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The

Injured Service Persons Association (Peacetime Injuries)

submission to the

Senate Foreign Affairs, Defence and Trade Legislation Committee

for the

Inquiry into the Military Rehabilitation and Compensation Bill 2003 and the Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Bill 2003

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Introduction

The ISPA has been operating since January 1996 as an ESO primarily for ADF persons who suffered peacetime injuries.

ISPA has always tried to keep abreast of all issues relating to the *Safety, Rehabilitation and Compensation Act 1988, (SRCA)* as this is the Act that pertains to those defence personnel who are not covered by the *Veterans Entitlement Act 1986.*

As the years have passed the experiences that many injured service and ex-service persons have had, have been either directly or indirectly made known to the ISPA.

Contact with other ESO's also provides evidence of mismanagement, anomalies and less desirable attitude by delegates who administer the relevant schemes applicable.

As a member of the Working Group formed to draft a new Military Compensation Scheme, we have a fair insight into the new Bill. We have also made many comments both verbally and written during the drafting process, and will continue to do so where we believe there to be anomalies.

We thank the Government for this opportunity to again put forth our concerns and comments and hope our voice is heard, listened to and acted upon.

We believe that the Government has a duty of care to all serving and ex-serving ADF members who have service related injuries and/or diseases and that the MRCB must reflect the goodwill to care for them.

Summary

The description of this new scheme as a “single self contained scheme” should be ceased as the different avenues that can be taken depending on where the injury occurred contradicts the description. In its current form it is not a “single streamed scheme”. This Bill is in fact two schemes given the one title.

We do not agree with the intention to have different amounts of compensation for the same injury being determined on the basis of whether it was war, war-like or peacetime service. This also is applies to the differing amounts being proposed for a war widowed spouse and peacetime service widowed spouse.

To continue with the proposed system, we believe will cause confusion and incorrect claim results.

The review process has a choice of two or even three avenues the claiming member may take depending on the type of service the injury/disease had occurred during. This has the potential to cause indecision and confusion.

We believe the name should be changed in part. The removal of the word “compensation” from the title and replace it with “entitlements”. There is more to this Bill than compensation. This Bill encompasses a wide range of benefits which are seen to be “entitlements” for injuries sustained during military service.

Transitional Management has the potential to confuse, cause stress, become frustrating and upset families who are going through the process. Current indications highlight glitches within the system which is evident in severe injury cases.

The proposed Bill we believe fails the severely injured and their families especially if through peacetime service and treats peacetime widowed spouses with contempt and little regard for their necessities.

Quality of life is very important and this Bill does little to assist financially the extra requirements associated with having a quality of life for severely injured members.

The intention to legislate this Bill as quickly as possible is a major concern as this could lead to misinterpretation of some aspects and many ESO’s are sceptical of government changes.

Although it has been stated that there will be no retrospectivity, the ISPA requests that there are two exceptions. The first one is that those who are classified as severely injured under the current system be granted a gold card and secondly, that provisions to reimburse extra expenses incurred due to the necessity of requiring a carer be applied to those currently under the SRCA.

Chapter 3—Rehabilitation

Chapter 3, Section 38 - Rehabilitation in the proposed Military Rehabilitation and Compensation Bill (MRCB), states:

The aim of rehabilitation is to maximise the potential to restore a person who has an impairment, or an incapacity for service or work, as a result of a service injury or disease to at least the same physical and psychological state, and at least the same social, vocational and educational status, as he or she had before the injury or disease.

There are areas of concern for the ISPA relating to vocational assessment, social (quality of life) rehabilitation and capabilities and transitional management.

Vocational Assessment

There have been instances as recent as December 2003 in which injured ex-service members have felt their condition has worsened and approached their MCRS office to seek reassessment only to be directed to a MCRS preferred doctor and ultimately losing all benefits. This is being appealed of course.

This means that a previous doctor who has deemed this injured ex-member as unable to work has in affect been overruled by another doctor who conducted a 10 minute interview. This all because the ex-member believed his condition deteriorated and asked to be reassessed.

There are other instances of life affecting decisions being made by specialists when all that is being done is a 5 – 10 minute tick and flick questionnaire, a couple of questions to the member and a browse of other reports. Hardly a fair and independent assessment.

Requests for review could increase.

After discharge where it is assessed that a member is unsuitable to undertake vocational rehabilitation due to the severity of the injury/disease, then they should be given a case manager who handles all aspects of their case.

Currently, when a member makes a request their files are handled in such a way that they have no idea which delegate is the one to contact. It's not uncommon for up to 3 delegates being involved in some cases.

This only stresses and confuses the member and/or family.

Social Rehabilitation and Quality of Life

The following is the definition for psycho-social rehabilitation which the ISPA believes is incomplete.

Psychosocial rehabilitation is the use of rehabilitation measures aimed at restoring or maximising the person's function in the community by providing appropriate behavioural and social skills for living in the community.

Therefore the ISPA submits the following that is believed to be pertinent to psycho-social rehabilitation and the continuation of social and community interaction, aka quality of life.

As part of this rehabilitation, members would be encouraged to again participate in activities such as dining out, going to concerts, sporting venues, shopping, movies and even travelling interstate or other places for holidays.

It does take many people a lot of courage to venture back into the community after becoming blinded, paralysed or disfigured through fire, disease or amputation. During hospitalisation and rehabilitation these injured people are encouraged to try to re-establish a social life, which many do.

There is a problem however for some types of injured people. One of these is those who suffer psychological problems and then there are those who require constant assistance in daily living, which are normally high level quadriplegics and the brain injured.

It appears beyond doubt that this Bill negates any ability for the dependant injured to re-establish a quality of life and quickly diminishes any want of psycho-social training.

This Bill has inherited the same anomaly as that in the *Safety, Rehabilitation and Compensation Act 1988 (SRCA88).* No provision has been made to allow extra costs associated with having to be accompanied by a carer to be reimbursed. This means that when an injured member who due to his/her service related injury/disease wishes to go to a sporting event or concert he/she will pay twice.

This lack of financial support also ends any possibility of ever having a holiday or visiting family who reside in another state. Where a member requires constant assistance (24hr care), there is a requirement when going away to have 2 carers so as to share the work load.

This therefore requires extra accommodation, airline tickets or other appropriate arrangements, which then doubles or even triples the costs.

There have been Administrative Appeals Tribunal (AAT) hearings as well as Federal Court cases which have reinforced the *SRCA88* no reimbursement for carer's expenses anomaly.

Although there is provision in the *SRCA88* to provide an Attendant Care Allowance, currently $327.18 per week, this is inaccessible to those with 24 hr care as this care is paid for under *Section 16 of the SRCA88.*

This needs to be rectified or those who have the misfortune of requiring constant care will remain house bound, sink into depression and commit suicide. There are not many injured members that will fall into the 24 hr care category and these figures could be provided by Defence or MCRS.

The ISPA believe that these injured ex-members deserve the same right as independent able bodied people to be able to attend sporting events, cinemas, concerts and holidays without the extraneous costs associated with the necessity of having a carer due to a service related injury or disease.

Transitional Management

Transitional management is an area of grave concern especially when dealing with severely injured members.

ISPA is sceptical of the intention to appoint a case manager to a potential medical discharging member. To have such a system would require a dedicated discharge cell in each unit. Given the number of defence units and the number of medical discharges ISPA believe it will still be the Ex-Service Organisations who will give the most discharge assistance.

Whilst there is the intention to appoint case managers, questions need to be asked about such things as, what rank is that person and what authority does that person have when it comes to approving purchases or modifications.

ISPA has many experiences with dealing with medical discharges with severe injuries since 1996. The ISPA has been in constant contact with many of those under MCRS, with the ISPA assisting a quadriplegic late 2002/early 2003 and another quadriplegic who is at this time still going through the transitional stages.

It is our understanding that people are appointed to assist in Transitional Management pending medical discharge already, as what was/is the case with a current severely injured Reservist who had a WO2 assisting him.

To say the transitional phase needs work is an understatement. The first issue is appropriate accommodation.

Spinal injuries are at the top of the severe injury list yet there is no appropriate accommodation that allows the spinal injured member to leave hospital for day/weekend visits during rehabilitation.

The current system involves DHA to modify a house at whatever location is decided. This can and has taken more than 8 weeks to happen and the amount of time taken to receive approval does nothing to ease the stress, uncertainty and confusion of the injured member and his/her family.

The Department of Defence (DoD) is watching the dollars and will do the bare minimum it can to save money. This is due to the attitude of, why spend thousands or tens of thousands of dollars when the member is to be discharged. The ultimate decision it appears rests on the Director of Entitlements.

Hand in hand with paying for accommodation modification is when MCRS assumes responsibility of costs associated with a discharging member. In the latest 2 cases dealing with quadriplegics, a common issue was to do with who pays for what and when.

Problems arise because again DoD doesn't believe they should pay for equipment for the member when that member is to be discharged.

Severely injured members also require more time to make decisions regarding their future housing location. Currently, members are given a discharge date and are then told that if they need to remain in that accommodation after discharge that they must pay market value rent, which in some areas can be as much as $400.00 per week.

Given that the discharging member's salary will be reduced to 75% of what they use to earn, the member will certainly be scrapping to survive the next fortnight. Let's not forget that the member may have children to look after as well.

In cases of spinal injuries, time from injury to finishing rehabilitation can be as long as 18 months providing there are no complications, eg pressure areas (aka bed sores). Therefore, time to conduct house appropriation trips must also be included.

Recommendations

That there is a more defined description of psycho-social rehabilitation that encompasses all the possibilities, so that those who are untrainable to return to work have some understanding of what support they can receive.

That the government establishes purpose built accommodation in each of the main cities that would allow total wheelchair access so that suitable accommodation is available as soon as a severe injury occurs and that this accommodation is managed and maintained by DHA.

That those classified as severely injured are allowed to reside in defence subsidised accommodation until the member has his/her own home built or modified.

That provisions be made in the Bill to allow reimbursements to be made to those incapacitated who due to their injury/disease require constant care up to the amount equal to the Attendant Care Allowance with the provision that unused weekly amounts can be accumulated to allow for activities that are longer than a week and more costly.

That when a member has been confirmed as being medically discharged that the MRCC assume responsibilities regarding costs associated with the injured member such as modifications, aids and appliances and household and attendant care services.

That those classified as severely injured have a MRCC case manager appointed and deals with him/her only to prevent confusion and misunderstanding after discharge.

Chapter 4—Compensation for Members and Former Members

Part 2 - Permanent impairment

Warlike, non warlike and peacetime injuries will be assessed using the same guides and lifestyle questionnaires yet it is proposed that those with warlike will receive more for the service related injury.

The ISPA has continually called for equality when it comes to compensating for impairment. Regardless of where a service person sustains their injury/illness/disease the final outcome is the same.

Someone rendered a quadriplegic, paraplegic, blinded; amputee etc from a designated war zone suffers no less or no more than someone suffering from the same injury during peacetime service.

Searches through the internet and medical papers do not indicate that those who receive their injury or disease in Australian actually suffer less than those overseas on operations.

We are yet to find evidence the Ross River Fever contracted in Australia is less debilitating than if contracted overseas yet the intention is to compensate the 'home grown' case less.

It could be argued that there would be a higher risk of being at risk from anthrax in Australia than during operations but yet the compensation will be lower.

The proposed system will do nothing but complicate and confuse all future claims and again highlights the fact that this is not a single stream scheme.

The following paragraph is on page 35 of the Explanatory Memorda and is self explaining.

Depending on whether the service injury is suffered or the disease is contracted on warlike or non-warlike service or peacetime service, different compensation factors will apply for the same impairment and lifestyle rating. The outcomes in terms of compensation for those whose injury or disease results from warlike or non-warlike service and is up to 50 impairment points will approximate those under the VEA. For peacetime service the results will approximate those under the SRCA.

It still relates to the S*RCA* and *VEA* also goes on to say;

*If the 2 conditions lead to impairment ratings of **A** and **B**, the combined impairment rating is calculated as:*

***C** = **A** + **B** * (100 – **A**)/100 rounded to nearest integer*

The guide will also specify the means of calculating compensation where different conditions arise from warlike or non-warlike service and from peacetime service.

*When two conditions lead to impairment ratings of **A** and **B** and are caused by warlike or non-warlike service and peacetime service respectively, then the compensation payable will be a weighted average. The weighted average of the levels is that that would be paid if warlike or non-warlike service caused both. This is also true if peacetime service caused both conditions. The weights used are the impairment ratings **A** and **B**. If the combined impairment is **C** (from the equation above) and the lifestyle effect is **L**, this can be expressed as:*

$$CFfinal(\mathbf{C},\mathbf{L}) = \frac{\mathbf{A} * CFop(\mathbf{C},\mathbf{L}) + \mathbf{B} * CFpt(\mathbf{C},\mathbf{L})}{(\mathbf{A} + \mathbf{B})}$$

*where the compensation factors for warlike or non-warlike service [shown as CFop(**C**,**L**)] and peacetime service [CFpt(**C**,**L**)] are taken from the relevant tables and the final compensation factor [CFfinal(**C**,**L**)] is applied to determine the final level of compensation.*

If the Senate Committee can understand that without actually using any injuries, imagine how many pension officers will understand it when confronted with a range of war caused and peacetime caused injuries.

Pension Officer numbers will drop due to the complicated process especially when disputing a decision.

Recommendations

That the process of deciding compensation amounts for permanent impairment be uniform and consistent in compensating the member for the impairment and not the location.

Chapter 4—Part 7: Other Types of Compensation for Members and Former Members

Division 2—Motor Vehicle Compensation Scheme

There should be no requirement for a member to trade in his/her vehicle if that member is in a relationship regardless of whether there are children or not.

If the members spouse is employed and wishes to continue to work then a trade in of the families existing vehicle is not an option.

Division 3—Compensation for Household and Attendant Care Services

The ISPA has reservations when it comes to what the factors to be considered when determining the level of household and attendant care services.

Experience has shown that the Commonwealth prefer to leave the role of care and assistance to the family, relatives and in some cases friends of the injured member.

The use of the term ‘reasonably required’ leaves so much open and again the families will be left to provide the care. The amount provided of $330 p/w is far from the potential loss of earnings that a spouse may suffer as a result of being force to give up work to provide care.

The ISPA believes that provisions be made to allow the spouse of an injured defence member who gives up paid employment to provide the care to be eligible to receive both the attendant care and household service allowances in full per week.

However, this should not exclude the use of respite.

Another factor applicable when determining what is reasonably required is the level of incapacity. How this will be applied to a family environment where the member is dependant on 24 hr care is yet to be seen, but given previous cases as a benchmark we wait with abated breath.

When assessing a members needs, the quality of life assessment must include the family’s quality of life.

Chapter 5—Compensation for Dependants of Certain Deceased Members, Members and Former Members

Part 2—Division 2, Section 234: Amount of Compensation for Wholly Dependant Partners

This has created an unfounded gap that again relates to where the death occurred and not the death itself.

Not only is the amount of compensation questionable but also the amount of material contribution needed from war service compared to peacetime service when applying for the higher additional amount.

There are many serving and ex-serving men and women who are continually asking why is there such a difference in the amount of money when at the end of the day it's still a service related death?

The ISPA has questioned the Minister for Veterans Affairs and the Prime Minister but still have not received a reply (as at 29/1/04).

A war widow/widower will receive an additional age-based tax free amount of up to $103,000.00 whilst the widow/widower of a peacetime or non-warlike serviceperson receives only $41,200.00.

As a comparison we could ask that a scheme for politicians be created and that in the provisions it is legislated that the spouse of a politician killed while overseas receives $103,000.00 extra and spouses of politicians killed in Australia receive $60,000.00 less. There would be an uproar.

The is a case of an SASR soldier who did two tours of Vietnam, including being involved in a fierce contact with the enemy, returned to Australia and subsequently died in a peacetime training accident shortly after returning.

Under the tabled Bill, if he had a spouse, she would have received only $41,200.00 but yet the impact of his death would have been no different emotionally, financially or psychologically for his family if it had occurred in Vietnam a few months before.

This goes against the intention of like compensation for like injury and gives the impression that peacetime service equates to a lesser level of importance. It is another example of two schemes with multiple choices using one title.

The ISPA strongly opposes any difference in payments to widows/widowers and believes this was done to appease and quieten an outspoken war widow.

<u>Recommendation</u>

That the additional age based payments be equal and there is no increase based on location of death.

Chapter 8—Reconsiderations and Review of Determinations

The proposed two stream system is unacceptable and goes against the intention of a single scheme for all ADF personnel.

A Senate Inquiry was conducted in June – August 2003 to *Investigate Administrative Review Within The Area Of Veteran And Military Compensation And Income Support.*

The ISPA made a detailed submission which included some comments and points that are again presented in this submission.

If the intention is to use SoP's and GARP to determine all future claims then it makes sense to use the review stream experienced the most in their use. The current system used in the DVA is seen as fair and veteran friendly, whilst those who have experienced the MCRS avenue believe the internal review to be a farce and in favour of the Commonwealth.

Evidence of internal reconsiderations being reviewed by legal representatives has been proven and if this practice is to continue the claimant MUST receive a copy of ALL correspondance associated with that claim and/or review.

Mediation prior to AAT hearings have in many cases resulted in the claimant having their initial claim approved, which could have been sorted out earlier thus saving the tax-payer money.

An advocate/legal representative is restricted in costs received if the ruling at the AAT is in favour of the claimant. This is a dramatic difference to the representation that the Commonwealth can gain in defence of a claim and on many occasions claimants find themselves against barristers.

The costs associated with legal representation should be the same for both claimant and Commonwealth.

Legal aid should be available to all ex ADF members if their situation warrants it. If illegal immigrants can get legal aid for appeal after appeal then why can't those who have served the nation have access in their endeavour for what they believe is fair?

To continue with separate avenues will in affect cause more work as claim officers, advocates and legal representatives who do not already know the processes will be required to learn them.

Training of advocates will be simpler and those who are currently trained can continue without extra training if the one process is adopted for all reconsiderations.

<u>Recommendations</u>

That a copy of all correspondance associated with a claim and/or review including outsourcing to legal and medical departments is provided to the member such a claim or review request.

That all appealing ADF members have access to legal aid regardless of type of service.

That there is one process of review for all appealing members regardless of type of service.

Chapter 10—Part 2, Section 389: Choice to institute action for damages against the Commonwealth etc. for non-economic loss

Under current common law claims within the *SRCA88* the maximum amount payable is $110,000.00.

This amount has not changed since the inception of the *SRCA88* and is not indexed.

If this proposed scheme is to be presented as an enhanced scheme compared to the *SRCA88* and the *VEA86* then the maximum amount payable needs enhancing as well.

Recommendations

The current amount of $110,000.00 is indexed in line with the maximum compensation payable under the new scheme, the SIA.

That the maximum amount payable is equal to the maximum payable for injury/illness/disease under the new scheme, that is, the Severe Injury payment.

Miscellaneous

Defence Home Loan Scheme

This has not been addressed in the new Bill.

As part of a rehabilitation and compensation package assistance needs to be provided to those who because of defence service have a reduced earning capacity thus affecting the potential to get a home loan.

Two options that could be incorporated into the new scheme involve the home loan and DHA.

Of particular note is the ATSIC Home Owner Scheme which caters to a disadvantaged group of Australians.

Why can't injured ex service members, another group of disadvantaged Australians receive a more accessible scheme.

The scheme is still $80,000.00 which has not been adjusted since its inception in 1991. This needs to be adjusted immediately and to be indexed to CPI twice yearly.

Extension of the subsidy period for those deemed unemployable up to 18 years.

Increase the subsidy amount to 50% for peacetime and 60% for Qualifying Service or have set interest rates that are capped not to rise above say 6.85%.

DHA

Defense Housing Authority (DHA) is a government owned entity, and is responsible to the Department of Defence and the Department of Finance and Administration.

The role of the Defence Housing Authority is to provide housing and relocation solutions for all the members of the Australian Defence Force. DHA also provides

property management services to the Australian Customs Service and other government departments.

As an alternative for someone who may not want to build or purchase their own home DHA could modify a home in the members chosen location and rent that to the incapacitated member at the subsidized rate that is currently charged to Defence members.

These houses would be maintained by DHA thus releasing potential financial hardship from the incapacitated member and family (if married).

Subsidized housing at government expense is already available for single mothers, the unemployed and retirees.

Surely this option could be incorporated in the new scheme.

Stamp duty and GST exemption when building/purchasing a house can also be implemented to reduce the costs for those who will be financially hobbled.

Offsetting

There continues to be much confusion in the ex-service community regarding the offsetting of government and non-government based superannuation and other benefits.

The ISPA would like to see more explanation and education regarding all the possibilities and impact it will have.

Clothing Allowance

The ISPA questions the omission of this benefit.

During the drafting process the ISPA did make mention of the clothing allowance and again when the draft was released.

It is evident in the tabled Bill that the ISPA was ignored.

We once again raise this point that this allowance be included.

Minister Dana Vale made a statement in Parliament which is recorded in Hansard when asked by Graham Edwards MP “will you give a guarantee to the House that there will be no reduction in benefits for serving members of the Australian Defence Force when the new Military Compensation Scheme is introduced”. Minister Vale replied “that any changes that we make to the entitlements of veterans will be only to enhance them”

The omission of the Clothing Allowance is evidence of one reduction of benefits.

This benefit should be included.

Cessation of Payments at Age 65

The ISPA does not agree that payments cease at age 65. Those who have suffered incapacity do not lose that incapacity at age 65 but continue to suffer.

The injured member receives the incapacity payments for loss of earnings; however these incapacity payments do not take into consideration the loss of possible allowances, overtime or even the ability to take on a second job to earn more.

They no longer have any ability to change jobs, be promoted or contribute more to a retirement fund.

Same Sex Couples

The ADF currently boasts about equality and fairness in the forces. There is recognition for opposite sex marriage and defacto, but none for same sex.

The ADF has a tolerance for homosexuals and lesbians and continually shows support for them by its anti-discrimination policies.

However this is all lost because the powers to be will not recognise their relationship thus committing discrimination.

Would this be acceptable to same sex politicians or would there be a push to change the discriminatory Act.

Times have changed and so to should ideals.

Family Law

The ISPA is concerned that compensation payments may be counted as income when dealing with family payments in the event of family break up.

This needs to be clarified prior to any introduction of the new Bill.

Ray Brown
National President

29 January 2004