Appendix F  International schemes

Introduction

The Committee, in taking stock of the operation of Military Rehabilitation and Compensation Act 2004 (MRCA), examined models of military compensation applying in other allied nations. The Committee has thus been able to place the MRCA within an international context and assess the currency of the policy principles on which it is based. The international models examined were New Zealand, Canada, United Kingdom and the United States.

Background

In each of these countries there have been recent reviews of military compensation schemes. In Canada, reforms have already been legislated. In the United Kingdom, New Zealand and the United States, work has been undertaken and recommendations are being considered by government.

In analysing these schemes, the Committee acknowledges the useful commentary provided by WestWoodSpice in its August 2008 report titled Disability in the 21st century: constructive approaches to disability. Commissioned by the Department of Veterans’ Affairs (DVA), the report deals specifically with military compensation in the countries listed above and also provides useful context with respect to changing workers’ compensation policies in the Australian context.

The Committee is conscious that in making comparisons, the context in which the models operate needs to be appreciated. Traditional approaches to military compensation have varied both in their structure and in the way they relate to broader social health and welfare systems. Each model reflects the social, historical, cultural and legal contexts in which it was developed. This makes it difficult to assess whether one system is more beneficial than another.

The following is a brief summary of the salient features of each system.

---

1 WestWood Spice, Disability in the 21st century: constructive approaches to disability, Department of Veterans’ Affairs, Canberra, 2008.
2 All efforts were made by at the time of drafting the report to ensure that the information quoted in this chapter was correct. The information herein should not be relied upon to make decisions about claims under those schemes.
The United Kingdom introduced a new compensation system — the Armed Forces Compensation Scheme (AFCS) — in 2005. To a large extent, the AFCS avoids the trend towards rehabilitation found in more recent workers’ compensation schemes and remains essentially a compensation-orientated system. It is a comparatively simpler regime than MRCA, particularly with respect to process. AFCS is complemented by a dedicated military superannuation scheme as well as life insurance. Some of the key features of AFCS include:

- permanent impairment paid as a lump sum, with the maximum serious injury amount at tariff level 1 recently doubled to £570,000;
- a guaranteed income payment (GIP) based on age, salary and level of injury paid to compensate for an inability or reduced ability to work;
- in all but exceptional cases, payments are final and already take into account the normal expected deterioration of a condition;
- a taxable survivor’s guaranteed income payment (SGIP — essentially a pension scheme) awarded for the death of a partner or spouse plus an additional lump sum bereavement grant of up to £25,000 for the dependants of regular members, and up to £37,000 for dependants of Reservists;
- all claims must be made within seven years of injury, with some exceptions for late-onset conditions (e.g. malignancies and mental health);
- reviews based on original evidence and decision only (no new evidence);
- common law suits not capped;
- onus of proof with claimant;
- balance of probabilities only standard of proof regardless of service; and
- travel to work claims generally not accepted.

AFCS is administered by the Service Personnel and Veterans Agency, an executive agency within the Ministry of Defence. The agency was created in 2007 to provide a fully integrated set of ‘through life’ personnel services to the serving and veteran community. A single contact within the Agency grants access to advice on pay, pensions, compensation payments, records of service and medal entitlement, the intention being to remove some of the communication and transition issues inevitably found in systems where information is held across multiple departments.

Nevertheless, the scheme has been controversial. In several high-profile media cases, it was heavily criticised for not providing adequate compensation to soldiers severely injured on deployment. Prominent veterans’ groups also criticised the scheme, asserting that it was contrary to the spirit of the Military Covenant — the special bond of mutual obligation that exists between the state and its armed forces.
In response, the UK Government doubled the amount of compensation payable to severely injured personnel and brought forward a review of AFCS. The Review of the Armed Forces Compensation Scheme found that the scheme was fundamentally sound, but recommended a number of significant changes, all of which have been accepted by government. Recommendations to increase the time limit within which claims must be lodged from five years to seven years, and to increase the amount paid for bereavement and hearing loss, have already been implemented. All other recommendations are to be introduced in February 2011. These include:

- lump sum permanent impairment payments to be increased by up to 68% for all tariff levels except level 1, which was recently doubled independently of the Review;
- increased awards for mental health conditions;
- a new ‘interim payment’ for the more severely disabled, paid before a final decision is reached;
- changes to how multiple injuries are considered so that some payment is made for all conditions sustained in an incident;
- GIP to take account of future promotions that would reasonably have been expected and will calculate earnings to age 65, instead of 55;
- bereavement grant increased from £20,000 to £25,000;
- the establishment of an independent expert medical group to advise on medical aspects;
- increased time limits for appeals and reconsiderations;
- burden of proof — onus in favour of service person if the Ministry of Defence loses records; and
- a list of diseases ‘likely to be due to Service’ to be created to provide better clarity and easier decision making.

The AFCS review also examined whether personnel injured on operations should receive greater compensation than those injured on peacetime duty. This is a unique aspect of the MRCA and is examined in detail in Chapters 8 and 9. The AFCS review found that support was strongest for equal compensation regardless of where the injury took place and recommended that no changes be made to current arrangements.

**New Zealand**

All peacetime military service in New Zealand is covered by the Accident Compensation Scheme, which is a public, no-fault liability scheme. It provides a range of benefits including income support, lump sum compensation for non-economic loss, treatment and rehabilitation, death benefits, and some ancillary services. It is a needs-based system based on discretionary individual assessment, without a prescriptive schedule of entitlements.

Military service in a recognised war or emergency is covered by the War Pension Act 1954. Entitlements are largely pension based with little provision for lump sum amounts outside of ancillary benefits, such as funeral payments. Eligible veterans are entitled to the War Disablement Pension for any current disability that is attributable to, or aggravated by, service. The War Disablement Pension is a compensatory payment designed to counterbalance the impact of a disability on a veteran’s quality of life and not compensation for the injury itself. It is not means tested or taxed and is awarded on
the basis of a reverse onus of proof on the War Pensions Claim Panel, which must disprove a claim for it to be denied.

Veterans who cannot work due to mental or physical disability may also be entitled to a Veterans’ Pension until superannuation age.

The New Zealand Law Commission has recently reviewed the veterans’ legislation due to a perception that the current range of services drawn from the community is not adequately meeting the needs of younger veterans. The final report of the Law Commission, *A new support scheme for veterans*, contains some 170 recommendations addressing issues including eligibility, evidential standards, health care, compensation, income support and rehabilitation.

The report proposes two schemes:

**Scheme 1:** is similar to the current legislation and covers veterans and service personnel who have disabilities relating to service before 1 April 1974. It would provide impairment compensation (via disablement pension), income support, health care independence assistance, rehabilitation and assistance to families through spouse pensions, funeral grants and education bursaries. It is similar to the *Veterans’ Entitlements Act 1986* (VEA) of Australia.

**Scheme 2:** applies to veterans on or after 1 April 1974, and is designed on modern principles of disability management to suit the needs of younger veterans. Entitlements and benefits include rehabilitation, income replacement, impairment compensation, health care independence assistance, transition assistance, and family assistance (including surviving spouse lump sum, surviving spouse weekly income compensation, children’s lump sum, children’s weekly income compensation, funeral grant). It is similar in concept to the MRCA with a focus on rehabilitation.

Interestingly, the report proposes the adoption and adaptation of the Australian Statements of Principles produced by the Repatriation Medical Authority. It also proposes use of the American Medical Association’s *Guides to the evaluation of permanent impairment* to measure impairment.

The New Zealand Government is considering the report.

**United States**

The United States model draws no distinction between non-economic and economic loss, and all benefits are paid as pensions. The only lump sum is the death benefit (US$100,000) paid to dependants immediately on death, according to statutory priority (including non-dependants). United States pensions all appear to be related to work incapacity, and as such also provide for partners and children in every case.

The key features of the United States system are:

- compulsory enrolment in an extensive life insurance plan (with an option to opt out), structured for overseas deployments;
- a death benefit for non-dependants of $100,000, paid according to a will or the order of precedence set out by statute;
- dependency and indemnity compensation (DIC) in the form of a monthly benefit of $1,154 paid to a spouse in the event of a member’s death, with further amounts payable for each dependent child;
• a monthly disability pension of up to $2,673 for service-related injuries, with additional payments for dependants; and
• a completely self-contained Veterans’ Affairs (VA) system, including hospitals, but with broader health care contracted out.

The United States has not substantially changed its military compensation system in more than 50 years. However, there has been considerable pressure to do so. Two recent commissions have recommended complete reform of the United States system, which would bring it more into line with the Australian and Canadian models. Recommendations include:

• benefits should be focused on rehabilitation and reintegration to civilian life;
• benefits should be uniformly based on severity of injury without regard to the circumstances of the disability;
• benefits should be calculated for the impact on earnings capacity, ability to engage in usual life activities, and quality of life; and
• a case-management system for the disabled should be established.3

The United States system is considerably different from the MRCA. Being almost exclusively reliant on pensions, it has more in common with traditional military compensation schemes. Life insurance plays a key role. The United States has a long history of providing life insurance to serving members with a number of plans available. It plays a far greater role in providing benefits than in any other system examined by the Review.

Canada

Canada introduced a new military compensation scheme on 1 April 2006. Known as the ‘New Veterans Charter’, The Canadian Forces Members and Veterans Re-establishment and Compensation Act contains a number of significant changes designed to ‘encourage wellness and help veterans achieve independence’. The rationale cited for the changes is:

a shift to a greater use of lump sum payments combined with customised rehabilitation services would serve, over time, to regain control of an alarming future liability scenario (and) … to provide younger clients with a support system that is based not on getting more pension by becoming more disabled, but on enabling and rewarding a return to the best life possible. 4

The new scheme moves away from traditional compensation models that pay lifetime pensions to a greater focus on lump sum payments. These payments are complemented by a ‘wellness package’ of initiatives to help veterans re-establish themselves in civilian life. The scheme places a greater emphasis on rehabilitation, with ongoing financial support unavailable until a veteran has a rehabilitation plan in place.

Some key features of the Canadian model include:

• rehabilitation as a ‘gateway’ to receiving benefits;
• a disability allowance to compensate for non-economic loss, paid as a tax-free, lump sum amount (a maximum of $276,080);

3 WestWoodSpice, op cit., p.42.
4 WestWoodSpice, ibid., p.38.
• a permanent impairment allowance to compensate for lost job opportunities, paid to veterans with a physical and/or mental impairment that is severe and permanent;

• an earnings loss benefit that ensures income does not fall below 75 per cent of gross pre-release military salary while taking part in a rehabilitation or vocational program;

• a broader package of benefits focusing on ‘wellness’, including case management, rehabilitation, health care, job placement assistance, and family support;

• a Canadian Forces income support benefit that pays a tax-free amount to helps veterans who are able to work but have not been able to find a job;

• free advice, assistance and advocacy for appeals available from departmental staff (the Bureau of Pension Advocates);

• insurance provided for income protection (free of charge);

• advocacy assistance provided at appeal;

• central assessment of claims;

• coverage of civilians who serve ‘in close support’; and

• no distinction for the type of service rendered.

At the time of drafting the report, the Government of Canada had introduced legislation on 17 November 2010 to increase monthly financial support for injured veterans no longer able to work\textsuperscript{5} by:

• expanding eligibility for monthly allowances for seriously injured veterans; and

• introducing an additional $1,000 monthly supplement for the most seriously injured or ill veterans.

The legislation will also provide increased flexibility by allowing Canadian Forces members and veterans to receive existing lump sum disability awards as either an annual payment over any number of years, or as a combination of lump sum and annual instalments.

Of the military compensation systems examined by the Review, the Canadian model most closely mirrors that of the MRCA. Both schemes place a strong focus on rehabilitation with the aim of re-engaging discharging ADF members with the community.