Appendix to Chapter 22 Alternative method for calculating permanent impairment claims that are transitional in nature

An alternative method for calculating permanent impairment compensation in transitional cases under the Military Rehabilitation and Compensation Act 2004 (MRCA) is presented in this Appendix to Chapter 22.

Essentially, the alternative method offsets impairment points (using notional dollar amounts) rather than actual dollar amounts for conditions accepted under the Veterans’ Entitlements Act 1986 (VEA) and the Safety, Rehabilitation and Compensation Act 1988 (SRCA). This reduces the ‘apples and oranges’ effect of the current method, because the gross amount and the amount being offset are calculated at the same time using the same assessment tool — the Guide to determining impairment and compensation (GARP M). It ensures that a claimant will receive the same amount of compensation for a new MRCA condition that would be payable if the VEA or SRCA conditions had also been compensated under the MRCA.

The alternative method can be summarised as follows:

(i) Assess the combined effect of all conditions under the VEA, SRCA and MRCA as at the date of claim, using GARP M, and calculate the resulting compensation that would notionally be payable under MRCA.

(ii) Assess whether the MRCA condition contributes at least five impairment points to the overall impairment rating:

• if the MRCA condition contributes at least five impairment points to the overall impairment rating, compensation for that condition is payable and the process continues to step (iii); or

• if the MRCA condition does not contribute at least five impairment points then the claim is rejected.

(iii) If compensation is payable, calculate the amount of compensation that would be payable under the MRCA for the VEA or SRCA conditions as at the date of claim, using GARP M, as if those conditions were compensable under the MRCA.

(iv) Reduce the amount calculated under (i) by the amount calculated under (iii).

(v) The net amount calculated at (iv) is the amount payable under the MRCA.

(vi) However, the amount payable at step (v) cannot take the total amount payable under the MRCA, the SRCA and the VEA over the maximum amount of permanent impairment compensation payable under the MRCA.
Example A of the alternative method

A claimant, born on 24 February 1979, has the following accepted conditions:

<table>
<thead>
<tr>
<th>Condition</th>
<th>Legislation</th>
<th>Date of determination</th>
</tr>
</thead>
<tbody>
<tr>
<td>Osteoarthrosis of the left ankle</td>
<td>SRCA</td>
<td>July 2005</td>
</tr>
<tr>
<td>Amputation of the great right toe</td>
<td>MRCA</td>
<td>October 2007</td>
</tr>
</tbody>
</table>

The claimant’s left ankle condition was assessed under the SRCA in July 2005 using Comcare’s Guide to the assessment of degree of permanent impairment. He was assessed at 20 per cent impairment and received a lump sum of $46,292.51.

Under section 13 of the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004*, both conditions must be assessed using GARP M in October 2007 when he claims under the MRCA. He is assessed at 24 impairment points for his MRCA condition. His SRCA condition is reassessed at 6 impairment points. Therefore the combined impairment rating is 29 (under the combined values formula in Chapter 18 of GARP M, not arithmetically). The claimant is assessed at a lifestyle rating of 2. This translates to a gross amount of $45.26 per week.

**Current method**

Under the current method (Figure 22.1), the claimant’s SRCA lump sum is converted to a current weekly equivalent of $36.27. The MRCA payment for the new condition is calculated as new assessment minus previous compensation equals new compensation. Therefore, $8.99 is payable per week in respect to the MRCA compensable condition. This can be converted to an age-based lump sum of $11,780.50.

Gross MRCA compensation $45.26
Weekly equivalent SRCA $36.27
Net MRCA compensation $8.99
(or $11,780.50)

**Alternative method**

Under the alternative method (Figure 22.2), the claimant’s gross MRCA weekly permanent impairment compensation amount would remain $45.26. However, the amount deducted would be the amount he would have received under the MRCA for his SRCA condition as at the date of claim (i.e. October 2007), through assessment under GARP M.

If his SRCA condition was assessed at 6 impairment points, with a lifestyle rating of 1, this would be compensated at $11.25 per week under the MRCA. This method would result in this claimant receiving $34.01 per week or a lump sum of $44,566.70.

Gross MRCA compensation $45.26
SRCA condition as if compensated under MRCA $11.25
Net MRCA compensation $34.01
(or $44,566.70)
Figure 22.1 Example A of current offsetting method

Figure 22.2 Example A of alternative offsetting method
Example B of the alternative method

A claimant, born on 4 December 1944, has the following accepted conditions:

<table>
<thead>
<tr>
<th>Condition</th>
<th>Legislation</th>
<th>Date of determination</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rotator cuff syndrome of the right shoulder</td>
<td>VEA</td>
<td>August 2003</td>
</tr>
<tr>
<td>Solar keratosis and non-melanotic neoplasm of skin</td>
<td>MRCA</td>
<td>January 2007</td>
</tr>
<tr>
<td>Osteoarthrosis of the left arm</td>
<td>MRCA</td>
<td>January 2007</td>
</tr>
</tbody>
</table>

In August 2003, the VEA conditions were assessed, using GARP V, at 20 impairment points. The claimant was in receipt of a disability pension of $63.24 per week (40 per cent of the General Rate of Pension) when he lodged his claim under the MRCA.

The claimant is assessed as having an impairment rating of 10 points for his VEA conditions and 13 points for the MRCA new condition, which combines for a total of 22 impairment points (using the combined values formula in Chapter 18 of GARP M and not arithmetically). The claimant is assessed at a lifestyle rating of 2. The gross MRCA permanent impairment compensation entitlement is $51.08 per week.

**Current method**

Under the current method (Figure 22.3), this new total assessment is offset by the weekly disability pension of $63.24, leaving no net MRCA permanent impairment compensation.

| Gross MRCA compensation | $51.08         |
| VEA disability pension  | –$63.24        |
| Net MRCA compensation   | $0.00          |

**Alternative method**

Under the alternative method (Figure 22.4), the claimant’s gross MRCA weekly permanent impairment compensation amount would remain $51.08. However, the amount deducted would be the amount he would have received under the MRCA for his VEA conditions as at the date of assessment (i.e. January 2007) under GARP M.

If his VEA conditions are assessed at 10 impairment points, with a lifestyle rating of 1, this would be $28.77 per week. This method would result in the claimant receiving $22.29 per week or a lump sum of $29,195.17.

| Gross MRCA compensation | $51.08         |
| VEA condition as if compensated under MRCA | –$28.77       |
| Net MRCA compensation   | $22.31         |

(or $29,195.17)
Figure 22.3  Example B of current offsetting method

Figure 22.4  Example B of alternative offsetting method
Example C — detriment under the alternative method

A claimant, born on 26 June 1980, has the following accepted conditions:

<table>
<thead>
<tr>
<th>Condition</th>
<th>Legislation</th>
<th>Date of determination</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gastrointestinal condition</td>
<td>VEA</td>
<td>March 2005</td>
</tr>
<tr>
<td>Spinal injury</td>
<td>MRCA</td>
<td>November 2008</td>
</tr>
</tbody>
</table>

The claimant’s gastrointestinal condition was assessed under the VEA in March 2005 using GARP V. He was assessed at less than 10 impairment points and 1 lifestyle rating and began receiving payments at 20 per cent of the General Rate of Pension — $35.45 per week as at November 2008.

Under GARP M, both of the claimant’s conditions must be reassessed in November 2008. He is assessed at 10 impairment points for his MRCA condition. His VEA conditions are reassessed at 15 impairment points (a worsening of 5 points). This results in a combined impairment rating of 24 (under the combined values formula in Chapter 18 of GARP M, not arithmetically). The claimant is assessed at a lifestyle rating of 2. This translates to a gross amount of $70.89 per week.

Current method

Under the current method (Figure 22.5), once the former member’s disability pension is subtracted, he is left with $35.44 compensation payable per week in respect to the MRCA compensable condition. This can be converted to an age-based lump sum of $46,440.58.

\[
\begin{align*}
\text{Gross MRCA compensation} & \quad $70.89 \\
\text{VEA disability pension} & \quad -$35.45 \\
\text{Net MRCA compensation} & \quad $35.44 \\
\text{(or $46,440.58)} & \\
\end{align*}
\]

The disability pension offset is based on the old assessment of 10 points, but 15 points have been included for the VEA condition when calculating the permanent impairment compensation under the MRCA. Therefore, the 5-point worsening of the VEA condition has effectively been compensated under the MRCA.

Alternative method

Under the alternative method (Figure 22.6), the claimant’s gross MRCA weekly permanent impairment compensation amount would remain $70.89. However, the amount offset would be the amount he would have received under the MRCA for his VEA condition as at date of assessment under GARP M (i.e. November 2008). If his VEA condition was assessed at 15 impairment points, with a lifestyle rating of 1, this would be $42.76 per week. The alternative method would result in the claimant receiving $28.13 per week or a lump sum of $36,861.55.

\[
\begin{align*}
\text{Gross MRCA compensation} & \quad $70.89 \\
\text{VEA condition as if compensated under MRCA} & \quad -$42.76 \\
\text{Net MRCA compensation} & \quad $28.13 \\
\text{(or $36,861.55)} & \\
\end{align*}
\]
The claimant could then lodge an application for increase under the VEA. If his assessment for VEA condition under GARP V was 15 impairment points and a lifestyle rating of 1, his disability pension would increase to 30 per cent of the General Rate of Pension ($53.18 per week as at September 2008).

This situation would also apply to a claimant with a SRCA condition in similar circumstances. He or she could seek a reassessment and increased lump sum under that Act.

Therefore, even though the amount of MRCA compensation payable using the alternative method is less than under the current method in this example, the alternative method ensures that only conditions accepted under the MRCA are compensated under that Act. However, this does not prevent any additional compensation being paid to the claimant under the SRCA or the VEA.

Figure 22.5 Example C of current offsetting method
Benefits of the alternative method

The alternative method addresses the reasons for the low or nil outcomes identified at Chapter 22 by ensuring that like is offset against like. Under the alternative method, the gross MRCA weekly payment that is calculated and the amount that is offset for the SRCA and/or VEA condition will be calculated using the same assessment tool (GARP M), rather than up to three different assessment tools (GARP V, Comcare Guide, and GARP M).

An assessment under this alternative method would still be an overall impairment assessment, including a person’s MRCA, SRCA and VEA impairment ratings. Conditions accepted under the VEA or the SRCA would continue to count towards eligibility for Special Rate Disability Pension or eligibility for a Repatriation Health Card – For All Conditions (Gold Card) under the MRCA.

The alternative method would continue to ensure that the whole person impairment method is applied across all three pieces of military compensation legislation. Impairment resulting from a MRCA condition would continue to be assessed by taking into account previous impairment resulting from VEA and SRCA conditions.

The alternative method ensures, as far as possible under the MRCA, that the total compensation under all three Acts cannot exceed the maximum compensation intended to be paid by the Commonwealth for a person’s defence service, as any payment would be capped at the maximum permanent impairment compensation payment under the MRCA.

The alternative model would ensure than an increase in an overall impairment rating of five or more impairment points arising from a condition accepted under the MRCA would give rise to a permanent impairment compensation payment (except where this payment would take a claimant’s total compensation over the maximum amount payable under the MRCA).
Lastly, under the alternative method, a claim for permanent impairment compensation under the MRCA would not result in any form of reduction of earlier compensation paid under the VEA or the SRCA.

**Detriment under the alternative method**

As demonstrated in Example C, where liability is accepted for a condition under the VEA or the SRCA, but that condition does not attract sufficient impairment points to be compensable under those Acts, the current method results in compensation being paid under the MRCA for impairment derived from a VEA or SRCA condition.

This also occurs where additional compensation has not been paid under the VEA or the SRCA for a worsening of a condition previously compensated under those Acts. In these cases, compensation will paid under the MRCA for the impairment related to the worsening of the condition accepted under the VEA or the SRCA.

This result may not have been an intended outcome under the MRCA. The intention seems to have been for permanent impairment compensation under the MRCA to be payable only for impairment suffered as a result of MRCA conditions, while impairment suffered as a result of VEA or SRCA conditions would continue to be compensated under those Acts.

As demonstrated in Example C, the alternative method would correct this by ensuring only impairment that results from a condition accepted under the MRCA, and not a condition accepted under the SRCA or the VEA, is compensated for under the MRCA. However, as a consequence, compensation outcomes in these cases will be less than under the current method.

Nevertheless, claimants would be able to seek a reassessment under either the SRCA or the VEA for conditions for which liability has been accepted under those Acts and be compensated appropriately under either of those Acts. Therefore, the alternative method would not produce any actual loss of compensation, although there would be a ‘loss’ of entitlement under the MRCA.

**Retrospectivity**

Subsection 12(2) of the *Legislative Instruments Act 2003* provides that a legislative instrument may not be given retrospective effect in a manner that would be detrimental to the accrued rights of persons affected by that instrument.

The alternative method will result in certain kinds of claimants receiving less compensation. Effectively, this means that any amendments to GARP M could not be applied to pre-existing claimants if the effect of the amendments would be to the detriment of those claimants.

The exception to this would be any pre-existing cases where the claimant will be better off under the amended version of GARP M than under the current version. In such cases, it would be open to the Military Rehabilitation and Compensation Commission to consider assessing that claimant under the alternative method.
Cost implications of the alternative method

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. There were approximately 700 cases considered before 1 December 2010 that have been potentially affected by the current method.

Around 250 transitional permanent impairment claims can be expected per year, with that number increasing slowly. Based on case studies, the alternative method would result in an average increase of approximately $15,000 per permanent impairment compensation claim that is transitional in nature.

The prospective cost for the alternative method is estimated to be approximately $15 million over four years. The cost of retrospectively reassessing past claims is estimated to be approximately $10.5 million over four years.