Chapter summary

Section 8 of the Military Rehabilitation and Compensation Act 2004 (MRCA) provides specified civilians, who support the Australian Defence Force (ADF) but do not have access to other workers’ compensation schemes, access to the benefits of military compensation.

The Safety, Rehabilitation and Compensation Act 1988 (SRCA) provides cover to Australian Government employees in a variety of occupations and locations around the world. Extending the MRCA to a Australian Government employee already covered by the SRCA would mean that the claimant could choose which Act is the most beneficial, a contradiction given that dual eligibility ceased for ADF members with the introduction of the MRCA. This also applies to civilians covered under state and territory workers’ compensation arrangements.

The Committee believes that military compensation should generally be restricted to ADF members. Extending coverage to employees covered by other schemes would conflict with one of the major reasons for enacting the MRCA, to remove dual eligibility.

However, the position of civilians who are not employees and who do not have compensation coverage can be clearly distinguished from those employees covered by the SRCA and other compensation schemes, and it is necessary to continue to provide them with cover under section 8 of the MRCA.

The Committee recommends that civilians in this category should only be provided with access to the MRCA in circumstances where they are:

- integrated with the ADF in an area of operations;
- employed and subject to military command and control; and
- subject to the relevant provisions of the Defence Force Discipline Act 1982.

The Committee also recommends that members undergoing career transition assistance and personnel holding honorary ranks should be defined under the Act as ‘members’ to ensure their continued coverage under the MRCA.

Introduction

30.1 This chapter examines the intent of section 8 of the Military Rehabilitation and Compensation Act 2004 (MRCA) — ‘Ministerial determinations that other people are members’. The purpose of section 8 is to provide access to the benefits of military compensation for specified civilians who support the Australian Defence Force (ADF) but do not have access to other worker’s compensation schemes. Subsection 8(1) says:

The Defence Minister may make a written determination that a person, or a class of persons, who engage or have engaged, in activities, or who perform, or have performed, acts:

(a) at the request or direction of the Defence Force; or
(b) for the benefit of the Defence Force; or
Background

30.2 Extending military compensation to civilians has its origins in 1943 when the War Cabinet approved the provision of benefits to certain categories of civilians for service during the Second World War. For many years, act of grace payments provided benefits consistent with repatriation legislation. In 1982, the *Repatriation Act 1920* was amended to include a specific provision following a recommendation by Justice Toose.1

30.3 Section 8 provides a mechanism for certain categories of personnel, such as official entertainers, war artists, photographers and members of philanthropic organisations, to be declared ‘members’ for the purposes of the legislation. This mechanism has also been used to provide coverage for former ADF members undergoing career transition assistance and those holding honorary rank performing official duties.

30.4 An equivalent provision was included in the *Veterans’ Entitlements Act 1986* (VEA) when it replaced the *Repatriation Act 1920* in 1986, now section 5R. The *Military Compensation Act 1994* amended the SRCA to include a provision, section 6A; section 8 followed when the MRCA was enacted 10 years later. Section 6A of the SRCA specified particular categories of people as being covered. Section 8 removed specific reference to these categories and is, therefore, broader in its application, which allows coverage for honorary ranks and transitioning ADF members.

Submissions

30.5 At the public consultation conducted in Melbourne on 9 April 2010, the Committee heard from Dr Dorothy Angell, who put forward a view that Southeast Asia Treaty Organization (SEATO) medical personnel should have access to the VEA. Dr Angell pointed out that the issues relating to compensation for civilians deployed overseas will also arise in relation to the proposal by the Australian Government to raise a civilian corps. Dr Angell’s verbal submission supports a written submission to the Review from the Australian Civilian Medical/Surgical Teams Vietnam 1964–1972.

30.6 The Committee noted that the extension of VEA coverage to non-military personnel has been considered in previous reviews. It is unable to make specific recommendations on compensation arrangements for Australian civilian medical and surgical teams in Vietnam as the terms of reference for the Review do not include matters relating to access to the VEA. However, these submissions raise the issue of future civilian deployments in operational areas. It should be noted from the outset that the views of the Committee as presented in this chapter are consistent with previous approaches applied under the VEA in relation to groups such as the SEATO medical personnel.

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1 Toose Enquiry, p. 121.
Persons covered by a civilian workers’ compensation scheme

30.7 Since its inception in the late 1980s, the SRCA has been considered to be one of the leading workers’ compensation schemes in Australia. It has been seen by successive governments as providing sufficient cover to Australian Government employees in a variety of occupations and locations around the world. This includes working in countries that may involve higher exposure to risk than would normally be the case in Australia or other developed nations. Contractors to Defence are covered by state or territory compensation schemes depending on where their parent organisation is registered.

30.8 For some years there was a much greater gap between benefits that flowed from the Repatriation Act 1920 and the Commonwealth Employees’ Compensation Act 1930 (which operated until 1971) than exists between the MRCA and the SRCA. As stressed in Chapter 4, the MRCA is modelled largely on the SRCA with some enhancements and VEA features included, the purpose of which is to take specific account of the unique nature of military service.

30.9 Overall liability acceptance rates of SRCA and MRCA are comparable. However, in some instances, a claimant may have liability accepted under the SRCA that, because of the operation of a Statement of Principles (SoP), or the absence of a SoP or a factor in a SoP, would not be accepted under the MRCA.

30.10 Differences can arise because the assessment of permanent impairment under the MRCA is based on whole person impairment, whereas the SRCA assesses impairment on an incident or injury basis. In cases involving multiple muscular skeletal injuries, there is the potential for the SRCA to be more beneficial than the MRCA.

30.11 On the other hand, the MRCA’s beneficial standard of proof (the reasonable hypothesis) for operational service, when combined with the SoPs, can be an advantage over the SRCA balance of probability standard, such as in relation to late-onset disease.

30.12 Extending the MRCA to an Australian Government employee already covered by the SRCA creates an anomaly. The effect of this would be that the claimant could choose which Act is the most beneficial — a contradiction, given that dual eligibility ceased for ADF members with the introduction of the MRCA.

30.13 Civilian employees and contractors integrated with ADF personnel in an area of operations should not be viewed as an exception to this. It is an everyday occurrence for ADF members, Australian Government public servants and contractors to work in close proximity to each other either in Australia or in overseas missions and posts while being covered by different compensation Acts.

30.14 For example, it is not unusual for military and civilian personnel to travel to and from work together by motor vehicle, or to travel together during their lunch or recess break. Defence Census data reveal there are approximately 1,100 partners of ADF personnel employed under the Public Service Act 1999 within Defence. The MRCA provides cover for journeys and recess breaks, but the SRCA does not. Many Defence civilian employees and contractors work under the direct supervision of their ADF managers with no issue being made of the different compensation entitlements between the three workforces.
Declared members and persons not covered by any compensation scheme

30.15 Many of the people who come under determinations made under the provisions of section 8 of the MRCA, such as entertainers, war artists and members of philanthropic societies, may not be classified as employees at law. They are unlikely to have the benefit of workers’ compensation coverage before being declared a member for the purposes of the legislation. Given recent issues with restrictions on insurance coverage in areas of operations for ADF and Defence civilians, section 8 coverage may be the only protection available.

30.16 The position of civilians who are not employees and who do not have compensation coverage can be clearly distinguished from those employees covered by the SRCA and other compensation schemes, and it is necessary to continue to provide them with cover under section 8 of the MRCA.

30.17 It is also necessary to consider those ADF members undergoing career transition assistance and personnel holding honorary ADF rank carrying out duties on behalf of the ADF. Currently, these groups are subject to section 8 determinations as a consequence of omission from the Act. To remove ambiguity, persons belonging to these groups should be defined in the Act as ‘a member’.

Conclusions

30.18 The Committee believes that military compensation should generally be restricted to ADF members. SRCA provides beneficial workers’ compensation coverage for many Australian Government employees around the world. The Committee does not consider that section 8 of the MRCA should be invoked merely to improve a civilian’s compensation entitlement. Declaring civilians covered by the SRCA to be members for the purposes of the MRCA effectively gives them access to two compensation Acts. This also applies to civilians covered under state and territory workers’ compensation arrangements. This would conflict with one of the major reasons for enacting the MRCA: to remove dual eligibility.

30.19 If a person in support of the ADF in an area of operations is not an employee and has no access to workers’ compensation, then he or she should be provided with compensation cover under section 8 of the MRCA.

30.20 The Committee considers that civilians in this category should only be provided with access to the MRCA in circumstances where they are:

- integrated with the ADF in an area of operations;
- employed and subject to military command and control; and
- subject to the relevant provisions of the Defence Force Discipline Act 1982.

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2 Clarke op. cit. p. 466.
Recommendations

The Committee recommends that:

30.1 members undergoing career transition assistance and personnel holding honorary ranks should be defined under the Military Rehabilitation and Compensation Act 2004 (MRCA) as ‘members’;

30.2 civilians required to support the Australian Defence Force (ADF), who are not Commonwealth, state or territory government employees and do not have statutory workers’ compensation cover, be provided with access to the MRCA where they are:

- integrated with the ADF in an area of operations;
- employed and subject to military command and control; and
- subject to the relevant provisions of the Defence Force Discipline Act 1982.