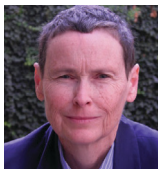


# The Long Arc of Justice for Veteran Benefits

*I do not pretend to understand the moral universe. The arc is a long one. My eye reaches but little ways. I cannot calculate the curve and complete the figure by experience of sight. I can divine it by conscience.*

*And from what I see I am sure it bends toward justice.*

Theodore Parker<sup>1</sup>



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**T**his Veterans Day we honor the passing of the largest expansion of veterans benefits and services in history. On August 10, 2022, President Biden signed the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act. This act was named for a combat medic who died of a rare form of lung cancer believed to be the result of a toxic military exposure. His widow was present during the President's State of the Union address that urged Congress to pass the legislation.<sup>2</sup>

Like all other congressional bills and government regulations, the PACT Act is complex in its details and still a work in progress. Simply put, the PACT Act expands and/or extends enrollment for a group of previously ineligible veterans. Eligibility will no longer require that veterans demonstrate a service-connected disability due to toxic exposure, including those from burn pits. This has long been a barrier for many veterans seeking benefits and not just related to toxic exposures. Logistical barriers and documentary losses have prevented many service members from establishing a clean chain of evidence for the injuries or illnesses they sustained while in uniform.

The new process is a massive step forward by the US Department of Veterans Affairs (VA) to establish high standards of procedural justice for settling beneficiary claims. The PACT Act removes the burden from the shoulders of the veteran and places it squarely on the VA to demonstrate that > 20 different medical conditions—primarily cancers and respiratory illnesses—are linked to toxic exposure. The VA must establish that exposure occurred to cohorts of service members in specific theaters and time frames. A veteran who served in that area and period and has one of the indexed illnesses is presumed to have been exposed in the line of duty.<sup>3,4</sup>

As a result, the VA instituted a new screening process to determine that toxic military

exposures (a) led to illness; and (b) both exposure and illness are connected to service. According to the VA, the new process is evidence based, transparent, and allows the VA to fast-track policy decisions related to exposures. The PACT Act includes a provision intended to promote sustained implementation and prevent the program from succumbing as so many new initiatives have to inadequate adoption. VA is required to deploy its considerable internal research capacity to collaborate with external partners in and outside government to study military members with toxic exposures.<sup>4</sup>

Congress had initially proposed that the provisions of the PACT ACT would take effect in 2026, providing time to ramp up the process. The White House and VA telescoped that time line so veterans can begin now to apply for benefits that they could foreseeably receive in 2023. However, a long-standing problem for the VA has been unfunded agency or congressional mandates. These have often end in undermining the legislative intention or policy purpose of the program undermining their legislative intention or policy purpose through staffing shortages, leading to lack of or delayed access. The PACT Act promises to eschew the infamous Phoenix problem by providing increased personnel, training infrastructure, and technology resources for both the Veterans Benefit Administration and the Veterans Health Administration. Ironically, many seasoned VA observers expect the PACT expansion will lead to even larger backlogs of claims as hundreds of newly eligible veterans are added to the extant rolls of those seeking benefits.<sup>5</sup>

An estimated 1 in 5 veterans may be entitled to PACT benefits. The PACT Act is the latest of a long uneven movement toward distributive justice for veteran benefits and services. It is fitting in the month of Veterans Day 2022 to trace that trajectory. Congress first passed veteran benefits legislation in 1917, focused on soldiers

with disabilities. This resulted in a massive investment in building hospitals. Ironically, part of the impetus for VA health care was an earlier toxic military exposure. World War I service members suffered from the detrimental effects of mustard gas among other chemical byproducts. In 1924, VA benefits and services underwent a momentous opening to include individuals with non-service-connected disabilities. Four years later, the VA tent became even bigger, welcoming women, National Guard, and militia members to receive care under its auspices.<sup>6</sup>

The PACT Act is a fitting memorial for Veterans Day as an increasingly divided country presents a unified response to veterans and their survivors exposed to a variety of toxins across multiple wars. The PACT Act was hard won with veterans and their advocates having to fight years of political bickering, government abdication of accountability, and scientific sparing before this bipartisan legislation passed.<sup>7</sup> It covers Vietnam War veterans with several conditions due to Agent Orange exposure; Gulf War and post-9/11 veterans with cancer and respiratory conditions; and the service members deployed to Afghanistan and Iraq afflicted with illnesses due to the smoke of burn pits and other toxins.

As many areas of the country roll back LGBTQ+ rights to health care and social services, the VA has emerged as a leader in the movement for diversity and inclusion. VA Secretary McDonough provided a pathway to VA eligibility for other than honorably discharged veterans, including those LGBTQ+ persons discharged under Don't Ask, Don't Tell.<sup>8</sup> Lest we take this new inclusivity for granted, we should never forget that this journey toward equity for the military and VA has been long, slow, and uneven. There are many difficult miles yet to travel if we are to achieve liberty and justice for veteran members of racial minorities, women, and other marginalized populations.

Even the PACT Act does not cover all putative exposures to toxins.<sup>9</sup> Yet it is a significant step closer to fulfilling the motto of the VA LGBTQ+ program: to serve all who served.<sup>10</sup>

#### Author disclosures

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#### Disclaimer

The opinions expressed herein are those of the author and do not necessarily reflect those of *Federal Practitioner*, Frontline Medical Communications Inc., the U.S. Government, or any of its agencies.

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