EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Veterans' Affairs

Papua New Guinea (Members of the Forces Benefits) Act 1957
Papua New Guinea (Members of the Forces Benefits) Regulation 2016

The Papua New Guinea (Members of the Forces Benefits) Act 1957 (the Act) provides for the granting of pensions and other benefits to certain indigenous inhabitants of Papua New Guinea who served in the Australian Defence Force during World War II and their dependants (entitled persons).

Section 9 of the Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

In particular, regulations may be made prescribing matters for or in relation to the making and determination of claims for pensions, compensation or other benefits under the Act; and determination of the persons who shall, for the purposes of any of the provisions of the Act and the regulations, be deemed to be dependants of members of the Forces.

The Papua New Guinea (Members of the Forces Benefits) Regulation 2016 (the Regulation) revokes and remakes the Papua New Guinea (Members of the Forces Benefits) Regulations 1961 (former regulations). The former regulations will be automatically repealed on 1 April 2017 under the “sunsetting” provisions of the Legislation Act 2003. In accordance with the sunsetting scheme, the Department of Veterans’ Affairs has reviewed the regulations and determined they are still required - albeit the number of potential claimants has reduced significantly. Accordingly, the Regulation is being remade in substantially the same form, with necessary updates to the general pension rates set out in Schedule 1 to the Regulation. In addition, the Office of Parliamentary Counsel has taken the opportunity to modernise some of the language of the Regulation.

More specifically, the purpose of the Regulation is to establish a compensation and treatment scheme for indigenous inhabitants of Papua New Guinea who served in the ADF during the Second World War (members). The Regulation provides disability pensions and treatment benefits to members for war-caused conditions and other benefits such as travelling expenses for journeys to treatment locations. Benefits may also be payable to a member's dependants. In particular, on the death of a member from a war-caused condition a pension is payable to the member's dependants. Further, education and training benefits are available for a member's children.

Details of the Regulation are set out in the Attachment.
Consultation

Section 17 of the Legislation Act 2003 requires the rule-maker to be satisfied that any consultation that is considered appropriate and reasonably practicable to undertake, has been undertaken.

No external consultation was undertaken. Consultation was not considered appropriate or reasonably practicable for the re-making of this Regulation on the basis that the number of potential claimants has reduced significantly and that consultation with the affected group is impractical bearing in mind their geographical location. Further, the Regulation is being re-made in essentially the same form and benefits are not being affected.

In these circumstances it is considered that the requirements of section 17 of the Legislation Act 2003 have been met.

Retrospectivity

None.

Documents Incorporated-by-Reference

No.

Regulatory Impact

None.

Human Rights Statement


The attached legislative instrument does engage an applicable right or freedom. It relates to the Right to Social Security contained in Article 9 of the International Covenant on Economic Social and Cultural Rights.

The attached legislative instrument also engages the Right to Health contained in Article 12(1) of the International Covenant on Economic Social and Cultural Rights.

The Right to Social Security is engaged and promoted by the attached instrument in that it enables payments of pensions, compensation and other benefits to certain indigenous inhabitants of Papua New Guinea who served in the Australian Defence Force during World War 2 and their dependants.

The legislative instrument engages the Right to Health by the provision of medical treatment for eligible persons in respect of an incapacity due to war service.
Conclusion

The attached legislative instrument is considered to be compatible with the human rights to social security and health because it enables eligible persons under the Regulation to be provided with certain payments and medical treatment.

Rule-Maker
The Minister for Veterans’ Affairs
Details of the Papua New Guinea (Members of the Forces Benefits) Regulation 2016

Section 1 – Name

This section provides that the name of the Regulation is the Papua New Guinea (Members of the Forces Benefits) Regulation 2016.

Section 2 – Commencement

This section provides for the Regulation to commence on the day after it is registered.

Section 3 – Authority

This section provides that the Papua New Guinea (Members of the Forces Benefits) Regulation 2016 is made under the Papua New Guinea (Members of the Forces Benefits) Act 1957.

Section 4 – Schedules

This section provides for repeal measures in the Schedules to have effect. Schedule 3 to the Regulation repeals the Papua New Guinea (Members of the Forces Benefits) Regulations 1961.

Section 5 - Definitions

This section defines the terms used in the Regulation.

Section 6 - Prescribed authority

This section provides that for the purposes of paragraph 9(4)(a) of the Papua New Guinea (Members of the Forces Benefits) Act 1957 and the Regulation, the Repatriation Commission (the Commission) is the prescribed authority.

Section 7 – Who may claim pension

This section sets out who can make a claim for a pension – essentially members, and where the member has died, their dependants, and persons authorised on their behalf.

Section 8 – Application for pension

This section prescribes the method of applying for a pension.

Section 9 – Determination of claims

This section sets out the duties of the Commission when investigating and determining a claim.

The Commission would also inform the claimant of the outcome of its investigations.
Section 10 – Acceptance of claim subject to conditions

This section requires the Commission to inform the claimant of any conditions that the claim is subject to.

Section 11 – Rates of pension – general

This section sets out the rates of pension that are payable to entitled persons under the Act.

Subsection (1)(a) provides that the pension payable in respect of a deceased member of the Forces is the rate specified in Table A of Schedule 1 (as indexed under the Regulation).

Subsection (1)(b) provides that the rate of pension payable for a member who is totally incapacitated is the rate specified in Table B of Schedule 1 (as indexed under the Regulation).

Subsection (1)(c) provides that the rate of pension payable for a partially incapacitated member, for an incapacity in Schedule 2, is the percentage of the total incapacity rate specified in Schedule 2 and for an incapacity not specified in Schedule 2, the percentage of the total incapacity rate determined by the Minister for Veterans’ Affairs under subsection 11(2).

Subsection (2) enables the Minister for Veterans’ Affairs, by written instrument, to determine a percentage of the total incapacity rate that would be the rate of pension for a partially incapacitated member where the member’s incapacity was not listed in Schedule 2 of the Regulation. In making a determination the Minister would need to take into account the:

- nature of the member’s incapacity
- its duration
- the percentages of the total incapacity rate for the kinds of partial incapacities in Schedule 2 of the Regulation.

Section 12 – Rate if deceased member had more than one wife

This section provides for the rate of a widow’s pension that is payable where the deceased member had more than one wife.

This section applies where a deceased member had more than one wife at the time of his death and the arrangement was recognised by native custom.

Section 13 – Rate if instalment period straddles indexation day

This section addresses the situation where an instalment period for a pension straddles an indexation day. It sets out a formula to be applied in order to arrive at the appropriate rate of pension.
Section 14 – Indexation of pension rates

This section sets out the methods of indexation for the rates of pension mentioned in Tables A and B of Schedule 1 to the Regulation.

Subsection (1) ensures that the rates of pension in Tables A and B of Schedule 1 of the Regulation are indexed on each indexation day for the rate.

Subsection (2) provides that the indexation part of the Regulation has effect on or after an indexation day as if the indexed rate (new rate) for the pension is substituted for the rate of pension in effect on the day before the indexation day (old rate).

Subsection (3) provides the formula for the indexation of the rates of pensions for entitled persons other than the rate in item 2 in Table A i.e. rates other than the rate for a dependant (of a deceased member) under 16 years of age.

Subsection (4) provides the formula for the indexation of the rate of pension in item 2 in Table A i.e. rate for a dependant (of a deceased member) under 16 years of age. The formula is based on a factor called “the orphan pension factor”. This factor is ascertained by reference to the orphan pension rate under paragraph 30(2)(a) of the Veterans’ Entitlements Act 1986.

Subsection (5) provides the mechanism for working out the orphan pension factor.

Subsection (6) sets out the decimal places for the orphan pension factor.

Section 15 – Rounding up of rates ending in 5 cents

This section ensures that an indexed rate of pension is “rounded up” if need be (to the nearest multiple of $0.10).

Section 16 – Date from which pension is payable

This section enables the Commission to backdate the payment of a pension from a date not more than 3 months before the date of lodgement of the claim for pension.

Section 17 – Payment by instalments

This section states that pensions are payable by instalments as is determined by the Commission and may be paid in advance.

Section 18 – Cessation of pension payable to dependants of member

This section sets out the circumstances when a pension payable to a dependant of a member shall cease, and includes where a dependant attains the age of sixteen years.

Section 19 – Cessation of pension payable to widow

This section sets out the circumstances when a pension payable to a widow shall be cease.
Section 20 – Medical Treatment

This section enables the Commission to provide medical treatment for a member in respect of an incapacity due to war service.

Section 21 – Travelling expenses

This section enables the Commission to grant travelling expenses for both the member and any necessary attendant for travel incurred in obtaining any medical treatment under section 20.

Section 22 – Decoration allowance

This section provides for a member who has been awarded a decoration in respect of war service to be entitled to a payment of a gratuity, annuity, allowance or addition to the pension received subject to the rate and in accordance with the same conditions as are prescribed from time to time under the Veterans’ Entitlements Act 1986.

Section 23 – Education and training benefits

This section states that a child of an eligible member is eligible for the grant of educational and training facilities.

Section 24 – Application for benefits etc.

This section sets out the method for applying for assistance and benefits (namely medical treatment, travelling expenses, decoration allowance etc) under Part 3 of the Regulation.

Section 25 – Appointment of trustee etc.

This section enables the Commission to appoint a trustee in certain circumstances, including where the member is infirm or in ill-health.

The section also sets out the procedures where a trustee has been appointed and enables the Commission at any time to revoke an appointment of a trustee by instrument in writing.

Section 26 - Review of decisions

This section provides a person with a right to apply to the Administrative Appeals Tribunal for a review of certain decisions made under the Regulation by the prescribed authority (the Repatriation Commission) or the Minister for Veterans’ Affairs.

Section 27- Signature to forms

This section sets out procedures for signature to forms, including in the situation where an eligible person is unable to sign their name.
Sections 28, 29, 30 and 31

These sections are application, savings and transitional provisions that are designed to ensure a seamless transition for processes commenced under the former Regulations to the proposed Regulation.

Schedule 1 – General pension rates

This Schedule sets out the general rates of pension payable per fortnight:
- in respect of deceased members - Table A.
- in respect of members who are totally incapacitated - Table B.

Schedule 2 – Percentage of pension payable for a partially incapacitated member

This Schedule sets out the percentage of pension payable in respect of a member who is partially incapacitated.

Schedule 3 – Repeals

This Schedule repeals the *Papua New Guinea (Members of the Forces Benefits) Regulations 1961*. 