Senate Foreign Affairs, Defence and Trade Legislation Committee

SUBMISSION COVER SHEET

Inquiry Title: Military Rehabilitation and Compensation Bill 2003 and Related Bill

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Submitter: RSL National Headquarters

Organisation: RSL National Headquarters

Address: GPO Box 303,
CANBERRA

Phone: (02) 6248 7199

Fax: (02) 6247 7637

Email: nhqresearch@rsl.org.au

Name/Contact: Mr Bruce Tunnach OAM JP

Date Authorised:

RSL SUBMISSION TO THE SENATE INQUIRY INTO

THE MILITARY REHABILITATION AND COMPENSATION BILL 2003 AND THE MILITARY REHABILITATION AND COMPENSATION (CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) BILL 2003

BACKGROUND

The RSL has attended various working group meetings during the past year with other Ex-Service Organisation (ESO) representatives and officers of the Defence and Veterans Affairs Departments to discuss a wide range of matters during the development of the Military Rehabilitation and Compensation Bill (MRCB).

The RSL commends this cooperative and comprehensive approach to formulating significant legislation affecting Defence Force members and veterans, and recommends this approach be adopted as a model for any further important issues affecting the service and ex-service community. That the process worked well was evidenced by the considerable number of welcome changes made following the release of the Exposure Draft. The RSL further recommends that the practice of working party groups be continued for the development of further protocols in relation to the implementation of the Act.

In addition to attending the working group meetings, the RSL made two written submissions on the MRCB Exposure Draft to the Minister for Veterans Affairs. Copies of these submissions are enclosed.

GENERAL COMMENT

The RSL believes the Bill brings significantly improved rehabilitation and compensation conditions of service to members of the Australian Defence Force (ADF) and that the Bill addresses all the key issues.

The introduction of this Bill continues the practice of recognising the 'profession of arms' as a unique occupation; one which contains risks not evident in other forms of government service. The emphasis on rehabilitation is particularly welcomed and the RSL looks forward to working closely with the ADF, DVA, and other ESO as the protocols for rehabilitation are further developed.

The RSL is most pleased that the consequential amendment to the Veterans Entitlement Act which proposed to 'offset' compensation payments against military superannuation payments for future claims at above the Special Rate will not be implemented. The RSL congratulates the Government on this decision.

Conversely, one matter about which we had considerable concern was the extremely short time frame (approximately one-month) initially provided for ESO to study the newly amended Bill, compare it to the exposure draft, and then make a reasoned submission to the Senate Inquiry. Given the added difficulties of communication during the Christmas / New Year break and the internal structure of National ESO, there has been limited opportunity to consult widely with members.

DEFINITIONS AND MATTERS ARISING

The exposure draft states that it is a "Bill for an Act to provide rehabilitation, compensation and other entitlements for veterans, members and former members of the Defence Force, and for other purposes".

Terms and Entitlements

In the Bill there is no mention of the entitlements for veterans other than matters that could be inferred from references to war-like and non-war-like service. There is no definition of 'veteran' and there is no reference to 'qualifying service'. There is no doubt that a veteran is a member or former member and, if the Act is to provide entitlements for veterans, their entitlements must be clearly enunciated within the Act. Veterans, members and former members (and their representatives) should not have to examine the Act to attempt to define their entitlements from inferred references and meanings within the Act, or be compelled to search through some other Act or regulations to determine those entitlements.

The term 'veteran' could be defined in S.6 Definitions.

Person

Throughout the Bill there are references to members, to former members, and to persons. The term 'person' is not defined although it is used interchangeably with members, former members, entitled persons, and can also refer to 'a body corporate'. On one occasion the term person is specified within the Bill as being a 'plaintiff'. In no other place is a reference to ‘person’ so specified. Where the Bill refers to a member, former member, veteran, or entitled person who is making a claim or entitled to make a claim; then that person should be referred to as 'the claimant' and the term 'claimant' should be clearly defined in S.6. This action would then allow the term ‘person’ to be accepted and used as referring to an individual of no specific category within the context of the Bill.

Section 189(4) Compulsory Retirement

For some members, former members, and veterans the term ‘compulsory retirement’ is not clear. It is not sufficient that those administering the Act will understand the meaning of the term, it is essential that those affected by the Act are able to understand the meaning and intent of the various sections. For example, a veteran was given the choice of taking retirement or being discharged on medical grounds. He took retirement. Was he compulsorily retired? Or is the term to be limited to mean that the member, former member or veteran is compulsorily retired when he or she reaches the age for retirement, is retired because of force reduction, or retires when he or she reaches the age that enables him or her to retire within the terms of DFRDB, or for some other reason that the ADF deems to be a reason for retirement (redundancy?), or in some other way?

The term ‘compulsory retirement’ therefore should be defined to avoid uncertainty and the definition must be included in this section or in S.6

Section 193, Motor Vehicle Compensation

Section 193 (2) stipulates the matters for which compensation may be paid to a claimant in relation to a motor vehicle whereas the term motor vehicle is not defined in the Bill. Such a definition is required either in this Section of the Bill or in Section 6. A claimant or his or her representative should not have to read outside the Bill to identify whether or not the vehicle he or she requires as a result of his or her impairment is a motor vehicle within the meaning of the Bill. For example, relevant State laws pertaining to transport operations and road use (Motor Vehicle Law). We have not had the benefit of examining and commenting on the writing which is the MVCS, however we are of the opinion that the term 'motor vehicle' must include, but not necessarily be limited to:

> "a vehicle of two or more wheels capable of being driven or ridden on public roads and made for the carriage of one or more persons and is self propelled by a propulsion method which is a petrol, diesel or gas-fired internal combustion engine, either of two or four strokes; a battery powered (including solar power) electric motor, or any combination of such power sources".

Any such vehicle may be required to be registered within the laws of a relevant State and be the subject of a policy of Third Party Compulsory Insurance, and the costs of such registration and insurance should be included in the compensation available to a claimant.

CENTRAL ISSUES

There are a number of important issues the RSL wishes to make particular comment on. These issues are referred to by the relevant Section or Chapter of the Bill.

Chapter 4

In relation to the intent that incapacity payments are to be indexed to the CPI, we would argue that they should be indexed to the CPI or MTAWE whichever is the greater. In recent times, increases in average weekly earnings have been greater than the CPI. There has been a progressive erosion in the value of incapacity payments indexed to the CPI.

Chapter 7

During the last working party meeting in December there was discussion on the use of the Statement of Principles (SOP) in determining claims for compensation and the apparent claimed imbalance in claims submitted under the VEA; as opposed to claims submitted under the current MCRS where the SOP are not in force.

Anecdotal evidence cited by RSL pensions officers and some statistics support a view that claims under MCRS are more likely to succeed than those under the VEA jurisdiction. For example, RAAF F111 reseal/deseal claims as at September 2003 are three times as likely to succeed under MCRS (no SOP) than under the VEA where the SOP are applied.

While some comfort is drawn from the fact that claims under the new MRCA will have the beneficial aspects of the VEA in terms of burden of proof, the RSL wishes to register some concern and advise that claims statistics should be monitored.

Our concern can be attributed to the way in which some SOP have been developed, rather than to the concept of using SOP. We are of the view that a well articulated and developed SOP should offer a more effective basis for claim determination. We intend separately to take up the issue of SOP derivation as this is critical to our acceptance of their being used as a basis of claims under the MRCS.

Chapter 8

The RSL does not support a dual process of appeal and review as proposed in the new Bill. The RSL was invited to make a submission to the Senate Committee on Finance and Public Administration that inquired into the administrative review of veteran and military compensation and income support. An RSL representative appeared before the Senate Committee on 26 September 2003 and gave further evidence and responded to questions from the Committee.

In brief the RSL view is that all persons who are covered by the new Bill should have access to the Veterans' Review Board regardless of the type of service they have experienced. Similarly, all should then have the right to appeal to the AAT and those hearings should be on a "de novo" basis. That is, new evidence (including medical evidence) would be allowed and, if needs be, diagnosis could be changed.

Legal aid should be available to all based on merit only. It is very important that appeals to the AAT continue to be heard by the 'Veterans Division' of that Tribunal. This division includes 'service members' and a great deal of experience and understanding of the unique circumstances that exists within the military environment.

The RSL understands that the Senate Committee found in favour of the RSL (and other ESO) submissions that the VRB should be available to all. If correct, this is most pleasing. We also understand that the Committee favours funding ESO to gather new medical evidence prior to a VRB hearing. The RSL would welcome such funding but definitely NOT at the expense of a somewhat fettered right to appeal to the AAT which, we understand, the Committee is suggesting. Our strong view is that the current, unfettered arrangements for appealing to the AAT must not be changed.

Section 26

The RSL would prefer to see industrial diseases included within the definition of service diseases as they are with the current MCRS, and that attention be given to the development of appropriate protocols.

Section 122 and 208

The RSL submits that these sections constitute an additional and unreasonable penalty on the grounds that the incarcerated member does not become impaired as a result of the incarceration. That is, the reason for his/her being compensated remains and has no causal connection with the offence for which he/she is incarcerated. We also question, if retained, whether these sections would also apply to weekend detention.

Section 127

The RSL recognises that this section would apply to very few members but considers it an unreasonable erosion of a persons rights and expectations to have their compensation payments reduced by half after a period of one year in hospital.

Sections 134, 135 and 136

In examining 'compensation payments offset against Commonwealth Superannuation', this provision is understood to reflect that Commonwealth Superannuation provides a measure of income support and this may reasonably be offset against any future assessment of the need for income support as a component of the compensation payment. However, we caution that inequities may well arise.

We would argue strongly that the economic component of compensation should result in the service or ex-service person being at least as well remunerated as had they been able to continue in the Service.

Section 182

The RSL believes that indexation should be applied every six months, as it is in every other area, instead of every twelve months.

Section 197

The decision to introduce a 'safety net' payment is a sensible one that offers a measure of financial protection to certain members of the ADF. This safety net payment is the equivalent of the T&PI special rate pension as paid under the VEA.

The RSL believes it important that the Committee of Inquiry understand that the RSL has for years been arguing that the current TPI pension has been eroded in value, has not been properly indexed, and is inadequate. The RSL position on the TPI pension is summarised as follows, that Government:

- Acknowledge that there has been an erosion of the TPI pension over recent years due to inappropriate indexation;
- Grant an increase in the pension of not less than $66.00 per fortnight;
- Index the TPI pension to the CPI or MTAWE, whichever is the greater; and
- Benchmark the TPI Pension to MTAWE.

Section 234

The rationale for a significant difference in compensation paid to dependants of deceased members is not accepted. The RSL believes that when a member's death is attributed to service it makes no difference to the surviving partner where or how that death occurred. The surviving partner still faces the same difficulties of coping with children and other issues. The Townsville Blackhawk incident in 1999 tragically highlighted the trauma and suffering of those left behind just as much as if their husbands had been killed on active service.

CONCLUSION

This submission ends with an appropriate quote from RG Menzies (then Opposition Leader) in his reply to the second reading of the Commonwealth Reconstruction Training Scheme 23 March 1945. "I am not proposing—and I think I can say for all honorable members of the house—to make this a party debate. We are dealing with a problem which is above party, a problem which is intimately associated with the discharge of the nation's duty to those who have served in time of war". [1]

Enclosures:

1. RSL National Headquarters Letter, D1–3–12, dated 12 August 2003
2. RSL National Headquarters Letter, D1–3–12, dated 25 August 2003

[1] From "We got a Fair Go" A History of the Commonwealth Reconstruction Training Scheme 1945—1952. Self Published by Hector Gallagher in (Melbourne) 2003.