



**Australian Government**  
Repatriation Medical Authority

**Application of the concept of ‘beneficial  
legislation’ to the Practices and Procedures of  
the Repatriation Medical Authority**

### ***Veterans' Entitlements Act 1986* as “beneficial legislation”**

1. The *Veterans' Entitlements Act 1986* (VEA) establishes a scheme whereby the Commonwealth of Australia is liable to pay pensions, benefits or allowances to veterans who have eligible service and have suffered an injury or a disease as a result of that service.
2. It has long been acknowledged that the VEA and its predecessors are beneficial legislation. Effectively, this is a term used to refer to legislation which gives some benefit to a person and thereby remedies some perceived injustice. As well as veterans legislation, the commonly cited examples are social welfare and pension legislation, Workers Compensation Acts and the like.

### **What is the concept of “beneficial legislation”?**

3. This concept is one that assists the interpretation of legislation which gives some benefit to a person and thereby remedies some perceived injustice.
4. The relevant principle can be summarised thus:

*If legislation is beneficial in nature and its provisions are ambiguous or alternative interpretations of relevant provisions are suggested, the interpretation which gives force to the relief sought as the object of the legislation or provisions, consistent with the subject matter and the fair meaning of the language of the provisions, is the one which will be adopted by the Courts.*<sup>1</sup>
5. The operation of this principle should be understood against the background of the general principles governing statutory interpretation.
6. Firstly, the operation of this principle does not mean:

*that the true signification of the provision should be strained or exceeded, but that it should be construed so as to give the fullest relief which the fair meaning of its language will allow.*<sup>2</sup>
7. In particular, while beneficial construction has regard to the purpose of the statute:

*When the express words of a legislative provision are reasonably capable of only one construction and neither the purpose of the provision nor any other provision in the legislation throws doubt on that construction, a court cannot ignore it and substitute a different construction because it furthers the objects of the legislation.*<sup>3</sup>
8. Secondly, the characterisation of legislation as beneficial does not mean that every provision or amendment affected will be construed beneficially. It is the purpose of the provision in the context of the legislation itself will govern the interpretation. There is no mechanical process where any interpretation consistent with this purpose is adopted.<sup>4</sup>
9. A good example of the application of this concept is found in *Re Baverstock and Repatriation Commission*<sup>5</sup>, where a Veteran who had defence service as a marine technician and radio operator had duties including aerial maintenance, chipping and painting, replacing equipment and re-assembling sleeping quarters, and was exposed to asbestos fibres in dust. During some period of service he was on

<sup>1</sup> *Bull v Attorney-General (NSW)* (1913) 17 CLR 370.

<sup>2</sup> *Ibid* at page 384.

<sup>3</sup> *Newcastle City Council v GIO General Ltd* (1997) 191 CLR 85.

<sup>4</sup> *ADCO Constructions Pty Limited v Goudappel* [2014] HCA 18.

<sup>5</sup> (2008) AATA 467

vessels which were fitted with steam pipes insulated with asbestos which deteriorated due to the ships vibration and ordinary use.

10. At that time, the Statement of Principle for his disease Adenocarcinoma of the kidney (Instrument No. 88 of 2001) provided that factor 5(b):

*inhaling respirable asbestos fibres for a cumulative period of at least 2000 hours: at the time material containing asbestos fibres was being applied, removed, dislodged, cut or drilled.*

11. In the circumstances, the issue for the Tribunal was whether, “dislodged” could contemplate the circumstances of the veteran’s service. There is a syntactical presumption applicable, *noscitur a sociis*, a thing is known by its associates, which in its ordinary operation would limit the meaning of “dislodge” to “shift position of”, implying some direct human action on the subject matter.

12. Here, the Tribunal applying the principle of beneficial legislation to the Statement of Principle, it being a legislative instrument and subject to the canons of statutory interpretation including this principle, found that “dislodge” could comprehend the situation where the position of steam pipes shifted through vibration or ordinary human use. This allowed the Veteran to access the benefit of the factor and the relevant presumption in the cause of his disease.

13. This accords with the approach to statutory interpretation outlined by the High Court in *Project Blue Sky v Australian Broadcasting Authority*<sup>6</sup>.

#### **“Beneficial Legislation” and Part XIA VEA**

14. The VEA is “beneficial legislation” and is intended to be generous. This is seen in the legislative tests for the inclusion of factors set out in Part XIA of the VEA, which permit factors at standards of proof lower than those that might be considered appropriate in clinical and other public health settings.

15. The operation of those legislative tests and their beneficial nature is reflected in the approach adopted by the RMA outlined in the policy document, “*How the Repatriation Medical Authority Interprets and Applies the two Standards of Proof*”.

16. However, the principle of “beneficial legislation” does not affect the operation of the statutory processes governing the operation of the Authority.

17. This has the following import. Firstly, the statute requires that the RMA must make a decision anterior to the conduct of an investigation that there is a particular kind of disease that can be the subject matter of such an investigation.

18. While a request under s 196E of the VEA, is not to be disregarded if veterans or their advisors inadequately or incorrectly describe diseases, the RMA must form a view that there is a disease of a particular kind as a first step in the discharge of its investigative functions. Secondly, the procedures adopted by the RMA do not apply the beneficial purpose outlined in the legislative tests to “give the benefit of the doubt” to evidence which does not meet the statutory criteria.

19. Section 196C of the VEA provides that:

*(3) In forming any view during the investigation the Authority*

*(a) may rely only on sound medical-scientific evidence. and*

*(b) must consider and evaluate all the evidence so made available to it.*

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<sup>6</sup> (1998) 194 CLR 355

20. Whilst the RMA is an expert body and utilises its knowledge and clinical experience in the application of the statutory tests for factors in the various Statement of Principles, the insertion of particular factors arises from the beneficial nature of the legislative provisions, not because of the application or the concept of “beneficial legislation”.