

Military Rehabilitation and Compensation Regulations 2020

REPLACEMENT EXPLANATORY STATEMENT

Issued by the Minister for Veterans' Affairs

Military Rehabilitation and Compensation Act 2004

Background

The *Military Rehabilitation and Compensation Act 2004* (the Act) received the Royal Assent on 27 April 2004. The Act provides for compensation and other benefits to be provided for current and former members of the Defence Force who suffer a service injury or disease. The Act also provides for compensation and other benefits to be provided for the dependants of some deceased members.

Section 440 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Purpose

The *Military Rehabilitation and Compensation Regulations 2020* (the Regulations) revoke and replace the *Military Rehabilitation and Compensation Regulations 2004* (the former Regulations). The former Regulations were due to be automatically repealed on 1 April 2020 under the 'sunsetting' provisions of the *Legislation Act 2003*.

Both the Regulations and the former Regulations are made pursuant to the following provisions of the Act:

- section 116 – which provides that the regulations may prescribe one or more methods of working out the normal and actual earnings for persons who are cadets or declared members. Item 6 of the table to subsection 89(3) of the Act provides that the regulations made under section 116 set out the meanings for actual and normal earnings for a cadet or a declared member;
- section 175 – which provides that the regulations may prescribe methods for working out normal earnings, actual earnings and normal weekly hours for persons who were cadets and declared members. Item 7 of the table in subsection 132(2) of the Act provides that the regulations made under section 175 set out the definition of normal earnings and normal weekly hours for former cadets or declared members;
- section 196 – which provides that the regulations may apply for the purposes of working out the amount of compensation the Commonwealth is liable to pay under Part 3 of Chapter 4 of the Act if a person is only entitled to compensation for part of a week and not a whole week.
- subsection 439(1) – which provides that the regulations may apply for the purposes of the application of Chapter 2 and Parts 3 and 4 of Chapter 4 to cadets and declared members.

The former Regulations also provided for the interaction of the Act with respect to modified provisions of the *Veterans' Entitlements Regulations 1986*.

There are only minor differences between the Regulations and former Regulations. The differences are due to changes in formatting and drafting style and updated references to incorporated documents.

Details of the Regulations are set out in the [Attachment](#).

The Act specifies no conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations commenced on the day after the registration of the legislative instrument, 25 March 2020.

Consultation

As the Regulations were being made on the basis that the former Regulations would sunset on 1 April 2020, the Department undertook the required review of the need for all or any of the former Regulations to be remade and after consulting with the relevant policy areas had concluded that all of the former Regulations were to be retained in their then current form.

The need for external consultation was also recognised early in the process of remaking the Regulations and Ministerial approval to remake the Regulations was sought on the basis that information about the proposed Regulations would be provided to the Ex-Service Organisation Round Table (ESORT).

The ESORT is a forum intended to enhance the capacity of the Repatriation Commission and Military Rehabilitation and Compensation Commission (the MRCC) by addressing issues of strategic importance to the ex-service and defence communities and assist in setting directions for the medium to long term. The specific responsibilities of the ESORT include:

- acting as the main forum for dialogue between the MRCC, Repatriation Commission, Department of Veterans' Affairs and the leadership of the ESO and Defence communities;
- providing advice on how government can better facilitate a common approach to veteran and ex-service issues against the current background of ageing members, declining membership and multiple ex-service organisations not necessarily united in their common concerns;
- guiding strategic directions for the portfolio;
- serving as the main body for consultation under the *Legislation Act 2003* on the development of legislative instruments impacting members of the ex-service and Defence communities under the:
 - *Veterans' Entitlements Act 1986*;
 - *Military Rehabilitation and Compensation Act 2004*;
 - *Safety, Rehabilitation and Compensation (Defence Related Claims) Act 1988*;
 - *Defence Service Homes Act 1918*; and the
 - *War Graves Act 1980*.

Information about the proposed Regulations was provided to the ESORT secretariat in February 2020. Due to the ongoing COVID-19 pandemic it was not possible for ESORT to consider this information at its meeting on 27 February 2020. As this was the last ESORT meeting prior to 1 April 2020, ESORT could not be consulted prior to the Regulations needing to be remade.

A paper concerning the remaking of the Regulations was submitted and considered at the next ESORT meeting, on 12 May 2020.

ATTACHMENT

Military Rehabilitation and Compensation Regulations 2020

Part 1 Preliminary

Section 1 – Names

This section provides that these regulations are to be cited as the *Military Rehabilitation and Compensation Regulations 2020*.

Section 2 – Commencement

This section provides that these regulations commence on the day after the instrument is registered.

Section 3 – Authority

This section provides that the *Military Rehabilitation and Compensation Regulations 2020* are made under the *Military Rehabilitation and Compensation Act 2004*.

Section 4 - Schedules

This section provides that an instrument in a Schedule to the instrument is amended or repealed in accordance with that Schedule. Schedule 1 revokes the *Military Rehabilitation and Compensation Regulations 2004*.

Section 5 - Definitions

This section contains definitions relevant to the regulations.

Note 1 to section 5 lists those definitions used in the Regulations as having the same definition as they have in the Act. The definitions are:

- (a) Cadet;
- (b) Commission;
- (c) declared member.

Note 2 to section 5 provides for the purposes of the Regulations a reference to a ‘declared member’, or ‘member’, will include a person who is the subject of a determination under subsection 8(1) of the Act.

In section 5:

Act is defined to mean the *Military Rehabilitation and Compensation Act 2004* (the Act);

casual work is defined as a person who is employed on a casual or irregular basis; and is 16 years or over;

Human Services Department is defined as the Department or the Executive Agency administered by the Minister administering the *Human Services (Centrelink) Act 1997*. Describing the agency currently referred to as “Services Australia” in this manner reduces the need to amend references to the agency if its title changes in the future.

remunerated cadet is defined to mean an Officer of Cadets (OOC) or an Instructor of Cadets (IOC), who is remunerated for his or her service as a cadet.

social security law is defined as having the same meaning as in section 23 of the *Social Security Act 1991*.

Part 2 Matters relating to cadets

The Act provides compensation coverage to current and former members" of the Defence Force who suffer a service injury or disease. A 'member' is defined in subsection 5(1) of the Act to include a person who is a 'cadet' or a 'declared member'.

Subsection 5(1) of the Act defines a 'cadet' to mean "a member of the Australian Defence Force Cadets" and 'Australian Defence Force Cadets' is further defined in in subsection 5(1) as having the meaning that it has in the *Defence Act 1903*.

The Australian Defence Force Cadets (ADF Cadets) is a community based, youth development program, sponsored primarily by the Australian Defence Organisation. The Defence Service Chiefs exercise command and are responsible for their respective Cadet Corps organisations.

The ADF Cadets program is aimed at youth between the ages of 12 and 18 and is conducted in a military context in Defence locations, schools and other community settings. ADF Cadets participate in a range of activities designed to encourage self-confidence, leadership and team building skills.

Subsection 62(1) of the *Defence Act 1903* provides that the 'Australian Defence Force Cadets' is comprised of the following branches:

- (a) the Australian Navy Cadets;
- (b) the Australian Army Cadets;
- (c) the Australian Air Force Cadets.

Subsections 62(2), (3) and (4) all refer to the cadets being volunteers who have been accepted by the Chief of the Defence Force (CDF) as "officers, instructors or cadets" within the various branches.

Cadets are not members of the 'Defence Force' as defined in subsection 5(1) of the Act, however an OOC or an IOC may also be serving as a Reservist or as a member of the Permanent Forces at other times.

Division 1 - Working out compensation for serving cadets

Section 6 is applicable for the purposes of section 116 of the Act. It applies to working out normal and actual earnings of cadets engaged in paid civilian work at the time of incapacity.

Subsection 6(1) provides that compensation is payable if the cadet is incapacitated for work, was injured during a period of cadet service, was engaged in paid civilian work at the time of the incapacity (that was not 'casual work') and is not a person who is unable to continue full-time studies or enter the workforce as a result of the incapacity.

Subsection 6(2) provides that the civilian component of the cadet's normal earnings will be assessed on the basis of that paid civilian work.

If the cadet is a remunerated cadet (an OOC or an IOC) or also a member of the Permanent Forces or the Reserves, then any cadet pay or ADF pay earned by the cadet will also be taken into account as part of the cadet's normal earnings under subsection 6(3).

If the cadet was in paid civilian work which was casual work and has turned 16, the civilian component of the cadet's normal earnings will be determined by the Commission under subsection 6(3) having regard to the cadet's qualifications, skills and expertise.

If the assessment of normal earnings under section 6 is less than the national minimum wage applicable to the person, the normal earnings will be adjusted to the 'national minimum wage' as determined under the *Fair Work Act 2009* in accordance with section 179 of the Act.

Subsection 6(4) provides that actual earnings will also be assessed having regard to any civilian, cadet or ADF pay actually earned by the cadet.

Example: Ben, a cadet aged 17 works 4 days per week in part-time employment and earns \$200 per day. Because of an injury sustained while performing cadet duty, Ben is only able to work 2 days per week in his part-time employment. Ben's normal earnings for the week are \$800 (which is greater than the applicable national minimum wage). His actual earnings are \$400 per week. The compensation for incapacity paid to Ben for the week is \$400.

Section 7 is applicable for the purposes of section 116 of the Act. It applies to working out normal and actual earnings of cadets who were only engaged in casual work, or not engaged in civilian work, at the time of incapacity.

Subsection 7(1) provides that compensation is payable if the cadet is incapacitated for work, was a cadet at the time the injury was sustained, was only engaged in casual work or not engaged in civilian work at the time of the incapacity.

Subsection 7(2) provides that a cadet's normal earnings will be based on the amount determined by the Commission under subsection 7(3) having regard to the cadet's qualifications, skills and experience and an ADF component under subsection 7(4) if the cadet is a 'remunerated cadet'.

Subsection 7(3) provides that for the purposes of subsection 7(2) the civilian component of the cadet's normal earnings is determined by the Commission where:

- (a) the cadet is aged 16 years or over;
- (b) is unable to continue full-time studies or enter the workforce as a result of the incapacity; and
- (c) is, has or is not required to undertake a rehabilitation program.

In any other circumstances, the civilian component of normal earnings will be nil but may be adjusted under section 179 of the Act to accord with the applicable national minimum wage.

If the cadet is a remunerated cadet (an OOC or an IOC) or also a member of the Permanent Forces or the Reserves, then any cadet pay or ADF pay earned by the cadet will also be taken into account as part of the cadet's normal earnings under subsection 7(4).

Subsection 7(5) provides that actual earnings will also be assessed having regard to any civilian, cadet or ADF pay actually earned by the cadet. Actual earnings are assessed by working out the amount of the cadet's actual earnings from civilian, cadet and Defence Force employment accordingly.

The Commission's power to determine the civilian component having regard to the cadet's qualifications, skills and experience provides flexibility to ensure that appropriate incapacity compensation is assessed on a case by case basis.

Example: Jane, a cadet with the Australian Army Cadets aged 18, suffers a serious injury during cadet training and is unable to continue full-time studies in year 11 or enter the workforce. Jane has undertaken a rehabilitation program. Jane has no paid civilian work at the time of the incapacity. Jane has always aspired to join the Army upon finishing school. The Commission having regard to her qualifications, skills and experience assesses Jane's normal earnings as being equivalent to a person undertaking recruitment training in the Army.

Division 2 - Working out compensation for former cadets

Section 8 is applicable for the purposes of section 175 of the Act. It applies to working out normal and actual earnings of former cadets who were engaged in paid civilian employment before last ceasing to be members of the Defence Force.

Section 8 is similar to section 6. However, because it relates to a former cadet, the assessment of normal earnings is up to the time that the former cadet last ceased to be a member of the Defence Force. If the amount assessed is less than the national minimum wage an adjustment can be made under section 179 of the Act.

Section 9 is applicable for the purposes of section 175 of the Act. It applies to working out normal and actual earnings of former cadets who were not engaged in paid civilian work, or only engaged in casual work, before last ceasing to be members of the Defence Force.

Section 9 is similar to section 7. However, as with section 8, the assessment of normal and actual earnings is up to the time that the former cadet last ceased to be a member of the Defence Force. If the amount assessed is less than the national minimum wage an adjustment can be made under section 179 of the Act.

Division 4 - Working out compensation for parts of weeks

Section 10 is applicable for the purposes of paragraph (b) of the definition of 'number of days' in subsection 196(3) of the Act. It applies for working out compensation for parts of a week for cadets.

If the cadet is engaged in paid employment, the number of days is the number of days the cadet normally works in a week. In any other circumstances it is 5 days.

Division 4 - Modification of Chapter 2 in relation to cadets

Section 11 is applicable for the purposes of subsection 439(1) of the Act. It modifies some of the provisions of Chapter 2 of the Act in relation to their application to cadets.

The modifications relate to some of the exclusionary provisions which if applicable would operate to prevent the Commission from accepting liability for an injury, disease or death even if it is determined to be a service injury, disease or death. The operation of these provisions has serious consequences for a person claiming under the Act, as they cannot receive compensation under the Act. The modifications are made to take account of the age of some cadets.

Paragraph 11(a) is applicable where section 32 of the Act applies to prevent the Commission from accepting liability for injuries, diseases or deaths resulting from the person's serious default or wilful act or a serious breach of discipline. The section is modified as not being applicable to a serious default or wilful act of a cadet under the age of 16.

Paragraph 11(b) is applicable where section 34 of the Act applies prevents the Commission from accepting liability if the person made a wilful and false representation, in connection with his or her defence service or proposed defence service. The section is modified as not being applicable to a wilful and false representation of a cadet under 16.

Paragraph 11(c) is applicable to the circumstances where section 35 of the Act makes a number of exclusions relating to travel. Subsection 35(3) applies where there has been a substantial delay commencing the journey. Subsection 35(4) is similar to subsection 35(3) and applies to routes that are not reasonably direct. Subsection 35(5) applies to substantial interruptions to journeys.

Section 35 is modified so that subsections (3), (4) and (5) do not apply to a cadet who at the time of the injury, disease, death, aggravation or material contribution was under 18 and under the supervision of a parent of the cadet, or a responsible adult.

Part 3 Matters relating to declared members

A declared member is defined in subsection 5(1) of the Act to mean a person to whom a determination under section 8 of the Act applies. Declared members include persons who hold honorary ranks in the

Defence Force, persons who are on Career Transition Assistance (CTA) under an arrangement made by the Defence Force and members of approved philanthropic organisations serving the Defence Force.

A declared member who is undertaking CTA may be a Permanent Forces member or a continuous full-time Reservist who has not been discharged or a Permanent Forces member or continuous full-time Reservist who has been discharged who is undertaking CTA.

Division 1 – Working out compensation for declared members

Section 12 is applicable for the purposes of section 116 of the Act. It applies to working out normal and actual earnings for declared members engaged in paid civilian work at the time of the incapacity who are not undertaking career transition assistance.

Subsection 12(1) provides that compensation is payable to a declared member, who is not undertaking CTA, is incapacitated for work, was a declared member at the time the injury was sustained and was engaged in paid civilian work at the time of the incapacity.

Subsection 12(2) provides that the normal earnings of the declared member will only have a civilian component and will be assessed on the basis of that civilian work. If the amount assessed is less than the national minimum wage an adjustment can be made under section 179 of the Act.

Actual earnings will be assessed on the basis of any pay actually received from that civilian work.

Section 13 is applicable for the purposes of section 116 of the Act. It applies to working out normal and actual earnings for declared members not engaged in civilian employment at time of incapacity and not undertaking career transition assistance.

Subsection 13(1) provides that compensation is payable to a declared member, who was not engaged in civilian work at the time of the incapacity, is 16 or over, is unable to continue full-time studies or enter the workforce as a result of the incapacity.

Subsection 13(2) provides that the declared member's normal earnings will be based on the amount determined by the Commission under subsection 13(3) having regard to the member's qualifications, skills and experience.

The Commission's power to determine the civilian component having regard to the cadet's qualifications, skills and experience provides flexibility to ensure that appropriate incapacity compensation is assessed on a case by case basis.

Subsection 13(3) provides that for the purposes of subsection 13(2) the civilian component of the member's normal earnings is determined by the Commission where:

- (a) the member is aged 16 years or over;
- (b) is unable to continue full-time studies or enter the workforce as a result of the incapacity; and
- (c) is, has or is not required to undertake a rehabilitation program.

In any other circumstances, the civilian component of normal earnings will be nil but may be adjusted under section 179 of the Act to accord with the applicable national minimum wage.

Subsection 13(4) provides that actual earnings working out by treating the member as an incapacitated Reservist mentioned in section 94 of the Act and working out the amount that would be the member's actual civilian earnings if the member were an incapacitated Reservist.

Section 14 is applicable for the purposes of section 116 of the Act. Subsection 14(1) states that it applies to working out normal and actual earnings for declared members at the time of the incapacity who are undertaking career transition assistance.

Subsection 14(2) provides that if the declared member is a person who has not been discharged from the Permanent Forces, but was undertaking a period of CTA at the time of injury and incapacity, the member's normal earnings for a week is the amount worked out by treating the member as if he or she were:

- (a) a Permanent Forces member of continuous full-time reservist mentioned in section 91 of the Act; and
- (b) incapacitated for service.

If the amount assessed under subsection 14(2) is less than the national minimum wage an adjustment can be made under section 179 of the Act.

Subsection 14(3) provides that the actual earnings for a week for a member who has not been discharged is the amount worked out by treating the member as if he or she were:

- (a) a Permanent Forces member or continuous full-time reservist mentioned in section 92 of the Act; and
- (b) incapacitated for service.

Subsection 14(4) provides that the normal earnings for a week for a member who has been discharged is the amount worked out by treating the member as if he or she were a person referred to in section 104 who was Permanent Forces member immediately before completing the member's last period of full-time service.

Subsection 14(5) provides that the actual earnings for a week for a member who has been discharged is the amount worked out by treating the member as if he or she were a person referred to in section 105 who is incapacitated for service.

Division 2 - Working out compensation for former declared members

Section 15 is applicable for the purposes of section 175 of the Act. Subsection 15(1) provides that section 15 is applicable for working out the normal and actual earnings for a former declared member eligible for compensation under section 118 of the Act who was engaged in paid civilian work before last ceasing to be a member of the Defence Force, who has not undertaken career transition assistance and who has not chosen to receive Special Rate Disability Pension under Part 6 of Chapter 4 of the Act.

Section 15 is similar to section 12. However, because it relates to a former member, the assessment of normal earnings is taken up to the time that the former declared member last ceased to be a member of the Defence Force. If the amount assessed is less than the national minimum wage an adjustment can be made under section 179 of the Act.

Section 16 is applicable for the purposes of section 175 of the Act. Section 16 is similar to section 13. However, as with section 15, the assessment of normal earnings is taken up to the time that the former declared member last ceased to be a member of the Defence Force. If the amount assessed is less than the national minimum wage an adjustment can be made under section 179 of the Act.

Section 17 is applicable for the purposes of section 175 of the Act. It applies to working out normal and actual earnings of an incapacitated former declared member who undertook career transition assistance.

In the case of a former declared member who was undertaking a period of CTA at the time of injury, the member's normal earnings for a week is the amount worked out by treating the member as if he or she were a Permanent Force member immediately before last ceasing to be a member of the Defence Force. The normal earnings will be calculated using the former declared member's earnings as a member of the Permanent Force using the provisions at Section 141 of the Act. If the amount assessed is less than the national minimum wage an adjustment can be made under section 179 of the Act.

Actual earnings will be calculated using Section 129 of the Act.

Division 3 - Working out compensation for parts of weeks

Section 196 applies to working out the amount of compensation the Commonwealth is liable to pay under Part 3 or 4 of Chapter 4 of the Act if a person is only entitled to compensation for part of a week and not a whole week.

Section 18 is applicable for the purposes of paragraph (b) of the definition of *number of days* in subsection 196(3) of the Act. It applies for working out compensation for parts of a week for declared members.

If the member is on CTA, the number of days is 5. For other declared members engaged in paid employment the number of days is the number of days that the member normally works in a week. In any other circumstances it is 5 days.

Part 4 Review by the Board of original determinations

Section 19 is made under paragraph 440(b) of the Act in respect of the application of the *Veterans' Entitlements Regulations 1986* (VEA Regulations) for the purposes of section 353 of the Act.

Section 353 of the Act provides for the Veterans' Review Board to review an original determination made under the Act and subsection 353(1) sets out the provisions of the *Veterans' Entitlements Act 1986* which apply for the purposes of a review by the Veterans' Review Board under Part 4 of Chapter 8 of the Act.

Subsection 353(2) of the Act lists the modifications which are applied to the provisions listed in subsection 353(1).

Subsection 19(1) provides that regulations 2, 8A to 9AL, 9AN, 10, 12 and Form 3 of Schedule 1 of the VEA Regulations will also apply for the purposes of section 353 of the Act.

Subsection 19(2) lists the modifications which are applied to the provisions listed in subsection 19(1).

Part 5 Indexation of certain pay and earnings

Section 20 provides for the purposes of paragraph 182(1)(a) of the Act for the indexation of pre-CFTS (continuous full-time service) pay and civilian daily earnings.

Subsection 20(1) states that the index for section 182 of the Act is based on the *Australian Bureau of Statistics 6345.0 Wage Price Index* being the *Total hourly rates of pay excluding bonuses* index in respect of the most recent quarter.

Subsection 20(2) sets out the manner of working out an increase in the amount of a person's pre-CFTS pay or civilian daily earnings for the purposes of paragraph 182(1)(b) of the Act. The method is based on that used in the Act to index amounts by the Consumer Price Index (CPI), but replacing the CPI in the formula with the index referred to in subsection 20(1).

Section 21 inserts the indexation provisions relating to the \$100 which is included in the value of the normal earnings calculation for certain members and former members of the Defence Force. The \$100 amount reflects the loss of the non-pay related allowances that make up the entire remuneration for Defence Force members.

Subsection 21(1) specifies the index to be used for the purposes of paragraph 183(1)(a) of the Act as the being the annual percentage increase for each year as set out in the current ADF Workplace Remuneration Arrangement for the across the board percentage increase in ADF salary.

Subsection 21(2) sets out the manner of working out the annual increase in the amount of the \$100 allowance.

Part 6 Other matters

Section 22 provides for a table of the persons who, in addition to those specified in section 409 of the Act, may be given information obtained by the Military Rehabilitation and Compensation Commission (or a member of the Department of Veterans' Affairs assisting the Commission) in the performance of the Commission's or member's duties under the Act (relevant information)

The table in section 22 also provides for the purposes for which that information may be given.

Item 1 of the table prescribes the persons who may be given the relevant information as being:

- an employee, or contractor of the Defence Department; or
- the Chief of the Defence Force; or
- an employee, or contractor of the Human Services Department.

The purposes prescribed in item 1 as purposes for which the relevant information may be given to the prescribed persons are:

- monitoring or reporting of the Defence Force's occupational health and safety performance; or
- monitoring the cost to the Commonwealth of a service injury or a service disease.

Item 2 of the table prescribes the persons who may also be given the relevant information as being an employee, or contractor of the Human Services Department.

The purposes prescribed in item 2 as purposes for which the relevant information may be given to the prescribed persons are:

- administering the social security law;
- giving information relevant to the concessions provided to persons in receipt of compensation under the Act by State, Territory or local government authorities or other organisations.

Part 7 Application and transitional matters

Section 23 refers to actions taken or things that have been done under the provisions of the *Military Rehabilitation and Compensation Regulations 2004* as they were in force prior to their repeal by Schedule 1 of the *Military Rehabilitation and Compensation Regulations 2020*.

Subsection 23(1) provides that such actions (included but not limited to a calculation, determination, decision or other instrument being given or made) will have effect or be regarded as having been done under the provisions of the *Military Rehabilitation and Compensation Regulations 2020*.

Subsection 23(3) refers to actions taken or things that have been done under the provisions of the VEA Regulations as applied by the *Military Rehabilitation and Compensation Regulations 2004* as they were in force prior to their repeal by Schedule 1 of the *Military Rehabilitation and Compensation Regulations 2020*.

Such actions will have effect or be regarded as having been done under the provisions of the VEA Regulations as applied by the *Military Rehabilitation and Compensation Regulations 2020*.

Schedule 1 – Repeals

Item 1 of Schedule 1 repeals the *Military Rehabilitation and Compensation Regulations 2004*.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

MILITARY REHABILITATION AND COMPENSATION REGULATIONS 2020

The *Military Rehabilitation and Compensation Regulations 2020* are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Parts

Part 1 – Preliminary

The provisions in Part 1 are mainly practical provisions which refer to the title of the instrument, the commencement date, the legislative authority under which it is made and the inclusion of a schedule.

The terms that are used in the instrument are also defined in Part 1.

The provisions in Part 1 do not engage any of the applicable rights or freedoms.

Part 2 – Matters relating to cadets

Part 3 – Matters relating to declared members

The provisions in Part 2 concern the methods used to calculate the earnings of cadets and former cadets for the purpose of determining the compensation payable to those who are injured as a consequence of a service injury or disease.

The provisions in Part 3 concern the methods used to calculate the earnings of declared members for the purpose of determining the compensation payable to those who are injured as a consequence of a service injury or disease.

Human rights implications

Right to social security

The provisions included in Parts 2 and 3 engage the right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Article 9 of the ICESCR states “States Parties ... recognize the right of everyone to social security, including social insurance”. General Comment 19 by the Committee on Economic, Social and Cultural Rights sets out the essential elements of the right to social security, including “States parties should ... ensure the protection of workers who are injured in the course of employment or other productive work”.

Conclusion

The provisions included in Parts 2 and 3 are consistent with the right to social security as they promote access to social security by providing for methods to determine the compensation payable by enabling the calculation of the loss of income suffered by a cadet or a declared member as a consequence of a service injury or disease.

Part 4 – Review by Board of original determinations

The provisions in Part 4 concern the application of *Veterans’ Entitlements Regulations 1986* (VEA Regulations) to reviews by the Veterans’ Review Board of original determinations made under the Act.

Human rights implications

Right to a fair hearing

Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR) provides that: “All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law”.

The provisions in Part 4 modify the VEA Regulations for the purposes of the Act. The provisions assist the Veterans’ Review Board to operate efficiently and effectively as a merits review tribunal and are consistent with the aims stated in Article 14(1) of the ICCPR.

Conclusion

None of the provisions have an adverse impact on the access to justice by applicants for a review of a decision.

Part 5 – Indexation of pre-CFTS pay and civilian daily earnings

The provisions in Part 5 contain the methods used to index certain components of the income of members of the Defence Force for the purpose of determining the amount of compensation payable under the Act for a service injury or disease.

Human rights implications

Right to social security

The provisions included in Part 5 engage the right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Article 9 of the ICESCR states “States Parties ... recognize the right of everyone to social security, including social insurance”. General Comment 19 by the Committee on Economic, Social and Cultural Rights sets out the essential elements of the right to social security, including “States parties should ... ensure the protection of workers who are injured in the course of employment or other productive work”.

Conclusion

The provisions included in Part 5 are consistent with the right to social security as they promote access to social security by providing for methods to determine the compensation payable by enabling the calculation of the loss of income suffered by a member as a consequence of a service injury or disease.

Part 6 – Other matters

Part 6 includes a table of the persons who, in addition to those specified in section 409 of the Act, may be given information obtained by the Military Rehabilitation and Compensation Commission (or a member of the Department of Veterans’ Affairs assisting the Commission) in the performance of the Commission’s or member’s duties under the Act (relevant information).

The purposes for providing the relevant information include:

- monitoring or reporting of the Defence Force’s occupational health and safety performance; or
- monitoring the cost to the Commonwealth of a service injury or a service disease; or
- administering the social security law; or
- giving information relevant to the concessions provided to persons in receipt of compensation under the Act by State, Territory or local government authorities or other organisations.

Right to privacy and reputation

The right to protection from unlawful interference with privacy and reputation is engaged by the provisions of the Regulation. The right to privacy and reputation is expressed as a prohibition on unlawful or arbitrary interferences with a person's privacy, family, home and correspondence. It provides that persons have the right to the protection of the law against such interference.

The right to privacy and reputation is contained in article 17 of the *International Covenant on Civil and Political Rights* (ICCPR).

According to the Commonwealth Attorney-General's Department: "Laws that affect privacy should be precise, and not give decision-makers too much discretion in authorising interferences with privacy. They should provide proper safeguards against arbitrary interference. To avoid being considered arbitrary, any interference with privacy must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the particular circumstances".

Part 6 enables the Military Rehabilitation and Compensation Commission (or staffer assisting) to give personal information about a client to other Government agencies for the benefit of the client and for administrative purposes (e.g. protect the public revenue by preventing the making of double payments).

The information will be used by the relevant Government agencies for the purpose of providing benefits or for administering their legislation. The agencies operate under the privacy framework imposed by the *Privacy Act 1988*. Any information, therefore, that is disclosed under the Regulations will be subject to appropriate safeguards.

Conclusion

Part 6 is compatible with the right to protection from unlawful interference with privacy and reputation in that it represents a lawful interference with privacy; it does not contain too much discretion; and it is reasonable in that the interference can be justified from the viewpoint of the citizen (disclosure necessary to obtain benefits) and the State (disclosure necessary to verify claims for benefits and administer legislation).

Part 7 – Application and transitional matters

The provisions in Part 7 ensure that any things that are done or actions that are taken under the provisions of the *Military Rehabilitation and Compensation Regulations 2004* as they were in force prior to their repeal by Schedule 1 of the *Military Rehabilitation and Compensation Regulations 2020* will have effect or be regarded as having been done under the provisions of the *Military Rehabilitation and Compensation Regulations 2020*.

The provisions in Part 7 do not engage any of the applicable rights or freedoms.

Darren Chester

Minister for Veterans' Affairs