Chapter summary

The Committee examined the provision of compensation for household services and attendant care under the Military Rehabilitation and Compensation Act 2004 (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.

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 Military Rehabilitation and Compensation Commission (MRCC) develop guidelines on when household services and attendant care compensation can be paid to the spouse or another household member under the MRCA.

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 Veterans’ Entitlements Act 1986 (VEA) Treatment Principles.

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.

The services provided under a Home Care program are more limited and of less value than the services that attract compensation under the MRCA. However, the MRCA Home Care program provides entitlements to some people who are not eligible to be compensated for household services and attendant care. Partners and eligible young persons who have a Repatriation Health Card – For All Conditions (Gold Card) would not have access to compensation for household services and attendant care under the primary legislation, but would have access to services under the Home Care program. The Committee recommends that dual entitlements to household and attendant care services be removed.

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. The Department of Veterans’ Affairs 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.
13.1 This chapter discusses issues raised in submissions and public consultations relating to the provision of compensation for household services and attendant care under the *Military Rehabilitation and Compensation Act 2004* (MRCA). Specifically, this chapter addresses:

- household services and attendant care provided by spouses;
- overlap between household services or attendant care, and the MRCA Home Care program; and
- the level of services for high-dependency clients.

13.2 Section 214 of the MRCA provides that the Commonwealth will meet the cost of household services that are reasonably required by the person as a result of an accepted injury or disease, up to a current maximum amount of $413.56 per week, indexed annually on 1 July in accordance with the Consumer Price Index (CPI).

13.3 Household services are defined in section 213 as services of a domestic nature (including cooking, house cleaning, laundry and gardening services) that are required for the proper running and maintenance of the person’s household. Services for which a householder would usually employ a professional service provider are excluded.¹

13.4 Similarly, section 217 of the MRCA provides that the Commonwealth will meet the cost of attendant care services that are reasonably required by the person as a result of an accepted injury or disease, up to a maximum amount of $413.56 per week, indexed annually on 1 July in accordance with the CPI.

13.5 Attendant care services are defined in section 213 as services (other than household services, medical or surgical services, or nursing care) that are required for the essential and regular personal care of the person.

13.6 These provisions are modelled on similar provisions in the *Safety, Rehabilitation and Compensation Act 1988* (SRCA).

13.7 Table 13.1 shows the number of clients that have accessed attendant care or household service payments per year, under both the SRCA and the MRCA. Because of system limitations, reliable MRCA data are only available from 2008–09.

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Table 13.1  Number of clients receiving household services and attendant care provided by
the Military Rehabilitation and Compensation Commission

<table>
<thead>
<tr>
<th>Financial year</th>
<th>Household services</th>
<th>Attendant care</th>
</tr>
</thead>
<tbody>
<tr>
<td>SRCA 2004–05</td>
<td>1,044</td>
<td>85</td>
</tr>
<tr>
<td>SRCA 2005–06</td>
<td>1,066</td>
<td>90</td>
</tr>
<tr>
<td>SRCA 2006–07</td>
<td>1,104</td>
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<tr>
<td>SRCA 2007–08</td>
<td>1,140</td>
<td>106</td>
</tr>
<tr>
<td>SRCA 2008–09</td>
<td>1,257</td>
<td>125</td>
</tr>
<tr>
<td>MRCA 2008–09</td>
<td>162</td>
<td>13</td>
</tr>
<tr>
<td>SRCA 2009–10</td>
<td>1,297</td>
<td>112</td>
</tr>
<tr>
<td>MRCA 2009–10</td>
<td>226</td>
<td>20</td>
</tr>
</tbody>
</table>

Household services and attendant care provided by spouses

13.8  Two submissions² note that the MRCA is unclear whether household services and attendant care provided by a spouse can be compensated. Both recommend that the MRCA be amended to make it clear that services being provided by a spouse can be paid for. The submissions go on to recommend that a spouse be able to claim loss of earnings if full-time employment is foregone to care for the member.

13.9  The MRCA does currently allow for the payment for attendant care services provided by a spouse or member of the person’s household. Current Military Rehabilitation and Compensation Commission (MRCC) policy clarifies this further and provides that compensation may be paid to a spouse or member of the household:

- where the intimate nature of some attendant care services may cause anxiety or distress to the client if performed by a third party; or
- where there is evidence that the family member has relinquished paid employment in order to provide for the care of the client.

13.10  At present, although the MRCA also does not preclude payment for household services provided by a family member, the MRCC policy is generally not to pay compensation where a household member is available to undertake those services. Compensation for household services is limited to those things that were performed by the injured person before the injury. However, in a small number of cases, compensation is paid for household services performed by a spouse.

13.11  The Department of Veterans’ Affairs (DVA) sought legal advice on whether or not the SRCA and MRCA permit payment of compensation for household services when those services are undertaken by a spouse or other members of the same household as the injured person. The advice concluded that the MRCC cannot preclude compensation for household services performed by a member of the same household, but should consider what is ‘reasonable’ in the circumstances. The advice confirmed that it is lawful for household services provided by family members to be paid, but each individual case should be considered on its own merits.

13.12  As there is no legal impediment to the payment of compensation for both attendant care and household services provided by a spouse or household member, no change to the MRCA is necessary. However, the Committee recommends that the MRCC develop guidelines on when household services and attendant care

compensation can be paid to the spouse or other household member under the MRCA and the SRCA.

13.13 Where a partner has become the carer of a member, the Commonwealth provides for benefits by way of the means tested carer payment (equivalent to the age pension) and the non-means tested carer allowance administered by Centrelink. For those that require significant ongoing personal care, community nursing services are provided under the Treatment Principles.

13.14 The maximum amount payable for household services and attendant care is $827.12 per week. This is considered to be sufficient compensation for those duties, and the Committee does not support consideration of further compensation for any loss of income in addition to payment of this amount.

Overlap between household services and attendant care, and the Military Rehabilitation and Compensation Act Home Care program

13.15 On enactment of the MRCA, Treatment Principles were made by the MRCC. The Treatment Principles is a legislative instrument that sets out the circumstances in which, and conditions subject to which, treatment may be provided to holders of Repatriation Health Cards.

13.16 For administrative ease, the MRCA Treatment Principles were modelled closely on the Veterans’ Entitlements Act 1986 (VEA) Treatment Principles. They also provide for a MRCA Home Care program, similar to the VEA Veterans’ Home Care program.

13.17 Services available under the Veterans’ Home Care program are:

• personal care — includes assistance with daily self-care tasks, such as eating, bathing, toileting, dressing, grooming, getting in and out of bed, and moving about the house. These are tasks that the person would normally do themselves, but because of illness, disability or frailty, they require the assistance of another person;

• domestic assistance — assistance with domestic chores, including help with general cleaning, dish washing, washing and ironing, and bed making. It may also include help with some meal preparation if this service is not being provided separately. In rural and remote areas, it may also include activities such as collecting firewood;

• home and garden maintenance — includes tasks such as replacing light bulbs and tap washers, or other tasks agreed between the veteran and the service provider. Home and garden maintenance does not include major home repairs such as gutter replacement, landscaping and garden tasks such as branch lopping, tree felling or tree removal. Nor does it include routine, cosmetic or ornamental gardening services such as maintenance of flower beds, regular lawn mowing and pruning of roses, unless there is a safety hazard. Home and garden maintenance does not include the provision of materials; and

• respite care — relief for a carer who has responsibility for the ongoing care, attention and support of another person who is in ill health or incapacitated. It provides an alternative form of care and enables carers to have a break. Respite care services may be provided in an appropriate accommodation setting or at home (including overnight or emergency care), or a combination of these.
13.18 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. Therefore, a person may be eligible to be compensated for services that are very similar to the services that may be provided under the Home Care program.

13.19 The value of services that would be provided under a Home Care program would be far less than the compensation payable to a person under MRCA sections 213 and 217. Furthermore, services available under a Home Care program would be more limited than the services that attract compensation under sections 214 and 217 of the MRCA, and would likely require a co-payment.

13.20 For those with an accepted disability, it is only the respite care element of the Home Care program that does not represent a duplication of service provision eligibility.

13.21 However, the MRCA Home Care program provides entitlements to some people who are not eligible to be compensated for household services and attendant care. This is because the compensation payable must relate to an accepted injury or disease. Partners and eligible young persons who have a Repatriation Health Card – For All Conditions (Gold Card) would not have access to compensation for household services and attendant care under the primary legislation, but would have access to similar services under the Home Care program.

13.22 The Committee recommends that the MRCA Home Care program continue, with dual entitlements to household and attendant care services removed.

Other overlaps and exclusions

13.23 A similar overlap situation exists in respect of rehabilitation appliances. The Treatment Principles under both the VEA and the MRCA provide for a Rehabilitation Appliances Program (RAP), and the MRCA also contains provision within the primary legislation for rehabilitation aids and appliances.

13.24 However, in relation to aids and appliances, a mutual exclusion provision already specifies that, if a person can be provided with a rehabilitation aid or appliance under the primary legislation, then they are not eligible under the RAP. Therefore, there is no overlap in this area.

Level of services for high-dependency clients

13.25 Public consultations in Melbourne highlighted concerns at the monetary cap on household and attendant care services, specifically in regard to tetraplegic clients. Clients or their families arrange their own services and availability, and costs vary considerably between regions in Australia. The Comcare recommended rate is currently $40.90 per hour which, as the allowance is capped at $413.56 per week, equates to service of less than 11 hours per week for each of household and attendant care services if this rate has to be paid.

13.26 The alternative proposed in discussions was for a statutory limit of hours to apply, rather than a monetary limit. The Committee considers that these circumstances are highly exceptional in the overall client base and individual case management would be more appropriate. Such additional services as are clinically necessary are provided by the DVA community nursing program or medical rehabilitation. DVA has an
Exceptional Case Unit that oversees the funding and services provided to very high dependency cases. No change is recommended.

Conclusions

13.27 The MRCA has combined elements of the SRCA and the VEA by providing weekly compensation for household services and attendant care, and additional services under the MRCA Treatment Principles and rehabilitation provisions. While this has created some overlap that needs to be addressed to ensure that a claimant cannot double up on access to the same services, the Committee believes the MRCA provides an adequate level of services for high-dependency clients.

13.28 The Committee also believes that the MRCC should develop guidelines on when household services and attendant care compensation can be paid to the spouse or other household member under the MRCA and the SRCA.

Recommendations

The Committee recommends that:

13.1 the Military Rehabilitation and Compensation Commission (MRCC) develop guidelines on when household services and attendant care compensation may be paid to the spouse or other household member under the Military Rehabilitation and Compensation Act 2004 (MRCA) and the Safety, Rehabilitation and Compensation Act 1988;

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; and

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