administrative policy tribunal hearing, the relevant employee department would need to make available to the DRE (or Social

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CABINET-IN-CONFIDENCE

6

Security) all relevant personal and medical documents for any claimant under the Compensation (Commonwealth Government Employees) Act. The individual concerned is entitled to have access to these records and would be advised of their use in the proceedings.

9. To promote an awareness of the relationship of the incidence of cancer to exposure to low levels of radiation, and avoid arousing unreal compensation expectations, there could be advantage in providing some indication of the likely risks of exposure to radiation when making available the information recorded in the lists to individuals there identified. The Director of the Australian Radiation Laboratory has advised that at the levels of radiation to which some 15,000 Australians may have been exposed during the tests, there is a risk of one or two cancer cases in excess of normal population incidence.

CONSULTATION

10. Detailed comments from Departments are at ATTACHMENT A. These are summarised in paragraphs 11 to 14.

11. The Department of Defence submits that there is no evidence in the Submission which justifies departure from established procedures for the handling of compensation claims to the extent that legislation and Government policies regarding the privacy and confidentiality of information are overridden.

12. The Attorney-General's Department says that its advice referred to in paragraph 5(b) does not appear to be relevant to the question whether the Register should be created. The Department also does not agree that the Epidemiological Studies (Confidentiality) Act 1981 is necessarily a barrier to the establishment of the Register.

13. The Department of Social Security question the implicit assumption that the Commonwealth will be regularly appealing against decisions of the Commissioner. It also considers that a wide range

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of advice should be obtained concerning the likely effects of the tests on those exposed to them.

14. The Commissioner for Employees' Compensation is strongly in favour of the Government accepting Recommendation 2. He also considers the statement in paragraph 5(b) is misleading and has difficulty accepting the exposure risk figures presented in paragraph 9.

RECOMMENDATIONS

15. That Cabinet note that:

- (a) two substantial lists of persons involved in the tests and possibly exposed to radiation already exist within the DRE;
- (b) additional information obtainable is unlikely to add significantly to the present data base;
- (c) much of the information which would be incorporated in any new register is protected by the Epidemiological Studies (Confidentiality) Act from direct disclosure to anyone but the individual concerned; and
- (d) arrangements can readily be made, building on existing practice, to ensure that compensation claimants and the Commissioner for Employees' Compensation can get access to all relevant material held in the Commonwealth's possession;

and that Cabinet agree that:

- (e) Recommendation 2 not be accepted, on the grounds identified in paragraphs (a) - (d);
- (f) when a Commonwealth position on an atomic test related compensation claim is required to be established, all Commonwealth agencies should on request and in consultation with the DRE provide all personal and medical documents relevant to

CABINET-IN-CONFIDENCE

8

that claim (such material to be used by the Departments of Resources and Energy or Social Security only for the purpose of responding to the compensation claim);

- (g) the Department of Health should, in consultation with the DRE, prepare for issue to all persons who request access to material held in DRE lists and related material, a statement on health risks of radiation exposure; and
- (h) the Government statement made in response to Recommendation 2 incorporate a full explanation of the nature of the existing lists and the proposed arrangements outlined above.

NEAL BLEWETT

25 June 1986

GARETH EVANS

25 June 1986

CABINET-IN-CONFIDENCE

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9

ATTACHMENT A

COORDINATION COMMENTS

1. Department of Defence is opposed to the proposed arrangements at paragraph 8 and the recommendations at sub-paragraph 15(f) on the following grounds:
 - a. the proposed access arrangements do not accord with Commonwealth practices for other compensation claims;
 - b. the proposals do not reflect present arrangements and safeguards inherent in the release of files to another Department (Veterans Affairs) for the purpose of processing claims for repatriation benefits;
 - c. the proposals are in apparent conflict with known Government policies and proposals regarding the privacy of information and records (proposed privacy legislation) and the protection of data collected by Commonwealth agencies (Data Protection Agency - Australia Card proposals); and
 - d. information or records collected by DRE for the purpose of compensation claims could inadvertently be used for other purposes - in contravention of Section 24A of the Compensation (Commonwealth Government Employees) Act.

2. Whilst Defence acknowledges the very significant responsibilities of the DRE in the establishment of the Commonwealth's position regarding nuclear tests in Australia, there is no evidence in the Submission before Cabinet which justifies departure from established procedures for the handling of compensation claims to the extent that legislation and Government policies regarding the privacy and confidentiality of information are overridden.

CABINET-IN-CONFIDENCE

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10

ATTACHMENT A (CONT'D)

3. To accommodate the need for preparation of the Commonwealth's position, whilst protecting the rights and privacy of individual claimants, Defence submits that the following procedures should apply in place of those described in paragraph 8 of the Cabinet Submission:

"8. When a Section 20 statement of (Commonwealth) position is requested by the Commissioner for Employees' Compensation the relevant employee department would need to provide to the Commissioner, through the DRE, facts relevant to the individual claim held on departmental files. For any subsequent Administrative Appeals Tribunal hearing the Department of Social Security might require access to relevant departmental files to prepare the Commonwealth's position. Material considered relevant to the hearing would be extracted and referred to the DRE for clarification if necessary prior to submission to the Tribunal. In either case the DRE would not seek access unless the claimant has given authority for such access. The claimant would be informed of any such access by the DRE to personal or medical records, files or information and would be afforded access to that material. Information so obtained by the DRE would not be used for any other purpose excepting in accordance with the provisions of Section 24A of the Compensation (Commonwealth Government Employees) Act 1971."

4. The revised procedures proposed above would, if agreed, lead to the requirement for Cabinet to consider amended recommendations in place of the recommendation at sub-paragraph 15(f) of the Cabinet Submission. The revised recommendations are:

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(paragraph 15)

"(f) when a Commonwealth position on an atomic test related compensation claim is required to be established the DRE may co-ordinate the provision to the Commissioner for Employees' Compensation of relevant facts held by Commonwealth agencies, and may have access to all material identified by Department of Social Security as relevant to any subsequent Administrative Appeals Tribunal hearing"; and

insert new sub-paragraph 15(g)

"(g) the DRE may not obtain access to information or records from a claimant's personal or medical files held by Commonwealth agencies unless the claimant has authorised such access."

5. The Attorney-General's Department says that its advice referred to in paragraph 5(b) of the Submission was not given in relation to the recommendations made by the Royal Commission and does not appear to be relevant to the question whether the Register recommended by the Royal Commission in recommendation 2 should be created or whether the expenditure of resources on it (or on up-dating existing lists) is justified. The essence of that advice was that certain deeming provisions in the legislation may be available where it is determined, on the balance of probabilities, that a Commonwealth employee is suffering from a disease caused by radiation or radioactive substance. It is unclear from the Submission what was the premise of the Royal Commission in identifying the requirement for a Register. This being the case, this Department cannot confirm that the effect of its advice is as stated in para. 5(b). The Attorney-General's Department also does

CABINET-IN-CONFIDENCE

CABINET-IN-CONFIDENCE

12

ATTACHMENT A (CONT'D)

not agree that the Epidemiological Studies (Confidentiality) Act 1981 is necessarily a barrier to the establishment of the recommended Register. In the absence of amendment, that Act will merely influence the way in which material is placed on such a Register. The Department notes, moreover, that the possibility of appropriate changes being made to the Act was referred to in para. 10 of Submission No 3513 date 17 January 1986.

6. The Department of Social Security questions the assumption implicit in the Submission that the Commonwealth will be regularly appealing against decisions of the Commissioner and believes that the issue should be considered on the basis of the Submission of the Minister for Social Security on Recommendation 1.

7. The Department also considers that a wide range of advice should be obtained, in addition to that of the Australian Radiation Laboratory, concerning the likely effects of the tests on those exposed to them.

8. The Commissioner for Employees' Compensation is strongly in favour of the Government accepting Recommendation 2 of the Royal Commission as access to a national register of nuclear veterans and the epidemiological survey would be invaluable in assisting him investigate and determine claims received from nuclear veterans. In the Commissioner's view the DRE should have applied itself to the manner in which these documents could be made available to the Commissioner. Access to the whole lists is important to enable profiles of exposure and risk to be obtained.

CABINET-IN-CONFIDENCE

CABINET-IN-CONFIDENCE

13

ATTACHMENT A (CONT'D)

9. The Commissioner considers the statement in paragraph 5(b) is misleading. Although the Commonwealth has received legal opinion from the Attorney-General's Department, it should not be assumed that the reverse onus of proof provisions are not sustainable.

10. The Commissioner has difficulty in accepting the exposure risk figures presented in paragraph 9. 247 claims from nuclear veterans have been received to date, 10 of these have been accepted without appeal by the Commonwealth, 117 are still under investigation and 101 in respect of which liability was denied are to be reconsidered in the light of additional information that has now been presented to the Commissioner following the Royal Commission investigations.

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