## Chapter summary

The *Military Rehabilitation and Compensation Act 2004* (MRCA) recognises three classes of dependants who may be eligible for compensation in the event of the death of a member: wholly dependent partners, eligible young persons, and ‘other’ dependants. The Committee believes that the death benefit package provided by the MRCA is probably the most beneficial and comprehensive of any Australian compensation jurisdiction. Where a member’s death is service related, his or her wholly dependent partner is currently eligible to receive a lifetime periodic payment, an additional death benefit (ADB), a Repatriation Health Card — For All Conditions (Gold Card), and a range of other benefits depending on his or her circumstances.

The Committee recommends simplifying the payment arrangements by combining the current age-based lump sum and the ADB to create a new combined lump sum. This will make the compensation package simpler and easier to understand. It is proposed that the new lump sum payment be age based as with the existing lump sum and indexed in accordance with Wage Price Indexation. The Committee also proposes that more flexibility be allowed in the choice between a pension and a lump sum to allow dependent partners to structure compensation to meet their financial priorities.

The Committee examined whether the differential in permanent impairment payments between operational service and peacetime service should be extended to death benefits. Again, the Committee has divided views on this question. If the concept of a differential is accepted, the suggested differential of 10 per cent for higher impairment levels should also be considered for death benefits. Indicative estimates are that creating a 10 per cent differential for death benefits due to operational service would cost $2.85 million over four years. Committee members representing the Department of Veterans’ Affairs (DVA) and the Department of Defence, as well as Mr Peter Sutherland, favour extension of a 10 per cent differential for operational service to the wholly dependent partner death benefit. Committee members representing the Department of Finance and Deregulation, the Treasury, and the Department of Education, Employment and Workplace Relations, favour maintaining the status quo.

Where the death of the member is not service related, the wholly dependent partner is entitled to compensation if the member was eligible for Special Rate Disability Pension or had 80 or more impairment points. The Committee proposed that the current lesser amount for this class of wholly dependent partner be maintained.

A number of submissions to the Review pointed out that the periodic payment to eligible young persons under the MRCA is below that of the *Safety, Rehabilitation and Compensation Act 1988* (SRCA). However, the SRCA does not provide the additional benefits of a separate lump sum payment, Gold Card or non-means tested education assistance to eligible young persons, as does the MRCA. The Committee recommends that the MRCA’s current pension rate for an eligible young person should not be changed.

Several submissions argued that the requirement for a wholly dependent partner to be dependent on the deceased member for economic support is not relevant in contemporary society and is less beneficial than the previous arrangements under the *Veterans’ Entitlements Act 1986* (VEA). Most, if not all, compensation jurisdictions in Australia require dependants to be deemed to be economically dependent before they can receive compensation for the death of a partner, and the MRCA supports this principle.

Some submissions also argued that former partners (including both divorced spouses and former de facto partners) should be compensated if they were economically dependent on the member at the time of death or while they have responsibility for the care of the
deceased member’s children. Currently, as the definition of a ‘partner’ in the MRCA does not include a former partner, a former partner is not entitled to compensation on the death of a member. This is so even if the former partner was wholly or partly economically dependent on the member at the time of death. The Committee recognises that situations could exist in which a former partner continues to be economically dependent on a member and believes that the MRCC should consider further the question of compensation for a former partner, and if necessary provide advice to the Australian Government.

The MRCA provides compensation for financial advice for the member or his or her family in a number of circumstances. On 1 July 2004, the amount payable for financial advice was set at $1,200. This amount has been indexed annually in line with the Consumer Price Index so that the current maximum is $1,503.83. The Committee recommends that the existing compensation for the cost of financial advice should be increased to at least $2,400, taking into account pressures in the industry resulting in changes to fee structures. The cost of this increase would likely be under $50,000 over four years.

Introduction

9.1 This chapter examines the death benefit provisions of the Military Rehabilitation and Compensation Act 2004 (MRCA). The following issues are considered:

- the amount of financial support provided to a wholly dependent partner;
- age-based lump sums;
- restructuring the existing wholly dependent partner death benefit;
- differentials for wholly dependent partner compensation payments;
- benefits for eligible young persons;
- the definition of dependant;
- compensation for former partners; and
- the provision of financial advice.

Background

9.2 The MRCA recognises three ‘classes’ of dependants who may be eligible for compensation in respect of the death of a member:

- wholly dependent partners;
- eligible young persons; and
- ‘other’ dependants.

9.3 Compensation to dependants under the MRCA is non-taxed, non-means tested, and not offset by superannuation or private insurance arrangements.
Wholly dependent partners

9.4 To be considered the wholly dependent partner of a deceased member under the MRCA, a person must have been: ¹
(a) a partner of the member immediately before his or her death; and
(b) wholly dependent (for economic support) on the member before his or her death.

9.5 Criterion (a) will be satisfied where the person: ²
• was legally married to the member;
• was in a de facto relationship with the member;
• if the member is a member of the Aboriginal race of Australia or a descendant of Indigenous inhabitants of the Torres Strait Islands — was recognised as the member’s husband or wife by the custom prevailing in the tribe or group to which the member belongs; or
• was in a registered relationship with the member under a law of a state or territory.

9.6 Whether a person is considered to have been in a de facto relationship with the member will depend on a number of factors, including: ³
• the financial aspects of the relationship;
• the nature of the household;
• the social aspects of the relationship;
• any sexual relationship between the people; and
• the nature of the people’s commitment to each other.

9.7 Under the MRCA, criterion (b) will be deemed to exist where a partner was living with the member before his or her death, or would have been living with the member but for a temporary absence or illness or infirmity (see Figure 9.1). ⁴

¹ Section 5 of the MRCA.
² Ibid.
³ Subsection 5(2) of the MRCA and section 11A of the Veterans’ Entitlements Act 1986.
⁴ Section 17 of the MRCA.
Where a member’s death is service related, his or her wholly dependent partner is currently eligible to receive:

- a lifetime periodic payment equivalent to the war widow(er)’s pension under the Veterans’ Entitlements Act 1986 (VEA) of $362.55 (indexed every six months) per week, which can be converted to an age-based lump sum up to a maximum of $610,497.95;\(^6\)

- an additional death benefit (ADB) of $125,319.80 (indexed annually);\(^7\)

- a Repatriation Health Card — For All Conditions (Gold Card);\(^8\)

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\(^5\) Rates of compensation are dependant on the date of death of the member. Rates quoted in this chapter apply to deaths on and after 20 September 2010.

\(^6\) Subsections 234(4) and 234(5) of the MRCA.

\(^7\) Subsection 234(2) of the MRCA.

\(^8\) Subsection 284(1) of the MRCA.
• a MRCA supplement of $3.00 per week (indexed every six months) – unless received from some other source such as Income Support Supplement;9 and
• up to $1,503.83 for the cost of obtaining financial advice (indexed annually).10

9.9 The same compensation is available, excluding the tax-free ADB of $125,319.80, to the wholly dependent partner of a deceased member where the death was not related to service if the deceased member:
• satisfied the eligibility criteria for a Special Rate Disability Pension (SRDP) during some period of his or her life; or
• suffered an impairment as a result of one or more service conditions that constituted 80 or more impairment points.11

Eligible young persons

9.10 To be considered an eligible young person under the MRCA, a person must be:12
• under 16; or
• aged 16 to 24, receiving full-time education and not in full-time employment.

9.11 To receive compensation in respect of the death of a member, the eligible young person must establish that he or she was at least partly dependent on the member for economic support before the member’s death (see Figure 9.2). As with the partner of a member, the eligible young person will be deemed to be wholly dependent on the member for economic support where he or she was living with the member before his or her death, or would have been living with the member but for a temporary absence or illness or infirmity.13

9 Section 245 of the MRCA.
10 Section 240 of the MRCA.
11 Section 12 of the MRCA.
12 Subsection 5(1) of the MRCA.
13 Section 17 of the MRCA.
9.12 Where an eligible young person was at least partly dependent on the deceased member for economic support, he or she will receive:

- lump sum compensation of $75,191.88 (indexed annually),\(^{14}\) and
- education assistance ranging from $23.35 to $188.50 per week depending on age and circumstances (indexed annually).\(^{15}\)

9.13 In addition to the above, where an eligible young person was at least wholly or mainly dependent on the deceased member for economic support, he or she will receive:

- an ongoing weekly benefit of $82.71 (indexed annually),\(^{16}\)
- a Gold Card;\(^{17}\) and
- a MRCA supplement of $3.00 per week (indexed every six months).\(^{18}\)

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\(^{14}\) Section 252 of the MRCA.
\(^{15}\) Military Rehabilitation and Compensation Act Education and Training Scheme (Instrument 2004 No. M4 as amended) made under section 258 of the MRCA.
\(^{16}\) Section 254 of the MRCA.
\(^{17}\) Subsection 284(2) of the MRCA.
\(^{18}\) Section 302 of the MRCA.
**Other dependants**

9.14 A person who is not a wholly dependent partner or an eligible young person may still be eligible to receive compensation under the MRCA in respect of the death of a member where the person was:

(a) wholly or partly dependent on the deceased member for economic support; and

(b) meets one of the categories of relationship defined as a ‘dependant’. 19

9.15 Unlike wholly dependent partners and eligible young persons, an ‘other dependant’ will not be deemed to be wholly dependent on a member for economic support simply because they were living with that member before his or her death; they must prove economic dependence (see Figure 9.3).

9.16 Criterion (b) will be met by the following people: 20

- the member’s partner;
- the member’s father, mother, stepfather or stepmother;
- the father, mother, stepfather or stepmother of the member’s partner;
- the member’s grandfather or grandmother;
- the member’s son, daughter, stepson or stepdaughter;
- the son, daughter, stepson or stepdaughter of the member’s partner;
- the member’s grandson or granddaughter;
- the member’s brother, sister, half-brother or half-sister;
- a person in respect of whom the member stands in the position of a parent; or
- a person who stands in the position of a parent to the member.

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19 Section 15 of the MRCA.
20 Subsection 15(2) of the MRCA.
People who satisfy the criteria will be eligible to receive a lump sum up to a maximum of $75,191.88 (indexed annually), depending on:21

- any financial loss suffered by the dependant as a result of the member’s death;
- the degree to which the dependant was dependent on the deceased member; and
- the length of time that the dependant would have been dependent on the member.

However, the total amount that can be paid to all ‘other’ dependants is $238,107.62 (indexed annually) in respect of the death of one member.

**Degree of financial support provided to a wholly dependent partner**

The scenarios at the appendix to this chapter provide an indication of the level of financial support a widow(er) will receive from the Australian Government after the death of a member.

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21 Section 263 of the MRCA.
9.20 The MRCA provides what the Committee believes is probably the most beneficial and comprehensive death benefit package in any Australian compensation legislation.

9.21 The total lifetime value of the MRCA’s compensation package to a member’s partner and children has the potential to exceed $1 million, depending on the family’s circumstances. This includes the Gold Card, which provides the wholly dependent partner and eligible young persons with free healthcare for any condition. In November 2008, the Australian Government Actuary estimated the lifetime value of the Gold Card for a 30-year-old widow to be between $240,000 and $490,000 (net of Medicare).

9.22 Some comments about military superannuation death benefits are also considered necessary due to the overlap between compensation and superannuation; that is, because military superannuation also provides a benefit in respect of deceased ADF members.

9.23 Full-time members of ADF are presently covered by one of two superannuation schemes: the Defence Force Retirement and Death Benefits Scheme (DFRDB) and the Military Superannuation and Benefits Scheme (MSBS). Both schemes are defined benefit schemes. DFRDB was closed in 1991 and replaced by MSBS. There are approximately 5,500 ADF members still contributing to the DFRDB, with approximately 48,000 contributing to the MSBS.22

9.24 Reserve members are unlikely to have military superannuation unless they have had a period of continuous full-time service. They may, of course, have their own civilian superannuation that provides death, income replacement and total and permanent disablement insurance cover, and does not offset MRCA compensation. The scenarios at the appendix to this chapter demonstrate that employer contributions make up a significant component of any death benefit provided under military superannuation. In broad terms, a military superannuation death benefit pension could be expected to provide the dependent partner with a benefit of approximately 50 per cent of the deceased member’s final salary.

9.25 The flexibility in payment arrangements means that the widow(er) can choose whether to take the pension option under military superannuation and the lump sum under the MRCA, or vice versa.

9.26 In addition to military compensation and military superannuation, the Australian Government provides a means-tested Family Tax Benefit A and B to help with the costs of raising children.

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Rationale for age-based lump sums

9.27 The MRCA is the only compensation scheme in Australia with age-based lump sum payments for dependent partners. Because women live longer than men, on average, female factors in actuarial tables are higher than male factors. This results in women generally receiving higher lump sum payments than men, which was a cause of some criticism in submissions to the Review.23

9.28 The Committee accepts that it would be simpler and easier to remove the age-based system — a view advocated by some submissions. However, there is a sound basis for retaining age-based lump sums. This is outlined in Chapter 8 in relation to permanent impairment compensation.

9.29 The wholly dependent partner periodic payment under the MRCA is based on the VEA war widow(er)’s pension. However, the MRCA improved upon the VEA by offering a choice to convert the pension into a lump sum. To make either the pension option and the lump sum option of equal value, the pension must be converted to a lump sum using actuarial assumptions. To maintain the choice, the Committee supports the retention of age-based lump sums under the MRCA for wholly dependent partners.

Restructuring the existing wholly dependent partner death benefit

New combined lump sum

9.30 The Committee recognises the beneficial nature of the MRCA’s death benefit package when compared with other statutory compensation schemes. However, the complicated nature of the package means its value is not always readily apparent or easily understood. The Committee believes that a single lump sum payment to wholly dependent partners would be more easily understood than the existing, complicated arrangement.

9.31 The Committee proposes combining the current age-based lump sum and the ADB to create a new combined lump sum. The new lump sum would reduce on the basis of age in accordance with the actuary factors presently applied to those separate payments. This then becomes the default benefit as shown in Figure 9.4. Because the current ADB lump sum under the MRCA is exempt from means testing for the purposes of the Income Support Supplement under the VEA, a component of the new combined lump sum equivalent to the ADB amount would need to continue to be recognised as exempt for the same purposes.

9.32 Combining the two existing lump sum payments into a single, larger payment would make it simpler and easier to understand. There would also be no cost impact, because the amounts above are already payable, albeit as separate amounts.

23 Legacy Canberra.
The Committee recognises the requirement for flexibility for a dependent partner to structure his or her compensation so that they meet immediate and long-term financial priorities. The Committee proposes that the current choice between a pension and a lump sum under the MRCA be improved to provide a wholly dependent partner with more flexibility in the way he or she is paid compensation under the MRCA.

Under this restructured arrangement, the new lump sum would be the initial figure produced; the wholly dependent partner would not begin with consideration of a war widow(er)’s pension. The wholly dependent partner would then make a one-off election whether to have the new lump sum converted to a pension equivalent in set proportions of 100 per cent, 75 per cent, 50 per cent, 25 per cent or nil.

This proposed arrangement is similar to the options available under the MRCA’s permanent impairment compensation provisions and the MSBS death benefit provisions.

Indexing the new lump sum

Currently, the wholly dependent partner periodic payment under the MRCA is linked to the rate of war widow(er)’s pension under the VEA. The war widow(er)’s pension is indexed in reference to the single maximum basic rate of service pension.

The service pension is indexed with reference to the Consumer Price Index (CPI), Pensioner and Beneficiary Living Cost Index (PBLCI) and Male Total Average Weekly Earnings (MTAWE).

The ADB under the MRCA is simply indexed annually by increases in the CPI.
9.39 The current indexation method for the wholly dependent partner periodic payment under the MRCA is characteristic of income support payments, such as the age pension. However, the payment should be clearly differentiated from an income support payment. If such a differentiation is not made, then it made lead future policy makers to question why the payment should not be taxed or means tested.

9.40 The Committee recommends that the new combined lump sum be indexed annually in accordance with wage price indexation (WPI), as is the case with the death benefit under the SRCA. Indexing the payment in accordance with the WPI maintains purchasing power relative to those in the workforce and can be justified because the benefit provides compensation having regard to losses suffered by dependants as a result of the cessation of the member’s earnings. This measure would also clearly differentiate the benefit as a compensation paid in respect of the death of a member of ADF, as opposed to an income support payment. This change will have a negligible impact on costs, because the use of the WPI will be largely consistent with movements in MTAWE, and MTAWE represents the major component of the existing, complex indexation calculation.

Differentials in wholly dependent partner compensation

Argument for an operational service differential

9.41 In Chapter 8, the Committee discussed broadening the MRCA differential for warlike and non-warlike service (‘operational service’). The same consideration must also be given in relation to compensation for the wholly dependent partner of a deceased member.

9.42 The Committee notes that a differential in the quantum of death benefits was not supported by ESOs when first proposed in 2004, and, more recently, at an ESO Round Table meeting in August 2009.

9.43 A financial differential payable in respect of permanent impairment from operational service but not for deaths could be seen as an anomaly. If the differential represents recognition for operational service by the government of the day, then it would follow logically that the differential should apply to deaths as well as all levels of permanent impairment.

9.44 Chapter 8 suggested a differential of the order of 10 per cent for the higher impairment levels. A similar differential should also be considered for wholly dependent partner compensation if the concept of a differential is accepted.

9.45 Accordingly, under a 10 per cent differential model, the total lump sum payment for a 30-year-old female dependent partner of a member who dies as a result of operational service would be $747,544.86. This is $67,958.62 greater than the amount payable had the death been as a result of peacetime service. Indicative estimates are that creating a 10 per cent differential for death benefits due to operational service would cost $2.85 million over four years, assuming prospective implementation and more recent numbers of operational deaths per year.

9.46 Committee members representing DVA and the Australian Defence Organisation, as well as Mr Peter Sutherland, favour extension of a 10 per cent differential.

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24 Sections 17 and 13AA of the SRCA.
differential for operational service to the wholly dependent partner death benefit. This approach would achieve a death compensation differential for operational service for a small cost, while acknowledging the community sentiment for deaths relating to operational service.

**Argument against an operational service differential**

9.47 As with the proposed amendment to the permanent impairment differential, there are competing views among Committee members on the introduction of a differential in the quantum of death benefits payable.

9.48 Committee members representing the Department of Finance and Deregulation (Finance), the Treasury, and the Department of Education, Employment and Workplace Relation (DEEWR) again gave weight to the principle of ‘like compensation for like injury’, which is recognised in the development of all modern workers’ compensation schemes. The unique nature of operational service is recognised, where appropriate, through remuneration and relevant allowances, and the more beneficial standard of proof under the MRCA. It is the view of these Committee members that extending the compensation differential to MRCA death benefits could lead to people questioning why one death is worth more than another.

9.49 Committee members representing Finance, the Treasury and DEEWR concluded that, while the unique nature of operational service is acknowledged, it is more appropriate that operational service be financially recognised in remuneration and allowances rather than through further differential levels of compensation payments when injuries or deaths do occur. It could also be argued that the unique nature of operational service is also recognised through the different standards of proof applicable to the determination of liability for any claimed condition.

**Other deaths for which compensation may be paid**

9.50 As stated earlier in this chapter, where the death of the member is not service related, the wholly dependent partner will still be entitled to compensation if the member was eligible for SRDP or had 80 or more impairment points. It is proposed that the current lesser amount for this class of wholly dependent partner be maintained.

9.51 This would effectively create the following three rates of death benefit if the 10 per cent differential is accepted for wholly dependent partners (see also Figure 9.5, below):

- a rate for deaths related to operational service (assuming the 10 per cent differential model is accepted);
- a rate for deaths related to peacetime service (i.e. as per current payment arrangements); and
- a rate for the death of a member that is not related to service, where the member was SRDP eligible or had 80 or more impairment points (i.e. as per current payment arrangements).
Benefits for eligible young persons

9.52 A number of submissions to the Review pointed out that the present periodic payment to eligible young persons under the MRCA ($82.71 per week) is below that of the SRCA ($121.60 per week).\(^{25}\) However, the SRCA does not provide the additional benefits of a separate lump sum payment, Gold Card or non-means tested education assistance to eligible young persons, as the MRCA does.

9.53 The MRCA payments to eligible young persons are clearly beneficial when compared to all other schemes. In these circumstances, the Committee does not propose that the MRCA’s current periodic payment rate for eligible young persons be increased to the same level as the SRCA’s equivalent periodic payment rate.

Definition of dependant and other issues

9.54 Several submissions to the Review argued that the requirement for a wholly dependent partner to be dependent on the deceased member for economic support immediately before the member’s death is not relevant in contemporary society and is less beneficial than the previous arrangements under the VEA. However, as Table 9.6 shows, this is not necessarily the case.

Table 9.6 Comparison between eligibility for death benefits under the Military Rehabilitation and Compensation Act (MRCA) and Veterans’ Entitlements Act (VEA)

<table>
<thead>
<tr>
<th>Relationship status and living arrangements</th>
<th>MRCA-dependent partners</th>
<th>VEA war widow(er)’s pension</th>
</tr>
</thead>
<tbody>
<tr>
<td>Married and living together</td>
<td>Eligible</td>
<td>Eligible</td>
</tr>
<tr>
<td>Married and not living together</td>
<td>Must establish economic dependence</td>
<td>Eligible</td>
</tr>
<tr>
<td>De facto and living together</td>
<td>Eligible</td>
<td>Eligible</td>
</tr>
<tr>
<td>De facto and not living together</td>
<td>Must establish economic dependence</td>
<td>Cannot be eligible</td>
</tr>
</tbody>
</table>


9.55 Although the amount of the MRCA’s wholly dependent partner death benefit is currently tied to the VEA war widow(er)’s pension, there are some marked differences in the policy rationale underpinning eligibility for the two payments.

9.56 Where a couple were living together (or would have been) before the death, the partner is eligible for the wholly dependent partner death benefit under MRCA, regardless of whether the couple were legally married or de facto. The same is true of the VEA.

9.57 However, partners of members who live apart must be found to be wholly dependent on the member to receive MRCA death benefits. This is true whether they are legally married or in a de facto relationship.

9.58 The VEA, on the other hand, has no provision for a pension to be paid to the de facto partner of a member if the couple were living apart. This is regardless of any dependency for economic support.

9.59 It is no longer considered appropriate to provide eligibility for death benefits to a person who is separated from a member but still legally married; that is, married in name alone. In the same light, it also appears irrelevant in today’s society to automatically deny compensation to a deceased member’s partner if they were in a de facto relationship but living apart, where that partner was economically dependent on the member. The provisions in the MRCA support both these principles. Most, if not all, modern compensation jurisdictions in Australia require a dependant to be economically dependent, or deemed to be economically dependent, before he or she can receive compensation for the death of a partner.

9.60 Importantly, no examples were brought to the Committee’s attention that demonstrated that the economic dependence requirement under the MRCA has resulted in a claim being inappropriately denied.

Former partners

9.61 Some submissions argue that former partners (including both divorced spouses or former de facto partners) who were economically dependent on the member or former member at the time of death should be compensated for the death of that member.27

9.62 As the definition of a ‘partner’ in the MRCA does not include a former partner and they are not otherwise listed in subsection 15(2) of the MRCA as a ‘dependant’, a former partner is not entitled to compensation on the death of a member. This is so even if the former partner was wholly or partly economically dependent on the member at the time of death.

9.63 A member of the ESO Round Table subcommittee that met with the Committee argued that a divorced spouse should have access to the same compensation as a wholly dependent partner, including a Gold Card, while they have responsibility for the care of the deceased member’s children. Once the divorced spouse ceases to care for the deceased member’s children, compensation would also cease. How such a scheme would work in conjunction with lump sum commutations under the MRCA remains unclear.

9.64 A submission to the Review argued that a divorced spouse should be included in the definition of a dependant if they are dependent on the economic support of the member. Alternatively, the test under subsection 15(2) of the MRCA should be removed altogether, with economic dependency the only criteria for eligibility.28

9.65 Removing the ‘dependant’ test in subsection 15(2) of the MRCA as suggested could increase substantially the pool of persons eligible for compensation on the death of a member or former member. For example, there may be instances where a close friend or housemate may argue that they were dependent on a member or former member.

9.66 The list of dependants in the MRCA could be amended to include ‘former partner’ and, if he or she were able to establish that they were wholly or partly dependent on the member or former member, could be compensated. In terms of compensation, he or she would be equivalent to current partners not wholly dependent on the member and other close family relations.

9.67 Currently, the list of dependants in the MRCA reflects the same list of dependants in the SRCA. The list of dependants comprises those who could be considered to have a close familial relationship with the member or former member. The question raised by the submissions is whether a divorced or separated partner should be considered to have a similar relationship.

9.68 The Committee is aware of only two compensation schemes that allow for a former partner to be considered a dependant:

- section 4(1) of the NSW Workplace Injury Management and Worker’s Compensation Act 1998 defines dependants of a worker as including a ‘divorced spouse of the worker’ who was ‘wholly or in part dependent for support on the worker at the time of the worker’s death, or would but for the incapacity due to the injury have been so dependent’; and

27 Legacy Canberra & Australian Special Air Service Association.
28 Australian Special Air Service Association.
section 5 of the *WA Workers’ Compensation and Injury Management Act 1981* defines ‘spouse in relation to compensation payable in respect of the death of a worker’ and including ‘… any former spouse of the worker if the worker was legally obliged immediately before the death of the worker to make provision for that former spouse with respect to financial matters …’.

9.69 One argument was put to the Committee in respect of a former partner in receipt of child support payments at the time of the member’s death. It was argued that the former partner should have been considered economically dependent on that member and eligible for compensation in respect of that financial loss. However, this argument seems to ignore the fact that in such a situation the payment was being made in respect of the children, not the former partner, and that the children of the deceased member would be considered eligible young persons and compensated accordingly.

9.70 Child support payments paid in respect of a child are distinct from spousal maintenance (including de facto spousal maintenance), which is financial support paid by a party to a marriage or de facto relationship to their former partner in circumstances where that partner is unable to support themselves adequately.

9.71 It is the Committee’s understanding that payment of spousal maintenance is not common in Australia and that the current preference under family law is a distribution of property out of the property settlement, which severs any ongoing economic relationship between former partners. Nevertheless, the Committee recognises that situations could exist in which a former partner continues to be economically dependent on a member.

9.72 The Committee believes that the MRCC should consider further the question of compensation for a former partner, and if necessary provide advice to the Australian Government, taking account of whole-of-government considerations in relation to treatment of former partners for various benefits (e.g. superannuation) and other legal issues (e.g. family law).

**Provision of financial advice**

9.73 The MRCA provides compensation for financial advice in the following circumstances:

- under section 81 for the member suffering significant permanent impairment of 50 impairment points or more;
- under section 202 for the member to choose between SRDP and ongoing incapacity payments; and
- under section 239 for a wholly dependent partner.

9.74 On 1 July 2004, the amount payable was set at $1,200. This amount has been indexed annually in line with the CPI so that the current maximum is $1,503.83. Submissions to the Review questioned the adequacy of the amount provided for compensation for financial advice, particularly in relation to the amounts provided to wholly dependent partners. The submissions effectively proposed that the Australian Government pay all costs, both legal and financial, associated with closing the estate of the deceased.

9.75 This is a longstanding issue that has been raised by the Legacy Coordinating Council and the Australian Special Air Service Association within a number of forums since the MRCA came into operation. The issue was discussed at the Ex-Service
It is clear that the provision of compensation for financial advice is provided to a beneficiary under the MRCA to assist him or her to make an informed choice about compensation payments. In relation to compensation under section 239, the intention of parliament when passing the Military Rehabilitation and Compensation Bill 2003 is clearly expressed in the explanatory memorandum:

A wholly dependant partner entitled to compensation may make a claim for payment of the costs of financial advice obtained to assist in making an informed decision between a lump sum and weekly payments [under the MRCA] …

The same policy rationale applies to the other categories of people entitled to compensation for financial advice under the MRCA. A member with 50 or more impairment points has the choice to convert part or all of his or her periodic permanent impairment compensation payment into a significant lump sum. Likewise, a member who is eligible for SRDP has an important choice to make between SRDP and incapacity payments.

In the case of wholly dependant partners, it is acknowledged that some members will have complex estates to administer, and that their families may, therefore, benefit from obtaining legal advice to cover costs that would not have been incurred but for the service-related death of the member. However, the Committee believes a commitment to cover all legal costs incurred by a family leaves the Australian Government in a position that is too indefinite and uncertain. In extreme cases, the Australian Government may become liable to cover costs associated with family court disputes and other legal matters tied to the administration for the estate. This is not necessarily the role of a compensation scheme such as the MRCA.

Therefore, the Committee confirms that the amount of compensation paid under the MRCA should be limited to reimbursement for the cost of obtaining financial advice, and not legal advice. The question remains about whether the amount of compensation provided under the MRCA is adequate to reimburse a beneficiary for the cost of seeking the financial advice because of the need to make an informed decision about compensation payments under the MRCA. When considering this question, the Committee acknowledges that a decision about compensation payments cannot be made in a vacuum, and the entire financial situation will need to be considered by his or her financial adviser, including matters such as superannuation entitlements.

Since the MRCA came into operation in 2004, there has been pressure on the financial advice industry to move away from remuneration based on commissions to a fee-for-service basis. The National Information Centre on Retirement Investments (NICRI) has advised that this pressure has resulted in an increase in the cost of financial advice. NICRI further advises that, under current industry practice, financial advisers will spend between 6 and 10 hours in preparing a first statement of advice at a charge of up to $400 an hour.

The increased cost of financial advice will not only affect wholly dependent partners, but also the other categories of beneficiaries who currently receive compensation for financial advice under the MRCA. Although the amount provided under the MRCA has been indexed by the CPI, this increase has not kept pace with increases in the cost of financial advice brought about by changes within the industry.

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The Committee believes that the Australian Government should increase the amount of compensation for financial advice provided under sections 81, 202 and 239 of the MRCA to at least $2,400 and continues to have it indexed by the CPI.

9.82 The cost implications of such a change would be minimal (likely to be no more than $150,000 over four years) based on the small number of MRCA clients per year who are eligible for the payment.

Conclusions

9.83 In this chapter, the Committee has examined the compensation paid to dependants in respect of the death of a member under the MRCA.

9.84 The Committee has concluded that, while the level of benefit is appropriate, there are grounds for restructuring the wholly dependent partner compensation payment so that it is more modern and simplified. The Committee has concluded that the two separate payments currently available to a wholly dependent partner — that is, the wholly dependent partner periodic payment and the ADB — be combined to create a new lump sum payment. It is proposed that the new lump sum payment be age based in a manner consistent with the existing lump sum, and indexed in accordance with the WPI.

9.85 It is also proposed that dependent partners be offered the choice of converting either the whole of the lump sum payment, 75 per cent, 50 per cent or 25 per cent thereof, into a lifetime pension. This pension should be consistent across all age groups.

9.86 The chapter also raises the question as to whether the differential in permanent impairment payments between operational service and peacetime service should be extended to death benefits. The Committee has divided views on this question.

9.87 The chapter has argued that the MRCA’s current pension rate for an eligible young person should not be adjusted to the same level as the SRCA’s equivalent pension rate.

9.88 The Committee considered the question of compensation for former partners and recommends that the MRCC consider this issue and provide the Australian Government with options, bearing in mind whole-of-government and legal factors.

9.89 The Committee also concluded that the existing compensation for the cost of financial advice to MRCA beneficiaries should be increased to take into account recent pressures in the industry resulting in changes to fee structures.

Recommendations

The Committee recommends that:

9.1 the lump sum payment, as prescribed at subsection 234(4) of the Military Rehabilitation and Compensation Act 2004 (MRCA), paid in lieu of the pension equivalent to the Veterans’ Entitlements Act 1986 war widow(er)’s pension, and the additional death benefit (ADB), as prescribed at subsection 234(2), be combined;

9.2 the proposed new lump sum payment be age-based in a manner consistent with the existing lump sum prescribed at subsection 234(4) of the MRCA and indexed in accordance with the Wage Price Index;
9.3 dependent partners be offered the one-off choice of converting either the whole of the lump sum payment, 75 per cent, 50 per cent or 25 per cent thereof, into a lifetime pension (tax free);

9.4 the Government considers:

(a) if recommendation 8.2(a) in Chapter 8 is accepted, that the lump sum death benefit be increased by 10 per cent for deaths related to warlike or non-warlike service — favoured by the Department of Veterans’ Affairs and the Australian Defence Organisation representatives and Mr Peter Sutherland; or

(b) if recommendation 8.2(b) in Chapter 8 is accepted, that no change be made to current death benefit arrangements, which do not currently differentiate between the nature of the service related to the member’s death — favoured by the Department of Finance and Deregulation, the Treasury and the Department of Education, Employment and Workplace Relations representatives;

9.5 the proposed new lump sum payment be reduced by an amount equivalent to the ADB for deaths relating to those categories of members or former members who would not be eligible for the lump sum payment prescribed at subsection 234(2) of the MRCA;

9.6 the MRCA’s current pension rate for dependent children prescribed at sections 253 and 254 be maintained;

9.7 the MRCC consider further the question of compensation for former partners and provide advice to the Government, taking account of whole-of-government issues and legal matters; and

9.8 the amount of compensation for financial advice provided under sections 81, 202 and 239 of the MRCA be increased to at least $2,400 and continue to be indexed by the Consumer Price Index.