Chapter summary

The Review received several submissions on issues relating to making claims. Several submissions criticised the volume of paperwork required, and one submission claimed that the onus is on the claimant to provide information that is often held by the Australian Defence Force (ADF). Another proposed that the Military Rehabilitation and Compensation Commission (MRCC) obtain all relevant information from the Australian Defence Organisation (Defence) and provide this to the claimant with an opportunity to respond or to provide additional supporting information. The Committee believes that early determination of the claim is best served by claimants providing all reasonably available evidence with their primary claim.

Some submissions criticised the 28 days allowed in the Military Rehabilitation and Compensation Act 2004 (MRCA) for a claimant to respond to a request for further information held or obtainable by them. The MRCC ensures that this is not applied in circumstances where it would be unreasonable, and no evidence was provided to the Review to show that the MRCC is being unreasonable in this matter.

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

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

The average time from injury to a Comcare claim is approximately 110 days, compared to the combined MRCA and Safety, Rehabilitation and Compensation Act 1988 (SRCA) average of 16 years and median of 12 years. The average MRCA lag time between injury and claim is increasing. The Committee believes that the MRCC should establish a key performance indicator (KPI) to measure the time lag between injury and report or claim. Defence should report this annually to monitor the effectiveness of efforts to reduce the time lag, and the information should be included in the MRCC annual report.

There are no formal requirements in the Veterans’ Entitlements Act 1986 or the MRCA to report an incident or injury or lodge a claim within a certain time; however, the SRCA requires notification of an injury as soon as practicable. In the United Kingdom, claims must be made within five years of injury, with some exceptions. The Committee does not believe that this would be practical in Australia, and believes that issues with lag time should be addressed by Defence practice and MRCC monitoring.

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

16.1 This chapter considers the experience to date with the prescribed Military Rehabilitation and Compensation Act 2004 (MRCA) claim form and related issues. The previous chapter looked at time taken to process claims (TTTP) and quality of performance. Other critical factors considered in this chapter are the powers of the Military Rehabilitation and Compensation Commission (MRCC), evidence requirements, lag times between injury and claim, and how information is obtained from the Australian Defence Organisation (Defence).

Background

16.2 The key requirements for the claims process under the MRCA are as follows:
• the claim must be in writing, given to the MRCC, and satisfy prescribed requirements or written determinations of the MRCC;\(^1\)
• once a claim is lodged at an approved physical or electronic location, the MRCC is obliged to investigate the matters to which the claim relates;\(^2\)
• the MRCC may, at any time after the claim is lodged, require the person to undertake a medical examination by a practitioner nominated by the MRCC at its cost;\(^3\)
• the claim may be suspended for the period where a person fails to undergo the medical examination;\(^4\)
• the MRCC can refuse to consider a claim where it believes a claimant has or could reasonably obtain relevant information and has failed to provide this within 28 days, or such further period as allowed;\(^5\)
• any documents held by the MRCC in relation to the claim must be made available on request by the claimant or their Service Chief;\(^6\)
• the MRCC is not bound by technicalities; it is not bound to act in a formal manner, can inform itself as it sees fit and just, must act according to substantial justice and the substantial merits of the case, but must take into account the difficulties in gathering evidence through the passage of time or the absence of records;\(^7\) and
• there is no onus of proof on the claimant or the Commonwealth.\(^8\)

16.3 Most of these provisions are modelled on the Veterans’ Entitlements Act 1986 (VEA), with the same beneficial terms that have evolved over time; for example, to deal with the vagaries of the evidence available from archived records, particularly for claims from operational service.

16.4 There is little difference in effect between the Safety, Rehabilitation and Compensation Act 1988 (SRCA) and MRCA requirements for the claim form. The SRCA\(^9\) requires medical certification and the SRCA claim is deemed not to have been

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1 Section 319 of the MRCA.
2 Section 324 of the MRCA.
3 Section 328 of the MRCA.
4 Section 329 of the MRCA.
5 Section 330 of the MRCA.
6 Section 331 of the MRCA.
7 Section 334 of the MRCA.
8 Section 337 of the MRCA.
9 Section 54 of the SRCA.
made until such information is provided. The MRCA claim form\textsuperscript{10} has provision for a medical practitioner to specify a preliminary or final diagnosis, the basis for the diagnosis and the date of the first consultation on the condition.

16.5 MRCA provisions supporting the investigation of the medical evidence for the claim, and the obligations of claimants\textsuperscript{11} and the MRCC,\textsuperscript{12} are based on similar provisions in the SRCA.\textsuperscript{13} It is open to the MRCC to suspend investigation of the claim (and therefore the measure of TTTP) for the period that evidence is being sought. Where claimants do not provide the information that is needed to determine a claim upfront, it is necessary to seek further information from the claimant, the medical profession or the Australian Defence Force (ADF). Currently, the time taken to gather new information is still counted as part of the Key Performance Indicator (KPI).

**Submissions**

**Volume of paperwork**

16.6 Several submissions to the Review criticised the volume of paperwork and forms required of claimants. One submission claimed that the onus has shifted onto veterans to provide information that is often in the hands of the ADF.\textsuperscript{14}

16.7 In practice, the Committee considers that the claimant providing all reasonably available evidence with the primary claim best serves the interests of early determination of the claim. This matter is explored further in this chapter.

**Suggestion that the Military Rehabilitation and Compensation Commission obtain all relevant Australian Defence Force information**

16.8 A submission\textsuperscript{15} to the Review proposed that the MRCC should firstly obtain all relevant information from Defence, provide a copy of that information to the claimant, request they comment on the information that is in the possession of the MRCC, and provide them with a reasonable opportunity to respond or provide information to support a claim.

16.9 Referral back to the client for claims likely to be rejected was recommended by KPMG after its internal audit review and has now been implemented, as discussed in the previous chapter. Measures to include ADF in the claim lodgement process, and thus provide evidence for consideration at the primary level, are discussed below.

**Response times for provision of additional information**

16.10 Some submissions criticise the 28 days allowed in the MRCA\textsuperscript{16} for a claimant to respond to a request for further information held or obtainable by them.

\textsuperscript{10} Determined under MRCA subsection 319(2).
\textsuperscript{11} Sections 328 and 329 of the MRCA.
\textsuperscript{12} Sections 330 and 331 of the MRCA.
\textsuperscript{13} Sections 5, 58 and 59 of the SRCA.
\textsuperscript{14} Vietnam Veterans Federation of Australia and KCI Lawyers.
\textsuperscript{15} Vietnam Veterans Federation of Australia and KCI Lawyers.
\textsuperscript{16} Section 330 of the MRCA.
16.11 The MRCC has the responsibility to ensure that the 28-day period is not applied in circumstances where it would be unreasonable. No evidence was provided to the Review to illustrate that the MRCC is unreasonable in this regard.

**Reimbursement of medical report costs**

16.12 One submission argues that the additional information requested by the MRCC from a claimant under section 330 of the MRCA should be defined so that the claimant can be reimbursed for the cost of providing a medical report from their treating doctor or specialist. The submission claims that this will reduce the discretion of the MRCC to generally rely on their own medico-legal report to deny claims, notwithstanding the availability of medical information that a veteran is unable to provide as they cannot pay for it.

16.13 For serving members, obtaining medical evidence at the time of a claim without cost should not be a problem. Former members need to consult their general practitioner or medical specialist to get the necessary information to lodge a claim. Reports used in making the decision are reimbursable from the MRCC. Reimbursement is not dependent upon the decision on liability (acceptance or rejection). The claims assessor must investigate the claim once lodged and this may include seeking medical examinations under section 328, again at cost to the MRCC. The MRCC will always reserve the right to consult with an independent specialist, where considered appropriate. Section 330 is applied where the delegate believes that information is already held by a claimant or can be obtained without unreasonable expense or inconvenience to the claimant.

16.14 Policy guidelines are provided to decision makers on the matter of unsolicited medical reports. Essentially, where a decision maker finds that an unsolicited medical report is not useful in coming to a decision, the fee for the report will not be reimbursed. Any issues with these guidelines can be raised with the MRCC through existing forums.

**Structure of the claim form**

16.15 The MRCA claim form was introduced in July 2004 and was developed with the assistance of the Ex-Service Organisation Working Group of the time. It is based primarily on the VEA claim form. Claimants with conditions related to service rendered before commencement of the MRCA may also be able to claim under the VEA or the SRCA (see Chapters 20, 21 and 22).

16.16 In comparing and assessing the MRCA, the VEA and Comcare claim forms, it is apparent that the MRCA form in particular serves more than one purpose, by allowing:

1. the claims assessor to form an opinion on liability under the relevant Statement of Principle (SoP), or provide evidence where there is no applicable SoP;

2. preparation of the needs assessment (identifying priorities, needs and means of providing rehabilitation, treatment and incapacity payments); and

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17 Vietnam Veterans Federation of Australia and KCI Lawyers.
3. determination of impairment points and lifestyle, and whether the condition has stabilised.

16.17 Combining the details needed for all of the above does make the current MRCA claim form more complicated than is strictly required for all claims. Points one and two are closely linked and suitable to be dealt with in the same form. Once liability is established, the needs assessment should be concluded without delay. Consideration might, therefore, be given to a modular approach, confining the information required in the initial claim form to what is needed for considering liability and the needs assessment.

16.18 The medical specialty from which an expert opinion will be sought for determination of initial liability may be more commonly related to the cause of the condition. Other expert opinion (for example, from medical rehabilitation specialists) may be needed for assessing ability to work (rehabilitation and incapacity payments) and the stabilisation and scale of impairment (for permanent impairment compensation). Comcare has a modular format for claims, including a separate permanent impairment compensation claim. Change to a modular format for MRCA claims would not preclude the lodgement of the claim for permanent impairment compensation at the same time, where circumstances dictate this approach (see discussion of Irwin v. Military Rehabilitation and Compensation Commission,18 paragraphs 16.50–16.57).

16.19 Other points of interest in the comparison of claim forms are:
• only Comcare has a separate form for the employer to complete; the VEA and MRCA forms do not have the employer’s endorsement and, although similar information is provided, they are less demanding of rehabilitation, medical and treatment history and workplace absences than the Comcare form; and
• the VEA and MRCA forms do not seek the International Classification of Diseases codes of the diagnosed condition from medical practitioners; this may be worth seeking where known to the practitioner, as this information is used to determine the appropriate SoP.

16.20 The Committee notes that DVA has trialled a new Single Claim Form, covering claims under all or any of the VEA, the SRCA and the MRCA. An evaluation of the trial concluded that there are significant front-end advantages of a Single Claim Form for those with eligibility across multiple Acts, but considerable work is still required, particularly around relevant business processes, before the form can be implemented. See also Chapter 15 for a discussion of business process and information technology systems reform.

16.21 However, the Committee does not believe that a claimant who has served only after 1 July 2004 should be required to complete a claim form seeking information that is relevant to the VEA or the SRCA. The Committee believes that DVA should maintain a shorter MRCA claim form for claimants who only have service after 1 July 2004.

16.22 The Committee also believes that the MRCC should consider a modular approach for MRCA claims. The first module would seek only the information necessary to make the decision on the initial liability and to provide essential background for the needs assessment.

Lodgement through Defence

16.23 A critical difference between the Comcare and DVA forms is that Comcare requires the endorsement of the employer and details of the injury, the job tasks at the time of the injury and any barriers to returning to work for the injured employee. The employer’s report to Comcare is made easier by the fact that these mostly concern incidents some days or weeks old, compared to the average ADF claim with a lag of some years (see paragraph 16.26). Nevertheless, it is clear to the Committee that if this requirement were to be adopted by the MRCC (that is, for ADF to provide details and views up front with the claim), claims could be resolved considerably faster. However, for the claimant to benefit, Defence would need to be prompt in providing the needed material and endorsements.

16.24 Consideration should be given to requiring Defence, at least for serving members, to provide the necessary information on the circumstances of the incident from which the initial liability claim arises and related health and rehabilitation issues. A shortened MRCA claim form, as discussed at paragraph 16.21 for claimants who have service only after 1 July 2004 and have all the accompanying ADF endorsements, incident reports, medical and service records already discussed in this chapter, would assist this process. However, the implementation of this recommendation from the review may depend upon the follow up action of the Support for Wounded, Injured or Ill Project (see paragraphs 16.44–16.46).

16.25 To implement the requirement for ADF to provide details with the claim, the MRCC would need to determine\(^{19}\) that claims are to come through the ADF with its endorsement and with specified evidence. This option is more applicable to current serving members and those who lodge claims at discharge. There is more difficulty in this option for former members. It is, therefore, also necessary to look into improving DVA access to Defence records (see paragraphs 16.38–16.43).

Lag time from injury to claim

16.26 The Committee noted that the average time from injury to a Comcare claim is approximately 110 days, compared to the combined MRCA and SRCA average of 16 years and median of 12 years. This is the major factor behind the difference in TTTP between Comcare and DVA. The delay between injury and claim is known as lag time, and is not a statistic that has been monitored on a regular basis. The following table shows the average lag time under the MRCA only. As would be expected, the average MRCA lag is increasing with the time since commencement of the legislation, and is well below the average and median for the total of SRCA and MRCA claims.

<table>
<thead>
<tr>
<th>Table 16.1 MRCA permanent impairment compensation claim lag times</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Average number of days from date of injury to claim</strong></td>
</tr>
<tr>
<td>----------</td>
</tr>
<tr>
<td>240</td>
</tr>
</tbody>
</table>

19 Section 319 of the MRCA.
16.27 There are several reasons why it is in the interests of civilians under the SRCA to lodge early liability and compensation claims, compared to full-time ADF members:

- civilians injured in the workplace are often in immediate need of assistance with medical expenses. Medicare and private health funds do not cover compensable cases. ADF members continue to be treated at ADF expense, whether or not an injury or disease is compensable; and

- incapacity payments may be needed by civilians who run out of sick leave, whereas full-time ADF members remain on full pay until discharge. Full-time ADF members only apply for incapacity payments where they lose allowances following injuries from a service-related incident.

16.28 There is also a cultural background to the longer lag times for ADF members. Many members believe that revealing an injury will affect their career in some way. For example, a member may be concerned that their medical classification could be downgraded, thus affecting their prospects for deployment or promotion, or their ability to stay in their current or preferred roles or locations. In some cases, a member may go to the extent of seeking treatment outside the ADF, at their own expense. This can mean a condition may remain unnoticed by the ADF, creating risk to the individual and their colleagues.

16.29 The MRCA introduced the requirement for the MRCC to provide the ADF with the outcome of claims from serving members. This is regarded as good policy for workforce and safety management.

16.30 Defence has advised that current serving members are given greater encouragement to report incidents and to lodge claims for compensation during their career, rather than at discharge. Reducing the time lag would be better practice for workplace safety management purposes; it would also result in more timely provision of evidence supporting a compensation claim.

16.31 The Committee believes that the MRCC should establish a KPI to measure the time lag between the injury and the report or claim. This should be reported annually by Defence to monitor the effectiveness of efforts to reduce the time lag.

**Time limits to report or claim for injury**

16.32 There are no formal requirements in the VEA or the MRCA for reporting an incident or injury or lodging a claim within a certain time. However, the SRCA requires an employee to notify an injury within the soonest practicable time after becoming aware of an injury.20

16.33 Practice and case law on this matter suggest that the SRCA provision is interpreted beneficially. The Committee believes the issues with lag times should be addressed by Defence practice and MRCC monitoring, as discussed above, rather than amending the legislation.

16.34 SRCA claims arising from events prior to its commencement (1 December 1988) are subject to time limits under the prior Commonwealth workers’ compensation Acts. Failure to comply with those time limits can result in these SRCA claims being denied. No time limits apply to other SRCA claims.

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20 Section 53 of the SRCA.
16.35 Time limits apply in the United Kingdom for veterans’ claims. All claims in the United Kingdom must be made within seven years of injury, with only exceptions for late onset conditions (such as malignancies and mental health).

16.36 Such a provision in the MRCA would not be practicable without considering a range of exceptions, such as late onset conditions, new medical research outcomes and changes in individual diagnosis. It would also be inconsistent with section 334, which requires the MRCC to take into account the difficulties arising from the passage of time.

16.37 The Committee opposes such a provision in the MRCA.

**Single Access Mechanism**

16.38 Several submissions are critical of the time taken to access Defence records to support a claim. A submission from a firm of solicitors\(^{21}\) states that

… substantial improvement [should] be made to the DVA’s “single access mechanism” to ensure that requests for central health records are processed by the DOD [Department of Defence] within 14 days in cases where the member has not provided copies of relevant extracts with the claim form.

They state that Defence has advised it may take up to 30 weeks to action a request by a former member for a central health record. DVA and Defence have been aware of the need to address these delays for some time.

16.39 The Single Access Mechanism (SAM) is an initiative whereby all requests for DVA’s access to Defence records are channelled through single teams at DVA and Defence. The SAM is aimed at reducing time frames and eliminating duplicate requests. DVA staff were given enhanced access to PMKeyS (the ADF pay system), for the purpose of retrieving service records to determine eligibility of claims.

16.40 The SAM was phased in from November 2006. A service-level agreement for the SAM was signed by DVA and Defence in January 2008. Problems in achieving objectives of the SAM were drawn to the attention of Defence by DVA soon after. Defence advised in June 2008 that KPIs for the SAM are not always able to be met by Defence staff in service history and medical units, due to competing priorities and fluctuating staff levels.

16.41 The following table shows the TTTP (in days) for SAM requests for the past two years. These figures relate to all information sought by DVA and are not confined to the evidence being sought for the more contemporary MRCA claims.

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\(^{21}\) Slater & Gordon Lawyers.

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Table 16.2  Average time taken to process for Single Access Mechanism requests, 2008–09 and 2009–10

<table>
<thead>
<tr>
<th>Request type</th>
<th>TTTP (days) 2008–09</th>
<th>TTTP (days) 2009–10</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service information</td>
<td>9</td>
<td>19</td>
</tr>
<tr>
<td>Medical documents</td>
<td>23</td>
<td>16</td>
</tr>
<tr>
<td>Overseas postings/operational service</td>
<td>14</td>
<td>4</td>
</tr>
<tr>
<td>Research request</td>
<td>33</td>
<td>36</td>
</tr>
<tr>
<td>Incident reports</td>
<td>11</td>
<td>19</td>
</tr>
<tr>
<td>Psychological documents</td>
<td>24</td>
<td>24</td>
</tr>
<tr>
<td>Confirmation of leave</td>
<td>59</td>
<td>70</td>
</tr>
<tr>
<td>Other</td>
<td>26</td>
<td>29</td>
</tr>
<tr>
<td>Financial statements</td>
<td>12</td>
<td>10</td>
</tr>
</tbody>
</table>

TTTP = time taken to process

16.42  The most frequent requests are for service and medical information. The average TTTP is 19 and 16 days, respectively. Only two categories are above 30 days — research requests and confirmation of leave. These results are high due to system changes at Defence and difficulty obtaining approval to access records for military researchers. The recent implementation of the Defence SAM team is expected to improve the abilities of both DVA and Defence SAM teams to meet their KPIs.

16.43  Wherever possible, the claimant should provide this information with the claim form in the first place. However, the Committee considers it reasonable for a KPI to be set and for this to be monitored by the MRCC.

Separation Health Examination and Support for Wounded, Injured or Ill Project

16.44  The Separation Health Examination (SHE) is a standardised medical examination that the member undertakes prior to their separation from the ADF. The SHE evaluation has been completed and the interdepartmental working group has been directed to consider the next steps within the context of the Support for Wounded, Injured or Ill Project (SWIIP).

16.45  The SWIIP is the second phase of the Support for Injured or Ill Project, which was conducted between August and December 2010. The principal intent of the SWIIP is to develop a schema around which to build a coherent, effective and efficient support system.

16.46  Phase Two will be characterised by a holistic, system-level approach, reviewing Defence and DVA policy and governance, information sharing arrangements and education and communication. Other related initiatives/activities presently in train, or planned for the future, may be influenced by the conduct and outcomes of Phase Two. Given the strategic nature of Phase Two, and its breadth of scope, SWIIP Phase Two is the pre-eminent program.
Provisions for rejecting claims

16.47 Certain legal firms submitted to the Review that the MRCA should impose processing time requirements on the MRCC. These observations are based on the deeming provisions in the Seafarers Rehabilitation and Compensation Act 1992 (Seafarers Act), where a claim is considered rejected if it is not finalised in a certain time frame, and the right to seek reconsideration and review then commences. Some submissions acknowledge that all information requested by the decision maker needs to be on hand before performance measures are made. Slater & Gordon seek a time limit of 30 days to seek further information, 30 days to determine an initial liability claim once complete information is available, and 30 days for all other steps in the decision making on compensation and reconsiderations.

16.48 As part of the legislative program for Autumn 2011, a Bill containing a number of amendments to the SRCA will be considered before the Australian Parliament. The Bill includes provisions for time limits, to be prescribed by regulations, within which Comcare claims and reconsiderations must be determined.

16.49 The Committee considers it reasonable for similar statutory reporting provisions to be built into the MRCA requirements. The MRCC should not accept claims until they meet the requirements of its determination under subsection 319(2), and it should not be accountable for the period when further information is requested. For example, where a claim is lodged and the service record has to be obtained or checked with the ADF, or medical details have to be verified from one or more medical specialists, the time interval from the request to receipt of the information should not count against the target TTTP. The total time for the claims to be determined should be retained, but adjusted for the time taken to obtain the further information.

Irwin case

16.50 Slater & Gordon Lawyers took Irwin v. Military Rehabilitation and Compensation Commission as a test case through to the Federal Court.

16.51 The outcome is that when the Administrative Appeals Tribunal (AAT) is reviewing a decision of the MRCC, it may determine a claim for compensation, provided it has decided that the MRCC is liable, even where the MRCC found that there was no liability, and has not itself addressed the compensation issue.

16.52 It is Slater & Gordon Lawyers’ practice to write a covering letter asking for a claim for liability and compensation to be considered. Their interpretation of Irwin is that assessment of liability and permanent impairment compensation should now be considered together and they are critical of the lack of the MRCC policy response.

16.53 Liability and permanent impairment compensation claims are processed in parallel in certain straightforward cases where requested, but it is not always practicable when the medical assessments on causation and impairment might be quite different.

16.54 In Irwin, the MRCC argument to the Tribunal included the view that it is not open to a claimant to make a valid claim for compensation (that is, a claim under

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22 Slater & Gordon Lawyers, and Vietnam Veterans Federation of Australia and KCI Lawyers.
23 Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2011.
paragraph 319(1)(d) of the MRCA) until the MRCC has accepted liability under one or other of paragraphs 319(1)(a) to (c). The Federal Court did not accept this view.

16.55 If all liability and permanent impairment compensation claims were run concurrently, considerable resources and time would be wasted, resulting in longer TTTP for most cases. There is little point in arranging for a permanent impairment assessment when liability cannot be accepted. Nor is there any point in assessing the impairment of a condition at a stage when it is unstable. Statistics indicate that only approximately 25 per cent of MRCA liability claims proceed to a permanent impairment assessment.

16.56 Splitting claims into two separate modules may assist delegates to process the liability claim first and the compensation benefits claim second. From an operational perspective, where only a claim for compensation (e.g. permanent impairment compensation) is lodged, it is imperative that the question of liability be considered and determined before or simultaneously with determination of the compensation claim. To do otherwise could ultimately put the question of liability in the hands of the AAT, should an appeal be lodged in relation to the determination on compensation. Such a process was recently endorsed by Deputy President Forgie in the case of Vincent & Military Rehabilitation and Compensation Commission. Although under the SRCA, the AAT held that ‘[o]rdinarily, before any issue of … entitlement to compensation for permanent impairment arises, a determination concerning the person’s entitlement to compensation will have been made under s14 of the Act’.

16.57 The Committee believes there should be a modular approach to claims, and that the policy implications and practice subsequent to the Irwin decision should be re-examined by the MRCC.

Conclusions

16.58 The Committee recommends a modular approach to MRCA claims to allow concentration on liability and the needs assessment in the first instance. This may be subject to clarification of policies and practices after the Federal Court decision on the Irwin case.

16.59 Claims by serving (including discharging) members should be lodged through the ADF with critical information provided on the claimant, the injury, and health and rehabilitation issues with the first claim. An alternative shortened (MRCA-only) claim form (designed for claimants who have service only after 1 July 2004) would simplify arrangements for such claimants.

16.60 The MRCC should monitor progress toward the objective of reducing the average lag time between the service-related incident or exposure, and lodgement of a claim for compensation.

16.61 Reporting provisions to parliament for TTTP should be considered for the MRCA along similar lines to those under consideration for Comcare under the SRCA. Times taken should be counted only when mandatory claim form requirements, and additional requests for supplementary evidence, are satisfied.

### Recommendations

The Committee recommends that:

16.1 the Military Rehabilitation and Compensation Commission (MRCC) should consider a modular approach for claims under the *Military Rehabilitation and Compensation Act 2004* (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 Australian Defence Force (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 key performance indicator (KPI) to be reported on by the Australian Defence Organisation (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; and

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 *Safety, Rehabilitation and Compensation Act 1988*.