

# Recommendations

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## 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*.

