Governance arrangements

Chapter summary

Administration and governance of the Military Rehabilitation and Compensation Act 2004 (MRCA) is shared between the Australian Defence Organisation (Defence; the employer) and the Department of Veterans’ Affairs (DVA; the scheme administrator). Three recommendations about governance from the Tanzer Review in 1999 were agreed to by the government of the day, but were not implemented when the MRCA was enacted. The current Review examined why these recommendations were not adopted.

The Tanzer Review proposed that the Australian Defence Force (ADF) should not be covered under the occupational health and safety (OHS) legislation of the time, but should be covered under the MRCA, or that ADF-specific OHS legislation be enacted. Since OHS legislation is different to compensation legislation, and there are moves towards harmonising OHS legislation across jurisdictions by 2012, the Tanzer proposal no longer has relevance or benefit to Defence. The Committee recommends that the current arrangements continue.

The Tanzer Review also proposed that the Minister for Defence should be responsible for the MRCA. The government at the time changed this to the Minister for Veterans’ Affairs, since military compensation is core business for DVA, but not for Defence. The Committee recommends that the Minister for Veterans’ Affairs continue to be responsible for the MRCA.

In addressing funding and ministerial responsibility, the Tanzer Review believed that Defence should introduce a premium, payable to the Department of Finance and Deregulation. This has not been pursued by Defence or DVA, although the Australian Government Actuary has been calculating a notional premium for military compensation since the 1990s. The MRCA is funded on the basis of emerging costs, with its expenditure appropriated from the Budget.

The Committee is sympathetic to making the costs of military compensation more visible, but believes that a premium-based model is not appropriate for the ADF. There are difficulties in capturing compensation data, concern about commanders’ ability to adjust their unit’s activities in response to rising OHS costs, and a lengthy time required to know whether the calculation made was correct. The Committee recognises that the absence of an effective price signal is a barrier to understanding the dollar cost of service-related deaths, injuries and illnesses in the ADF.

Military compensation costs play a minor role in improving ADF OHS performance. Peacetime activities are covered under the same OHS regulations as civilians, with some exceptions, and peacetime service makes up the bulk of both claims and costs under the MRCA. This may change as the MRCA matures or operational tempo increases.

A more integrated approach to OHS and military compensation is required from DVA and Defence. The two organisations have different responsibilities but common goals, and a collaborative approach is needed to improve effectiveness and accountability. The Committee recommends that the two agencies should jointly determine the most appropriate future arrangements for operation of the MRCA, rather than revising the existing Memorandum of Understanding, which has little practical application.

Accurate and timely management information sharing is central to this approach. A system that is integrated with Defence’s OHS and health information management systems would improve efficiency for both agencies. DVA claims assessors could interrogate Defence
incident data and access medical and payroll information data directly. This could significantly reduce the time taken to process many claims. The Committee believes that Defence and DVA should devote greater effort and resources to developing and implementing more integrated systems.

The Military Rehabilitation and Compensation Commission membership consists of three members of the Repatriation Commission, a member nominated by the minister administering the *Safety, Rehabilitation and Compensation Act 1988* (currently the nominee is the Chief Executive Officer of Comcare), and a member nominated by the Minister for Defence (currently an ADF member at the two star rank level, the Head of People Capability). The Committee believes that the addition of another member to represent Defence has significant potential benefits and should be considered.

### Introduction

18.1 Administration and governance of the *Military Rehabilitation and Compensation Act 2004* (MRCA) is shared between the Australian Defence Organisation (Defence; the employer) and the Department of Veterans’ Affairs (DVA; the scheme administrator). The way information is captured, interpreted and used to aid decision making and improve MRCA administration is an important element of the MRCA’s governance arrangements, as is the structure and operation of the legislation’s governing body, the Military Rehabilitation and Compensation Commission (MRCC).

18.2 This chapter describes and analyses three recommendations by the Tanzer Review dealing with key governance issues. These recommendations were approved by the then government, but were not implemented when the MRCA was enacted.

18.3 This chapter includes an overview of Defence’s occupational health and safety (OHS) management systems and the need to adopt a more integrated approach. It also considers a more effective use of management information.

### Background

18.4 The independent Tanzer Review\(^1\) was established to develop options for a discrete compensation scheme for the Australian Defence Force (ADF). In 1999, its recommendations led to the then government, with bipartisan support, establishing a new scheme (the MRCA) for the ADF, based on modern workers’ compensation principles.

18.5 Three of the recommendations of the Tanzer Review\(^2\) about governance were agreed to by the then government, but were not implemented when the MRCA was enacted. The Tanzer Review clearly saw these proposals as being important to the establishment of the legislation it was recommending. It is appropriate for the current Review to examine the approach taken, and attempt to understand what was proposed and the reasons for not adopting those particular recommendations.

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\(^2\) ibid., pp. 81–7.
Australian Defence Force coverage under the Occupational Health and Safety Act

18.6 The Tanzer Review proposed that the ADF be removed from the operation of the Occupational Health and Safety (Commonwealth Employment) Act 1991, and that new compensation legislation should include the ADF’s OHS responsibilities and requirements.

18.7 Tanzer proposed that, if this was unacceptable to government, ADF-specific OHS legislation should be enacted. Inherent in this proposal was the establishment of a new regulatory body within Defence. Tanzer argued that:

If the compensation (injury management) arrangements for the ADF need to recognise the special requirements of military service, it follows that safety (injury prevention) arrangements should also be structured to take account of those ADF employment requirements.

18.8 OHS within the ADF continues to be regulated under the Occupational Health and Safety Act 1991 (OHS Act). However, under a Notice of Declaration of 26 April 1995, issued in accordance with section 7 of the OHS Act, accidents and dangerous occurrences in respect of members involved in operational deployments, deployments in support of the United Nations or sporting activities are no longer required to be notified under section 68 of the OHS Act (notification of accidents and dangerous occurrences).

18.9 OHS legislation is quite different from workers’ compensation legislation, which is more prescriptive and detailed. Separate legislation deals with OHS and workers’ compensation in all jurisdictions.

18.10 Tanzer argued that, because the ADF was required to conduct peacetime training activities that were inherently more risky than civilian employment, this could best be achieved through specific ADF legislation and a self-regulatory approach.

18.11 The current Review is not aware of any Chief of the Defence Force or Service Chief since the Tanzer Review in 1999 expressing the opinion that the ADF should self-regulate because ADF training activities are impeded by the requirement to be covered under the OHS Act. Self-regulation would invariably lead to extensive criticism concerning a lack of independence if a major accident involving ADF personnel occurred.

18.12 In light of moves towards ‘harmonisation’ of OHS legislation across the jurisdictions by 2012, the Tanzer proposal no longer has relevance or benefit to the ADF.

Funding and ministerial responsibility

18.13 Funding is a critical element in all workers’ compensation schemes. The majority of employers pay premiums (expressed as a percentage of the employer’s total wages bill) to fund the support provided to workers and their dependants in the event of work-related deaths, injuries or illnesses. The payment of premiums is important in ensuring

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4 N Tanzer, op. cit., p. 41.

accountability. Premium rates are generally pooled across similar risk profile employers, allowing the risk to be spread.

18.14 The Tanzer Review’s position was that a premium payable to the Department of Finance and Deregulation should be introduced by Defence in establishing the new scheme. In arguing for this, it stated:

The Review considers that if the objective of improving occupational health and safety performance is to be achieved, a premium-based model should be adopted for the new scheme. This is because the annual cost to Defence would be linked to current injury cost. However, the ability to achieve this objective would be diminished if the premium could not be devolved to an appropriate level in the Defence Organisation so that commanders have responsibility for injury costs.  

6 N Tanzer, op. cit., p. 81.

18.15 Although the Australian Government Actuary has been calculating a notional premium for military compensation since the 1990s, the move to an actual premium-based model for the ADF has not been pursued by Defence or DVA. The MRCA is funded on the basis of emerging costs, with its expenditure appropriated directly from the Australian Government Budget.

18.16 Tanzer also proposed that the Minister for Defence be responsible for administering the new legislation. The then government changed its original decision and made the Minister for Veterans’ Affairs responsible for the MRCA. Military compensation is not considered to be core business for Defence, with compensation claims administered through DVA.

18.17 If Defence had taken responsibility for the legislation, it would have also been required to take on additional policy responsibilities, such as health studies, veterans’ health and the provision of veterans’ medical and associated services — all of which is DVA core business.

18.18 There were concerns that the Minister for Veterans’ Affairs would have no direct role in the administration of the new legislation, unless the occupant of that office was also appointed Minister Assisting the Minister for Defence; a situation that was likely to create policy confusion and opposition from within the veteran community.

18.19 The Tanzer Review considered that by making Defence responsible for the legislation, the costs of service-related deaths, injuries and illnesses would have a higher visibility and, with the use of a premium, influence the behaviour of commanders in managing their OHS responsibilities.

Problems with a premium-based model

18.20 While the Committee is sympathetic to making the costs of military compensation more visible, a number of factors suggest that a conventional workers’ compensation premium would not work in the ADF environment.

18.21 There are problems associated with capturing compensation data that is not largely historical. This problem, which is inherent in the calculation of all workers’ compensation premiums, is significantly more pronounced with military compensation due to greater time lags between injuries and claims.
18.22 There is a concern about the ability of commanders to adjust their unit’s activities in response to rising OHS costs. This presumes that commanding officers have total control, as well as complete knowledge and information within their area of responsibility. Tension would invariably be created across the ADF, because of the differing levels of risks that can exist between individual units and the three Services in general.

18.23 The Australian Government Actuary acknowledges the difficulty of developing accurate premium calculations for the ADF, and the time required to know whether the calculation made was correct. By the time the calculation is considered to be close to being ‘correct’ in a dynamic organisation such as the ADF, the circumstances are likely to have changed.

Visibility of military compensation costs

18.24 The Review recognises that the absence of an effective price signal is a barrier to understanding the dollar cost of service-related deaths, injuries and illnesses in the ADF. ADF managers and commanders, while aware of the effects on individuals and on the capability of their units, are unaware of the dollar cost of poor OHS practices. These costs are covered in rehabilitation and health budgets in Defence, and rehabilitation and compensation budgets in DVA.

Australian Defence Force notional premium

18.25 The ADF’s notional premium calculated by the Actuary is presently in the range of 4–5 per cent when averaged across the three Services, as opposed to 1–1½ per cent for Defence civilians.7 This premium attempts to estimate the lifetime cost of service-related deaths, injuries and diseases likely to be sustained during the coming year, minus the cost of in-Service medical and health treatment, which is not captured in the notional premium.

The Defence safety management system

18.26 In the course of the Review, it became evident that military compensation costs play a minor role in improving ADF OHS performance.

18.27 As previously noted, the ADF’s peacetime activities have been subject to the same OHS regulations as civilian workers within the Commonwealth jurisdiction for almost 20 years. The ADF is subject to regulation by the Commonwealth’s OHS regulators, Comcare and the Safety, Rehabilitation and Compensation Commission (SRCC). The ADF’s activities also come under the Australian Radiation Protection and Nuclear Safety Act 1998 and are regulated by the Australian Radiation Protection and Nuclear Safety Agency. For the purposes of the OHS Act, the Chief of the Defence Force is the employing authority.

18.28 The ADF does have certain exemptions under the OHS Act, such as not being required to appoint health and safety representatives or having to prescribe designated

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7 This notional premium for the ADF is not to be confused with the premium that applies to Defence’s civilian employees. The Defence civilian premium for 2008–09 was 1.01 per cent, down from 1.27 per cent the previous year and well below the Commonwealth average of 1.36 per cent.
work groups. It is also exempt from reporting to Comcare on accidents and dangerous incidents occurring on operational deployments or as a result of organised sporting activities. Historically, Comcare has not sought to use its investigative powers in the area of operational deployments.

18.29 Analysis of MRCA data reveals that compensation claims for operational service account for 10–15 per cent of total claims, and slightly more than that in costs. Peacetime service makes up the bulk of both claims and costs under the MRCA.

18.30 Subject to the future operational requirements of the ADF, the ratio of operational service to peacetime service claims may change as the MRCA matures. Increased operational tempo combined with the effect of the more beneficial MRCA standard of proof for operational service is likely to result in increased operational service claims. However, the proportion of claims is unlikely to change to the extent that operational service claims would outnumber peacetime MRCA claims.

18.31 For a number of years, Defence has sought to improve its OHS performance. In 2004, following the F-111 Deseal/Reseal Board of Inquiry, it established a dedicated, corporate Occupational Health, Safety and Compensation Branch.

18.32 The key features of Defence’s safety management systems are:

- the chain of command has primary responsibility to ensure workplace and personnel safety within its respective area of control;
- the OHS governance framework supports the chain of command in discharging this responsibility through a tiered committee system, with the Defence Occupational Health and Safety Committee responsible for overseeing the Defence Occupational Health and Safety Strategy 2007–12, associated activities and a number of key safety appointments;
- implementation of a federated occupational health and safety management system, allowing the Services and Defence groups to implement flexible workplace procedures and practices while providing a corporate OHS management capability; and
- implementation of the OHS Strategy to reform the management of OHS throughout Defence and realise performance improvements.

### Comcare investigations

18.33 In 2009–10, Comcare conducted a total of 48 investigations in Defence, almost all of which were in respect of ADF activities. This was down from 66 in 2008–09 and 107 in 2007–08. For 2009–10, Comcare investigators issued 38 notices, such as improvement, prohibition and do not disturb notices, as well as letters of statutory obligation and letters of warning.8

18.34 In 2009–10, Defence reported a total of 15,676 OHS incidents, along with 1,175 serious personal injuries during the reporting period. The figures for 2007–08 and 2008–09 were 16,468 and 17,641 for total incidents, and 1,125 and 1,284 for serious

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8 Department of Defence, *Annual report 2009–10*, Department of Defence, Canberra, 2010, pp. 369–70. Note that Comcare undertakes three types of investigations: reviews of previous investigation, targeted investigations (at specific OHS concerns) and reactive investigations (in response to an accident or incident).
personal injuries, respectively. Defence sources suggest that the ADF accounts for approximately 30 per cent of Comcare’s regulatory workload.

An integrated approach to safety management and military compensation

18.35 Although ADF OHS and military compensation are the responsibility of separate agencies, there is a substantial overlap between them. Defence and DVA manage their respective responsibilities, but they have common goals and objectives. OHS and military compensation are parts of a ‘single system’.

18.36 The Committee found that ADF members have little understanding of the operation of the MRCA or its underlying policies, and DVA has only a limited understanding of OHS in the ADF. The Committee concluded that the connection between OHS and military compensation is tenuous.

18.37 In order for Defence and DVA to achieve a higher level of effectiveness and accountability, it is essential that a stronger culture and a collaborative partnership approach be promoted. The two agencies need to work together in a complementary manner as their roles are not mutually exclusive.

18.38 There is also an urgent need for accurate and timely management information about OHS issues and military compensation claims. Defence needs to have comprehensive knowledge and understanding of the OHS risks affecting both serving and former members. Former members should not be just seen as ‘DVA’s responsibility’; the injuries and illnesses they suffer provide essential information that can help introduce measures to improve safety outcomes for serving members. An effective and sophisticated use of management information would allow Defence to be more aware of the cost drivers associated with military compensation, achieving similar results to the premium-based model recommended by the Tanzer Review.

18.39 When the MRCA was enacted, it was intended that compensation claims by serving members would be visible to Defence. In articulating the rationale for providing this information to Defence, the Explanatory Memorandum for the Military Rehabilitation and Compensation Bill 2003 stated:

The Service Chiefs are responsible for ensuring that members of the ADF are able to meet readiness programs for potential deployments for national security and defence. This responsibility entails maintaining a visibility of the physical and health status of ADF personnel. ... The Service Chiefs need to receive the notice in order to consider the impact of compensable injuries, diseases and deaths on capability, safety and health issues.

18.40 This reform was instituted because significant compensation claims were being granted in relation to serving members without the knowledge of the respective Service Chief, an issue that has ongoing implications for military capability.

Management information

18.41 MRCA claims now provide more contemporary information on military service injuries and illnesses than those arising from Safety, Rehabilitation and Compensation Act

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9 Ibid., p. 368.
1988 (SRCA) claims. An effective management information system, managed by DVA and shared with Defence, would provide Defence managers and commanders with additional information necessary for them to be aware of the factors contributing to the cost of OHS, rehabilitation and compensation for ADF members.

18.42 Current compensation data is provided by DVA to Defence on a quarterly basis. It focuses on processing data and does not include indicators necessary to strategically examine system performance. For example, data on length of time between injury and claim lodgement are not included. Reducing the existing time lag before claim lodgement after injury should be a focus of Defence and the MRCC.

18.43 DVA has access to Defence data through a Single Access Mechanism. As noted in Chapter 16, this arrangement works reasonably well, given the need for DVA to deal with different parts of Defence to obtain information about salary, allowances, service records and unit medical records.

18.44 A system that is integrated with Defence’s OHS and health information management systems would lead to considerable improvements and efficiencies for both agencies. This would allow DVA claims assessors to interrogate Defence incident data, as well as directly access medical and payroll information data.10 This could significantly reduce the time taken to process many claims.

18.45 The Review was informed that Defence could improve its capability in capturing quality information, analysing it and reporting on its OHS performance. This would assist ADF commanders to fully appreciate the OHS implications of the ADF’s decisions and activities. More effective management of OHS and compensation data is essential for improvement, including data on the extent to which injuries and illnesses may result in current and projected compensation claims.

18.46 Increased safety intelligence could be useful in designing measures to ensure injured members lodge compensation claims promptly. This would assist DVA in claim investigation and administering benefits, and provide the Australian Government with a better understanding of its ongoing military compensation liability. The Committee believes that both Defence and DVA need to make more concerted efforts to develop and implement management information systems that allow both agencies to share data in relation to OHS and military compensation.

18.47 With more effective management information systems operating within and between the two agencies, it should be possible to make more practical use of the Actuary’s notional premium calculation, and the accuracy of that calculation would be aided by the availability of comprehensive, contemporary data.

**The Military Rehabilitation and Compensation Commission**

18.48 The MRCC was created when the MRCA was introduced. This was a new, five-person commission responsible for strategic monitoring and management of the scheme’s performance. In doing so, it was required to undertake a range of performance evaluations and report annually on those matters to ministers. It was also required to report regularly to the Secretary of the Department of Defence and the Chief of the Defence Force on operational aspects of the new scheme.

10 Certain information can be accessed directly by DVA now through PMKeys.
18.49 The MRCC membership consists of three members of the Repatriation Commission, a member nominated by the Minister administering the SRCA (currently the nominee is the Chief Executive Officer of Comcare), and a member nominated by the Minister for Defence (currently an ADF member at the two star rank level, the Head of People Capability).  

18.50 Members of the MRCC hold office on a part-time basis and, if they are employed full-time by the Australian Government, do not receive additional remuneration. Meetings are convened by the Chair or at the request of at least three members. A quorum is four members and questions arising at a meeting are decided by a majority vote of the members present and voting, with the presiding member holding both a deliberative and, if necessary, casting vote. Resolutions made without a meeting are decided by a majority of members.

18.51 One submission to the Review suggested that the membership of the MRCC should be expanded because ‘there are serious omissions in the representation of the veteran community and the Reserves’ and that ‘these two groups should be separately represented by a member experienced in government procedures and in the field of industrial disputation’.

18.52 All members of the MRCC are very experienced in government processes, being either senior government employees or senior members of the ADF. The functions of the MRCC are set out in section 362 of the MRCA, including making determinations under the MRCA, minimising the impact of injuries and diseases to ADF members, promoting the return to work of ADF members and undertaking relevant research. None of these functions require expertise in industrial disputes.

18.53 Defence believes that current Defence representation on the MRCC is inadequate, given the breadth and complexity of the OHS and compensation issues facing ADF commanders and managers. This can be illustrated by a collaborative Defence and DVA activity, the Support for Wounded, Injured or Ill Project, which aims to develop a seamless and integrated support process for injured or ill ADF members throughout their service career, and in transition from the ADF. This project will undertake a gap analysis of current Defence, single-Service and DVA incident reporting, welfare, health care and rehabilitation, compensation and transition policies.

18.54 Defence proposes an additional member for the MRCC. The inclusion of a second member nominated by the Minister for Defence from the Department of Defence or the ADF on the MRCC (such as the Head of Joint Command Health) could be of significant benefit to both the MRCC and Defence, particularly in facilitating the improvements necessary to allow DVA and Defence to share information effectively.

18.55 The addition of a second part-time Defence member of the MRCC would have little effect on its proceedings. The quorum of four members would still be appropriate. The addition of another member may increase the occurrence of a split vote, but the

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11 Section 364 of the MRCA.
12 Section 369 of the MRCA and subsection 7(11) of the Remuneration Tribunal Act 1973.
13 Section 373 of the MRCA.
14 Section 375 of the MRCA.
15 Subsection 376(1) of the MRCA.
16 Subsection 376(2) of the MRCA.
17 Section 377 of the MRCA.
18 Australian Veterans and Defence Services Council.
power of the deliberating member to make a casting vote does not change the balance of power. In practical effect, the MRCC tends to make decisions by reaching consensus. However, the equivalent of a casting vote for resolutions made without a meeting may need to be included to ensure that matters considered this way can be resolved.

18.56 Overall, the Committee believes that the addition of another member to also represent Defence has significant potential benefits and should be considered.

Conclusions

18.57 The Committee notes the reasons why two of Tanzer’s key governance recommendations (making the Minister for Defence responsible for the legislation and removing the ADF from the OHS Act) were not implemented.

18.58 The Committee notes that Defence has not introduced a premium-based model for military compensation, despite the recommendation to do so. However, the practical difficulties of implementing this within an organisation such as the ADF are acknowledged.

18.59 There is a strong case for making greater and more effective use of management information systems between Defence and DVA. In the Committee’s opinion, this would be an adequate and practical substitute for the absence of an actual premium. It may also allow the Actuary’s notional premium to be a more effective tool to evaluate OHS performance.

Recommendations

The Committee recommends that:

18.1 the Minister for Veterans’ Affairs continues to be responsible for administering the Military Rehabilitation and Compensation Act 2004 (MRCA);

18.2 subject to section 7 of the Occupational Health and Safety Act 1991 (OHS Act), service within the Australian Defence Force (ADF) continues to come under the OHS Act and be regulated by the Safety, Rehabilitation and Compensation Commission, Comcare and the Australian Radiation Protection and Nuclear Safety Agency;

18.3 greater effort and resources be devoted by the Australian Defence Organisation (Defence) and the Department of Veterans’ Affairs (DVA) to introduce comprehensive and effective management information systems for occupational health and safety and military compensation within and between both agencies;

18.4 the Government consider expanding the membership of the Military Rehabilitation and Compensation Commission by including a second member nominated by the Minister for Defence from the Department of Defence or the ADF, given the advantages this would bring for both Defence and the MRCC, especially in facilitating improvements in information sharing between DVA and Defence; and

18.5 Defence and DVA jointly determine the most appropriate mechanism for regulating their relationship, including defining their respective roles and responsibilities, in relation to the future administration of the MRCA.