



Australian Government
Office of Parliamentary Counsel

First Parliamentary Counsel

Inquiry into the Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Bill 2016

Background

1 The Office of Parliamentary Counsel is established under the *Parliamentary Counsel Act 1970*. Subsection 2(2) of that Act establishes the position I hold, the position of First Parliamentary Counsel, as the head of the office. Under paragraph 3(1)(a) of that Act, one of the Office's functions is "the drafting of proposed laws for introduction into either House of the Parliament". A drafter in the Office of Parliamentary Counsel was responsible for drafting the Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Bill 2016 (the **Bill**).

2 This submission sets out my understanding of the legal effect of that Bill.

Legal effect of the Bill

3 Item 1 of Schedule 1 to the Bill creates an identical copy of the *Safety, Rehabilitation and Compensation Act 1988* (the **SRCA**) and calls it the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (the **DRCA**). Item 2 of that Schedule preserves all previous versions of the SRCA, and instruments made under the SRCA, for the purpose of administering the DRCA. Parts 2 and 3 of that Schedule then amend the newly created copy of the SRCA to create a standalone Act that applies only to Defence Force members.

4 The consequential amendments in these Parts do the following:

- (a) limit the application of the Act to Defence Force members;
- (b) repeal the following provisions as the equivalent provisions are to remain in the SRCA:
 - (i) Divisions 1 and 2 of Part III (introduction and approved rehabilitation providers);
 - (ii) Part VII (administration and finance);
 - (iii) Part VIII (licences to enable Commonwealth authorities and certain corporations to accept liability for, and/or manage, claims);

- (c) make consequential amendments as a result of these repeals;
- (d) remove amendments made by the *Safety, Rehabilitation and Compensation Legislation Amendment (Exit Arrangements) Act 2016* which are not relevant to Defence Force members.

5 There are amendments in Schedule 1 that cannot be described as merely consequential and that change the policy in the SRCA. The amendments are:

- (a) item 23 which applies to ailments or aggravations of ailments that are contributed to, to a significant (rather than material) degree, by a Defence Force member's employment;
- (b) item 45 which creates a new section 121B that gives the regulations the power to modify the Act to ensure that no person (except the Commonwealth) is disadvantaged by the enactment of DRCA;
- (c) item 48 which repeals 2 functions of the MRCC (the function requiring the MRCC to maintain contact with the Safety, Rehabilitation and Compensation Commission (the **SRCC**) and incidental functions);
- (d) item 49 which removes the prohibition on MRCC taking action in a court or tribunal if Comcare or the SRCC has required that MRCC not take the action;
- (e) item 50 which removes the power of Comcare to make an approved guide under section 28 and gives that power to the Military Rehabilitation and Compensation Commission (the **MRCC**);
- (f) item 53 which removes the requirement for the MRCC or the Chief of the Defence Force to consult Comcare before nominating a person to provide a rehabilitation program for an employee;
- (g) item 54 which removes the power of the SRCC to make Guidelines.

6 In addition, subsections 5(10C) and (10D) and 7(4) of the SRCA Act have not been re-enacted. Subsections 5(10C) and (10D) deal with the relationship between the *Veterans' Entitlements Act 1989* and SRCA. Subsection 7(4) deems an injury or disease to have been sustained on earliest of the day the employee first sought medical treatment for the injury or disease, the employee died or the employee became incapacitated or impaired.

7 Part 3 also makes amendments which are not consequential amendments. These make changes relating to the pension age. However, if the *Seafarers and Other Legislation Amendment Act 2017* is passed before the Bill is passed, then those changes would already have been made to the version of SRCA that is picked up when the DRCA is enacted under item 1 of Schedule 1.

8 Schedule 2 to the Bill makes amendments to remove Defence Force members from SRCA as they would now be covered by DRCA, and makes other consequential amendments as a result of the enactment of the DRCA.

9 Schedule 3 to the Bill amends other Acts to include references to DRCA where there are currently references to SRCA.

Summary

10 The legal effect of the Bill is to create a version of SRCA, called the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*, that is to apply to Defence Force members, making the policy changes set out in paragraphs 5 and 6 above.

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