

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**MILITARY COMPENSATION
BILL 1993**

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Defence Science and Personnel
and Minister for Veterans' Affairs, Senator the Hon. John Faulkner)

THIS MEMORANDUM TAKES ACCOUNT OF AN AMENDMENT MADE
BY THE HOUSE OF REPRESENTATIVES TO THE BILL AS
INTRODUCED

Military Compensation Bill 1993

✦ OUTLINE

This Bill introduces a Military Compensation Scheme to meet the special requirements of the Australian Defence Force.

The Scheme is structured around the existing provisions of the Veterans' Entitlements Act 1986 (the VEA) and the Safety Rehabilitation and Compensation Act 1988 (the SRCA), with modifications for Defence Force needs. A key feature of the Scheme is that members on operational, peacekeeping or hazardous service will be able to choose between SRCA or VEA coverage, to meet their personal needs.

The main elements of the Bill are that it will:

- a. amend the SRCA so that it provides the core of the Military Compensation Scheme for all members of the Defence Force;
- b. give members on future operational service (within the meaning of the VEA) the option of choosing coverage under either the VEA or the SRCA, as modified for the Military Compensation Scheme;
- c. maintain the option of members on hazardous and peacekeeping service (within the meaning of the VEA) to choose coverage under either the VEA or the SRCA, as modified for the Military Compensation Scheme; and
- d. maintain the option of ordinary peacetime members to choose coverage under either Act in respect of any period of entitlement that has arisen under the VEA before the commencement of the Military Compensation Scheme.

Military Compensation Bill 1993

FINANCIAL IMPACT

Introduction of the Military Compensation Scheme is expected to bring a progressive shift of Defence Force compensation claims from coverage under the Veterans' Entitlements Act 1986 (the VEA) to coverage under the modified Safety Rehabilitation and Compensation Act 1988 (the SRCA). This will reduce expenditure in the Department of Veterans' Affairs and increase expenditure in the Department of Defence.

Based on assumptions about the likely change in the claims pattern, it is expected that the reduction in the number of members of the Defence Force with access to the benefits of the VEA will result in savings to the Department of Veterans' Affairs in the order of:

Year 1	\$0.48m.
Year 2	\$1.55m.
Year 3	\$2.59m.
Year 4	\$3.73m.
Year 5	\$4.92m.

Additional costs to the Department of Defence will come from meeting the cost of claims under the Military Compensation Scheme and in providing staff to manage the new workload.

Precise costing is not possible because the claims for compensation which are likely to result from future Defence Force deployments and activities cannot be predicted. This is compounded by the uncertainty of the effect that introduction of the Military Compensation Scheme will have on the historical pattern of claims within the Defence Force.

Based on current activity levels the estimated additional cost to Defence in administration and benefits would be in the order of:

Year 1	\$1.2m.
Year 2	\$1.5m.
Year 3	\$2.6m.
Year 4	\$3.2m.
Year 5	\$3.9m.

There will, however, be savings in later years when members who choose the Military Compensation Scheme reach age 65, at which stage incapacity benefits cease under the SRCA.

Military Compensation Bill 1993

NOTES ON CLAUSES

PART 1 (CLAUSES 1 and 2) - PRELIMINARY

1. This Part provides for a short title and for the Act to commence on Royal Assent.

PART 2 (CLAUSES 3 to 10) - AMENDMENTS OF THE SAFETY REHABILITATION AND COMPENSATION ACT 1988 (the SRCA)

2. The SRCA provides compensation for persons who are injured in the course of their employment by the Commonwealth. The Veterans' Entitlements Act 1986 (the VEA) provides pension entitlements to persons who have suffered a war or defence-caused incapacity. At present, members of the Defence Force on hazardous, peacekeeping and ordinary peacetime service are covered by both the SRCA and the VEA while members on operational service are only covered by the VEA. Members of the Defence Force who are injured and are covered by both Acts must choose which Act to claim under. Sections 43 and 115 of the SRCA and sections 74 and 79 of the VEA avoid overlapping entitlements for those members covered by both Acts.

3. The amendments made by this Part of the Bill establish a Military Compensation Scheme within the framework of the SRCA.

4. The amendment to subsection 5(10), and insertion of new subsections 5(11) and (12), of the SRCA by clause 4 of the Bill ensure that the SRCA, as modified for the Military Compensation Scheme, applies to all members of the Defence Force (including members on future operational service). As a result of this amendment, members on operational service, as well as members on hazardous and peacekeeping service, will have the option of SRCA or VEA coverage. Ordinary peacetime members who, on the commencement of the Military Compensation Scheme, have an existing period of entitlement under Part IV of the VEA will continue to have the option of SRCA or VEA coverage for that period. Subsequent service will be covered by the SRCA only. Any ordinary peacetime members who do not have an existing entitlement under Part IV of the VEA on the commencement of the Military Compensation Scheme, or who enter the Defence Force after that date, will only have SRCA coverage, as modified for the Military Compensation Scheme.

5. Clause 4 of the Bill will also insert a new subsection 5(6A) which will enable the Minister to extend the operation of the SRCA beyond members of the Defence Force by declaring that the Act will apply to:

persons who are not members of the Defence Force but hold an honorary rank in that Force, when they are engaging in activities stemming from their honorary rank;

members of philanthropic organisations who are serving with the Defence Force; and

ex-members of the Defence Force who are on discharge resettlement training (which is available for up to 6 months after discharge).

6. The amendments to sections 43 and 115 of the SRCA by clauses 9 and 10 of the Bill ensure that members (including operational service members and members of a Peacekeeping Force) do not receive overlapping entitlements under the VEA and the SRCA.

7. The Military Compensation Scheme benefits of members are based on their normal SRCA entitlements, supplemented by provisions that are necessary to meet the requirements of Defence Force service. These supplementary provisions are set out in clauses 5, 6, 7 and 8 of the Bill.

8. Clause 5, which inserts a new section 6A, covers members of the Defence Force, members of Cadet Corps and persons declared under the new subsection 5(6A) for any injury that arises from medical treatment provided at Commonwealth expense where that injury is an unintended consequence of the treatment. This entitlement applies regardless of whether there has been negligence and regardless of whether the original condition being treated was compensable.

9. Clauses 6, 7 and 8, which amend sections 20, 21 and 21A, provide for injured members of the Defence Force to receive full pay for the first 45 weeks of compensation, regardless of whether they remain in the Defence Force or separate from that Force. (The amendments prevent sections 20, 21 and 21A from operating to reduce this compensation to 75% of salary if a superannuated member retires during that 45 week period.)

10. Clause 9A of the Bill amends section 89E of the SRCA, which sets out the constitution of the Safety, Rehabilitation and Compensation Commission. The amendment will add a serving member of the Defence Force to the Commission. This will ensure that the composition of the Commission reflects the fact that the SRCA will be providing coverage for an increasing percentage of serving members and former members.

PART 3 (CLAUSES 11 to 16) - AMENDMENTS OF THE VETERANS' ENTITLEMENTS ACT 1986

11. The amendments made by this Part of the Bill deal with certain aspects of the dual coverage of members under the VEA and SRCA, as modified for the Military Compensation Scheme. VEA coverage (with the option to choose between the two schemes) is maintained for members on operational or peacekeeping service. While no amendment is required to achieve this, provision is required to avoid members on operational service having overlapping entitlements under the VEA and the SRCA. Clause 16 of the Bill, which avoids such overlap, is in transitional form because it will be replaced by a substantive provision in the VEA.

12. The amendments to sections 68, 69 and 70 by clauses 12, 13 and 15, and the insertion of new section 69A by clause 14, will continue the choice of VEA coverage for members on hazardous service, both before and after the commencement of the Military Compensation Scheme. (Hazardous service, declared under section 120, is service carrying greater risks than normal peacetime service.)

13. Sections 68 and 69 already provide for ordinary peacetime members who have an existing period of entitlement under Part IV of the VEA on the commencement of the Military Compensation Scheme to have the choice of VEA coverage for that period. Any ordinary peacetime members who do not have an existing entitlement under Part IV of the VEA on the commencement of the Military Compensation Scheme will only have SRCA coverage, as modified for the Military Compensation Scheme.

14. The amendment of the definition of "terminating date" in section 68 by clause 12 will define the "terminating date" (ie date of commencement of the Military Compensation Scheme) as the date of assent to this Bill. The effect of fixing the terminating date is to remove VEA coverage for ordinary peacetime service, except for periods of entitlement already existing at that date.



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