Chapter summary

Non-liability health cover is available under subsection 85(2) of the Veterans’ Entitlements Act 1986 (VEA) for the treatment of pulmonary tuberculosis (TB), malignancies (cancer) and post-traumatic stress disorder (PTSD). Determinations made under section 88A provide further non-liability health cover for other psychiatric conditions, such as anxiety disorder. Both these provisions also apply to members who have rendered warlike and non-warlike service (operational service) after 1 July 2004 where they do not have the condition accepted under the Military Rehabilitation and Compensation Act 2004 (MRCA). Members who entered the Australian Defence Force (ADF) after 1994 and have peacetime service only are not eligible for non-liability health cover.

One submission to the Review argued for treatment of malignancies for all members, regardless of service type. Comments at public consultation meetings concerned the lack of automatic coverage for treatment of psychiatric disorders and malignancies for members with only peacetime service; comments were particularly strong about psychiatric conditions.

Treatment coverage for TB now has limited application, with a very small volume of claims made under the MRCA. Extending non-liability health cover for TB for all modern-day peacetime service is not considered necessary. Similarly, the low numbers of claims for malignancies under the MRCA to date indicate that there is not a substantial need to extend non-liability health cover to all peacetime former members covered under the MRCA. The Committee considered whether a subgroup of members should be defined for this purpose, using full-time status or length of service, but concluded that any extension could not be justified.

Current VEA non-liability health cover includes treatment for anxiety, depressive disorders and PTSD. These disorders represent 73 per cent of claims under the MRCA for psychiatric conditions; other claims are for conditions not included in VEA non-liability health cover (including acute stress disorder, adjustment disorder, bipolar disorder, panic disorder, personality disorder and schizophrenia). Recent reviews have drawn attention to the need for improvements in the care of all members and former members with mental health conditions.

As at 31 December 2010, there had been 683 claims from ADF members with peacetime service only for psychiatric conditions covered under the VEA non-liability treatment provisions; of those, 363 claims were rejected. The Department of Veterans’ Affairs (DVA) has estimated that the cost of providing non-liability treatment for this group would be approximately $6 million over four years. However, there may also be offsets to government costs through non-use of Medicare arrangements that are not included in this estimate.

The Committee was divided in its view on whether the MRCA should be used to extend non-liability treatment for psychiatric conditions to former members of the ADF with peacetime service only.

Committee members representing the DVA and the Australian Defence Organisation, and Mr Peter Sutherland believe that non-liability health cover for all psychiatric disorders should be provided under the MRCA for former ADF members and part-time Reservists who have served after 1 July 2004. These Committee members also believe that this is consistent with the thrust of recommendations of recent reviews including the suicide
study by Professor David Dunt, which drew particular attention to members’ needs around the period of transition to discharge and did not limit consideration to those who had operational service.

The Committee members representing the Department of Finance and Deregulation, the Treasury and the Department of Education, Employment and Workplace Relations believe the MRCA (or Safety, Rehabilitation and Compensation Act 1988) is not an appropriate vehicle to extend non-liability health cover for all psychiatric disorders to former ADF members and part-time Reservists with peacetime service only. In principle, compensation schemes should only deal with cases where liability is established.

These members recommend that Defence and DVA gather further evidence to establish both the benefit and need of additional psychiatric care for this group separate to the existing general health services. If need and benefit are established, then options could be explored to deliver such health coverage outside of compensation legislation and presented to the Australian Government.

Introduction

25.1 This chapter addresses issues raised by stakeholders regarding the continuing non-liability health cover for certain conditions under the Veterans’ Entitlements Act 1986 (VEA) after 1 July 2004 for former members with warlike and non-warlike service.

Background

25.2 Non-liability health cover is coverage by the Department of Veterans’ Affairs (DVA) for treatment without the need to establish service causation. This is available under subsection 85(2) of the VEA for the treatment of pulmonary tuberculosis (TB), malignancies and post-traumatic stress disorder (PTSD). This clause continues to apply to members with warlike and non-warlike service where they do not have the condition accepted under the Military Rehabilitation and Compensation Act 2004 (MRCA).

25.3 Non-liability health cover has obvious advantages for early intervention through treatment to lessen the impact of the condition without the need to await acceptance of liability.

25.4 DVA also administers a specific non-liability health cover scheme for all cancers, irrespective of causation, for all Australian military personnel, Australian public service employees and third party civilian contractors who participated in the British nuclear test programs in Australia.

25.5 This approach in veterans’ legislation commenced in 1935 when the regulation authorising treatment was widened to include all veterans who were suffering from TB. Difficulties in assessing whether TB was attributable to war service had been noted since the 1920s.

25.6 In 1973, cancer treatment entitlements were extended to all those who had served in a theatre of war, whether the cancer was war caused or not. This was introduced at the same time as the extension of free treatment for all Boer War and First World War veterans. In 1975, treatment for malignancies was extended to Australian Defence Force (ADF) members having only peacetime service. This ceased for new

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1 Statutory Rules, No. 136 of 1935.
members with the introduction of the *Military Compensation Act 1994* when the VEA was closed off for other than warlike or non-warlike service (operational service).

25.7 Non-liability health cover for PTSD was introduced with a range of measures for ‘younger veterans’ as part of the 1995–96 Budget.

25.8 The VEA was amended in 2000 to include section 88A, which allows the Repatriation Commission to provide treatment of a specified kind to a veteran included in a specified class (or a person who is or was a dependant of such a veteran). Relevant determinations by the Repatriation Commission include:

- veterans and other members entitled under the VEA who suffer an unidentified condition (a medical condition that does not satisfy diagnostic criteria in current evidence-based medicine);³
- veterans and other members entitled under the VEA suffering an anxiety or depressive disorder;⁴ and
- psychiatric assessments of dependants of war veterans.⁵

25.9 MRCA clients with operational service since 1 July 2004 continue to be covered by the VEA provisions. Members entering the ADF after 1994 and having peacetime service only do not have eligibility for non-liability health cover under the VEA, nor subsequently under the MRCA.

**Submissions**

25.10 One submission⁶ sought treatment for malignancies and psychiatric conditions as per subsection 85(2) and section 88A of the VEA for all members regardless of service type. Comments at several public consultation meetings concerned the lack of automatic coverage for treatment of psychiatric disorders and malignancies for current and former members with only peacetime service. Comments were particularly strong about the lack of coverage for psychiatric conditions.

**Tuberculosis**

25.11 The long-standing treatment benefit for TB has very limited application, as instances of TB are now very low. The volume of MRCA claims at the primary level and the accepted/rejected rates for TB conditions, from 1 July 2004 to 31 December 2010, is shown in Table 25.1.

<table>
<thead>
<tr>
<th>Types of service</th>
<th>Total</th>
<th>Accepted</th>
<th>Rejected</th>
</tr>
</thead>
<tbody>
<tr>
<td>All service types</td>
<td>38</td>
<td>28</td>
<td>10</td>
</tr>
<tr>
<td>Peacetime service only</td>
<td>10</td>
<td>4</td>
<td>6</td>
</tr>
</tbody>
</table>

MRCA = *Military Rehabilitation and Compensation Act 2004*

25.12 As the table shows, claims were rejected for 10 persons with TB. Of these, four were able to claim treatment costs from DVA and six with peacetime service only would have had to seek treatment through the ADF (if a serving member), Medicare or privately.

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⁶ Australian Peacekeeper and Peacemaker Veterans’ Association.
25.13 Of the 10 claimants for TB with peacetime service only, two were from former members. One claim was accepted. Based only on claims lodged, therefore, just one person over the past six years may have sought DVA health cover without this being an accepted liability due to service.

25.14 The circumstances in which TB can be accepted as service-related are now more definable than when this condition was first covered by non-liability provisions in 1935. The relevant Statement of Principles (SoP) lists 22 specific exposures, any one of which is accepted as causation for the purposes of MRCA liability. Extension of non-liability health cover for TB for all modern-day peacetime service is not considered necessary at this time.

Malignancies

25.15 The volume of claims at the primary level and the accepted/rejected rates for malignant conditions, from commencement of the MRCA to 31 December 2010, is shown in Table 25.2.

Table 25.2 Malignancy claims under the MRCA to 31 December 2010

<table>
<thead>
<tr>
<th>Types of service</th>
<th>Total</th>
<th>Accepted</th>
<th>Rejected</th>
</tr>
</thead>
<tbody>
<tr>
<td>All service types</td>
<td>130</td>
<td>79</td>
<td>51</td>
</tr>
<tr>
<td>Peacetime service only</td>
<td>103</td>
<td>59</td>
<td>44</td>
</tr>
</tbody>
</table>

MRCA = Military Rehabilitation and Compensation Act 2004

25.16 As the table shows, liability was not established for 51 persons with malignancies. Of these, seven were able to claim treatment costs from DVA and 44 would have had to seek treatment through the ADF (if a serving member), Medicare or privately. This group would have had non-liability health cover under the VEA if they rendered continuous full-time service between 1975 and 1994.

25.17 These low numbers do not indicate a substantial need for health cover for malignancies for all persons covered by the MRCA. The Committee considered whether a subgroup of members should be defined for this purpose, using full-time status or length of service, but concluded that any extension could not be justified.

Psychiatric conditions

25.18 Current VEA non-liability health cover extends to anxiety, depressive disorders and PTSD. These disorders represent 68 per cent of claims under the MRCA for psychiatric conditions.

25.19 The volume of MRCA claims at the primary level and the accepted/rejected cases from 1 July 2004 to 31 December 2010 are shown in Table 25.3. This table includes only those conditions included in VEA non-liability health cover.

Table 25.3 Psychiatric claims (all) under the MRCA to 31 December 2010

<table>
<thead>
<tr>
<th>Types of service</th>
<th>Total</th>
<th>Accepted</th>
<th>Rejected</th>
</tr>
</thead>
<tbody>
<tr>
<td>All service types</td>
<td>1,144</td>
<td>730</td>
<td>412</td>
</tr>
<tr>
<td>Peacetime service only</td>
<td>683</td>
<td>319</td>
<td>362</td>
</tr>
</tbody>
</table>

MRCA = Military Rehabilitation and Compensation Act 2004
25.20 The group that would otherwise be liable to pay for their own treatment upon disallowance of their claim are those who are not serving full-time; mainly former members and Reservists. These would form the major component of the 363 claims rejected for claimants with only peacetime service.

25.21 DVA’s initial estimate is that the cost of providing non-liability treatment for this group would be approximately $6 million over the four out years. However, there may also be offsets to government costs through non-use of Medicare arrangements that are not included in this estimate.

**Psychiatric conditions from peacetime compared to warlike or non-warlike service**

25.22 Professor Dunt’s review of mental health care drew attention to the interrelationship between military culture and mental health issues. He made recommendations for resilience training to increase a member’s ability to withstand the stresses that can be expected during service life. His report does not refer to non-liability health cover as this was not within his terms of reference. Importantly, Dunt’s recommendations are not confined to mental health care for members who have been deployed on operational service. Dunt states in his executive summary:

> These [stresses] are not only combat related but also include working and living on bases and on deployment, interacting with others including the chain of command.

Dunt also notes that:

> Mental health presents obvious extra challenges for armed forces, the ethos of which is necessarily values physical and mental toughness as well as teamwork. There are many barriers to seeking mental health care in the ADF and these need to be addressed …

> [the current Medical Employment classification system] encourages members to conceal their mental, and for that matter, physical health problems.

> Failure to succeed in the ADF for whatever reason sets in train a sequence of possible negative reactions – anger and resentment against the ADF, failure to find new employment, illness and invalidism … This is most undesirable in both personal and economic terms for the individual, ADF and community.

25.23 Professor Dunt stresses the importance of a seamless transition to discharge in his study into suicide in the ex-service community, recorded in the Government’s response. Of particular relevance are the following extracts from the Government report:

> [Dunt] Recommendation 5.4: It is important that members leaving the ADF with mental health (or other problems) are fulsomely acknowledged for their contribution to the ADF, particularly so as their health had deteriorated while they were in the ADF. This could take the form of a letter of thanks from CDF [Chief of the Defence Force] or Passing out Parade.

Government response: Accepted

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ADF members who are separating are to be pro-actively engaged and treated with care, consideration, and compassion. The separation process is to be as uncomplicated and stress free as possible and include formal acknowledgment of the member’s contributions to the ADF.

Recommendation 5.5: A Keeping in Touch program post-discharge with responsibility jointly by the ADF and DVA extends this healing process. In doing so, it is likely to make an important contribution to the proactive management of any emerging mental health problems.

Government response: Accepted

As mental health issues may not surface for some period after separation from the ADF a robust program that encourages contact with Defence and veteran organisations may serve to assist the better management and early detection of emerging mental health problems. Defence and DVA are currently exploring this issue.

25.24 Neither Professor Dunt nor the Government response to his reports separate the treatment entitlements of members with or without warlike service. While not raised specifically by Dunt, the current restriction of non-liability mental health cover to certain veterans has been criticised in ex-service organisation submissions and public consultations and this approach needs to be re-examined.

25.25 The fact that a person has been unwilling or unable to establish a compensable entitlement for a mental health condition while an ADF member or shortly thereafter, possibly due to the cultural issues referred to by Dunt, should not inhibit access to treatment. This is particularly relevant when they are going through the stress of transition to discharge or later disruptions in their lives which may well have arisen from or have been exacerbated by their period of service. While public programs may be available through Medicare, former ADF members having issues with transition may be reluctant to use these or may have to wait for places to become available.

25.26 While ADF members are in full-time service they are covered by ADF health arrangements for all treatment. There is the possibility that former members of the ADF with peacetime service only will not be able to access necessary treatment if they do not have the same access as their former colleagues who have warlike/non-warlike service. This may be important in addressing emerging problems at an early stage without the stress of waiting for compensation coverage to be confirmed.

Extension of non-liability treatment for psychiatric conditions

25.27 The Committee was divided in its view on whether non-liability treatment provided under the VEA for psychiatric conditions should be extended to members of the ADF with peacetime service only.

25.28 The Committee members representing DVA and the Australian Defence Organisation (Defence), and Mr Peter Sutherland believe that non-liability health cover for psychiatric conditions should be provided for all former ADF members and part-time Reservists who have served after 1 July 2004. These Committee members believe this will ensure that timely mental health treatment can be accessed by all former members, and assist government to follow through with its duty of care for those who are discharged and need to seek psychiatric care. These Committee members also believe that this is consistent with the thrust of recommendations of recent reviews including the suicide study by Professor Dunt, which drew particular attention to
members’ needs around the period of transition to discharge and did not limit consideration to those who had operational service.10

25.29 The Committee members representing the Department of Finance and Deregulation (Finance), the Treasury and the Department of Education, Employment and Workplace Relations (DEEWR) believe the MRCA is not an appropriate vehicle to extend non-liability health cover for all psychiatric disorders to former ADF members and part-time Reservists with peacetime service only. In principle, compensation schemes should deal only with cases where liability is established. These members recommend that Defence and DVA gather further evidence to establish both the benefit and need of additional psychiatric care for this group separate to the existing general health services. This should include analysis of the benefits of providing additional psychiatric care to this group and why needs are not currently being met through existing Defence or DVA programs or other community services. If need and benefit is established, then other options to deliver such health coverage outside compensation legislation could be explored and presented to government.

25.30 No members of the Committee supported extension of non-liability treatment for psychiatric conditions to former cadets or others covered by the MRCA due to their comparatively lower level of exposure to the unique nature of ADF service.

Other considerations

25.31 The Committee considered whether a provision similar to subsection 7(2) of the Safety, Rehabilitation and Compensation Act 1988 (SRCA) might be applicable to MRCA clients with mental health disorders. This section contains a test for the provision of benefits, namely that the incidence of a disease in a particular group of employees was higher than in another group undertaking other duties in the same location. This is the provision used to provide coverage under the SRCA to former F-111 maintenance workers for 31 specified conditions associated with this work. This SRCA provision covers all liability, not simply health cover. It was not considered a solution, as it would potentially complicate the overall liability provisions for the MRCA with its reliance upon the SoPs.

25.32 The Military Rehabilitation and Compensation Commission (MRCC) has a legislated means of introducing non-liability health cover for specified classes of members as the need arises.11 This provision could be used where liability under the MRCA is unable to be determined under SoPs because it is too early for sound scientific evidence to be available or there is no consistent diagnosis. These are circumstances similar to the illnesses suffered by particular peacetime service groups such as the F-111 fuel tank maintenance workers. Outcomes of extensive health studies on the Australian participants in the British nuclear tests and in Vietnam War veteran groups are also relevant. In major studies for these groups cancer rates above community norms were noted, but specific attributable evidence was not available. Non-liability health cover was considered to be the most appropriate means of ensuring treatment is provided for people in these groups.

25.33 Mental health issues were also identified as having a high incidence among these specific groups. Targeting benefits for such groups is considered preferable to

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10 Entitlement issues were not part of the Dunt Review’s terms of reference so there was no need for Dunt to comment on non-liability treatment under the VEA.
11 MRCA section 424 provides the scope for the MRCC to determine special assistance for members, former members or dependants.
legislating treatment-only coverage for specific disorders for all those who have served. The advent of longitudinal studies of the health of all serving members, discussed in Chapter 5, should improve the capacity to determine future needs for specific groups.

Conclusions

25.34 Committee members were not in favour of extending the current non-liability treatment arrangements for TB and malignancies to members with peacetime service only. Importantly, the Committee notes that the MRCA can provide special assistance for particular groups of ADF members as the need arises.

25.35 Recent reviews have drawn attention to the need for improvements in the care of all members and former members with mental health conditions. Public consultations by the Review drew out particular concerns about the lack of automatic coverage of mental health conditions for those with peacetime service only. Ultimately, the Committee was divided in its view on whether non-liability treatment for psychiatric conditions should be extended to members of the ADF with peacetime service only as follows:

- committee members representing DVA and Defence, and Mr Peter Sutherland believe that non-liability health cover for all psychiatric disorders should be provided under the MRCA for former ADF members and part-time Reservists who have served after 1 July 2004; and
- committee members representing the Finance, the Treasury and DEEWR recommend that Defence and DVA gather further evidence to establish both the benefit and need of additional psychiatric care for this group separate to existing general health services. If need and benefit are established, then options to deliver such health coverage outside compensation legislation could be explored and presented to government.

Recommendations

25.1 The Committee recommends that the Government consider:

(a) providing non-liability health cover under the Military Rehabilitation and Compensation Act 2004 for certain psychiatric conditions to all former members of the Australian Defence Force (ADF) and part-time Reservists who have served after 1 July 2004 – favoured by the Department of Veterans’ Affairs (DVA) and the Australian Defence Organisation (Defence) representatives and Mr Peter Sutherland; or

(b) requesting Defence and DVA to gather further evidence to establish both the benefit and need of additional psychiatric care, separate to the existing general health services, for former members of the ADF and part-time Reservists who have served after 1 July 2004. If benefit and need are established, then options could be presented to the Government to deliver such health coverage outside of compensation legislation – favoured by the Department of Finance and Deregulation, the Treasury and the Department of Education, Employment and Workplace Relations representatives.