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**Department of Veterans' Affairs**

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## 9.2 Reducing incapacity payments by superannuation benefits

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Date amended: 11 Feb 2022

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Superannuation benefits may be paid in the form of a pension, a lump-sum benefit, or a combination of both pension and lump-sum. Incapacity payments are reduced dollar for dollar by the Commonwealth-funded portion of the pension (a weekly amount). Lump-sum benefits are converted to a weekly amount before incapacity payments are reduced dollar for dollar by the Commonwealth-funded portion.

If a person has an overpayment as a result of receiving incapacity payments and having an entitlement to superannuation for the same period, the overpaid incapacity amount can be recovered from the Commonwealth Superannuation Corporation (CSC). A new 'transitional' approach to recover these overpayments has been developed by DVA, the Australian Taxation Office (ATO) and CSC. The transitional approach should be applied to cases from July 2019 and is to be applied until a final process is established between the three agencies. The transitional approach is applicable to incapacity payment calculations under both MRCA and DRCA.

Broadly, under the transitional approach DVA will recover the gross incapacity overpayment from the net CSC pension in arrears payment (overpayments within the same financial year can be recovered at the net amount). The CSC will first repay to DVA any 'pre 2005' amount, and apply a new (more beneficial) tax rate to any remaining arrears.

For cases where the CSC arrears is not enough to repay the full incapacity overpayment, DVA is required to recover the remaining overpayment from the person. Once the overpayment is repaid in full or DVA is satisfied repayment of the full amount will occur under a formal repayment arrangement, the ATO will reassess the tax paid in previous financial years and refund any overpaid tax to the person.

### Tax amendments and debt repayment

When a person has received both incapacity payments from DVA and a retrospective superannuation pension (an arrears payment) from the CSC they may incur a debt to

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DVA. Once the debt is repaid the person is able to seek an amendment of their tax and may receive a refund.

Three different scenarios may occur:

1. The debt is repaid in full by CSC (via the arrears payment);
2. The debt is repaid in full by a combination of CSC (via the arrears payment) and the person (via a lump sum payment i.e. from incapacity payment or permanent impairment payment) at the same time; or
3. The debt is partially repaid by CSC and a portion of the debt remains with the person to repay via a repayment arrangement with DVA.

To facilitate a tax amendment DVA is required to furnish the person with either;

1. a letter confirming that the full amount of the debt has been repaid (scenarios 1 and 2 above); or
2. a letter confirming that DVA is satisfied repayment of the full amount will occur under a formal repayment arrangement with the person (scenario 3); and
3. an amended payment summary for each relevant year that the debt has been repaid for (this may be a payment summary, or the information contained in a letter).

There is an element of risk to being satisfied that the debt will be repaid as compared to being certain it has been repaid after the fact of repayment. The intent of (2) is to allow the person to access a refund sooner (even though the debt has not been fully repaid) and potentially use that refund to repay the remaining debt owing to DVA. However, DVA cannot compel a person to pay a debt from a refund or garnish a refund directly.

## Debt recovery

There are a variety of mechanisms available to DVA to recover a debt. These include recovery from DVA payments and recovery directly from the person. DVA cannot garnish wages or tax refunds to recover a debt.

## What is a formal repayment arrangement?

1. Person is still receiving incapacity payments and an amount is withheld each pay.
2. Person is not receiving incapacity payments but has agreed to pay periodic amounts either from other DVA payments or a regular deposit.
3. Person has agreed to repay any outstanding debt from an upcoming PI lumpsum payment (i.e. claim is outstanding). Consultation with the appropriate PI processing team should be undertaken to identify timing and likely outcome of the PI claim.
4. Person has agreed to repay any outstanding debt from a tax refund issued following a tax amendment (facilitated by DVA).

## When is DVA satisfied repayment of the full amount will occur under a formal repayment arrangement with the person?

This will vary case by case and depend on the amount of the debt outstanding i.e. smaller amounts would be more likely to be recovered. It is anticipated that most debts could be recovered in full.

Factors to consider in establishing that the repayment of the full amount will occur under a formal repayment arrangement include;

- The amount of the debt
- Whether the person agreed in writing to a repayment plan
- How much the person is repaying periodically
- If the person is repaying via their incapacity payment, how much longer the person will be eligible to receive incapacity payments for, including;

9.10 Notional Superannuation Contributions ('SC' amount) - DRCA only

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- o whether they will continue in payment after 45 weeks. After 45 weeks has the person agreed to continue repayments?
- o age of the person. At the rate of current repayments, will the debt be repaid before they are age pension age?
- If the person is repaying via a withholding of another DVA payment, i.e. a supplement, at the current rate will the debt be repaid in their lifetime?
- Does the person have any other debts with DVA?

If the person has agreed to repay the debt from an outstanding PI lump sum, delegates would also need to consider how many PI points the person currently has i.e. high/maximum points already will limit additional payments.

## What to do when DVA is not satisfied the full amount will occur under a formal repayment arrangement with the person

Seeking a tax amendment for the full debt amount repaid is simpler for the person rather than seeking a tax amendment for the portion of the debt repaid by CSC and then separately seeking an amendment for the portion of the debt repaid or under repayment by the person. While the preference is for a single amendment, it remains open to the person to seek multiple amendments from the ATO. In this case multiple tax amendment letters may be sent to the person.

The tax amendment letter can be sent for the portion of the debt repaid by the CSC before the remainder of the debt is repaid. In this case that repayment should be apportioned back over financial years, starting at the latest year. The person may use the refund to repay DVA, subsequently generating additional amendments. Otherwise, an amendment should only be sought when the remaining debt is repaid. This will lead to a higher administrative cost across agencies should multiple amendments be undertaken. It may also restrict the persons ability to actually repay the debt if the amendment is not done for the full amount.

### 9.2.1 Use of Superannuation benefit for a family law settlement

A person may have their superannuation benefit split and part of the benefit paid to their former spouse as a result of a family law settlement. Following a family law settlement, the member's superannuation entitlement is reduced in line with the amount paid to their former spouse.

The policy prior to the 15 December 2016 was to reduce a person's incapacity payment by the full (pre-settlement) amount of any Commonwealth-funded superannuation benefit that is derived from the ADF employment that gave rise to the incapacity. This policy has now ceased and should not be applied regardless of the date of the family law settlement.

### From date of family law settlement

A person's incapacity payment can only be reduced by the Commonwealth-funded superannuation amount the person actually receives. Following a family law settlement only the reduced (post-settlement) amount of their Commonwealth-funded superannuation benefit (derived from the ADF employment that gave rise to the incapacity) can be included in calculations. The amount the person receives is as advised by the CSC. Any amount of superannuation paid to the spouse is no longer included in calculations.

Delegates are not expected to seek out and correct calculations where the pre-settlement superannuation amount has been held prior to 15 December 2016, but should correct these calculations as they are identified i.e. during the regular review

## 9.2.2 Indexation of Superannuation pensions

The 'current (CPI-adjusted)' weekly amount of a person's superannuation pension is the amount of pension currently paid to the person, and includes all indexation adjustments to the relevant date. Commonwealth superannuation pensions, including DFRDB, MSBS and ADF Cover pensions, are indexed to protect the value of the pensions against cost/price inflation in the economy. Until 2001 pensions generally were increased each year on the first payday in July, with the increase taking effect from the first day of that pay period (e.g. in late June). The increase was an amount based on upward movement of the Consumer Price Index for the 12 months ending on 31 March of that year.

After July 2001, the Commonwealth-funded portion of all superannuation pensions paid by the CSC (formerly ComSuper) are adjusted twice a year – in January and June/July each year.

The 'original' weekly amount of a person's superannuation pension is the amount of pension initially approved by the CSC upon retirement from service or at the time of the date of effect of any reclassification.

## 9.2.3 Commutation of a DRFDB pension to a lump sum

A DFRDB superannuation pension can be commuted (converted) in part to a lump sum benefit. The person's superannuation entitlement after the commutation is regarded as comprising part pension and part lump sum.

Until 24 December 1992, the DRCA did not provide for the situation where a person received both pension and a lump sum (i.e. S21A). In such cases, the lump sum is to be ignored and S20 is applied.

Where the person retired after 24 December 1992, S21A applies and both the Commonwealth-funded portion of the pension and the lump sum are to be taken into account in the calculation of incapacity payments.

In the case where part of a pension entitlement is commuted to a lump-sum, and the balance of the superannuation benefit is paid at a reduced rate of pension, the reduced rate of pension is the 'original' weekly amount.

## 9.2.4 Conversion of lump sum amount to weekly amount

Under the DRCA, the Commonwealth-funded portion of the lump-sum superannuation benefit is multiplied by a set interest rate and then divided into notional weekly payments.

### *DRCA lump-sum conversion calculation prior to 27 April 2007*

For incapacity calculations prior to 27 April 2007, the superannuation lump-sum amount is multiplied by 10% and divided by 52 (or divided by 520) to establish an equivalent weekly amount.

### *DRCA lump-sum conversion calculation on or after 27 April 2007*

For incapacity calculations on or after 27 April 2007, the superannuation lump-sum amount is multiplied by a rate in line with the 10 year Government bond rate and divided by 52 to establish an equivalent weekly amount. The rate is set by the Minister

for Employment (who has primary responsibility for SRCA) by legislative instrument. A new rate is applicable from 1 July each year and is available via CLIK (the 'specified weekly interest on lump sums' rate).

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The date the person discharges has no influence on which interest rate is used. The interest rate used for the calculation is the rate that is applicable for the period of incapacity.

### **Calculation Example**

*A person receives a lump-sum superannuation benefit of \$156,000. The current 'specified weekly interest rate on lump sums' is 3.26% (rate as at 1/7/15).*

*Equivalent weekly amount = \$156,000 x 3.26% / 52 = \$97.80*

## **MRCA lump-sum conversion calculation**

Under the MRCA, an actuary table, prepared by the Australian Government Actuary (AGA), is used to convert the Commonwealth-funded portion of lump sum superannuation benefit to an equivalent weekly amount that can then be used to calculate incapacity payments (or SRDP). The actuary tables are available via CLIK. <http://auth-clik.dvastaff.dva.gov.au/military-compensation-mrca-manuals-and-resources-library/actuary-tables-used-age-adjusting-lump-sum-payments> 

### **Calculation example – Converting the MRCA superannuation lump-sum to a weekly amount**

*A 55 year old male receives a lump-sum benefit of \$156,000. According to the current Actuary table his age based number is 737.2 (age next birthday is 56).*

*Equivalent weekly amount = \$156,000/737.2 = \$211.61*

## **Choosing the correct table to apply**

The AGA instructions specify that for the purposes of section 135 and 136 the date used to determine which table is applicable, should be the date on which section 135 or 136 **began to apply to their incapacity entitlement.**

The applicable table under sections 135 and 136 are fixed for the duration of the persons compensation amount and is not intended to be indexed from time to time so this is not updated when new tables are released at a later date.

### **Examples – determining when section 135/136 began to apply to find the correct table**

#### **Example 1**

- Person received incapacity payment for the period 1 Jan 2019 to 3 March 2019.
- Person receives a superannuation lump sum amount on 2 Feb 2020 (lump sum received date).
- Person applies for and receives incapacity payments from 1 Jan 2025 ongoing (section 135/136 began to apply).
- Choose AGA table according to date 135/136 began to apply - 1 Jan 2025 (applicable table on or after 1 March 2021).

#### **Example 2**

- Person receives superannuation lump sum 2 Feb 2018 (lump sum received date).
- Person received incapacity payments from 1 Jan 2019 to 3 March 2019 (section 135/136 began to apply).
- Person applies for and receives incapacity payments from 1 Jan 2025 ongoing.
- Choose AGA table according to date section 135/136 began to apply - 1 Jan 2019 (applicable table on or after 4 May 2015 and before 1 March 2021).

**Example 3**

- Person received incapacity payments from 1 Jan 2019 ongoing.
- Person receives superannuation lump sum 2 Feb 2020 (lump sum received date and section 135/136 began to apply).
- Choose AGA table according to date 135/136 began to apply - 2 Feb 2020 (applicable table on or after 4 May 2015 and before 1 March 2021).

**Example 4**

- Person receives incapacity payments from 1 Jan 2017 ongoing.
- Person receives superannuation lump sum 2 Feb 2018 (lump sum received date and date section 135/136 should have been applied).
- Persons incapacity payments are not correctly adjusted to transfer entitlement to section 135/136 and offset the lump sum.
- Error identified 1 Feb 2025 and corrected to apply section 135/136 backdated to 2 Feb 2018 with overpayment raised.
- Choose AGA table according to date 135/136 began to apply – 2 Feb 2018 (applicable table on or after 4 May 2015 and before 1 March 2021).

**Example 5**

- Person receives incapacity payments from 1 Sept 2010 ongoing.
- Person receives superannuation lump sum 12 December 2010 (lump sum received date and date section 135/136 should have been applied).
- Persons incapacity payments are not correctly adjusted to transfer entitlement to section 135/136 and offset the lump sum.
- Error identified 23 March 2017 and corrected to apply section 135/136 backdated to 12 December 2010 with overpayment raised.
- Delegate determines (in error) that superannuation lump sum amount should not be offset 1 April 2020.
- Error again identified 1 Feb 2025 and corrected to apply section 135/136 from the date the lump sum was received with overpayment raised.
- Same AGA table applied at all times as the date that section 135/136 applied to the persons entitlement did not change – section 135/136 began to apply 12 December 2010 (applicable table after 15 January 2010 and before 4 May 2015).

**Example 6**

- Person receives superannuation lump sum 15 May 2020.
- Person applies for incapacity payments on 10 Nov 2022 seeking retrospective payment back to 1 June 2010.
- Decision is made that the person is entitled to retrospective payments.
- For period 1 June 2010 to 14 May 2020 section 135/136 do not apply.
- For period from 15 May 2020 section 135/136 began to apply.
- Choose AGA table according to date 135/136 began to apply – 15 May 2020 (applicable table on or after 4 May 2015 and before 1 March 2021).

**Example 7**

- Person applies for and receives incapacity payments from 1 July 2006 but remains in the Reserves at the time so receives payments as a current serving member.
- Person receives superannuation lump sum 20 Nov 2010. Payments are not adjusted to offset the lump sum as for claims made and determined prior to 1 July 2013 there was no provision under the MRCA to reduce incapacity payments by superannuation.
- Person discharged from all ADF service 1 Nov 2016. Incapacity payments are calculated under Part 4 of Chapter 4 instead of Part 3 and are offset by the superannuation lump sum (section 135/136 began to apply).
- Choose AGA table according to date 135/136 began to apply – 1 Nov 2016 (applicable table on or after 4 May 2015 and before 1 March 2021).



9.1 Legislation



9.3 Key dates affecting  
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benefits and incapacity  
benefits



[Incapacity Procedures Manual Ch 5](#)

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## Military Rehabilitation and Compensation (General) Delegation 2023

MRCC No. 3 of 2023

The Military Rehabilitation and Compensation Commission, by resolution, makes the following instrument.

Dated 8 JUNE 2023



The Seal of the Military Rehabilitation and Compensation Commission was affixed in the presence of:

**S 47F**

Alison Frame  
Chair

.....  
Gwen Cherne  
Member

**S 47F**

.....  
Sarah Sharkey AM CSC RAN  
Rear Admiral  
Member

**S 47F**

.....  
Donald Spinks AM  
Member

**S 47F**

.....  
Kate Pope PSM  
Member

**S 47F**

.....  
Wade Stothart DSC AM CSC  
Major General  
Member



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Michael Duke  
Member

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Kate Pope PSM  
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.....  
Sarah Sharkey AM CSC RAN  
Rear Admiral  
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Member

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## Part 1—Introduction

### 1 Name

This instrument is the *Military Rehabilitation and Compensation (General) Delegation 2023*.

### 2 Commencement

This instrument commences on the day after the day on which it is made.

### 3 Authority

This instrument is made under section 384 of the *Military Rehabilitation and Compensation Act 2004*.

### 4 Definitions

Note: Terms used in this instrument have the same meaning as they do in the *Military Rehabilitation and Compensation Act 2004*. For example, the following are defined in that Act, section 5:

- approved program provider;
- approved rehabilitation program;
- Commission;
- Defence Force.

In this instrument:

**Act** means the *Military Rehabilitation and Compensation Act 2004*.

**APS employee** has the meaning given by section 7 of the *Public Service Act 1999*.

**APS employee classification** means the classification of APS employees mentioned in column the table in Schedule 1 to the *Public Service Classification Rules 2000*.

**APS level**—see section 5.

**consultant** means a consultant engaged by the Commission under section 383 of the Act.

Note: Section 383 of the Act enables the Commission to engage persons having suitable qualifications and experience as consultants.

**Department** means the Department of Veterans' Affairs.

**range of APS levels**—see section 6.

## 5 Meaning of *APS level*

In this instrument a reference to an *APS level* mentioned in column 1 of an item of the following table means the APS employee classification mentioned in column 2 for the item.

Item	Column 1	Column 2
	APS level	APS employee classification
1	APS2	APS Level 2
2	APS3	APS Level 3
3	APS4	APS Level 4
4	APS5	APS Level 5
5	APS6	APS Level 6
6	EL1	Executive Level 1
7	EL2	Executive Level 2
8	SESB1	Senior Executive Band 1
9	SESB2	Senior Executive Band 2
10	SESB3	Senior Executive Band 3

## 6 Meaning of *range of APS levels*

In this instrument, a *range of APS levels* mentioned in column 1 of an item in the following table means the APS levels mentioned in column 2 for the item.

Item	Column 1	Column 2
	Range of APS levels	APS Level
1	APS2 to SESB3	APS2, APS3, APS4, APS5, APS6, EL1, EL2, SESB1, SESB2 and SESB3
2	APS3 to SESB3	APS3, APS4, APS5, APS6, EL1, EL2, SESB1, SESB2 and SESB3
3	APS4 to SESB3	APS4, APS5, APS6, EL1, EL2, SESB1, SESB2 and SESB3
4	APS5 to SESB3	APS5, APS6, EL1, EL2, SESB1, SESB2 and SESB3
5	APS6 to SESB3	APS6, EL1, EL2, SESB1, SESB2 and SESB3
6	EL1 to SESB3	EL1, EL2, SESB1, SESB2 and SESB3
7	EL2 to SESB3	EL2, SESB1, SESB2 and SESB3
8	SESB1 to SESB3	SESB1, SESB2 and SESB3
9	SESB2 to SESB3	SESB2 and SESB3

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## Part 2—Delegations

### 7 Delegation to APS employees in Department

- (1) Where a provision of an Act or legislative instrument is specified in column 1 of an item of a table in Schedule 1, the Commission's functions and powers under the specified provision are delegated to each APS employee holding, occupying or performing the duties of a position in the Department at:
  - (a) the APS level specified in column 3 of the item; or
  - (b) if column 3 of the item specifies a range of APS levels—the range of APS levels.

Example: An item of table 1.1 in Schedule 1 specifies paragraph 39(3)(aa) of the Act in column 1 of the item. Column 3 of the item specifies a range of APS3 to SESB3. This subsection provides that the Commission's functions and powers under paragraph 39(3)(aa) of the Act are delegated to APS employees covered by that range (at the levels of APS3, APS4, APS5, APS6, EL1, EL2, SESB1, SESB2 and SESB3—see section 6 (Meaning of *range of APS levels*) of this instrument).

- (2) Descriptions of the Commission's functions and powers in column 2 of the items in a table in Schedule 1 are for information only, and are not part of this instrument.

### 8 General delegation to consultants and their employees

Where a provision of an Act or legislative instrument is specified in column 1 of an item of a table in Schedule 1, the Commission's functions and powers under the specified provision are delegated to a person if:

- (a) the person is:
  - (i) a consultant; or
  - (ii) a person employed by a consultant for the purposes mentioned in paragraph (b); and
- (b) the engagement of the consultant is for the performance of the Commission's functions and powers under the provision at a level equivalent to that of a level of APS employees specified in the terms and conditions of engagement; and
- (c) those functions and powers are delegated under section 7 to APS employees holding, occupying or performing the duties of a position in the Department at the specified level, or a level in the range of APS levels specified.

Example: The terms and conditions of a consultant are for the performance of the Commission's functions and powers under a provision of the Act at a level equivalent to that of an APS6. This subsection provides that the Commission's functions and powers that are delegated under section 7 to APS employees holding, occupying or performing the duties of a position in the Department at the level of APS6 are also delegated to a consultant, as well as to anyone employed by the consultant for the purposes for which the consultant is engaged.

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## 9 Delegations to waive debts—limits

- (1) This section applies to a delegation under section 7 or 8 of this instrument of the Commission’s power to waive a debt under section 429 of the Act.

Note: See Table 1.1 for details of delegations of the Commission’s functions and powers under the Act.

- (2) For a person who is an APS employee holding, occupying or performing the duties of a position in the Department at a level specified in column 1 of an item of the following table, or who is engaged as, or employed by, a consultant, as mentioned in section 8, to perform duties at an equivalent level, the delegation applies only to debts of an amount not exceeding the amount specified in column 2 of that item.

<b>Delegations to waive debts—limits</b>		
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>APS level or equivalent</b>	<b>Limit on delegation (exclusive of GST)</b>
1	EL1	\$10,000
2	EL2	\$30,000
3	SESB1	\$50,000
4	SESB2	\$100,000
5	SESB3	\$500,000

## 10 General delegation to members of Defence Force

Where a provision of an Act or legislative instrument is specified in an item of a table in Schedule 1, functions and powers of the Commission under the specified provision are delegated to a person if:

- (a) the person is a member of the Defence Force; and
- (b) the member’s duties include a duty that relates to a matter to which the specified provision relates; and
- (c) the performance of the duty requires the member to exercise those functions and powers of the Commission.

Example: The duties of a member of the Defence Force relate to investigating claims under section 324 of the Act, which is a provision specified in column 1 of an item of table 1.1 in Schedule 1. To carry out these duties, the member is required to exercise the Commission’s power in section 324 of the Act. This section provides that this power is delegated to the member.

## 11 Delegation to healthcare professionals

- (1) Where a provision of a legislative instrument is specified in column 1 of an item in a table in Schedule 2, the functions and powers of the Commission under the specified provision are delegated to a person described in column 3 of the item.
- (2) An expression used in an item of a table in Schedule 2 that specifies a provision of a legislative instrument has the meaning given by the instrument.

- (3) Descriptions of the Commission's functions and powers in column 2 of the items in a table in Schedule 2 are for information only, and are not part of this instrument.

## Part 3—Repeals

### 12 Repealed instruments

- (1) The following instruments are repealed:
  - (a) *Military Rehabilitation and Compensation Powers and Functions Instrument of Delegation* (MRCC 42/2021), made on 21 December 2021;
  - (b) *Delegation of Military Rehabilitation and Compensation Commission (MRCC) Powers and Functions to MRCC Subcommittee Members* (MRCC 15/2021), made on 8 July 2021;
  - (c) *Military Rehabilitation and Compensation Powers and Functions Instrument of Delegation* (MRCC 6/2020), made on 6 May 2020;
  - (d) *Military Rehabilitation and Compensation Commission Powers and Functions Delegation* (MRCC 2/2019), made on 13 June 2019;
  - (e) *Delegation of Military Rehabilitation & Compensation Commission's Powers* (MRCC 105/2014), made on 6 November 2014;
  - (f) *Delegation of Military Rehabilitation and Compensation Commission (MRCC) Powers and Functions to MRCC Subcommittee Members* (MRCC 51/2013), made on 13 September 2013.
- (2) Schedule 2 of the *Rehabilitation and Compensation (Acute Support Package) Delegations Instrument 2022* (MRCC No. 37 of 2022), made on 12 October 2022, is repealed.

## Schedule 1—Delegation to APS employees in the Department

Note 1: See sections 7 and 8.

Note 2: Descriptions of the Commission’s functions and powers in column 2 of the items in a table in this Schedule are for information only, and are not part of this instrument (see subsection 7(2)).

<b>Table 1.1 <i>Military Rehabilitation and Compensation Act 2004</i></b>			
<b>Item</b>	<b>Column 1 Provision</b>	<b>Column 2 Description of Commission functions and powers</b>	<b>Column 3 Range of delegations</b>
<b>Chapter 3—Rehabilitation</b>			
1	Paragraph 39(3)(aa)	determination of <i>rehabilitation authority</i> —for specified person and time	APS3 to SESB3
2	Section 44	assessment at rehabilitation authority’s initiative, or on request	APS3 to SESB3
3	Subsection 45(2)	seeking assistance for assessment	APS3 to SESB3
4	Subsection 45(4)	requiring examination	APS3 to SESB3
5	Section 48	determination of liability for journey & accommodation costs	APS5 to SESB3
6	Subsection 50(1)	suspension of right to compensation—refusal or failure to undertake examination	EL1 to SESB3
7	Subsection 50(3)	termination of suspension of right to compensation	EL1 to SESB3
8	Subsection 51(1)	determination that person is to undertake a rehabilitation program	APS4 to SESB3
9	Subsection 51(3)	making arrangements for rehabilitation program	APS3 to SESB3
10	Subsection 51(4)	seeking assistance for rehabilitation program	APS3 to SESB3
11	Subsection 52(1)	suspension of right to compensation—refusal or failure to undertake rehabilitation program	EL1 to SESB3
12	Subsection 52(3)	termination of suspension of right to compensation	EL1 to SESB3
13	Subsections 53(2) and (3)	determination that rehabilitation program cease or be varied	APS5 to SESB3
14	Subsection 56(1)	make alterations or provide etc. aids or appliances	APS5 to SESB3
15	Section 57	determination of amount of reasonable costs for alterations, aids or appliances	APS5 to SESB3

**Table 1.1 *Military Rehabilitation and Compensation Act 2004***

<b>Item</b>	<b>Column 1 Provision</b>	<b>Column 2 Description of Commission functions and powers</b>	<b>Column 3 Range of delegations</b>
<b>Chapter 4—Compensation for members and former members</b>			
16	Subsection 68(1)	determination of eligibility for compensation for impairment	APS5 to SESB3
17	Subsection 68(2)	determination of degree of impairment and date of entitlement	APS5 to SESB3
18	Subsections 71(1) and (2)	determinations of additional compensation for impairment, injury or disease	APS5 to SESB3
19	Subsection 71(3)	determination of date of entitlement to additional compensation	APS5 to SESB3
20	Subsection 74(2)	determination of amount of compensation	APS5 to SESB3
21	Section 75	determination of eligibility for interim compensation	APS5 to SESB3
22	Section 76	notifying claimant of amount of compensation payable	APS5 to SESB3
23	Subsection 78(4)	extending the period for lump sum choice	APS5 to SESB3
24	Subsection 80(2)	determination of when additional compensation is payable	APS5 to SESB3
25	Section 81	determination of impairment suffered by person	APS5 to SESB3
26	Section 82	determination of amount of compensation for costs of financial or legal advice	APS5 to SESB3
27	Section 89B	determination that section 89A is not to apply, and revoking determination	APS5 to SESB3
28	Section 116B	determination of superannuation pension amount (current members)	APS5 to SESB3
29	Section 116C	determination of superannuation lump sum amount (current members)	APS5 to SESB3
30	Section 126A	determination that section 126 is not to apply, and revoking determination	APS5 to SESB3
31	Section 127	determination of compensation for former members who are maintained in a hospital	APS5 to SESB3
32	Section 134	determination of superannuation pension amount (former members)	APS5 to SESB3
33	Section 135	determination of superannuation lump sum amount (former members)	APS5 to SESB3
34	Section 139	determination of person's incapacity likely to continue indefinitely	APS5 to SESB3
35	Section 181	determination of weekly amounts of actual earnings	APS5 to SESB3
36	Section 187	determination of category of defence work when defence work abolished	APS5 to SESB3

**Table 1.1 *Military Rehabilitation and Compensation Act 2004***

<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Provision</b>	<b>Description of Commission functions and powers</b>	<b>Range of delegations</b>
37	Section 188	determination of pay-related allowance when defence work abolished	APS5 to SESB3
38	Section 196	determination of number of days that person would normally work in part of a week	SESB2 to SESB3
39	Subsection 199(1)	determination of eligibility to make a Part 6 choice to receive a Special Rate Disability Pension	APS5 to SESB3
40	Subsection 199(2)	make a written offer of Part 6 choice to an eligible person	APS5 to SESB3
41	Subsection 201(2)	extend the period within which Part 6 choice must be made	APS5 to SESB3
42	Subsection 202(1)	approve a form for making a Part 6 choice	EL2 to SESB3
43	Section 203	determination of liability for Special Rate Disability Pension	APS5 to SESB3
44	Section 206	determination of amount of compensation for costs of financial or legal advice	APS5 to SESB3
45	Section 214	determination of eligibility for compensation for costs of household services	APS4 to SESB3
46	Subsection 216(2)	determination of amount of compensation for costs of household services—catastrophic injury or disease	EL1 to SESB3
47	Section 217	determination of eligibility for compensation for costs of attendant care services	APS4 to SESB3
48	Subsection 219(2)	determination of amount of compensation for costs of attendant care services—catastrophic injury or disease	EL1 to SESB3
49	Subsection 224(2)	determination that MRCA supplement is to be paid in 2-part (weekly) payments.	APS3 to SESB3
<b>Chapter 5—Compensation for dependants of certain deceased members, members and former members</b>			
50	Section 235	provide wholly-dependent partner with written notice about payments	APS5 to SESB3
51	Subsection 236(4)	extension of time for lump sum choice	APS5 to SESB3
53	Section 240	determination of amount of compensation for costs of financial or legal advice	APS5 to SESB3
54	Subsection 244(2)	determination concerning payment of permanent impairment and incapacity compensation—multiple partners of deceased member	EL1 to SESB3
55	Subsection 248(2)	determination that MRCA supplement is to be paid in 2-part (weekly) payments.	APS3 to SESB3

**Table 1.1 Military Rehabilitation and Compensation Act 2004**

<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Provision</b>	<b>Description of Commission functions and powers</b>	<b>Range of delegations</b>
56	Subsection 257(2)	determination concerning payment of permanent impairment and incapacity compensation—multiple eligible young persons in relation to deceased member	EL1 to SESB3
57	Subsection 263(1)	determination of amount of compensation for other dependants	EL1 to SESB3
58	Subsection 267(1)	determination of amount of funeral compensation	APS2 to SESB3
<b>Chapter 6—Treatment for injuries and diseases</b>			
59	Paragraph 279(d)	determination to provide treatment under this Act rather than the <i>Defence Act 1903</i>	APS5 to SESB3
60	Section 285	entering into arrangements for treatment at hospitals and other institutions	EL2 to SESB3
61	Subsection 287(1)	arranging treatment  Note: See also Table 2.1 of Schedule 2 (delegations relating to provision of MRCA Home Care program and residential care (respite) arrangements).	APS3 to SESB3
62	Subsection 287(2)	approving additional treatment	EL2 to SESB3
63	Subsection 287(2A)	accepting financial responsibility for costs of treatment provided by an entity other than the Commission	APS3 to SESB3
64	Paragraph 287A(1)(b)	determination of entitlement for services under the Coordinated Veterans' Care mental health pilot	EL1 to SESB3
65	Section 288B	determination of entitlement to compensation for treatment provided prior to service death	EL1 to SESB3
66	Section 288C	determination of entitlement to compensation for treatment in other special circumstances	EL1 to SESB3
67	Section 288F	determination of amount of compensation payable under section 288A, 288B or 288C (compensation payable in special circumstances)	EL1 to SESB3
68	Section 290	determination of entitlement to compensation for journey costs relating to treatment	APS3 to SESB3
69	Section 291	determination of entitlement to compensation for accommodation costs associated with journey relating to treatment	APS3 to SESB3
70	Section 293	determination of amount of compensation for journey costs relating to treatment	APS3 to SESB3
71	Subsection 303(2)	determination that MRCA supplement is to be paid in 2-part (weekly) payments.	APS3 to SESB3
71	Section 316	entering arrangements etc. relating to interest payable because of false or misleading statements	EL1 to SESB3

**Table 1.1 *Military Rehabilitation and Compensation Act 2004***

<b>Item</b>	<b>Column 1 Provision</b>	<b>Column 2 Description of Commission functions and powers</b>	<b>Column 3 Range of delegations</b>
72	Section 317	determinations concerning reduction of payable amounts	EL1 to SESB3
<b>Chapter 7—Claims</b>			
73	Subsection 319(3)	giving copy of a liability claim to the Chief of Defence Force	APS3 to SESB3
74	Subsection 319(4)	advising the Chief of Defence Force of a claim for compensation	APS3 to SESB3
75	Subsection 320(2)	approval of persons who may make a claim	EL1 to SESB3
76	Section 323	approval for the electronic lodgement of documents	SESB2 to SESB3
77	Section 324	investigation of a claim	APS4 to SESB3
78	Section 325	carrying out needs assessment after acceptance of liability	APS4 to SESB3
79	Section 328	requiring a person to undertake a medical examination	APS4 to SESB3
80	Subsection 329(1)	determination that a person’s right to compensation is suspended	EL1 to SESB3
81	Subsection 329(3)	determination that a suspension under subsection 329(1) is terminated	EL1 to SESB3
82	Section 330	requesting information about claim	APS4 to SESB3
83	Section 331	providing documents on request	APS4 to SESB3
84	Section 333	determination of claims	APS5 to SESB3
85	Section 342	determination of the onset date for an incapacity for service or work	APS4 to SESB3
86	Section 343	determination of the date of a deceased member’s death	APS4 to SESB3
<b>Chapter 8—Reconsideration and review of determinations</b>			
87	Section 346	providing written notice of original determinations	APS2 to SESB3
88	Section 347	reconsideration of original determinations	APS6 to SESB3
89	Section 347A	reconsideration of amount of permanent impairment compensation	APS6 to SESB3
90	Section 348	variation of determinations affirmed or made by the Veterans’ Review Board and variation of date of determinations	APS6 to SESB3

**Table 1.1 *Military Rehabilitation and Compensation Act 2004***

<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Provision</b>	<b>Description of Commission functions and powers</b>	<b>Range of delegations</b>
91	Section 349	extension of period for reconsideration of determinations	APS6 to SESB3
92	Section 350	reconsideration of original determination at request of Chief of Defence Force	APS6 to SESB3
93	Section 351	giving written notice of terms of reviewable determination and reasons for the determination	APS2 to SESB3
<b>Chapter 9—The Military Rehabilitation and Compensation Commission</b>			
94	Paragraph 362(1)(e)	providing advice and information to the Minister etc.	SESB2
95	Section 383	engaging consultants to the Commission	SESB2
<b>Chapter 11—Miscellaneous</b>			
96	Section 405	giving notice to claimant requiring information etc.	APS5 to SESB3
97	Section 406	giving notice to certain persons or entities requiring information etc.	APS5 to SESB3
98	Section 409	giving information to certain persons or entities	APS3 to SESB3
99	Section 412(2)(a)	requesting provision of tax file number from person	APS3 to SESB3
100	Section 412(2)(b)	requesting provision of new tax file number from Commissioner of Taxation	APS4 to SESB3
101	Section 415	recovering overpayments	APS5 to SESB3
102	Section 418	giving notice to the administrator of the Commonwealth superannuation scheme	APS3 to SESB3
103	Section 419	giving notice to the incapacitated person that it has given notice to the administrator under section 418	APS3 to SESB3
104	Subsection 420(2)	determination about overpayment and giving relevant notices	APS5 to SESB3
105	Section 424	providing special assistance	EL1 to SESB3
106	Section 424J (repealed)	determining date of payment of clean energy advance	APS3 to SESB3
107	Section 428	decision to write off debt	EL1 to SESB3
108	Section 429	decision to waive debt (financial limits apply—see s 9)	EL1 to SESB3
109	Subsection s 430(1),	direction that compensation be paid into bank account etc.	APS3 to SESB3

**Table 1.1 *Military Rehabilitation and Compensation Act 2004***

<b>Item</b>	<b>Column 1 Provision</b>	<b>Column 2 Description of Commission functions and powers</b>	<b>Column 3 Range of delegations</b>
	(3), (3AA) and (3A)		
110	Section 431	deducting amounts from compensation at request of the payee	APS3 to SESB3
111	Section 436	determination that no application will be made for probate etc.	EL1 to SESB3

**Table 1.2 *Military Rehabilitation and Compensation Regulations 2020***

<b>Item</b>	<b>Column 1 Provision</b>	<b>Column 2 Description of Commission functions and powers</b>	<b>Column 3 Range of delegations</b>
1	Paragraph 6(3)(a)	determination of normal earnings—cadet engaged in paid civilian work at time of incapacity (for section 116 of the Act)	APS4 to SESB3
2	Paragraph 7(4)(a)	determination of normal earnings—cadet only engaged in casual work, or not engaged in civilian work, at time of incapacity (for section 116 of the Act)	APS4 to SESB3
3	Paragraph 8(3)(a)	determination of normal earnings—former cadet engaged in paid civilian work before last ceasing to be a member (for section 175 of the Act)	APS5 to SESB3
4	Paragraph 9(4)(a)	determination of normal earnings—former cadet not engaged in paid civilian work, or only engaged in casual work, before last ceasing to be a member (for section 175 of the Act)	APS5 to SESB3
5	Subparagraph 13(2)(b)(i)	determination of normal earnings—declared member not engaged in paid civilian work at time of incapacity, and not undertaking career transition assistance (for section 116 of the Act)	APS5 to SESB3
6	Subparagraph 16(2)(b)(i)	determination of normal earnings—former declared member not engaged in paid civilian work before last ceasing to be a member, who did not undertake career transition assistance (for section 175 of the Act)	APS5 to SESB3

**Table 1.3 *Military Rehabilitation and Compensation Act Education and Training Scheme 2004 (MRCC 43/2015)***

<b>Item</b>	<b>Column 1 Provision</b>	<b>Column 2 Description of Commission functions and powers</b>	<b>Column 3 Range of delegations</b>
1	Paragraph 2.3	approval of another person to make a claim	APS3 to SESB3

**Table 1.3 *Military Rehabilitation and Compensation Act Education and Training Scheme 2004* (MRCC 43/2015)**

<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Provision</b>	<b>Description of Commission functions and powers</b>	<b>Range of delegations</b>
2	Paragraph 2.5	determination that benefits may cease, or be restored	APS5 to SESB3
3	Paragraph 2.6	approval for study outside Australia	APS5 to SESB3
4	Paragraph 2.7.1	approval of full-time tertiary study	APS3 to SESB3
5	Paragraph 2.7.2	approval of part-time study	APS3 to SESB3
6	Paragraph 2.10	absences—suspension and restoration of benefits	APS3 to SESB3
7	Paragraph 2.11	determination of eligibility if other assistance paid	APS3 to SESB3
8	Paragraph 3.2	approval of allowances for primary education	APS3 to SESB3
9	Paragraph 3.3	approval of allowances for secondary and tertiary education	APS3 to SESB3
10	Paragraph 3.4	approval of living away from home allowance—secondary students	APS3 to SESB3
11	Paragraph 3.5	approval of living away from home allowance—tertiary students	APS3 to SESB3
12	Paragraph 3.6	approval of homeless student education allowance	APS5 to SESB3
13	Paragraph 3B.7	approval of payment of income support bonus	APS3 to SESB3
14	Part 4	arranging community welfare, education, guidance and counselling services	APS3 to SESB3
15	Paragraph 5.1	approval of fares allowance	APS3 to SESB3
16	Paragraph 5.2	approval of additional tuition	APS3 to SESB3
17	Paragraph 5.3	approval of special assistance	APS3 to SESB3
18	Paragraph 5.4	determination of maximum value of additional tuition and special assistance	APS5 to SESB3
19	Paragraph 5.5	approval of rent assistance	APS5 to SESB3
20	Paragraph 7.2	grant of student start-up scholarship payment	APS3 to SESB3
21	Paragraph 7.3	grant of relocation scholarship payment	APS3 to SESB3

**Table 1.3 *Military Rehabilitation and Compensation Act Education and Training Scheme 2004 (MRCC 43/2015)***

<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Provision</b>	<b>Description of Commission functions and powers</b>	<b>Range of delegations</b>
22	Paragraph 8.1.1	determinations about eligibility and benefits	APS3 to SESB3

**Table 1.4 *Military Rehabilitation and Compensation (Catastrophic Injury or Disease) Determination 2018 (MRCC 66/2018)***

<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Provision</b>	<b>Description of Commission functions and powers</b>	<b>Range of delegations</b>
1	Section 6	determination that an injury or disease is catastrophic in nature	EL1 to SESB3

**Table 1.5 *Military Rehabilitation and Compensation (Full-time Study) Instrument 2018 (MRCC 77/2018)***

<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Provision</b>	<b>Description of Commission functions and powers</b>	<b>Range of delegations</b>
1	Section 5	determination that a person is undertaking full-time study	EL1 to SESB3

**Table 1.6 *Motor Vehicle Compensation Scheme (MRCC 20/2015)***

<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Provision</b>	<b>Description of Commission functions and powers</b>	<b>Range of delegations</b>
1	Paragraph 2.4.1	approval of application form	APS5 to SESB3
2	Paragraph 2.4.4	determination an application to participate in Scheme	APS5 to SESB3
3	Paragraph 2.4.5	requiring a person to make an undertaking	APS5 to SESB3
4	Paragraph 2.5.1	determination that a person is not eligible due to failure to comply	EL1 to SESB3
5	Paragraph 3.1.1	determination that a motor vehicle may be modified	APS5 to SESB3
6	Paragraph 3.2.1	determination of amount of subsidy	APS5 to SESB3
7	Paragraph 3.2.2	requesting advice from an approved program provider or occupational therapist—modifying a vehicle	APS5 to SESB3
8	Paragraph 3.3.3	determination that a grant is payable	APS5 to SESB3

**Table 1.6 Motor Vehicle Compensation Scheme (MRCC 20/2015)**

<b>Item</b>	<b>Column 1 Provision</b>	<b>Column 2 Description of Commission functions and powers</b>	<b>Column 3 Range of delegations</b>
9	Paragraph 3.4.1	determination of the amount of subsidy under paragraph 3.3.1—new vehicle	APS5 to SESB3
10	Paragraph 3.4.2	requesting advice from an approved program provider or occupational therapist—new vehicle	APS5 to SESB3
11	Paragraph 3.4.6	determination of the amount of subsidy under paragraph 3.4.4—replacement vehicle	APS5 to SESB3
12	Paragraph 3.4.7	requesting advice from an approved program provider or occupational therapist—replacement vehicle	APS5 to SESB3
13	Paragraph 3.6.3	giving notice of breach of paragraph 3.6.3	APS5 to SESB3
14	Paragraph 3.6.4	issuing instrument giving effect to discharge chattel mortgage	APS5 to SESB3
15	Paragraph 3.6.5	discharging chattel mortgage to facilitate sale of vehicle	APS5 to SESB3
16	Paragraph 4.1.1	determination of claims	APS5 to SESB3
17	Paragraph 5.1.4	requesting review applicant’s reasons in writing	APS5 to SESB3
18	Paragraph 5.1.5	reviewing decisions made under the Scheme	APS5 to SESB3

**Table 1.7 MRCA Pharmaceutical Benefits Scheme (MRCC 44/2013)**

<b>Item</b>	<b>Column 1 Provision</b>	<b>Column 2 Description of Commission functions and powers</b>	<b>Column 3 Range of delegations</b>
1	Section 6	giving prior approval	APS3 to SESB3
2	Section 20	notifying use of forms and their manner of use	APS3 to SESB3
3	Section 22	determination of refund in certain circumstances	APS3 to SESB3
4	Section 23	determination of refund for expenses incurred in obtaining Pharmaceutical Benefits while not in receipt of a pharmaceutical allowance	APS5 to SESB3
5	Section 33	accepting financial responsibility for pharmaceutical reimbursement	APS5 to SESB3
6	Section 38A	determinations concerning the five year limit on payments of pharmaceutical reimbursement	APS5 to SESB3

**Table 1.8 MRCA Treatment Principles (MRCC 53/2013)**

Note: The *MRCA Treatment Principles* provide for matters that relate to the performance or exercise of the Commissions functions or powers under paragraph 287(1)(b) or (c) (arranging for treatment) of the Act, or subsection 287(2A) (accepting financial responsibility for treatment) of the Act. For delegations of those functions or powers, see Table 1.1 of this Schedule.

Item	Column 1 Provision	Column 2 Description of Commission functions and powers	Column 3 Range of delegations
1	First definition of <i>approved provider</i> in paragraph 1.4.1	Entering into arrangements for the provision of certain services	EL1 to SESB3
2	Definition of <i>community nursing provider</i> in paragraph 1.4.1	Entering into agreements with community nursing providers for the provision of certain services	EL1 to SESB3
3	Definition of <i>GP Home Care service (category C) Referral</i> in paragraph 1.4.1	Approving form of referral	EL1 to SESB3
4	Paragraph 3.5.2(c)	Approving form for claiming payment	APS6 to SESB3
5	Paragraph 3.5.2A	Allowance of longer period for lodging claim for payment	APS6 to SESB3
6	Paragraph 7.3A.4(1)	Informing entitled person of non-suitability for services under Home Care Program	APS3 to SESB3
7	Treatment Principle 12.6	Recovering moneys	APS6 to SESB3

**Table 1.9 Military Rehabilitation and Compensation (Defence, Veterans' and Families' Acute Support Package) Instrument 2022**

Item	Column 1 Provision	Column 2 Description of Commission functions and powers	Column 3 Range of delegations
1	Section 7	Granting an acute support package	APS5 to SESB3
2	Section 8	Preparing a support plan	APS5 to SESB3
3	Subsection 9(1)	Varying a support plan	APS5 to SESB3
4	Subsection 9(2)	Revoking a support plan – where member or former member no longer receiving compensation	APS5 to SESB3
5	Subsection 9(3)	Revoking a support plan – ineligibility or other statutory reason	APS5 to SESB3
6	Section 13	Requesting information	APS5 to SESB3

## Schedule 2—Delegation to health care professionals

Note 1: See section 11.

Note 2: Descriptions of the Commission’s powers and functions in column 2 of the items in a table in this Schedule are for information only, and are not part of this instrument (see subsection 11(3)).

**Table 2.1 *Military Rehabilitation and Compensation Act 2004***

Item	Column 1 Provision(s)	Column 2 Description of Commission functions and powers	Column 3 Description of delegates
1	Paragraphs 287(1)(a) and (b) and subsection 287(2A), to the extent that those provisions relate to services provided under the MRCA Home Care Program in accordance with Treatment Principle 7.3A of the <i>MRCA Treatment Principles</i>	arranging treatment consisting of the provision of services in relation to the MRCA Home Care Program, or accepting financial responsibility in relation to such services.	A person who is: (a) a consultant engaged to provide services in relation to the MRCA Home Care Program in accordance with Treatment Principle 7.3A of the <i>MRCA Treatment Principles</i> ; or (b) employed by such a consultant to provide services for the purposes of such an engagement.
2	Paragraphs 287(1)(a) and (b) and subsection 287(2A), to the extent that those provisions relate to residential care (respite) provided in accordance with Treatment Principle 10.3 of the <i>MRCA Treatment Principles</i>	arranging treatment consisting of the provision of residential care (respite) services in accordance with Treatment Principle 10.3 of the <i>MRCA Treatment Principles</i> , or accepting financial responsibility in relation to such services	A person who is: (a) a consultant engaged to provide residential care (respite) services in accordance with Treatment Principle 10.3 of the <i>MRCA Treatment Principles</i> ; or (b) employed by such a consultant to provide services for the purposes of such an engagement.
3	Paragraphs 287(1)(a) and (b) and subsection 287(2A), to the extent that those provisions relate to respite care in an institution, other than residential care (respite), provided in accordance with Treatment Principle 10.4 of the <i>MRCA Treatment Principles</i>	arranging treatment consisting of the provision of respite care in an institution, other than residential care (respite), in accordance with Treatment Principle 10.4 of the <i>MRCA Treatment Principles</i> , or accepting financial responsibility in relation to such services	A person who is: (a) a consultant engaged to provide residential care in an institution, other than residential care (respite), in accordance with Treatment Principle 10.4 of the <i>MRCA Treatment Principles</i> ; or (b) employed by such a consultant to provide services for the purposes of such an engagement.

**Table 2.2 MRCA Pharmaceutical Benefits Scheme (MRCC 44/2013)**

<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Provision</b>	<b>Description of Commission power or function</b>	<b>Description of delegates</b>
1	Section 6	approval of matter requiring prior approval	<p>A person who is:</p> <p>(a) a consultant engaged as a pharmacist to provide services for the Veterans' Affairs Pharmaceutical Advisory Centre or for an organisation having the same or similar functions; or</p> <p>(b) employed by such a consultant to provide services for the purposes of such an engagement.</p> <p>Note: The Veterans' Affairs Pharmaceutical Advisory Centre is part of the Department.</p>



**Australian Government**  
**Department of Veterans' Affairs**

# **ELECTRONIC RECORDS**

**NB: These documents have been obtained from an electronic record. An original hard-copy version of this record does not exist.**

## Part 3—Recovering overpayments

### Division 1—Recovery generally

#### 415 Recovery of overpayments

- (1) This section applies if:
  - (a) an amount of compensation is paid under this Act to a person as a result of a false or misleading statement or representation, or a failure or omission to comply with this Act; or
  - (aa) an amount is paid under an instrument made under section 268B to a person as a result of a false or misleading statement or representation, or a failure or omission to comply with this Act or the instrument; or
  - (b) an amount of compensation (other than an amount that the Commonwealth is entitled to recover under Division 2) that has been paid to a person under this Act should not have been paid; or
  - (c) a person is liable to pay an amount under this Act to the Commonwealth.
- (2) However, this section does not apply in respect of a person if one or more of sections 315, 316 and 317 apply in respect of the person.

Note: Chapter 6 has its own recovery provisions (see sections 315, 316 and 317).
- (3) The amount is recoverable by the Commission from the person in a court of competent jurisdiction as a debt due to the Commonwealth.
- (4) The recoverable amount may be deducted from an amount that is payable to or for the benefit of the person under this Act.

#### 420 What happens if the incapacitated person has not received any Commonwealth superannuation benefit in respect of his or her cessation of employment

- (1) This section applies if:
  - (a) the incapacitated person has not received any payment in respect of his or her entitlement mentioned in paragraph 417(1)(b); and
  - (b) the incapacitated person's benefits under the scheme have not been deferred; and
  - (c) the Commission has received the details mentioned in paragraph 418(2)(b).

Note: Under paragraph 418(2)(b), the administrator is required to give the Commission details of either or both the amount of the pension or lump sum that is payable to the incapacitated person.
- (2) The Commission must do the following within 2 working days after receiving the details:
  - (a) determine whether an overpayment of compensation to the incapacitated person has occurred;
  - (b) if it determines that no overpayment has occurred—give a written notice to the administrator stating that fact;
  - (c) otherwise—give a written notice to the administrator:
    - (i) stating the amount of the overpayment; and
    - (ii) requiring the administrator to pay that amount to the Commonwealth in accordance with section 421.
- (3) The Commission must not reduce the rate or amount of compensation payable to the incapacitated person under this Act until it has given the notice mentioned in paragraph (2)(b) or (c) to the administrator.
- (4) For the purposes of subparagraph (2)(c)(i), the *amount of the overpayment* is the difference between:
  - (a) the total amount of compensation paid under Part 3, 4 or 5 of Chapter 4 after the incapacitated person ceased his or her employment; and
  - (b) the total amount of compensation that should have been paid to the incapacitated person under that Part having regard to:
    - (ia) Division 7 of Part 3 of Chapter 4 (compensation where a Commonwealth superannuation benefit is received); or
    - (i) Subdivision D of Division 2 of Part 4 of Chapter 4 (compensation where a Commonwealth superannuation benefit is received); or
    - (ii) section 204 (reduction in rate of Special Rate Disability Pension).

#### 421 Administrator must pay the amount of overpayment to the Commonwealth

- (1) If section 420 applies in respect of an incapacitated person, the administrator must pay the amount mentioned in subsection (2) to the Commonwealth out of the payments of pension or lump sum that the administrator would otherwise have made to the incapacitated person.
- (2) The administrator must pay on a particular day the lesser of the following amounts:
  - (a) the amount of the payment of pension or lump sum (or both) that the administrator would otherwise have made to the incapacitated person on the day;
  - (b) the amount of the original overpayment less any amounts that the administrator has paid to the Commonwealth before that day to reduce the original overpayment.
- (3) The payment of an amount by the administrator to the Commonwealth discharges, to the extent of that amount:
  - (a) the liability of the administrator to pay that amount to the incapacitated person; and
  - (b) the liability of the incapacitated person to pay that amount to the Commonwealth.