

**Senate Foreign Affairs, Defence and Trade
Legislation Committee**

SUBMISSION COVER SHEET

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

Submission No: 09

Date Received: 30.01.04

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Listed Ex-Service Organisation with the Department of Veterans' Affairs ESO Directory

Friday, 30 January 2004

Brenton Holmes
Foreign Affairs, Defence and Trade
Parliament House
Canberra, ACT, 2600

RE: Your letter dated 7 January 2004

Subject: INQUIRY INTO THE MILITARY REHABILITATION AND
COMPENSATION BILL 2003 AND RELATED BILL

Dear Mr Holmes,

Please find enclosed the APPVA submission for the above inquiry.

APPVA apologise for the lateness of the enclosed submission, however, due to the time constraints and the need to consult both the Executive and Membership, it was deemed necessary that a full and concise submission be presented.

Yours in the Service of Peace,

R.S. Kennard
National Secretary

**Submission to the Senate Hearing Committee
of the Military Rehabilitation and Compensation Bill
(MCRB) 2003 Present and read a first time (4th December 2003)
By the Australian Peacekeepers & Peacemakers Veterans' Association
2nd January 2004**

Purpose

1. The purpose of this brief is to outline the Australian Peacekeeper & Peacemaker Veterans' Association (APPVA) views of the soon to be Legislated Military Rehabilitation and Compensation Scheme (MRCS) also known as the Military Rehabilitation and Compensation Bill (MRCB).

2. In order to briefly highlight the good and bad points, we have devised a table highlighting areas of concern with contention and additional commentary.

General

3. We view the Bill as a hybrid of both the VEA and MCRS, with extant entitlements from the Defence Act. A positive key feature that has been noted is the disregarded Proposed Consequential Amendment of the Offsetting provisions for those veterans who decide to choose the Special Rate of Disability Pension (SRDP). The abolishment of this Amendment is very welcomed by the APPVA and the Defence Community. Further Advantages and Disadvantages are described within this paper and the attached Enclosed table. The Change of name of the MRCB to that suggested in the attached table is also requested to be considered by the Senate.

Advantages

4. There are a number of further advantages under the Exposure Draft, they are the following:
 - a. The use of the VEA Guide to Assessment of Rates of Veterans' Pensions (GARP), in place of the American Medical Association (AMA) doctrine used in the Safety Compensation and Rehabilitation Act 1988 (SRCA);
 - b. Rehabilitation of members whilst serving and outside of serving of the ADF, potentially providing the member with retention within the ADF, or improved quality of life outside of the ADF;
 - c. Reserve Service has been given greater consideration, in that income lost or wages lost is given appropriate Economic Loss, as opposed to the SRCA cap of 150%;
 - d. Adjustment of Economic Loss (Incapacity Payments (IP)), to be reactive to movements within the relevant Defence Force pay and allowances rates;

- e. Removal of notional member superannuation contributions – increasing the IP by five to seven percent;
- f. 45 weeks of 100% payment of NWE is payable commencing post discharge and not aggregated from service Sick Leave prior to discharge;
- g. Increased Dependents' Benefits on death;
- h. Retention of the Specific Treatment Entitlement Card (STEC – commonly known as the White Card) and Repatriation Health – For All Conditions (commonly known as the Gold Card);
- i. Continued access to some benefits of the VEA. These benefits include:
 - Service Pension and associated benefits.
 - Specified veterans and others, entitlements to specific treatment (s.88A).
 - Gold Card after age 70 for veterans with qualifying service (Warlike service only).
 - Automatic issue of white cards for cancer, PTSD, TB (s.85(2)) etc.
 - Vietnam Veterans' Counselling Services (s.92).
 - Funeral Benefits (s.99).
 - Victoria Cross Allowance (s.103).
 - Seniors' Health Card (s.118V); and
- j. Retention of the Statement of Principles and the Standards of Proof.
- k. Removal of the Offsetting arrangements for the Special Rate of Pension.

Disadvantages

5. There are however, concerns that the APPVA holds toward a number of areas of the Exposure Draft of the MRCB. They are the following:
- a. Age and Gender Based, sliding scale of Lump Sum (Permanent Impairment (PI) or Non-Economic Loss (NEL)) Payments;
 - b. Age and Gender based sliding scale of Widowed partner Compensation;
 - c. The nullification of Substance Abuse (Alcohol, Tobacco, and drugs), being accepted by the MRCC, where there appears to be no consideration toward the masking of the Substance Abuse for Stress or Psychological illness;
 - d. No apparent allowances for personnel suffering from Psychosis or psychological stress whilst on operations and thereafter (or intentional injury or suicide);

- e. The extremely high Impairment Rating of the Guide to Assessment of Rates of Veterans' Pensions (GARP) of 80 points to effect the maximum payments of \$300,000 for 30 years and below males and 35 years and below females. In addition the maximum benefit of \$466.16 on a sliding scale (downward) that is service and gender based. We suggest that the Severely Incapacitated person may begin at 50 impairment points upward;
- f. Rehabilitation could be excessively assessed and examined under the Bill, placing unnecessary stress of the member concerned;
- g. The Legislation appears to be given allowances for parliamentary scrutiny and may be budget reactive. The Bill should be Legislation and remain unaffected by various policies as the VEA itself has withstood time and government policies;
- h. Gold Card provisions for 70 years old and above are have not been considered for those members who have Non-Warlike Service;
- i. The types of service—Warlike, Non-Warlike and Peacetime service needs to be defined, particularly given the scope of Terrorist operations and the threat of these operations inside Australia. It is also considered by the APPVA that all service, no matter where served should be considered the same. An example is the Review process, Widow entitlements, and Payment calculations. Although it is acknowledged that the “Generous Approach” toward Warlike and Non-Warlike Service under the “Reasonable Hypothesis” is favourable, Peacetime and Non-warlike service appear to suffer a reduction in NEL payment and on death, in comparison to that of a veteran with Warlike service;
- j. Cumulative addition of PI and IP payments being counted as financial income for assets for income support payments under the VEA and Social Security Act 1991 (SSA), with income to deemed to be earned from them. Current PI payments for VEA and SRCA are not counted as income under the VEA, however the SSA includes that income—therefore the PI component should be income exempt for SSA and Child Support Agency (CSA) purposes, as it is compensation for that particular person's pain, suffering and restriction to the quality of life; and
- k. Provision for PI (NEL) to be paid on or after the age of 65 years of age will no longer be available to those with service-related conditions that worsen. Currently the Extreme Disabled Adjustment (EDA) is accessed through the VEA. Although it is understood that the War Service Pension (WSP), will be available for those with Qualifying Service (QS).
- l. Former Permanent ADF members who have held employment within a much higher pay in comparison to their service pay and allowances will be disadvantaged. The Reservists are able to claim higher wages without limitation—the same should be provided for a former Permanent ADF member, whose income exceeds that of their previous ADF salary and

allowances

- m. Continuous Full-Time Service Reservists (CFTS) are entitled to the ADF Bonus of \$100.00 p.a. The CFTS is not normally entitled to these conditions; in particular they are not provided with Married Quarters (or subsidised accommodation) and other Permanent Force benefits. Therefore the ADF Bonus of \$100.00 should be **only** available to current and former Permanent Force members.

Conclusion

6. In conclusion, this association welcomes the IP (EL) components and the prospect of positive and effective Rehabilitation under the MRCA. There are however many areas that require further review and modification within the Bill, and it is the intention of the APPVA to actively negotiate with the Government and other Ex-Service Organisations (ESO), to enable an equitable outcome for members and former members of the ADF.



P.A. Copeland AHRI,
National President

2 January 2004

Attachments:

1. APPVA Response to the MRCB 2003, For the Senate Legislative Committee, January 2004.

**The Australian Peacekeeper & Peacemaker Veterans’ Association.
 Response to the Military Rehabilitation and Compensation Bill 2003.
 For the Senate Legislative Review Committee.
 January 2004.**

Serial	Reference	Item Description	Matter of Contention.	Remarks.
	Chap 1, s1, p 1.	Short Title	<p>The acronym of the Short Title has possible implications toward administrative and client confusion, when discussing the <i>Military Compensation & Rehabilitation Scheme 1992 (MCRS)</i>, indeed the mis-use of the letters ‘C’ and ‘R’, has the potential to cause problems.</p>	<p>In order to acknowledge the hybrid of the MCRS and the <i>Veterans’ Entitlement Act 1986 (VEA)</i>, the words “<i>Compensation</i>” would be appropriately changed to “<i>Entitlement</i>” – maintaining the historic VEA link. The word “<i>Compensation</i>” would link veterans or members to the <i>Safety Compensation and Rehabilitation Act 1988 (SRCA)</i>, which is an act that mainly covers civilians. Therefore in order to retain a Military or Veteran distinction from civilian compensation, it is suggested to change the name of the Act to “<i>The Military Rehabilitation and Entitlement Scheme (MRES)</i>”, or the “<i>Military Rehabilitation and Entitlement Act (MREA)</i>.”</p>
	Chap 1, Section 5, Definitions, p. 13.	Definition	<p>Insert Veteran and describe as either a member or former member of the ADF.</p>	<p>Consistent with the Veterans’ Entitlement Act 1986 (VEA), s5c (1).</p>

	Chap 1, s 14, p. 18	Definition of Commonwealth Superannuation scheme for a person who has chosen a Special Rate Disability Pension (SRDP).	Requires revision and/or removal or change to reflect the abolishment of the Offsetting Consequential Amendment.	Offsetting for the SRDP was abolished at the First Hearing in Parliament on 4 December 2003 by Minister for Veterans' Affairs, D. Vale, MP.
	Chap 2, Part 4, s 31 p.34	Simplified outline of this Part – exclusions (e) the use of tobacco products.	The use of tobacco products could be caused by various incidents during service. An example is the use and addiction by Special Forces Soldiers establishing rapport with some cultures who use smoking as a discussion medium.	It is noted that the use of tobacco products is disallowed under the Safety Compensation and Rehabilitation Act 1988 (SRCA), however was accepted under the VEA until 1 Jan 1998.
	Chap 2 Part 4, s32 (entirety) p.35	Exclusions relating to serious defaults or wilful acts etc.	Serious breaches of discipline, injury was self-inflicted and injury or disease is drug or alcohol related.	It is believed that breaches of discipline may cause injury to the veteran if ordered to participate in physical punishment. Self-inflicted injury or disease as a result of drugs or alcohol should be considered as a problem masking a psychological condition of the veteran. In particular should the veteran decide to attempt or has committed suicide due to psychosis. Therefore in these circumstances the veteran could well have contracted an injury or disease as a result of his/her service.

	<p>Chap 2, Part 4, s36 pp 40-41.</p>	<p>Exclusion relating to use of tobacco products.</p>	<p>The exclusion does not appear to account for battle or operational stress suffered by a veteran, whilst on Warlike Service or Non-Warlike Service.</p>	<p>Previously accepted by VEA until 1 Jan 1998. It is believed that the VEA was changed due to the Warning notices on cigarette packets; therefore the decision to smoke is up to the veteran. This is rejected, as the veteran may have been placed into a situation of undue stress and may commence the habit of smoking as a result of that operational stress. The veterans of WWII, Korea & South Vietnam have had this accepted in the past – we are asking for consistency.</p>
	<p>Chap 3, Part 1, Division 2, s38 p. 43</p>	<p>Aim of Rehabilitation.</p>	<p>The aim states at the end: <i>“restore.. 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.”</i> It is contended that the latter would be very difficult to achieve for a veteran with irreversible medical conditions.</p>	<p>The aim of Rehabilitation is suggested to be <i>“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 attempt the same physical and psychological state, within that veterans’ physical and mental capacity.”</i></p>

	<p>Chap 3, Part 1, Division 3 s39 (3)(ii) p. 44.</p>	<p>Definition of <i>rehabilitation authority</i>. The person: “<i>has not been identified by or on behalf of the person’s service chief as being likely to be discharged from the Defence Force for medical reasons</i>”.</p>	<p>Contention is that it should not matter if the person has or has not been identified for Medical Discharge from the ADF. The Rehabilitation process must be affected whilst the member is serving.</p>	<p>Rehabilitation should continue as a “<i>Seamless Transition</i>” from ADF to Civilian life. Therefore the veteran is not denied timely rehabilitation due to bureaucratic limiting factors.</p>
	<p>Chap 4, Part 2, Division 2, s46.</p>	<p>Requirements for examinations.</p>	<p>Should include the appointment of the veterans’ treating specialist.</p>	<p>It is deemed that the veterans’ treating and consultative specialist is the best person to comment on the veterans’ capacity for rehabilitation and work capacity potential. This specialist should be inclusive of the assessment or examination process.</p>
	<p>Chap 4, Part 2, s80 (1) p. 76</p>	<p>Additional amounts payable if maximum compensation paid.</p>	<p>Constitution of 80 impairment points. The contention is that a severely injured person, depending upon limitations to the veterans’ Lifestyle can be also be severely injured or ill with 50 impairment points.</p>	<p>Under the VEA GARP V, a veteran is able to be determined as Totally & Permanently Impaired (TPI), or in the case of the MRCB – Severely injured with an impairment point score of 50 points and a minimum Lifestyle rating of 1-7. This situation should be available under the MRCB 2003.</p>
	<p>Chap 4, Part 3, Division 1, s84.</p>	<p>Entitlement to compensation.</p>	<p>Should include the payment of 100% of Normal Weekly Earnings (NWE) from ADF Discharge date or later.</p>	<p>Highlighted as a previous key feature of the Bill.</p>

Chap 4, Part 3.	Compensation for incapacity for service or work for members.	Reservists have the opportunity to be paid their NWE as an example a Professional on around \$100,000 p.a. There is also available a Safety Net for those reservists who earned below the standard wage benchmark. Ex-Regular or Permanent members do not have the opportunity to be provided NEL for income that was higher than that when in service.	This leads to a disparagement in entitlement for former Permanent ADF members, in that the NEL component of compensation is only paid to what they were receiving in the ADF (After various calculations within Chap 4, Part 3), however if they were to earn a larger wage post-discharge and have been rendered incapable of further work or reduced hours of work, the NEL is not consistent with that of their Reservist counterpart.
Chap 4, Part 4, Division 4.	Working out ADF earnings for former continuous Full-time Reservists. (s 144(1)).	The \$100.00 ADF bonus is for Permanent Full time Service personnel who are in the receipt of various service related allowances, including subsidised Accommodation (e.g. Married Quarters).	A Continuous Full Time Reservist (CFTS), is not entitled to the ADF service related allowances and Married Quarters. Therefore the \$100.00 ADF Bonus should only be made available to Permanent Forces members only. Exception is given to s103 and s104 – Incapacitated Reservist (former Permanent ADF Member).
Chap 4, Part 6, s197 p.172	Choice to receive a SRDP.	Remove references to the Offsetting of COMSUPER for Permanent Impairment (PI) or Non-Economic Loss payments.	As was promised by the Minister of Veterans' Affairs in the First Reading to Parliament.
Chap 4, Part 6, s204 p 175.	Offsets para (5) and para (6).	Delete mention of reduction for veteran in receipt of COMSUPER.	As for previous.

	Chap 5, Part 2 Division 2 s234 p 194.	Amount of compensation for wholly dependent partners. (Entire section).	Should be the same amount of compensation, no matter where the service person served. The fact is that the service person is dead irrespective of service.	The War Like Service (WLS) bonus for spouse or partner death should be the same amount for Non-warlike service (NWS) and Peacetime Service. This is inconsistent with previous arrangements under the VEA and SRCA.
	Chap 6 Part 3, Division 1 s281 p. 226	Treatment for persons (veterans) with 60 impairment points.	Veterans with 60 or more impairment points are considered to have a high rate of disability and therefore should be entitled to the Gold Card – Treatment for All Conditions.	60 or more impairment points, dependant upon Lifestyle rating (LS 4 and above), usually provided the veteran with 100% General Rate of Pension under the VEA, Guide to the Assessment of Rates of Veterans' Pensions Fifth Edition (GARP V). Therefore the veteran was entitled to the Gold Card. The Bill proposes to take this opportunity away from veterans.
	Chap 8, Part 1, s344, p. 276.	Simplified outline of this Chapter (Reconsideration and review of determinations).	Remove the 2 possible paths in the reconsideration and review process depending on the nature of the original determination. One path is applicable to WLS & NWS, however Peacetime service is provided with a different review process.	It would save administration problems and avoid confusion by placing the Peacetime Service in the same review path as WLS & NWS. Therefore remove the review path for Peacetime service and place into a uniform review path with all service.
	Chap 8, Part 4, s352, p.285	Review by the Board of WLS & NWS determinations.	Include Peacetime service under this Review path.	As described above.

Chap 9, Part 5, s364 p 298.	Membership of the Commission. Para (1)(b)(iii) a person who is nominated by the Defence Minister and is either a Permanent Forces member or engaged under the <i>Public Service Act 1999</i> and performing duties in the Defence Department.	The person nominated by the Defence Minister is to be a Permanent Forces member. Not a Public Servant within the Defence Organisation.	Allows consistency of a Defence Uniformed service person presence within the MRCC. The uniformed member of the ADF is considered to be the subject matter expert in ADF medical, administrative and service life. Therefore an advantage is presented for the veteran who is required to be reviewed by the MRCC.
Chap 9, Part 5, s367, para (2)(b), p 301.	Acting appointment for the member described in subparagraph 364(1)(b)(ii) or (iii)	The nominated person of the Defence Minister is to remain a uniformed person, not a Public Servant.	As for above.
Chap 10, Part 2, s389 (5).	Choice to institute action for damages against the Commonwealth etc. for Non-Economic Loss (NEL).	The amount of \$110,000 for NEL suffered by the person is consistent with the SRCA 1988. It is believed that the amount should be a higher amount.	The amount of \$110,000 was an amount decided and not indexed since 1988. Clearly, this is an inadequate amount in today's dollar terms. We suggest that the amount is up to \$300,000, consistent with NEL paid by State Governments. ¹ Also that
Chap 11, Part 1, s404 p 322.	Indexation of amounts.	Omission of Lump Sum NEL for Commonwealth damages as in s389.	As described above.

¹ Comparison of Worker's Compensation Arrangements in Australian Jurisdictions as at 1 July 2002.