



Police Federation of Australia

The National Voice of Policing

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24 June 2009

Military Compensation Review
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Dear Steering Committee members

POLICE FEDERATION OF AUSTRALIA: SUBMISSION TO THE REVIEW OF MILITARY COMPENSATION ARRANGEMENTS

The Police Federation of Australia (PFA) represents Australia's 52,000 police officers serving in the Australian Federal Police and the police forces of each State and Territory. This includes members of the AFP, and officers seconded from State and Territory police forces to the AFP, who serve overseas, including in high-risk overseas operations.

We note that the Terms of Reference of the Review of Military Compensation Arrangements include the following (referred to here as Term of Reference 5):

5. *'Consider the suitability of access to military compensation schemes for members of the Australian Federal Police who have been deployed overseas*
 - Consider whether the current arrangement to develop an 'enhanced' scheme under the SRCA remains appropriate.
 - Consider whether it is appropriate for members of the Australian Federal Police who have been deployed on high-risk overseas operations to have access to the MRCA.
 - Consider whether it is appropriate to develop a stand-alone compensation scheme for members of the Australian Federal Police who have been deployed on high-risk overseas operations.'

The PFA has for nine years been pressing for effective and adequate statutory rehabilitation and compensation arrangements for police who serve overseas.

Most recently, prior to the 2007 Federal election, the PFA sought a commitment from each political party to introduce such arrangements through stand-alone legislation for the AFP, administered by the Department of Veterans' Affairs, and providing benefits equivalent to the *Military Rehabilitation and Compensation Act 2004*. Attachment 1, **Briefing Paper** sets out the background and our proposal in more detail.

In response, the Rudd Government made the following commitment:

Labor understands that the strategic environment is changing, and that consequently personnel from the AFP, namely the International Deployment Group (IDG), will be increasingly required to serve overseas.

In recognition of these changing circumstances Labor will consider options to have AFP officers who serve overseas represented under the current legislative schemes for Military Compensation administered by the Department of Veterans' Affairs.

Labor believes that any moves to have AFP officers represented under the Military Compensation Scheme must not dilute the fundamental principle of 'qualifying service', and that any scheme should be based on graded benefits dependent on the level of danger to which officers are exposed.

Therefore any review would focus on the roles played by AFP officers overseas and their proximity to dangerous threats and their appropriate representation under the military compensation legislative schemes.

As a general rule Labor would seek to implement any new compensation system for future deployments and would not seek to retrospectively apply that system unless there are exceptional circumstances.

In addressing your Terms of Reference, the PFA considers that the question of whether the AFP should be covered under the military scheme (MRCA) is a threshold question which should be settled at the beginning of your Review. We say this because we consider it would be inappropriate for the PFA to find the Review recommending in March 2010, or later, that the AFP should not be covered by the MRCA and to have lost nearly twelve months during which alternative measures through a stand-alone scheme could have been developed for the AFP.

In this connection we note that the former Minister's announcement of your Review made it clear that your 'timetable is subject to the need for a flexible approach which allows **priority issues to be addressed in a timely way** as required' (our emphasis).

Therefore, we propose that your Review addresses this question at the outset and fast-tracks the matter.

To put our position on Term of Reference 5 succinctly, we set out below our view of the three options.

1. The PFA is totally opposed to AFP officers being covered by the SRCA scheme (ComCare).

As a result of the *Veterans Entitlement Act* (VEA) being closed to Australian Federal Police (AFP) members from 2004, the only Commonwealth legislation available to AFP and state and territory police seconded to the AFP serving overseas in the event of work-related injuries or illness has been the *Safety Rehabilitation & Compensation Act 1988* (SRCA or ComCare). This is inadequate legislation for the overseas policing operational environment.

The SRCA scheme was never developed to take into account the types of service and operations undertaken by police in overseas service environments.

Because the previous government agreed to continue to provide the same level of compensation for injuries and fatalities as the VEA using ex-gratia arrangements on a case by case basis until new legislation could be introduced, AFP and seconded Police Officers suffering injury or illness are currently being dealt with in an ad hoc way. This is creating unacceptable anomalies.

We understand that senior officials of ComCare are also of the view that its scheme is not particularly suitable for policing. It is essentially a scheme for peaceful, domestic circumstances. It certainly does not provide anywhere near benefits comparable with the military compensation arrangements nor does it have the legislative requirement for claims to be interpreted in a beneficial manner.

As a consequence, the PFA considers that the current arrangement to develop an 'enhanced' scheme under the SRCA is inappropriate (see Term of Reference 5).

We are sure you will agree that ADF members would not accept this as providing effectively for their rehabilitation and compensation needs - neither will the AFP members.

2. The PFA does not believe that the MRCA meets the needs of AFP officers serving overseas.

The Military scheme has been specifically designed for the needs and circumstances of military service which is entirely appropriate. The military need and warrant an effective rehabilitation and compensation scheme tailored to their operational circumstances.

We are also of the view that the Australian Defence Force and military personnel and stakeholders are unlikely to support the military scheme being extended to non-military personnel, namely police officers serving overseas. It would be quite natural and understandable for the military to want to retain a scheme covering their needs exclusively.

We also believe that extending the MRCA to cover AFP personnel would create 'a pimple on a pumpkin' situation. Decisions made in relation to the scheme covering thousands of military personnel would likely have little or no regard for the needs of several hundred AFP personnel serving overseas. The circumstances of AFP deployed are likely to be overlooked.

3. The PFA's strong preference is for a stand-alone rehabilitation and compensation scheme covering Australian Federal Police personnel serving overseas, administered by the DVA and providing benefits comparable to those provided through the MRCA.

It is deplorable that from 2004, and still in 2009, we have AFP and seconded State and Territory police officers serving overseas in hostile and dangerous environments, providing law and order services in sometimes 'failing States', without the very best in effective workers' safety, rehabilitation and compensation arrangements. Many of the deployments these personnel are engaged in are high-risk operations comparable with those in which ADF personnel are engaged. In some cases, the ADF and AFP personnel are operating side-by-side in the same hostile environment and experiencing similar work-related injuries and illnesses.

It should be noted that the Rudd Government has committed to a significant expansion of the AFP International Deployment Group (IDG) as part of its international obligations. The IDG numbers some 700 officers, and at any time some 350 officers are deployed overseas, including in places like Iraq, Afghanistan, Pakistan, Sudan, Cyprus, Timor Leste and the Solomon Islands.

In addition to the International Deployment Group commitments, the AFP is increasingly deployed overseas at short notice for transnational crime investigations, counter terrorism intelligence and investigations, forensics, surveillance, protective security and for other Commonwealth international commitments. AFP operatives are now subject to multiple international and domestic deployments as part of their duties.

The situation police serving overseas face are comparable to those faced by the ADF. Four have been killed, some others wounded, and many others are suffering from the effects of their duties, performed while generally unarmed, under circumstances of extreme danger, in

locations of squalor and non-existent hygiene, and operating without the benefit of the ancillary services that accompany military units.

Police officers have been subjected to civil war, air attack, minefields, snipers, and crossfire; been taken hostage, threatened with death, taken 'prisoner of war', stoned, spat upon, assaulted and insulted. They have witnessed and investigated horrendous crimes against humanity.

A stand-alone scheme covering AFP personnel would be far more readily adapted to contemporary policing issues and circumstances which are not always the same as defence-related issues. We propose that the scheme be:

- modeled on the MRCA;
- the responsibility of the Minister for Home Affairs; and
- administered by DVA, well versed in the processes and issues involved, which would avoid the need to create an entirely separate administration to operate the scheme.

The Steering Committee should note that the Deputy Prime Minister, The Hon Julia Gillard MP, as Minister for Employment and Workplace Relations, and the Australian Federal Police support the proposal for 'a stand-alone compensation and rehabilitation scheme for police appointees in high risk missions overseas' (see Attachment 2: letter dated 4 June 2009 from the AFP).

I can also advise that Mr Bill Crews of the Returned and Services League (RSL) has informed me that the RSL strongly supports the PFA's proposal for a stand-alone scheme for AFP members serving overseas.

We would be pleased to meet with the Steering Committee and the Military Rehabilitation and Compensation Commission at the earliest opportunity to discuss the issues and options you are asked to consider and our proposal. We would be pleased to have our submission published on the DVA website.

Yours sincerely

Mark Burgess
Chief Executive Officer

Cc: The Hon Brendan O'Connor MP, Minister for Home Affairs

BRIEFING PAPER

Workers' compensation and rehabilitation

In 2000, the Senate Foreign Affairs, Defence and Trade references committee, in its inquiry into the East Timor situation of 1999, identified (in Chapter 3 of their Report under the sub-heading of "AUSCIVPOL¹" at paragraph 3.48) the committee's assessment of the duties, difficulties and dangers experienced by AUSCIVPOL and even goes as far as to compare them with, and find they were greater than, those experienced by the ADF.

On 27 February 2006, the then Minister for Justice and Customs, Senator Chris Ellison announced that AFP officers serving overseas would soon benefit from the support of a police-specific compensation and rehabilitation scheme relating to dangerous foreign missions. He said the scheme is intended to recognize 'the increased role of police at the front line in a time of heightened risk and will ensure AFP compensation entitlements remain consistent with those currently provided to Australian Defence Force members in similar mission circumstances'². In October 2006 the Minister advised that the legislation would shortly be available. The legislation has yet to be introduced.

The PFA has expressed concern at the delay in settling this important matter. Given the hazardous missions in which IDG members and a number of AFP Liaison Officers are engaged, it is vital that the police-specific workers' compensation and rehabilitation scheme be enacted at the earliest opportunity.

Historically, Australia's police serving in overseas peacekeeping deployments have been covered by the *Veterans' Entitlements' Act 1986* as "peacekeepers" entitling them to the same disability benefits as defence force personnel. That situation changed with the commencement of the *Military Rehabilitation Compensation Act 2004*, an Act from which police, as peacekeepers, have been excluded. No compensating legislation was provided to fill this vacuum.

It is proposed that this vacuum be filled by providing "compensation and rehabilitation benefits commensurate to those provided to Defence Force personnel". However we have grave concerns about this proposed legislation being simply an "amendment" to the *Safety Rehabilitation Compensation Act 1988*. This Act was never designed to meet such operational circumstances as it is primarily a Workers' Compensation and Rehabilitation regime for domestic purposes.

¹ Australian Civilian Police attached to a UN Mission.

² Senator Ellison Media Release, *Government supports AFP on dangerous missions*, 27 February 2006.

For some time the PFA argued that any Act to cover police should be a stand-alone Act, managed and controlled by the Justice Minister yet administered by the Department of Veterans' Affairs in an identical fashion to the *Military Rehabilitation Compensation Act 2004* being managed and controlled by the Minister for Defence. Deployed defence and police forces carry out similar but not identical functions in an overseas environment which carries with it a significantly increased element of danger.

The problem of appropriate workers' compensation and rehabilitation arrangements for AFP Liaison Officers has also been an ongoing issue. The recent Garuda Airlines plane crash in Jogjakarta which killed two AFP officers has highlighted the inequities between workers' compensation and rehabilitation entitlements for them as opposed to defence force personnel.

We are advised that the proposed police overseas workers' compensation and rehabilitation legislation will only cover IDG personnel.

The development of a stand-alone Act specific to police will allow other AFP personnel, such as AFP Liaison Officers working offshore, who would normally be covered by the *Safety Rehabilitation Compensation Act 1988*, to be covered by this new piece of legislation.

Veterans' Entitlements Act 1986 (VEA) issues

As at 2002, when the PFA made a submission to the *Commission of Review of Veterans' Entitlements* (the Clark Report), there were 1,871 police officers who had volunteered and served in a total of 2,453 tours of duty in 11 separate missions throughout the world entitled to coverage under the VEA. Since that report, police involvement in overseas deployments has increased dramatically as the Brahimi Report forecast and all such officers should be entitled to coverage under the Act.

Four have been killed, some others wounded, and many others are suffering from the effects of their duties, performed while generally unarmed, under circumstances of extreme danger, in locations of squalor and non-existent hygiene, and operating without the benefit of the ancillary services that accompany military units.

Police officers have been subjected to civil war, air attack, minefields, snipers, and crossfire; been taken hostage, threatened with death, taken 'prisoner of war', stoned, spat upon, assaulted and insulted. They have witnessed and investigated horrendous crimes against humanity.

The PFA proposes a review of all previous overseas deployments that are currently covered by the VEA to reassess whether certain deployments should be upgraded to 'warlike' or, in the case of police, termed 'extraordinary overseas policing', to ensure parity with the ADF. This would require some form of retrospective legislative change to the VEA. In support of this call, in 1990 during the first Gulf War, RAAF personnel temporarily attached for duty on Cyprus were classified as being in a warlike situation under the VEA, while

Australian police serving on Cyprus were not afforded like coverage. Other similar situations exist.

Proposed policy

14. The PFA seeks your commitment that:

- *the proposed compensation and rehabilitation benefits for police serving overseas be in a stand-alone piece of legislation and not an amendment to the Safety, Rehabilitation and Compensation Act 1988;*
- *the proposed compensation and rehabilitation Act for police working overseas be administered by the Department of Veterans' Affairs;*
- *the proposed compensation and rehabilitation Act for police working overseas cover all Australian police who work offshore including but not limited to IDG members and AFP Liaison Officers;*
- *the entitlements under the proposed compensation and rehabilitation Act for police be commensurate to those provided to Defence Force personnel under the Military Rehabilitation and Compensation Act and the Veterans' Entitlements Act;*
- *the proposed compensation and rehabilitation Act for police contain, as a minimum, the following provisions:*
 - *a special definition of 'extraordinary overseas policing' be included in the Act. The inclusion of such a definition is to give equality to the provisions of the Military Rehabilitation Compensation Act 2004;*
 - *a special definition of 'overseas policing' be included in the Act where the policing circumstances are of a lesser degree than 'extraordinary' for the same reasons as outlined above;*
 - *that the Commissioner, Australian Federal Police, have responsibility for recommending to the Minister for Justice and Customs (now Minister for Home Affairs), being the Minister responsible for the Act, any overseas deployment that meets the definition of 'extraordinary overseas policing' or 'overseas policing' deployment;*

- *that any member of such a declared deployment be entitled to full coverage and benefits under the Act which should mirror the Military Rehabilitation Compensation Act 2004;*
- *that the onus of proof should be identical to that currently required under the Veterans' Entitlements Act 1986;*
- *that an appeals system be included in the Act that is no less than that provided under the VEA;*
- *a review of all previous overseas deployments will be undertaken with a view to determining which if any deployments should be upgraded to 'warlike' in a policing context;*

ALP Response: *Labor understands that the strategic environment is changing, and that consequently personnel from the AFP, namely the International Deployment Group (IDG), will be increasingly required to serve overseas.*

In recognition of these changing circumstances Labor will consider options to have AFP officers who serve overseas represented under the current legislative schemes for Military Compensation administered by the Department of Veterans' Affairs.

Labor believes that any moves to have AFP officers represented under the Military Compensation Scheme must not dilute the fundamental principle of 'qualifying service', and that any scheme should be based on graded benefits dependent on the level of danger to which officers are exposed.

Therefore any review would focus on the roles played by AFP officers overseas and their proximity to dangerous threats and their appropriate representation under the military compensation legislative schemes.

As a general rule Labor would seek to implement any new compensation system for future deployments and would not seek to retrospectively apply that system unless there are exceptional circumstances.

Mark Burgess
 Chief Executive Officer
 Police Federation of Australia

November 2007

ATTACHMENT 2: AFP letter dated 4 June 2009



HUMAN RESOURCES

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04 June 2009

Mr Mark Burgess
Chief Executive officer
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21 Murray Crescent
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Dear Mr Burgess

A handwritten signature in black ink that reads 'Mark Burgess'.

WORKERS' COMPENSATION AND REHABILITATION FOR POLICE OFFICERS SERVING OVERSEAS

Thank you for your letter of 20 May 2009 to Commissioner Keelty and the opportunity to update the Police Federation of Australia (PFA) on workers' compensation and rehabilitation provisions for Australian Police deployed on high risk overseas missions.

You will be aware that new access to the Veterans Entitlement Act 1986 was closed to both Australian police and Australian Defence Force personnel from 1 July 2004, with the introduction of the Military Rehabilitation and Compensation Act 2004 (MRCA). The MRCA provides for a military specific compensation and rehabilitation scheme that covers domestic and offshore (including war-like) situations. On 1 July 2009, the Government will commence a review of the military compensation arrangements, which is expected to be finalised by 31 March 2010. The Terms of Reference for that review acknowledge the issue of compensation coverage for Australian Federal Police personnel deployed overseas.

I can confirm the Deputy Prime Minister, consistent with the Government's pre-election commitment, has asked the AFP and the Department of Education, Employment and Workplace Relations to bring forward a separate submission for a stand alone compensation and rehabilitation scheme for police appointees in high risk missions overseas. The submission will ideally be available for Government consideration early in the new financial year. Consistent with the previous endeavour, it is anticipated that the compensation, rehabilitation and health care benefits framework will be comparable to the military arrangements that apply for like overseas deployments.

I trust this information is of assistance to you.

Yours sincerely

A handwritten signature in black ink that reads 'Paul Jevtovic'.

Assistant Commissioner Paul Jevtovic APM
National Manager
Human Resources