Short Digest of Bill

Purpose

To remove the effects of a recent High Court decision and to implement other changes to the repatriation system announced by the Treasurer in the Statement on Government Expenditure Savings delivered on 14 May 1985.

Background

The Repatriation Act was passed in 1920 to make compensation available for incapacity or death that resulted from military service. The eligibility criteria for compensation varies slightly in relation to the various conflicts in which Australia has been involved. Generally, compensation is available for members of the forces who were incapacitated or killed during service in the First and Second World Wars, the Malayan and Korean Operations, South East Asia or during service with the Defence Force on or after 7 December 1972.

There are three main categories of compensation:

- **Special Rate** - payable to those who are incapacitated to such a degree that they are only capable of earning a negligible percentage of a living wage.

- **Intermediate Rate** - payable to those who can work part-time or occasionally.

- **General Rate** - payable to veterans who suffer from service related incapacity but are still able to work full-time. Amounts of 10-100% of the General Rate are payable, depending on the assessed degree of incapacity.

The standard of proof that must be met to be eligible for compensation was last altered in 1977. Prior
to 1977, the legislation required that the applicant was to receive the 'benefit of the doubt', when doubt existed as to whether the incapacity or death was service related. The 1977 amendments to the Repatriation Act 1920 (Principal Act) followed recommendations by the Independent Inquiry Into The Repatriation System, which reported in 1975. It recommended that compensation should be paid unless the Repatriation Commission was satisfied, beyond reasonable doubt, that there were insufficient grounds for granting the compensation. In an attachment to a News Release issued by the Minister on 31 May 1985, it is stated that it 'would seem that the Government of the day was intending to clarify by this amendment that the "benefit of any doubt"... meant the benefit of any reasonable doubt'.

This provision has been considered by the Courts on a number of occasions, the most important being the High Court decision in Repatriation Commission v O'Brien, delivered on 27 February 1985.[1] In upholding the application for compensation, the majority determined that compensation is payable where the evidence is neutral on the cause of injury or death. The effect of this decision is that compensation will be payable unless it can be shown, beyond reasonable doubt, that the incapacity or death was not related to service in the forces. The Solicitor-General has advised that, in light of the O'Brien decision, it will be:

"virtually impossible for the Commission to discharge the onus of proof conferred upon it by the Act, with the result that virtually any ex-serviceman who suffers a disability, during his declining years or otherwise, becomes eligible to receive a repatriation benefit".[2]

An increase in the number of applications and the success rate of applications since the O'Brien case has proven the Solicitor-General to be correct. As a result, it became clear that payments would exceed Budget estimates in 1984/85 and the increase in expenditure would continue for a number of years. To prevent this, a number of amendments to the Principal Act were announced by the Treasurer in his statement on Government Expenditure savings, delivered on 14 May 1985. These measures are implemented by the present Bill.

Outline

The Bill amends the Principal Act and associated legislation to effect changes to the standard of proof, the eligibility of dependants for payments, and the grounds for receiving a pension at the intermediate or special rates.
The standard of proof that must be satisfied to refuse compensation is amended by this Bill to remove the effects of the O'Brien decision. The amendment will require evidence capable of raising a reasonable hypothesis that the incapacity or death was service related before the claim may be considered. As well, the current test that compensation is paid, unless the Commission is satisfied beyond reasonable doubt that there are insufficient grounds, is also to be restricted. This test will apply only for veterans who served overseas in World War II; were allocated to operational service in Korea, Malaya, Borneo or Vietnam; served on peacekeeping duties overseas, or were involved in hazardous duties. For other claims, the Commission may refuse compensation if it is satisfied, on the balance of probabilities, that insufficient grounds exist. The new rules will apply for future applicants so that no-one currently in receipt of compensation will be affected by these amendments.

The Bill also alters the method and range of payment to veterans and their dependants. At present, a small additional payment is made to the wife and children of incapacitated veterans (currently $4.05 a week for the wife and $1.38 for each child).[3] These payments will be abolished for future successful applicants. There will be no change in payments to the wife and children of deceased veterans. The range of dependants eligible to receive compensation is restricted to the wife and children of a incapacitated or deceased veteran. At present other dependants and the parents may be eligible for compensation. In line with election commitments, current beneficiaries will not be affected.

The Bill also clarifies the situations in which intermediate or special rate pensions are payable, which have remained unchanged since 1920. The intermediate rate will be granted where the veteran is currently in receipt of a pension at the full general rate, is incapacitated to such a degree that he can only work part-time, and has lost wages or salary as a result of the incapacity. For this purpose, part-time work is defined as working for not more than half of the normal working week. There is deemed to be no loss where the veteran's inability to work full-time is not associated with the incapacity. There is also a special provision for veterans under 65 years who, apart from their incapacity, would be seeking paid employment. Such persons will be treated as having been prevented from continuing to undertake paid employment. Consequently, there will be a deemed loss of wages and the veteran will, therefore, be able to satisfy the criteria for such a loss.
Pensions at the special rate are payable to veterans who were blinded as a result of war service, or those who are receiving the full general pension but are unable to undertake more than 8 hours paid employment per week and suffer a loss of wages or salary as a result of the incapacity. Again there are special provisions for incapacitated, unemployed veterans under 65 years. The special rate is not payable where the veteran is unable or unwilling to work for other reasons.

The Bill was amended in the Senate, the amendment being accepted by the House at a special sitting on 31 May 1985. A new clause was added to the Bill and acts as a sunset clause. Under this clause all modifications to the standard of proof will cease to be of force 6 months after the commencement of the Act, and the standard of proof will revert to the current, 1977 standard.

Main Provisions

Amendments to the Repatriation Act 1920 (the Principal Act), are contained in Part II of the Bill. Changes to other repatriation legislation consequential to the amendments to the Principal Act are contained in Parts III to IV.

Alterations to the standard of proof are contained in clause 16 of the Bill which amends section 47 of the Principal Act.

Changes to dependant payments are implemented through amendments to sections 23 and 24 of the Principal Act effected by clauses 4 and 5 of the Bill.

The grounds for granting an intermediate or special rate pension are addressed by clauses 33 and 34, respectively. These clauses amend Schedules 1 and 2 of the Principal Act.

The sunset clause for the modifications to the standard of proof is contained in clause 2.

Remarks

In the Second Reading Speech, the Minister estimates that these moves will save the Government $36.8m in 1985/86.[4]

For further information, if required, contact:

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References
