

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time

(Defence)

MILITARY COMPENSATION BILL 1993

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1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
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(Defence)

A BILL

FOR

***An Act to amend the Safety Rehabilitation and
Compensation Act 1988 and the Veterans' Entitlements Act
1986, and for related purposes***

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Military Compensation Act 1993*.

5 **Commencement**

2. This Act commences on the day on which it receives the Royal Assent.

**PART 2—AMENDMENTS OF THE SAFETY REHABILITATION
AND COMPENSATION ACT 1988**

Principal Act

3. In this Part, “**Principal Act**” means the *Safety Rehabilitation and Compensation Act 1988*¹. 5

Employees

4. Section 5 of the Principal Act is amended:

(a) by inserting after subsection (6) the following subsection:

“(6A) Without limiting subsection (6), the Minister may, by notice in writing, declare: 10

(a) that persons specified in the notice, being persons who:

- (i) hold an honorary rank in the Defence Force; or
- (ii) are members of a philanthropic organisation that provides services to the Defence Force; or
- (iii) undertake resettlement training under an arrangement made by the Defence Force; 15

are, for the purposes of this Act, taken to be employed by the Commonwealth; and

(b) that such persons’ employment is, for those purposes, taken to be constituted by the performance by those persons of such acts as are specified in the notice; 20

and such a declaration has effect accordingly.”;

(b) by omitting from subsection (10) “This” and substituting “Subject to subsections (11) and (12), this”;

(c) by omitting from paragraph (10)(a) “(other than Part IV)”;

(d) by adding at the end the following subsections: 25

“(11) Subsection (10) does not apply in relation to a veteran:

- (a) who has rendered operational service on or after the day on which the *Military Compensation Act 1993* commences; and
- (b) for whom provision for the payment of pension in respect of service rendered by the person is made by Part II of the *Veterans’ Entitlements Act 1986*. 30

“(12) Subsection (10) does not apply in relation to a member of the Defence Force who has rendered service in respect of which provision for the payment of pension is made by Part IV of the *Veterans’ Entitlements Act 1986*.”. 35

Insertion of new section

5. After section 6 of the Principal Act the following section is inserted:

Injury arising out of or in the course of employment—extended operation

- 5 “6A.(1) This section applies to the following employees:
- (a) members of the Defence Force;
 - (b) members of the Air Training Corps established under section 8 of the *Air Force Act 1923*;
 - 10 (c) members of the Australian Cadet Corps established under section 62 of the *Defence Act 1903*;
 - (d) members of the Naval Reserve Cadets established under section 38 of the *Naval Defence Act 1910*;
 - (e) persons declared by the Minister under subsection 5(6A).

15 “(2) In addition to the circumstances set out in section 6, an injury to an employee to whom this section applies is to be taken, for the purposes of this Act, as having arisen out of, or in the course of, the person’s employment, if the injury was an unintended consequence of medical treatment paid for by the Commonwealth.

20 “(3) Subsection (2) applies whether or not the original condition that was being treated was compensable under this Act.”.

Compensation for injuries resulting in incapacity where employee is in receipt of a superannuation pension

25 6. Section 20 of the Principal Act is amended by omitting paragraph (b) of the definition of “AC” in subsection (3) and substituting the following paragraph:

“(b) in the case of an employee who was not a member of the Defence Force immediately before retirement—the week were a week referred to in subsection 19(3);”.

30 **Compensation for injuries resulting in incapacity where employee is in receipt of a lump sum benefit**

7. Section 21 of the Principal Act is amended by omitting paragraph (b) of the definition of “AC” in subsection (3) and substituting the following paragraph:

35 “(b) in the case of an employee who was not a member of the Defence Force immediately before retirement—the week were a week referred to in subsection 19(3);”.

Compensation for injuries resulting in incapacity if employee is in receipt of a superannuation pension and a lump sum benefit

8 Section 21A of the Principal Act is amended by omitting paragraph (b) of the definition of "Compensation otherwise payable" in subsection (4) and substituting the following paragraph: 5

"(b) in the case of an employee who was not a member of the Defence Force immediately before retirement—the relevant week were a week referred to in subsection 19(3);".

Certain persons may request cessation of compensation payments

9 Section 43 of the Principal Act is amended by omitting from subsection (1) "a member of the Forces for the purposes of Part IV of the *Veterans' Entitlements Act 1986*, or a dependant of such a member," and substituting the following: 10

- “(a) a member of the Forces, or a member of a Peacekeeping Force, for the purposes of Part IV of the *Veterans' Entitlements Act 1986*; or 15
- (b) a veteran who has, on or after the day on which the *Military Compensation Act 1993* commences, rendered operational service for the purposes of Part II of the *Veterans' Entitlements Act 1986*; or
- (c) a dependant of such a member or veteran;”.

Deduction of overpayments of repatriation pensions 20

10.(1) Section 115 of the Principal Act is amended:

(a) by inserting before subsection (1) the following subsection:

“(1A) Where:

(a) an amount of pension has been paid to a person under the *Veterans' Entitlements Act 1986* in respect of the incapacity or death of a veteran who has rendered operational service within the meaning of Part II of that Act; and 25

(b) that amount is not payable to that person by virtue of Division 5A of Part II of the *Veterans' Entitlements Act 1986*;

that amount is recoverable from that person by deducting it from any amounts of compensation payable to that person under this Act in respect of the injury to, or death of, the veteran.”; 30

(b) by inserting in paragraph (1)(a) “, or a member of a Peacekeeping Force,” after “member of the Forces”;

(c) by omitting from subsection (2) “subsection (1)” and substituting “subsections (1A) and (1)”;

(d) by omitting from paragraph (2)(c) “a member of the Forces” and substituting “a veteran within the meaning of Part II of that Act or a member of the Forces, or a member of a Peacekeeping Force,”;

(e) by omitting from paragraph (2)(d) “section 74” and substituting “Division 5A of Part II, or section 74,”; 40

(f) by inserting in subsections (3) and (4) “(1A) or” after “subsection” (first occurring).

(2) If the *Veterans’ Affairs Legislation Amendment Act (No. 3) 1993* does not receive the Royal Assent before this Act commences, the references in paragraphs 115(1A)(b) and (2)(d) of the Principal Act as amended by this Act to Division 5A of Part II of the *Veterans’ Entitlements Act 1986* are taken, until the *Veterans’ Affairs Legislation Amendment Act (No. 3) 1993* receives the Royal Assent, to be references to section 16 of this Act.

PART 3—AMENDMENTS OF THE VETERANS’ ENTITLEMENTS ACT 1986

Principal Act

11. In this Part, “Principal Act” means the *Veterans’ Entitlements Act 1986*².

Interpretation

12. Section 68 of the Principal Act is amended:

(a) by inserting after paragraph (b) in the definition of “defence service” in subsection (1) the following word and paragraph:

“; and (c) hazardous service rendered before or after the terminating date.”;

(b) by adding at the end of the definition of “member of the Forces” in subsection (1) “or 69A”;

(c) by omitting from subsection (1) the definition of “terminating date” and substituting the following definition:

“ ‘terminating date’ means the date on which the *Military Compensation Act 1993* commences.”.

Application of Part to members of the Forces

13. Section 69 of the Principal Act is amended by omitting paragraph (1)(ea).

Insertion of new section

14. After section 69 of the Principal Act the following section is inserted:

Application of Part to members of the Forces who render hazardous service

“69A.(1) This Part applies to a person who has rendered or is rendering hazardous service as a member of the Defence Force.

“(2) This Part so applies whether the hazardous service is rendered before or after the terminating date.”.

Eligibility for pension under this Part

15. Section 70 of the Principal Act is amended:

- (a) by omitting from subsection (5) “paragraph 69(1)(ea)” and substituting “section 69A”;
- (b) by omitting from subsection (5A) “paragraph 69(1)(ea)” and substituting “section 69A”;
- (c) by omitting from subsection (5B) “paragraph 69(1)(ea)” and substituting “section 69A”.

Transitional—payments by way of compensation or damages

16.(1) This section only applies if the *Veterans’ Affairs Legislation Amendment Act (No. 3) 1993* does not receive the Royal Assent before this Act commences. If it so applies, it ceases to apply on the commencement of that Act. 10

(2) The provisions of Division 4 of Part IV of the Principal Act apply in relation to a veteran who: 15

- (a) has rendered operational service; and
- (b) is entitled to a pension under Part II of that Act or other compensation.

(3) The provisions of Division 4 of Part IV of the Principal Act apply in like manner as those provisions apply in relation to pensions and other compensation payable in accordance with Part IV of that Act. 20

(4) For the purposes of the application of the provisions of Division 4 of Part IV of the Principal Act as provided by subsection (2):

- (a) a reference in those provisions to a defence-caused injury is to be read as a reference to a war-caused injury; and 25
- (b) a reference in those provisions to a defence-caused disease is to be read as a reference to a war-caused disease; and
- (c) a reference in those provisions to a member of the Forces or a member of a Peacekeeping Force is to be read as a reference to a veteran; and
- (d) a reference in those provisions to Part IV of the Principal Act is to be read as a reference to Part II of that Act. 30

NOTES

Safety Rehabilitation and Compensation Act 1988

1. No. 75, 1988, as amended. For previous amendments, see Nos. 71, 109 and 135, 1988; No. 68, 1990; Nos. 70 and 122, 1991; and Nos. 7, 95, 196, 233 and 264, 1992.

Veterans' Entitlements Act 1986

2. No. 27, 1986, as amended. For previous amendments, see No. 106, 1986 (as amended by Nos. 78 and 130, 1987); No. 130, 1986; No. 78, 1987 (as amended by No. 164, 1989); No. 88, 1987; No. 130, 1987 (as amended by No. 133, 1988); No. 13, 1988 (as amended by No. 83, 1989; and No. 73, 1991); Nos. 35 and 79, 1988; No. 134, 1988 (as amended by No. 164, 1989); No. 135, 1988 (as amended by Nos. 84 and 164, 1989; and No. 73, 1991); Nos. 59, 83, 84, 93 and 163, 1989; No. 164, 1989 (as amended by No. 56, 1990; and No. 73, 1991); Nos. 59, 83, 84, 93, 163, 1989; No. 164, 1989 (as amended by No. 56, 1990; and No. 73, 1991); Nos. 56, 84 and 119, 1990; No. 2, 1991 (as amended by No. 73, 1991); No. 72, 1991; No. 73, 1991 (as amended by No. 74, 1991); Nos. 74, 122, 175 and 208, 1991; Nos. 12, 51, 70, 94 and 228, 1992; and No. 27, 00 and 00, 1993.

