

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

**SUBMISSION COVER SHEET**

---

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

**Submission No:** 10

**Date Received:** 30.01.04

**Submitter:** Australian Special Air Services Association

**Organisation:**

**Address:** The House  
Campbell Barracks, SWANBOURNE WA 6010

**Phone:** (08) 9243 5085  
(MOB) 0414 3020 085

**Fax:**

**Email:** Davcat66@aol.com

**Name/Contact:** Mr David Lewis

**Date Authorised:**

**Cassidy, Laureen (SEN)**

---

**From:** Davcat66@aol.com  
**Sent:** Friday, 30 January 2004 4:12 PM  
**To:** FADT, Committee (SEN)  
**Cc:** rgibbo@inet.net.au; miltonkirk@iprimus.com.au  
**Subject:** INQUIRY INTO THE MRC Bill & Related Bill



**For attention:** Ms Mary Lindsay or Ms Saxon Patience..

Re: Inquiry into the MRC Bill 2003 & Related Bill in your letter dated 05 Dec 03

The attachment covers the submission to the Senate Foreign Affairs, Defence and Trade Legislation Committee.....on behalf of the *Australian Special Air Service Association*.

The submission is given in this (email) format to meet the time constraints of the submission to the inquiry response date. A hard copy is in transit per post.

Any questions or feed back should be directed to those given as POC within the submission..

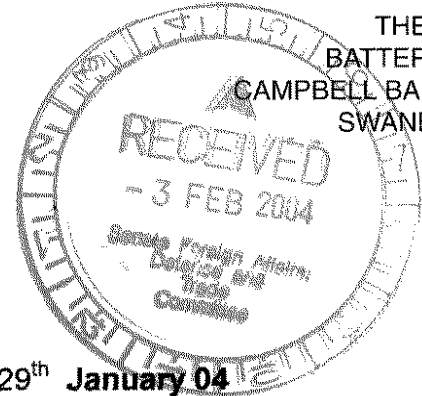
Sincerely in Service

David Lewis  
LtCol (Retd)  
National Chairman ASASA



# Australian Special Air Service Association

NATIONAL EXECUTIVE



THE HOUSE  
BATTERY ROAD  
CAMPBELL BARRACKS  
SWANBOURNE  
WA 6010

NC 002/04

The Senate  
Foreign Affairs, Defence and Trade  
Legislation Committee  
Parliament House'  
CANBERRA. ACT. 2600

For attention: *Ms Mary Lindsay or Ms Saxon Patience*

## Inquiry into the Military Rehabilitation and Compensation Scheme (MRC)

Reference: A. Legislation Committee letter dated 05 December 03

Thank you for the opportunity to comment on the proposed new *MRC Bill* and in doing so, we acknowledge the improvements contained within the Proposal, against the existing Schemes available to the Veteran Community and those members still in uniform. We also acknowledge that this new *MRC Bill* highlights the considerable shortfalls in arrangements for the existing Veteran Community. Our response, submitted on 31 Aug 03 (NC 63/03) remains the primary areas of concern to this Association.

The enclosure represents the views of the *Australian SAS Association* and was compiled by a selected committee of *ASASA* members. The review teams' principal focus remains the earlier concerns raised to the Minister for Veterans' Affairs and cover the areas of concern to the members of the *SAS Association* retired and still serving. It is their findings that are given as Enclosure 1 and the original submission (Attachment 1).

There already exists a great deal of complexity and confusion as to which schemes apply to which members, depending on such things as their date of enlistment, length of service, type of service and their possible dual eligibility under the existing VEA or MCRS. With the true impact of the *Clarke Review* and the *SCRA Reviews* not being obvious in this Bill, we remain concerned that, to proceed with the enactment of this *MRC Bill*, without those aspects being considered or resolved and included in the proposed Act, is almost "criminal".

To have a Bill/ Act passed incomplete, with a number of these matters, as unresolved, is inappropriate and inefficient to say the least. Equally so, is the lack of transparent opportunity for further comment after the current ESO submissions were reviewed by the MRC Writing Committee. It has continued to inflame the "mistrust and antagonism" that currently exists between the Government and the ex-service and veteran community.

What is a very significant and important piece of legislation, which appears to have a considerable impact on our community and will have a huge impact on serving members, future ex-servicemen and veterans, appears to being '*rushed*' through an unrealistic process, without adequate consideration of the outcomes of the Bill. We owe our future Service Personnel a better outcome than this. With the *Minister* indicating that "*any Government response to the recent Clarke Committee, which make a number of recommendations, will carry over to the new scheme*" and then omitting to have these outcomes from *Clarke* and the *SCRA Review* considered, is a complete betrayal of the present beneficial legislation and to the Veteran Community.

The response time to the initial release of the MRC Bill and then the original comment deadline on a Veteran Community, that is principally made up of Volunteers, remains unrealistic. Governments can take months and years to review outcomes but the expectations of the Volunteer Veterans who may be consulted, is reduced down to weeks...effectively denying realistic consultation within our own organizations. It is urged that any dialogue between Ministerial Committees and the Veteran Community give realistic consideration to the time constraints and limitations on a volunteer structure.

*Sincerely in Service,*



**David R. Lewis**  
LTCOL (Retd)  
National Chairman ASASA

**Enclosure: 1. ASASA Response to the Senate Inquiry. MRC Bill**

# **Australian Special Air Service Association**

**National Executive**

***"The House"***

**Campbell Barracks. SWANBOURNE. W.A. 6010**



*Response to*

**Senate Foreign Affairs, Defence & Trade Legislation Committee's**

**Inquiry into**

**The Military Rehabilitation & Compensation Bill 2003.**

References:

- A. *Military Rehabilitation & Compensation (MRC) Bill 2003 (Cat.# 0331547)*
- B. *MRC Bill Explanatory Memorandum (Cat # 03 30023)*
- C. *ASASA Submission on the Draft MRC Bill 2003 (Enclosed) NC63/03 dated 31 Aug 03*
- D. *Media Release VA 114 MR & C Bills Introduced dated 04 December 03. 03*
- E. *Senate Foreign Affairs, Defence and Trade Letter dated 05 Dec 2003*

**Introduction:**

On the 4 December 2003 the *Minister for Veterans' Affairs*, The Hon Danna VALE MP, introduced legislation into Federal Parliament, given as the *Military Rehabilitation and Compensation Bill 2003*, for *Australian Defence Force (ADF) Personnel*, serving on and after 01 July 04, the expected introduction date of the 'new' Bill. The Minister, in her press release of the 4 December 2003, advised that extensive consultation had been undertaken within Defence and the Veteran Community of Australia. The Minister went on to say in the release that the Government had listened to the ADF members and Veterans and have incorporated a number of their comments into the Bill.

**Australian Special Air Service Association (ASASA) August 2003 Submission: (Reference C.)**

It is believed that, the (ASASA) is the only Ex Service Organisation (ESO) that has a large membership consisting of serving, ex serving and veteran (former) members of the *Special Air Service Regiment (SASR)*, including widows and children (adult) of former members, now deceased. Due to this factor, the *ASASA* has maintained a special interest in all aspects of the provisions of the proposed new Bill, and the potential impact of the Bill on its members. It is out of this concern and the subsequent ongoing deployment of members of the *SASR* on warlike and non-warlike service, that the *ASASA* made a comprehensive submission on this proposed legislation in August 2003 detailing its concerns, which at that time included inter alia:

- Type of Service
  - Serious Breach of Discipline
  - Accepting Liability
  - Tobacco Use
  - Alcohol and Drug Use

- Rehabilitation
- Review
- Finding Employment
- Nature of Employment
- Protocols and Details
- Permanent Impairment
- Offsetting
- War Widows

The above points plus *eleven* more appeared in submission given at Reference C. Unfortunately not one of the concerns raised by the *ASASA* appear to have been addressed in the tabled Bill. In fact the tabling of the Bill in its present form has risen in the *ASASA* grave concerns as to the procedure undertaken to arrive at what is perceived as the finished product, particularly as those in the “*veteran community consulted widely*” are still expressing the concerns raised in the Bill’s first release!

**Superannuation:**

It is requested that the Senate Inquiry seek Legal opinion and strong consultation on what is perceived by the *ASASA*, as an ungenerous as well as unconscionable practise of offsetting the Superannuation of a long serving member against Incapacity payments that are received under the new scheme. Also, the payments to War Widows are age based which like the Superannuation offsetting, is seen by the *ASASA* as discriminatory. An opinion will also be sought by the *ASASA* on these aspects and, if available the time the Senate Inquiry sits in Perth, will be presented.

**ESO Input:**

As stated above the *ASASA* have concerns at the way this legislation was arrived at and the continued perception that the Veteran Community and possibly, members of the ADF were consulted all the way as this Bill was created. Unfortunately this is not and was not the case right from the beginning of the process. Meetings were held with a select few from very limited ESO and it appears there has been no presentation of any Minutes, taken at these meetings, to enable the wider veteran community and concerned members of the ADF to make comment and have some constructive input into the process. This is particularly valid with the limited number of ESO consulted in the structure process.

## SENATE COMMITTEE ENQUIRY

It is believed that a Senate Enquiry will be in Perth on the 23 February 2004 to listen to verbal submissions from various interested ESO's. The ASASA feels it imperative that an address to the enquiry be given. This would enable the Association to articulate direct their concerns from the August 03 Submission and also relay the concerns that have emerged from the tabling of the Bill in its present form. Our original submission is attached and outlines our grave concerns regarding this legislation at the draft stage for the information of the committee.

### Summary:

In summary, once again the ASASA feel compelled to reiterate that the outstanding matters from the Clarke Review have not been addressed and parts of this legislation are asking the veteran community to take the legislators on trust. An example of this is that a 'Safety Net' is continually mentioned and the Special Rate of pension, under the Veterans Entitlement Act (VEA), is pointed at as being the Safety Net! Unfortunately the Special Rate has been an outstanding issue before the Government for some years now with no attempt to resolve the matter.

*Sincerely in Service*



David R. Lewis  
LtCol (Retd)  
National Chairman ASASA

**Attachment: 1.** ASASA NC 063 /03 dated 31 Aug 03 Comments on Proposed MRC Bill

**ASASA POC: David Lewis [Davcat66@aol.com](mailto:Davcat66@aol.com) Ph: 08 9243 5085 (m) 0414302085**

**Rick Giblett [rgibbo@iinet.net.au](mailto:rgibbo@iinet.net.au) Ph: 08 9399 1192 (m) 0400322651**

**Milton Kirk [miltonkirk@iprimus.com.au](mailto:miltonkirk@iprimus.com.au) Ph: 08 94096682 (m) 0407420472**



**Australian Special Air Service Association  
National Executive  
Response to the proposed New MRCB Legislation**



This response has been drawn together from various segments of the veteran community of Western Australia. Members of this Association, Widows, and Advocates in collaboration with other Ex Service Organisations, through the working group in WA. We wish to thank them for their diligence.

**OVERVIEW**

This Exposure Draft of the proposed Bill is a workable document which has the potential to replace the current Acts and provide a central theme of support to future serving, ex-serving members and veterans. It should be noted that there are still a number of serious concerns with this Draft and the fact **that it is incomplete** in relation to the outcomes of the Clarke Review, the SCRA Review and several other aspects of its content leaves one with considerable trepidation and concern about its ongoing compilation, subsequent passing through Parliament and eventual administration. The other aspect of great concern is that the general community is only going to be given this one chance at commenting on its content. Surely it would make sense and be much more effective and efficient if the community were to be given the opportunity to comment on the final draft with the outcomes of the Clarke and MCRS Reviews and all uncompleted sections finalised and included.

There is a perception that this Bill is based on the civilian working environment and employment circumstances. It doesn't appear to be appreciated that the normal civilian equivalent Occupational Health and Safety Regulations have very little, if any relevance in the realities and conduct of operational and hazardous training and exercises and operational circumstances. This perception needs to be changed and unless due consideration is given to the special circumstances that apply to the different nature of some service circumstances, that perception and resulting mistrust will not be negated.

The realities of combat and the consequences which "catch up" with ex Service men and women are evidently less known to current Service management and appear not to be part of the rationale which underpins this Draft Bill.

A clear and simple statement is required of the impact of the proposed arrangements on current and former members of the Defence Forces. There is considerable concern among the current ex-service and veteran community about the effect of the proposed Bill on their eligibility, entitlements and ongoing access to support. They believe that they are going to be disadvantaged by this new Bill. Although this, in many areas may be an unfounded perception, it is a real concern and needs to be addressed. It is considered essential that this be addressed as early as possible and ex-service and veteran community organizations are reassured that

they will not be disadvantaged. An appropriate reassurance from the Minister would probably save a great deal of time and reduce the negativity of a number of the comments that have been a significant part of the submissions to date.

The underpinning assumption that Rehabilitation will provide a universal panacea to all Service related injuries or illness is not supported by any known study or even by anecdotal evidence. The rehabilitation focus is on vocational rather than holistic issues. There needs to be an emphasis and balance to incorporate health, lifestyle and self-development aspects as well as employment. The TPI Federation's submission to the Clarke Committee emphasized the need for a holistic approach to rehabilitation. That submission was widely quoted and adopted by the Clarke Committee in particular the issues relating to personal and education development. The draft needs more work to provide a proper balance and focus to the rehabilitation component.

The proposed naming of Act has caused considerable disquiet among former members. The prime function of the legislation is to provide compensation for current and former members of the Defence Forces and their families. Rehabilitation is simply one aspect of the necessary, consequential arrangements that will be a part of a properly constructed compensation scheme. If it is considered necessary for "Rehabilitation" to be included in the name, then why not Education and Treatment which are as important, if not more, than rehabilitation?

The new arrangements do little if anything to address the defects in the current schemes. The issues put by the Ex Service Organizations to the Clarke Committee regarding the discounting of disability pensions by Centerlink, the benchmarking of the TPI pension and the proper indexation of the TPI pension to the MTAW or CPI, which ever is the greater, remain unresolved. We think that the Government should include in this draft legislation, the Clarke Committee Recommendations they intended to implement. Leaving them to be inserted by regulation at a later date is potentially detrimental to the present beneficial legislation enjoyed by the veteran community. The inclusion of additional elements to the proposed Bill, at a later date, is viewed with considerable concern. It is not conducive to the feeling of mutual trust, is speculative and must have an affect on the introduction and effective administration of the intended Act. Why can't it be included in the final submission of the new Act even if it means that its introduction needs to be delayed?

Should this Draft Bill be enacted in its present form it will see many amendments in the future, especially in the face of the consequence of combat realities and the later life consequences of them. In view of the importance of this new Bill / Act, it would seem that its introduction should be set to a time when every endeavor has been made to ensure that all options have been considered and it covers all aspects. It seems that there is an inappropriate haste to place into being an Act, which will be, incomplete and plagued by the impact of not including the outcomes of the Review of the SRCA and all aspects of the Clarke Report.

## **INTRODUCTION**

### ***Chapter 1.***

#### ***Commencement and Coverage***

While it is stated that the new arrangements are expected to commence on or after 1 July 2004 and will apply prospectively to those who have service after that date it will clearly apply to veterans, for example, Vietnam and Gulf War veterans who currently have entitlements under the VEA. Their position is unclear and a statement needs to be made as to whether they will lose their current eligibility and be forced to apply for benefits under the new arrangements or whether they will have a choice of the VEA or the new arrangements.

## ***Type of Service***

The arrangements are to apply to warlike, non-warlike and peacetime service. However, the definitions provided in the draft Bill for the Terms warlike and non-warlike simply provide that they are as determined by the Minister. The Clarke Committee devoted a considerable part of its report to trying to interpret those terms and the result was confusing and ambiguous. It accepted that the concept of non-warlike service should apply to members who were involved in the Atomic Test in the 1950s and on "secret" submarine missions – even though it may only have been a single incident and have been of very short duration. On the other hand the Committee found that long periods of hazardous duty with the Special Air Service Regiment was not non-warlike service. The situation must be clarified and the new arrangements should address the anomalies.

## ***Serious Breach of Discipline***

The Draft does not define Serious Breach of Discipline and it may in fact breach Natural Justice in that Servicemen and women in the field, acting to meet the exigencies of the Service, particularly in combat situations, could be exposed to subsequent serious disciplinary action if their actions are judged, in hindsight, to be in breach of regulations. If in the course of this duty they have suffered injury or illness and MRCS cover is withdrawn or not provided. Would this not be "double" punishment? These particular provisions seem to serve as exemplars of the "civilianisation" of a system designed to cover Service personnel in the ultimate expression of their profession; combat.

## **ACCEPTING LIABILITY**

### ***Chapter 2.***

The liability provisions in the draft are said to be modeled on the VEA yet it introduces variations that are of concern especially if they are seen as foreshadowing future changes to the VEA.

If a claim is lodged under Section 273(3) it states that a copy of every Claim for injury and/or disease or aggravation of same must be given to the Service Chief if the Claim: (a) is in respect of the person; or (b) is for the acceptance of liability by the Commission for the person's death. Under present V.E.A. Legislation there is no requirement to notify Service Chief of a Claim (This Section may cause a person not to lodge a Claim for illness/injury as he or she could be of the belief it would cause loss of promotion or discharge.

## ***Tobacco Use***

In particular the exclusion for claims based on tobacco use has the potential to adversely impact on members with long service. The draft provides that the MRCC must not accept the claim if the injury disease or death resulted from the member's use of tobacco products. The SOP's relevant to tobacco use will be redundant in the new Act. The position for members that will continue to be covered by the VEA, SCRA, needs to be clarified. There is a feeling that the new Act will exclude those entitled under the new system, with the Services saying that they will not condone smoking from the implementation date.

What impact does this have on members such as Vietnam Veterans? Under the VEA smoking related conditions would generally be accepted. Does this mean that current serving members for example Vietnam veterans - who develop a smoking related disease and make a claim under the VEA will have it accepted? But if the claim is made after the commencement date it will be rejected? What happens with existing accepted smoking related conditions and the consequences such as death flowing from the accepted conditions?

## ***Alcohol and Drug Use***

Similarly, the situation with the consumption of alcohol / drugs needs clarification. The draft and explanatory material seem to apply prohibition in all circumstances! It fails to indicate the exceptions that are already accepted or permitted by State and Federal Law relating to the consumption of alcohol.

The issues are too numerous to contemplate if the consumption of "any" alcohol constitutes "a serious default or wilful act" where an injury or disease results? What if alcohol has nothing to do with the injury for example if the member is a passenger in a motor vehicle accident and the driver is sober? The draft implies that the driver would be eligible for compensation but the passenger would not. This is discriminatory.

## ***REHABILITATION***

### ***Chapter 3.***

The "Process" of Rehabilitation is iterative and seems to suggest that no member or former member is beyond Rehabilitation. Together with the lack of definition of Rehabilitation there is also no definition of what constitutes Rehabilitation. A glaring omission in Ch 3, Pt2 and Pt 4 of this document is that there is no mention of any form of re-education for the impaired as part of the rehabilitation program.

The new arrangements specify rehabilitation for current members to enable them to return to service and for former members where they are incapacitated for work. The Service Chiefs of each arm of the ADF have a duty of care for all service personnel and it should be stated as such if they are the relevant rehabilitation authority.

Their functions are to:

- Arrange an assessment of a person's capacity for rehabilitation,
- Determine where a person is to undertake rehabilitation, and
- Arrange for a rehabilitation program to be devised for a person.

Where the members are to be discharged or are former members, the MRCB must take all reasonable steps to assist the members in finding suitable civilian work.

If a person fails to undergo or obstructs an examination without a reasonable cause, they forfeit /lose compensation payments under the new scheme until that examination takes place.

Rehabilitation should, by definition, take a member back to an approximate equal earning capacity to that which he or she enjoyed before their injury/illness [e.g. an instrument fitter cannot be said to have been rehabilitated if they are only re-employable as a cleaner]. Most concerning is the lack of clear and unambiguous instruction on when the Rehabilitation Process is exhausted and hence ended.

### ***Review***

The thrust of the provisions is directed to making rehabilitation compulsory and the MRCB is empowered to suspend compensation payments where a person fails to undergo an assessment or undertake a program without reasonable excuse.

The decisions to suspend payments under the new arrangements are not reviewable by the VRB or AAT and the question needs to be asked why the Government has departed from the usual course. If veterans are to be cut off from their entitlements they are entitled to have those decisions reviewed by an independent body.

### ***Finding Employment***

Rehabilitation is to be compulsory and while that is understandable for retraining, re-skilling and reposting serving members but it is problematic when it is applied to former members. As mentioned above, the focus in the draft is concentrated on vocational rehabilitation and not on a holistic approach to address a far broader range of "whole person" issues of which employment is only one aspect.

The existing practice of the Defence Force is to discharge members if they are not able to satisfy medical and fitness requirements for operational deployment. There are some very notable examples of members of the SAS who were discharged after the Blackhawk tragedy with no consideration by the Defence Force of using their skill and experience in some other role through re training and re education. This is a considerable loss of corporate knowledge.

Under Federal and State public sector compensation arrangements there are significant provisions covering such as, graduated return to work for injured or disabled employees. That philosophy should be applied to current and former members of the Defence Force. In the past there have been legislative provisions providing preferential employment for veterans and if the Government is truly serious about rehabilitation it should look to reintroduce those arrangements.

### ***Nature of Employment***

There is a perception among our Association members that, the Government will adopt a position where any employment will be considered to satisfy the rehabilitation requirements. For example a skilled professional being required to take lower paid, unskilled employment.

In the past tests applied by the Repatriation Commission saw skilled and qualified veterans being classified as "suitable to undertake remunerative employment" if they could work as a car park attendant, commissionaire or lift driver. The new arrangements must give a clear indication of the scope and nature of the employment that satisfies the rehabilitation criteria and current and former members must be protected from arbitrary decisions, which, would force them into inappropriate and unhelpful employment situations.

### ***Protocols and Details***

There are a range of difficult and important questions that need to be addressed in the process and protocols for any new Rehabilitation scheme. For instance: will the member have a choice of medical practitioner or rehabilitation specialist, what is a reasonable time, at what age or in what medical circumstances will rehabilitation no longer be compulsory and what impact does a members location and family circumstances have on the decision to make them engage in the rehabilitation process. The Rehabilitation provisions in the Draft scheme cannot be supported prior to seeing the finer detail of the process and procedures, particularly when two parts which are pertinent to the veteran community are undecided, namely the Clarke Review and the SRCA Review and their potential impact on the new MRCS Bill.

**COMPENSATION FOR MEMBERS AND FORMER MEMBERS**  
**Chapter 4 (Part 1)**  
**Permanent Impairment**

There are concerns that the current GARP and Personal Assessment Guide (MRCS) will be modified and be applied to current and former members under the VEA and MCRS. It is not clear from the explanatory material distributed with the draft Bill whether there will be two versions of the GARP – one for the VEA, MRCS and one for the MRCB – or one covering both schemes.

It is also difficult to assess and compare the impact of the permanent impairment ratings under the new scheme and the General rate pension amounts under the VEA. The Charts provided in the draft are confusing and imprecise and need to be applied to some specific cases to obtain a realistic comparison of benefits under the two schemes. The Australian SAS Association's judgment shall be reserved until definite details are provided by the Department for consideration.

**Actuarial Bases**

The emphasis appears to be on remaining in the workforce until 65 years of age. This appears to fly in the face of contemporary Government endeavors and advice that individuals need to work beyond 65. The reasons for determining the actuarial mean of males 30 / females 35 is not really clear and again seems to emphasize the "civilian systems" approach/emphasis in this document. This is gaining greater emphasis in the recent comments made by the Prime Minister.

The proposed system appears to perpetuate the lack of recognition of the causal links from a recognized initial injury/illness to associated flow on conditions

**COMPENSATION FOR MEMBERS AND FORMER MEMBERS**  
**Chapter 4 (Part 2 and 3)**  
**Incapacity Payments**

The draft Bill provides financial compensation for loss of earnings (termed economic loss) in the form of incapacity payments. The incapacity payments are calculated on the person's most contemporaneous service earnings for serving members and the date of discharge for former members. The incapacity payments cease at age 65.

The draft Bill also provides that the maximum level of incapacity payments will not be capped and that this is particularly relevant for high income earning members of the Reserve.

**Serving Members**

Serving members are entitled to 100% of their normal weekly earnings for a period of 45 weeks. After this the amount is reduced to 75% and is adjusted up to 100% depending on the person's capacity to undertake work.

An important issue that needs to be addressed is what constitutes "normal weekly earnings". There are many instances under the current arrangements where normal weekly earnings does not equate to the actual amount members receive in their pay packets. It does not include a

range of allowances such as the Special Action Forces Allowance (SAFA). This has recently been an issue raised in the Parliament and Media in relation to members' salaries for superannuation purposes. The allowances are excluded and as a result the members' superannuation entitlements are significantly reduced.

In some instances the allowances paid to members of The Special Air Service Regiment may form as much as 43% of a member's salary. If the member is incapacitated and is restricted to 75% of salary without allowances they are in fact only receiving 45% of their normal income. In the majority of circumstances, no family can afford to have their income more than halved, especially, if it is sudden and unplanned as with a serious injury – and continue to remain financially sound. Incapacity payments must be based on the normal "take home pay" of the member. If there are difficulties in making that assessment they could be averaged over a period of 6 to 12 months preceding the injury.

### ***Former Members***

The same provisions for incapacity payments apply to former members except that their "normal weekly wage" is deemed to be what they were receiving at the time of their discharge. This might be reasonable where the determination is made close to the time of discharge but could be unreasonable where considerable time has elapsed since the member's discharge.

The member may have been discharged at a relatively low rank after a short period of service and pursued a successful career, which the member's service related conditions effectively terminate. The incapacity payments should be keyed to current normal weekly earnings at the time of the member's incapacity to continue working, as is the case with the current members and Reservists – rather than based on a salary that may be many years old and not reflect the ability or earning capacity of the member.

The compensation must address actual loss, and enable injured members to continue to enjoy a lifestyle comparable to that which they enjoyed prior to having their working life affected by their service related disabilities.

It is not clear how a former member who is discharged at say Private/Corporal level, or indeed Lieutenant, and who has subsequently progressed in their civilian occupation/s until brought to totally and permanently incapacitated state, or something just short of that status, is meant to continue to "live". Nor is it clear how a Permanent or Reservist member discharged at similar rank and medical status is expected to maintain a normal life until he or she reaches the 65 year old status and then face the reality of having been, as a totally and permanently incapacitated individual, unable to accrue superannuation, progress to the Old Age Pension.

## **COMPENSATION FOR MEMBERS AND FORMER MEMBERS**

### **Chapter 4 (Part 3)**

#### ***Entitlement to Compensation***

Sections 105 and 191 of the draft Bill provide that the Commonwealth are not liable to pay compensation or the Special Rate pension while the recipient is in prison. This is contrary to the long established principles contained in the VEA and the rationale for such a change has not been explained in the explanatory document or in any of the Departmental briefings. Why should a period of imprisonment for say a traffic offence result in the loss of disability entitlements? Or perhaps worse deprive his family of an income.

## **Safety Net**

The draft Bill provides that the Special Rate will be the safety net for those eligible under the new Act, to ensure that they will not be worse off than they would have been had they been covered by the VEA. The Department of Veterans' Affairs, the Clarke Committee, the TPI Federation and the RSL have all acknowledged that the current Special Rate is inadequate. In order for the Special Rate to be used as the Safety Net in the MRCS Bill, the acknowledged inadequacies must be corrected before it is enshrined in new legislation.

Under the VEA the Special Rate pension is paid where a member is identified as being permanently incapacitated and the safety net arrangements need to be made on the same basis. There is no justification in this new Bill to have the Special Rate paid only to age 65 when they are intended to have the same benefits

The Government must also honour its 1996 election promise to remove the Centrelink income assessment test for those with non-qualifying service to ensure those with only peacetime or defence service will not be disadvantaged.

The safety net proposed to the working group is the present Special Rate plus Service Pension (both properly indexed to the MTAW or CPI whichever is the greater). The compensation paid to ex-service personnel, unable to work as a result of their service related disability, should not fall below that level. And what will happen should a member not have qualifying service,

The draft Bill explanatory material suggests that the safety net is given as a one off choice. Used in this manner it is not a safety net as it cannot act to ensure an adequate compensation payment will continue as there can be no guarantee that military wages will remain adequate. Personnel can choose to have the safety net equivalent but if they choose the military wage option they must be protected from future wage devaluation.

## **Offsetting**

The draft Bill provides that there will be an offset of 60 cents in the \$ against a portion of the Safety Net or incapacity payment for "military superannuation payments". In the recent round of Departmental briefings this was said to relate to DFRDB/ MSBS incapacity or superannuation payments. However, the draft Bill clearly provides that the safety net payment is reduced if they receive a "pension or lump sum under a Commonwealth superannuation scheme". The position needs to be clarified urgently.

The offsetting arrangements are clearly a disadvantage for members who have a long period of Commonwealth employment. For example, a member with 30 years continuous service will have an much more substantial offsetting than some one who was discharged after six years and spent 24 years in a State service like the Police or Fire service even though they may have very similar superannuation entitlements. There is no logical or rational reason why such members should be treated differently and in particular why the one with the long and dedicated service should have the less favourable outcome.

MSBS, is understood to be fully funded by members and is therefore not the equivalent to the DFRDB. The "offsetting" of Government contributions appears discriminatory in one case and mean spirited in the other.

## **COMPENSATION FOR MEMBERS AND FORMER MEMBERS**

### **Chapter 4 (Part 4)**

#### **Other Types of Compensation**

#### **Advice That Significant New Benefits Are To Be Accorded To Carers**



We have been advised by the briefing team that "significant new benefits" have been accorded carers of those "returned veterans" and service personnel who are in receipt of the Safety Net. These include provisions for the well being of the carers as well as the injured veteran/service person?

None are identified or even indicated in the Exposure Draft; nor is the role and sacrifice of carers in this situation acknowledged. We wish to see these "new benefits" in writing.

There also appears to be an assumption that "partners" are "working" as opposed to being "carers".

Compensation is indexed once every 12 months. Our view is that the index must be CPI or MTAW, related, which ever is the greater; and for it to be applied every six (6) months

## **COMPENSATION FOR DEPENDANTS**

### **Chapter 5**

#### **War Widows**

Compensation for Wholly Dependent Partners; we disagree with, the distinction drawn in this section between warlike and non-warlike service a distinction not drawn elsewhere in the draft. This is unreasonable.

The new scheme is an age based compensation payment with improvements to the present lump sum payments. The compensation to the "widowed wholly dependent partner" is either a periodic payment equivalent to the war widow's payment payable under the VEA (currently \$232.65 per week) or age related lump sum of \$348,900 for a 30-year-old widow, \$267,200 for a 50-year-old widow and \$156,800 for a 70-year-old widow. The lump sum payments will be tax-free.

A 30-year-old widow who takes the lump sum option receives the equivalent of 28 years of the periodic payment. So if her life expectancy is around 80 years the Government makes a profit of some 22 years of periodic payments at \$12,097 per year for a total of \$266,151.60. For a 50-year-old widow it is 8 years of periodic payments for a profit of \$96,776. Only the 70-year-old widow comes out on the right side of the ledger with an additional \$25,000.

Clearly, it is in the best interest of the widow to seriously consider the periodic payment. The payment is insufficient to allow a young widow (say the 30 year old used in the examples) and the amount is some \$70.00 per week below the Henderson poverty line for a sole parent with one child.

If a member is incapacitated by their service to the extent that they can no longer work to support their family, the Government believes they should be compensated at 75% of their normally weekly earnings.

If the member dies the widow is expected to exist and support the family on an amount that is in average circumstances less than 30% of the family's income prior to the member's death. The younger the widow and the shorter the service of the member the less compensation and financial support the widow will receive and the more desperate will be the circumstances. To suggest that the benefits are generous when the Government expects the families of veterans to live in poverty is simply disgraceful.

It would be a much better and fairer proposal if the periodic payments were keyed to a percentage (e.g. 70%) of the member's normal weekly earnings. This would provide a logical

and rational connection between the level of compensation and the family's lifestyle and circumstances.

Why should a death in peacetime be of less financial consequence to the dependants than one in war? The amount should be the same; the loss will certainly be for the dependants.

### ***Automatic Grants of War Widow's Benefits***

There is no reference in the draft Bill or the explanatory material as to whether widows under the new scheme will be granted automatic war widows entitlements if their spouse was in receipt of the equivalent of the Special Rate pension. Under the VEA they would be automatically entitled.

### ***Naming of the War Widows pension***

There is no reference in the draft Bill or the explanatory material as to the name that will be given to recipients of the war widows benefits. It is important for access to State and Local Government concessional arrangements that they be formally and officially referred to as War Widows.

### ***Definition of an Eligible Young Person***

There is no attempt to cover dependant children who are themselves lifelong disabled people who might reasonably have been maintained by the disabled parent/s had the latter not been permanently rendered unfit to work as a consequence of their Service in the Armed Forces

Nor is there recognition that disabled children may occur through Service exposure to agents such as radiation/chemicals etc. There is also no recognition that "ripple effects" of parent's Service experiences, especially active service, may affect children well into adult years.

## ***TREATMENT FOR INJURIES AND DISEASES***

### ***Chapter 6***

No Comment

## ***CLAIMS***

### ***Chapter 7***

Cross references M.R.C.A. and V.E.A. 1986 for VRB. These must be written into the act, otherwise claimants, advocates and delegates alike are going to be forced to shuffle between three different acts, increasing the likelihood of mistakes occurring.

## ***RECONSIDERATION AND REVIEW OF DECISIONS***

### ***Chapter 8***

#### ***Review***

As mentioned in Chapter 3 above, ALL, decisions made under the new scheme should be subject to review by the VRB and the AAT. Full time paid independent advocates should be available to assist members with their claims and appeals.

The lack of review entitlements for some of the determinations under the proposed scheme requires better and more strongly argued case from the Government to justify the proposed limitations. The period of time allowed to seek reconsideration should be extended to 60 days instead of the 30-day period shown in the Narrative Guide. The period of 30 days does not allow sufficient time to for example, to revisit and/or see doctors and medical specialists, obtain specialist medical reports, source and obtain other relevant supporting documents and statements. This is often complicated and compounded by Departmental processes such as Freedom of Information requirements and access to people and documents

## **MILITARY REHABILITATION AND COMPENSATION COMMISSION**

### **Chapter 9**

#### ***Ex-Service Representation***

Over the last decade or so it has become apparent that there is a considerable gap between the expectations of the ex-service community and the Governments with a spate of inquiries, Tanzer, Mohr and Clarke.

It is absolutely crucial that the working arrangements between Government and the ex-service community be reviewed and renewed as a matter of urgency. It is also absolutely crucial that there be a forum as there is in many other portfolios to provide a conduit to Government for the considered and collective views of ex-service community. The successful concept that was embodied in the former Ministerial Advisory Council on Veteran's Issues needs to be revisited and similar process reintroduced to give veterans a real voice in the administration of THEIR portfolio.

The Government should establish, and fund, a National Council of Ex-Service Organizations with representation from the major ex-service organization. The council should meet regularly (at least four times per year) and provide input and guidance to the Ministers for Defence and Veterans' Affairs.

This Council should have an independent Chairperson who is not an office holder of any ex-service organization but who understands and is experienced with veteran's issues. The Chairperson should represent the ex-service community on the MRCC.

## **MISCELLANEOUS**

### **Chapter 10**

No Comment

## **APPENDIX**

### ***Transitional Provisions***

There is some concern and confusion arising from the material in the Explanatory document on the Draft Bill and from the Departmental briefings surrounding the position of members and former members with entitlements under the existing legislation.

No draft has been provided for a Transitional Arrangements Bill for the new scheme and the Explanatory material states that after the commencement date "unless the Act or the transitional provisions indicate otherwise" entitlements under existing legislation will be unaffected. Further, that "notwithstanding anything in any Commonwealth legislation or veterans' legislation,

that legislation will not apply to any claim for compensation relating to service" after the commencement date. The MRCS will apply instead.

Several scenarios have been put forward and they need to be clearly explained to identify the entitlement of the member:

1. A long serving member, for example a Vietnam veteran, with VEA entitlements of say 50% who is discharged 6 months after the commencement date. If their accepted condition deteriorates due to aggravation after the commencement date and they make an application for an increase in pension which legislation applies?
2. If the member in the example above is covered by the new scheme is his pension to be offset by, say, 30 years of superannuation for 6 months of eligible service under the new scheme.
3. What is the position for National Servicemen, both those with service in Vietnam and those with service only in Australia?
4. What is the position for former members before the commencement of the date, say Vietnam or Gulf War veterans, who are determined after the commencement date to be entitled to TPI pension? Will they be subject to the compulsory Rehabilitation and offsetting provisions of the new scheme?
5. What is the position of former members who are not members at the commencement date seeking EDA after the commencement date?

#### ***In Summary***

With the true impact of the Clarke and SCRA reviews not being obvious in this exposure draft, or complete, at this stage and various elements of this Bill not being finalised we, as an Association, are deeply concerned. We believe that to have a comment stage and then, to proceed with the enactment of this Bill without those aspects being resolved and included in the proposed Act, or, without the opportunity to comment further, is inappropriate and inefficient to say the least.

To have a Bill/ Act passed incomplete with a number of these matters still unresolved is almost "criminal". It will certainly continue to inflame the "mistrust and antagonism" that currently exists between the Government and particularly the Minister and the ex-service and veteran community. There needs to be a couple of months grace and a bit more sensible negotiation to achieve a suitable outcome not only for the Government, but those members still in Uniform who are dependant in the future, on the decisions we make now.



Charles Stewart  
Honorary National Secretary  
Australian Special Air Service Association



Lt. Col. David Lewis  
National Chairman  
Australian Special Air Service Association