

1980-81-82

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

REPATRIATION AMENDMENT BILL 1982

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Veterans'
Affairs, Senator the Hon. A.J. Messner)

OUTLINE

The purposes of this Bill are fourfold: to repeal section 49 of the Repatriation Act 1920 relating to the control of pensions of unmarried mentally afflicted veterans; to ensure that all Australians serving with a Peacekeeping Force are covered for Repatriation benefits; to empower the Repatriation Commission to recover from a third party the costs of medical treatment provided for compensable patients; and to allow for the protection of employees in Repatriation hospitals and institutions when complying with certain State and Territory laws.

First, in repealing section 49 of the Repatriation Act, the Bill provides for veterans suffering from mental illness to be regarded on the same basis as those suffering from other illnesses. This is in accordance with the Government's 'Review of Commonwealth Functions' decision announced on 30 April 1981. Section 49 of the Repatriation Act is a special provision that can be applied by the Repatriation Commission to manage the affairs of an unmarried veteran suffering severe mental illness. Provision is made by this Bill for a veteran's pension and any accumulated moneys to become the property of the veteran. The distribution of the amounts accumulated will vary according to the extent of the veteran's mental illness. If it is considered by the Repatriation Commission that he is capable of managing his own affairs, the amounts accumulated will be returned to him. Otherwise they will be transferred to the trusteeship of the Repatriation Commission under regulation 9 of the Repatriation Regulations, which will then determine the appropriate arrangements for the veterans' welfare. Provisions have been included in the Bill to require the Commission to reimburse the costs of maintenance deductions to a veteran who recovers from his illness, or, in the case of death, payment to the legal personal representative, or a person best entitled to receive them. The Bill also provides for similar amendments to be made to the associated Acts.

Secondly, the Bill amends the definition of "Peacekeeping Force" in section 107J of the Repatriation Act, so that an Australian member of any Peacekeeping Force authorized or approved by the Australian Government will be eligible to receive

Repatriation benefits in the event of death or incapacity. Australian members of the Multinational Force and Observers committed to the Sinai region will therefore be included.

The third amendment of the Bill empowers the Repatriation Commission to recover the costs of medical treatment provided to a compensable patient either from a third party liable to pay compensation, or from the patient himself.

The final amendment inserts a new section in the Repatriation Act to permit the making of Regulations that will allow certain State and Territory laws to operate effectively in Repatriation hospitals and institutions. The intention of this provision is to allow employees in Repatriation institutions to be protected by the provisions of State law when complying with law, such as that relating to blood alcohol testing.

PART I - PRELIMINARY

Clause 1 -Short Title, & c.
Self-explanatory.

Clause 2 -Commencement
This clause provides for the Act to come into operation on the day on which it receives the Royal Assent, except for the amendment made by clause 4 which is to come into effect on 1 November 1981, the date upon which Repatriation benefits were extended to members of Peacekeeping Forces under the Repatriation Acts Amendment Act 1981.

PART II - AMENDMENTS OF THE REPATRIATION

ACT 1920

Clause 3 -Repeal of section 49

Sub-clause (1) repeals section 49 of the Repatriation Act which empowered the Repatriation Commission to assume control of the disability pension of an unmarried veteran afflicted with a serious mental illness.

Sub-clause (2) requires the Repatriation Commission to transfer moneys and investments held on behalf of afflicted veterans at the time of repeal of section 49 to the Repatriation Commission as trustee under regulation 9 of the Repatriation Regulations. This is to facilitate arrangements for the proper administration of the veteran's affairs according to the nature of his mental illness, by the veteran himself, or by a trustee appointed by the Repatriation Commission.

Sub-clauses (3), (4) and (5) have the same effect as sub-clause (2) in respect of the Interim Forces Benefits Act 1947, the Repatriation (Far East Strategic Reserve) Act 1956 and the Repatriation (Special Overseas Service) Act 1962.

Sub-clause (6) requires the Repatriation Commission to reimburse to a veteran who recovers from a mental illness the amount deducted from his disability pension for maintenance under the provisions of sub-section 49(2)(c) whilst a patient in a mental institution.

Sub-clause (7) provides that the amount of maintenance deductions payable to a veteran who has recovered from his mental illness shall be regarded as an allowance for such trust arrangements as may apply.

Sub-clause (8) deals with the situation where a veteran dies, whether or not he has recovered from a mental illness. The Commission is required to pay the amount equal to the maintenance deducted to the legal personal representative of the deceased. If there is no legal personal representative that amount shall be paid to the person the Commission determines is best entitled to receive it, provided it is satisfied that no application will be made for probate of the Will, or letters of administration of the estate of the deceased.

Sub-clause (9) provides that where the Repatriation Commission is holding any moneys or investments under section 49, or the associated Acts, on behalf of a mentally afflicted veteran who died before the commencement of section 4, the funds shall be paid to the legal personal representative or, if there is no legal personal representative, to the person the Commission determines is best entitled to receive it, provided it is satisfied that no application will be made for probate of the Will or letters of administration of the estate of the deceased.

Sub-clause (10) provides that in respect of maintenance deductions made by the Repatriation

Commission for a veteran in a mental institution who died on or after 30 April 1981 and before the commencement of clause 3, the Commission may pay the maintenance funds to his legal personal representative. If there is no legal personal representative, Commission shall pay the moneys to the person whom it decides is best entitled to receive it, provided it is satisfied that no application will be made for probate of the Will or letters of administration. This overrides the the existing section 49(6) to apply the Government's 'Review of Commonwealth Functions' decision to the Commission from 30 April 1981, the date it was announced.

A provision is included to ensure that an amount equal to any maintenance deductions previously paid, applied or distributed in respect of the veteran, is not to be taken into account in ascertaining the payment to be made, so as to avoid duplication of payment.

Sub-clause (11) This is a similar provision to clause (10) but maintains the status of the existing section 49(6) in relation to the payment of maintenance funds to those veterans who died prior to the Government's announcement on 30 April 1981.

Clause 4

-Interpretation

Extends the definition of "Peacekeeping Force" to cover Australian members of the Multinational Force and Observers in Sinai for Repatriation benefits as a consequence of incapacity or death.

Clause 5-

Clause 5 operates to insert section 120E and 120F after section 120D in the Act.

New section 120E: Recovery of Cost of Medical Treatment

Inserts a new section in the Repatriation Act to permit the Repatriation Commission to recover the costs of medical treatment provided to compensable patients, from either a third party, where the injured person is entitled to claim damages or receive compensation for injuries suffered, or the person who receives treatment.

Sub-section (1) defines terminology used in the new section.

Sub-section (2) provides for the person receiving prescribed medical treatment to be liable to the Commission for the cost of that treatment if he recovers compensation for it from another person. It also provides for a lesser amount to be payable if claimed by the Commission. This overcomes the situation where the amount of compensation/damages is less than the cost of prescribed medical treatment.

Sub-section (3) empowers the Repatriation Commission to notify a person liable to pay compensation in respect of the person who is receiving or has received medical treatment of the Commission's intention to recover the costs of that treatment from the person liable to pay compensation.

Sub-section (4) provides for the Repatriation Commission to serve a notice on the person liable to pay compensation that specifies the cost of medical treatment and the amount of payment being claimed. The person then becomes liable to pay to the Commission the amount so specified, or the amount of compensation, whichever is the less.

Sub-section (5) precludes a third party paying compensation , unless notice has first been served by the Repatriation Commission under sub-clause (4).

Sub-section (6) provides that a person can discharge his liability to the Repatriation Commission by paying the amount specified in sub-clause 4 for medical treatment of the person entitled to receive compensation.

Sub-section (7) permits the Repatriation Commission to bring an action in the courts to recover the cost of medical treatment from a third party.

Sub-section (8)
Self-explanatory.

Sub-section (9)
Self-explanatory.

New section 120F: Operation of State and Territory laws in relation to hospitals and other institutions

Inserts a new section in the Repatriation Act to provide that certain laws of a State or a Territory that are declared by regulations made under the Act to apply to those who are employed or provide services in Repatriation hospitals and institutions shall so apply. This will enable these employees to receive the protection of State law while performing duties in accordance with State law, which they would not otherwise receive because of their status as Commonwealth employees.

Clause 6

Regulations

This clause inserts a new sub-section 124(3) in the Act to permit modifications to be made in respect of the application of State laws in Repatriation hospitals and other institutions by the amendment of the Repatriation Regulations.