Military Rehabilitation and Compensation Amendment Bill 2014

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Law and Bills Digest Section

Contents

Purpose of the Bill ................................................................. 2
Background ................................................................................ 2
Calculating permanent impairment ........................................... 2
Military compensation arrangements review ......................... 2
Government response................................................................. 3
A new problem .................................................................
Committee consideration .........................................................
Standing Committee for the Selection of Bills .........................
Senate Standing Committee for the Scrutiny of Bills ............
Parliamentary Joint Committee on Human Rights .................
Statement of Compatibility with Human Rights ......................
Position of major interest groups ...............................................
Financial implications .............................................................
Key issues and provisions........................................................

Date introduced: 17 July 2014
House: House of Representatives
Portfolio: Veterans' Affairs
Commencement: On the day after Royal Assent

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation
When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.
Purpose of the Bill

The purpose of the Military Rehabilitation and Compensation Amendment Bill 2014 (the Bill) is to amend the Military Rehabilitation and Compensation Act 2004 to enable the Military Rehabilitation and Compensation Commission (the Commission) to retrospectively apply the methodology for calculating permanent impairment compensation to claims that have been the subject of:

- claimant initiated reconsideration by the Commission
- a review by the Veterans’ Review Board (the Board) or
- a review by the Administrative Appeals Tribunal (AAT).

Background

Calculating permanent impairment

Permanent impairment compensation payments are non-economic loss payments—that is, they are paid to compensate for pain, suffering, functional loss or dysfunction and the effects of injury or disease on lifestyle. When the Military Rehabilitation and Compensation Act was enacted, it was necessary to determine how persons whose injuries had already been accepted under the Veterans’ Entitlements Act 1986 or the Safety Rehabilitation and Compensation Act 1988 would be treated.

That being the case, the Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004 (Consequential and Transitional Provisions Act) provided that the impairment rating for the old injury or disease, whether liability was accepted under the Veterans’ Entitlements Act or the Safety Rehabilitation and Compensation Act, would be determined under the Military Rehabilitation and Compensation Act.

Section 67 of the Military Rehabilitation and Compensation Act requires the Commission to use the Guide to Determining Impairment and Compensation (GARP M) to determine an impairment rating for the old injury or disease.

Military compensation arrangements review

On 8 February 2009, the then Minister for Veterans’ Affairs, Alan Griffin, announced that there would be a review of military compensation arrangements (the Review) to ensure that ‘Government is providing appropriate support and compensation to Australia’s veterans and ex-service personnel’. The Review was conducted by a steering committee chaired by the Secretary of the Department of Veterans’ Affairs, Ian Campbell PSM.

The Review report was released on 18 March 2011. The Review found the military compensation system to be fundamentally sound but noted that certain improvements could be made—particularly to permanent impairment compensation.

The Review noted that the assessment of permanent impairment under the Military Rehabilitation and Compensation Act was based on whole person impairment methodology. That is, where multiple service-related conditions exist, the impairment resulting from all service-related conditions is not simply added but must be combined by applying a combined values formula, which ensures compensation cannot exceed 100 per cent of the whole person.

The Review examined the date of effect provisions for permanent impairment compensation. Weekly permanent impairment compensation under the Military Rehabilitation and Compensation Act became payable...
(at the time of the Review) from the date the claim for liability was lodged or the date that the claimant’s condition(s) were found to have become permanent and stable, whichever is the later. The Review found:

... inequities for claimants with multiple conditions where the conditions become stable at different points in time [and recommended that] permanent impairment compensation become payable on the basis of each individual accepted condition, rather than on the basis of all accepted conditions.9

Government response
The Government’s response to the Review was announced on 8 May 2012.10

Consistent with the recommendation of the Review, the Veterans’ Affairs Legislation Amendment (Military Compensation Review and Other Measures) Act 2013 (Military Compensation Review Act)11 was enacted to amend the Military Rehabilitation and Compensation Act. The relevant amendments allowed for permanent impairment compensation payments for a service injury or disease to be made on the basis of each accepted condition rather than for all accepted conditions together, and to incorporate lifestyle factors into the calculation of the amount payable. This new methodology was set out in Chapter 25 of the GARP M which was in force on 1 July 2013.12 According to the Department of Veterans’ Affairs those amendments would:

... enable each condition to have its own date of effect that will depend on the date of the claim and the date the conditions meets the requirements for payment of permanent impairment compensation. All conditions will be compensable including any that individually do not meet the relevant threshold.13

In addition, the Military Compensation Review Act contained transitional provisions to allow for certain transitional impairment calculations made from 1 July 2004 to 30 June 2013 to be recalculated under the new methodology. Importantly, past payments were to be adjusted retrospectively only if the recalculated amount resulted in a benefit to a recipient.14 In that case he, or she, would be paid the difference between the amount originally paid and the new amount.

A new problem
When the Commission commenced its review of transitional permanent impairment calculations15 in order to apply the new methodology, a ‘technical barrier in the existing legislation' was detected.16 This barrier had the effect of preventing the retroactive recalculation of transitional permanent impairment compensation in certain circumstances.

The provisions of this Bill operate so that the Commission is able to retrospectively apply the methodology for calculating permanent impairment compensation to claims that have been the subject of claimant initiated reconsideration by the Commission, a review by the Board or a review by the AAT.

Committee consideration
Standing Committee for the Selection of Bills
At its meeting of 28 August 2014, the Standing Committee for the Selection of Bills resolved not to refer the Bill to Committee for inquiry and report.17

9. Ibid., p. 68.
12. Ibid., section 2.
**Senate Standing Committee for the Scrutiny of Bills**

In its Alert Digest of 27 August 2014, the Senate Standing Committee for the Scrutiny of Bills stated that it had no comments to make in relation to the Bill.  

**Parliamentary Joint Committee on Human Rights**

The Parliamentary Joint Committee on Human Rights has stated that it considers the Bill to promote the right to social security (noting in particular the provision that no person will be disadvantaged by the application of the new methodology) and is therefore compatible with human rights.  

**Statement of Compatibility with Human Rights**

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.

**Position of major interest groups**

At the time of writing this Bills Digest, no comments had been made about this Bill. However, as the purpose of the Bill is to make a technical correction to the Military Rehabilitation and Compensation Act to facilitate the making of transitional impairment calculations, it is expected to be supported by military advocacy groups.

**Financial implications**

According to the Explanatory Memorandum, the Bill has no financial impact as the funding for the measure was provided in the 2012–13 Budget.

**Key issues and provisions**

Chapter 8 of the Military Rehabilitation and Compensation Act sets out the rules for the reconsideration or review of determinations as follows:

- most determinations made by the Commission (the original determinations) can be reconsidered and reviewed
- there are two possible paths in the reconsideration and review process depending on the type of reconsideration sought by the claimant—a claimant who has received notice of an original determination can ask the Commission to reconsider it or ask the Veterans’ Review Board to review it
- if a claimant is dissatisfied with the determination on reconsideration or review (the reviewable determination), the claimant can apply to the Administrative Appeals Tribunal (AAT) for review of the reviewable determination.

Item 1 of the Bill amends the definition of original determination which is contained in subsection 345(1) of the Military Rehabilitation and Compensation Act to include a determination made under subsection 347A(2) or 347A(4).

Item 2 of the Bill inserts proposed section 347A into the Military Rehabilitation and Compensation Act so that where a reviewable determination was made about permanent impairment compensation, or the AAT made a decision in relation to permanent impairment compensation the Commission will be able, on its own initiative, to review the amount by applying the new methodology set out in Chapter 25 of GARP M.

According to the Explanatory Memorandum, ‘the amendments will result in beneficial or neutral outcomes only’. Compensation is to be increased if it is found to be less than it should be. However, if after review the...
Commission is satisfied that the amount of compensation should not be increased, the Commission may make a determination confirming the amount of compensation.  

The effect of the amendments is that the decision of the Commission will be an original decision which can be reconsidered or reviewed as above.
