VOLUME ONE

Overview

Review of Military Compensation Arrangements

REVIEW OF MILITARY COMPENSATION ARRANGEMENTS

Report to the Minister for Veterans' Affairs

February 2011

Review of Military Compensation Arrangements

February 2011

Volume One Overview

ISBN 978-1-877007-62-0

Department of Veterans' Affairs publication number P02136.

Requests for further authorisation should be directed to the:

Commonwealth Copyright Administration
Copyright Law Branch
Attorney-General's Department
Robert Garran Offices
National Circuit
BARTON ACT 2600

Or at http://www.ag.gov.au/cca

Department of Veterans' Affairs

http://www.dva.gov.au

Edited by Biotext, Canberra

Letter of transmittal

24 February 2011

The Hon Warren Snowdon MP
Minister for Veterans' Affairs
and Minister for Defence Science and Personnel
Parliament House
CANBERRA ACT 2600

On 8 April 2009 the then Minister for Veterans' Affairs, the Hon Alan Griffin MP, announced a Review of Military Compensation Arrangements.

A Steering Committee was appointed to conduct the Review. The Committee is pleased to present its report.

Ian Campbell PSM
Chair

Contents

Chair's introduction

1. On 8 April 2009, the then Minister for Veterans' Affairs announced a Review of Military Compensation Arrangements (the Review). The terms of reference focused on the operation to date of the *Military Rehabilitation and Compensation Act 2004* (MRCA), which provides compensation coverage for defence service rendered on or after 1 July 2004. The terms of reference also called for a review of legislative schemes that govern military compensation for service before 1 July 2004 and any anomalies that exist; the level of medical and financial care provided to members of the Australian Defence Force (ADF) who are injured during peacetime service; the implications of a compassionate payment scheme for the families of deceased ADF members; and the suitability of access to military compensation schemes for members of the Australian Federal Police (AFP).

2. A six-member Steering Committee was appointed to conduct the Review. As chair of the Military Rehabilitation and Compensation Commission (MRCC), the governing body of the MRCA, I chaired the Steering Committee. Members of the Committee represented the Australian Defence Organisation (Defence), the Department of Education, Employment and Workplace Relations, the Department of Finance and Deregulation (Finance), and the Treasury. Mr Peter Sutherland, a visiting fellow from the Australian National University College of Law and an expert in workers' and military compensation, was the sixth member of the Committee.

3. A project team was established to support the Review. The project team gathered information and prepared discussion papers for the Committee. It also consulted widely on behalf of the Committee by holding public meetings and visiting ADF bases in each state and territory capital city, as well as in Townsville.

4. The Steering Committee met frequently during the course of the Review. Mr Frank Benfield and Mr Ken Kipping AM, members of the Prime Ministerial Advisory Council on Ex-service Matters (PMAC), attended most Steering Committee meetings. Ms Anne Pahl of PMAC also attended some Committee meetings.

5. The Steering Committee and the project team met with a subcommittee nominated by the Ex-Service Organisation Round Table on several occasions. This subcommittee comprised Mr John Hodges of the Returned & Services League of Australia, Mr Michael Quinn of the Peacekeeper and Peacemaker Veterans' Association of Australia, Mr Tim McCombe OAM of the Vietnam Veterans Federation of Australia, and Mr Ian Wills of Legacy.

6. In addition to the formal consultation undertaken as part of the Review, MRCC members also sought feedback on issues being considered under the Review during their regular attendance at ex-service meetings and other forums.

7. The Committee received 68 submissions to the Review, 52 of which raised matters that were within the scope of the Review. Submissions generally raised technical issues about legislation or administration.

8. It was apparent to the Steering Committee that the broad policy principles underpinning military compensation arrangements are accepted by the defence and veteran communities. The Committee concluded that the policy principles and objectives

of the MRCA are sound (such as an increased focus on vocational and non-vocational rehabilitation, while ensuring an appropriate level of compensation for both economic and non-economic loss), and also identified some areas for improvement.

9. In recommending improvements, the Committee was mindful to balance a number of principles. These included a desire to reduce complexity; the need for the MRCA to be flexible enough to meet the needs of claimants; the tradition of recognition of the special nature of military service; the need to ensure members and former members of the ADF and their families are supported and cared for; modern approaches to rehabilitation and compensation; and the Australian Government's commitment to responsible economic management.

10. This report attempts to cover as many issues raised during the Review as possible, and includes the reasoning behind the Committee's recommendations. All the issues raised in submissions have informed the Committee's deliberations, even where they have not been specifically mentioned in the report.

11. The report contains a total of 108 recommendations that reflect the wide range of issues raised by submissions and during consultation. Of the 108 recommendations made to the Australian Government, 25 recommendations were for improvements to administration by the Department of Veterans' Affairs (DVA) and Defence; 28 recommendations called for legislative change; 11 recommendations identified areas for further work; 12 recommendations identified issues that should be further considered by the MRCC; 7 recommendations supported current DVA or Defence initiatives; and 25 recommendations were for no change in response to specific issues raised in submissions or consultations. Of the 108 recommendations, 19 have budgetary implications.

12. The Committee confirms the need to recognise the unique nature of military service through compensation arrangements that are specific to the ADF. Because the MRCA is unique legislation, comparing it with other Commonwealth and state compensation schemes is difficult. However, it was clear to the Committee that the benefits available under the MRCA compare favourably with compensation schemes in Australia, particularly death benefits and incapacity compensation.

13. The *Veterans' Entitlements Act 1986* (VEA) and the MRCA use Statements of Principles (SoPs) determined by the Repatriation Medical Authority to resolve causation issues when determining liability. The Committee has recommended no change to the SoP regime, but has identified a small number of issues relating to liability decisions that the MRCC should monitor.

14. A key change introduced under the MRCA is a stronger focus on early intervention and rehabilitation, and the Committee noted that this trend is being mirrored in other military compensation arrangements internationally. The Committee confirmed the importance of vocational, medical and psychosocial rehabilitation as an integral part of military compensation arrangements, and made recommendations aimed at improving and encouraging rehabilitation and early intervention.

15. The Review approached military compensation arrangements as a system, beginning in Defence and finishing with DVA, with significant overlap between the two departments at various points in the continuum. The Committee made a number of recommendations to improve administration throughout this system (particularly in relation to discharging members of the ADF) and to identify and fill any gaps in services provided by Defence and DVA.

16. Members of the Committee were divided on four key recommendations. First, the MRCA continues the tradition of recognising members injured on overseas service by providing higher permanent impairment compensation payments for injuries and diseases related to warlike and non-warlike service compared to peacetime service (known as the compensation differential). The Committee was divided on whether the compensation differential should be broadened to include compensation for severe impairment, or whether the current arrangements (which do not differentiate between different types of service for severe impairment) should be maintained.

17. Secondly, the Committee was divided on whether the compensation differential should be broadened to include compensation for death benefits, or whether the current arrangements (which do not differentiate between different types of service for death benefits) should be maintained.

18. Thirdly, alternative recommendations were made about the methodology used to calculate permanent impairment compensation under the MRCA for claimants who have previously been compensated or are being compensated under the *Safety, Rehabilitation and Compensation Act 1988* (SRCA) or the VEA. The Committee was divided on whether the current methodology produces anomalous outcomes and should be reviewed, or whether the current methodology produces appropriate outcomes and should be retained.

19. The last recommendation on which the Committee was divided was on the extension of access to non-liability treatment for psychiatric conditions to former Permanent Force members and part-time Reservists with peacetime service only after 1 July 2004 (currently, only members with operational service can access non-liability treatment for psychiatric conditions). The Committee was divided on whether non-liability treatment for all psychiatric conditions should be provided to all former Permanent Force members and part-time Reservists who have served after 1 July 2004, or whether services provided by Defence in existing programs and as part of the Australian Government's response to the Dunt Review could be explored as an alternative.

20. The Committee concluded that the two review pathways under the MRCA should be refined to a single review pathway that includes internal reconsideration, the Veterans' Review Board and the Administrative Appeals Tribunal, with active case management at all stages.

21. Very few true anomalies were identified during the Review. A number of submissions pointed to the difference in benefits across various pieces of legislation. In almost all cases, the Committee concluded that these differences were intentional and not anomalous.

22. The Committee did not recommend a compassionate payment scheme for the families of deceased ADF members. Furthermore, while acknowledging the important work that the Australian Federal Police (AFP) undertakes overseas on behalf of the Australian Government, the Committee did not recommend that MRCA coverage be extended to include members of the AFP deployed on high-risk overseas missions, as the MRCA is a scheme designed specifically to meet the needs of the ADF.

23. Committee members support the recommendations contained in this report; however, proposals with financial implications that are considered in the Budget process will be determined with reference to the Australian Government's broader social and economic priorities.

24. The Committee was very appreciative of the contribution to the Review made by the defence and veteran community, including ex-service and other organisations. The information provided by these groups, and the discussions with representatives, greatly assisted deliberations on the many issues examined. The Committee would also like to express its gratitude to those people who shared with it, in their submissions or at consultations, and often with great difficulty, their personal circumstances and experiences.

25. The Committee would also like to thank staff of the Department of Veterans' Affairs; Department of Defence; Department of Finance and Deregulation; Department of Education, Employment and Workplace Relations; and the Treasury, who devoted considerable time and effort in supporting the Review.

Ian Campbell PSM
Chair

Executive summary

Part 1 Context

Chapter 1 Terms of reference and conduct of the Review

1. The Review of Military Compensation Arrangements was established in response to concerns expressed by the veteran and ex-service community. An examination of the legislation was also timely, as the *Military Rehabilitation and Compensation Act 2004* (MRCA) had been in operation for six years. The Review aimed to examine all aspects of the compensation system and the operation of the MRCA, including access to the system and the level of medical and financial care provided to military personnel and their families.

2. In 2009, a call for submissions to the Review resulted in 68 submissions, 52 of which were in the scope of the Review, and in June 2009 a six-member Steering Committee was appointed to conduct the Review. Serving and former members of the Australian Defence Force (ADF), their families, ex-service and other relevant organisations, other government agencies and members of the public were consulted.

Chapter 2 Historical overview

3. The Committee examined the evolution of military compensation arrangements in Australia. Since the First World War, successive governments have made it a high priority to provide compensation and related support to veterans and their dependants. Military compensation arrangements have evolved since that time in response to changing situations and a number of reviews. During the 1980s and early 1990s, significant changes were made in the standard of proof, pension eligibility, and compensation arrangements for peacetime service.

4. Legislation has included the *Australian Soldiers' Repatriation Act 1920* (later renamed the *Repatriation Act 1920*), *Veterans' Entitlements Act 1986* (VEA), *Safety, Rehabilitation and Compensation Act 1988* (SRCA), *Military Compensation Act 1994*, and the current MRCA. The MRCA covers defence service on or after 1 July 2004; the SRCA and VEA cover service before 1 July 2004. The MRCA is the first compensation legislation designed to cover the whole spectrum of military service, and it came into operation following an extensive examination of military compensation arrangements.

5. The current Review of Military Compensation Arrangements is the latest in a long line of reviews, inquiries and analyses of the compensation arrangements applying to military personnel and their dependants. Such attention demonstrates the sensitive and complex nature of this legislation and the importance given to it by governments.

Chapter 3 The Military Rehabilitation and Compensation Scheme

6. The Committee reviewed the current processes of military rehabilitation and compensation, along with historic and projected expenditure and liability estimates. The

ADF is the primary provider of medical treatment and rehabilitation to serving members. Following injury or disease, rehabilitation assistance may be requested by a treating medical officer, unit commander, the Military Rehabilitation and Compensation Commission (MRCC) or the member. For serving members, rehabilitation assessment is conducted under the ADF Rehabilitation Program (ADFRP) and a rehabilitation program may be recommended as a result.

7. The MRCC investigates claims for liability and accepts or rejects the claim. Before any compensation is payable, the MRCC conducts a needs assessment with the member to identify medical treatment, rehabilitation and compensation priorities. Compensation can include incapacity payments for lost income, payment for necessary attendant care or household services, or compensation for permanent impairment.

8. As at September 2010, the Department of Veterans' Affairs (DVA) had a total of 120,755 disability pensioners and 99,982 war widow(er)s under the VEA, compared to 4,798 active clients under the MRCA and 11,260 active clients under the SRCA (active clients are clients who have received benefits or services in the past two years).

9. Annually, DVA receives around 5,000 to 7,000 claims for initial liability under the SRCA and the MRCA (compared to around 17,000 primary claims for compensation under the VEA). There was a sharp decline in claims under the SRCA in 2005–06, after the enactment of the MRCA. Since 2007–08, initial liability claims under the SRCA have increased slightly and seem to have plateaued at around 3,500 claims per year. The 'tail' of SRCA claims is expected to continue for some time due to the lag between service related injury, disease or death and the lodgement of a claim for compensation.

10. The number of MRCA clients receiving permanent impairment compensation appears to have plateaued at around 1,000 clients per year. Despite a small decrease in 2008–09 compared to the previous financial year, the number of permanent impairment compensation payments continues to trend upwards. The number of SRCA permanent impairment clients decreased markedly in 2009–10, although the number of SRCA permanent impairment payments is decreasing more slowly.

11. MRCA incapacity payments and clients have been increasing quickly. SRCA clients and payments both increased slightly in 2009–10, at odds with the steady decline evident since the commencement of the MRCA. Although relatively stable up to 2008–09, both the total number of clients under both Acts and total payments increased significantly in 2009–10. It is difficult to know if this increase will continue.

12. Payments for medical and other services under the MRCA are growing quickly. Payments for medical and other services under the SRCA have been steadily declining since 2004–05, but increased again in 2009–10. The declining number of payments under the SRCA from 2004–05 to 2008–09 have more than offset the increasing number of payments under the MRCA, resulting in a steady decline in the total number of payments for medical and other services under both Acts during that period. Again, it is difficult to know if the significant increase in the total number of payments under the MRCA in 2009–10 will continue.

13. In 2009–10, total expenditure under the MRCA was $72.2 million — still less than half the total expenditure of $146 million for defence-related claims under the SRCA. Total 2009–10 expenditure under both Acts was $218.2 million (compared to $11.2 billion under the VEA). Total MRCA expenditure is expected to increase steadily in line with the claim trends, while SRCA expenditure should gradually tail off.

Chapter 4 Unique nature of military service

14. The Committee confirms the unique nature of military service and the requirement for a military-specific compensation scheme that recognises that military service is different from civilian employment. The Committee concluded that compensation arrangements separate from the civilian compensation arrangements should be continued.

15. Military compensation arrangements exist within the broader context of civilian occupational health and safety laws and systems, including workers' compensation legislation. While the MRCA needs to always have regard to the special features of military service, at the same time, the Act should be informed by community standards. The Committee recommends that the MRCC should review Australian workers' and international military compensation arrangements at least every five years to ensure that the MRCA remains contemporary.

Part 2 Operation of the Military Rehabilitation and Compensation Act

Chapter 5 Initial liability and the Statements of Principles

16. The Committee considered the application of the Statements of Principles (SoPs) system, which is used to determine liability for injuries, diseases and deaths under the MRCA and the VEA. SoPs are legislative instruments that define the factors to establish a connection between a medical condition and service in the ADF. They are determined by the Repatriation Medical Authority (RMA) according to 'sound medical–scientific evidence', and their aim is to provide an equitable, efficient, consistent and non-adversarial system of dealing with claims for liability. Under the SRCA, in contrast, causes of medical conditions are determined on a case-by-case basis using evidence provided by a specialist medical practitioner.

17. Some submissions to the Review recommended that there should be discretion not to use the SoPs for claims rejected under the MRCA where claims do not meet the relevant factor(s) in the SoP. This discretion would apply to claims that were in 'substantial compliance' with a SoP, or where other medical evidence, such as a specialist report, supported the claim. The Committee's view is that conferring such discretionary power on decision makers would undermine the SoP system's strengths of consistency and adherence to expert evidential judgement.

18. Discrepancies between the compensation coverage of the MRCA and the SRCA led some stakeholders to argue that the liability provisions of the MRCA should be more flexible. These concerns were raised in relation to medical conditions caused by ongoing wear and tear, such as chondromalacia patellae ('runner's knee'), for which the acceptance rate has been much higher under the SRCA than under the MRCA. The reason for this discrepancy does appear to be the requirement for the use of SoPs under the MRCA (but not under the SRCA); however, recent changes to the SoPs for this condition are likely to resolve the issue.

19. Diseases that have a temporal connection with service but not a causal connection were raised in some submissions. Under the MRCA, both a causal connection and a temporal connection must be established if the claim is to succeed. As a result, conditions

such as heart attacks are less likely to be accepted under the MRCA, because it is difficult to establish a causal connection with service. Heart attack is more likely to be accepted under the SRCA because of differences in the interpretation of injury and disease, and the liability provisions of that Act. While acknowledging the different outcomes between the SRCA and the MRCA, the Committee holds the view that the SoP regime under the MRCA should continue to require a disease process to have a causal relationship with service, not just a temporal relationship, before liability can be accepted for any condition that results from that disease process.

20. Currently, liability for an injury or disease related to a sporting activity undertaken away from the workplace is accepted under the MRCA only if that sporting activity is part of a formal training program designed by an ADF Physical Training Instructor. In light of developing case law on the liability provisions under both the VEA and the MRCA, the Committee's view is that the MRCC should review this policy to determine whether coverage for off-duty sporting activities should be broadened.

21. The MRCA sets out the circumstances under which the MRCC cannot accept liability for an injury, disease or death. These circumstances, which are known as the 'exclusion provisions', include injury or disease resulting from a member being under the influence of alcohol, seriously breaching discipline or self-inflicting harm. Some submissions to the Review expressed concern that some of the exclusion provisions were open to the decision makers' discretion. The Committee acknowledges this concern, but feels that the discretion within the current provisions allows each case to be assessed on its merits. The Committee also notes that there is case law clarifying the operation of exclusions, that discretion can often work in favour of the claimant, and that inappropriate application of an exclusion can be set aside on review. Although it is not aware of any case involving use of an exclusion to inappropriately deny liability for a particular injury, disease or death, the Committee considers that information technology systems should be improved to assist the MRCC in monitoring and reviewing the application of the exclusion provisions under the MRCA.

Chapter 6 Rehabilitation

22. The aim of rehabilitation is to maximise the potential for a person with a service injury or disease to return to their previous physical and psychological state, with the same social and vocational status. Rehabilitation programs, formulated by approved rehabilitation providers, can include medical, dental, psychiatric, in-patient and out-patient care; physical exercise and physiotherapy; psychosocial training and counselling; aids and appliances; and modifications to workplaces, homes and cars.

23. Defence provides rehabilitation to all full-time serving members though the ADF Rehabilitation Program (ADFRP), with no requirement to establish liability under any compensation scheme. There were 4,189 new referrals to the ADFRP in 2009–10. Of these, 925 were assessed as not requiring a rehabilitation program and resumed duties. On completion of rehabilitation programs, 2,405 members returned to normal or alternate duties.

24. For part-time Reservists and former members of the ADF, rehabilitation is provided by the MRCC; however, liability for the injury or disease must first be established under the MRCA or the SRCA. DVA also administers the Veterans' Vocational Rehabilitation Scheme (VVRS), which is available to former members of the ADF who are eligible under the VEA. In 2009–10, DVA opened 773 non-return to work

(NRTW; psychosocial) rehabilitation cases and 525 return to work (RTW; vocational) rehabilitation cases. Fifty-one per cent of RTW programs under the SRCA were successful; 63 per cent under the MRCA were successful; and 45 per cent under the VVRS were successful.

25. DVA has an active research program into its rehabilitation services, and some recent reviews and commissioned research have recommended that case management be improved and arrangements simplified across the relevant government agencies. The Committee recommends that this research continues, and that outcomes from the research are promptly reflected in revised policies and improved practices in the ADF and DVA.

26. A number of submissions to the Review related to vocational rehabilitation, including opportunities for tertiary training. Vocational rehabilitation programs are decided on a case-by-case basis, and may include tertiary training if appropriate for an individual; however, this may not be widely known. The Committee's view is that clients and providers would benefit from an improved understanding about MRCC policies on vocational rehabilitation. This could be achieved through more details and clarity in DVA referrals to providers, and through information in pamphlets and the DVA website, including examples of successful vocational programs undertaken by former ADF members.

27. The Committee identified a gap between the level of psychosocial rehabilitation that DVA delivers and what clients perceive is delivered. Psychosocial rehabilitation includes referral to community support services, basic skills training, lifestyle programs, attendant care services, drug and alcohol management programs, and household aids and appliances for daily living. The Committee believes that DVA should improve the information in its pamphlets and website on the availability of psychosocial rehabilitation, in addition to vocational rehabilitation. Performance reports for the MRCC should show the volume and outcomes for subcategories of psychosocial rehabilitation.

28. Early intervention improves the effectiveness of vocational rehabilitation. Some submissions and comments in public consultation indicated that the need to await the determination of liability can delay intervention. The Committee considered the feasibility of allowing entitlements to rehabilitation assessments and limited access to programs as soon as a claim is lodged for initial liability. Another option considered was to allow reimbursement of rehabilitation-related costs between the date of onset and the date of acceptance of liability. For cases in which claims are lodged some years after service, case coordinators could be able to offer a rehabilitation assessment without the need to await determination of liability. The Committee believes that the ADF and DVA should develop options to improve access to early intervention, and provide advice to the Government on such options.

29. The effectiveness of requiring people with mental health conditions to undergo rehabilitation programs has been raised as an issue of concern. However, the Committee received expert advice from the Technical Advisory Committee on Rehabilitation that participation in a rehabilitation program, including vocational rehabilitation, can benefit people with mental illness. MRCC policy is that people with mental health conditions should receive medical and psychiatric clearance before entering a vocational rehabilitation program. The Committee supports this aspect of the rehabilitation framework provided in the MRCA. The rehabilitation authority can suspend a member's right to compensation if the member refuses or fails to undertake a rehabilitation program, although these provisions are used sparingly.

30. ADF performance reports are not currently provided to the MRCC. The Committee believes that the ADFRP should provide performance reports on ADF rehabilitation assessments and program outcomes to assist the MRCC to fulfil its functions.

31. Lastly, the Committee recommends a long-term study of the effectiveness of rehabilitation arrangements within the ADF and DVA, reviewing the level of rehabilitation services and the link with incapacity payments. The study should cover at least 10 years, and should include mental health and physical injuries and the response by the ADF from the time of the first injury through transition to discharge and later experience in civilian life.

Chapter 7 Transition management

32. The Review considered the management of advice and assistance services for ADF members in the transition period from discharge from the ADF to re-entering civilian life. In 2009–10, there were approximately 530 medical discharges from the ADF and fewer than 4,000 discharges in total. Under the current arrangements, the DVA Transition Management Service (TMS) provides a voluntary service on referral from the ADF that supports members facing medical discharge. Legislation recognises that the ADF has a duty of care before discharge, and that post-discharge entitlements are governed by complex legislation administered by the DVA and other government agencies.

33. The Australian Defence Organisation (Defence) is developing a new model to support injured or ill ADF members throughout their career, including transition, under the Support for Wounded, Injured or Ill Project (SWIIP). The whole framework of transition support services is being re-examined as part of the SWIIP, and Defence plans to take full responsibility for transition management by 30 June 2011, depending on certain conditions being met.

34. Some submissions to the Review were critical of the current transition management services, citing a lack of coordination in management of the TMS among the agencies involved. In particular, guidelines for the appointment of case managers, their role and training are said to be unclear.

35. Recent reports and reviews on DVA and Defence operations have included specific comments on transition management. Two reviews recommended a ‘one-stop shop’ approach for transition support services, while others recommended joint responsibility between Defence and DVA. Defence and DVA continue to work collaboratively and aim to provide a seamless transition for members. Current joint initiatives include streamlining the separation health examination, continuing the DVA client liaison unit, referring clients to DVA case coordinators, conducting studies as part of the Lifecycle initiatives, continuing the Stepping Out program, and trialling a Keeping-In-Touch program. DVA and Defence continue to work with other agencies through the Interdepartmental Working Group to seek further opportunities to improve transition services.

36. To improve consistency and oversight of transition services under the tri-service management structure, the Committee recommends that responsibilities assigned to the Service Chiefs (particularly as rehabilitation authorities and appointers of transition case managers) be transferred to the Chief of the Defence Force.

37. Under the MRCA, the Service Chief is the rehabilitation authority for all full-time members, unless the member has been identified as being 'likely to be discharged from the ADF for medical reasons', when the MRCC is the rehabilitation authority. The timing of transfer of responsibility from Defence to the MRCC is currently stringently defined by Defence and does not currently consider individual needs or circumstances. The Committee recommends amendment of section 39 of the MRCA to allow more flexibility in the timing of the appointment of the MRCC as the rehabilitation authority, and of section 64 to allow more flexibility in the timing of the appointment of a transition advisory case manager.

38. No provision is currently made under section 64 of the MRCA for part-time Reservists to access transition advisory services. The Committee believes that this group has the right to be offered these services, and recommends that section 64 be amended to include part-time Reservists in the required group to be offered a transition advisory case manager. The Committee also recommends that the rehabilitation authority for part-time Reservists be amended in section 39 to designate the Chief of the Defence Force as rehabilitation authority, because the ADF has a duty of care as a responsible employer and can provide rehabilitation assessment and programs under the *Defence Act 1903* in advance of acceptance of MRCA liability, aiding early intervention.

39. Pension officer and advocacy services are provided by ex-service organisation (ESO) representatives trained under the DVA Training and Information Program (TIP), with funding from the DVA Building Excellence in Support and Training (BEST) program. ADF members have expressed concern over the variable levels of knowledge, skill and competence shown by these advocates in providing advice. A separate Review of DVA-funded ESO Advocacy and Welfare Services (TIP/BEST Review) has recently been completed and the Government has accepted all 45 recommendations. This follows previous reports that have recommended that ESO representatives and advocates who assist veterans should be paid, better trained, and accredited (Doogan Review), and that a second level of trained and accredited pension officers and advocates may be paid through a DVA-funded program (Dunt Review). The Committee recommends that ESO officers who will be in contact with ADF members should have a demonstrated understanding of the MRCA and rehabilitation programs. The accreditation programs being established for DVA staff could be extended to Defence and ESO officers who are in contact with compensation claimants, including Australian Army regional casualty assistance support officers.

40. A member in the ADFRP faced with medical discharge may have a number of different people assigned to them in various coordination or case-management roles, which may be confusing. The Committee believes the roles of these officers need to be explained more clearly, including on the Defence and DVA websites, so that the terminology is better understood by discharging members and staff.

41. SWIIP will monitor transition service performance and develop revised comprehensive transition advisory arrangements with agreed milestones, reporting mechanisms and a recommended model. So that the current oversight provided by the MRCC is not lost after this date, the Committee recommends that revised reporting arrangements after this date should include comprehensive monthly performance reports to the MRCC by Defence on transition services.

42. The Review received criticism of the dissemination and clarity of information on transition available on the Defence and DVA websites. The Committee recommends that

the Defence and DVA websites and transition information should be updated and refined to better meet the needs of ADF members planning their transition to civilian life.

Chapter 8 Permanent impairment compensation

43. Impairment is defined in section 5 of the MRCA as '… the loss, the loss of the use, or the damage or malfunction, of any part of the person's body, of any bodily system or function, or of any part of such a system or function'. Where liability for an injury or disease that results in permanent impairment has been accepted, the MRCA enables compensation to be paid as a periodic payment (generally, paid for life). Permanent impairment compensation payments are non-economic loss payments; that is, they are paid to compensate for pain, suffering, functional loss or dysfunction and the effects of the injury or disease on lifestyle. Functional loss and lifestyle effects are assessed using the *Guide to determining impairment and compensation* (known as GARP M).

44. The Committee discussed the arguments for and against the retention of different compensation levels for different types of service in the MRCA. Under the MRCA, different permanent impairment compensation amounts result for the same impairment rating depending on whether the service at the time is operational or peacetime. Generally, a higher permanent impairment compensation payment is made for operational service.

45. Many ESOs argue that compensation under the MRCA should be the same, regardless of the type of service rendered. Submissions on the issue centred on the argument that impairment has the same impact, regardless of what the service was at the time of injury. The principle of 'like compensation for like injury' is recognised in the development of all modern workers' compensation schemes. In addition, it can be argued that operational service is already financially recognised through the ADF deployment allowances. Conversely, the unique and high-risk nature of operational service compared to peacetime service can be seen to require a higher level of compensation. The Committee recommends that the existing permanent impairment compensation differential for warlike and non-warlike service (or operational service) as opposed to peacetime service be maintained.

46. The current compensation differential is payable for low levels of impairment but not severe impairment or death, and the Committee examined whether this should be revised so that the differential also applies to severe impairment and death.

47. The Committee had divided views on the application of the differential across differing levels of impairment. Committee members representing the Department of Finance and Deregulation, the Treasury, and the Department of Education, Employment and Workplace Relations support maintaining the status quo; Committee members representing DVA and Defence, as well as Mr Sutherland, supported the recommendation that higher rates of compensation for operational service should continue and be extended to the severely impaired and for death. It is estimated that 15–20 per cent of annual permanent impairment compensation expenditure relates to injuries from operational service, and that the proposed extension would have a cost of $1.15 million over four years.

48. The Committee discussed and confirmed the rationale for age-based lump sums under the MRCA. An eligible claimant may choose to convert all or part of a periodic permanent impairment payment into an age-based lump sum. Several submissions to the

Review raised the disadvantage caused to older recipients in not being eligible for the maximum lump sum. The Committee supports the retention of the current system because the lump sum is based on the periodic payments and is calculated on the total payments remaining to the member. If the member is unhappy with the lump sum calculation, they can choose to remain on the periodic payment.

49. The assessment of permanent impairment under the MRCA is based on whole person impairment methodology. That is, where multiple service-related conditions exist, the impairment resulting from all service-related conditions is not simply added but must be combined by applying a combined values formula, which ensures compensation cannot exceed 100 per cent of the whole person. The Committee recommends that the whole person impairment methodology continue under the MRCA.

50. The Committee examined the date of effect provisions for permanent impairment compensation. Weekly permanent impairment compensation under the MRCA becomes payable from either the date the claim for liability was lodged or the date that the claimant's condition(s) are found to have become permanent and stable, whichever is the later. The Committee has found inequities for claimants with multiple conditions where the conditions become stable at different points in time. The Committee recommends that permanent impairment compensation become payable on the basis of each individual accepted condition, rather than on the basis of all accepted conditions. The Committee confirms the stability requirement in the MRCA, but recommends that the increased use of interim compensation payments would alleviate concerns about delays created by the requirement.

51. Several submissions raised concerns relating to the limitations imposed by the MRCA on the pursuit and level of common law damages. If permanent impairment compensation is payable to a claimant under the MRCA, but the compensation has not yet been paid, the member may irrevocably choose to institute common law action against the Commonwealth or a potentially liable member for damages for non-economic loss. Under the MRCA, if a member institutes an action at common law, the court must not award damages of more than $110,000 for non-economic loss. In addition, the choice to pursue common law damages is only offered where permanent impairment compensation is payable. The Committee does not support any changes to these provisions and confirms that one of the objectives of the MRCA should be for statutory compensation to take precedent over the common law as the system for seeking non-economic loss compensation in respect of most, if not all, conditions related to defence service.

Chapter 9 Death benefit provisions

52. The MRCA recognises three classes of dependants who may be eligible for compensation in the event of the death of a member: wholly dependent partners, eligible young persons, and 'other' dependants. The Committee believes that the death benefit package provided by the MRCA is probably the most beneficial and comprehensive of any Australian compensation jurisdiction. Where a member's death is service related, his or her wholly dependent partner is currently eligible to receive a lifetime periodic payment, an additional death benefit (ADB), a Repatriation Health Card — For All Conditions (Gold Card), and a range of other benefits depending on his or her circumstances.

53. The Committee recommends simplifying the payment arrangements by combining the current age-based lump sum and the ADB to create a new combined lump

sum. This will make the compensation package simpler and easier to understand. It is proposed that the new lump sum payment be age based as with the existing lump sum and indexed in accordance with the Wage Price Index. The Committee also proposes that more flexibility be allowed in the choice between a pension and a lump sum to allow dependent partners to structure compensation to meet their financial priorities.

54. The Review examined whether the differential in permanent impairment payments between operational service and peacetime service should be extended to death benefits. Again, the Committee has divided views on this question. If the concept of a differential is accepted, the suggested differential of 10 per cent for higher impairment levels should also be considered for death benefits. Indicative estimates are that creating a 10 per cent differential for death benefits due to operational service would cost $2.85 million over four years. Committee members representing DVA and Defence, as well as Mr Sutherland, favour extension of a 10 per cent differential for operational service to the wholly dependent partner death benefit. Committee members representing the Department of Finance and Deregulation, the Treasury, and the Department of Education, Employment and Workplace Relations, favour maintaining the status quo.

55. Where the death of the member is not service related, the wholly dependent partner is entitled to compensation if the member was eligible for Special Rate Disability Pension (SRDP) or had 80 or more impairment points. The Committee proposed that the current lesser amount for this class of wholly dependent partner be maintained.

56. A number of submissions to the Review pointed out that the periodic payment to eligible young persons under the MRCA is below that of the SRCA. However, the SRCA does not provide the additional benefits of a separate lump sum payment, Gold Card or non-means tested education assistance to eligible young persons, as does the MRCA. The Committee recommends that the MRCA's current pension rate for an eligible young person should not be changed.

57. Several submissions argued that the requirement for a wholly dependent partner to be dependent on the deceased member for economic support is not relevant in contemporary society and is less beneficial than the previous arrangements under the VEA. Most, if not all, compensation jurisdictions in Australia require dependants to be deemed to be economically dependent before they can receive compensation for the death of a partner, and the MRCA supports this principle.

58. Some submissions also argued that former partners (including both divorced spouses and former de facto partners) should be compensated if they were economically dependent on the member at the time of death or while they have responsibility for the care of the deceased member's children. Currently, as the definition of a 'partner' in the MRCA does not include a former partner, a former partner is not entitled to compensation on the death of a member. This is so even if the former partner was wholly or partly economically dependent on the member at the time of death. The Committee recognises that situations could exist in which a former partner continues to be economically dependent on a member and believes that the MRCC should consider further the question of compensation for a former partner, and if necessary provide advice to the Australian Government.

59. The MRCA provides compensation for financial advice for the member or his or her family in a number of circumstances. On 1 July 2004, the amount payable for financial advice was set at $1,200. This amount has been indexed annually in line with the Consumer Price Index so that the current maximum is $1,503.83. The Committee

recommends that the existing compensation for the cost of financial advice should be increased to at least $2,400, taking into account pressures in the industry resulting in changes to fee structures. The cost of this increase would likely be under $50,000 over four years.

Chapter 10 Incapacity payments

60. Incapacity payments are economic loss compensation payments for the inability (or reduced ability) to work because of a service injury or illness. Incapacity payments are based on the difference between a person's normal earnings (NE) and their actual earnings (AE). The full difference between NE and AE is paid for 45 weeks after discharge; after this time, payments are made as a percentage (at least 75 per cent) of the person's NE and their AE (known as 'stepping down'). Payments may continue for as long as a person's AE are below their NE, or until they reach the age of 65 years.

61. The Review received a number of submissions relating to incapacity payments, all of which contended that the provisions be made more beneficial. However, the MRCA has a very high income replacement ratio in comparison with other compensation schemes, which may adversely affect some members' willingness to undergo vocational rehabilitation or desire to return to the civilian workforce.

62. Incapacity payments are based on pre-injury earnings adjusted over time. It is often argued that payments should be further adjusted over time to take account of career progression that is likely to have occurred if not for the injury (known as 'reasonable expectations'). Adjusting payments for 'reasonable expectations' is likely to involve speculation, be difficult to quantify for legislation, create inequity and inconsistency, and unreasonably increase Australian Government responsibilities and costs.

63. Significant administrative difficulties are involved in determining NE over time, due to the complexity of ADF pay scales and the more than 40 allowances that apply to incapacity payments. Determining incapacity payments is labour intensive and system support is inadequate. A more efficient method for calculating NE might be required; for example, consolidating allowances into one generic allowance or loading, or placing time limits on the application of allowances. Another option may be to convert long-term incapacity payment recipients to a statutory rate (either a flat rate, or taking account of rank) for the remainder of the time they are eligible.

64. The beneficial nature of the MRCA's incapacity payments may act as a disincentive for some former members to undertake rehabilitation with a view to obtaining alternative employment. While benefits should make up for what the former member loses through their incapacity to the extent practicable, there is also a need to recognise the link between return-to-work incentives and the level of income replacement.

65. As many of the issues raised in relation to incapacity payments under the MRCA also relate to the administration of incapacity payments in other state, territory and Commonwealth jurisdictions, as well as whole-of-government superannuation issues, the Committee recommends that a cross-agency working group investigate and advise the MRCC on issues relating to incapacity payments.

Chapter 11 Special Rate Disability Pension

66. A former member unable to work because of accepted disabilities may choose the SRDP in lieu of incapacity payments. Under the SRDP, they are paid an ongoing, tax-free amount for life. The SRDP rate is equivalent to the Special Rate of pension under the *Veterans' Entitlements Act 1986* (VEA; currently $1,092.90 per fortnight) and there are offsets for Commonwealth superannuation and permanent impairment compensation payments. The SRDP was built into the MRCA as a safety net payment.

67. There are significant differences between eligibility for the SRDP under the MRCA and eligibility for the Special Rate of pension. One key difference is that, under the MRCA, the former member must undergo a rehabilitation assessment before he or she can be eligible for SRDP. Before choosing the SRDP, a member must obtain financial advice from a suitably qualified financial adviser. Eligibility for SRDP attracts some additional benefits, irrespective of whether a former member chooses SRDP or incapacity payments.

68. There is no age limitation in the MRCA for SRDP eligibility. By contrast, additional conditions apply to the Special Rate of pension for applicants aged 65 years or over. It is unlikely that it was intended that the MRCA be less restrictive than the VEA in regard to remunerative work after age 65 years. The lack of employment history restrictions in the MRCA on SRDP applications after age 65 years should be addressed.

69. People who are eligible for the Special Rate of pension under the VEA or SRDP under the MRCA generally have access to equivalent benefits. One exception is that, under the VEA, a person who is eligible for the Special Rate of pension is automatically eligible for the invalidity service pension; however, a person who is SRDP eligible is not automatically eligible. The Committee recommends that SRDP-eligible former members should have automatic eligibility for invalidity service pension in the same manner as recipients of the Special Rate of pension under the VEA.

70. The commutation of a small amount of weekly compensation for incapacity into lump sum compensation under section 138 of the MRCA will result in a person becoming ineligible to make a choice to receive the SRDP, in circumstances where they would have otherwise been eligible. This is because section 199 of the MRCA requires a person to be receiving incapacity compensation at the time they are determined to be eligible for SRDP to be given the choice to receive SRDP. The Committee is not aware of any cases that have been affected by this situation.

71. Since the introduction of the MRCA in 2004, superannuation and taxation reforms have improved incentives for people to join, stay in and strive for greater rewards in the workforce, and to improve their standard of living in retirement. While tax offsets under superannuation schemes have changed since 2004, the superannuation offset against the SRDP has remained unchanged, with the result that the SRDP is now more advantageous than in July 2004. The setting of a single rate of offset as an adjustment to the SRDP does not result in an equitable outcome. Given the policy intention to reduce taxation for low and middle income earners and provide employment incentives, no change is recommended in the offset until the age of 60 years. The Committee recommends that, after the age of 60 years, the offset should be increased to 70 cents in the dollar to take account of reduced taxation on superannuation benefits after that age.

72. The Committee recommends maintenance of the current approach to not pay SRDP during a person's imprisonment, consistent with the non-payment of incapacity payments in this situation.

73. There are 22 former members who have become eligible for the SRDP since 1 July 2004. As at December 2010, only two had elected, or had indicated they will elect, to take the SRDP. This is thought to be because increases in remuneration levels in the ADF since 2004 have flowed on to incapacity payments, making the SRDP less attractive. In addition, changes in recent years to income tax thresholds and marginal rates have had a beneficial impact on recipients of incapacity payments.

74. With this low rate of uptake, and since the SRDP is designed as a safety net and is unique in modern Australian compensation legislation, the Review has considered its ongoing relevance. The Committee believes that the SRDP may still be of relevance to injured part-time Reservists and those approaching retirement. All aspects of the SRDP including its relevance, eligibility criteria and the effectiveness of rehabilitation should be evaluated as more data become available after a further five years.

Chapter 12 Military superannuation and related compensation issues

75. Most current serving ADF members contribute to the Military Superannuation and Benefits Scheme (MSBS), with some longer serving members remaining with the Defence Force Retirement and Death Benefits Scheme (DFRDB). Incapacity compensation payments and the SRDP under the MRCA are offset by the value of Commonwealth contributions towards superannuation benefits, under the principle that the Australian Government should not make duplicate income maintenance payments to the same person through both superannuation and compensation.

76. Submissions to the Review from ESOs argue that superannuation should not be offset against compensation, as members have paid for their superannuation benefits through their own contributions. The Committee does not support this view, as only the Commonwealth contribution to superannuation payments is offset, not the member's own contributions. If a member received benefits from the MSBS and the MRCA without offset, they could potentially have an income over 175.5 per cent of pre-discharge salary for the first 12 months, and 150.5 per cent until retirement age. The Committee recommends that the offset of incapacity payments and the SRDP by the Commonwealth-funded superannuation received by the member should continue. As at 30 June 2010, half of MRCA incapacity payees out of a total of 748 recipients were in receipt of superannuation payments that offset their compensation.

77. Under the MRCA, only Commonwealth superannuation contributions are offset, not those from private employers. The principle of the Commonwealth not duplicating compensation and superannuation is not applicable for corporations that are not Commonwealth funded. However, this is seen by some as discriminatory against former Commonwealth employees, as the NE and AE calculations for incapacity payments do not take into account superannuation payments from private employers, and the scheme is therefore more beneficial for these members than those receiving only Commonwealth superannuation.

78. The definition of Commonwealth-funded superannuation schemes includes licensed corporations, meaning that contributions to a part-time Reservist's superannuation scheme by a licensed corporation would be offset under the MRCA. The

Committee recommends that the MRCA definition of Commonwealth superannuation scheme should be amended to exclude licensed corporations, except Commonwealth licensed authorities.

79. Under the MRCA, superannuation offsets for incapacity payments apply to former ADF members only. In some circumstances, a current member may receive both Commonwealth superannuation and an incapacity payment, thereby duplicating Commonwealth payments. The Committee recommends the MRCA be amended to apply superannuation offsetting against incapacity payments for current members receiving Commonwealth superannuation, as well as former members.

80. The Review also examined several submissions relating to why the Commonwealth does not pay contributions to superannuation, or compensate for lost superannuation contributions, for people on incapacity payments who are unable to work because of their compensable conditions. The Committee recommends that this issue be considered as part of a cross-agency working group on incapacity payments recommended in Chapter 10.

81. The Review did not examine superannuation legislation or administration in depth, but did note the complexities of administration of invalidity and death benefits. One submission criticised the lack of cooperation between agencies in the administration of death benefits. The Committee recommends that the scope for streamlining the administration of superannuation and compensation invalidity and death benefits be further considered across government.

Chapter 13 Ancillary benefits

82. The Review examined the provision of compensation for household services and attendant care under the MRCA. The MRCA provides that the Commonwealth will meet the cost of services that are reasonably required by the person as a result of an accepted injury or disease, up to a maximum weekly amount.

83. Two submissions to the Review raised the issue of compensation for household and attendant care services provided by a spouse, particularly where a spouse experiences loss of income due to these services. The MRCA does currently allow for the payment for household and attendant care services provided by a spouse or member of the person's household in certain circumstances. However, this does not seem to be well documented in current policies or procedures. The Committee recommends that the MRCC develop guidelines on when household services and attendant care compensation can be paid to the spouse or ANother household member under the MRCA.

84. On enactment of the MRCA, Treatment Principles were made that set out the circumstances in which, and conditions subject to which, treatment may be provided to holders of Repatriation Health Cards. The MRCA Treatment Principles were modelled closely on the VEA Treatment Principles.

85. The Treatment Principles provide for a MRCA Home Care program, similar to the VEA Veterans' Home Care program, which provides personal care, domestic assistance, home and garden maintenance, and respite care. However, there is an overlap in the types of services that can be provided under the program and the household services and attendant care that can be compensated under the MRCA.

86. The Committee recommends that dual entitlements to household and attendant care services be removed.

87. Public consultations for the Review highlighted concerns at the monetary cap on household and attendant care services in regard to tetraplegic clients. Clients or their families arrange their own services and costs vary considerably between regions in Australia. The alternative proposed in discussions was for a statutory limit of hours, rather than a monetary amount. The Committee considers that these services are highly exceptional in the overall client base and individual case management would be more appropriate. DVA has an Exceptional Case Unit that oversees the funding and services provided to very high-dependency cases. The Committee recommends no change to the monetary cap.

Chapter 14 Treatment provisions

88. The MRCA allows the MRCC to provide treatment to a serving member, where liability for compensation has been accepted and the member's Service Chief requests the MRCC to provide treatment. In all other cases, full-time serving members are provided with treatment for injuries or diseases under the *Defence Act 1903*.

89. The Committee examined the treatment pathways available. For former members of the ADF, part-time Reservists and cadets, an MRCC delegate carries out a needs assessment upon acceptance of liability or when a person claims compensation, and determines whether the claimant should follow Treatment Pathway 1 or Treatment Pathway 2. Treatment Pathway 1 provides reimbursement for the cost of treatment that was reasonable for the person to obtain in the circumstances. It is intended as the pathway for short-term conditions. Treatment Pathway 2 is intended for chronic and permanent conditions, and Repatriation Health Cards are issued to provide access to treatment. Claimants who have over 60 impairment points or are eligible for SRDP have an automatic entitlement to a Gold Card, and the MRCA also provides a Gold Card to wholly dependent partners and eligible young persons.

90. As at December 2010, 36 per cent (1,685) of former members receiving treatment under the MRCA were on Treatment Pathway 1, and 64 per cent (2,786 former members) were on Treatment Pathway 2.

91. It is MRCC policy to encourage its delegates to use Treatment Pathway 2 wherever practical. The Committee believes that proper use of the needs assessment should provide for short-term or resolved cases to remain on a reimbursement system and for those with long-term needs to be issued with a Repatriation Health Card. The Committee recommends that the MRCC should conduct ongoing quality assurance reviews or team leaders' analysis of decisions to retain people on Treatment Pathway 1. The reasons behind these decisions should be ascertained and codified to allow ongoing analysis.

92. It has been suggested that the system could be simplified by abolishing the two pathways, and moving all eligible people to the card system on discharge or on acceptance of liability, as in the VEA system. However, the VEA system itself allows reimbursements of certain medical expenses; that is, for the period from the onset of the condition or injury (or three months before the claim, whichever is the later) until the Repatriation Health Card is issued. The Committee believes there are insufficient data

available to determine this question at this stage and it should be reviewed again in three years time, when further data will be available for analysis.

93. A person with both VEA and MRCA entitlements may have cards from both systems. The Committee recommends that the MRCC review the need to issue multiple treatment cards and, if necessary, seek legislative change for greater simplicity. For example, those with pre-existing VEA conditions or cards could be issued only with a MRCA card.

Chapter 15 Administration

94. The administration of SRCA claims for ADF personnel was transferred from the Department of Defence to the DVA in December 1999. With the commencement of the MRCA on 1 July 2004, the MRCC was established within the Veterans' Affairs portfolio. Its role is to oversee all military compensation matters under the SRCA and the MRCA, while Defence retained responsibility for healthcare and rehabilitation for serving members. Since 2004, DVA has assessed liability claims for more than 26,000 clients, made permanent impairment payments to more than 10,000 clients, and made incapacity payments to more than 21,000 clients under the SRCA and MRCA.

95. The DVA organisational structure is a national management model. From 1 July 2010, responsibility for rehabilitation and compensation claims processing staff was transferred to the Deputy Commissioners in each state and territory, and performance management was localised. Liability staff work in multidisciplinary teams with knowledge across all three Acts (the MRCA, the SRCA and the VEA), in an effort to address complexities arising where claimants have eligibility under multiple Acts. A risk-based model has been developed to prioritise claims and direct resources, and national management allows workloads to be moved between offices as the need arises. While submissions from ESOs expressed the preference for processing of claims, reconsiderations and reviews to take place in the claimant's home state, this is not favoured by the Committee, as it limits flexibility in applying staff resources to fluctuating workloads in different locations.

96. Submissions to the Review voiced concern about the time taken to process claims (TTTP), staff administration and quality of decisions. These issues have been the subject of internal audit reviews, and the Review examined the audit findings and management commitments to resolve the issues raised.

97. Performance statistics on compensation and rehabilitation workloads are collated monthly and reported quarterly to the DVA Executive Management Group and the MRCC.

98. DVA conducts a quality assurance program of all administrative functions, including MRCA operations. The key performance indicator (KPI) for each subprogram is expressed as a critical error rate, which is the proportion of cases that have at least one oversight or error of detail, and does not translate to the same percentage of cases with an incorrect outcome. DVA has now instituted a check of 5 per cent of MRCA casework each month over five key areas: liability, rehabilitation, incapacity payments, permanent impairment compensation and accounts payable. The results are compiled and feedback is provided to the MRCC and to the claims processing teams. These show improvements in accuracy in 2009–10 compared to 2008–09 in liability, permanent impairment compensation and rehabilitation work. Other error checks introduced include a 100 per

cent peer review technical check for permanent impairment compensation and team leader checks of at least 5 per cent of cases before a decision is finalised.

99. The TTTP target for initial liability and permanent impairment is 120 days to complete both stages. The average TTTP for initial liability reached 188 days in 2006–07 under the MRCA; however, the times taken are now trending down. Since 2006-07, initial liability claims in process for greater than 12 months were most often 2 to 3 per cent of cases, and were highest in 2006–07 at 5 per cent.

100. Comparisons are often made with the TTTP targets for Comcare claims processing, which are 10–20 days for injury (achieved 14 days in 2009–10) and 37–47 days for disease (achieved 49 days in 2009–10). However, there are a number of important differences that make this comparison invalid. Comcare only starts to record processing times once all evidence required to make a decision has been provided, whereas DVA begins recording its processing times once the claim is received. The average time from injury to a Comcare claim is approximately 110 days, compared with the SRCA and MRCA average of 16 years. In addition, the availability of timely evidence endorsed by the employer assists prompt processing for Comcare, whereas DVA usually needs to obtain archived records from Defence and conduct its own investigation. The MRCA TTTP for permanent impairment claims are adversely affected by the requirement for the condition to be stable before permanent impairment is assessed and the six-month period claimants are given to choose whether to accept compensation as a periodic payments or lump sum (or combination).

101. Needs assessments are completed once liability is determined. The timing of completion of a needs assessment is important for resolution of a member's priority needs. Therefore, the Committee recommends that a KPI should be developed for the time taken from the acceptance of liability to the dispatch of the needs assessment to the client.

102. DVA has sought to address client dissatisfaction with TTTP and other aspects of client liaison, particularly from the younger group of clients, in a number of ways. DVA has improved the coordination of case management and has appointed case coordinators for complex claims as per the recommendations of the Dunt Review. Staff training programs have been conducted to improve the client service culture. Processing times have reduced significantly since 2006–07 as a result of these initiatives.

103. The Committee believes that concerns outlined in submissions regarding the staffing and processing of claims are largely addressed by recommendations from an external review of business processes, an external audit of information technology systems and an internal audit of quality decision making, and supports DVA's efforts to implement the agreed actions as soon as possible.

Chapter 16 Claims

104. The Review received several submissions on issues relating to making claims. Several submissions criticised the volume of paperwork required, and one submission claimed that the onus is on the claimant to provide information that is often held by the ADF. Another proposed that the MRCC obtain all relevant information from Defence and provide this to the claimant with an opportunity to respond or to provide additional supporting information. The Committee believes that early determination of the claim is

best served by claimants providing all reasonably available evidence with their primary claim.

105. Some submissions criticised the 28 days allowed in the MRCA for a claimant to respond to a request for further information held or obtainable by them. The MRCC ensures that this is not applied in circumstances where it would be unreasonable, and no evidence was provided to the Review to show that the MRCC is being unreasonable in this matter.

106. The MRCA claim form combines many details that make it more complicated than may be necessary for all claims. DVA has trialled a Single Claim Form to simplify the claim process and reduce the form length. However, the Committee believes that a modular approach may be suitable for the claims process, where the initial claim form would seek only the information necessary to decide on initial liability and conduct a needs assessment. Other claims, such as permanent impairment compensation, could be submitted either separately or at the same time as the initial claim.

107. In addition, the Committee believes that a modified claim form should be considered for serving ADF members, or those claiming at the time of discharge, who have only served after 1 July 2004. These members will be entirely covered under the MRCA, and the ADF should provide the necessary information.

108. The average time from injury to a Comcare claim is approximately 110 days, compared to the combined MRCA and SRCA average of 16 years and median of 12 years. The average MRCA lag time between injury and claim is increasing. The Committee believes that the MRCC should establish a KPI to measure the time lag between injury and report or claim. Defence should report this annually to monitor the effectiveness of efforts to reduce the time lag, and the information should be included in the MRCC annual report.

109. There are no formal requirements in the VEA or the MRCA to report an incident or injury or lodge a claim within a certain time; however, the SRCA requires notification of an injury as soon as practicable. In the United Kingdom, claims must be made within five years of injury, with some exceptions. The Committee does not believe that this would be practical in Australia, and believes that issues with lag time should be addressed by Defence practice and MRCC monitoring.

110. Several submissions were critical of the time taken to access Defence records to support a claim. DVA and Defence have been aware of the need to address these delays for some time. Since 2006, the Single Access Mechanism initiative has channelled all requests for DVA access to Defence records through teams at DVA and Defence, in an effort to reduce timeframes and duplicate requests. Most requests for service and medical information are processed in fewer than 20 days, but requests for research and confirmation of leave take more than 30 days to process. The Committee believes that a KPI could be set and monitored by the MRCC, and reported in the MRCC annual report, but that the claimant should provide this information with the initial claim whenever possible.

Chapter 17 Reconsideration and review

111. With the introduction of the MRCA in 2004, the decision was made to provide parallel appeal pathways: review by the Veterans' Review Board (VRB); or

reconsideration by the MRCC delegate. This provides a choice between consideration by a non-judicial body (the VRB) and a path that provides reconsideration by another delegate, which may lead more quickly to the Administrative Appeals Tribunal (AAT). Both paths lead to review by the Veterans' Appeals Division of the AAT.

112. The Committee examined the issues around the parallel appeal pathways raised by several submissions to the Review. The VRB path can be seen as a lengthy and daunting process and, therefore, some claimants seek MRCC reconsideration, only then realising the irrevocability of the decision and the fact that legal aid will not be available at the MRCC or at the AAT, other than for claims relating to operational service. Confusion also arises from the different time limits applying for lodgement of applications and for subsequent actions in the two paths. For example, applications for MRCC reconsideration must be lodged within 30 days and subsequent review by the AAT must be within 60 days, and applications for VRB review must be lodged within 12 months and subsequent review by the AAT must be within 3 months.

113. The main suggestions from the submissions were that the appeals process be simplified by removing the MRCC pathway and directing all appeals to the VRB; and that legal aid be available for all appeals. The Committee recommends a single appeal path should be established that includes internal reconsideration, the VRB and then the AAT. The Committee believes that this will achieve more timely reviews at a lower cost. However, the Committee also believes that significant alterations to the current VRB process are required, including the introduction of active case management and improvements to timeliness for MRCA reviews by the VRB.

114. Case management and case conferences will help to ensure that the process is fully understood by the applicant, the issues are well defined, and all relevant evidence is identified and sought as early as possible so that the hearings can proceed without any unnecessary delay. In advance of the adoption of a single path, a formal service level agreement between the MRCC and the VRB should be negotiated to define a comprehensive case conference process within current legislation.

115. The Committee believes that reconsideration by the MRCC should be the first step in the review process. This would help ensure the quality of decisions that are considered by the VRB and reduce VRB workloads and costs.

116. Given the significance of the changes involved in moving to one pathway, alterations will need to be introduced incrementally. The Committee recognises that there are many significant issues that would need to be worked through in consultation with all stakeholders. A model for reform, business case and change management plan for implementation of incremental and legislative change would need to be developed. Incremental change could begin with negotiated changes between the DVA and the VRB. There will be up-front costs in recruitment, training and systems needs. Implementation of a single path would also require the current position in relation to costs and legal aid to be rethought. For legal aid coverage to be extended to a broader group, the federal Attorney-General would need to take up this matter with his state counterparts.

117. Where liability has been rejected by the MRCC but is subsequently accepted by the VRB, there is rarely sufficient material on file to enable the VRB to determine compensation, as the matters would not have been investigated by the MRCC. As the VRB currently has no power to remit a matter to the MRCC to determine compensation, it must, upon accepting liability, adjourn the hearing. The Committee believes the VRB

should be provided with explicit powers to remit a matter to the MRCC for needs assessment and compensation.

Chapter 18 Governance arrangements

118. Administration and governance of the MRCA is shared between Defence (the employer) and DVA (the scheme administrator). Three recommendations about governance from the Tanzer Review in 1999 were agreed to by the government of the day, but were not implemented when the MRCA was enacted. The current Review examined why these recommendations were not adopted.

119. The Tanzer Review proposed that the ADF should not be covered under the occupational health and safety (OHS) legislation of the time, but should be covered under the MRCA, or that ADF-specific OHS legislation be enacted. Since OHS legislation is different to compensation legislation, and there are moves towards harmonising OHS legislation across jurisdictions by 2012, the Tanzer Review no longer has relevance or benefit to Defence. The Committee recommends that the current arrangements continue.

120. The Tanzer Review also proposed that the Minister for Defence should be responsible for the MRCA. The government at the time changed this to the Minister for Veterans' Affairs, since military compensation is core business for DVA, but not for Defence. The Committee recommends that the Minister for Veterans' Affairs continue to be responsible for the MRCA.

121. In addressing funding and ministerial responsibility, the Tanzer Review believed that Defence should introduce a premium, payable to the Department of Finance and Deregulation. This has not been pursued by Defence or DVA, although the Australian Government Actuary has been calculating a notional premium for military compensation since the 1990s. The MRCA is funded on the basis of emerging costs, with its expenditure appropriated from the Budget.

122. The Committee is sympathetic to making the costs of military compensation more visible, but believes that a premium-based model is not appropriate for the ADF. There are difficulties in capturing compensation data, concern about commanders' ability to adjust their unit's activities in response to rising OHS costs, and a lengthy time required to know whether the calculation made was correct. The Committee recognises that the absence of an effective price signal is a barrier to understanding the dollar cost of service-related deaths, injuries and illnesses in the ADF.

123. Military compensation costs play a minor role in improving ADF OHS performance. Peacetime activities are covered under the same OHS regulations as civilians, with some exceptions, and peacetime service makes up the bulk of both claims and costs under the MRCA. This may change as the MRCA matures or operational tempo increases.

124. A more integrated approach to OHS and military compensation is required from DVA and Defence. The two organisations have different responsibilities but common goals, and a collaborative approach is needed to improve effectiveness and accountability. The Committee recommends that the two agencies should jointly determine the most appropriate future arrangements for operation of the MRCA, rather than revising the existing Memorandum of Understanding, which has little practical application.

125. Accurate and timely management information sharing is central to this approach. A system that is integrated with Defence's OHS and health information management systems would improve efficiency for both agencies. DVA claims assessors could interrogate Defence incident data and access medical and payroll information data directly. This could significantly reduce the time taken to process many claims. The Committee believes that Defence and DVA should devote greater effort and resources to developing and implementing more integrated systems.

126. The MRCC membership consists of three members of the Repatriation Commission, a member nominated by the Minister administering the SRCA (currently the nominee is the Chief Executive Officer of Comcare), and a member nominated by the Minister for Defence (currently an ADF member at the two star rank level, the Head of People Capability). The Committee believes that the addition of another member to represent Defence has significant potential benefits and should be considered.

Part 3 Legislative schemes that govern military compensation before the Military Rehabilitation and Compensation Act and anomalies that exist

Chapter 19 Compensation offsetting between the Veterans' Entitlements Act and the Safety, Rehabilitation and Compensation Act

127. The Committee examined offsetting arrangements between the VEA and the SRCA. This matter has been the subject of widespread criticism and concern in the veteran community for some years.

128. Offsetting occurs because certain claimants have dual eligibility and are able to claim compensation under both the VEA (pension) and the SRCA (permanent impairment lump sum payments and incapacity payments). Dual eligibility dates from 1972, when ADF members on peacetime service became eligible to claim under the two compensation schemes. The enactment of the MRCA from 1 July 2004 ceased the practice of dual eligibility for all forms of service from that date. However, dual eligibility continues for service before 1 July 2004. A key principle of offsetting is that dual eligibility should not result in claimants receiving benefits greater in value than the more generous of the benefits available under either the SRCA or the VEA for the same incapacity or death.

129. Out of 120,755 disability pensioners (as at September 2010), almost 9,000 (7 per cent) have their disability pension offset. In addition, 370 war widow(er)s have had their war widow(er)'s pension offset. The average disability pension offset is approximately $87.00 per fortnight. The average war widow(er)'s pension offset is approximately $313.00 per fortnight. These total approximately $25 million per year.

130. Offsetting is the process of reducing one compensation payment in recognition of another compensation payment for the same incapacity or death, so that a claimant does not receive double compensation. Offsetting typically occurs when a claimant receives a pension under the VEA and subsequently elects to receive a SRCA lump sum payment for the same incapacity or death. The legislation that governs the offsetting arrangements requires that the lump sum be converted to give a fortnightly payment equivalent. This conversion uses factors provided by the Australian Government Actuary, which take account of the claimant's age. The fortnightly VEA pension is then reduced for the life of

the claimant by an amount initially equal to the fortnightly equivalent (this amount increases in line with the Consumer Price Index).

131. Submissions to the Review did not take issue with the principle underlying offsetting, but were critical of the methodology. Claimants argued that offsetting should cease once the original amount has been repaid or, alternatively, upon claimants attaining their actuarial age. In 2003, these issues were the subject of a specific inquiry by the Senate Foreign Affairs, Defence and Trade Legislation Committee. The Senate Committee did not recommend changing the offsetting arrangements, noting that the introduction of the MRCA would cease dual eligibility for future service and thus the problem would eventually cease to exist.

132. The Committee examined the current actuarial model used for offsetting calculation and three alternatives: a modified actuarial model; a loan model; and ceasing the offset when the lump sum is 'paid back'. Any changes to existing military compensation offsetting arrangements would need to be considered from a whole-of-government perspective, since offsetting calculations based on an actuarial model are not confined to military compensation.

133. In the actuarial model, the total dollar amount offset against a claimant's pension over his or her lifetime usually exceeds the lump sum amount. This feature can result in perceived inequities. However, on average, the cost to the Commonwealth of providing the lump sum benefits is equal in value to the savings arising by offsetting the pensions.

134. To remain cost neutral to the Commonwealth, the modified actuarial model would result in a higher offset than the current approach, but the offset would cease when claimants reach their actuarial age (life expectancy). However, the higher offset would be unlikely to gain claimants' support.

135. In the loan model, when the offsetting process commences, the relevant part of the pension would be set to zero (fully offset); and when the loan is fully repaid, including an appropriate allowance for interest, the disability pension would be restored to full value for the rest of the claimant's life. The loan model would cost the Commonwealth 5–10 per cent more than the actuarial model. In addition, the 2003 Senate Inquiry concluded there were too many complexities associated with this model.

136. By ceasing the offset when the lump sum is 'paid back', the offset effectively becomes a non-interest loan. This approach has the benefit of being simple to understand, but it violates the key principle of offsetting mentioned earlier. Since this approach ignores the time value of money, claimants with dual eligibility would be able to receive benefits of greater value than under either the SRCA or VEA individually.

137. The Committee believes that these alternative models are complex and not cost effective, and recommends that existing offsetting arrangements be maintained. The Committee also recommends that the Repatriation Commission further explore the concept of giving claimants a choice, at the date any offset is determined under the VEA, to pay back the actuarial value of the lump sum previously received under the SRCA.

138. Since the complexities of the current offsetting arrangements make information difficult for many claimants to fully understand, it is important that the advice given to potential claimants is comprehensive, accurate and clear. The Committee recommends that the Department of Veterans' Affairs continue its efforts to improve advice to clients

regarding the effect that offsetting provisions will have on their compensation entitlements.

Chapter 20 Ceasing new claims under the Safety, Rehabilitation and Compensation Act

139. The MRCA was enacted in 2004 to overcome the complexities and confusion created by the parallel and combined operation of two separate compensation Acts for military service, the VEA and the SRCA. There continues to be complexity and confusion arising from the interaction of the three Acts (five Acts, if the 1930 Act and the 1971 Act subsumed into the SRCA are also considered). Most liability claims under the MRCA are determined quickly and dealt with simply. Claims that give rise to concerns are often complicated by previous conditions accepted under one or two other Acts. The effect of continuing to accept claims under the SRCA and the VEA for service before 1 July 2004 means that claims under those Acts will not be exhausted for possibly 60 years or even longer.

140. The Committee examined the possibility of reducing legislative complexity by ceasing future claims under the SRCA and treating them as claims under the MRCA. While the Committee's discussion focused on the movement of SRCA claims to be treated as MRCA claims, the Committee noted similar considerations might also be made for VEA claims in the future. Transitioning future SRCA claims to the MRCA would reduce complexity, confusion among stakeholders and some administration. Exact benefits under the MRCA and SRCA depend on individual circumstances; however, most would receive a higher benefit under the MRCA. The Australian Government's future military compensation liability could therefore be expected to increase substantially over time as a consequence of transitioning the SRCA into the MRCA. There may also be a perceived inequity where late claimants come under the MRCA, which is, in certain respects, more beneficial than the SRCA, so these claimants would be at an advantage by not lodging their claims sooner. There is potential for this to lead to demands that all old SRCA claims should be reassessed under the MRCA.

141. However, not all future SRCA recipients would be better off if assessed under the MRCA. The application of the MRCA's whole person impairment assessment, and the use of the SoPs and the *Guide to determining impairment and compensation* (GARP M) assessment tool, can lessen the amount of compensation for some claimants or deny eligibility altogether to some others. This may reduce, to some degree, the costs associated with transitioning new claims under the SRCA to the MRCA. However, it could lead to arguments by claimants for a choice as to which legislation they wish to be covered by, or litigation by claimants arguing they have been denied their rights.

142. Therefore, the Committee recommends that the current transition approach be maintained and that no action be taken to cease future claims under the SRCA by treating them as claims under the MRCA.

Chapter 21 Aggravations of conditions accepted under the Veterans' Entitlements Act related to service rendered after 1 July 2004

143. When the MRCA was enacted, the intention was not to interfere with compensation entitlements of VEA beneficiaries. Transitional provisions contained in the

Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004 (CTPA) clarify the interaction between the MRCA, the VEA and the SRCA.

144. Claims for aggravation of a condition compensated under the VEA (where the aggravation occurred as a result of service rendered on or after 1 July 2004) require the claimant to make a choice under section 12 of the CTPA (known as a section 12 election). Claimants can either:

- make an application for increase (AFI) under the VEA for the aggravation. This means that both the underlying condition and the aggravated component will be pensionable under the VEA; or
- claim under the MRCA for acceptance of liability for the aggravation. This means that the underlying condition will remain pensionable under the VEA, while the aggravated component may be compensated under the MRCA.

145. The election process is an exception to the general date of injury approach adopted under the MRCA transitional provisions, but it ensures that the MRCA does not interfere with the entitlements of VEA beneficiaries. The election process is complex and can cause confusion and anxiety for claimants, and administrative burden for DVA. Most claimants elect to proceed with an AFI under the VEA, rather than claim under the MRCA. The Committee also identified a number of issues, in addition to those raised in submissions, relating to the difficulties in the administration of section 12 elections.

146. One approach to address these issues is that all aggravations of VEA conditions caused by service on or after 1 July 2004 could be compensated under the MRCA. This would be in line with the date of injury approach and the approach to aggravations of conditions previously accepted under the SRCA. However, the Committee does not prefer this option, as it may prevent some claimants from being eligible for an above General Rate of Pension or Repatriation Health Card — For All Conditions (Gold Card) under the VEA, and some claimants may have liability for the aggravation rejected under the MRCA.

147. An alternative approach is to remove the election process and stipulate that all aggravations of a VEA condition that relate to service can only be compensated under the VEA, regardless of when that service occurred. This option is an exception to the date of injury approach, but is more in line with the principle that enactment of the MRCA would not interfere with VEA entitlements. The Committee therefore recommends that the election provisions be removed and replaced with provisions stipulating that all aggravations of VEA conditions relating to service on or after 1 July 2004 must be the subject of an AFI under the VEA, and cannot be claimed under the MRCA.

Chapter 22 Transitional permanent impairment claims

148. Chapter 25 of GARP M sets out the method to be used where a person already has a condition accepted under the VEA and/or the SRCA, and suffers a further condition that is to be assessed for permanent impairment compensation under the MRCA. The legal authority for this process is provided in section 13 of the CTPA. The process involves:

- assessing the VEA or SRCA and the MRCA condition(s) using GARP M as at the current date and combining them according to GARP M to derive a total impairment rating;
- using the total impairment rating to determine a gross MRCA amount; and

- offsetting this gross amount by any compensation payment(s) under the VEA or SRCA.

149. The purpose of this method is to guarantee that impairment suffered as a result of previous VEA and/or SRCA conditions will be counted towards eligibility thresholds under the MRCA. Secondly, the method ensures that the whole person impairment methodology is applied across all three Acts. However, the method is complex and not easily understood by claimants, and was the subject of a number of submissions to the Review.

150. Submissions argued that the methodology is only about cutting costs and is detrimental to members, and suggested that claimants should be compensated for each individual injury. Ex-Service Organisation Round Table representatives requested no offsetting at all under Chapter 25 of GARP M. The Committee does not support this position, since removing consideration of previous conditions under the VEA or SRCA completely would not be in accordance with the intent of the whole person impairment methodology of MRCA. Total compensation under all three Acts should not exceed the maximum compensation intended to be paid by the Commonwealth for a person's defence service under the MRCA. Compensation should therefore remain capped at the maximum permanent impairment compensation payment under the MRCA.

151. However, the Committee found that the methodology used to calculate permanent impairment compensation for the MRCA condition under GARP M may result in a lower or higher net MRCA permanent impairment compensation payment than expected (when considered in light of the impairment points suffered as a result of the MRCA conditions), or no payment. This may occur because of differences in assessment methodologies and the calculation of compensation under the three Acts, and changes in VEA or SRCA conditions over time.

152. The Committee investigated whether the method of offsetting should be amended. The Committee was divided in opinion:

- Committee members from DVA and the Australian Defence Organisation, and Mr Peter Sutherland, believe that the current method is inappropriate because members who suffer an increase in whole person impairment as a result of new MRCA conditions may not receive additional compensation for that increased permanent impairment. They believe that the low or nil outcomes produced by the current method could not have been foreseen and were not intended at the time the MRCA was introduced.
- Committee members from the Department of Finance and Deregulation, the Treasury and the Department of Education, Employment and Workplace Relations believe that the current method is appropriate because it ensures that compensation outcomes for transitional claimants and MRCA-only claimants with the same levels of whole person impairment are equalised to the extent possible under the MRCA.

153. The Committee recommends that the Government consider these two views. The Committee also recommends that there be an education campaign in conjunction with ex-service organisations to facilitate greater understanding of the arrangements and ensure claimants are aware of the effect that these provisions may have on their compensation.

154. As an appendix to this chapter, an alternative method of offsetting is presented that, for the purposes of calculating the amount of compensation payable for the new impairment level, the SRCA or VEA conditions be treated as if they were being

compensated under the MRCA. It addresses the reasons for low or nil outcomes by ensuring that like is offset against like, while still meeting the policy principles of whole person impairment.

155. The alternative method would, if adopted, increase administered expenditure by approximately $25.5 million over four years, assuming any pre-existing cases where the claimant will be better off are not prevented from seeking a reassessment. Approximately 700 cases considered before 1 December 2010 have had the current method applied, and around 250 transitional permanent impairment claims can be expected per year, with that number increasing slowly.

Chapter 23 Other perceived anomalies

156. The MRCA is based on the SRCA structure. It includes rehabilitation benefits, and economic loss or non-economic loss compensation, with additions from the VEA, where this is beneficial and not anomalous. The VEA is pension based and has general healthcare benefits. Differences in benefits between the schemes have arisen because of the history of each of the Acts, and some differences in rates or circumstances in which a benefit is payable should be expected. The Committee considered several perceived anomalies between the MRCA, VEA and SRCA that were raised in submissions and during consultation. These relate to the following payments:

- household services and attendant care under the VEA;
- motor vehicle compensation scheme under the MRCA;
- lump sum payments for VEA recipients;
- telephone allowances;
- private vehicle travel expenses;
- funeral benefits;
- fortnightly payments for eligible young persons;
- education allowances for eligible young persons;
- impairment points and eligibility criteria for certain benefits, such as the Repatriation Health Card — For All Conditions (Gold Card); and
- automatic grant of death benefits for dependants of prisoners of war.

157. While it is not unusual for beneficiaries under one piece of legislation to compare similar benefits available under a different piece of legislation and argue for those that are more beneficial, the Committee concluded that, in all the above cases, the differences in these benefits are not unintended or anomalous. The Committee therefore recommends that no change is necessary to adjust benefits between the applicable Acts.

Part 4 Level of medical and financial care provided to Australian Defence Force personnel injured during peacetime service

Chapter 24 Treatment cards for Safety, Rehabilitation and Compensation Act clients

158. Defence-related claims under the SRCA can include medical expenses reasonably required for the compensable condition. This usually occurs through reimbursement of costs, and occasionally by direct billing. The Review received a number of submissions relating to healthcare provisions under the SRCA, including proposals to issue Repatriation Health Cards to ADF claimants under the SRCA.

159. Introducing Repatriation Health Cards would bring the SRCA in line with provisions under the VEA and the MRCA. However, this will mean that access to certain types of treatment, such as remedial massage or gym programs, will be more limited than under the current SRCA provisions. A co-contribution for pharmaceuticals will also be payable.

160. Many amounts payable under the DVA fee schedule are significantly lower than those under the SRCA, such as standard general practitioner consultations and most specialist consultations. This may lead to provider dissatisfaction, and medical and allied health provider groups, including the Australian Medical Association, should be consulted as part of the development of the expanded card system.

161. Advantages of Repatriation Health Cards — For Specific Conditions (White Card) for SRCA clients include:

- the convenience of not paying upfront and waiting for reimbursement;
- consistency in provisions across the VEA, SRCA and MRCA;
- greater control and monitoring of treatment and pharmaceuticals; and
- administration and departmental savings.

162. The SRCA has a steady volume of between 5,000 and 6,000 treatment claimants per year. Given that the SRCA has been closed for service rendered after 1 July 2004, it is assumed that most of these claimants will be suffering long-term or chronic conditions. The average annual cost per claimant is around $4,364 per year. As at September 2010, there were 50,137 White Card holders under the VEA and MRCA, with an average expenditure of $1,700 per cardholder. This figure may be slightly skewed towards a higher cost, given that the VEA treatment population will be, on average, older than the SRCA treatment population and therefore accessing health care more often.

163. The Committee therefore recommends that White Cards be issued to defence-related claimants under the SRCA. Provision of cards should be subject to a needs assessment showing long-term treatment needs. The current reimbursement arrangements for the treatment of short-term conditions should be retained. The Committee also recommends that the DVA fee schedule be adopted for treatment provided to defence-related claimants under the SRCA, and that the supplement payment for pharmaceuticals be extended to SRCA clients with Repatriation Health Cards.

Chapter 25 Non-liability health cover for certain conditions

164. Non-liability health cover is available under subsection 85(2) of the VEA for the treatment of pulmonary tuberculosis (TB), malignancies and post-traumatic stress disorder (PTSD). Determinations made under section 88A provide further non-liability health cover for other psychiatric conditions, such as anxiety disorder. Both these provisions also apply to members who have rendered operational service after 1 July 2004 where they do not have the condition accepted under the MRCA. Members who entered the ADF after 1994 and have peacetime service only are not eligible for non-liability health cover.

165. One submission to the Review argued for treatment of malignancies for all members, regardless of service type. Comments at public consultation meetings concerned the lack of automatic coverage for treatment of psychiatric disorders and malignancies for members with only peacetime service; comments were particularly strong about psychiatric conditions.

166. Treatment coverage for TB now has limited application, with a very small volume of claims made under the MRCA. Extending non-liability health cover for TB for all modern-day peacetime service is not considered necessary. Similarly, the low numbers of claims for malignancies under the MRCA to date indicate that there is not a substantial need to extend non-liability health cover to all peacetime former members covered under the MRCA. The Committee considered whether a subgroup of members should be defined for this purpose, using full-time status or length of service, but concluded that any extension could not be justified.

167. Current VEA non-liability health cover includes treatment for anxiety, depressive disorders and PTSD. These disorders represent 73 per cent of claims under the MRCA for psychiatric conditions; other claims are for conditions not included in VEA non-liability health cover (including acute stress disorder, adjustment disorder, bipolar disorder, panic disorder, personality disorder and schizophrenia). Recent reviews have drawn attention to the need for improvements in the care of all members and former members with mental health conditions.

168. As at 31 December 2010, there had been 683 claims from ADF members with peacetime service only for psychiatric conditions covered under the VEA non-liability treatment provisions; of those, 363 claims were rejected. DVA has estimated that the cost of providing non-liability treatment for this group would be approximately $6 million over four years. However, there may also be offsets to Government costs through non-use of Medicare arrangements that are not included in this estimate.

169. The Committee was divided in its view on whether the MRCA should be used to extend non-liability treatment for psychiatric conditions to former members of the ADF with peacetime service only.

170. Committee members representing DVA and the Australian Defence Organisation, and Mr Peter Sutherland believe that non-liability health cover for all psychiatric disorders should be provided under the MRCA for former ADF members and part-time Reservists who have served after 1 July 2004. These Committee members also believe that this is consistent with the thrust of recommendations of recent reviews including the suicide study by Professor David Dunt, which drew particular attention to members' needs around the period of transition to discharge and did not limit consideration to those who had operational service.

171. The Committee members representing the Department of Finance and Deregulation, the Treasury and the Department of Education, Employment and Workplace Relations believe the MRCA (or *Safety, Rehabilitation and Compensation Act 1988*) is not an appropriate vehicle to extend non-liability health cover for all psychiatric disorders to former ADF members and part-time Reservists with peacetime service only. In principle, compensation schemes should only deal with cases where liability is established.

172. These members recommend that Defence and DVA gather further evidence to establish both the benefit and need for additional psychiatric care for this group separate to the existing general health services. If need and benefit are established, then options could be explored to deliver such health coverage outside of compensation legislation and presented to the Australian Government.

Part 5 Implications of an Australian Defence Force compassionate payment scheme for non-dependents

Chapter 26 Compassionate payment scheme

173. The question of whether or not to introduce an ADF compassionate payment scheme was referred to the Review by the then Minister for Defence Science and Personnel and the then Prime Minister in 2008. The purpose of such a scheme would be to provide compassionate payments to the non-dependent parents (and other close family members) of ADF members who die while serving. Occasionally the government grants payments for grief or pain and suffering resulting from the loss of an ADF member, on a case-by-case basis.

174. Public emotion generated by a death of an ADF member can be accompanied by concern about the adequacy of the compensation and support provided to bereaved family members, particularly in circumstances where the ADF is at fault, or perceived to be at fault. Arguments for the introduction of a compassionate payment scheme for non-dependent family members include eliminating or reducing the potential for these matters to be politicised, and providing a clear and consistent way of providing support.

175. Consistent with other workers' compensation legislation, the MRCA does not pay compensation to parents or other family members unless they can establish they were financially dependent on the deceased. Common law in Australia does not generally provide compensation for grief or bereavement arising from the wrongful death of a close family member.

176. Implementing a military compassionate payment scheme would clearly go further than any other Australian workers' compensation scheme and would extend the notion of compassionate payment well beyond its present statutory scope. It would be difficult to design a scheme that would seem fair to all families, be relatively simple to understand and administer, entail minimal costs, and provide minimal potential for flow-on effects to other legislation.

177. The Committee concluded that, if such a scheme was introduced, it would have the potential to create more problems than it would solve. However, it recommends that Defence continue to consider the circumstances of individual cases under the current

arrangements as there may be grounds for the Australian Government to make payments in certain limited circumstances.

Part 6 Suitability of access to military compensation schemes for members of the Australian Federal Police who have been deployed overseas

Chapter 27 Coverage for Australian Federal Police

178. The current Australian Government gave a 2007 election commitment to consider the appropriateness of compensating Australian Federal Police (AFP) members for conditions arising from high-risk overseas missions through military compensation arrangements. This consideration forms part of the Review.

179. As Australian Government employees, AFP members are covered by the SRCA including when deployed, posted or working overseas. AFP members deployed with Peacekeeping Forces were eligible for benefits under the VEA until the enactment of the MRCA, and some on high-risk missions continued to be eligible. However, VEA coverage effectively ceased for the AFP when the previous government announced in 2006 its intention that AFP members with eligible overseas service would be compensated under new arrangements comparable to the provisions of the MRCA. It was intended that these arrangements would be included in an enhanced SRCA. However, while work on amendments to the SRCA commenced in 2006, technical difficulties halted the work and the requisite legislation has not been drafted. The AFP has recently introduced interim compensation arrangements for members posted to Afghanistan, Timor Leste and Papua New Guinea.

180. When the MRCA replaced the VEA in 2004, coverage for AFP members was intentionally not carried over into the new legislation, as the MRCA was designed to be a military-specific scheme and to take account of the special characteristics of military service. The Committee believes that bringing the AFP into the MRCA would run counter to the commitments given to ADF members and the ex-service community in promoting acceptance of the MRCA on the basis it was specifically for military personnel.

181. The Committee also believes that the work performed by the AFP and the ADF while on overseas operations is not the same, nor is the role of the two organisations always integrated. Bringing the AFP into the MRCA would necessitate not insignificant technical amendments to the legislation, and give rise to considerable complexity and anomalies in administration.

182. For these reasons, the Committee recommends that AFP members not be given access to the MRCA.

Part 7 Miscellaneous Issues

Chapter 28 Life insurance in the context of military compensation

183. The issue of life insurance for ADF members is outside the Review's terms of reference. Defence brought the issue to the Review in response to ADF members being

denied life insurance coverage, or having existing policies suspended, due to war exclusion clauses. This is a significant problem for Reservists on continuous full-time service, especially health professionals, where MRCA benefits for injury or death may not be sufficient to cover loss of business income.

184. Life insurance is a personal decision for ADF members, based on their individual financial circumstances. Defence provides financial assistance in the form of an allowance to reimburse ADF members for the additional coverage they need to purchase above the normal cost of a life insurance policy. It is difficult to see how life insurance could be integrated into the MRCA without radical change to the legislation and support from a wide range of stakeholders.

185. Compulsory insurance would also convey the impression that the MRCA is inadequate and life insurance is a necessary substitute for military compensation. In reality, compensation under MRCA is sufficient for the vast majority of ADF members, particularly when combined with the death and disability benefits provided by military superannuation schemes.

186. The Committee recommends that Defence and DVA jointly undertake a comprehensive communication strategy, aimed at educating serving ADF members on the full range of financial benefits provided under the MRCA and military superannuation.

187. Defence has elected to pursue this matter separately from the Review process, with several options under consideration before a recommendation is made to the Australian Government.

Chapter 29 Reconsideration of compensation-related recommendations from the Review of Veterans' Entitlements

188. A reconsideration of unimplemented recommendations from the Clarke Review of Veterans' Entitlements referred 22 recommendations on compensation issues to the current Review. These relate to the disability compensation structure, the private health insurance allowance, Extreme Disablement Adjustment (EDA), one-time election for SRCA or VEA, and rehabilitation.

189. The Clarke Review proposed a new disability compensation structure with different levels of compensation up to and after retirement age that varied according to family composition. Several elements of this disability structure have been included in the MRCA. The introduction of the MRCA and increases to VEA disability and war widow(er)'s pension rates have substantially improved the situation for former ADF members and families compared to the benefits available at the time of the Clarke Review. There is, therefore, no need to reconsider the revised disability structure arising from recommendations 76–79 of the Clarke Review.

190. Submissions to the Clarke Review advocated extending Gold Card eligibility to families of veterans. The Clarke Review rejected this concept, but recommended a private health insurance allowance for Special Rate of pension and EDA veterans. The DVA does not provide this allowance for any client group; families have access to health care through Medicare and the Australian Government's private health insurance premium subsidy. The needs identified in the Clarke Review have been addressed through higher Special Rate and EDA pensions, the introduction of the Defence Force Income Support Allowance and increases in income support pensions. The Committee does not

recommend introducing a tax-free allowance to assist Special Rate and EDA pension families with children who decide to take out private health insurance cover (Clarke Review recommendations 72 and 89).

191. Clarke recommendations 88 and 90 outline revised benefits for EDA veterans, including a Goods and Services Tax (GST) rebate for motor vehicle parts and services, and a 'more targeted' range of benefits for people older than 65 years who have 70 impairment points and six lifestyle factors. Considering the full range of benefits currently available to EDA veterans and increases in the rates of disability and income support pensions since 2003, Clarke's recommendations would actually reduce family income for this group. GST exemption for motor vehicle parts is available to all members of the general community who have lost the use of one or more limbs, so some EDA veterans may already be covered. For those who do not qualify for the general exemption, the VEA and MRCA provide motor vehicle compensation and assistance schemes. The Committee, therefore, does not recommend adjusting the benefits structure or seeking GST exemptions for EDA recipients or former members suffering the equivalent levels of impairment and lifestyle under the MRCA (Clarke Review recommendations 88–90).

192. Recommendation 92 of the Clarke Review called for veterans with dual entitlements under the VEA and SRCA to be allowed a one-time election, which would restrict them to receiving benefits under one Act of their choice. The Committee considers that this could prove disadvantageous to an individual if their circumstances change. Dual entitlements under the VEA and SRCA for injuries or disease arising from service after 1 July 2004 have been discontinued through the MRCA and the CTPA.

193. The Clarke Review made a number of recommendations relating to rehabilitation. The place of rehabilitation in military compensation administration is now firmly based and well entrenched in practice, and a number of recommendations for improvement in this area are made in the current Review. DVA's main effort on rehabilitation is through the MRCA service delivery stream, but there is a risk that people with VEA eligibility may not have the opportunity to participate in the programs relevant to their age and quality of life expectations. The Committee recommends that DVA, the Repatriation Commission and MRCC review the Veterans' Vocational Rehabilitation Scheme (VVRS) to improve rehabilitation options for those who have VEA eligibility and are younger than 50 years.

194. The MRCA contains many of the interlocking disability benefits and rehabilitation programs proposed by the Clarke Review. They are also evident in the principles and protocols for rehabilitation established by DVA in consultation with the Ex-Service Organisation Working Group (ESOWG) for implementing the MRCA. The gaps identified mainly relate to younger veterans who may still benefit from rehabilitation. The Committee recommends that no further action be taken on the recommendations of the Clarke Review that were referred to this Review.

Chapter 30 Suitability of access to military compensation schemes for non-members

195. Section 8 of the MRCA provides specified civilians, who support the ADF but do not have access to other worker's compensation schemes, access to the benefits of military compensation.

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

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

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

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

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

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

Recommendations

Part 1 Context

Chapter 4 Unique nature of military service

4.1 The Military Rehabilitation and Compensation Commission (MRCC) should constantly monitor and review the *Military Rehabilitation and Compensation Act 2004* (MRCA) to ensure it appropriately reflects and recognises the unique nature of military service.

4.2 The MRCC should periodically review developments in Australian workers' compensation jurisdictions and international military compensation arrangements at least every five years to ensure the MRCA's financial benefits and associated policies and procedures remain contemporary.

4.3 Department of Veterans' Affairs (DVA) representation and participation on the Heads of Workers' Compensation Authorities continues.

Part 2 Operation of the Military Rehabilitation and Compensation Act

Chapter 5 Initial liability and the Statements of Principles

5.1 There should be no change to the current Statements of Principles regime.

5.2 The MRCC should monitor the situation in relation to injuries sustained by members at the time they are rendering defence service to ensure that the MRCA liability provisions are operating fairly.

5.3 The MRCC should review its policy in relation to off-duty personal fitness regimes, and consider whether, in light of relevant case law, it is appropriate to deny liability for injuries sustained or diseases contracted as a result of sporting activities that are not part of a formal training program designed by an Australian Defence Force (ADF) Physical Training Instructor.

5.4 Information Technology (IT) systems should be improved to monitor and report information relating to the application of the exclusion provisions under the MRCA.

Chapter 6 Rehabilitation

6.1 Research into rehabilitation, and the formulation of the research outcomes into improved policies and practices in the ADF and DVA, be continued.

6.2 DVA rehabilitation pamphlets and websites should highlight the MRCC policies on vocational training aimed at restoring potential, based on individual abilities and

assessed capacity; examples (de-identified) of successful vocational programs undertaken by former ADF members should be publicised.

6.3 Rehabilitation providers should be fully briefed on the opportunities available for vocational training under MRCC rehabilitation.

6.4 DVA should improve the information in its pamphlets and on the website on the availability of holistic assistance, including psychosocial services, in addition to the traditional and important role of job-related programs.

6.5 Performance reports for the MRCC should be expanded to show the volume and outcomes for relevant subcategories of holistic rehabilitation.

6.6 The Australian Defence Organisation (Defence) and DVA should develop options to further the aim of early intervention and ensure that the timing and effectiveness of rehabilitation are improved, and provide advice to government.

6.7 The ADF Rehabilitation Program should provide performance reports on ADF rehabilitation assessments and program outcomes to assist the MRCC to fulfil its functions under the MRCA.

6.8 A long-term study of the effectiveness of MRCA rehabilitation arrangements within both the ADF and DVA, with respect to the level of rehabilitation services needed and the importance of the nexus with incapacity payments, should be undertaken.

Chapter 7 Transition management

7.1 Defence and DVA continue the current initiatives addressing the strategic objective to provide a seamless transition.

7.2 The responsibilities assigned in the MRCA to the Service Chiefs should be redesignated to the Chief of the Defence Force (CDF) as a means of achieving greater consistency and oversight through tri-Service administration.

7.3 Section 39 of the MRCA should be amended to allow the appointment of the MRCC as the rehabilitation authority on the recommendation of the CDF, thus adopting the same discretion as applies under section 279 for the MRCC to take over responsibility for arrangements for treating diseases and injuries after considering advice from the Service Chief.

7.4 Section 64 of the MRCA should similarly be amended, to allow earlier appointment of a transition advisory case manager.

7.5 Section 39 of the MRCA be amended to allocate to the CDF the responsibility as rehabilitation authority for serving part-time Reservists.

7.6 Section 64 of the MRCA be amended to include part-time Reservists in the required group to be offered a transition advisory case manager.

7.7 Ex-service organisation (ESO) pension officers who have access to ADF members should have a demonstrated understanding of the MRCA and transition and rehabilitation programs.

7.8 DVA initiatives for MRCA training and accreditation of staff be considered for extension to Defence transition and advisory officers, and to ESO pension officers and advocates.

7.9 The role of each person who deals with a member going through transition, such as a case manager or case coordinator, should be clearly explained to the member.

7.10 In the event of any possible future changes to transition management, comprehensive monthly performance reports on transition services to the MRCC by either DVA or Defence should be maintained.

7.11 The transition pages of the Defence and DVA websites be refined to better meet the needs of ADF members planning their transition to civilian life.

Chapter 8 Permanent impairment compensation

8.1 The existing permanent impairment compensation differential for warlike and non-warlike service, as opposed to peacetime service, be maintained.

8.2 The Government considers:

(a) a model that revises the current differential, by having a standard 10 per cent permanent impairment differential for 71 or more impairment points (and for death benefits, see Chapter 9) — favoured by DVA and Department of Defence representatives and Mr Peter Sutherland; or

(b) not altering the current arrangements, noting the issues associated with removing the existing differential and the range of views in the broader veteran community — favoured by the Department of Finance and Deregulation (Finance), the Treasury and Department of Education, Employment and Workplace Relations (DEEWR) representatives.

8.3 Permanent impairment compensation under the MRCA continues to be paid either by way of periodic payments or an age-based lump sum payment, or a combination of the two.

8.4 Claimants continue to be allowed six months to make an election to receive an age-based lump sum in lieu of periodic payments, and the MRCC should provide clear policy and guidelines regarding what constitutes ‘special circumstances’ for the purposes of an extension.

8.5 The whole person impairment methodology continues to be applied under the MRCA.

8.6 The date of effect for commencement of periodic permanent impairment compensation payments under the MRCA be on the basis of each accepted condition rather than all accepted conditions.

8.7 Decision makers make greater use of the interim permanent impairment compensation provisions of the MRCA.

8.8 No changes be made to existing provisions relating to the limit on damages against the Commonwealth or other liable parties for non-economic loss.

8.9 No changes be made to existing provisions relating to the choice to institute action for damages against the Commonwealth or other liable parties for non-economic loss.

Chapter 9 Death benefit provisions

9.1 The lump sum payment, as prescribed at subsection 234(4) of the MRCA, paid in lieu of the pension equivalent to the *Veterans' Entitlements Act 1986* (VEA) war widow(er)'s pension, and the additional death benefit (ADB), as prescribed at subsection 234(2), be combined.

9.2 The proposed new lump sum payment be age-based in a manner consistent with the existing lump sum prescribed at subsection 234(4) of the MRCA and indexed in accordance with the Wage Price Index.

9.3 Dependent partners be offered the one-off choice of converting either the whole of the lump sum payment, 75 per cent, 50 per cent or 25 per cent thereof, into a lifetime pension (tax free).

9.4 The Government considers:

(a) if recommendation 8.2(a) in Chapter 8 is accepted, that the lump sum death benefit be increased by 10 per cent for deaths related to warlike or non-warlike service — favoured by DVA and Defence representatives, and Peter Sutherland; or

(b) if recommendation 8.2(b) in Chapter 8 is accepted, that no change be made to current death benefit arrangements, which do not currently differentiate between the nature of the partner's death — favoured by the departments of Finance and Deregulation, Treasury and DEEWR representatives.

9.5 The proposed new lump sum payment be reduced by an amount equivalent to the ADB for deaths relating to those categories of members or former members who would not be eligible for the lump sum payment prescribed at subsection 234(2) of the MRCA.

9.6 The MRCA's current pension rate for dependent children prescribed at sections 253 and 254 be maintained.

9.7 The MRCC consider further the question of compensation for former partners and provide advice to the Government, taking account of whole-of-government issues and legal matters.

9.8 The amount of compensation for financial advice provided under sections 81, 202 and 239 of the MRCA be increased to at least $2,400 and continue to be indexed by the CPI.

Chapter 10 Incapacity payments

10.1 No change be made to the current approach used to calculate normal earnings (NE) under the MRCA to account for career progression.

10.2 Because many of the issues raised in relation to incapacity payments under the MRCA also relate to the administration of incapacity payments in other state, territory

and Commonwealth jurisdictions, as well as whole-of-government superannuation issues, a cross-agency working group should be established to conduct more detailed analysis of existing incapacity payment provisions under the MRCA and provide advice to the MRCC on:

- the relationship between the current incapacity payments structure and effective vocational and psychosocial rehabilitation;
- options for implementing more efficient methods of determining NE in respect of ADF pay and pay-related allowances;
- options for simplifying payments to long-term incapacity payees, who have little prospect of returning to the workforce; and
- the practicality and implications of redefining NE for self-employed Reservists employed on continuous full-time service.

Chapter 11 Special Rate Disability Pension

11.1 The MRCA be amended to address the lack of employment history restrictions on applications for the Special Rate Disability Pension (SRDP) after age 65.

11.2 All aspects of the SRDP, including its relevance, eligibility criteria and the effectiveness of rehabilitation, should be evaluated as more data become available, or after a further five years.

11.3 SRDP recipients and SRDP-eligible former members should have automatic eligibility for invalidity service pension in the same manner as recipients of the Special Rate of pension under the VEA.

11.4 The rate of offset of Commonwealth superannuation against the SRDP should be retained at 60 cents in the dollar until age 60, and after age 60 the offset should be increased to 70 cents in the dollar to take account of the reduced taxation on superannuation benefits after that age.

Chapter 12 Military superannuation and related compensation issues

12.1 The offset of incapacity payments and the SRDP by the Commonwealth-funded superannuation received by the member should continue.

12.2 The definition of Commonwealth superannuation under the MRCA should be amended to exclude licensed corporations and include Commonwealth payments into retirement savings accounts, in line with the *Safety, Rehabilitation and Compensation Act 1988* (SRCA) definition.

12.3 The MRCA should be amended to apply superannuation offsetting against incapacity payments for current members who are in receipt of Commonwealth-funded superannuation payments, as well as former members (for example, former Permanent Force members who later become part-time Reservists).

12.4 The payment by the Australian Government of an employer's contribution on incapacity payments for former ADF members not able to work because of their compensable conditions (including former cadets and Reservists not covered by military

superannuation) should be considered as part of the cross-agency working group on incapacity payments (see recommendation 10.2).

12.5 The scope for streamlining the administration of superannuation and compensation invalidity and death benefits, by aligning legislative definitions and consolidating service delivery, should be further considered across government.

Chapter 13 Ancillary benefits

13.1 The MRCC develop guidelines on when household services and attendant care compensation may be paid to the spouse or other household member under the MRCA and the SRCA.

13.2 The MRCA Treatment Principles be amended to provide that:

- where a person is eligible to be both compensated for household services under section 214 of the MRCA and receive domestic assistance and home and garden maintenance under the Treatment Principles, they may only receive the compensation payable under section 214; and
- where a person is eligible to be both compensated for attendant care under section 217 of the MRCA and receive personal care under the Treatment Principles, they may only receive the compensation payable under section 217.

13.3 No change be made to the weekly statutory limit for reimbursement for household services or attendant care under the MRCA.

Chapter 14 Treatment provisions

14.1 The MRCC should continue to encourage a stronger review mechanism for the issue of Repatriation Health Cards, and should conduct ongoing quality assurance reviews of decisions to retain clients on reimbursement of treatment costs (Treatment Pathway 1).

14.2 The MRCC should review the need for the dual treatment pathways approach in three years time, with a review strategy to be developed in the near term.

14.3 The MRCC should review the need for former members with both VEA and MRCA entitlements to hold multiple cards and, if necessary, seek legislative change for greater simplicity.

Chapter 15 Administration

15.1 DVA continues to improve both the quality and timeliness of its compensation claims processing under the SRCA and the MRCA, as well as its client service.

15.2 DVA continues to identify better Key Performance Indicators (KPIs), particularly for time taken to process (TTTP) claims.

15.3 The MRCC should monitor the timeliness for the conduct of needs assessments, with adjustments where the client is unable to be contacted.

15.4 The KPI for TTTP should be adjusted for permanent impairment compensation cases awaiting stabilisation.

15.5 DVA implements the recommendations from the recent internal audit and consultant reviews of TTTP and quality decision making and, in doing so, address the concerns outlined in submissions on staffing and claims processing.

15.6 DVA and Defence continue to modernise their business processes and IT systems for SRCA and MRCA compensation-related processing and management systems, including scope for client lodgement and monitoring of claims, and IT links between DVA and Defence.

Chapter 16 Claims

16.1 The MRCC should consider a modular approach for claims under the MRCA, dealing firstly with initial liability and needs assessment (subject to clarification of policies and practices after the Federal Court decision on *Irwin v. Military Rehabilitation and Compensation Commission* [2009] FCAFC 33 (20 March 2009)).

16.2 For serving members, the ADF should provide information on the circumstances of the incident from which the initial liability claim arises, and related health and rehabilitation issues, with the claim for liability.

16.3 The MRCC should consider a shortened MRCA claim form to be available for claimants who have service only after 1 July 2004 and have all the accompanying ADF endorsements, incident reports, medical and service records.

16.4 The average lag time between injury or exposure and lodgement of a claim for compensation should be reduced for ADF safety and compensation evidential purposes; the MRCC should establish a KPI to be reported on by Defence so that the efforts to reduce the time lag can be monitored on an annual basis and reported in the MRCC annual report.

16.5 The MRCC should establish a KPI for the timeliness of provision of information by Defence to support compensation claims, and this KPI be monitored and reported in the MRCC annual report.

16.6 Reporting provisions (to Parliament) for times taken to process initial liability and permanent impairment compensation claims, with adjustment for times not within MRCC control, be developed for the MRCC similar to those being considered for Comcare under the SRCA.

Chapter 17 Reconsideration and review

17.1 The MRCA determining system be refined to a single appeal path to the Veterans' Review Board (VRB) and then the Administrative Appeals Tribunal (AAT), as a means of a more timely review that is less complex and less costly.

17.2 Internal reconsideration by the MRCC be the first step in the review process, and the process for section 31 reviews under the VEA be adopted, to help ensure the quality of decisions that are considered by the VRB and reduce VRB workloads and costs.

17.3 There be access to a case conference process by the VRB so that, wherever possible, the key questions and relevant evidence are established as early as possible and the hearings can proceed without any unnecessary delay.

17.4 In advance of the adoption of a single path, a formal service level agreement between the MRCC and the VRB be negotiated to define a comprehensive case conference process within current legislation.

17.5 The MRCA be amended to provide the VRB with explicit powers to remit a matter to the MRCC for needs assessment and compensation.

Chapter 18 Governance arrangements

18.1 The Minister for Veterans' Affairs continues to be responsible for administering the MRCA.

18.2 Subject to section 7 of the *Occupational Health and Safety Act 1991* (OHS Act), service within the ADF continues to come under the OHS Act and be regulated by the Safety, Rehabilitation and Compensation Commission, Comcare and the Australian Radiation Protection and Nuclear Safety Agency.

18.3 Greater effort and resources be devoted by Defence and DVA to introduce comprehensive and effective management information systems for occupational health and safety and military compensation within and between both agencies.

18.4 The Government consider expanding the membership of the MRCC by including a second member nominated by the Minister for Defence from the Department of Defence or the ADF, given the advantages this would bring for both Defence and the MRCC, especially in facilitating improvements in information sharing between DVA and Defence.

18.5 Defence and DVA jointly determine the most appropriate mechanism for regulating their relationship, including defining their respective roles and responsibilities, in relation to the future administration of the MRCA.

Part 3 Legislative schemes that govern military compensation before the Military Rehabilitation and Compensation Act and anomalies that exist

Chapter 19 Compensation offsetting between the Veterans' Entitlements Act and the Safety, Rehabilitation and Compensation Act

19.1 Existing offsetting arrangements be maintained.

19.2 Ongoing efforts by DVA aimed at improving advice to clients regarding the effect offsetting provisions will have on their compensation entitlements be continued.

19.3 DVA should examine the viability of providing claimants with the option to repay the actuarial value of a lump sum previously received under the SRCA at the time an

offset of a pension is determined under the VEA, taking into account the benefits of increased flexibility while maintaining simplicity.

Chapter 20 Ceasing new claims under the Safety, Rehabilitation and Compensation Act

20.1 The date of injury approach be maintained and no action be taken to cease future claims under the SRCA by treating them as claims under the MRCA.

20.2 DVA and Defence undertake more education of claimants and ESO representatives on the three pieces of legislation that govern military compensation and continue to simplify the front-end claims process for potential claimants.

Chapter 21 Aggravations of conditions accepted under the Veterans' Entitlements Act related to service rendered after 1 July 2004

21.1 The section 12 election provisions be removed. The election provisions should be replaced with provisions that stipulate that all aggravations of a condition accepted under the VEA that relate to service after 1 July 2004 be the subject of an application for increase under the VEA, and cannot be claimed under the MRCA.

Chapter 22 Permanent impairment claims that cross multiple Acts

22.1 Recognising the complexity of the transitional arrangements, there be an education campaign in conjunction with ESOs to facilitate greater understanding of the arrangements and ensure claimants are aware of the effect that these provisions may have on their compensation.

22.2 The Government consider that:

(a) the MRCC be asked to review the current method of calculating transitional permanent impairment compensation claims, noting the arguments that it produces unintended consequences that are not appropriate — favoured by DVA and Defence representatives and Mr Peter Sutherland; or

(b) the current method be retained, noting the arguments that outcomes under the current method are intended and appropriate — favoured by the Finance, the Treasury and DEEWR representatives.

Chapter 23 Other perceived anomalies

23.1 No change is necessary to adjust benefits between the applicable Acts, as these differences are not unintended. This relates specifically to:

- household and attendant care services under the VEA;
- the Motor Vehicle Compensation Scheme under the MRCA;
- lump sum payments for VEA recipients;
- MRCA telephone allowances;
- private vehicle travel for treatment expenses;

- funeral benefits;
- fortnightly payments for child dependants under the VEA;
- education allowances under the SRCA;
- the MRCA benefits derived from specific impairment levels; and
- the automatic grant of death benefits for dependants of deceased prisoners of war.

Part 4 Level of medical and financial care provided to Australian Defence Force personnel injured during peacetime service

Chapter 24 Treatment cards for Safety, Rehabilitation and Compensation Act clients

24.1 Repatriation Health Cards – For Specific Conditions (White Cards) for specific conditions be issued to Part XI defence-related claimants under the SRCA to achieve consistency in treatment arrangements for all former ADF members. Cards should be provided subject to a needs assessment showing long-term treatment needs, and the current reimbursement arrangements for the treatment of short-term conditions should be retained.

24.2 The DVA fee schedule be adopted for treatment provided to defence-related claimants under Part XI of the SRCA.

24.3 The supplementary payment for pharmaceuticals be extended to defence-related claimants under Part XI of the SRCA with White Cards.

Chapter 25 Non-liability health cover for certain conditions

25.1 The Government consider:

(a) providing non-liability health cover under the MRCA for certain psychiatric conditions to all former members of the ADF and part-time Reservists who have served after 1 July 2004 — favoured by DVA and Defence representatives and Mr Peter Sutherland; or

(b) requesting Defence and DVA to gather further evidence to establish both the benefit and need of additional psychiatric care, separate to the existing general health services, for former members of the ADF and part-time Reservists who have served after 1 July 2004. If benefit and need are established, then options could be presented to the Government to deliver such health coverage outside of compensation legislation — favoured by the Finance, the Treasury and DEEWR representatives.

Part 5 Implications of an Australian Defence Force compassionate payment scheme for non-dependants

Chapter 26 Compassionate payment scheme

26.1 An ADF compassionate payment scheme should not be introduced.

26.2 The payment of compensation to families in relation to the service-related deaths of ADF members continue to be managed by Defence in accordance with existing arrangements as considered appropriate to the circumstances.

Part 6 Suitability of access to military compensation schemes for members of the Australian Federal Police who have been deployed overseas

Chapter 27 Coverage for Australian Federal Police

27.1 Australian Federal Police members not be given access to the MRCA.

Part 7 Miscellaneous Issues

Chapter 28 Death and disability insurance in the context of military compensation

28.1 Defence and DVA jointly undertake a comprehensive communication strategy aimed at providing education to serving members of the ADF on the full range of financial benefits provided under the MRCA and military superannuation.

28.2 Defence should work to resolve the insurance issue external to the Review process.

Chapter 29 Reconsideration of compensation-related recommendations from the review of veterans' entitlements

29.1 No further action is required on the unimplemented recommendations of the Review of Veterans' Entitlements (Clarke Review) referred to this Committee.

29.2 DVA, the Repatriation Commission and MRCC review the Veterans' Vocational Rehabilitation Service with the aim of improving rehabilitation options for those who have eligibility under the VEA and are younger than 50 years.

Chapter 30 Suitability of access to military compensation schemes for non-members

30.1 Members undergoing career transition assistance and personnel holding honorary ranks should be defined under the MRCA as 'members'.

30.2 Civilians required to support the ADF, who are not Commonwealth, state or territory government employees and do not have statutory workers' compensation cover, be provided with access to the MRCA where they are:

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

Part 1 Context

1 Terms of reference and conduct of the Review

Chapter summary

The Review of Military Compensation Arrangements was established in response to concerns expressed by the veteran and ex-service community. An examination of the legislation was also timely, as the *Military Rehabilitation and Compensation Act 2004* (MRCA) had been in operation for six years. The Review aimed to examine all aspects of the compensation system and the operation of the MRCA, including access to the system and the level of medical and financial care provided to military personnel and their families.

In 2009, a call for submissions to the Review resulted in 68 submissions, 52 of which were in the scope of the Review, and in June 2009 a six-member Steering Committee was appointed to conduct the Review. Serving and former members of the Australian Defence Force (ADF), their families, ex-service and other relevant organisations, other government agencies and members of the public were consulted.

Background

1.1 In response to concerns expressed by the veteran and ex-service community, the Labor Party committed, in the lead-up to the federal election of 24 November 2007, to examine the military compensation system if it was elected.

Establishment of the Review

1.2 On 8 April 2009, the then Minister for Veterans' Affairs, the Hon Alan Griffin MP, formally announced the commencement of the Review and called for submissions from interested members of the public and organisations.

Terms of reference

1.3 The terms of reference for the Review were also released by the then Minister for Veterans' Affairs on 8 April 2009.

Terms of reference

The Review will:

Examine the operation to date of the *Military Rehabilitation and Compensation Act 2004*:

- Consider legislative and policy issues identified by stakeholders relating to the Military Rehabilitation and Compensation Act 2004 (MRCA), including the quantum of benefits payable for death and serious injury.
- Document and examine past military compensation operational performance, ideally from 1 July 2004 until 30 June 2009, and report on factors impacting on performance.
- Recommend possible legislative and policy changes relating to the MRCA and improvements to claims administration and service delivery.

Examine the legislative schemes that govern military compensation before the MRCA and identify any anomalies that exist:

- Consider unintended differences identified between the MRCA and the SRCA, Defence Determination 2000/1, the Military Compensation Act 1994 and the VEA.
- Consider legislative and policy issues identified by stakeholders relating to transitional arrangements between the VEA or SRCA, and the MRCA.
- Recommend possible changes to address unintended differences identified by stakeholders between the MRCA and the SRCA, Defence Determination 2000/1, the MCA and the VEA, and issues relating to transitional arrangements between the VEA or SRCA, and the MRCA.

Examine the level of medical and financial care provided to members of the Australian Defence Force (ADF) injured during peacetime service:

- Consider what level of financial and medical care is available to members with warlike and non-warlike service, which is not available to members with peacetime service only.

Consider the implications of an ADF compassionate payment scheme for non-dependants:

- Consider the implications of a compassionate payment scheme for the family members of a deceased ADF member, where those family members were not economically dependent on the member before his or her death.

Consider the suitability of access to military compensation schemes for members of the Australian Federal Police (AFP) 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 AFP 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 AFP who have been deployed on high-risk overseas operations.

Out of scope

Issues falling outside the above terms of reference are out of scope of the Review. This includes the following issues:

- determinations relating to non-warlike service or warlike service made by the Minister for Defence;
- functions and powers of the Repatriation Medical Authority, the Specialist Medical Review Council and the Veterans' Review Board;
- commemorative issues including the presentation of medallions;
- issues relating to the Defence Service Homes Act 1918; and
- services provided by the Department of Defence to serving and discharging ADF members, including the presentation of service medals.

The Australian Government has committed to a number of other inquiries and investigations that may impact on the military compensation system. Though the outcome of these may educate and inform the Steering Committee as they conduct the Review, the subject of those inquiries and investigations will not be the principal focus of this Review. This includes, for example, the Australian Government's commitment to revisit the recommendations of the Clarke Review, the parliamentary inquiry into former F-111 deseal/reseal workers, and the Australian Government's Pension Review and Review of Australia's Future Tax System.

By their very nature, the different Acts that govern military compensation contain a number of differences. However, it should be noted that not all differences are unintended. If a submission raises an issue which might be concerning an unintended difference, it will be investigated. If the issue is determined to be an intended difference between the different Acts, this will be explained and noted.

Whole-of-government working group

The Review will work in conjunction with the whole-of-government working group, which focuses on key areas of administrative and legislative policy and administrative processes as they affect discharging ADF members and their families. It is expected that some issues will cross over between the Review and the working group. Where this is the case, referrals between the two reviews will be necessary.

Call for submissions

1.4 Following the then Minister's announcement of the establishment of the Review on 8 April 2009, advertisements inviting submissions to the Review were placed in major national and regional newspapers on 9 May, 30 May and 13 June 2009. The Chair of the Military Rehabilitation and Compensation Commission (MRCC), Mr Ian Campbell PSM, also wrote to key ex-service organisations (ESOs), inviting them to make submissions. At the same time, a website for the Review was established.

1.5 The Review received 68 submissions, 52 of which raised matters that were within the scope of the Review. Of these, 48 submissions were published on the Review's website as authors agreed to publication, although some details were removed to protect the privacy of individuals.

1.6 Given the enormous range of matters raised in submissions, the Steering Committee was not able to specifically address every issue. Nevertheless, all matters raised in submissions have informed the Committee's deliberations, even where they are not mentioned in the body of this report.

1.7 A list of submissions is included in Appendix A.

Appointment of Steering Committee

1.8 In June 2009, a six-member Steering Committee was appointed to conduct the Review, comprised mainly of high-level and experienced senior officials representing relevant departments, plus an independent member. As Chair of the MRCC and President of the Repatriation Commission, the Secretary of the Department of Veterans' Affairs (DVA), Mr Ian Campbell PSM, was appointed as its chair.

1.9 Other members of the Steering Committee were:

- Major General Craig Orme AM CSC, Head of People Capability in the People Strategies and Policy Group, of the Australian Defence Organisation (Defence);
- Ms Peta Furnell, General Manager, Social Policy Division, Fiscal Group, The Treasury;

- Ms Jenny Chynoweth, Assistant Secretary, Human Services and Veterans' Affairs Branch, Department of Finance and Deregulation (Ms Chynoweth replaced the initially appointed Ms Joan Ross);
- Ms Michelle Baxter, Group Manager, Safety and Entitlements Group, Department of Education, Employment and Workplace Relations; and
- Mr Peter Sutherland, Visiting Fellow at the Australian National University College of Law.

Project team

1.10 A dedicated full-time project team was established in DVA to support the Steering Committee by taking on some of the ground work and information-gathering roles. This team also prepared discussion papers for the Committee.

1.11 The project team was led by a senior DVA staff member and included a number of experienced contractors. The team was assisted by staff of the Department of Defence.

Cost of the review

1.12 The funding provided by the Australian Government as a contribution to the cost of the Review as part of the 2008-09 and 2009–10 Budgets is shown in Table 1.1.

Table 1.1 Funding from the 2008–09 and 2009–10 Budgets

2008–09	2009–10	Total
$50,000	$450,000	$500,000

1.13 However, supporting the Review required significant DVA resources. Table 1.2 shows actual expenditure on the Review (including staffing, travel, contractors and other administrative costs) in the three financial years from 2008–09 to 2010–11.

Table 1.2 Actual expenditure on the Review 2008–09 to 2010–11

2008–09	2009–10	2010–11	Total
$156,497	$1,305,000	$430,000	$1,891,497

Note: These figures do not include staffing costs incurred in other agencies represented on the Steering Committee and costs incurred by Defence for the ADF base consultations. They also do not include overhead costs related to the project team staff and staff costs for DVA staff outside the project teams who provided assistance to the project team.

Consultation

1.14 Early in the Review, the project team consulted with serving and former members of the Australian Defence Force (ADF), their families, ESOs and members of the public. Details of those meetings are included in Appendix B.

1.15 The project team also met with individuals and organisations to assist the Steering Committee in its consideration of specific issues. Details of these meetings are also in Appendix B.

1.16 All but one of the public meetings were recorded and transcripts were provided to the Steering Committee and published on the Review's website.

1.17 In addition to the formal consultation undertaken by the project team, the Chair of the Steering Committee attended around 50 meetings with ESOs, individual members of the veteran community and members of the ADF, to discuss issues considered by the Review.

Prime Ministerial Advisory Council on Ex-service Matters

1.18 Two members of the Prime Ministerial Advisory Council on Ex-service Matters, Mr Frank Benfield and/or Mr Ken Kipping AM, attended meetings of the Steering Committee as observers. Ms Anne Pahl also attended three Committee meetings during their absence. Mr Benfield and Mr Kipping accompanied the project team as they consulted with the public and ADF members.

Ex-Service Organisation Round Table

1.19 The Steering Committee met five times with a small group nominated by the Ex-Service Organisation Round Table to represent ESOs' views, on 4 November 2009, 30 November 2009, 19 February 2010, 23 March 2010 and 5 May 2010.

1.20 The representatives were:

- Mr John Hodges of the Returned & Services League of Australia;
- Mr Tim McCombe OAM of the Vietnam Veterans Federation of Australia;
- Mr Michael Quinn of the Australian Peacekeeper and Peacemaker Veterans' Association; and
- Mr Ian Wills of Legacy.

Correspondence

1.21 The Steering Committee accepted and considered correspondence during the course of the Review.

Website

1.22 A website was established for the Review. The Review's terms of reference, questions and answers, and contact details were published on the site. Public submissions were also published on the site where permission was granted by the author. Information on public meetings was updated regularly, and the transcripts of those meetings were published on the site about four weeks after the meeting was held.

Examination of submissions

1.23 The Steering Committee appreciated the considerable time and effort that individuals and organisations put into preparing their submissions.

1.24 The Committee took a broad view of its terms of reference to ensure that relevant issues raised in submissions and during consultation were not excluded from the Review. However, some of the issues raised in accepted submissions were outside the Review's terms of reference.

1.25 The Committee was not able to respond to every issue raised during the course of the Review, but it is confident that all significant issues have been addressed.

Implementation of the Review's recommendations

1.26 The Committee recognised the Australian Government's commitment to responsible economic management and acknowledged that its recommendations will have to be considered in the context of the government's fiscal and policy priorities.

Structure of report

1.27 The Committee's report is presented in two volumes and seven parts:

- Volume 1: Overview
  - Chair's introduction, executive summary, recommendations and context;
- Volume 2: Detailed analysis
  - operation of the Military Rehabilitation and Compensation Act (MRCA);
  - legislative schemes that govern military compensation before the MRCA and anomalies that exist;
  - level of medical and financial care provided to members of the Australian Defence Force injured during peacetime service;
  - implications of an ADF compassionate payment scheme for non-dependants;
  - suitability of access to military compensation schemes for members of the Australian Federal Police who have been deployed overseas; and
  - other miscellaneous matters.

2 Historical overview

Chapter summary

The Committee examined the evolution of military compensation arrangements in Australia. Since the First World War, successive governments have made it a high priority to provide compensation and related support to veterans and their dependants. Military compensation arrangements have evolved since that time in response to changing situations and a number of reviews. During the 1980s and early 1990s, significant changes were made in the standard of proof, pension eligibility, and compensation arrangements for peacetime service.

Legislation has included the *Australian Soldiers' Repatriation Act 1920* (later renamed the *Repatriation Act 1920*), *Veterans' Entitlements Act 1986* (VEA), *Safety, Rehabilitation and Compensation Act 1988* (SRCA), *Military Compensation Act 1994*, and the current *Military Rehabilitation and Compensation Act 2004* (MRCA). The MRCA covers defence service on or after 1 July 2004; the SRCA and VEA cover service before 1 July 2004. The MRCA is the first compensation legislation designed to cover the whole spectrum of military service, and it came into operation following an extensive examination of military compensation arrangements.

The current Review of Military Compensation Arrangements is the latest in a long line of reviews, inquiries and analyses of the compensation arrangements applying to military personnel and their dependants. Such attention demonstrates the sensitive and complex nature of this legislation and the importance given to it by governments.

Introduction

2.1 This chapter sets out some of the historical background to current military compensation arrangements. In what follows, the term 'military compensation arrangements' is used in a generic sense, covering the *Australian Soldiers' Repatriation Act 1920* (later renamed the *Repatriation Act 1920*) and subsidiary legislation; its successor, the *Veterans' Entitlements Act 1986* (VEA); the *Military Rehabilitation and Compensation Act 2004* (MRCA); and Commonwealth workers' compensation legislation as and when applied to military personnel (e.g. the *Safety, Rehabilitation and Compensation Act 1988* (SRCA) and its antecedent legislation).

Background to the repatriation system

2.2 Since 1914, Australian governments of all political persuasions have made it a high priority to provide compensation and related support to veterans and their dependants. The casualties and widespread social effects of the First World War made this an imperative for Australian governments. The repatriation system, as it was known, became both an important Australian institution and a key public policy issue.

2.3 Large-scale mobilisation in the Second World War led to significant growth of the repatriation system. The system remained in place throughout Australia's military involvement in Korea, Borneo, Malaya, and Vietnam. In a modified form, it played a role in operations in the First Gulf War, East Timor and the early stages of the Iraq and Afghanistan conflicts.

2.4 Veterans have a special status in Australian society. The compensatory benefits provided to veterans (or their dependants) can be seen as an expression of gratitude by the government of the day, and through it the nation, for their war service.

Legacy of the repatriation system

2.5 The more beneficial aspects of military compensation arrangements have evolved gradually over a long period of time. They have been influenced by a generally sympathetic approach taken by governments and courts to the repatriation system.

2.6 The *Repatriation Act 1920* was repealed in 1986, and its successor, the VEA, ceased for the purposes of compensation from 1 July 2004. A number of the policies and processes from the original repatriation system can still be identified in military compensation arrangements today. For example, warlike and non-warlike service ('operational service') have the more beneficial standard of proof applied in the assessment of Commonwealth liability; and elements of the Special Rate of pension under the VEA continue in the form of a safety net payment, and are complemented by an increased focus on rehabilitation.

Beyond reasonable doubt standard of proof

2.7 The beyond reasonable doubt standard of proof that applies to operational service is unique to military compensation. It has evolved in the specific context of veterans' law. As far back as 1929, the *Australian Soldiers' Repatriation Act 1920* was amended to ensure that when veterans made a prima facie case of causation or aggravation due to war service, the onus of proof (that it was not caused by war service) lay with the determining authority, the Repatriation Commission.

2.8 In 1943, the legislation was further amended to lessen the burden on veterans to establish a prima facie case of causation. Veterans were given the benefit of any doubt in relation to the existence of any fact that would be favourable to them, or any question that arose for decision, and it was not necessary for them to furnish proof.

2.9 In 1977, the concept of the standard of proof 'beyond reasonable doubt', derived from the standard of proof used in criminal law, was introduced for the first time. This required the determining authority to allow the claim 'unless it is satisfied, beyond reasonable doubt, that there are insufficient grounds for granting the claim or application or allowing the appeal'. This was intended to ensure that the benefit of any doubt be given to veterans.

2.10 However, in 1981, the High Court found that the beyond reasonable doubt standard meant the same in repatriation law as it did in criminal law.[1] The reverse of the criminal standard of proof was to be applied.

2.11 In 1985, the High Court went further, finding that a mere possibility was enough for a claim to succeed unless the Repatriation Commission could be satisfied beyond reasonable doubt that the condition was not related to service.[2] Even if there was no evidence, or the evidence was neutral, the claim must succeed.

[1] *Repatriation Commission v. Law* (1981) 147 CLR 635.
[2] *Repatriation Commission v. O'Brien* (1985) 155 CLR 422.

Reasonable hypothesis

2.12 In response to these High Court decisions, the Australian Government amended the legislation. This provided that a claim should not be accepted unless the material raised a reasonable hypothesis connecting the injury, disease or death to the veteran's service.

2.13 In 1992 and 1993, the High Court ruled on the meaning of the term 'reasonable hypothesis'.[3] The consequence of these decisions was that the view of a single responsible medical practitioner acting within his or her area of expertise (or a single expert eminent in the field) who supported a claim automatically satisfied the reasonable hypothesis standard of proof.

2.14 Before the High Court decisions of the early to mid 1980s, claims for smoking-related conditions were generally not accepted. But those decisions, along with developments in medical research, led to smoking being linked to a wide range of medical conditions. It became less a matter of establishing the link between smoking and the condition claimed, and more a question of whether or not the commencement of, or increase in, smoking could be connected to service. Given that many of these conditions were directly or closely associated with the cause of death of many veterans, the number of successful claims for the war widow(er)'s pension also increased.

Statements of Principles

2.15 Following the High Court decisions of the early 1990s, the Australian Government established a review led by Professor Peter Baume to examine the repatriation compensation system. The Baume Review reported in March 1994, recommending that:

- there should be a single standard of proof — the civil standard of balance of probabilities — for both operational and peacetime service;
- there should be provision for veterans with operational service whereby they are given the benefit of any doubt;
- an expert medical committee should decide on generalised medical contentions; and
- where the predominant cause of a death, injury or disease is not related to war service, the pension should be assessed at a lower rate.

2.16 The Australian Government did not accept Baume's recommendations relating to the single standard of proof and reducing the rates of certain pensions.

2.17 The Australian Government did, however, establish the Repatriation Medical Authority (RMA) and the Specialist Medical Review Council (SMRC). The RMA was given the power to determine legislative instruments, known as Statements of Principles (SoPs), which set out the factors that cause certain medical conditions under the applicable standard of proof. SoPs are determined by the RMA in accordance with sound medical–scientific evidence. SoPs alone determine what factors could cause a medical condition that is the subject of a claim. The SMRC was set up to review the contents of a SoP (within three months of issue) or a decision by the RMA not to determine a SoP, on

[3] *Bushell v. Repatriation Commission* (1992) 175 CLR 408 and *Byrnes v. Repatriation Commission* (1993) HCA 51.

application from specified parties. The SoPs continue to be used to determine liability under both the VEA and the MRCA.

2.18 The result of the beneficial standard of proof and the SoPs is that there are substantial numbers of older veterans whose death or condition may be attributed to their service. In other words, many of the health conditions that are part of the normal ageing process are capable of being linked to military service.

2.19 The standards of proof and SoPs will be discussed in further detail in Chapter 5 of this report.

Special Rate of pension

2.20 The Special Rate of pension was introduced in the *Australian Soldiers' Repatriation Act 1920* and was granted to veterans who were blinded or totally and permanently incapacitated to such an extent that they could not earn a living wage. The payment was intended to benefit the most seriously disabled veterans, including those who were crippled or paralysed with no hope of restoration to health.

2.21 In the early 1980s, several Federal Court decisions[4] were seen as undermining the original intention of the Special Rate. Some veterans were granted the Special Rate of pension even though they had enjoyed a full working life. Some commentators remarked that the Special Rate of pension was seen as a type of retirement benefit.[5]

2.22 In 1985, the old provisions were replaced with provisions similar to those currently in the VEA to tighten up the criteria. It was restated that the Special Rate of pension was designed for severely disabled veterans of a relatively young age who could never go back to work and could never hope to support themselves or their families, or put away money for their old age.

2.23 Before 1994, there were no special rules for veterans who were older than 65 years. In 1994, restrictive rules for veterans aged over 65 years were introduced.

2.24 In 1997, the introduction of the Veterans' Vocational Rehabilitation Scheme (VVRS) resulted in further changes. The VVRS is a totally voluntary scheme to assist veterans to find or continue in suitable employment.

2.25 The Special Rate Disability Pension (SRDP) under the MRCA is linked to the amount of the Special Rate of pension under the VEA. However, the eligibility criteria have a number of important differences. The SRDP paid under the MRCA is also subject to a number of offsets, including offsets against Commonwealth superannuation payments.

2.26 The SRDP is discussed in further detail in Chapter 11 of this report. Superannuation offsetting is discussed in further detail in Chapter 12 of this report.

[4] *Bowman v. Repatriation Commission* (1981) ALR 556; *Smith, K.K. v. Repatriation Commission* (1982) 1 RPD 238; *Delkou v. Repatriation Commission* (1984) 2 RPD 327.
[5] Bruce Topperwein with Nicky Langhorne, 'Special Rate of Disability Pension: Analysis of the legislation and case-law concerning the special rate of pension', *VeRBosity*, Special Edition, 2003, p.6.

Peacetime service compensation arrangements

2.27 At the same time as the repatriation system was being established, workers' compensation legislation in Australia was developing. The original Commonwealth scheme — forerunner to the SRCA — and the first state schemes were all in place by 1914, albeit in much more restricted forms than today. When the repatriation system was introduced, the Commonwealth Parliament had already accepted the principle of statutory workers' compensation and had passed legislation to that effect.

2.28 For many years, peacetime compensation coverage for military personnel was provided under the *Defence Act 1903* and the *Naval Defence Act 1910*. From 1949, Australian Defence Force (ADF) members were given formal access to Commonwealth workers' compensation legislation.

2.29 Compensation pensions under the VEA were generally more beneficial for ADF members engaged on 'active service' or who 'served in a theatre of war and incurred danger from the enemy', than the entitlements provided for those on peacetime service.

2.30 Governments arguably saw it as appropriate and necessary to provide a higher level of compensation and support to veterans, as a means of recognising their service in engaging with enemy forces in defence of Australia.

Dual eligibility post-Vietnam War

2.31 Until the early 1970s, the repatriation system and the compensation arrangements for ADF members on peacetime service were effectively two separate systems. What is now known as operational service was covered under the repatriation stream, and peacetime service in Australia was covered under the Commonwealth employees' compensation stream.

2.32 This changed in 1973 when the Australian Government extended the *Repatriation Act 1920* to peacetime service, subject to a qualifying period of three years. This change was significant because governments had, for many years, thought of the repatriation system as exclusive to war service, and the change was not consistent with the history of Australia's military compensation arrangements.

2.33 Compensation for peacetime service was also still available under the *Compensation (Commonwealth Government Employees) Act 1971*, which created a system of 'dual eligibility'.

2.34 This meant that those injured on peacetime service could choose between different benefits provided by two separate Acts, whereas those on operational service were restricted to one Act. The decision to combine these two systems began the complexity and confusion that was to characterise military compensation arrangements for years.

2.35 The introduction of the SRCA in 1988 was especially significant because of the pre-eminent role it gave to rehabilitation and helping injured employees return to the workforce. Enactment of the SRCA resulted in the two preceding Acts — the *Commonwealth Employees' Compensation Act 1930* and the *Compensation (Commonwealth Government Employees) Act 1971* — being repealed.

2.36 However, Part X of the SRCA gives employees and former employees of the Commonwealth, who are covered by the earlier Acts, the right to claim compensation under the SRCA as if the 1930 and 1971 Act continued to operate. This provision includes ADF members and former members. Thus, the SRCA is effectively three pieces of legislation.

2.37 In April 1994, the *Military Compensation Act 1994* was enacted. It introduced dual eligibility between the VEA and the SRCA for members on operational, peacekeeping or hazardous service. This added another significant layer of complexity to military compensation.

2.38 At the same time, it removed dual eligibility under the VEA and SRCA for members on peacetime service. With the exception of those who enlisted before May 1986 and served on continuous full-time service (CFTS) for three or more years, or who enlisted after May 1986 and served until April 1994, members on peacetime service were covered by only the SRCA from 1994 onwards. The table below demonstrates the complexity in compensation coverage for the ADF following the 1994 changes.

Table 2.1 Military compensation coverage before 1 July 2004

Type of service	Key date		
	7 December 1972	22 May 1986	7 April 1994
CFTS before 22 May 1986	SRCA and VEA		
CFTS on or after 22 May 1986 and less than 3 years before 7 April 1994	Not applicable	SRCA	
CFTS on or after 22 May 1986 and greater than or equal to 3 years CFTS before 7 April 1994	Not applicable	SRCA and VEA	SRCA
CFTS on or after 7 April 1994	Not applicable		SRCA
Warlike service (including service in operational areas)	VEA		SRCA and VEA
Non-warlike (including peacekeeping and hazardous) service	SRCA and VEA		
Part-time Reservist service	SRCA		

CFTS = Continuous full-time service, SRCA = *Safety, Rehabilitation and Compensation Act 1988*, VEA = *Veterans' Entitlements Act 1986*

Black Hawk helicopter accident and the Tanzer Review

2.39 On 12 June 1996, two Black Hawk helicopters collided and crashed at the High Range Training Area near Townsville, resulting in the deaths of 18 Australian Regular Army members and injuries to a further 12 members.

2.40 This accident focused public and political attention on the differences in military compensation benefits that applied to ADF members killed or injured in the same incident or circumstances. The dates of enlistment of those killed or injured determined whether they or their dependants were eligible for compensation under the VEA and the SRCA, or only under the SRCA.

2.41 Following the Black Hawk helicopter accident, an interdepartmental inquiry into compensation for ADF members was established. The principal outcome was an increase in the benefits pertaining to death and severe injury for ADF members covered by the

SRCA under a *Defence Act 1903* determination, together with a number of criticisms about the adequacy of existing arrangements.

2.42 This inquiry was followed by the Tanzer Review, an independent review established to develop options for a single, self-contained compensation scheme encompassing all service short of declared war.

2.43 The recommendations of the Tanzer Review led to the Australian Government establishing a new military compensation scheme, the MRCA. This scheme is premised on modern compensation principles, including an increased focus on rehabilitation, and also maintains some important VEA features.

Development of the Military Rehabilitation and Compensation Act

2.44 Following the Australian Government's consideration of the Tanzer report, a 'Briefing Paper on the New Military Compensation Scheme' was prepared in March 2000 by the Department of Defence, in consultation with the Department of Veterans' Affairs (DVA). DVA undertook a program of briefings with ex-service organisations (ESOs) and departmental officials.

2.45 After the 2001 election, the momentum was renewed to develop the new single scheme. The briefing paper was revised and reissued in February 2002 with the following key features for the new single scheme:

- application to all military service, both in Australia and overseas;
- a better focus on military-specific requirements;
- a more integrated approach to management of safety, rehabilitation, resettlement and compensation;
- a basis in best-practice principles;
- prospective operation, with existing entitlements (under the VEA or SRCA) preserved for conditions arising before the commencement date of the new scheme;
- a benefits structure based on the current SRCA, plus the Defence Determinations, and additional benefits under the VEA;
- use of the VEA SoPs to determine initial liability, and the Guide to Assessment of Rates of Veterans' Pensions (GARP) to assess the lump sum for permanent impairments;
- removal of dual entitlements then existing between SRCA/VEA; and
- a dedicated regulatory body for the new scheme.

2.46 An ESO Working Group (ESOWG) representing the nine major organisations was formed to review the proposals for the new scheme, and six meetings were held between April and September 2002. Meetings were chaired by the President of the Repatriation Commission, and also attended by the other members of the Commission and senior Defence officers. ESOs also provided papers on particular issues of concern and, at the end of the process, a full set of the Departmental and ESO papers was issued to participants. Two organisations representing the Special Air Service and peacekeepers were later added to the ESOWG. ESO presidents and ESOWG members were briefed on developments with the new scheme at a meeting with the Repatriation Commission in March 2003.

2.47 An Exposure Draft of the Military Rehabilitation and Compensation Bill 2003 (MRCB) was prepared by the Office of Parliamentary Counsel and released in June 2003 for consideration by the wider community. ESOWG members were briefed on the day of release. An extensive round of presentations followed for ADF, Defence and DVA staff, and the ex-service community, at each major base and office in Australia, as well as for ADF members serving in East Timor.

2.48 A number of important changes were made as a result of the consultation process on the Exposure Draft in June–September 2003:

- withdrawal of the proposal to offset future payments of the Special Rate of pension under the VEA by the value of any Commonwealth superannuation received (this had been strongly opposed by ESOs);
- removal of an exclusion from the Commonwealth's liability to pay compensation where a person is injured or contracts a disease as a result of reasonable disciplinary action;
- relaxation of requirements for eligibility for the SRDP safety net payment to cover those who are unable to work more than 10 hours per week (no hours were stated in the Exposure Draft) — this removed the disincentive for a person receiving the safety net payment to return to some part-time work;
- extension of the time allowed to choose between a lump sum and weekly payments from three months to six months;
- removal of the bar on receiving more than one weekly death benefit payment where the partner is widowed a second time; and
- inclusion of a further choice of receiving part lump sum and part periodic payments for permanent impairment.

2.49 Following consideration of the comments on the Exposure Draft, the MRCB and the Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Bill 2003 were tabled in the House of Representatives on 4 December 2003. The ESOWG met on several occasions during 2004 to discuss the new arrangements and the preparation of rehabilitation principles and protocols.

2.50 The MRCB was listed for review by the Senate Committee on Foreign Affairs, Defence and Trade. Submissions were sought by the Senate for response by 30 January 2004, and hearings were held in Perth, Canberra and Melbourne on 23–25 February 2004. The Bill was passed with amendments, resulting from the Senate Inquiry, to ensure that all death benefits were the same, regardless of the nature of service; and changes that made the VRB available to all ADF members, regardless of the type of service that gave rise to the claim.

2.51 The MRCA commenced operation on 1 July 2004.

Conclusions

2.52 The MRCA, which had bipartisan support, is the first compensation legislation specifically designed to cover the whole spectrum of military service. The MRCA came into operation on 1 July 2004, after approximately seven years of examining military compensation arrangements.

2.53 The MRCA's introduction was a pragmatic response to the complexity of military compensation arrangements in the mid 1990s. It was a significant change to Australia's military compensation arrangements; perhaps the most significant change since the inception of the repatriation system. However, changing from a complex system with a number of different pieces of legislation to a single Act would be difficult, particularly in relation to transitional arrangements and offsetting.

2.54 This Review of Military Compensation Arrangements is the latest in a long line of reviews, inquiries and analyses of the compensation arrangements that apply to military personnel and their dependants, undertaken on behalf of the Australian Government. Such attention underlines the sensitive and complex nature of this legislation, and the importance given to it by governments since the inception of the repatriation system in the aftermath of the First World War.

3 The Military Rehabilitation and Compensation Scheme

Chapter summary

The Committee reviewed the current processes of military rehabilitation and compensation, along with historic and projected expenditure and liability estimates. The Australian Defence Force (ADF) is the primary provider of medical treatment and rehabilitation to serving members. Following injury or disease, rehabilitation assistance may be requested by a treating medical officer, unit commander, the Military Rehabilitation and Compensation Commission (MRCC) or the member. For serving members, rehabilitation assessment is conducted under the ADF Rehabilitation Program (ADFRP) and a rehabilitation program may be recommended as a result.

The MRCC investigates claims for liability and accepts or rejects the claim. Before any compensation is payable, the MRCC conducts a needs assessment with the member to identify medical treatment, rehabilitation and compensation priorities. Compensation can include incapacity payments for lost income, payment for necessary attendant care or household services, or compensation for permanent impairment.

As at September 2010, the Department of Veterans' Affairs (DVA) had a total of 120,755 disability pensioners and 99,982 war widow(er)s under the *Veterans' Entitlements Act 1986* (VEA), compared to 4,798 active clients under the *Military Rehabilitation and Compensation Act 2004* (MRCA) and 11,260 active clients under the *Safety, Rehabilitation and Compensation Act 1988* (SRCA) (active clients are clients who have received benefits or services in the past two years).

Annually, DVA receives around 5,000 to 7,000 claims for initial liability under the SRCA and the MRCA (compared to around 17,000 primary claims for compensation under the VEA). There was a sharp decline in claims under the SRCA in 2005–06, after the enactment of the MRCA. Since 2007–08, initial liability claims under the SRCA have increased slightly and seem to have plateaued at around 3,500 claims per year. The 'tail' of SRCA claims is expected to continue for some time due to the lag between service-related injury, disease or death and the lodgement of a claim for compensation.

The number of MRCA clients receiving permanent impairment compensation appears to have plateaued at around 1,000 clients per year. Despite a small decrease in 2008–09 compared to the previous financial year, the number of permanent impairment compensation payments continues to trend upwards. The number of SRCA permanent impairment clients decreased markedly in 2009–10, although the number of SRCA permanent impairment payments is decreasing more slowly.

MRCA incapacity payments and clients have been increasing quickly. SRCA clients and payments both increased slightly in 2009–10, at odds with the steady decline evident since the commencement of the MRCA. Although relatively stable up to 2008–09, both the total number of clients under both Acts and total payments under the MRCA increased significantly in 2009–10. It is difficult to know if this increase will continue.

Payments for medical and other services under the MRCA are growing quickly. Payments for medical and other services under the SRCA have been steadily declining since 2004–05, but increased again in 2009–10. The declining number of payments under the SRCA from 2004–05 to 2008–09 have more than offset the increasing number of payments under the MRCA, resulting in a steady decline in the total number of payments for medical and other

services under both Acts during that period. Again, it is difficult to know if the significant increase in the total number of payments in 2009–10 will continue.

In 2009–10, total expenditure under the MRCA was $72.2 million — still less than half the total expenditure of $146 million for defence-related claims under the SRCA. The total 2009–10 expenditure under both Acts was $218.2 million (compared to $11.2 billion under the VEA). Total MRCA expenditure is expected to increase steadily in line with the claim trends, while SRCA expenditure should gradually tail off.

Introduction

3.1 This chapter describes the processes of today's Military Rehabilitation and Compensation Scheme, and outlines the client and payment trends, along with historic and projected expenditure and liability estimates. Military compensation arrangements must be seen as a continuum and need to be linked closely between the Australian Defence Organisation (Defence) and the Department of Veterans' Affairs (DVA).

3.2 As at December 2010, DVA had a total of 120,755 disability pensioners and 99,982 war widow(er)s under the *Veterans' Entitlement Act 1986* (VEA), compared to 4,798 active clients under the MRCA and 11,260 active clients under the *Safety, Rehabilitation and Compensation Act 1988* (SRCA) (active clients are clients who have received benefits or services in the past two years).

Background

3.3 The *Military Rehabilitation and Compensation Act 2004* (MRCA) covers Defence service on or after 1 July 2004. The *Safety, Rehabilitation and Compensation Act 1988* (SRCA) and the *Veterans' Entitlements Act 1986* (VEA) cover service before 1 July 2004. Due to the MRCA's relatively short history, data for defence-related compensation under the SRCA have been included to provide a fuller picture post-2004.

3.4 As discussed in the previous chapter, the enactment of the *Military Compensation Act 1994* extended SRCA coverage to claims related to operational service (it had previously only applied to defence-related claims for peacetime service). The MRCA covers the same kinds of service that were covered by the SRCA after 1994. Furthermore, the benefit structure of the MRCA is aligned with the SRCA.

3.5 Detailed VEA data have not been included in this chapter. This is because eligibility under the VEA is limited to specific kinds of service, and the VEA has a different benefit structure from the SRCA and the MRCA. Furthermore, date of injury or disease is not recorded in the system for VEA claims, so it is difficult to ensure that VEA claims data are being compared for the same period as SRCA claims data. VEA expenditure is approximately $12 billion per year. The number of VEA beneficiaries is expected to halve over the next 10 years.

Kinds of service under the Military Rehabilitation and Compensation Act

3.6 The MRCA replicated the VEA system of classifying service, introduced in 1997, and recognises three types of defence service — peacetime, non-warlike and warlike

service.[1] Service is peacetime service by default unless it is determined by the Minister for Defence to be non-warlike or warlike service (see Appendix C for determinations under paragraphs 6(1)(a) and (b) of the MRCA, as at 1 October 2010).

3.7 Warlike operations are those military activities where the application of force is authorised to pursue specific military objectives, and there is an expectation of casualties.[2]

3.8 Non-warlike operations are those military activities where there is a risk associated with the assigned tasks and where the application of force is limited to self defence, but fall short of warlike operations. Casualties could occur but are not expected.[3]

3.9 The risk of harm from the enemy or dissident elements is a requirement for both warlike service and non-warlike service.

3.10 Under the MRCA, benefits payable for warlike service and non-warlike service are the same. For the sake of simplicity, this report will often refer to warlike and non-warlike service as 'operational service', a term that has no technical meaning under the MRCA, but is used to jointly describe the two types of service under previous legislation.

Occupational health, safety, rehabilitation and compensation in the Australian Defence Force

3.11 Within the Department of Defence, the Defence People Strategies and Policy Group is responsible for the development of policy for occupational health, safety, rehabilitation and compensation for the Australian Defence Force (ADF). The Vice Chief of the Defence Force is a member of the Safety, Rehabilitation and Compensation Commission (SRCC) and represents the interests of members and former members of the ADF. The SRCC oversees the administration of the *Occupational Health and Safety Act 1991* for members of the ADF.

3.12 Each of the Defence Services is responsible for implementing personnel management procedures. Each is responsible for reviewing a member's continued suitability for employment in the ADF and their reallocation or retraining, where possible. Such decisions are made in consultation with the member, the member's Commander and ADF health providers.

3.13 ADF commanders are responsible for the health and welfare of ADF members under their command. This includes efficient administration of long-term casualties, provision of adequate and timely rehabilitation, assignment of appropriate duties, ongoing support for the member and their family, assistance with the administrative requirement for the lodgement of compensation claims, and liaison with support agencies to ensure the best outcomes for the member.

[1] Section 6 of the MRCA.
[2] R Creyke & P Sutherland, *Veterans' Entitlements Law*, 2nd edition, Federation Press, 2008, p. 25.
[3] Creyke & Sutherland, op cit.

Incident report and rehabilitation referral

3.14 The ADF is the primary provider of medical treatment and rehabilitation to serving members of the ADF, with each Service Chief acting as the rehabilitation authority under the MRCA.

3.15 Where a serving member sustains an injury or contracts a disease, the member's supervisor will complete and submit an incident report.[4] These reports are recorded on the Defence system and are available for review by policy makers, Service Commanders and, on request, Military Rehabilitation and Compensation Commission (MRCC) claims assessors.

3.16 Rehabilitation assistance may be requested by a treating medical officer, the member's commander, the MRCC or the member.[5] A local ADF rehabilitation coordinator will arrange a rehabilitation assessment under the ADF Rehabilitation Program (ADFRP). A rehabilitation program may be recommended as a result of the rehabilitation assessment.

3.17 The senior medical officer of the base, establishment or area assigns an ADF medical practitioner to be the clinical case manager — the principal coordinator of the member's medical care and the point of contact for liaison with the allocated rehabilitation coordinator. The clinical case manager will provide medical guidelines for the serving member's rehabilitation and ensure that unit medical records accurately reflect the total plan of management.

3.18 Rehabilitation coordinators are appointed to manage the return to work (vocational rehabilitation) of all ADF members, regardless of their compensation status.

3.19 Rehabilitation providers must be approved Comcare program providers. If a member refuses to undertake a rehabilitation assessment or program, the rehabilitation authority can suspend the member's right to compensation until the member undertakes the program.[6] This does not affect the right to treatment or compensation for treatment.

[4] AC563, Defence OHS Incident Report.
[5] The originator completes a PM546, Request for Rehabilitation Assessment.
[6] Section 52 of the MRCA.

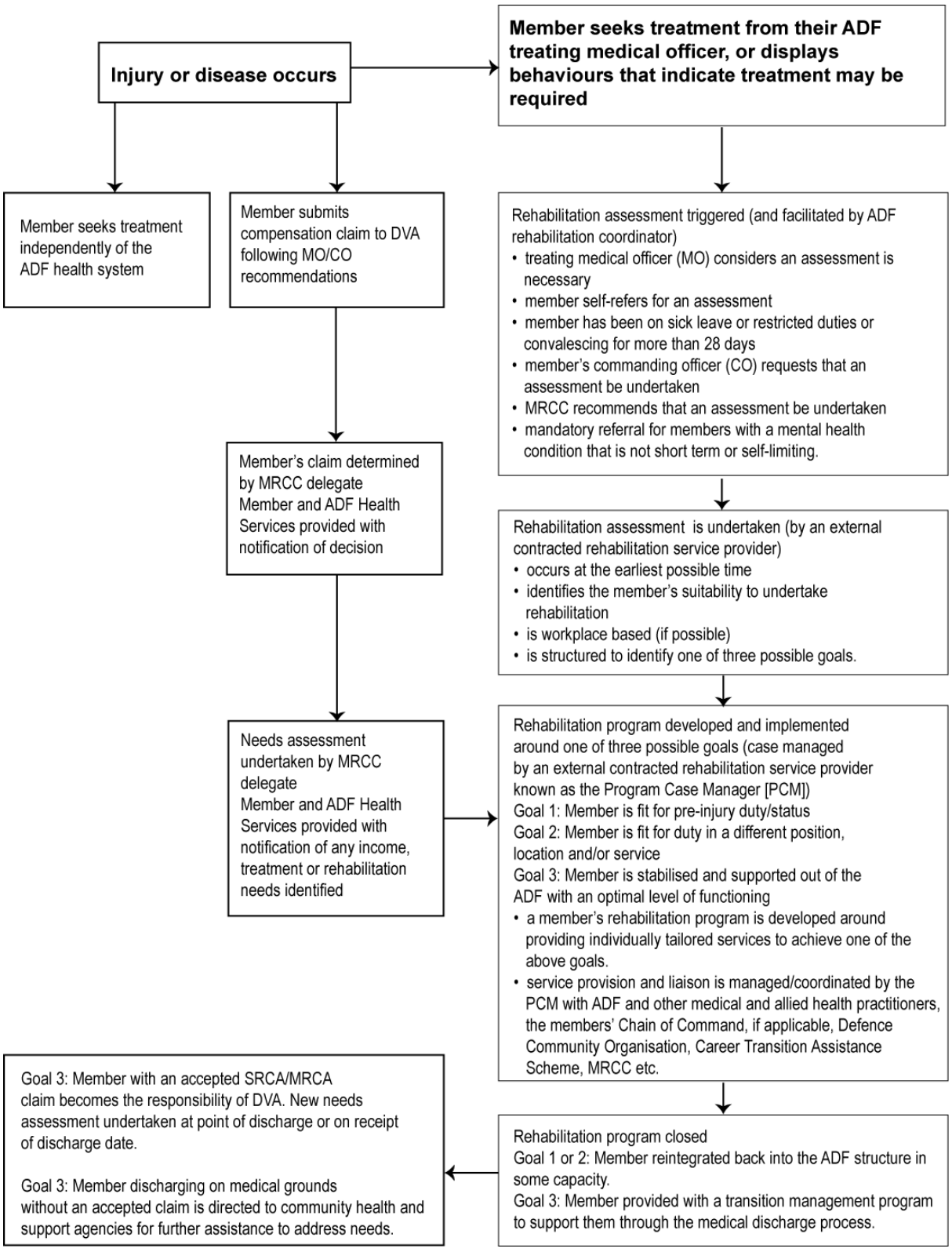

Figure 3.1 The Australian Defence Force Rehabilitation Program case management pathway

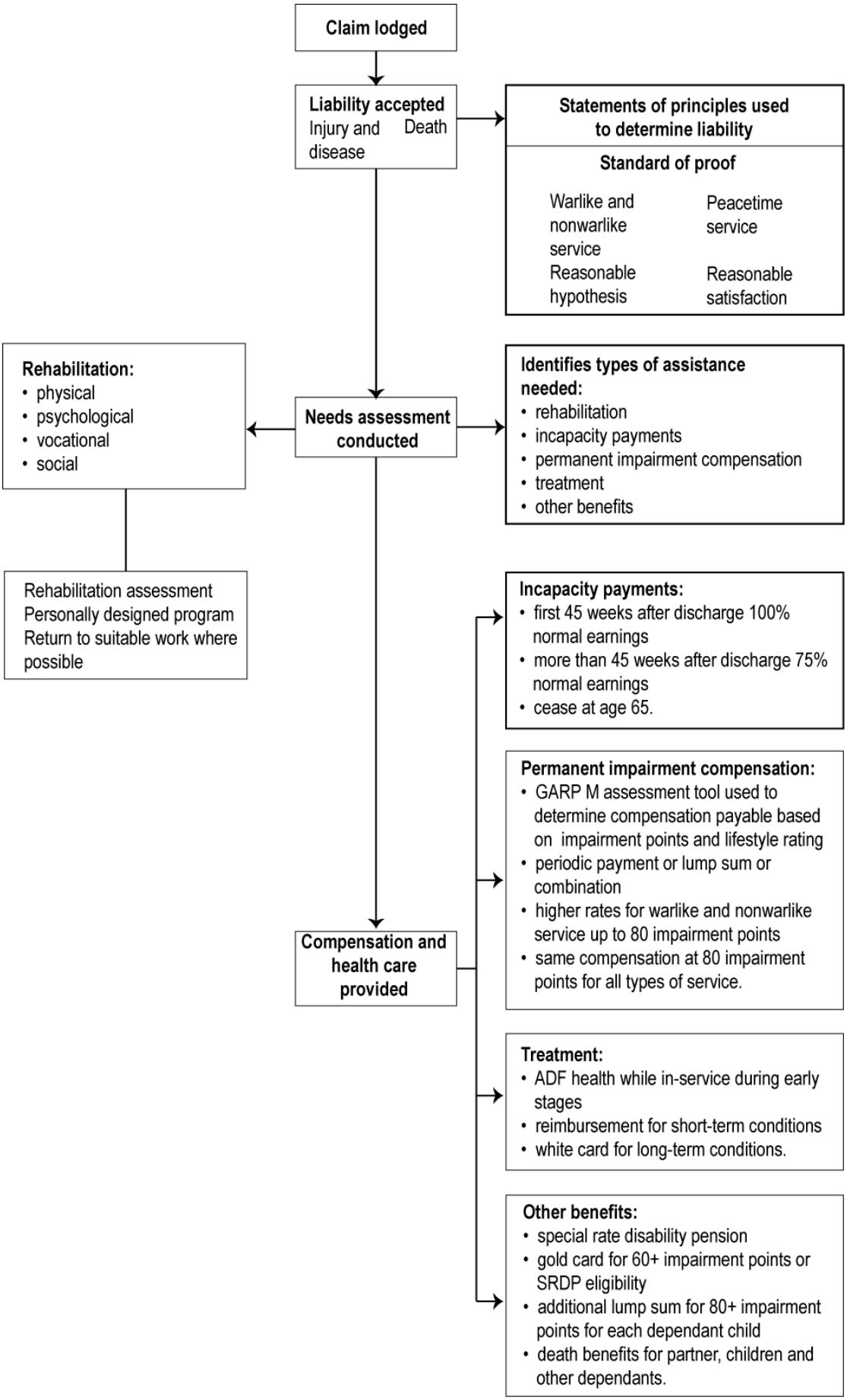

Figure 3.2 Military Rehabilitation and Compensation Act claims process

Initial liability

3.20 The member may contact DVA for information about possible compensation for a service-related injury or disease. Once a claim is lodged, DVA will acknowledge receipt and provide a copy to Defence. This documentation is retained by Joint Health Command and placed on the member's unit medical record.

3.21 A delegate of the MRCC within DVA investigates the claim for liability, including service details, diagnosis and causation. Generally, all the evidence required by the MRCC delegate will be available on the member's unit medical record and the incident report provided with the claim or sought by the delegate from Defence. The delegate may require other evidence; for example, a specialist medical report or witness statements.

3.22 For most conditions, there is a Statement of Principles (SoP) that the MRCC delegate must use to determine liability. The delegate will either determine that the member's injury or disease is a service injury or service disease and accept the claim for liability, or reject the claim for liability.

3.23 DVA provides a copy of the MRCC delegate's determination to the member's Service Chief. This documentation is retained by Joint Health Command and placed on the member's unit medical record.

3.24 The determination letter will outline the member's reconsideration and review options if he or she is unhappy with the decision of the delegate. The member may request an internal reconsideration within three months of receiving the original determination, or apply to the Veterans' Review Board (VRB) for a review within 12 months of receiving the original determination. The member's Service Chief may request that the MRCC reconsider its decision, or the MRCC may have a different delegate undertake its own reconsideration. The member can also appeal to the Administrative Appeals Tribunal (AAT) if not satisfied with the first level of appeal.

Needs assessment

3.25 Before any compensation is payable, a delegate of the MRCC will undertake a needs assessment with the member. During the needs assessment, the delegate will attempt to identify the priorities for rehabilitation, medical treatment and compensation needs that the member may have.

3.26 The MRCC delegate will summarise the findings of the needs assessment process and report these back to the member and the ADFRP. This document will confirm activities currently being undertaken and highlight any additional issues that may need to be addressed by the ADFRP or through DVA, such as the provision of aids and appliances, household assistance or attendant care.

3.27 The member may also claim for incapacity payments for any pay-related allowances included in their normal earnings that were lost as a result of the service injury or service disease; for example, any lost deployment allowance if the service injury or service disease resulted in the member's return to Australia before the expected unit end date of a deployment. It is the responsibility of Defence to provide the MRCC with

details about any pay-related allowances included in normal earnings that the member would have been receiving if not for the accepted injury or disease.

3.28 A claim for permanent impairment compensation may be discussed, but may need to be deferred until the member's condition has stabilised.

Transition to civilian life

3.29 While Defence has responsibility for providing medical treatment for all conditions for serving members, this responsibility may be transferred to the MRCC before discharge, after considering any advice from Defence.

3.30 The ADFRP aims to support the member in returning to his or her pre-condition duties or alternative duties. However, if a member is unable to return to normal or alternate duties during rehabilitation, they will be assisted in making the transition out of the ADF. The discharging member will be assigned a transition case manager through a referral process via the ADFRP. DVA provides a transition service for members undertaking medical discharge to advise on future compensation and treatment arrangements. Defence and DVA have agreed to extend this service until 30 June 2011 while a 'whole of life' medical, rehabilitation, compensation and transition framework is developed for ADF members.

3.31 Once the member has been identified as likely to discharge, responsibility for their rehabilitation transfers from the ADFRP to a DVA rehabilitation case manager on behalf of the MRCC. The member's existing rehabilitation provider will continue to manage the member's rehabilitation after discharge, if appropriate and practical.

3.32 As soon as possible after the member has been identified for discharge, a new needs assessment should be undertaken. Any change in the member's circumstances may require a new rehabilitation program or an adjustment to the range of services and activities required by the member, especially if their discharge involves relocation.

Incapacity payments

3.33 Incapacity payments compensate the member for lost income. If a rehabilitation program is no longer being undertaken, the member will be required to provide a medical certificate or other evidence of incapacity for service or work.

3.34 Through the transition process the member should contact ComSuper regarding any invalidity benefits payable under a Commonwealth superannuation scheme, such as the Military Superannuation and Benefits Scheme (MSBS). MRCA incapacity payments are offset on a dollar-for-dollar basis by the Commonwealth-funded portion of any Commonwealth superannuation the member receives. The maximum incapacity payment for a member who does not return to work is the difference between normal earnings and actual earnings for the first 45 weeks after discharge. After 45 weeks, normal earnings are reduced to 75 per cent. If a former member returns to work, this percentage increases in correlation to normal weekly hours worked during a week. Incapacity payments are payable for the duration of the incapacity or until age 65.

Treatment, household services and attendant care

3.35 After discharge, access to treatment at cost to the MRCC will be arranged either through reimbursement (for short-term conditions) or a Repatriation Health Card – For Specific Conditions (White Card). The MRCC delegate will arrange this as part of the needs assessment.

3.36 As noted above, during any needs assessment process, the member's eligibility for compensation for attendant care (essential and regular personal care services such as mobility assistance, personal hygiene, grooming, dressing and feeding) or household services (services required for the proper running and maintenance of a household such as cooking, cleaning, laundry and gardening) will also be considered. These benefits can be provided while the member is still serving.

Permanent impairment compensation

3.37 The member may wish to claim for permanent impairment compensation, either while serving or after separation. A copy of the claim for permanent impairment compensation will be provided to the member's Service Chief if they are still serving. This documentation is retained by Joint Health Command and placed on the member's unit medical record.

3.38 The MRCC delegate will arrange an appointment with an occupational physician or a specialist for a permanent impairment assessment. If the impairment is not yet stable, the delegate will generally defer a final decision. In some circumstances, interim permanent impairment compensation will be considered.

3.39 Once the injury or disease is determined as permanent and stable, the delegate will determine the member's impairment points using an assessment guide (the *Guide to determining impairment and compensation*, known as GARP M). The weekly permanent impairment compensation is then determined. An advice letter will outline the member's reconsideration and review options if they are unhappy with the delegate's decision.

3.40 DVA provides a copy of the delegate's determination to the member's Service Chief if he or she is still serving. This documentation is retained by Joint Health Command and placed on the member's unit medical record.

3.41 Before payment commences, the member will be provided with a choice between accepting the permanent impairment compensation payment or pursuing damages for non-economic loss under a common law action against the Commonwealth or another party. The choice to pursue common law action means that no future permanent impairment compensation is available under the MRCA for that condition. If the member chooses the permanent impairment compensation payment, he or she may also elect within six months to convert part or all (depending on the level of impairment suffered) of the weekly payment to an age-based lump sum.

Other benefits

3.42 If the impairment suffered by the member is assessed at 60 or more impairment points and they are no longer serving, they will be issued a Repatriation Health Card —

For All Conditions (Gold Card), which provides access to medical treatment for all conditions.

3.43 If the member is eligible for the maximum permanent impairment compensation payment, they will also be eligible for an additional lump sum for each of his or her dependent children.

3.44 Once a member is discharged, he or she may become eligible for the Special Rate Disability Pension (SRDP) when designated criteria around incapacity for work, permanent impairment and unsuitability for vocational rehabilitation are met. If a former member is determined to be eligible for the SRDP, he or she will be given a choice between incapacity payments and the SRDP. The SRDP is a safety net payment, and it will be financially advantageous for the former member to remain on his or her incapacity payments. However, once eligible for the SRDP, a member will receive a Gold Card and his or her dependent children will receive education assistance.

Claims lodged after separation from the Australian Defence Force

3.45 The most common variation in the process outlined above occurs where a claim for liability is lodged by a former member after he or she has separated from the ADF. This may occur for a number of reasons.

3.46 One major reason is that a disease may manifest itself years after a former member has separated from the ADF. For example, exposure to asbestos in the Royal Australian Navy in the 1970s may not result in a diagnosis of asbestosis until many years later.

3.47 Additionally, the Committee was informed by current ADF members at consultations held on Defence bases that ADF members are often reluctant to reveal the existence of a health condition while serving, due to concern that such a disclosure would affect their deployability or capacity to undertake certain duties.

3.48 Where a claim is lodged after separation from the ADF, DVA will carry sole responsibility for the administration of rehabilitation and compensation provided to the former member.

3.49 Establishing liability becomes more difficult with the passage of time between the service related to the condition and the lodgement of the claim. Evidence to support the claim can become more problematic.

Benefits under the Veterans' Entitlements Act

3.50 The compensation provisions of the SRCA (as it relates to defence service) and the VEA have been closed off for injuries, disease and deaths related to service rendered on or after 1 July 2004. However, service rendered on or after 1 July 2004 may attract eligibility for a number of non-compensation benefits under the VEA that have not been closed off.

3.51 In particular, members with qualifying service (warlike service), whether before or after 1 July 2004, continue to be eligible for the income support provisions of the VEA

such as the service pension. Members with qualifying service also remain eligible for a Gold Card at age 70.

3.52 Members who have rendered operational service, either before or after 1 July 2004, continue to be eligible for non-liability health care for certain mental health conditions, malignant neoplasia and tuberculosis.

3.53 Appendix D provides a comparison of benefits for different kinds of service.

Transitional cases

3.54 The process outlined above is for a new claim under the MRCA. However, many claimants in the early years of the MRCA have had service resulting in eligibility to claim compensation under previous veterans' and military compensation legislation. The Committee acknowledges that, where a claimant under the MRCA has been receiving compensation under the VEA or the SRCA for an injury or disease related solely to service rendered before 1 July 2004, the process outlined above can become significantly more complex.

Systemic issues

3.55 Failures in personnel or operational management during service can affect performance and member outcomes later in the system. For example, failure of occupational health and safety can lead to incidents that cause injuries, and failure to report an incident can affect liability determinations downstream.

3.56 Similarly, failure to refer a member for a rehabilitation assessment can lead to a delay in return to work; failure to return to work can reduce a member's sense of health and wellbeing, as well as increase compensation costs.

Claim trends

3.57 Claim trends affect both the administrative requirements for DVA and future program outlays. Annually, DVA receives around 5,000 to 7,000 claims for initial liability under the SRCA and the MRCA (Table 3.1)

3.58 The data in Table 3.1 shows a sharp increase in liability claims under the MRCA in 2004-05 and 2005-06, which has plateaued in recent years. There was a corresponding sharp decline in liability claims under the SRCA in 2005–06, after the enactment of the MRCA. Since 2007–08, liability claims under the SRCA have increased slightly and seem to have plateaued at around 3,500 claims per year.

3.59 The 'tail' of SRCA claims is expected to continue for some time due to the lag between service related to an injury, disease or death and the lodgement of a claim for compensation.

3.60 The number of MRCA clients receiving permanent impairment compensation appears to have plateaued at around 1,000 clients per year (Table 3.2). Despite a small decrease in 2008–09 compared to the previous financial year, the number of permanent impairment compensation payments continues to trend upwards. The number of SRCA

permanent impairment clients decreased markedly in 2009–10, although the number of SRCA permanent impairment payments is decreasing more slowly.

3.61 MRCA incapacity payments and clients have been increasing quickly (Table 3.3). SRCA clients and payments both increased slightly in 2009–10, at odds with the steady decline evident since the commencement of the MRCA. Although relatively stable up to 2008–09, both the total number of clients under both Acts and total payments increased significantly in 2009–10. It is difficult to know if this increase will continue.

3.62 Payments for medical and other services under the MRCA are growing quickly (Table 3.4). Payments for medical and other services under the SRCA have been steadily declining since 2004–05, but increased again in 2009–10. The declining number of payments under the SRCA from 2004–05 to 2008–09 have more than offset the increasing number of payments under the MRCA, resulting in a steady decline in the total number of payments for medical and other services under both Acts during that period, except in 2009-10 where there was a significant increase. Again, it is difficult to know if the significant increase in the total number of payments in 2009–10 will continue.

3.63 There is a considerable workload in processing account payments from medical and rehabilitation providers and other accounts. In 2009–10, a total of 12,365 MRCA accounts were paid, a 41 per cent increase on the previous year, and 106,202 SRCA accounts were paid (75 per cent within the target of 28 days), a 13 per cent increase.

Table 3.1 Number of initial liability claims and clients under the Military Rehabilitation and Compensation Act and the Safety, Rehabilitation and Compensation Act

		2004–05	2005–06	2006–07	2007–08	2008–09	2009–10
MRCA	Claims	688	1,798	2,572	2,709	3,282	2,948
	Clients	640	1,519	2,142	2,311	2,862	2,522
SRCA	Claims	5,510	3,659	3,170	3,469	3,728	3,451
	Clients	3,696	2,413	2,099	2,154	2,202	1,845
Total	Claims	6,198	5,457	5,742	6,178	7,010	6,399
	Clients	4,336	3,932	4,241	4,465	5,064	4,367

MRCA = *Military Rehabilitation and Compensation Act 2004*; SRCA = *Safety, Rehabilitation and Compensation Act 1988*

Table 3.2 Number of permanent impairment payments and clients under the Military Rehabilitation and Compensation Act and the Safety, Rehabilitation and Compensation Act

		2004–05	2005–06	2006–07	2007–08	2008–09	2009–10
MRCA	Payments	0	146	906	1,481	1,338	1,651
	Clients	6	53	368	990	1,046	977
SRCA	Payments	5,475	3,827	3,571	3,326	2,886	2,874
	Clients	1,759	1,332	1,142	1,233	978	842
Total	Payments	5,493	3,973	4,477	4,807	4,224	4,525
	Clients	1,765	1,385	1,510	2,223	2,024	1,819

MRCA = *Military Rehabilitation and Compensation Act 2004*; SRCA = *Safety, Rehabilitation and Compensation Act 1988*

Table 3.3 Number of incapacity payments and clients under the Military Rehabilitation and Compensation Act and the Safety, Rehabilitation and Compensation Act

		2004–05	2005–06	2006–07	2007–08	2008–09	2009–10
MRCA	Payments	167	856	3,892	8,963	13,443	20,372
	Clients	42	256	405	731	925	1,247
SRCA	Payments	70,752	70,733	66,742	63,071	58,801	61,587
	Clients	3,455	3,241	2,982	2,749	2,602	2,629
Total	Payments	70,919	71,589	70,634	72,034	72, 244	81,959
	Clients	3,497	3,497	3,387	3,480	3,527	3,876

MRCA = *Military Rehabilitation and Compensation Act 2004*; SRCA = *Safety, Rehabilitation and Compensation Act 1988*

Table 3.4 Number of payments for medical and other services under the Military Rehabilitation and Compensation Act and the Safety, Rehabilitation and Compensation Act

		2004–05	2005–06	2006–07	2007–08	2008–09	2009–10
MRCA	Payments	No data	No data	4,284	5,273	8,782	12,365
SRCA	Payments	112,165	108,290	104,882	100,771	94,340	106,202
Total		112,165	108,290	109,166	106,044	103,122	118,567

MRCA = *Military Rehabilitation and Compensation Act 2004*; SRCA = *Safety, Rehabilitation and Compensation Act 1988*

Most frequently claimed conditions and acceptance rates

3.64 In 2009–10, 3,284 liability claims were determined, representing around 6,000 conditions. (A claim can be for multiple conditions related to different aspects or incidents of military service.) Table 3.5 shows the 15 Statements of Principles (SoPs) most frequently used in MRCA decision making during the year.

Table 3.5 The 15 Statements of Principles most frequently used to decide claims under the Military Rehabilitation and Compensation Act in 2009–10

Statement of Principle	No. accepted	No. rejected	Total	Acceptance rate (%)
Acute sprain and acute strain	768	145	913	84
Fracture	326	61	387	84
Sensorineural hearing loss	177	72	249	71
Osteoarthrosis	163	82	245	67
Lumbar spondylosis	172	73	245	70
Internal derangement of the knee	151	64	215	70
Tinnitus	179	29	208	86
Depressive disorders	101	98	199	51
Chondromalacia patellae	101	85	186	54
Rotator cuff syndrome	147	27	174	84
Intervertebral disc prolapse	130	40	170	76
Dislocation	142	27	169	84
Shin splints	133	13	146	91
Post-traumatic stress disorder	114	29	143	80
Physical injury due to munitions discharge, and cuts, stabs, abrasions and lacerations	96	23	119	81
Total	2,900	868	3,768	77%

Expenditure

3.65 Total expenditure under the MRCA is still less than half the total expenditure for defence-related claims under the SRCA (Table 3.6). This is because the MRCA covers service only from 1 July 2004, whereas the SRCA applies to all claims before that date. In addition, the average lag time from date of injury in the ADF to date of claim is 17 years (with a median of 12 years).

3.66 Incapacity payments are the most significant expenditure under the SRCA (41.3 per cent; Table 3.7) and MRCA (39.7 per cent; Table 3.8). Permanent impairment compensation is the other significant expenditure (21.5 per cent under the SRCA; Table 3.7 and 39.4 per cent under the MRCA; Table 3.8). Because incapacity payments are ongoing, whereas permanent impairment compensation is generally paid as a lump sum, MRCA incapacity payment expenditure is expected to increase proportionately as more claimants use the scheme.

3.67 Total SRCA incapacity expenditure has remained relatively consistent since 2004–05 (Figure 3.3), although the amount of death benefits expenditure increased in 2009–10. This is expected to continue into forward estimate years, with incapacity payments trending downwards slightly from 2010–11. Permanent impairment payments under the SRCA are expected to decrease over the forward estimates.

3.68 Total MRCA expenditure is expected to increase steadily in line with the claim trends presented earlier in this chapter (Figure 3.4). Total expenditure for the MRCA and SRCA is shown in Figures 3.5 and 3.6.

Table 3.6 Actual expenditure for the Military Rehabilitation and Compensation Act and the Safety, Rehabilitation and Compensation Act in 2009–10

Act	$('000)
SRCA total	145,952
MRCA total	72,236
Combined total	218,188

MRCA = *Military Rehabilitation and Compensation Act 2004*; SRCA = *Safety, Rehabilitation and Compensation Act 1988*

Table 3.7 Actual expenditure for the Safety, Rehabilitation and Compensation Act in 2009–10

Benefit	$('000)	%
Permanent impairment	31,438	21.5
Benefits for eligible dependants	9,358	6.4
Incapacity payments	60,360	41.3
Medical examinations	3,306	2.3
Death payments	2,063	1.4
Medical services	20,514	14.1
Rehabilitation service	6,975	4.8
Other	11,938	8.2
Total	145,952	100.0

Table 3.8 Actual expenditure for the Military Rehabilitation and Compensation Act in 2009–10

Benefit	$('000)	%
Permanent impairment	28,467	39.4
Benefits for eligible dependants	1,699	2.3
Incapacity payments	28,673	39.7
Medical examinations	2,787	3.9
Medical services	5,756	8.0
Rehabilitation service	3,550	4.9
Other	1,304	1.8
Total	72,236	100.0

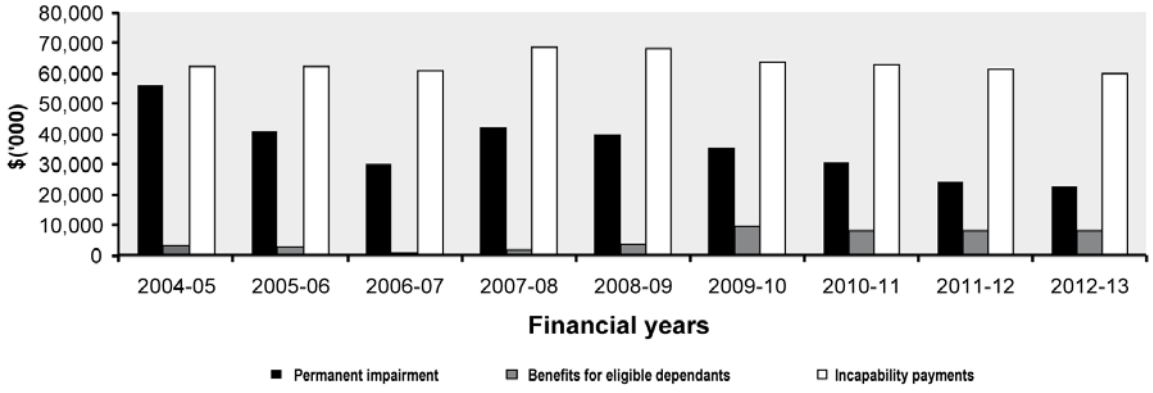

Figure 3.3 Safety, Rehabilitation and Compensation Act actual expenditure 2004–05 to 2009–10 and projected expenditure 2010–11 to 2012–13

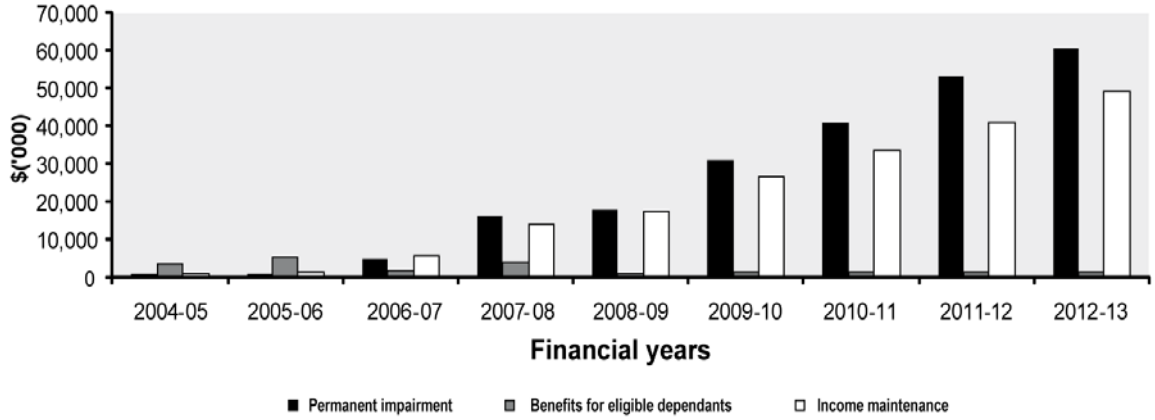

Figure 3.4 Military Rehabilitation and Compensation Act actual expenditure 2004–05 to 2009–10 and projected expenditure 2010–11 to 2012–13

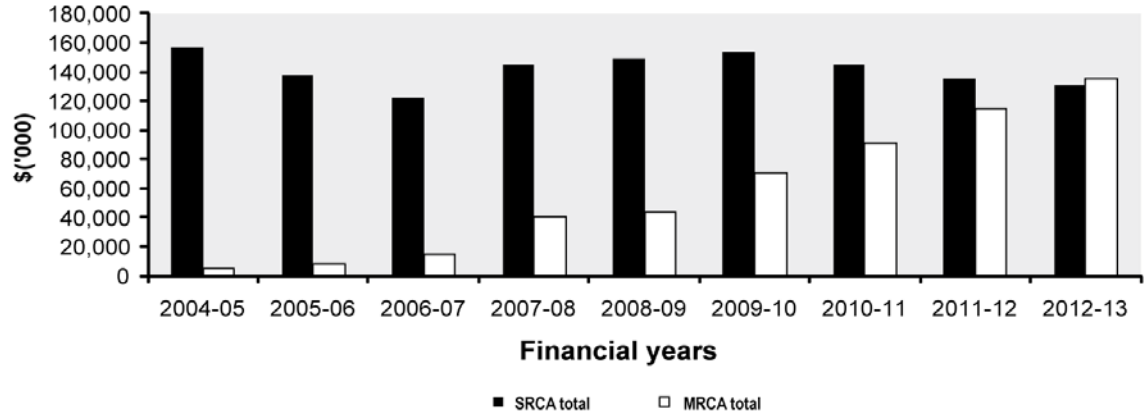

Figure 3.5 Total Safety, Rehabilitation and Compensation Act and Military Rehabilitation and Compensation Act actual expenditure 2004–05 to 2009–10 and projected expenditure 2010–11 to 2012–13

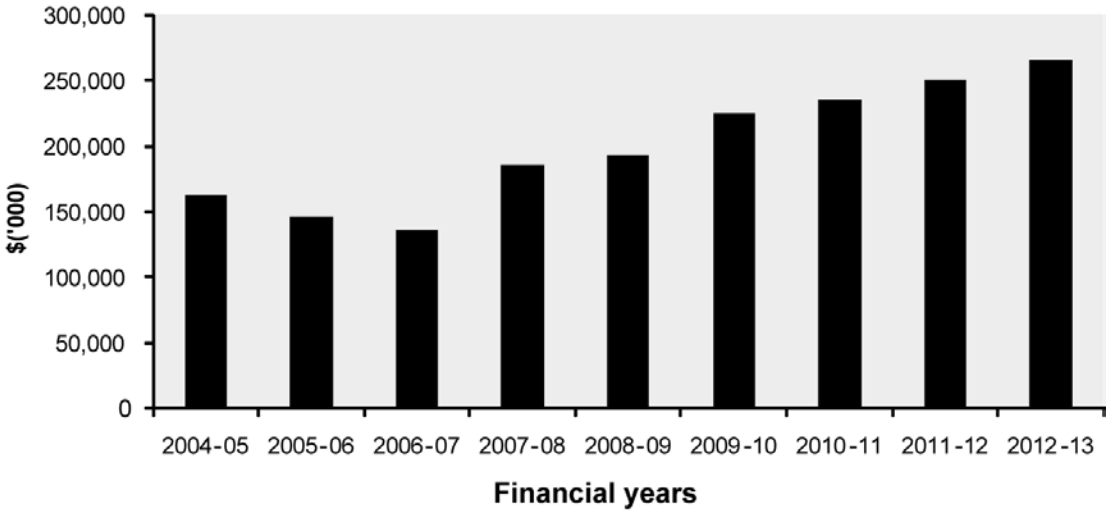

Figure 3.6 Combined Safety, Rehabilitation and Compensation Act and Military Rehabilitation and Compensation Act actual expenditure 2004–05 to 2009–10 and projected expenditure 2010–11 to 2012–13

Military Rehabilitation and Compensation Act and Safety, Rehabilitation and Compensation Act liability

3.69 The Australian Government Actuary produces estimates of the SRCA and MRCA liability for future years (Table 3.9). These figures become less assured as they estimate further into the future.

3.70 Liability in this context means the present value of all estimated future cash flows arising from claims attributed to service before the valuation date (in this case 30 June 2009). The estimates allow for the liability arising from claims attributable to service after the valuation date (e.g. the estimate for 2011 allows for the cost of claims attributable to 2009–10 and 2010–11 years). The value of the liability arising from a particular year is referred to as the notional premium for that year. The Australian Government Actuary has estimated the notional premium for 2009–10 to be $182 million.

Table 3.9 Safety, Rehabilitation and Compensation Act and Military Rehabilitation and Compensation Act liability estimates

	SRCA ($ billion)	MRCA ($ billion)	Total ($ billion)
2009	1.597	0.719	2.316
2010	1.546	0.881	2.427
2011	1.495	1.049	2.543
2012	1.445	1.222	2.667
2013	1.398	1.400	2.798
2014	1.353	1.586	2.939
2015	1.311	1.780	3.091
2016	1.270	1.984	3.254
2017	1.231	2.197	3.428
2018	1.193	2.421	3.614
2019	1.156	2.657	3.813

MRCA = *Military Rehabilitation and Compensation Act 2004*; SRCA = *Safety, Rehabilitation and Compensation Act 1988*

3.71 The SRCA liability is expected to reduce by about 28 per cent over the next decade (Table 3.9). Over the same period, the MRCA liability will more than treble and reach about two-and-a-half times the SRCA liability. It is estimated the MRCA liability will exceed the SRCA liability by 2013.

3.72 The liability figure is a notional estimate of future cash flows based on empirical data to date. The MRCA and SRCA schemes are funded on an emerging cost basis from the Consolidated Revenue Fund. The liability indicates the cash required in years well into the future and the liability figure for any one year does not require cash funding in that year. As the MRCA scheme is only six years old, the data on which the liability estimates are based reflect the early experience of the scheme. As the scheme matures, the claims and expenditure data on which the liability estimates are based will improve, providing a more reliable estimate. Annual changes in the liability estimates, as reported in the Portfolio Budget Statements for DVA, are likely to reduce as more claims experience data available each year builds better liability estimates.

3.73 It is worth noting that DVA's total departmental and administered annual budget for the VEA, SRCA and MRCA is approximately $12 billion per year. Defence's total annual budget is approximately $26 billion per year, including health costs.

Conclusions

3.74 The first part of this chapter introduced the military compensation scheme as a system, beginning with Defence and finishing with DVA, with significant overlap between the two departments at various points in the continuum. Failures at early parts in the system can affect performance at later parts in the system.

3.75 This chapter recognised that claims are often lodged under the military compensation scheme many years after discharge from the ADF, and that this can have an impact on the efficacy of the system, as evidence required to support a claim diminishes over time.

3.76 The second part of the chapter provided some data and commentary on payment and client trends, historic and projected expenditure, and liability estimates. Although these data are limited, they show a steady upward trend in both claims and expenditure under the MRCA over time. SRCA claims are not declining as steadily as might have been expected after 1 July 2004, while claims under the MRCA continue to grow.

4 Unique nature of military service

Chapter summary

The Committee confirms the unique nature of military service and the requirement for a military-specific compensation scheme that recognises that military service is different from civilian employment. The Committee concluded that compensation arrangements separate from the civilian compensation arrangements should be continued.

Military compensation arrangements exist within the broader context of civilian occupational health and safety laws and systems, including workers' compensation legislation. While the *Military Rehabilitation and Compensation Act 2004* needs to always have regard to the special features of military service, at the same time, the Act should be informed by community standards. The Committee recommends that the Military Rehabilitation and Compensation Commission should review Australian workers' and international military compensation arrangements at least every five years to ensure that the MRCA remains contemporary.

Introduction

4.1 This chapter provides an overview of the unique nature of military service and where the *Military Rehabilitation and Compensation Act 2004* (MRCA) sits in the landscape of compensation legislation in Australia.

4.2 The chapter makes some comparisons between the MRCA and the other major piece of Commonwealth compensation legislation, the *Safety, Rehabilitation and Compensation Act 1988* (SRCA), and provides a brief overview of some recent developments in relation to the SRCA that the Committee was aware of at the time of drafting the report.

4.3 Lastly, the chapter briefly discusses Safe Work Australia (SWA) and Heads of Workers' Compensation Authorities (HWCA), and moves towards harmonisation across workers' compensation jurisdictions.

Background

4.4 The MRCA was developed to solve the overly complex state of military compensation at the time.

4.5 The MRCA is different in a number of aspects to workers' compensation legislation, such as the SRCA. The MRCA is military compensation, not workers' or veterans' compensation.

4.6 The MRCA seeks to take account of the expansive role of the Australian Defence Force (ADF), with respect to peacetime service, and warlike and non-warlike service. It covers a range of occupational categories and reflects some aspects of the long-standing repatriation system, including important case law. The MRCA maintains the tradition of providing military personnel with more beneficial compensation, in recognition that their primary role is to defend Australia.

4.7 Incorporating elements of the *Veterans' Entitlements Act 1986* (VEA) was influenced by veterans' organisations wishing to ensure certain provisions were maintained because they were more beneficial or more appropriate forms of compensation for military personnel. Although outnumbered by the SRCA elements, these VEA elements have an important influence on the legislation. Appendix E provides a schematic comparison of the three Acts.

Unique nature of military service and the Military Rehabilitation and Compensation Act

4.8 The Review did not receive any submissions that questioned the need for a separate piece of legislation providing compensation for military service, or argued that military service should be compensated under the same legislation as Commonwealth public servants. The existence of statutory compensation legislation designed specifically to meet the needs of military service appears to be implicitly accepted. Nevertheless, the Committee briefly considered this issue.

4.9 From the outset, the Committee noted that military service is unique for the following reasons:

- military personnel are required to perform a range of activities, many of which involve high risk, particularly those undertaken during operational service where ADF members may engage in combat against enemy forces or face risks from dissident elements;
- ADF members are liable to be relocated within Australia and to other parts of the world, often at short notice;1
- the nature of the work performed by military personnel, including the requirement to be deployable, means ADF members need to maintain a level of fitness beyond that required of most types of civilian employment; and
- military personnel are subject to an extensive disciplinary code with significant punitive measures in cases of breach.

4.10 The unique nature of military service is recognised by a number of Australian Government arrangements that are specific to the ADF. For example, the establishment of the Defence Force Remuneration Tribunal is recognition of the ADF's unique industrial circumstances. Military-specific superannuation schemes provide further recognition by the Australian Government of the ADF's special circumstances.

4.11 The Committee concluded that, due to the unique nature of military service, compensation arrangements separate from the civilian compensation arrangements should be continued.

Maintaining the contemporary nature of the Military Rehabilitation and Compensation Act

4.12 Workers' compensation in Australia is constantly changing and developing. Recently, workers' compensation legislation in Victoria, South Australia, Tasmania, and

[1] J Reich, J Hearps, A Cohn, J Temple, & P MacDonald, *Defence personnel environment scan 2025*, 2006, p. 48.

the Australian Capital Territory has been the subject of reviews of various degrees and scope. Various state governments have made frequent and complex amendments to schemes in recent years. One of the challenges governments will face in the future will be to ensure that the MRCA remains contemporary in this changing workers' compensation environment.

4.13 The Committee believes that a formulaic approach to maintaining the contemporary nature of the MRCA should be avoided. Governments need the flexibility to respond to circumstances as they arise, subject to their particular priorities and programs.

4.14 This is especially important in the case of military compensation because a significant part of the Australian Government's future MRCA liabilities depend on the degree to which the ADF is required to engage in overseas operations, and the nature and extent of those operations.

4.15 While recognising the unique demands made of ADF members, military service and its underlying framework of conditions do not exist in isolation from the broader community. The Committee believes that the ADF is part of the community it is entrusted to defend.

4.16 Military compensation arrangements exist within the broader context of civilian occupational health and safety laws, including workers' compensation. It is necessary for the ADF to have reference to community standards.

4.17 In practical terms, this means the MRCA's financial benefits and its associated policies and processes need to always have regard to the special circumstances and features of military service. This may extend to taking account of Australia's strategic circumstances and the nature of the conflicts in which the ADF is required to participate.

4.18 At the same time, it is necessary to maintain awareness of community standards by monitoring and considering the implications of developments in relevant legislation, such as the SRCA and state and territory workers' compensation schemes.

4.19 The Committee noted that, while it is the responsibility of the Australian Government to ensure that the MRCA remains contemporary, the Military Rehabilitation and Compensation Commission (MRCC) has an ongoing role in monitoring the performance of the MRCA, developments in Australian workers' compensation jurisdictions and international military compensation arrangements, and in providing advice to government.[2]

4.20 The Committee is of the view that the MRCC should review the MRCA every five years to maintain its contemporary nature in comparison to Australian workers' compensation jurisdictions and international military compensation arrangements, and in light of changes in the nature of ADF service.

[2] Section 354 of the MRCA.

Comparisons between the Military Rehabilitation and Compensation Act and the Safety, Rehabilitation and Compensation Act

4.21 While military service is different from civilian employment, parts of it are comparable. For example, for peacetime service, the ADF is regulated by all aspects of the *Occupational Health and Safety Act 1991* (OHS Act). Consequently, it is required to comply with the Commonwealth's occupational health and safety regulator, Comcare.

4.22 Military and civilian employees of the Commonwealth have the same employer and often occupy the same workplaces. In view of this, and the related histories of the MRCA and the SRCA, comparisons will inevitably be made.

4.23 The argument that comparisons between the MRCA and the SRCA should only be made on a total package basis is attractive. But the nature of some of the key financial benefits, such as death benefits, and permanent impairment and incapacity payments, make benefit-by-benefit comparisons difficult to avoid.

4.24 Key financial benefits, such as death benefits, permanent impairment compensation and incapacity payments stand out as salient measures of the overall generosity of the respective schemes. Such benefits, and others, are regularly compared across the various workers' compensation jurisdictions.[3]

4.25 Comparisons between the MRCA and the SRCA will be made throughout this report, despite the different features of the two Acts. Such comparisons will focus on key financial benefits, as comparisons at a broader level may be confusing for many stakeholders or commentators.

Recent developments in the Commonwealth workers' compensation jurisdiction

4.26 At the time of preparing this report, the Committee was aware of the following developments in relation to the SRCA and took these developments into account during its deliberations.

Amendments to death benefits under the Safety, Rehabilitation and Compensation Act

4.27 The following changes to the SRCA came into effect on 13 April 2007:

- the required connection between work and eligibility for workers' compensation was strengthened, particularly in relation to disease and psychological claims, so that only significant contribution by work is accepted;
- workers' compensation coverage was removed for journeys between residence and usual place of employment and from recess breaks away from the place of employment where there is a lack of employer control over activity; and
- claimants who are no longer employed by the Commonwealth (or a licensee) can now have their capacity to work outside Commonwealth (or licensee) employment taken into account when calculating incapacity benefits.

[3] See, for example, the Safe Work Australia website (http://www.safeworkaustralia.gov.au), which publishes *Comparison of Workers' Compensation Arrangements in Australia and New Zealand*.

4.28 A number of other amendments that were beneficial to employees were also made, such as an increase to funeral benefits to $9,000.00 ($10,138.75 as at 1 July 2010) and an increase to weekly benefits paid to retired employees.

4.29 On 3 June 2009, the following amendments to death benefit payments under the SRCA came into effect retrospectively for deaths occurring on or after 13 May 2008:

- an increase in the lump sum death benefits payable under the SRCA to dependants of deceased persons from $219,023.62 to $400,000.00 ($442,177.76 as at 1 July 2010);
- an increase in the periodic payments payable under the SRCA to dependent children from $72.98 to $110.00 ($121.60 as at 1 July 2010); and
- indexation of dependant death payments by the Wage Price Index (WPI) instead of the Consumer Price Index (CPI).

Review of the Comcare Scheme and policy review of the Permanent Impairment Guide

4.30 Commencing in January 2008, the Department of Education, Employment and Workplace Relations (DEEWR) reviewed self-insurance arrangements under the SRCA and the OHS Act. Feedback on the assessment and payment of compensation under the permanent impairment compensation provisions of the SRCA led to a recommendation that Comcare review its permanent impairment arrangements.

4.31 In response to that recommendation, Comcare issued an options paper[4] in August 2009, as part of its review examining the adequacy of the *Guide to the assessment of the degree of permanent impairment*, second edition, 2005 (PIG) and legislative framework of the SRCA to deliver fair and equitable compensation for permanent impairment and non-economic loss. The terms of reference of the review concentrated on the public policy issues associated with the assessment and payment of compensation for permanent impairment. In preparing the options paper, Comcare considered 11 submissions, including several from ex-service organisations (ESOs), on an issues paper released on 1 April 2009.

4.32 Similar issues have been raised by ESOs in the context of the current Review of Military Compensation Arrangements. There are 15 issues in the Comcare option paper where a preferred option has been expressed. These have been summarised in Table 4.1.

4.33 The Comcare review was limited to Part 1 of PIG, as used by Comcare, premium-paying agencies and licensees under the SRCA. For defence-related claims, DVA uses Part 2 of PIG, which is the same as the 1st edition published in 1989. Part 2 was retained from the 1st edition for claims relating to ADF service, as ESOs believed that the new Part 1 in the 2nd edition would be less generous, and this is borne out by data supplied to the Review of Self-insurance Arrangements under the Comcare scheme.[5] Though Part 2 itself is not subject to review, any legislative changes in response to Comcare's preferred options may impact on the application of Part 2, requiring amendment or even replacement by another guide.

4.34 Comcare is currently considering the issues and the various options.

[4] Comcare, *Policy review of permanent impairment guide — options paper*, 2009.
[5] Taylor Fry Consulting Actuaries report, 15 May 2008.

Table 4.1 Comcare's preferred options from 'Policy review of permanent impairment guide — options paper'

Options paper issue number (page reference)	Comcare's preferred option
Legislation — *Safety, Rehabilitation and Compensation Act 1988* (SRCA)	
01 — The adequacy of current impairment benefits (pp. 8–11)	Increase the maximum amount payable for permanent impairment or non-economic loss to 90% of the death benefit, to be indexed annually, but not increase the maximum amount available under common law
02 — Separate payments for permanent impairment and non-economic loss (pp. 11–12)	Permanent impairment benefit be increased to include the previous non-economic loss component and, by consequence, section 27 of the SRCA be repealed
03 — The irrevocable election between permanent impairment and common law (pp. 12–14)	Irrevocable election between permanent impairment and common law be maintained
04 — The reasonableness of current impairment thresholds (pp. 14–20)	Threshold of 10% be retained for initial impairment but that threshold for deterioration of impairment be reduced from 10% to 5%
05 — Multiple injuries (Canute) (pp. 20–24)	All impairments resulting from all injury occurrences under the SRCA be combined
06 — Pre-existing conditions (pp. 24–27)	Clear legislative mechanism be introduced for the discounting of pre-existing conditions
Guide to the assessment of the degree of permanent impairment, 2nd edition (PIG)	
07 — General review of *Guide to the assessment of the degree of permanent impairment*, 2nd ed. 2005 (PIG) (pp. 29–31)	Base next edition of PIG on the American Medical Association's (AMA) *Guides to the evaluation of permanent impairment*, 5th edition (2000) and complete an in-depth analysis of the appropriateness of a transition to the 6th edition (2007) of the AMA Guide
08 — Stand-alone guide (pp. 31–35)	Ask New South Wales (NSW) to agree that Comcare develop a modifier guide based on the NSW *Workcover guides for the evaluation of permanent impairment*
09 — An impairment of a kind that cannot be assessed in accordance with the provisions of PIG (pp. 35–36)	Amend PIG to instruct that where an impairment is of a kind that cannot be assessed in accordance with the provisions of PIG, that assessment is to be made under the edition of the AMA Guides upon which that provision was based
10 — Slow onset conditions (pp. 36–37)	Work with an oncologist to consider diseases, other than lung cancer and mesothelioma (i.e. malignant or terminal diseases), that can be compensated for permanent impairment upon diagnosis
11 — Psychiatric conditions (pp. 38–41)	Adopt the Psychiatric Rating Impairment Scale (PIRS) for the assessment of psychiatric conditions (including 15% WPI threshold for psychiatric conditions)
12 — Comcare tables and the 10 per cent threshold (pp. 41–42)	In reviewing PIG, work with relevant medical bodies to consider whether tables in PIG can be created to enable most, if not all, conditions to be assessed at the relevant threshold
13 — Review of percentage amounts — Comcare tables (pp. 42–43)	Review all tables to incorporate the 'ranges' used in edition 5 of the AMA Guide
14 — Movement to future editions of the AMA Guides (pp. 43–44)	Establish a Permanent Impairment Working party to consider topical permanent impairment issues such as the appropriateness of moving to future editions of the AMA Guides
15 — Ongoing training package (pp. 44–45)	Structure an ongoing training schedule on PIG. Develop a training package for non-medical practitioners to obtain an 'understanding' of PIG; issue regular bulletins to trained medical practitioners on topical issues relating to the assessment of permanent impairment

High Court decision in Fellowes v Military Rehabilitation and Compensation Commission

4.35 There has been an increased focus on SRCA permanent impairment compensation (and issues discussed in the options paper) following the High Court decision in *Fellowes v Military Rehabilitation and Compensation Commission*,[1] handed down on 23 September 2009.

4.36 Before this decision by the High Court, determining authorities had considered that subsequent injuries to a lower limb, or limbs, that did not increase the degree of permanent impairment to the 'lower limb function' under Table 9.5 in Part 2 of PIG, or to the 'lower extremity' under Table 9.7 in Part 1 of PIG, could not be compensated. This approach was consistent with the Full Federal Court decision in *Comcare v Van Grinsven*.[2] However, in the case of *Fellowes*, the High Court overruled the decision made in *Van Grinsven* on the basis that it was incompatible with *Comcare v Canute*[3] and therefore wrongly decided.

4.37 The decision by the High Court in the *Fellowes* case challenged the approach taken by Comcare and DVA in applying the functional loss tables in PIG Parts 1 and 2. The effect of the decision could even extend to questioning the methodology by which 'injuries' are identified for the purposes of paying compensation under the SRCA. The latter may only be demonstrated by subsequent decisions by the Administrative Appeals Tribunal and the Federal Court.

4.38 Comcare has issued a jurisdictional policy advice (JPA).[4] Pursuant to subsection 142(1)(c) of the SRCA, the MRCC will be guided by this JPA to ensure equity of outcomes resulting from administrative practices and procedures used both by Comcare and by MRCC delegates.

Safe Work Australia and Heads of Workers' Compensation Authorities

4.39 SWA is an independent Commonwealth body, established on 1 July 2009, to make recommendations to the Workplace Relations Ministers' Council for legislative change regarding occupational health and safety (OHS) and workers' compensation issues. Its primary function is to progress 'harmonisation' of OHS and workers' compensation laws in partnership with governments, employers and workers, who are represented by SWA. The HWCA supports SWA in its workers' compensation function.

4.40 The HWCA is a group comprising the chief executives (or their representatives) of the peak bodies responsible for workers' compensation regulation in Australia and New Zealand. This includes Australia's 10 workers' compensation authorities (six state, two territory and two Commonwealth) and the New Zealand Accident Compensation Corporation.

4.41 HWCA held a permanent impairment workshop on 2 October 2009, facilitated by Comcare's Chief Executive Officer, Mr Paul O'Connor. The workshop supported the drafting of an issues paper on 'harmonisation' of permanent impairment compensation

[1] [2009] HCA 38.
[2] [2002] FCA 371.
[3] [2006] HCA 47.
[4] JPA 2010/02 (12 March 2010).

across the jurisdictions, including the creation of a common tool for assessment of permanent impairment.

4.42 In a subsequent communiqué, HWCA 'agreed to work together toward a harmonised approach to permanent impairment assessments'.

4.43 DEEWR supports this approach in its submission to this Review, stating 'that an agenda of harmonising the methodology used to assess permanent impairment throughout the Australian Government, including both the SRCA and the MRCA, be pursued'.

4.44 The Secretary of the Department of Veterans' Affairs has accepted an invitation for DVA to join HWCA and a senior DVA representative has attended 4 meetings as at 2 February 2011. This will allow DVA to provide ongoing input into HWCA activities, such as any continuing agenda of harmonisation across different workers' compensation benefits, and ensure that HWCA will remain aware of issues that may impact on the military compensation jurisdiction. The Committee supports this ongoing involvement.

Conclusions

4.45 The MRCA is a modern, military-specific scheme covering all ADF members, both permanent and part-time. It brings together features of the VEA and the SRCA. The existence of a military-specific scheme recognises that military service is different from civilian employment and the MRCA is not simply another workers' compensation scheme.

4.46 Nevertheless, the Committee believes that comparisons between the MRCA and other workers' compensation legislation, particular the SRCA, are inevitable and useful to a limited degree. The MRCA must remain contemporary in relation to other compensation jurisdictions, not only in Commonwealth and state workers' compensation legislation, but also military compensation arrangements in other countries. An overview of the features of international military compensation schemes is provided in Appendix F, and a brief comparison of state workers' compensations schemes is provided in Appendix G.

Recommendations

The Committee recommends that:

4.1 the Military Rehabilitation and Compensation Commission (MRCC) should constantly monitor and review the *Military Rehabilitation and Compensation Act 2004* (MRCA) to ensure it appropriately reflects and recognises the unique nature of military service;

4.2 the MRCC should periodically review developments in Australian workers' compensation jurisdictions and international military compensation arrangements at least every five years to ensure the financial benefits under the MRCA and associated policies and procedures remain contemporary; and

4.3 Department of Veterans' Affairs representation and participation on the Heads of Workers' Compensation Authorities continues.