THE HISTORY OF MILITARY COMPENSATION LAW IN AUSTRALIA+

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Introduction

There is a very substantial body of material available on the history of veterans' law in Australia, most notably the *Toose Report* (1975) which is a goldmine for those interested in the development of the Australian repatriation system. The *Toose Report* includes Pt 2 'History of Repatriation Legislation' which surveys the development of Australian repatriation legislation from Federation to the post- World War 2 period, and also, equally importantly, includes detailed historical information on all of the many issues considered by that Review, such as Departmental administration, service, entitlements, review and appeals, medical treatment, etc. The more recent history of veterans' law is neatly summarised in Ch 3 of the *Clarke Review* (2003).

It is however, quite noticeable that the attention of historians has generally been focused on compensation for injuries arising out of war service and that the history of compensation for injuries suffered in peacetime service is less widely discussed. Annex F of the *Tanzer Review* (1999) included a useful summary of legislative and conceptual changes in military compensation since World War 2, however there does not appear to be any comprehensive historical study available on peacetime military compensation in Australia. In this paper, I can make only a very brief start on this subject.

There has always been debate about the most appropriate mechanism for delivering peacetime military compensation in Australia. Essentially there are three policy options available:

1. alignment with the workers' compensation arrangements for civilian employees of the Commonwealth Government;

2. alignment with the repatriation system developed during and after World War 1 to meet the needs of the hundreds of thousands of veterans returning from active service overseas; and

3. a separate scheme for peacetime military compensation, based on the specific nature of military service.

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Between 1901 and 1948, for the most part, separate schemes operated under Regulations made under the *Defence Act 1903* and the *Naval Defence Act 1910*. The variants of these schemes were not well developed in a policy sense, were discretionary in character and at various times overlapped with civilian compensation arrangements.

Between 1949 and 2004, peacetime military compensation was aligned with Commonwealth employees compensation, however a tangle of dual entitlements with the repatriation system were put in place essentially on an ad hoc basis to meet specific policy challenges.

In 2004, a separate comprehensive, legislative scheme for Defence Force compensation was established by the *Military Rehabilitation and Compensation Act 2004*, providing coverage of injuries incurred in service after the commencement of the scheme on 1 July 2004

In the preparation of this paper, I have called upon, without explicit acknowledgment, material contained in two books – *Veterans' Entitlements Law*, of which I am co-author with Professor Robin Creyke, and the *Annotated Safety, Rehabilitation and Compensation Act 1988*, of which I am co-author with John Ballard. These books together provide comprehensive annotations of relevant Court and Tribunal decisions in respect of military compensation, however they do not attempt to provide a comprehensive history of the legislation which they annotate or of veterans' law more generally. I extend my thanks to Robin and John for their work on these books.

1901 - 1949

The Commonwealth contingent in the Boer War

In the very early days of the Commonwealth, the Commonwealth Government showed a marked lack of enthusiasm for military compensation, by failing to make adequate provision for the 4,000 men who participated in Commonwealth contingents in the Boer War in South Africa. Each Commonwealth recruit was required to sign an acknowledgment that he had no claim upon the Commonwealth Government 'in case of disablement or death'. In contrast, members of State contingents and their dependents received disability pensions paid by the Imperial Government under the provisions of Army Order No 150 of 1901, as given effect by a Royal Warrant of August 1902. In addition, Victoria and New South Wales paid pensions to a number of members under State legislation. This group of Commonwealth veterans finally accessed some Commonwealth veterans' benefits after World War 1, but not fully equivalent entitlements[1].

Defence Act 1903 and Naval Defence Act 1910

The Commonwealth first made provision for compensation for the Defence Forces of Australia in ss 57 and 124 of the *Defence Act 1903* (No 20/1903), which stated:

> PART III. – THE DEFENCE FORCE
> Division 4. – General Provisions
> *Provision for families of men killed, &c.*
> 57. When any member of the Defence Force is killed on active service or on duty, or dies or becomes incapacitated from earning his living from wounds or disease contracted on active service or on duty provision shall be made for his widow and family or for himself, as the case may be, out of the Consolidated Revenue Fund at the prescribed rates.
> PART XI. – REGULATIONS
> *Regulations*
> 124.(1.) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for securing the discipline and good government of the Defence Force, or

> for carrying out or giving effect to this Act, and in particular prescribing matters providing for and in relation to:-
> …
> (h) The insurance of their lives by married members of the Permanent Forces for the benefit of their wives and families;
> …
> (t) The payment of compensation to wives and families of members of the Defence Forces as provided in Part III. Division 4 of this Act.

Section 57 provided for injuries or death 'on active service or on duty', thus providing coverage for both war service overseas ('active service') and injury in peacetime service ('on duty').

The *Naval Defence Act 1910* (No 30/1910) established a separate legislative regime for the Naval Forces, including s 44 in relation to pensions:

> 44. Funds may be established in such manner and subject to such provisions as are prescribed for providing for the payment of annuities or gratuities to members of the Naval Forces permanently injured in the performance of their duties, and for the payment of annuities or gratuities to members of the Permanent Naval Forces who are retired on account of age or infirmity.

The *Naval Defence Act* included, in s 3, a definition of 'active service' which defined it as 'service in or with a force which is engaged in operations against the enemy, and includes any naval or military service in time of war'. The Act also amended the *Defence Act 1903* to confine its scope to the Military Forces of the Commonwealth (ie. the Army).

Regulations were promulgated under the *Defence Act* and were in existence by 1909, providing for payments of compensation to be made on the basis of a discretion exercised by a Board appointed to inquire into each case of injury or disablement. The Board could recommend compensation only if the serviceman had not contributed to the injury by any default of his own[2].

Workers compensation for Commonwealth employees

Modern workers compensation legislation had its origin in Imperial Germany in 1884 however the legislation in Australia is British-based, particularly drawing on the *Workmen's Compensation Act 1897* (UK) which initially was designed to protect British workers in what were regarded as dangerous trades and subsequently came to embrace workers in 'any employment'.

The development of workers compensation legislation in Great Britain was a direct response to the unsatisfactory nature of common law litigation as a protective mechanism against unsafe work places and work practices. In particular, common law remedies were unsatisfactory because of the cost and difficulty of litigation and the defences of accident, acquiescence, contributory negligence and common employment which greatly favoured the employer[3].

The Office of the Commissioner for Employees Compensation described the inadequacy of common law remedies in the Nineteenth Century:

> The doctrine of common employment ensured that the employer was not liable where injury to one of his workers was caused by the negligence of another employee. No damages could be recovered if there was any element of contributory negligence on the part of the worker. By application of the principle "volenti non fit injuria" the employer again avoided liability if he could show that the injury was attributable to a risk which the worker was aware of and accepted when he took employment. (1987, p 1)

The early history of workers compensation in Europe and America is briefly summarised in the Interim Report of the Heads of Workers' Compensation Authorities:

> 2.1 Workers' compensation is a product of the late industrial revolution. The first modern workers' compensation legislation was Bismarck's Imperial German Accident Law of 1884 which provided a model for similar European statutes, beginning with measures in Austria-Hungary in 1887 and in Norway in 1894. This "German model", represented by the legislation of 1884 and 1900, constitutes one of the two major streams of workers compensation development.
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> 2.2 The second major stream was represented by the English Workmen's Compensation Acts of 1897 and 1906. This model was largely followed by various British Dominions (eg the Australian States and New Zealand) and in most of the United States. The first Australian legislation was in South Australia in 1900 with Victoria being the last State to enact such a measure in 1914.
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> 2.3 A major difference between the German and English models was the former system's concern with accident prevention and rehabilitation, as well as compensation, whereas the English-influenced schemes were almost solely concerned with income support to compensate wage loss as a result of industrial injury.
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> 2.4 In the United States, the earliest legislation was the victim of successful constitutional challenge; however, from 1911, the various State jurisdictions adopted measures which survived such challenges. The major variant in the United States was that, while the English model retained recourse to the common law action for negligence, there was an abrogation of this tort remedy in an "historic compromise" in exchange for a more certain system of no-fault benefits.
>
> 2.5 In Canada, after 1914, the provincial schemes not only involved abrogation of the common law action but were financed by levies collected by the workers' compensation administrative agency rather than premiums collected by private insurance companies.
>
> 2.6 The earliest Australian workers' compensation statutes, following the model of the 1897 English legislation, confined coverage to a number of defined classes of "dangerous employment". The concept of general coverage of workers in all industries and occupations came with the 1906 English Act, a concept which was then adopted by the various Australian jurisdictions[4].

Compensation for Commonwealth employees was introduced by the *Commonwealth Workmen's Compensation Act 1912* (No 29/1912) ('the 1912 Act') which stated:

> 3(1) "Workman" means any person who has entered into or works under a contract of service or apprenticeship with the Commonwealth … but does not include –
> …
> (c) any member of the Naval or Military Forces of the Commonwealth while engaged on active service.

The original Bill for the Act purported to exclude Defence Force personnel entirely from the coverage of the Act, a measure explained by the Prime Minister and Treasurer, Mr Fisher, in the following terms:

> … the Naval and Military Forces are also excluded, as more fitting for treatment in another measure[5].
>
> The honourable member for Parramatta inquired why members of the Defence Forces were excluded from the provisions of the Bill. I would remind him that under the Defence Act power is taken to provide relief for members of the Defence Forces injured while on duty. … Regulations have been framed, and I think that payments have been made under them. (p 4660)

The Government's position appears to have been influenced by concern about the financial implications of creating a legislative right to compensation which could be drawn upon by large numbers of servicemen in the event of a major war. Under the Defence Regulations, access to compensation was discretionary and thus more able to be controlled in quantum and eligibility criteria by the Government of the day.

Many members of the House of Representatives and many Senators opposed the Government's intention on two broad grounds: compensation under the Regulations was

discretionary and could be refused on arbitrary grounds; and there was no assurance that military personnel (particularly other ranks) would receive amounts of compensation comparable with their civilian counterparts. This view was reflected by Mr Archibald, the Member for Hindmarsh, who stated in the Parliament:

> It is desirable that our soldiers should always be citizens, and subject to the ordinary laws of the community so far as it is possible without endangering military discipline. … their compensation should in no way depend on the temper of their superior officer, because we know what military men are, especially military men from the Old Country or Europe. Those who are serving in our Army and Navy should be compensated for injuries in the same way as the citizens in our industrial army[6].

A compromise was reached in the Senate whereby the Act would cover military personnel in their peacetime employment but would not cover members of the Naval or Military Forces while on 'active service'. 'Active service' was not defined in the 1912 Act, however the definition in the *Naval Defence Act* (supra) provided a reasonably certain basis for its application.

Accordingly, between 1912 and 1930 (when the 1912 Act was repealed), compensation for injuries sustained in peacetime military service was covered by the same legislation as compensation for civilian employees of the Commonwealth. While this was the legal position, I think it is possible that further research may reveal that a form of dual entitlement continued to operate in practice for military personnel during this time, with compensation entitlements for peacetime injuries being determined under the Defence Regulations as well as under the 1912 Act.

World War 1

On the outbreak of the 1914-18 War, Australia offered to make available for service overseas a force of 20,000 volunteers. Major-General WT Bridges, who was given the task of raising the force, advised the Government on 8 August 1914 that pensions should be guaranteed to men enlisting and to their dependants in case of death, and compensation in the case of disablement through wounds[7].

The *War Pensions Act 1914* was assented to on 21 December 1914 and provided for compensation for death, injury or disease incurred as a result of active service outside Australia. The scheme of this Act was later enhanced by the *Australian Soldiers' Repatriation Fund Act 1916* and the *Australian Soldiers' Repatriation Act 1917* and was finally consolidated into the *Australian Soldiers' Repatriation Act 1920*. This Act, later renamed as the *Repatriation Act 1920*, continued as the principal legislative basis for compensation for war service until its repeal and substitution by the *Veterans' Entitlements Act 1986* (the VEA).

Under the Repatriation Act, compensation was payable for injuries or death suffered during war service, including service in World Wars 1 and 2, Korea, Malaya and Vietnam. Progressively, other benefits and entitlements were introduced for veterans, including service pension, special allowances and enhanced arrangements for medical treatment such as the 'Gold Card'.

Commonwealth Employees Compensation Act 1930

The 1912 Act was repealed and substituted by the *Commonwealth Employees' Compensation Act 1930* (No 24/1930) (the 1930 Act) which stated:

> 4(1) … "Employee" … does not include –
> …
> (b) any member of the Naval, Military or Air Forces of the Commonwealth;

The Second Reading Speech, delivered by Mr Beasley, Assistant Minister, made only passing reference to the complete exclusion of the Defence Forces from the coverage of this Act:

> Clause 3 provides for the repeal of the Act of 1912, but safeguards the employees' rights for which eligibility was acquired under that statute. Clause 4 contains a new definition of "employees" and indicates the classes of workers who will be entitled to the benefits of this legislation. Honourable members will notice that members of the naval, military and air forces, do not come within the definition and will, therefore, not be subject to the provisions of the bill. The impracticability of including the members of the fighting forces, who may, at times, be required to proceed on active service, will be appreciated by honourable members[8].

It appears that there was little or no division of opinion on this issue in the Parliament (a stark contrast to the controversy in 1912). An explanation for this lack of interest may possibly found at another point in the Second Reading Speech where the Minister said:

> The standing of civil employees of the Defence Department required special consideration by virtue of the fact that provision for payment of compensation had already, to an extent, been applied by regulations under the Defence Act 1903–27 and the Naval Defence Act 1910-1918. To ensure regularity, clause 14 makes provision for the repeal of any relevant regulations which may at present be in operation under the acts that I have mentioned. The usual safeguards have, however, been provided so that the rights of any employees shall not be affected in circumstances which ordinarily would have been appropriately dealt with in such regulations prior to the passage of this legislation. (p 5627)

This reference to use of the Defence Regulations for civilian Defence employees suggests that the Regulations made under the *Defence Act* and the *Naval Defence Act* may have been in widespread use at that time as a mechanism for military compensation, given that their coverage had been extended even to civilian employees of the Department of Defence. Other possible explanations for the exclusion of the Defence Forces from the civilian compensation scheme may be found in the availability of the *Repatriation Act 1920* as the preferred compensation vehicle for all of the Defence Force personnel who were veterans of World War 1, and in the relatively limited benefit structure of the 1912 Act, which capped the amount of compensation payable at a relatively low amount and did not cover occupational diseases.

While the Defence Forces were compensated under Regulations made under the Defence Act during the 1930s, there is evidence that the general principles of workers compensation, and particularly the fundamental bases of the 1930 Act, provided guidance to the discretionary application of those Regulations. This is illustrated by two cases on record in the National Australian Archives:

> 1. Lance Corporal W Ring suffered a hernia during bayonet practice on a slippery surface in a hall on 5 April 1933. The medical advice was that the hernia could be fully repaired by appropriate surgery, however this would involve a significant period of incapacity after the surgery. The member declined to undergo surgery as he had just recently gained employment and would lose that employment if he took sick leave. Instead, he sought payment of lump-sum compensation under r 173 of the Financial and Allowance Regulations, made under the Defence Act, in respect of an injury of a permanent nature. Legal advice to the decision-maker drew upon the "reasonable to undergo treatment" test well established in the general principles of workers compensation. In this case, the legal adviser considered it was reasonable for the member to refuse treatment and therefore compensation for permanent injury should be paid. The legal adviser also noted that the circumstances of the bayonet practice gave rise to a risk of a common law action. (NAA: A432, 1934/339)
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> 2. Signaller TE Ward, a part-time member of the Forces, was injured while returning to camp from leave on 9 June 1941. As a result of his injuries, his right leg was amputated. In the Inter-departmental Committee Report submitted to Cabinet on Ward's case, it was pointed out that the principle of admitting liability for compensation in respect of injuries sustained while travelling to or from a place of employment was accepted in other Commonwealth compensation legislation such as the Commonwealth Employees Compensation Act and the Repatriation Act. Cabinet accepted the general principal of admitting liability for injuries received by part-time members of the Forces while travelling

> to or from a place of employment and directed that Sig. Ward and other Defence Force members in like circumstances be compensated through s 57 of the Defence Act. (NAA: A2700, 1219B)

World War 2

Following the outbreak of war in 1939 and the enlistment of the Second AIF, the *Australian Soldiers' Repatriation Act 1940* applied the Repatriation Act to servicemen and servicewomen engaged in World War 2. The Act provided for grant of pensions to members of the Forces with active service outside Australia where incapacity or death resulted from any occurrence happening during the period from enlistment until discharge. For members who only had home service, compensation entitlement arose only where incapacity or death was directly attributable to Defence service. Provision was made for Australian mariners in the *Seaman's War Pensions and Allowances Act 1940*. The *Australian Soldiers' Repatriation Act 1920* (shortened in 1950 to the *Repatriation Act 1920*) was described by the Attorney-General and Minister for External Affairs, the Right Hon Dr H V Evatt KC, in 1944 in these terms:

> The *Australian Soldiers' Repatriation Act 1920-1943* is not based upon any well-known type of legislation. Though it may have something in common with Workers' Compensation, it is an instrument which is largely *sui generis*. It represents the desire of the Australian people, through their National Parliament, to ensure that members of Australia's gallant fighting forces who have become wounded or sick as the result of their service shall be properly cared for, and that they and their dependants, and the dependants of deceased members, shall be provided for by a war pension and otherwise assisted in the economic struggle of life. The bearing of these forces in the field commands the admiration of the world, and too much cannot be done in the way of repatriation to recompense them for the sacrifices they have made in the sacred cause of liberty. (O'Sullivan, 1944, Foreword)

The history of veterans' law during World War 2, and its aftermath, is discussed in the *Toose Report* at pp 34-39.

Demobilisation of the Australian World War 2 Armed Forces was, to all intents and purposes, completed by February 1947, however a great many members had been enlisted or re-engaged for short terms of further service to become part of the British Commonwealth Occupation Forces in Japan. Because of the difficulties in setting an immediate and arbitrary cut-off date for the cessation of war-based entitlements, and in order to clarify discharge entitlements and arrangements, the *Interim Forces Benefits Act 1947* (No 46/1947) was enacted and provided for general compensatory benefits to members who continued to serve in the period 1947-49. (Skerman 1961, pp 179-80)

1949 - 2004

Commonwealth Employees Compensation Act 1948

Members who enlisted in the Permanent Forces after 30 June 1947 were excluded, by Cabinet decision, from war service and Interim Forces compensation benefits, which gave rise to Inter-Departmental consideration of future military compensation arrangements.

A Draft Report prepared by the Department of the Treasury (Defence Division) in 1947 considered two options for military compensation, coverage under the 1930 Act or use of the Regulations under the Defence Act, showing preference for the first option. The Draft Report stated:

> Following on the decision of Cabinet (Agendum No. 1241C. See 40/2075) that the provisions of the Repatriation Act were to cease to apply to Permanent Defence personnel in respect of injuries or death attributable to service after 30th June 1947, consideration is given in this Report to the provision to be made by way of compensation for death or injury of members of that personnel.
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> …

A consequence of the decision of Cabinet as indicated above is that members of the Permanent Forces will revert to the cover of the provisions of the Defence Act. It is desirable, therefore, to consider whether this method of compensation is preferable to a pension scheme and to review the appropriateness of the provisions of the Defence Acts, regard being had to:

a) the provisions of the Regulations under the Acts which, in the case of Army and Air personnel (other than Air Force Officers who take deferred pay in lieu of Superannuation pension), place a limit of £750 in lump sum payments;
b) the requirements that the disability is "directly attributable" to service;
c) the necessity for having uniform conditions for the three Defence Services;
d) the desirability or otherwise of setting off against the compensation provision the Government's contribution to pension in cases of total or partial incapacity as provided in the present Commonwealth Employees' Compensation Act;
e) the possibility that some members will not become contributors to the Defence Forces Retirement Act when it becomes law.

Pension Method of Compensation

Advantages which may be attributed to the pension method in preference to the lump sum method of compensation are :

1) a more adequate provision is made for a member injured at an early age;
2) better provision is made for a wife and children;
3) payment continues during the whole of incapacity;
4) a lump sum may be wasted;
5) the Commonwealth may be relieved of an invalidity pension.

On the other hand, the lump sum method has the following in its favour:

1) it avoids a considerable increase in public expenditure;
2) it restricts the cost and difficulties of administration;
3) in view of the desirability of uniformity in injuries compensation, there is no impact on State policy and the possibility of increased costs therefrom in three States being passed on to the Commonwealth by way of State deficits is avoided.

The general conclusion to be drawn from the foregoing is that the pension method makes more adequate provision for the member who is retired on account of injury for his family. Where, however, the member receives, as is proposed under the Defence Forces Retirement Scheme, a pension on account of invalidity, a lump sum payment by way of compensation has advantages. Where no such pension is payable and the member is totally and permanently incapacitated, weekly payments of compensation should be continued indefinitely.

…

Future Compensation Provision

…

The main disadvantage of the present civil service compensation scheme if applied to the Permanent Defence Forces is in regard to the set-off of the Commonwealth contribution to any Superannuation pension against weekly compensation payments. As the proposed Defence Forces Retirement Scheme makes provision for incapacity pensions which will include a substantial Commonwealth subsidy, set-off of this subsidy against the weekly payments of compensation under the Commonwealth Employees' Compensation Act would result in a reduction or total loss of compensation.

It is understood, however, that amendments of the Commonwealth Employees' Compensation Act, including an increase of benefits and complete elimination of set-off, are under consideration by the Treasury.

Elimination of the set-off of pension against compensation will resolve any difficulty associated with compensation to members of the Permanent Forces who will be contributors to the Defence Forces Retirement Fund. In view of the large numbers who will not be contributors to that fund, e.g. members of the Regular Army Special Reserve, Citizen Forces and possibly some permanent members of the Forces desirous of retaining deferred pay, it is desirable to consider whether the provisions of the Commonwealth Employees' Compensation Act compare favourably with the present compensation provisions to members of the Permanent Defence Forces. It is considered, however, that, the provisions of the Act compare favourably at present and even more so if suggested Treasury proposals are implemented.

The provisions of the Commonwealth Employees' Compensation Act are limited in their application to Australia but employees injured outside Australia receive the benefit of those provisions on an act of grace basis. A similar privilege should be applied to any member of the Permanent Defence Forces injured outside Australia.

On this understanding, it is recommended:

1) that the amendment of the Australian Soldiers' Repatriation Act arising from the Cabinet's decision of 26th May, 1947, to exclude injuries attributable to service in the Permanent Defence Forces after 30th June, 1947, from the provisions of that Act be implemented as soon as possible;
2) that the Commonwealth Employees' Compensation Act be amended to permit the provisions of that Act to be applied to the personnel of the Defence Forces not on active service. (NAA: A571, 1948/430)

The *Commonwealth Employees' Compensation Act 1948* (No 61/1948) provided for the inclusion of Defence Force personnel within the coverage of the 1930 Act. The Second Reading Speech to the Bill was made by Mr Dedman, Minister for Defence, Minister for Post-war Reconstruction and Minister in charge of the Council for Scientific and Industrial Research, who stated:

> As already mentioned, it is proposed to extend the provisions of the act to employees of the Commonwealth outside Australia and to members of the peacetime defence forces. Such members, if injured in future, will receive the benefits of the Employees' Compensation Act, and if retired on account of the injury, they will receive the full benefit of the recently enacted Defence Forces Retirement Benefits Act. The present provisions of the Australian Soldiers' Repatriation Act, Defence Act, Naval Defence Act and any service regulation in relation to pension, compensation or other benefits for these peacetime members in respect of incapacity or death will be terminated. The benefits at present being paid to injured members of the peacetime forces will be reviewed and adjusted as an act of grace on the basis of the new provisions in this bill. All injured employees who, at the time this bill comes into force, are receiving weekly compensation payments under the 1912, 1930 and 1944 acts shall, it is proposed, receive the increased weekly payments provided in this bill[9].

Commonwealth employees' compensation coverage of Defence Force members on peacetime service under the 1930 Act commenced on 3 January 1949. This coverage did not include cadets, for whom act-of-grace compensation arrangements continued to apply. The *Repatriation Act 1920* continued to apply to active service such as the Malayan Emergency and service in South Vietnam.

One important issue arising from the application of the 1930 Act to military personnel was the legal test applied to link the injury suffered with the employment of the member. Under the Repatriation Act, coverage was continuous – any injury sustained during the period of war service (with some exclusions relating to self-inflicted wounds and dereliction of duty) was compensable. However, under civilian workers compensation legislation such as the 1930 Act, an injury must arise 'out of' or 'in the course of' the employment – the first requiring a causal link with employment and the second a temporal link with the activity of employment. It was argued that Defence personnel are always on duty because of the special nature of Defence service, however this was not accepted by the High Court in *Commonwealth of Australia v Wright*[10]:

> … To support a claim for compensation the accident to a civilian employee must have arisen out of or in the course of his employment, or when travelling to or from his employment, that is to say, to or from a state of activity called "employment", as distinct from the place where that activity takes place. And so I think it is a proper inference from the Act that to support a claim for compensation the accident to a soldier must have arisen out of or in the course of his service, which would include travelling on that service to or from a military camp, and when going on leave from the camp or returning to the camp on the expiration of leave; but not otherwise for personal reasons. Neither a permanent civilian employee, even one liable as is a permanent soldier to be called upon to perform his duties at any time, eg. a fire brigade employer, nor a permanent soldier is entitled to worker's compensation if injured, say whilst taking part in a hotel brawl, on the ground that he is always in employment or service.

In cases of air accidents, until 1973, a member may also have been entitled to compensation under the *Air Accidents (Australian Government Liability) Act 1963* in respect of death or injury sustained while travelling as an air passenger at Government expense or in Government-owned aircraft[11].

Compensation (Commonwealth Government Employees) Act 1971

The *Compensation (Commonwealth Government Employees) Act 1971* (No 48/1971) (the 1971 Act) repealed and substituted the 1930 Act providing a new workers compensation scheme for Commonwealth employees, including the Defence Forces. The substantive provisions of the Act commenced on 1 September 1971. For the first time, cadets were included in the coverage of the Commonwealth scheme by virtue of r 11 of the *Compensation (Commonwealth Government Employees) Regulations* (SR 1971, No 112), which also commenced on 1 September 1971.

The 1971 Act provided an enhanced benefit structure, including a wider coverage of disease than the 1930 Act. The notice and claims provisions of the 1971 Act were, however, reasonably similar to those in the 1930 Act and required a notice of injury to be given within strict time limits. These strict provisions about notice of injury and form of claim continue to be very relevant in the present day because of the substantial volume of new claims for injury from the 1950s, 1960s and 1970s which continue to be received by the Military Compensation and Rehabilitation Service (MCRS) in the present day. The notice and claim provisions were significantly relaxed by amendments commencing on 1 July 1986 by the *Social Security Legislation Amendment Act 1986* (No 33/1986).

Dual entitlement for peacetime service

On 7 December 1972, the *Repatriation Act 1920* was extended to peacetime military service, subject to a three year qualifying period. This was an attempt to retain former National Serviceman in an all volunteer force. Coverage under the *Compensation (Commonwealth Employees) Act 1971* was retained as well but the benefits under one Act were to be offset against the benefits payable under the other[12].

The problems inherent in a system of dual entitlement was discussed at length in the Report of the 'Black Hawk Inquiry':

> 69. Dual entitlement refers to the ability for a claimant to receive benefits under two compensation schemes for the same injury or illness. This has been possible since 7 December 1972 for many, but not for all, ADF personnel depending on the type of service they have rendered. Benefits under the SRCA are offset against those under the VEA. Dual entitlement needs to be considered since, in effect, it has created a third, and more generous compensation scheme. Since 1972 it is estimated that there are approximately 210,000 former and serving members of the ADF that have eligibility for dual entitlements.
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> 70. The misunderstanding of the offsetting arrangements amongst recipients and administrators is widespread. Dual coverage generates additional administration but has no real independent review procedures of the application of complicated offsetting provisions. Overpayments arising when calculating the effect of dual entitlement cause distress to recipients, when "expected" lump sums or pensions are withheld or reduced and the recipient is often confused by the reasons provided.
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> 71. There is a separate method of assessment of injury under the VEA. A condition accepted under both the VEA and the SRCA results in an offsetting arrangement. This includes a "notional assessment" that has no legislative base. This happens when part of the condition is defence-caused and part is not. A "notional" apportionment is made in order to decide the incapacity from the defence-cause portion. The concept itself is difficult to explain to a claimant.
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> 72. The Office of the Australian Government Actuary has reported that the cost of dual entitlement is greater than coverage under one or the other of the base schemes, principally because of the offsetting calculation. This is inconsistent with the intent of the arrangements for dealing with dual eligibility[13]. See annexes H and I.
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> 73. An inquiry conducted by the Honourable Mr Justice Toose in 1975 looked at the same issue of dual entitlement. At that time submissions were made which supported the placement of the compensation arrangements for members of the Defence Forces solely within the *Repatriation Act*

1920 replacing the *Compensation (Commonwealth Government Employees) Act 1971* (C(CGE) Act 1971).

74. Under the provisions of section 98A of the C(CGE) Act 1971 a claimant could elect not to receive certain benefits. Thus, if VEA benefits were the higher, the member could elect not to receive the weekly incapacity payments available under the C(CGE) Act 1971.

75. Mr Justice Toose expressed the following view on how the two Acts should work together:

> Broadly, where the amount of compensation awarded under the Compensation Act equals or exceeds the amount which could be paid under the Repatriation Act, no Repatriation payment is made. However, if it is less, Repatriation pension is paid at the level necessary to bring the total from both sources up to the amount that would have been paid had the Compensation Act not applied. This the member or dependant receives the more beneficial of the two provisions.

76. It was recognised that the two schemes had different levels and forms of benefit, entry criteria were different and the proof required was different. In the circumstances where the same source, that is the Commonwealth of Australia, provided both benefits this situation ought not to apply.

77. Dual payments and responsibilities mean a lesser administrative and support service by the two providers that lowers the overall standard of administrative efficiency. This comes about because claims for the same condition are examined by two sets of staff who use two sets of rules and apply two sets of policy guidelines. That can result in decisions whereby a condition is accepted under one scheme and not accepted under another.

78. When a member forgoes weekly compensation payments under SRCA in favour of a VEA disability pension there are consequences. The person would not be considered for a rehabilitation program from the Military Compensation and Rehabilitation Service (MCRS). It is presumed that the incentive to get back into the workforce has been dissipated. The earlier that intervention can occur the greater is the chance of a successful rehabilitation program and of an early return to work. Anything that operates to delay the intervention lessens the prospects for new employment. Proposed arrangements under the Veterans' Rehabilitation Scheme (VRS) will address these problems. (Department of Defence, 1997, pp 16-18)

On 30 October 1981, the concept of 'peacekeeping service' was introduced into the *Repatriation Act 1920* by the *Repatriation Acts Amendment Act 1981* and was backdated to 9 January 1947.

A new concept of 'hazardous service' was introduced into the Repatriation Act in 1985. This was in recognition of the fact that operations could occur that were not warlike in nature (eg clearance diving) but which had a higher degree of risk than normal peacetime service. The disability compensation cover provided under the Repatriation Act (and later under the VEA) for members on hazardous and peacekeeping service was the same as that for operational service.

Veterans' Entitlements Act 1986

On 22 May 1986, the *Veterans' Entitlements Act 1986* (No 27/1986) (the VEA) commenced. Members on peacetime service continued to be covered under the VEA. The compensation entitlements for peacetime service were basically the same as for other forms of service, but were subject to the civil standard of proof, less generous than that for operational service. The extension of cover under the VEA for peacetime service was seen as an interim measure until such time as a military compensation scheme could be put in place[14].

Mr Clyde Holding, the Minister representing the Minister for Veterans' Affairs, in the Second Reading Speech to the Bill for the VEA described the Act as designed to achieve the following:

> ... to consolidate, rationalise and simplify the entitlements available to members of the veteran community. It represents the most important and comprehensive overhaul of the repatriation system since its establishment over 60 years ago. (*Hansard,* HR, 16 October 1985, p 2178)

A similar sentiment was expressed by the shadow Minister of Veterans' Affairs, Mr Tim Fischer, in his speech:

> ... the legislation which it replaces - the Repatriation Act of 1920 and other associated legislation - has been acknowledged as being unnecessarily complex, cumbersome and, in fact, obsolete. The object ... is to rationalise and simplify this convoluted lacework of previous legislation by replacing the existing statutes with one single, consistent document. (*Hansard*, HR, 12 November 1985, p 2499)

Safety, Rehabilitation and Compensation Act 1988

On 1 December 1988, the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*(No 75/1988) repealed and substituted the 1971 Act. The CERC Act, which in 1992 was renamed as the *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act), made some significant changes to the previous compensation scheme, including:

- an enhanced focus on rehabilitation and return to work;
- expanded lump-sum benefits for permanent impairments with impairment determined by an approved Guide modelled on the American *Guides to the Evaluation of Permanent Impairment*, which are also the source documents for the VEA's GARP;
- restricted access to common law actions for damages;
- introduction of premium and contribution arrangements.

The introduction of the SRC Act did not include any significant measures applying only to the Defence Forces, however several features of the Act were of particular relevance to the Military Compensation and Rehabilitation Service (MCRS) which administers the Act (as a delegate of Comcare) in respect of Defence Force personnel:

- the transitional provisions in Part X of the Act have been the subject of very significant litigation in relation to the closure of access to common law (in *Esber v Commonwealth of Australia* (1992) 174 CLR 430, the High Court held that actions commenced before 1 December 1988 were not affected by the new Act, and in *Georgiadis v Australian and Overseas Telecommunications Corporation* (1994) 179 CLR 297, the High Court upheld the restriction on common law rights for actions arising after 1 December 1988) and in relation to the availability of compensation for permanent impairment where the injury was suffered before 1 December 1988 (see *Brennan v Comcare* (1994) 50 FCR 555, *Comcare v Levett* (1995) 60 FCR 14, *Department of Defence v West* (1998) 85 FCR 491, and *Comcare v Maida* (2002) 36 AAR 69);
- compensation for incapacity and for medical treatment become relevant only when the member is discharged from the Defence Force. At the time of discharge, members tend to make their first claim for compensation for injuries accrued during service life, leading to very long time periods between injuries and claims;
- compensation for permanent impairment under ss 24 and 27 of the SRC Act forms a much higher proportion of compensation expenditure for military personnel than for civilian employees of the Commonwealth, because of the inherent rigours of military training and the consequent high incidence of back and limb injuries. This high cost of compensation for permanent impairment was exacerbated by the decision of the Federal Court in *Schlenert v Australian and Overseas Telecommunications Corporation* (1994) 49 FCR 139 where the Court (by majority) held that employees who suffered permanent impairment before the commencement of the SRC Act on 1 December 1988 nevertheless were entitled to compensation for non-economic loss under s 27 of the Act,

even though no such entitlement existed under the 1930 or 1971 Acts. The effect of *Schlenert* was finally reversed, in relation to applications for NEL made on or after 7 December 2000, by the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2002* (No 144/2001).

Military Compensation Act 1994

The *Military Compensation Act 1994* (No 54/1994) (the MCA), which commenced on 7 April 1994, closed off future access to dual entitlements under the VEA and the SRC Act, except for members who have operational service. The MCA also made some other, not very significant, changes to the application of the SRC Act to Defence Force members, including extension of cover to holders of honorary rank, members of philanthropic organisations providing services to the ADF and discharged members involved in approved post-discharge resettlement training.

Mr Punch, Parliamentary Secretary to the Minister for Defence, moved the Second Reading Speech:

> This measure, to establish a Military Compensation Scheme for members of the Defence Force, can be viewed against the recent history of compensation measures for that Force. In 1972, benefits under the Repatriation Act, which was originally designed for members on active service, were made available to Defence Force personnel on peacetime service. This cover was in addition to, but offset by, normal Commonwealth compensation cover. The Veterans' Entitlements Act, which replaced the Repatriation Act in 1986, provides for a continuation of this dual entitlement for members on peacetime service, but only until such time as a Military Compensation Scheme is established.
>
> In recognition of the special nature of Defence Force peacetime service, this Bill establishes a Military Compensation Scheme which will provide members with compensation and rehabilitation benefits available under the Safety Rehabilitation and Compensation Act, together with the following additional benefits: cover for the unintended consequences of medical treatment provided at Commonwealth expense; and, where members are discharged within 45 weeks of the date of an injury or illness that gives rise to compensation, supplementation of any earning to ensure payment equivalent to the member's normal defence salary up to the 45th week point. In addition, cadets, non-members with honorary rank, philanthropic representatives and ex-members on discharge training will be provided with cover under the enhanced Safety Rehabilitation and Compensation Act.
>
> Although cover under the Veterans' Entitlements Act is to cease for Defence Force members on peacetime service, the Government recognises that significant numbers of these members are already eligible for benefits under that Act. These personnel will retain their choice of coverage for any period of entitlement that has arisen under the Veterans' Entitlements Act before commencement of the military compensation scheme.
>
> The Government also recognises that the Military Compensation Scheme will be attractive to the non-peacetime categories of operational, peacekeeping and hazardous service, even though it was conceived primarily for Defence Force members rendering peacetime service. Because of its significant lump sum and rehabilitation benefits, which are not available under the Veterans' Entitlements Act, there will be situations where the provisions of the Military Compensation Scheme would be more appropriate to an individual's personal circumstances than those of the Veterans' Entitlements Act. That is not to say that the latter is in any way inadequate - the point is that its emphasis is on medical care and pensions rather than the lump sum and rehabilitation benefits available under compensation legislation.
>
> A key feature of the Military Compensation Scheme, therefore, is that Defence Force members on operational, peacekeeping or hazardous service will be able to choose between Veterans' Entitlement Act coverage or the enhanced Safety Rehabilitation and Compensation Act coverage. This entitlement to choice will provide a balance in the level of benefits provided for the various categories of service in that it acknowledges the greater risk and difficulty association with non-peacetime service.
>
> I might emphasise that the Government does not envisage any change to the current arrangements for administration of compensation benefits. In particular, as a function of its responsibility as an employer, the Department of Defence will administer the Military Compensation Scheme benefits that arise under the enhanced Safety Rehabilitation and Compensation Act. I commend the Bill to the House and present the explanatory memorandum. (Hansard, HR, 15 December 1993, p 4092)

Additional compensation under the Defence Act

The *Toose Report* (at pp 58-68) expressed its support for separation of military compensation arrangements from Commonwealth civilian employee compensation, but its consideration of the best available option for military compensation was affected by the likelihood (in 1974) of a National Compensation Scheme, as proposed by the National Compensation Bill 1994. The move to national compensation arrangements did not survive the fall of the Whitlam Government, however there has been a continuing underground voice since 1974 for a radical reshaping of military compensation arrangements.

This was given particular impetus by the Black Hawk helicopter accident in June 1996 which had a profound effect on the outcome of the *Inquiry into Military Compensation arrangements for the Australian Defence Force* (1997). This Inquiry discussed general principles of compensation in the following manner:

> **The Nature of Military Service**
>
> 16. There has been longstanding recognition by the Australian community that military service is different to other forms of employment and therefore warrants separate arrangements particularly in regard to pay and allowances, compensation and superannuation. Since World War I there have been distinct arrangements for the repatriation and compensation of members of the Australian military forces. Similarly, since 1948 separate superannuation arrangements have been in place.
>
> 17. The purpose of repatriation provisions was explained in the 1918 Australian Soldiers' Repatriation Bills as "An effort on the part of the nation … to aim at and as far as possible secure the satisfactory re-establishment in civil life of the returned soldier that carries with it also the obligation that where men returned maimed or wounded, in order to secure their satisfactory re-establishment in civil life, everything possible should be done to secure their return to health, or to make good physical defects from which they are suffering. (Minister for Repatriation, Australian Soldiers' Repatriation Bill 1918, Hansard vol 84, p 4309)
>
> 18. The same rationale applies to the modern ADF where service is characterised by the following:
>
> - a liability for combat operations that is both compulsory and continuous, which has no parallel in any other employment;
> - limited ability to control risk (and hence deaths and injuries) during the conduct of operations;
> - adherence to a legal code of military discipline which limits normal civil freedoms and the choice that members can exercise in undertaking employment activities;
> - an employment policy that emphasises a high level of physical fitness and where injury or illness that permanently effects the individual's physical fitness standard for their job usually results in loss of employment in the ADF;
> - the availability of a comprehensive in-house health service designed to conserve ADF personnel for operational duties, providing early intervention and return to work that absorbs much of the initial cost of injury compensation;
> - personnel management practices that facilitate early treatment and return to work after injury and limit the likelihood of long-term absence from duty for other than major injury and illness;
> - a personnel employment policy where there is no likelihood of return to work in the ADF following discharge on disability grounds; and
> - a culture of care and support for the welfare and whole of life needs of ADF members and their families.

Compensating for Risk

19. Disability allowance, or those allowances with a disability element, are paid to all members of the ADF who are employed in a particular set of circumstances. These allowances may be considered as incentives for ADF members to undertake hazardous activities. They are not a substitute for an adequate compensation arrangement in the event of injury.

20. ADF members are required to train in peace for war. This necessarily involves inherently dangerous activities such as live fire battle practices, nap-of-the-earth-flying, night flying operations with night vision goggles, clearance diving and submarine exit training to maintain combat standards through realistic training.

21. The ADF seeks to minimise the risk involved in such activities through stringent safety precautions. This reduces, but does not eliminate the danger as the Black Hawk accident all too clearly demonstrates. In the operation of military equipment in simulated operational conditions there is comparatively little margin for error. Where errors occur there are likely to be dire consequences.

22. Any attempt to compare the incidence of death or injury within the ADF with that of other occupational groups is difficult:

- The ADF Health Service provide comprehensive in-house health-care, which tends to reduce the reporting of compensable cases and perhaps the incidence of claims made for compensation.

- It relies on reported cases and, from experience, it is clear that ADF members, until recently at least, have tended not to report their injuries until late in their military career.

- The measurement of injury rates is not a true measure of the inherent danger or risk in an occupation nor is it the basis for any compensation system. It is more of an indication of the effectiveness of peacetime occupational health and safety measures.

23. A study conducted by Lieutenant Colonel S. Rudzki[15] into injury rates in Army suggests that injury occurrence in the military is much higher than that occurring in the civil sector. His research was based on injury reports submitted over the period 1987 to 1991 and 1995/96 and showed that the injury rate per 1000 soldiers per year ranged between 133 and 247. The most comparable civilian data was from Worksafe Australia in 1993 where the highest reported rate was 65 injuries per 1000 workers per year.

24. With regard to severe injury, a search of ADF superannuation records for the period 1991-96 revealed that on average seven members per year suffer severe injury/illness that results in discharge. Of that number it was assessed that 4 or 5 would be compensable cases. These figures account for the permanent force only; they do not include Reserves or Cadets. The average figure is only indicative since the number of severe injury cases fluctuated significantly from year-to-year. Further, an analysis of permanent impairment claims in the Commonwealth jurisdiction in 1995-96 shows that the ADF generated 82 per cent of claims with the majority being for chronic permanent physical disability.

25. An examination of superannuation data on deaths in the ADF shows that they average around 40 per year and of these, Department of Defence data indicate that around thirteen per year are compensable. Such averages can also be misleading since the numbers fluctuate from year-to-year, eg 34 deaths in 1994-95, 48 deaths in 1995-96, and the statistical period can be affected by date of receipt of accident reports.

26. The key issue for consideration is perhaps not so much whether service in the ADF involves more risk than other employment, but rather whether that risk should be reflected in compensation arrangements or in some other way. (Department of Defence 1997, pp 7-9)

As a result of this Inquiry, the Commonwealth Government introduced additional compensation for severely injured members of the ADF and for the families of members killed in compensable circumstances. The Inquiry also accepted the view that there should be a single Act for the ADF for peacetime service[16].

These additional benefits were originally paid under *Defence Determination 1998/3* and, after 6 January 2000, were paid under Chapter 10, Part 5 of *Defence Determination 2000/1*.

The additional benefits comprised:

- Additional Death Benefit (ADB) payable to a surviving spouse and dependent children if 'as a result of an injury suffered, the member died, or dies, on or after 10 June 1997' (10.5.5-7);
- Severe Injury Adjustment (SIA) is payable to a member who suffers a 'severe injury' (as defined in 10.5.2) on or after 10 June 1997 and who has a degree of permanent impairment of not less than 80% (10.5.8-11); and
- reimbursement of the cost of financial advice (10.5.22).

2004

Military Rehabilitation and Compensation Act 2004

The move towards a new Military Rehabilitation and Compensation Scheme was endorsed by the *Tanzer Review* in 1999:

> **The Proposed Scheme**
>
> 6. After analysing the current arrangements, and following extensive consultation, the Review concludes that it would be inappropriate to attempt to amend the current schemes. Neither the SRCA nor the VEA individually provides a totally acceptable solution. Rather the Review considers that there should be a new scheme set up under its own Act of Parliament. There is widespread support for a new scheme but there are differences of opinion on the most appropriate legislative vehicle. The new scheme would be built from best practice principles and essential attributes of a model modern compensation scheme and would recognise the distinctive nature of military service. It would also take an holistic approach to injured personnel by integrating the safety, rehabilitation, resettlement and compensation elements.
>
> 7. The Review recommends that this new scheme should be a comprehensive one incorporating a military specific occupational health and safety component. The merging of the safety and compensation functions in this way makes an unequivocal statement about the importance of taking an integrated, modern approach to this whole area of operational support. This will remove the ADF from the operation of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*. The Safety, Rehabilitation and Compensation Commission (SRCC) is unconvinced by the arguments advanced by the Review in favour of this separation. From the Review's point of view, this integrated approach to prevention and compensation is essential to the achievement of the objectives of the new scheme.
>
> 8. The SRCA appropriately forms the backbone of the benefits structure of the new scheme. However, it should also include the additional compensation which is currently payable under the Defence Act Determination and certain aspects of the VEA such as the medical assessment system, health care cards and the more beneficial standard of proof for warlike and non-warlike service.
>
> 9. The new scheme should apply to all those groups who were covered by the Military Compensation Act 1994. Thus the new scheme should cover the Permanent Force, the Reserves, former members of the ADF undergoing resettlement training, members of the Australian Services Cadet Scheme, and certain philanthropic organisations and holders of honorary rank. The benefits should apply equally to all groups on the principle of like compensation for like injury. However, in the case of self employed specialist Reserves who are deployed on overseas operations, the Review recommends that income support compensation needs to recognise their actual earning capacity. The specialists perform an essential role and their continuing recruitment is in jeopardy if more satisfactory arrangements are not put in place.

The *Tanzer Review* initially resulted in a move to co-location of MCRS and DVA offices, followed later by the transfer of the MCRS from the Department of Defence to the Department of Veterans' Affairs. The recommendations of the *Tanzer Review* were taken up in the Military Rehabilitation and Compensation Bill 2003 which proposed the establishment of a new compensation scheme for Defence Force personnel injured in peacetime service (including non-warlike and warlike service).

The Minister for Veterans' Affairs, Mrs Danna Vale, tabled the Second Reading Speech to the Bill in the House of Representatives on 4 December 2003; it stated:

> The *Military Rehabilitation and Compensation Bill 2003* is the governments detailed response to the findings of the inquiry into the Black Hawk disaster and the recommendations of the Tanzer review of military compensation for a new scheme that recognises the distinctive nature of military service.
>
> This bill sets in place the most comprehensive changes in military compensation legislation in nearly two decades.
>
> From the commencement date, planned for 1 July 2004, the new scheme will cover all injuries or conditions arising from service in the Australian Defence Force (ADF).
>
> This bill has no impact on current veterans or war widows who are receiving benefits under the Veterans' Entitlements Act 1986 (VEA). Current beneficiaries under the Safety Rehabilitation and Compensation Act 1988 (SRCA) will continue to receive their benefits under that act.
>
> An exposure draft of the bill was published in June this year. Subsequent consultation with the veteran and Defence Force communities has been important in developing the legislation.
>
> Several changes resulted from the consultation process, among them:
>
> - inclusion of a further choice of part lump sum and part periodic payments for permanent impairment;
> - extension of time allowed to choose between a lump sum and weekly payments from three to six months; and
> - eligibility for the special rate disability pension safety net payment for those who are unable to work more than 10 hours per week – this encourages some part-time work for eligible members.
>
> **Governance**
>
> The new scheme will be administrated by an independent Military Rehabilitation and Compensation Commission, supported by the Department of Veterans' Affairs.
>
> **Rehabilitation**
>
> Rehabilitation is emphasised and aimed at providing injured members with the support they need to make a full recovery and to return to work where possible. Assistance provided will be sensitive to an individual's needs and circumstances. Protocols will be developed in consultation with defence and ex-service organisations to document the manner in which rehabilitation is managed.
>
> The bill also addresses the need for assistance in the transition to civilian life for ADF members being discharged on medical grounds.
>
> **Compensation**
>
> The bill adopts the VEA's beneficial "beyond reasonable doubt" standard of proof for warlike and non-warlike service and the normal civil standard of "reasonable satisfaction" for peacetime service claims. It uses the statements of principles from the VEA in linking injury, disease or death with service.
>
> There will be two types of compensation available to injured members—economic loss and non-economic loss.
>
> Compensation for economic loss will be through incapacity payments. These payments will match, and in many cases surpass, payments under the VEA and the SRCA.
>
> A safety net will provide a choice for eligible veterans between receiving taxable incapacity payments up to age 65, or a taxfree special rate disability pension payment for life.
>
> Commonwealth-funded superannuation benefits will be taken into account when calculating incapacity payments so a Commonwealth benefit is not paid twice, extending the practice that already applies under the SRCA to Commonwealth public servants and members of the Australian Defence Force.

Permanent impairment payments are non-economic loss compensation. For warlike and non-warlike service, these payments will match the VEA, while members who are severely injured will have their compensation enhanced.

In most cases, permanent impairment payments for injuries from peacetime service will be enhanced from those available under the SRCA.

Members entitled to the maximum permanent impairment compensation will receive the same amount regardless of whether they were injured on warlike, non-warlike or peacetime service. In addition they will receive a lump sum payment for each dependent child.

Death

For eligible partners and dependants of members who die as a result of ADF service, the bill combines the best elements of existing entitlements. For widowed partners, benefits include:

- an additional aged-based amount of up to $41,200 for death connected to non-warlike or peacetime service, and up to $103,000 for death connected to warlike service; and
- a choice of a periodic payment equivalent to the VEA war widow's pension, or its lump sum lifetime equivalent.
- Dependent children may be eligible for a lump sum death benefit, initially set at $61,800 plus a weekly allowance.

These benefits are in addition to military superannuation benefits, free lifetime health care for widows through the gold card, and ancillary benefits including education allowances for dependent children.

Treatment

This bill blends the VEA and SRCA regimes for medical treatment. Where members have accepted conditions that do not require regular, ongoing treatment, payment will be made for reasonable costs of treatment required.

Where members require ongoing treatment, care will be provided using the VEA gold and white repatriation health cards.

Continuation of Veterans' entitlements

A number of entitlements currently provided in the VEA will continue to be available, including the service pension for warlike service, income support supplement for widowed partners, funeral benefits, and gold card at age 70 for veterans with warlike service.

Conclusion

The Military Rehabilitation and Compensation Bill and the associated transitional and consequential provisions bill are proof of this government's commitment to a military-specific rehabilitation and compensation scheme that will meet the needs of all Australian Defence Force members and their families in the event of injury, disease or death in the service of our nation.

The *Military Rehabilitation and Compensation Act 2004* (No 51/2004) received Royal Assent and commenced on 27 April 2004, along with the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004* (No 52/2004). The substantive provisions of both Acts commenced on 1 July 2004, by Proclamation in *Gazette* GN 22 of 2 June 2004 at p 1396.

A number of subordinate instruments have been made under the two Acts, including:

- *Military Rehabilitation and Compensation Regulations 2004* (SR 2004, No 156);
- *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Regulations 2004* (SR 2004, No 157);

- *Military Rehabilitation and Compensation (Members) Determination 2004 (No 1);*
- *Military Rehabilitation and Compensation (Pay-related Allowances) Determination 2004 (No 1);*
- *Guide to Determining Impairment and Compensation* - MCRA Instrument No 1 of 2004;
- *Motor Vehicle Compensation Scheme* - MCRA Instrument No 2 of 2004;
- *Determination for Providing Treatment* - MCRA Instrument No 3 of 2004;
- *Determination of Specified Rate Per Kilometre* – MCRA Instrument No 5 of 2004;
- *Determination of Rate of Interest* – MCRA Instrument No 6 of 2004;
- *Approval of Classes of Payments for the Purposes of Paragraph 431(1)(b)* – MCRA Instrument No 7 of 2004;
- *Number Specified in Writing by the Commission for the Purposes of the Definition of "Specified Number" in Subsection 138(3) of the Military Rehabilitation and Compensation Act 2004* - MCRA Instrument No 9 of 2004.

Copies of these Regulations and Instruments are available on the Web Site of the Military Rehabilitation and Compensation Commission: *www.mrcs.gov.au*.

From here, the history is yet to be made.

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Endnotes

1 Skerman 1961, p 3
2 Hansard, HR, 30 October 1912, p 4836
3 Hill & Bingeman 1981, pp 1-2
4 HWCA 1997, pp 26-27
5 Hansard, HR, 24 October 1912, p 4658
6 Hansard, HR, 30 October 1912, p 4835)
7 Toose 1975, p 20
8 Hansard, HR, 7 August 1930, p 5626
9 Hansard, HR, 16 September 1948, p 532
10 (1956) 96 CLR 536, 551
11 Toose 1974, p 60
12 Tanzer 1999, Annex F
13 Attachment to report to Department of Defence March 1997.
14 Tanzer 1999, Annex F
15 Lieutenant Colonel Rudzki, Injuries in the Army – The Need for Change, Australian Defence Force Journal No 122, Jan/Feb 1997.
16 Tanzer 1999, p 1