

Chapter 22

Compensation and rehabilitation

22.1 The committee notes that the compensation and rehabilitation of Australian peacekeepers was not specifically mentioned in the terms of reference. In light of the concerns raised in submissions and during oral evidence, the committee has decided to draw attention to them.

22.2 While sound training and effective health and safety programs help to minimise the risks of harm to peacekeepers, they nonetheless may encounter situations that have serious adverse effects on their wellbeing. It is inevitable that some Australian peacekeepers will require care and support on their return to Australia. In this chapter, the committee examines the legislation governing the compensation and rehabilitation of peacekeeping veterans. It provides some background to this legislation and the proposed scheme for the AFP. The committee then considers the administration of the various schemes to determine whether they are fair and effective.

Legislation

22.3 Currently, three major pieces of legislation govern the entitlements of personnel who have served on an Australian peacekeeping operation. There is some overlap in the application of the legislation.

Veterans' Entitlements Act 1986

22.4 A peacekeeper who suffers a disability or disadvantage because of service on a mission, or the family of a peacekeeper, may be entitled to compensation.

22.5 *The Veterans' Entitlements Act 1986* (VEA) provides for the payment and other benefits to, and medical and other treatment for, veterans and certain other persons. This Act also provides for members of a peacekeeping force.¹ Members of the AFP who served in a peacekeeping force were also covered under the VEA as 'peacekeepers', entitling them to the same disability benefits as ADF personnel.²

22.6 With the commencement of the *Military Rehabilitation and Compensation Act 2004* (MRCA) after 1 July 2004, the VEA ceased to apply to deployments for Defence Force personnel who are now covered under the MRCA. Similarly, police as

1 It defines a member of a peacekeeping force as a person who is serving, or has served, with a Peacekeeping Force outside Australia as an Australian member, or as a member of the Australian contingent. A Peacekeeping Force is a force raised or organised for the purpose of: peacekeeping in an area outside Australia; or observing or monitoring any activities of persons in an area outside Australia that may lead to an outbreak of hostilities; being a force that is designated by the Minister, by notice published in the Gazette, as a Peacekeeping Force for the purposes of this Part.

2 *Submission 14*, pp. 14–15.

peacekeepers have been excluded from the Act and are now covered under the *Safety Rehabilitation and Compensation Act 1988* (SRCA).

22.7 Although the VEA continues to apply, access to it is strictly limited and is based on declarations by the Minister for Veterans' Affairs on a mission-by-mission basis.³ People who have had that coverage will continue to have it under the VEA.⁴

Military Rehabilitation and Compensation Act 2004

22.8 The MRCA established a new military rehabilitation and compensation scheme to provide rehabilitation, compensation and other entitlements for ADF members and their dependants. It is a single, stand-alone legislative scheme governing compensation for injuries or conditions arising from service in the ADF. With effect from 1 July 2004, rehabilitation and compensation of ADF members who serve as peacekeepers came under the MRCA. The provisions of the MRCA apply to service injuries, service diseases and service deaths occurring after the commencement of this Act. It does not apply to injuries, diseases or deaths occurring before this date even where the entitlement is not established until after the commencement of the MRCA. This arrangement means that the provisions of the VEA and the SRCA continue to affect the determination of compensation entitlements of veterans and will do so for years to come.⁵

22.9 The new scheme is a military scheme and AFP members are not covered under it. The compensation and rehabilitation of AFP peacekeepers continue to be covered under the SRCA.

Safety, Rehabilitation and Compensation Act 1988

22.10 The SRCA introduced a scheme of compensation and rehabilitation for persons injured in the course of their employment by the Commonwealth. For example, AusAID employees deployed to RAMSI are entitled to claim compensation for work-related injury and death under the Act. Comcare administers the SRCA and specific entitlements and benefits are listed on Comcare's website.⁶

Proposed legislation for the AFP

22.11 As noted above, AFP peacekeepers are not covered under the MRCA but come under the SRCA.

22.12 On 27 February 2006, the then Minister for Justice and Customs, Senator Chris Ellison, announced that AFP officers serving overseas would soon benefit from

3 AFP, answer to question on notice 24, 25 July 2007.

4 *Committee Hansard*, 24 July 2007, p. 32.

5 Explanatory Memorandum, Military Rehabilitation and Compensation Bill 2003, p. 5.

6 AusAID, answer to question on notice 2c, 25 July 2007.

the support of a police-specific compensation and rehabilitation scheme relating to dangerous foreign missions.⁷ In October 2006, the minister advised that the legislation would be available shortly.

22.13 The AFP informed the committee that the package of enhanced benefits was being developed by the Department of Employment and Workplace Relations (DEWR) in consultation with the AFP and DVA. DEWR had held discussions with the Office of Parliamentary Counsel on a preliminary draft bill which involves 'complex drafting issues and requires extensive consultation with a number of stakeholders'.⁸

22.14 The AFP stated that the new provisions would 'ensure AFP members receive benefits comparable to those provided to ADF members on like overseas missions'. Furthermore, it was of the view that any delay in the enactment of the bill would 'not prejudice any AFP beneficiaries, as the scheme will be backdated to 1 July 2004'.⁹

22.15 Both the Police Federation of Australia (PFA) and the United Nations Police Association of Australia (UNPAA) expressed strong reservations about the proposed legislation, especially the suggestion that the legislation simply be an amendment to the Safety, Rehabilitation and Compensation Act.¹⁰ They argued that any legislation to cover police should be a stand-alone act owned and controlled by the Justice Minister in an identical fashion to the Military Rehabilitation and Compensation Act being owned and controlled by the Minister for Defence. They also suggested that the Department of Veterans' Affairs have responsibility for administering it.

22.16 The AFP informed the committee that the government had noted the views of the PFA and the UNPAA on the machinery of government issues, and would consider them in reaching its final decision.¹¹ It also indicated that the 2006–07 Budget Papers provide for the administration of the amended SRCA to come under DVA. According to the AFP, \$6.1 million over four years (including \$0.4 million in capital) would be provided to DVA for this initiative, with this funding to be 'offset by reductions in the current administrative costs of COMCARE (\$5.8 million over four years)'. In the AFP's view, 'This is an appropriate arrangement'.¹²

7 Senator the Hon Chris Ellison, Minister for Justice and Customs, 'Government supports AFP on dangerous missions', Media Release, 27 February 2006.

8 AFP, answer to written question on notice 24, 25 July 2007. DEWR is now the Department of Education, Employment and Workplace Relations, (DEEWR).

9 AFP, answer to written question on notice 24, 25 July 2007.

10 *Committee Hansard*, 6 September 2007, pp. 2–4 and 8. See also *Committee Hansard*, 6 September 2007, pp. 6 and 8 (Mr Burgess and Mr Webber); and *Submission* 14, pp. 15–16.

11 AFP, answer to written question on notice 26, 25 July 2007.

12 AFP, answer to written question on notice 28, 25 July 2007.

New South Wales Police

22.17 The PFA and UNPAA asserted that the NSW Police had declined to agree to the secondment of their police while the matter of a police-specific workers compensation and rehabilitation scheme remained unresolved.¹³ The AFP responded that this issue 'has not adversely affected IDG's ability to recruit staff for deployments. It is a barrier only to the participation of NSW Police in AFP peacekeeping deployments'.¹⁴

Committee view

22.18 The committee recognises the importance of having specific legislation that would establish a rehabilitation and compensation scheme for AFP officers who serve in overseas deployments. It notes the concerns of both the PFA and the UNPAA. The committee urges the government to resolve the issue as a matter of priority.

Recommendation 28

22.19 The committee recommends that the Australian Government release a policy paper outlining the options and its views on a rehabilitation and compensation scheme for the AFP, invite public comment and thereafter release a draft bill for inquiry and report by a parliamentary committee.

Processing claims

22.20 The APPVA raised concerns about the way in which claims are processed. It was of the view that DVA case officers, who investigate claims for peacekeeping veterans, have 'a distinct lack of understanding of the environment' in which ADF members have served.¹⁵ DVA informed the committee that it has not undertaken any agency-wide survey of its staff's experience with, or knowledge of, the operations of the ADF.¹⁶ Mr Johnson advised the committee:

A number of our staff are former Defence Force personnel or serving reservists. We do organise sessions with Defence to try to get an appreciation. We also have a fairly regular visiting program to bases to talk to people who have claims or may be thinking about putting in claims under the various pieces of legislation that we administer. And we do have regular contact with ex-service organisations, both in our state locations and at the national office, which bring various points of view to us on how we process claims and how we can improve processes.¹⁷

13 *Committee Hansard*, 6 September 2007, p. 9.

14 AFP, answer to written question on notice 25, 25 July 2007.

15 *Submission 16*, paragraph 8.8, p. 9.

16 DVA, answer to question on notice 1, 24 July 2007.

17 *Committee Hansard*, 24 July 2007, p. 29.

22.21 The APPVA recommended that 'DVA Staff investigating claims of Peacekeeping veterans undergo an education program in order to be provided [with] information of the environmental conditions experienced by Peacekeepers'.¹⁸ Mr Johnson indicated that the department would have no concerns about the suggestion to have some sort of education program for staff to provide them with background in the sorts of conditions experienced by peacekeepers. He said:

We actually have done that. We have invited various people who have had various experiences in the Defence Force to speak to officers in the department and, as I said, we have very regular contact with the Australian Defence Force on what is happening, deployments, OH&S issues and those sorts of things.¹⁹

22.22 Mr Paul Copeland noted and approved of an initiative to help DVA staff gain a better appreciation of the conditions under which ADF members serve.²⁰

Committee view

22.23 The committee notes the criticism that DVA case officers do not adequately appreciate the environment in which Australian peacekeepers work. It notes the measures taken by DVA to make their staff familiar with the environment in which ADF peacekeepers may operate and encourages DVA to continue with these initiatives. The committee also draws DVA's attention to APPVA's recommendation that 'DVA Staff investigating claims of Peacekeeping veterans undergo an education program in order to be provided [with] information of the environmental conditions experienced by Peacekeepers'.²¹

Onus of proof

22.24 The APPVA also expressed concerns about the method of assessment and the onus of proof:

...the Reasonable Hypothesis is used for Peacekeeping Operations in claims under the [Veterans'] Entitlement Act 1986 (VEA), Safety Rehabilitation and Compensation Act 1988 (SRCA), and the Military Rehabilitation & Compensation Act 2004 (MRCA), there has been a continuing demand by Case Officers to provide medical evidence on the

18 *Submission 16*, paragraph 9.1.8, p. 10.

19 *Committee Hansard*, 24 July 2007, p. 29.

20 *Committee Hansard*, 21 August 2007, p. 52. He informed the committee, 'A couple of weeks ago they took some of the delegates or decision makers to Bandiana. They put them through a bit of an inoculation of how troops live in the field and what workloads they carry in their packs. I think a few of them got a bit of a shock at just how heavy a pack is to carry with full weighted ammunition, a weapon and things like that. I think inoculation—exposure and education—may alleviate some of the difficulties that our veterans are going through with these claims'.

21 *Submission 16*, paragraph 9.1.8, p. 10.

Balance of Probability, hence placing the onus of proof on the Peacekeeper claimant.²²

22.25 DVA explained the approach taken by officers in assessing claims. It stated:

Under the Veterans' Entitlements Act and the new act, the Military Rehabilitation and Compensation Act, there is no onus of proof on the member, either serving or former. The investigation is all with the department; the responsibility for investigation is with the department. It is somewhat different under the Safety Rehabilitation and Compensation Act, but under the VEA and the MRCA the responsibility is with the department.²³

22.26 The APPVA recommended an amendment to the SRCA to reflect the nature of service of peacekeeping veterans, 'by providing a "beneficial approach" and placing the onus of proof under the reasonable hypothesis'.²⁴

Committee view

22.27 The committee notes the APPVA's recommendation for the government's consideration regarding the SRCA and placing the onus of proof under the reasonable hypothesis.

Medical records

22.28 The APPVA suggested that 'the lack of understanding of DVA Claims Assessors and Supervisors is due to the fact that for most peacekeeping operations foreign countries provide the Medical treatment'. It stated that this situation has made it difficult to obtain medical evidence and documentation to support the peacekeeping veterans' claim which, it argues, 'exacerbates the veterans' anxiety as they fight long battles for their Entitlements under the respective acts'.²⁵ Mr Copeland said:

The hardest thing about the documentation is that we do not have Australians over there providing the medical or hospitalised support. It is actually done, in some cases, by Third World countries. They do not have such a rigid recording system as we have for our Australian Defence Force. Realistically, it is a case of chalk and cheese. For example, if you have a head injury, you will probably be seeing an Indian doctor and dispatched back and there will be nothing on your record, but you have sustained a head injury. That was the case for one soldier. He was sent to Thailand and they could not find him for six weeks. He was actually in a Thai military hospital.

22 *Submission 16*, paragraph 8.8.1, p. 9.

23 *Committee Hansard*, 24 July 2007, p. 33.

24 *Submission 16*, paragraph 8.8.4, p. 9.

25 *Submission 16*, paragraph 8.8.2, p. 9.

These are the sorts of things that happen. It is not the cut and dried recording system that one would expect.²⁶

22.29 The Regular Defence Force Welfare Association also raised the problem of the availability of medical treatment records when health care is provided by a non-ADF health service:

Such services could be provided by a UN military health service or a UN contractor. We understand that some veterans have had problems establishing their entitlement to a DVA entitlement in that medical records could not be obtained or those that were available were deemed inadequate. In any such case the burden of proof should not rest with the individual.²⁷

22.30 The Australian Veterans and Defence Services Council (AVADSC) agreed with the view that medical records had been inadequate and was an area of concern. It recommended: 'More care and handling of all medical documents and member check the records before leaving the location'.²⁸ Noting the difficulty obtaining appropriate medical documentation for given illnesses or injury on peacekeeping operations, which is nominally provided by another country as part of the multi-national force, the APPVA suggested:

...it would be beneficial to the Australian veteran to have his/her claim considered for acceptance by the Repatriation Commission under the VEA; or the Military Rehabilitation Compensation Commission (MRCC), under the MRCA. This has been a difficult process to provide such evidence to DVA in order to have claims accepted.²⁹

22.31 Mr Johnson, DVA, said that the evidence presented to the committee about incomplete medical records of Australian peacekeepers was the first time he had heard of this complaint. He indicated that 'from time to time there are issues around accessing a particular medical record that relates to a claim, but that is a more general issue than relates just to peacekeeping'.³⁰ He said:

When we receive a claim, we seek service records and relevant medical records from the Department of Defence. I am not saying that sometimes there are not difficulties in sourcing relevant medical records from defence

26 *Committee Hansard*, 21 August 2007, p. 52

27 *Submission 8*, p. 3.

28 *Submission 10*, p. 3.

29 *Submission 16*, paragraph 4.5, p. 3. See also comments by Rear Admiral Crawford who referred to the inadequacy of medical records and the importance of ensuring that 'the integrity of those medical records is established immediately after return to Australia or even earlier'. He noted, 'the more we get into this international environment of peacemaking and peacekeeping, the more dependent we will be on other agencies for medical services'. *Committee Hansard*, 20 August 2007, p. 60.

30 *Committee Hansard*, 24 July 2007, p. 33.

on claims that have been put forward, but I am not aware that particular issues have arisen from peacekeeping forces.³¹

22.32 He expected that medical records of treatment provided by medical staff from another country 'would still go back with the Australian peacekeeping member and be part of their ongoing medical record that is held with defence'.³² DVA provided more detail in its answer to a written question on notice:

...some deployed health facilities provided by a number of countries (eg. US Aid Post in Camp Victory Iraq) do not hold a record of any treatment given to members of other nations' forces. Any documentation generated is given to the individual and it is then the individual's responsibility to ensure that it is put into his or her medical record.³³

22.33 It explained further:

Until recently, ADF members did not deploy on operations with their Unit Medical Record (UMR), so there was a reasonable likelihood that some record of treatment would not be reflected in their UMR. This would especially be the case if the treatment was provided early in the deployment, with the record often being retained by members on their person for considerable periods of time.

Whether to deploy with the UMR is now decided on a case by case basis (eg. ADF members now deploy with the UMR to the Middle East Area of Operations). Special Operations Command is currently developing an *Operational Health Record* in the form of a small booklet in a plastic wallet which could be issued to the individual. Key information would be transposed from the UMR, with details of all treatment provided in the Area of Operations being recorded in the booklet. The booklet would then be placed on the UMR on return from the operation and would form part of the permanent record.³⁴

22.34 With regard to police deployed on a peacekeeping operation, the AFP informed the committee:

Copies of medical records created by other supporting health service agencies during peacekeeping operations (such as United Nations Medical Units, or contracted services such as Aspen Medical), are sent to AFP Medical Services for inclusion in the AFP medical record relating to the member; these records are likewise accessible upon request to the AFP PMO.³⁵

31 *Committee Hansard*, 24 July 2007, p. 33.

32 *Committee Hansard*, 24 July 2008, p. 33.

33 DVA, answer to question on notice 4, 24 July 2007.

34 DVA, answer to question on notice 4, 24 July 2007.

35 AFP, answer to written question on notice 23, 25 July 2007.

22.35 It should be noted that in 2004, the committee inquired into the health preparation arrangements for the deployment of ADF personnel overseas. It found the state of service and medical records had declined in recent years to 'such a state that claimants can have little confidence as to their accuracy or completeness'.³⁶ It went further to state that the maintenance of health records for serving personnel had become 'chaotic due to incomplete information and shared responsibility'.³⁷

Committee view

22.36 The committee believes that agencies involved in peacekeeping operations must develop better procedures for the management of health records. It also believes that the evidence presented by the various veterans' associations about incomplete medical records of ADF personnel serving in peacekeeping missions requires further investigation by both Defence and DVA. Evidence suggests that there are shortcomings in relation to the records of personnel who have received medical treatment in the field. When considered in light of the committee's previous findings in 2004 about the deficiencies in health records, this evidence indicates that the ADF needs to identify the causes of the shortcomings and rectify them.

Recommendation 29

22.37 The committee recommends that the ADF commission an independent audit of its medical records to determine the accuracy and completeness of the records, and to identify any deficiencies with a view to implementing changes to ensure that all medical records are up-to-date and complete. The audit report should be provided, through the Minister for Defence, to the committee.

Recommendation 30

22.38 The committee recommends that the Australian Government requests ANAO to audit the hardware and software used by the ADF and DVA in their health records management system to identify measures needed to ensure that into the future the system is able to provide the type of detailed information of the like required by the committee but apparently not accessible.

Recommendation 31

22.39 The committee also recommends that Defence commission the Centre for Military and Veterans' Health to assess the hardware and software used by Defence and DVA for managing the health records of ADF personnel and, in

36 Senate Foreign Affairs, Defence and Trade References Committee, *Taking stock: Current health preparation arrangements for the deployment of Australian Defence Forces overseas*, August 2004, p. x.

37 Senate Foreign Affairs, Defence and Trade References Committee, *Taking stock: Current health preparation arrangements for the deployment of Australian Defence Forces overseas*, August 2004, p. xiv.

light of the committee's concerns, make recommendations on how the system could be improved.

22.40 Although no concerns were raised about AFP medical recordkeeping, it may be timely for the AFP to conduct an audit of the health records of its members deployed overseas to determine whether there are any short-comings.

22.41 Another matter that was not covered in the terms of reference but which drew significant comment from submitters was the recognition given to Australian peacekeepers. The following and final chapter in this part of the report looks at Australian peacekeepers and how their service is recognised.