

Veterans' Affairs Legislation Amendment (Military Compensation Review and Other Measures) Bill 2013

Introduced into the House of Representatives on 20 March 2013

Portfolio: Veterans' Affairs

Summary of committee view

1.337 The committee seeks clarification as to whether certain amendments in the bill may result in a person receiving lesser amounts of compensation or treatment options and, if so, how this is consistent with the right to social security.

1.338 The committee seeks further information in relation to broad information sharing powers and how this is consistent with the right to privacy.

Overview

1.339 This bill amends the *Military Rehabilitation and Compensation Act 2004* and other legislation to give effect to initiatives that form part of the government's response to the Review of Military Compensation Arrangements. The bill also amends Veterans' Affairs legislation to enable travelling expenses to be paid for the partners of certain eligible persons and clarify arrangements relating to bank accounts and in relation to certain treatment costs.

1.340 In particular, the bill:

- amends arrangements in relation to rehabilitation and transition management for Defence Force members (Schedule 1);
- provides for permanent impairment compensation to be payable earlier for eligible persons and to recalculate payments to take into account the effect of an injury or disease on a person's lifestyle, and change the methodology for recalculating payments (Schedule 2);
- expands options to allow lump sum compensation (instead of weekly compensation) for wholly dependent partners of deceased members and increases the rate of periodic compensation payable for dependent children of deceased members (Schedules 3 and 4);
- increases the amount of compensation for financial advice and includes legal advice within the new limit (Schedule 5);
- expands the eligibility criteria for Special Rate Disability Pension (Schedule 6);
- makes changes to certain superannuation provisions so that they apply equally to serving and former members (Schedule 7);

- provides the Veterans' Review Board with an explicit power to remit a matter to the Military Rehabilitation and Compensation Commission (MRCC) for it to conduct a needs assessment and determine compensation (Schedule 8), and increases membership of the MRCC (Schedule 9);
- requires all claims for conditions accepted under the *Veterans' Entitlements Act 1986* and aggravated by defence service after 1 July 2004 to be determined under that Act – removing the current choice to have those claims determined either under that Act or the *Military Rehabilitation and Compensation Act 2004* (Schedule 10);
- requires treatment for an injury recognised under the *Safety Rehabilitation and Compensation Act 1988* to be provided under other legislation, to achieve consistency in treatment arrangements for all former Defence Force members (Schedule 11);
- includes certain categories of persons as 'members' under the *Military Rehabilitation and Compensation Act 2004*, to provide certainty about access to rehabilitation and compensation for these defined groups (Schedule 12);
- clarifies which Commonwealth organisation is responsible for the cost of aged care services for eligible Veterans' Affairs clients (Schedule 13);
- extends the entitlement for travelling expenses for the partner of an eligible person who is required to travel with them to participate in their treatment (Schedule 14);
- streamlines the administrative arrangements for the payment of pensions, compensation and other pecuniary benefits into bank accounts (Schedule 15); and
- clarifies which payments made under the *Military Rehabilitation and Compensation Act 2004* are excluded income for the purposes of the *Social Security Act 1991* and provides for the recovery of compensation that should not have been paid.

Compatibility with human rights

1.341 The bill is accompanied by a self-contained statement of compatibility that examines each Schedule of the bill for compatibility with human rights. It identifies

the right to social security, the right to health, the right of people with disabilities and the right to privacy as being enhanced by the bill.¹

1.342 The committee agrees that the provisions in the bill that provide for more effective delivery of services or treatment to injured and ill Defence Force members promote the right to health under article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and many of the rights contained in the Convention on the Rights of Persons with Disabilities. The committee also agrees that increases in the amount of compensation payable and expansion of the eligibility criteria for members promotes the right to social security under article 9 of the ICESCR.

1.343 The committee seeks clarification as to the effect of some of the amendments in the bill on the right to social security and the right to privacy.

Right to social security and the right to health

1.344 There are a number of provisions in the bill where it is unclear what the effect of the amendments might be and whether it may have an adverse impact on the enjoyment of the right to social security.

1.345 Schedule 2 of the bill revises the methodology used for calculating the amount of permanent impairment compensation a person is to be paid where the person already has an injury or disease that has been accepted under certain Acts. The explanatory memorandum explains:

It has been found that the methodology that has been used may have resulted in a lower or higher net permanent impairment compensation payment than expected ...

As a consequence the methodology has been changed and will be applied both prospectively and retrospectively. Where retrospective application of the new methodology results in a lower amount of compensation for an existing recipient, the existing rate will apply until a new assessment results in a higher amount.²

1.346 It appears from this description that the new methodology may result in a lower amount of compensation for some people. Although the explanatory memorandum says that where retrospective application results in a lower amount of compensation the existing rate will apply, it is unclear if this is provided for in the

1 See article 9 (right to social security) and article 12 (right to health) of the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of Persons with Disabilities; and article 17 (right to privacy) of the International Covenant on Civil and Political Rights.

2 Explanatory memorandum, p. 8.

legislation and it is also unclear whether there will be lower rates applied to prospective applications. The statement of compatibility only states:

The amendments promote the right to social security by providing for permanent impairment compensation to be payable earlier to eligible persons and also for a recalculation of the amount that was previously payable.³

1.347 Schedule 10 removes the ability for claimants to choose to have certain claims determined under the *Military Rehabilitation and Compensation Act 2004* (instead requiring claims to be determined under the *Veterans' Entitlements Act 1986*). The statement of compatibility states that this promotes the right to social security 'by reducing the complexity and confusion for claimants and reducing the burden in the administration of claims'.⁴ However, it is unclear whether this change would result in any change to the level of compensation payable, access to review rights, or in other respects.

1.348 In addition, Schedule 11 requires treatment for an injury recognised under the *Safety Rehabilitation and Compensation Act 1988* to be provided under the *Veterans' Entitlements Act 1986* or the *Military Rehabilitation and Compensation Act 2004*. The explanatory memorandum provides that this is intended 'to achieve consistency in treatment arrangements for all former Defence Force members'.⁵ It is unclear whether this change will affect the level of treatment available to a person. Proposed new section 144C in Schedule 11 provides that the Military Rehabilitation and Compensation Commission (MRCC) can determine that parts of these provisions will not apply if satisfied there are 'exceptional circumstances'; which suggests there may be situations where a person may be adversely affected by the changes. However, the statement of compatibility simply states that the amendments will promote the right to health as they will provide for 'more effective delivery of treatment'.

1.349 The committee intends to write to the Minister for Veterans' Affairs to seek clarification as to whether the changes in Schedules 2, 10 and 11 of the bill may result in a person receiving lesser amounts of compensation or different levels of services or treatment options and, if so, how this is consistent with the right to social security under article 9 of the ICESCR and the right to health under article 12 of the ICESCR.

3 Statement of compatibility contained within the explanatory memorandum, p. 71.

4 Statement of compatibility contained within the explanatory memorandum, p. 78.

5 Explanatory memorandum, p. 47.

Right to privacy

1.350 The statement of compatibility states that the right to privacy under article 17 of the International Covenant on Civil and Political Rights (ICCPR) is 'advanced' by the bill, as it provides for greater sharing of personal information.

1.351 In Schedule 11 of the bill, new item 15 introduces a new section 151A which enables staff of the MRCC to provide 'any information obtained in the performance of duties' to the Secretary of the Department of Health, the Department of Human Services and the Chief Executive of Medicare and Centrelink, to be used for the purposes of the relevant Department, Centrelink or Medicare. This is a broad information-sharing power and could, presumably, allow for information about a claimant to be shared which may cause them to be investigated by the Department, Centrelink or Medicare. No reasons are given, in either the statement of compatibility or the explanatory memorandum, as to why this provision is necessary. The statement of compatibility simply states that the purposes for which the information can be shared 'are limited to those which assist the Departments and the agencies to perform their legislative functions and powers and are subject to the principles set out in the *Privacy Act 1988*'.⁶

1.352 The committee intends to write to the Minister for Veterans' Affairs to seek further information as to what objective new section 151A in Schedule 11 of the bill is seeking to achieve in giving broad information sharing powers and how this is consistent with the right to privacy and how this limitation might be said to 'advance' human rights as stated in the statement of compatibility.

1.353 Schedule 15 also engages the right to privacy as it enables the MRCC and the Repatriation Commission to use the details of a nominated bank account for the purposes of making payments into bank accounts. As this is limited to using the account details for the limited purpose of making compensation payments into accounts, the committee is satisfied that this does not appear to give rise to human rights concerns.

6 Statement of compatibility contained within the explanatory memorandum, p. 79.