Chapter summary

The Military Rehabilitation and Compensation Act 2004 (MRCA) is based on the Safety, Rehabilitation and Compensation Act 1988 (SRCA) structure. It includes rehabilitation benefits, and economic loss or non-economic loss compensation, with additions from the Veterans’ Entitlements Act 1986 (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.

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.

Introduction

23.1 The Military Rehabilitation and Compensation Act 2004 (MRCA) is based on the Safety, Rehabilitation and Compensation Act 1988 (SRCA) structure. It includes rehabilitation and treatment benefits, and economic loss and non-economic loss compensation, with additions from the Veterans’ Entitlements Act 1986 (VEA) where beneficial and not anomalous. The VEA is pension based and has general healthcare benefits. The matching of the two schemes into one was always going to involve matters for judgment. A number of submissions drew attention to elements of the VEA that do not appear in the MRCA. Such comments are often made without regard to benefits that are more beneficial than the VEA. The MRCA should be regarded, wherever possible, as a completely new scheme.

23.2 This chapter details the Committee’s consideration of several perceived anomalies between the MRCA, the VEA and the SRCA raised in submissions and
during consultation, which are not addressed elsewhere. These perceived anomalies relate to the following payments and programs:

- 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; and
- automatic grant of death benefits for dependants of prisoners of war.

**Household services and attendant care under the Veterans’ Entitlements Act**

23.3 One submission argued that the amount provided for ‘home services and gardening services (and/or assistance)’ under the VEA is not as generous as the MRCA and should be made equivalent.1

23.4 The MRCA Home Care program is based on the VEA program. However, the MRCA also has specific weekly allowances to cover household and attendant care services. The issue of overlap between these programs was discussed in Chapter 13.

23.5 The provisions for household services under the MRCA were modelled on those in the SRCA. The MRCA, while retaining many elements of the VEA, is a modern compensation scheme. The VEA, on the other hand, is a unique piece of legislation traditionally covering overseas war service, which essentially provides a pension scheme. VEA healthcare and support entitlements are not solely based on acceptance of liability for a particular condition. The Veterans’ Home Care Program was introduced for VEA beneficiaries in 2001 and retains many features (such as prioritisation and co-payments) of the then existing community-wide home care programs that it replaced. The Veterans’ Home Care Program has less restrictive qualifying provisions than MRCA household services, which must be related to the accepted condition.

23.6 A weekly compensation payment for household services under the MRCA was included as part of a modern military compensation scheme and was a step away from the pension scheme provided for under the VEA.

23.7 The Review’s terms of reference provide that only unintended differences identified between the MRCA and the VEA will be considered. The Committee does not support consideration of changes to the home care program under the VEA.

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1 Australian Peacekeeper and Peacemaker Veterans’ Association.
23.8 The motor vehicle compensation scheme (MVCS) provides compensation where a person suffers a service-related impairment and, because of that impairment, requires assistance to use a motor vehicle.

23.9 The MVCS compensates for the reasonable cost of:
- vehicle modifications;
- maintaining or repairing modifications to a motor vehicle; and
- subsidising the purchase of a motor vehicle where a person does not own a motor vehicle or it is not possible or viable to modify their existing motor vehicle.

23.10 The reasonable costs of vehicle modifications will be compensated where there is a clinical need that arises from an impairment suffered as a result of a service injury or service disease for which liability is accepted.

23.11 The MVCS enables the Military Rehabilitation and Compensation Commission (MRCC) to subsidise the cost of a new motor vehicle, where the modification of the member’s existing vehicle is not possible or viable. Where a severely impaired person requires a vehicle with modifications to assist with mobility and does not already own a vehicle, the MRCC may authorise the purchase of an appropriately modified vehicle for the person. Modifications to a vehicle are maintained and repaired at the MRCC’s expense, but normal running expenses such as routine maintenance and fuel remain the responsibility of the person.

23.12 One submission contends that an allowance for running costs should be included in the MVCS, as it is in the Vehicle Assistance Scheme (VAS) provided under the VEA.

23.13 The emphasis of the MVCS is on modifying a vehicle, and only purchasing a vehicle where modification of a vehicle is not possible or viable, or the person does not already own a motor vehicle.

23.14 In contrast to the VEA, the MRCA pays incapacity payments at a level commensurate with previous employment and earnings. The purpose of incapacity payments is to replace income that would cover normal living expenses, such as running and maintenance of a vehicle. Including an allowance to cover expenses that form part of a person’s normal living expenses would effectively result in double compensation.

23.15 The VAS is more limited in application than the MVCS, as it is available only to certain amputees, complete tetraplegics and those with accepted conditions with similar effect and severity.

23.16 The Committee does not support change to the MVCS to include compensation for running costs.

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2 MRCA Instrument No. 2 of 2004, determined under section 212 of the MRCA.
3 The Injured Service Persons Association.
Lump sum payments for Veterans’ Entitlements Act recipients

23.17 Under the MRCA, in respect to permanent impairment, a person may choose to convert all or part of their payment to a lump sum. The proportion eligible for conversion is determined by individual circumstances.

23.18 These options are not available for veterans receiving pensions under the VEA. The offer of a lump sum in lieu of periodic payments for permanent impairment in the MRCA was sought by ex-service organisations (ESOs) in the development of the MRCA and was considered an improvement compared to the VEA arrangements.

23.19 Two submissions from individuals⁴ argue that it is inequitable that the VEA does not include an option to take a Special Rate of pension under the VEA as a lump sum. Both referred to the lack of opportunity for those on Special Rate of pension to save for the purchase of a house. However, there is an essential difference between the Special Rate of pension under the VEA and permanent impairment compensation under the MRCA — the VEA combines compensation for economic and non-economic loss, and the MRCA is for non-economic loss alone.

23.20 The lack of a lump sum option for the payment of the Special Rate of pension is not an unintended difference between the VEA and the MRCA. The Committee does not support such a change.

Telephone allowance for certain Veterans’ Entitlements Act pensioners

23.21 One⁵ submission requests that eligibility for the MRCA telephone allowance be extended to include MRCA claimants with specific disabilities defined in section 27(1) of the VEA, VEA service pensioners, and war widows and widowers.

23.22 From 20 September 2009, new arrangements were introduced for the payment of supplementary allowances, including telephone allowance. These new supplement payments are a combination of previously separate payments. The consolidation streamlines various small payments made to assist with telephone and internet connections, cost of prescriptions, council rates, energy, water and sewerage.

23.23 All of the claimants identified in the submission would be eligible for one of the supplementary payments under the VEA. The Committee does not believe there is a need to amend the MRCA.

Private vehicle travel expenses

23.24 Claimants covered under the VEA, the SRCA or the MRCA may be eligible for compensation for travel costs that are reasonably incurred for a journey that is necessary for obtaining compensable treatment, or under the VEA for travel in connection with a claim. Claimants only receive the maximum allowable assistance with travelling expenses if they attend the closest practical health provider to their permanent or temporary residence, and travel by the most economical and suitable means of transport available at the time. Compensation is generally in the form of a reimbursement for the cost incurred by the claimant.

⁴ S. Tapp and another individual whose submission was published with the name withheld.
⁵ Returned & Services League of Australia.
23.25 Claimants under the SRCA and MRCA are eligible for reimbursement of travel expenses for travelling by private car, if the distance of their trip exceeds 50 kilometres. There is no minimum distance specified under the VEA to be eligible for reimbursement of expenses incurred travelling by private car.

23.26 The specified rate per kilometre for travel by private car differs between the Acts (Table 23.1).

**Table 23.1: Specified rate per kilometre for travel by private car**

<table>
<thead>
<tr>
<th>Act</th>
<th>Rate per kilometre</th>
</tr>
</thead>
<tbody>
<tr>
<td>Veterans’ Entitlements Act 1986</td>
<td>$0.293</td>
</tr>
<tr>
<td>Safety, Rehabilitation and Compensation Act 1988</td>
<td>$0.60</td>
</tr>
<tr>
<td>Military Rehabilitation and Compensation Act 2004</td>
<td>$0.60</td>
</tr>
</tbody>
</table>

23.27 One submission\(^6\) argues that, notwithstanding the more restricted circumstances in which private care expenses are reimbursed under the SRCA and the MRCA, the VEA rates should be increased to match the SRCA and MRCA rates. The ESO Round Table representatives also supported the increase in VEA travel rates, along with removal of the minimum 50 kilometres rule in the MRCA.

23.28 It would be inequitable to simply increase the VEA rate to match the MRCA or SRCA rate. To do so would place claimants under the MRCA and SRCA at a comparative disadvantage, as they would continue not to be entitled to reimbursement of expenses for trips of less than 50 kilometres.

23.29 To be equitable, the VEA would need to match both the rate and circumstances in which it is paid to those under the MRCA and SRCA. Changing the rates and circumstances under the VEA to align with the MRCA and SRCA would result in many VEA claimants becoming ineligible to be reimbursed for trips of less than 50 kilometres.

23.30 The proposal to abolish the 50 kilometres rule in the MRCA and SRCA is not considered necessary, as both Acts have incapacity payments that address loss of income. The Committee notes that the minimum distance rule does not apply to the use of public or ambulance transport. The rule is also not applied by delegates when the person’s condition precludes them from using public transport or if access to public transport or ambulance transport is restricted in that person’s location.

23.31 The Committee does not consider there is an unintended difference in rates or conditions in relation to travel for treatment; once again the issue arises from the schemes having different origins. The Committee does not recommend any change to the current travel for treatment rates in any of the three Acts.

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\(^6\) Returned & Services League of Australia.
Funeral benefits

23.32 One submission\(^7\) notes the marked difference in the amount paid under the VEA for funeral benefits compared to the SRCA and the MRCA. However, this amount must be seen in the overall context of the funeral benefits available under each Act.

23.33 Key differences between the funeral benefits under the VEA, SRCA and MRCA include:

- the eligibility criteria for deceased veterans and deceased members;
- benefits available relating to dependants who die in indigent circumstances;
- the amount paid and the purpose of the payment; and
- who receives the payment.

23.34 The VEA funeral payment is intended to subsidise funeral costs, and is paid to a range of claimants, including automatic grant to the estate of certain deceased veterans. In comparison, funeral benefits under the SRCA and the MRCA are intended to approximate the full costs of a funeral, but are paid in more restricted circumstances.

23.35 Under the SRCA, a funeral benefit is payable when a member dies as a result of an injury arising from, or disease significantly contributed to by, his or her defence service.

23.36 Under the MRCA, a funeral benefit is payable if one of the following circumstances apply:

- liability is accepted for the member’s death;
- the member was eligible for the Special Rate Disability Pension (SRDP) at some time before death; or
- the member had been assessed before their death at 80 or more impairment points, entitling them to the maximum permanent impairment compensation.

23.37 In 2003, the SRCA funeral benefit was up to $4,600 and this level was brought into the MRCA. At the time, the VEA limit was $572. In the 2004–05 Budget, the government increased the VEA funeral benefit to $1,000 and subsequently in 2007 to $2,000. The latter increase followed the SRCA and MRCA benefit rise to $9,000 earlier in 2007. The following table shows the current amount paid under each Act.

<table>
<thead>
<tr>
<th>Act</th>
<th>Amount paid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Veterans’ Entitlements Act 1986</td>
<td>Up to $2,000.00</td>
</tr>
<tr>
<td>Safety, Rehabilitation and Compensation Act 1988</td>
<td>Up to $10,138.75</td>
</tr>
<tr>
<td>Military Rehabilitation and Compensation Act 2004</td>
<td>Up to $10,138.75</td>
</tr>
<tr>
<td>VEA (dependants)</td>
<td>Up to $2,000.00</td>
</tr>
<tr>
<td>MRCA (dependants)</td>
<td>Up to $2,000.00</td>
</tr>
</tbody>
</table>

23.38 As in the discussion above on the rate for reimbursement of private car expenses, simply matching the amount of funeral benefits would not be equitable —

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\(^7\) Vietnam Veterans Federation of Australia and KCI Lawyers.
both the rate of payment and the circumstances in which it is paid need to be considered.

23.39 If both the rate of payment and circumstances in which funeral benefits are paid under the VEA were to match those paid under either the MRCA or the SRCA, it would have a negative impact on those who would be eligible for the payments. Such a change to the VEA is not likely to be supported by the veteran community. As there is no unintended difference, the Committee does not support the increase in funeral benefit rates in the VEA along with more restrictive conditions, as applying in the SRCA and the MRCA.

Benefits for eligible children

23.40 Legacy asked the former Minister for Veterans’ Affairs to increase pensions for eligible children under the VEA to the same level as eligible children under the MRCA, where the veteran’s death is service related. The previous Minister referred this matter to the Review.

23.41 The Legacy argument is that:

• the current VEA payment rates are anomalous and are based purely on the commencement date of legislation;

• the MRCA recognised that VEA children’s benefits were inadequate and increased them accordingly; and

• the cost would be extremely small as it is likely to involve around 200 children.

23.42 Legacy has compared children’s benefits under the VEA to those available under the MRCA. Any child benefits paid under the MRCA would be due to a parent’s death arising from service since July 2004. If the death is attributable to injury or disease from service before 1 July 2004, the child may be covered by either or both the SRCA or the Defect Act 1903 determination, or the VEA. The following table summarises the main benefits.

Table 23.3 Benefits for dependent children

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Benefit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Military Rehabilitation and Compensation Act 2004</td>
<td>Lump sum of $75,191.80 and an additional payment of $165.42 per fortnight, plus Repatriation Health Card – For All Conditions (Gold Card).</td>
</tr>
<tr>
<td>Safety, Rehabilitation and Compensation Act 1988 or Defence Determination</td>
<td>Lump sum of $71,753.26 under the Defence Act and an additional payment of $243.20 per fortnight.</td>
</tr>
<tr>
<td>Veterans’ Entitlements Act 1986</td>
<td>‘Orphan’s Pension’ of $85.70 per fortnight, or $171.30 per fortnight if the child has lost both parents, plus Gold Card.</td>
</tr>
<tr>
<td>Dual entitlement</td>
<td>Where the death has been accepted under the VEA and SRCA, applicable for peacetime service 1972–2004 and operational service 1994–2004: children are entitled to the higher SRCA and/or Defence Determination financial benefits, as well as the VEA Gold Card.</td>
</tr>
</tbody>
</table>

23.43 MRCA benefit levels were generally derived from the better conditions of the SRCA or the VEA. There was no intention at the time of development of the MRCA to raise all current and future VEA or SRCA rates to the new levels. The major concern was to develop a more modern single scheme for all service from the commencement...
date. The higher SRCA weekly payments and the lump sum for children were built into the new scheme, along with the VEA Gold Card and exemptions from income testing for other Commonwealth benefits.

23.44 Increasing VEA child benefits to the MRCA rate would provide consistent weekly compensation payments for children of deceased Australian Defence Force (ADF) members, and resolve the dollar gap for the children of veterans who died from service-related conditions that occurred before 2004.

23.45 However, no other benefit in either the SRCA or the VEA has been raised to the MRCA level. A strict commencement date was set as part of the implementation of the new scheme in 2004. This option may provoke arguments to increase all other benefits to the highest level. The Committee does not believe the different fortnightly rates under the VEA and MRCA are an unintended difference and concludes that no change should be made.

**Education allowance for eligible young persons**

23.46 An education allowance is payable under the VEA and the MRCA for the dependent children of certain members, former members and deceased members. As part of its comparison of the overall package of death benefits under the SRCA and MRCA, one submission\(^8\) points out that there is no similar scheme under the SRCA.

23.47 On enactment of the VEA, the Veterans’ Children Education Scheme (VCES) replaced the Soldiers’ Children Education Scheme that was introduced in 1922. The VCES provides financial assistance, student support services, guidance and counselling for eligible children to help them achieve their full potential in education or career training. The VCES caters for children undertaking primary, secondary or tertiary study, and is normally provided only for full-time study in Australia. The VCES is one of the benefits that could be characterised as a repatriation benefit.

23.48 On introduction of the MRCA, a similar scheme was established. The Military Rehabilitation and Compensation Act Education and Training Scheme (MRCAETS) provides financial assistance, student support services, guidance and counselling for eligible children under the MRCA who are undertaking primary, secondary or tertiary study.

23.49 The SRCA does not have an equivalent to the VCES or MRCAETS. This is not an unintended consequence — as the MRCA was intended to combine the best features of the VEA and the SRCA, it was a conscious decision at the time the MRCA was drafted to establish an education scheme similar to the VCES. The Committee does not support a change.

**Criteria for certain benefits: the Veterans’ Entitlements Act compared to the Military Rehabilitation and Compensation Act**

23.50 While assessments of impairment under the VEA and MRCA are made using the same medical impairment and lifestyle effects tables, the *Guide to the Assessment of Rates of Veterans’ Pensions*, Fifth Edition (GARP V) and the *Guide to Determining Impairment and Compensation* (GARP M) have separate final tables for conversion of

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\(^8\) Vietnam Veterans Federation of Australia/KCI Lawyers

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the impairment and lifestyle effects into a financial outcome for the applicant. This complicates any direct comparisons.

23.51 The MRCA adopted the basic format of the GARP V as its assessment document, including the shaded areas that show the lifestyle ratings that are broadly consistent with a particular degree of permanent impairment. However, some VEA anomalies are removed in GARP M. For example, specific impairment points and lifestyle ratings are used to assess the MRCA permanent impairment compensation payment, whereas the VEA assesses the percentage of incapacity by combining impairment points and lifestyle ratings and the combined impairment ratings are rounded to the nearest 5 per cent threshold. This result may be further distorted because a difference of one in the lifestyle rating can make a difference of 10 per cent in the disability pension rate under the VEA.

23.52 It is therefore misleading to suggest that impairment or incapacity can be directly compared between the Acts. However, it is inevitable that comparisons are made. Some of the key rates and trigger points in the VEA are compared with similar rates under the MRCA in Table 23.4.
### Table 23.4 Comparison of key rates and trigger points between the VEA and the MRCA

<table>
<thead>
<tr>
<th>Veterans’ Entitlements Act 1986</th>
<th>GARP impairment points, plus lifestyle ratings required</th>
<th>Rate per fortnight&lt;sup&gt;a&lt;/sup&gt;</th>
<th>Military Rehabilitation and Compensation Act 2004</th>
<th>GARP M impairment points</th>
<th>Rate per fortnight&lt;sup&gt;b&lt;/sup&gt; for warlike and non-warlike service</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Eligibility for Special Rate of pension with Gold Card</strong></td>
<td>Minimum 70% disability pension, may be achieved by combining impairment points and lifestyle ratings of: 35 + 4, 40 + 3, 45 + 2, 50 + 1</td>
<td>$271.81</td>
<td>Eligibility for SRDP</td>
<td>50</td>
<td>PI $297.34 to $310.77 (using shaded area lifestyle rating)</td>
</tr>
<tr>
<td><strong>Special Rate of pension</strong></td>
<td>As above.</td>
<td>$1,092.90</td>
<td>SRDP, before offsets</td>
<td>As above.</td>
<td>$1,092.90</td>
</tr>
<tr>
<td><strong>Gold Card</strong></td>
<td>100% disability pension, may be achieved by combining impairment points and lifestyle ratings of: 50 + 5, 60 + 4</td>
<td>$388.30</td>
<td>Gold Card</td>
<td>60</td>
<td>PI $401.90 to $410.66, depending on lifestyle rating</td>
</tr>
<tr>
<td><strong>Intermediate Rate of Pension</strong></td>
<td>Can work 50% of normal hours. Same as TPI pension</td>
<td>$741.60</td>
<td>NA</td>
<td>NA</td>
<td>Person on 50% hours would receive top-up incapacity payments of 90% of their normal earnings, plus PI.</td>
</tr>
<tr>
<td><strong>Extreme disablement adjustment (must be over 65 to qualify for payments over 100% disability pension)</strong></td>
<td>A combination of 70 impairment points and a lifestyle rating of 6</td>
<td>$603.30</td>
<td>NA</td>
<td>NA</td>
<td>PI $501.79 for life, at same minimum PI points as VEA</td>
</tr>
<tr>
<td><strong>Trigger for widows pension on death of member</strong></td>
<td>A combination of 70 impairment points and a lifestyle rating of 6</td>
<td>–</td>
<td>Trigger for widows pension on death of member</td>
<td>80</td>
<td>PI $584.16 for life</td>
</tr>
</tbody>
</table>

Gold Card = Repatriation Health Card – For All Conditions, SRDP = Special Rate Disability Pension, PI = permanent impairment, NA = not applicable

<sup>a</sup> Current to 20 September 2010.

<sup>b</sup> Current to 20 September 2010, also add incapacity payments to age 65.
Special Rate Disability Pension eligibility

23.53 ESO Round Table representatives believe that eligibility for the SRDP should be set at 40 impairment points, consistent with the possibility of a person qualifying for the Special Rate of pension under the VEA with 40 impairment points and a lifestyle rating of three out of a possible seven. Such an applicant would qualify under the VEA for a 70 per cent disability pension, the minimum level for consideration for the Special Rate of pension.

23.54 Eligibility for the SRDP entitles a former member to a Gold Card and education assistance for eligible children. As discussed in Chapter 11, MRCA SRDP eligibility is not set on permanent impairment levels alone. The person must be unable to work for more than 10 hours per week, and rehabilitation must be unlikely to increase their capacity to undertake remunerative work.

23.55 While a slightly higher level of impairment is required by the MRCA for eligibility for the SRDP, this is counterbalanced by the more lenient 10 hours’ work test, rather than eight hours as required in the VEA. The other tests in the VEA are also a more stringent requirement, as discussed in Chapter 11.

23.56 The Committee, therefore, does not recommend any change to the requirements for SRDP eligibility.

Repatriation Health Card — For All Conditions (Gold Card)

23.57 The Gold Card entitles the holder to treatment at DVA expense for a full range of health and medical services. There are also state, local government and private concessions available to Gold Card holders.

23.58 ESO Round Table representatives submitted to the Committee that a person with 50 impairment points under the VEA can receive a Gold Card, but under the MRCA they need to have 60 impairment points.

23.59 However, the shaded area of the GARP V for 100 per cent disability pension, the threshold for issue of a VEA Gold Card, only cuts in at 60 impairment points — the same threshold as set in the MRCA for the Gold Card.

23.60 A person with 50 impairment points and a lifestyle rating of 5 (that is, a rating outside the shaded area) would qualify for the 100 per cent disability pension. The threshold in the MRCA does not take lifestyle ratings into account, simply the impairment points. In this context, it is not unreasonable to define 60 impairment points as the minimum threshold for the MRCA Gold Card.

23.61 No change is recommended to the MRCA threshold for the Gold Card.

Intermediate Rate of Pension and half-time return to work

23.62 The VEA Intermediate Rate of Pension is paid to compensate a former member who, because of incapacity resulting from eligible service, is unable to resume or continue in paid work for 50 per cent or more of normal time, or 20 hours or more per week. Otherwise, it has the same criteria as for the Special Rate of pension. There were 825 recipients of the Intermediate Rate of Pension at 30 June 2010.
23.63 The Intermediate Rate of Pension has no direct equivalent in the MRCA. The MRCA provides for scaled incapacity payments, which reduce as more hours are worked (with overall increases in actual income). This allows for a more flexible method of compensating differing levels of inability to work compared to the single threshold approach of the Intermediate Rate of Pension. The scale is shown in Table 23.5.

Table 23.5 Incapacity payments scale under the MRCA

<table>
<thead>
<tr>
<th>Hours worked (% of normal hours)</th>
<th>Incapacity payments top up to this % of normal earnings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nil</td>
<td>75%</td>
</tr>
<tr>
<td>25% or less</td>
<td>80%</td>
</tr>
<tr>
<td>More than 25% but not more than 50%</td>
<td>85%</td>
</tr>
<tr>
<td>More than 50% but not more than 75%</td>
<td>90%</td>
</tr>
<tr>
<td>More than 75% but not more than 100%</td>
<td>95%</td>
</tr>
<tr>
<td>100% or more</td>
<td>100%</td>
</tr>
</tbody>
</table>

23.64 Under the MRCA, if a service injury or disease results in a person being unable to work more than half of their normal weekly hours, they would be entitled to incapacity payments to top up their earnings to a level of 85 per cent of their normal weekly earnings. This will be a much higher payment than the VEA Intermediate Rate of Pension of $741.60 per fortnight. For example, the former private (pay group 3) referred to in Chapter 10 would qualify for $2,147.43 per fortnight, plus permanent impairment compensation payments consistent with their impairment points and lifestyle factor.

23.65 The Intermediate Rate of Pension also brings entitlement to a Gold Card. The Committee heard representations from the ESO Round Table that members who would have qualified under the VEA for the Gold Card through the Intermediate Rate of Pension (i.e. working up to half of their normal hours), will not qualify for the MRCA Gold Card. Under the MRCA, treatment for service-related injury or disease is covered by the White Card, but this card rarely qualifies for concessions from state and local authorities. The Committee noted that, if the person suffers 60 impairment points or more, a MRCA Gold Card would be issued.

23.66 The Committee considers that the significant difference in income levels for those unable to work for more than 50 per cent of their normal hours would more than offset the state and local government and private concessions that the Gold Card may attract. Given that treatment and rehabilitation needs are provided for, the Committee does not recommend any change to existing MRCA criteria or benefits for this group.

**Extreme Disablement Adjustment**

23.67 Section 22 of the VEA provides an Extreme Disablement Adjustment (EDA), a higher level of non-economic loss compensation than the 100 per cent disability pension, for those aged over 65 years who cannot access the Special Rate of pension or Intermediate Rate of Pension. To qualify, a person must have at least 70 impairment points and a lifestyle rating of at least 6 (on a scale of up to 7). The EDA assessment takes into account only the medical impairment and lifestyle effects of a disability. It does not have regard to whether a veteran is employed, nor any regard to income or assets.
Some submissions\(^9\) are critical of the fact that the EDA is not replicated in the MRCA and observe that those over 65 years are disadvantaged by there not being EDA-equivalent provisions.

Table 23.4 shows that a person with the impairment point ratings and lifestyle ratings that would qualify for the EDA would presently receive some $100 per fortnight less for permanent impairment under the MRCA than the EDA payment. This is looking in isolation at a former member who applies for a benefit after age 65. Other factors to consider are:

- during the VEA client’s working life, the maximum payable for disability pension is $379.90 per fortnight, whereas the MRCA person on 60 impairment points could be better off by about $100 per fortnight, in some circumstances for many years;
- permanent impairment compensation claims can be made where the claimant believes they suffer greater than 60 impairment points. Permanent impairment compensation at 80 impairment points is very similar to the EDA level; and
- incapacity payments can also be received up to age 65. Additionally, after age 65, where a person ceases working due to a compensable injury, incapacity payments are payable for up to two years.

The Committee does not favour introducing an EDA category in the MRCA, as it is inconsistent with the structure of economic and non-economic loss benefits in a modern compensation scheme.

### Maximum permanent impairment compensation payment at 80 points

Some ESO submissions\(^10\) seek the highest permanent impairment compensation payment at 70 rather than 80 impairment points.

The Committee does not support lowering the maximum compensation from 80 to 70 impairment points. Most compensation schemes increase permanent impairment payments proportionately to 100 per cent impairment. The MRCA is already relatively generous by paying the maximum compensation at 80 impairment points, with increasing payments proportional to that level of impairment. To decrease this threshold further would place the MRCA well beyond the levels of other schemes.

As discussed in Chapter 8, the majority of MRCA claimants eligible for permanent impairment compensation are assessed as having an impairment rating of between 10 and 30 points. Although data are limited, the available information does not indicate a significant increase in the number of claimants with an impairment rating around 70 points that might point to a difficulty for severely incapacitated claimants to reach the maximum payment at 80 impairment points.

### Automatic grant of death benefits for dependants of prisoners of war

Representatives of the ESO Round Table stated that death benefits should be automatically granted under the MRCA to the dependent partner of a former prisoner of war (POW) in the same way as they are automatically provided under the VEA.

\(^9\) Including the Australian Veterans and Defence Services Council and the Australian Peacekeeper and Peacemaker Veterans’ Association.

\(^10\) Including the Australian Veterans and Defence Services Council.
23.75 The Committee notes that, while the MRCA does not contain any express provisions for the dependent partners of POWs, section 424 of the MRCA provides the MRCC with the discretion to provide special assistance to members and former members of the ADF and their dependants. The Explanatory Memorandum to the Military Rehabilitation and Compensation Bill 2003 states in relation to this provision:

Depending upon the circumstances that may arise in relation to the needs of members involved in future conflicts, this clause could be potentially be [sic] used to make provision for people who are recognised as prisoners of war.

23.76 The Committee notes that any attempt to include such an automatic provision would require a definition of a POW. Although this may seem straightforward when looking back at previous wars, determining what is a POW now and into the future, with the ever-changing nature of warfare, would be quite difficult. Indeed, an attempt to characterise a POW with sufficient clarity to remove doubt at this point in time may remove the existing flexibility under the MRCA and unintentionally exclude persons who, in hindsight, should be included. The Committee recommends no change be made in relation to automatic grant of death benefits for the dependants of deceased POWs and the existing provisions be used as the need arises.

Conclusions

23.77 The issues covered in this chapter are generally matters that need to be considered within a wider context, as part of the wider benefit structure of each Act. Many 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. However, simply being different rates or conditions is not sufficient grounds to make a change — all of the circumstances need to be examined to see if a proposal has merit.

23.78 The differences in benefits drawn to the attention of the Review are not unintended. Comparisons made as the basis for change are not legitimate due to the different nature of the Acts. The Committee recommends no changes in regard to the differences drawn to its attention between the Acts providing compensation for ADF members.

Recommendations

The Committee recommends that:

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 Veterans’ Entitlements Act 1986 (VEA);
- the Motor Vehicle Compensation Scheme under the Military Rehabilitation and Compensation Act 2004 (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 Safety, Rehabilitation and Compensation Act 1988;
- the MRCA benefits derived from specific impairment levels; and
- the automatic grant of death benefits for dependants of deceased prisoners of war.