Chapter summary

The majority of current serving Australian Defence Force (ADF) members contribute to the Military Superannuation and Benefits Scheme (MSBS), with some longer serving members remaining with the Defence Force Retirement and Death Benefits Scheme. Incapacity compensation payments and the Special Rate Disability Pension (SRDP) under the *Military Rehabilitation and Compensation Act 2004* (MRCA) are offset by the value of Commonwealth contributions towards superannuation benefits, under the principle that the Australian Government should not make duplicate income maintenance payments to the same person through both superannuation and compensation.

Submissions to the Review from ex-service organisations argue that superannuation should not be offset against compensation, as members have paid for their superannuation benefits through their own contributions. The Committee does not support this view, as only the Commonwealth contribution to superannuation payments is offset, not the member’s own contributions. If a member received benefits from the MSBS and the MRCA without offset, they could potentially have an income of over 175.5 per cent of pre-discharge salary for the first 12 months, and 150.5 per cent until retirement age. The Committee recommends that the offset of incapacity payments and the SRDP by the Commonwealth-funded superannuation received by the member should continue. As at 30 June 2010, half of MRCA incapacity payees out of a total of 748 recipients were in receipt of superannuation payments that offset their compensation.

Under the MRCA, only Commonwealth superannuation contributions are offset, not those from private employers. The principle of the Commonwealth not duplicating compensation and superannuation is not applicable for corporations that are not Commonwealth funded. However, this is seen by some as discriminatory against former Commonwealth employees, as the normal earnings and actual earnings calculations for incapacity payments do not take into account superannuation payments from private employers, and the scheme is therefore more beneficial for these members than those receiving only Commonwealth superannuation.

The definition of Commonwealth-funded superannuation schemes includes licensed corporations, meaning that contributions to a part-time Reservist’s superannuation scheme by a licensed corporation would be offset under the MRCA. The Committee recommends that the MRCA definition of Commonwealth superannuation scheme be amended to exclude licensed corporations, except Commonwealth licensed authorities.

Under the MRCA, superannuation offsets for incapacity payments apply to former ADF members only. In some circumstances, a current member may receive both Commonwealth superannuation and an incapacity payment, thereby duplicating Commonwealth payments. The Committee recommends the MRCA be amended to apply superannuation offsetting against incapacity payments for current members receiving Commonwealth superannuation, as well as former members.

The Committee also examined several submissions relating to why the Commonwealth does not pay contributions to superannuation, or compensate for lost superannuation contributions, for people on incapacity payments who are unable to work because of their compensable conditions. The Committee recommends that this issue be considered as part of a cross-agency working group on incapacity payments recommended in Chapter 10.

The Committee did not examine superannuation legislation or administration in depth, but did note the complexities of administration of invalidity and death benefits. One
submission criticised the lack of cooperation between agencies in the administration of death benefits. The Committee recommends that the scope for streamlining the administration of superannuation and compensation invalidity and death benefits be further considered across government.

Introduction

12.1 Current Australian Defence Force (ADF) members (other than part-time Reservists) contribute to the Military Superannuation and Benefits Scheme (MSBS), with some longer serving members remaining with the Defence Force Retirement and Death Benefits Scheme (DFRDB). Where members suffer an injury, disease or death while on service, they have compensation coverage through the Military Rehabilitation and Compensation Act 2004 (MRCA). An important principle is that the Australian Government should not make duplicate payments to the same individual for invalidity or retirement benefits through both superannuation and compensation. Incapacity payments under the Safety, Rehabilitation and Compensation Act 1988 (SRCA) or the MRCA, and the MRCA Special Rate Disability Pension (SRDP), are offset by the value of Commonwealth contributions towards superannuation benefits. There is no offset for superannuation against death benefits or permanent impairment payments.

12.2 Where death or medical discharge occurs, the ADF member or family will have considerable dealings with the Department of Defence for final payments of salary and allowances, and will then seek benefits from at least two administering agencies: ComSuper for military superannuation, and the Department of Veterans’ Affairs (DVA) for compensation.

12.3 The focus of this chapter is the interaction of compensation and superannuation, including matters arising from the SRCA and the Veterans’ Entitlements Act 1986 (VEA), the Acts that apply to ADF members’ compensation before 1 July 2004. Issues to be addressed are the offset of compensation payments by amounts received from Commonwealth-funded superannuation, and certain technical amendments to the MRCA.

Background

12.4 Both the DFRDB and MSBS are defined benefits schemes funded by the Commonwealth as the employer. DFRDB members contribute 5.5 per cent of the annual rate of pay for the highest pay grade for the member. MSBS contributions vary between 5 and 10 per cent of salary at the member’s option, and contributions are returned with interest at retirement age. Entry to the DFRDB was closed when the MSBS commenced for new members (with some existing DFRDB members electing to join the MSBS) on 1 October 1991. The majority of current serving members are covered under the MSBS. The schemes have different benefit structures and offsets against incapacity payments payable under the SRCA and MRCA.

12.5 A member may be discharged from the ADF on invalidity grounds if he or she does not meet the required standards of fitness for retention in the military, even though they may be capable of employment in the civilian workforce. The cause of the incapacity is not relevant for superannuation purposes. The determination of the percentage incapacity has regard to the member’s vocational, trade and professional skills, qualifications and experience; the kinds of civilian employment a person with those skills, qualifications and experience might reasonably undertake; and the degree
the member’s ability to undertake that type of employment has been diminished by the physical or mental impairment causing the retirement.

12.6 The following table indicates the superannuation invalidity benefits payable under the two military schemes for the three levels of incapacity to work, from 60 per cent or more incapacitated to less than 30 per cent.

### Table 12.1 Invalidity benefits — military superannuation schemes

<table>
<thead>
<tr>
<th>Percentage incapacity</th>
<th>DFRDB benefit</th>
<th>MSBS benefit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class A: 60% or more</td>
<td>76.5% of annual rate of pay (for super purposes) applicable to the member immediately before retirement</td>
<td>Pre 1999 member component refunded, balance preserved to preservation age. Commonwealth-funded pension based on years of actual and prospective service to compulsory retiring age</td>
</tr>
<tr>
<td>Class B: 30% to &lt;60%</td>
<td>38.25% of annual rate of pay (for super purposes) applicable to the member immediately before retirement or the normal rate of retirement pay, whichever is the greater</td>
<td>Pre 1999 member component refunded, balance preserved to preservation age. Commonwealth-funded pension the higher of 50% of the Class A rate, or the pension calculated on an accrued multiple to date of discharge</td>
</tr>
<tr>
<td>Class C: &lt;30%</td>
<td>30% to 76.5% of annual rate of pay (for super purposes) depending upon completed years of service</td>
<td>Pre 1999 member component refunded, balance preserved to preservation age</td>
</tr>
</tbody>
</table>

DFRDB = Defence Force Retirement and Death Benefits Scheme, MSBS = Military Superannuation and Benefits Scheme

12.7 The MSBS member benefit (the ADF member’s own contributions plus interest) is refunded in full as a lump sum, generally on retirement from the workforce. The ongoing employer benefit, paid as a fortnightly pension, is 100 per cent Commonwealth-funded and it is this benefit that is offset before calculating SRCA or MRCA incapacity payments. DFRDB benefits have been assessed as 80 per cent Commonwealth-funded and this is the proportion offset against SRCA or MRCA payments.

12.8 Table 12.1 concentrates on members who take invalidity retirement. Age retirement benefits are determined by age and years of service, and are calculated under the trust deed for the particular scheme. Essentially the same offset procedures as above apply to Commonwealth-funded components of age retirement benefits. They are offset against any incapacity payments and the SRDP, where both arise from the same period of ADF service.

12.9 Former ADF members may be eligible for compensation for loss of income due to service-related conditions under the SRCA or MRCA. The basic elements of post-discharge incapacity payments are shown in Table 12.2.
Table 12.2 Disability income benefits — military compensation schemes

<table>
<thead>
<tr>
<th></th>
<th>SRCA</th>
<th>MRCA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentage of ADF salary and allowances for the first 45 weeks</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>Percentage of ADF salary and allowances after the first 45 weeks</td>
<td>75% if not working, up to 100% on a sliding scale depending on % hours worked</td>
<td>75% if not working, up to 100% on a sliding scale depending on % hours worked</td>
</tr>
<tr>
<td>Defence Force loading added to salary before calculation</td>
<td>Nil</td>
<td>$130.88 per week (current rate)</td>
</tr>
<tr>
<td>Capped at 150% of AWOTEFA</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Deduction of notional contribution to superannuation</td>
<td>5% for MSBS members, 5.5% for DFRDB</td>
<td>No</td>
</tr>
</tbody>
</table>

AWOTEFA = average weekly ordinary time earnings for full time adults, DFRDB = Defence Force Retirement and Death Benefits Scheme, MRCA = Military Rehabilitation and Compensation Act 2004, MSBS = Military Superannuation and Benefits Scheme, SRCA = Safety, Rehabilitation and Compensation Act 1988

12.10 Comparisons of certain features of the superannuation and compensation regimes are shown in Table 12.3.

Table 12.3 Comparison of military compensation and superannuation disability pensions

<table>
<thead>
<tr>
<th>Military compensation</th>
<th>Superannuation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coverage</td>
<td>All ADF, Reservists, cadets and declared members</td>
</tr>
<tr>
<td>Salary basis for calculation</td>
<td>Salary on discharge plus allowances in ADF, special provisions for Reservists in determining ‘normal income’</td>
</tr>
<tr>
<td>Percentage paid on salary</td>
<td>75% after 45 weeks, increasing on a scale varying with hours worked, less actual earnings</td>
</tr>
<tr>
<td>Payment</td>
<td>Payment is in most cases a top-up of the MRCA incapacity payment level over the fortnightly Commonwealth superannuation payment,¹ ceasing at age 65</td>
</tr>
<tr>
<td>Rehabilitation regime</td>
<td>Yes</td>
</tr>
<tr>
<td>Review</td>
<td>Amount can vary from weekly to 5-yearly, based on medical evidence supporting incapacity to work due to accepted medical condition(s)</td>
</tr>
<tr>
<td>Paid during imprisonment</td>
<td>Incapacity payments not continued, permanent impairment compensation continues</td>
</tr>
</tbody>
</table>

ADF = Australian Defence Force, DFRDB = Defence Force Retirement and Death Benefits Scheme, MRCA = Military Rehabilitation and Compensation Act 2004, MSBS = Military Superannuation and Benefits Scheme

¹ Where the employer benefit has been paid as a lump sum, an actuarial equivalent amount is calculated for the purpose of applying the offset against the SRCA or MRCA payment.

12.11 Data on the numbers of SRCA or MRCA and DFRDB or MSBS incapacity payment payees are shown in Table 12.4.
### Table 12.4 Number of recipients of incapacity or invalidity payments under the two Acts and two military schemes

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>SRCA incapacity payees</td>
<td>3,241</td>
<td>2,982</td>
<td>2,749</td>
<td>2,602</td>
<td>2,589</td>
</tr>
<tr>
<td>MRCA incapacity payees</td>
<td>256</td>
<td>405</td>
<td>731</td>
<td>925</td>
<td>1,254</td>
</tr>
<tr>
<td>Total</td>
<td>3,497</td>
<td>3,387</td>
<td>3,480</td>
<td>3,527</td>
<td>3,843</td>
</tr>
<tr>
<td>MSBS invalidity payees</td>
<td>2,908</td>
<td>3,243</td>
<td>3,531</td>
<td>3,913</td>
<td>4,130</td>
</tr>
<tr>
<td>DFRDB invalidity payees</td>
<td>2,340</td>
<td>2,367</td>
<td>2,396</td>
<td>2,428</td>
<td>2,442</td>
</tr>
<tr>
<td>Total</td>
<td>5,248</td>
<td>5,610</td>
<td>5,927</td>
<td>6,341</td>
<td>6,572</td>
</tr>
</tbody>
</table>


### Superannuation offsetting

12.12 Sections 134, 135 and 136 of the MRCA provide for the amount of weekly incapacity compensation the Commonwealth is liable to pay to a former member who has:

- retired voluntarily, or is compulsorily retired, from his or her work; and
- received either a pension or lump sum, or both, under a Commonwealth superannuation scheme as a result of the retirement.

12.13 The amount of weekly incapacity compensation calculated under Part 4 of Chapter 4 of the MRCA is reduced on a dollar-for-dollar basis by the amount of the superannuation contribution made under the scheme by the Commonwealth, a Commonwealth authority or a licensed corporation. This process is often described as superannuation offsetting.

12.14 Table 12.5 shows the numbers in receipt of incapacity payments under the SRCA and MRCA, and the numbers and percentages of members who have these payments offset by Commonwealth superannuation.

### Table 12.5 Superannuation offset of incapacity compensation payees as at 30 June 2010

<table>
<thead>
<tr>
<th></th>
<th>Reserve</th>
<th>Permanent</th>
<th>Total</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SRCA payees</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Super offset</td>
<td>6</td>
<td>640</td>
<td>646</td>
<td>30%</td>
</tr>
<tr>
<td>No super offset</td>
<td>145</td>
<td>1,339</td>
<td>1,484</td>
<td>70%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2,130</td>
<td></td>
</tr>
<tr>
<td><strong>SRCA payees discharged in past 5 years</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Super offset</td>
<td>1</td>
<td>237</td>
<td>238</td>
<td>43%</td>
</tr>
<tr>
<td>No super offset</td>
<td>78</td>
<td>240</td>
<td>318</td>
<td>57%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>556</td>
<td></td>
</tr>
<tr>
<td><strong>MRCA payees</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Super offset</td>
<td>1</td>
<td>373</td>
<td>374</td>
<td>50%</td>
</tr>
<tr>
<td>No super offset</td>
<td>61</td>
<td>313</td>
<td>374</td>
<td>50%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>748</td>
<td></td>
</tr>
</tbody>
</table>

SRCA = Safety, Rehabilitation and Compensation Act 1988, MRCA = Military Rehabilitation and Compensation Act 2004
12.15 As discussed in Chapter 11, superannuation offsetting also applies to a former member in receipt of the SRDP under the MRCA. However, the amount offset is 60 cents for every dollar of Commonwealth-funded superannuation received by the former member.

12.16 These provisions of the MRCA reflect broader Australian Government policy that was established in the SRCA; namely, that the Australian Government should not pay two income sources to the same person.

12.17 Ex-service organisation (ESO) submissions argue that superannuation should not be offset against compensation, as members have paid for their superannuation benefits through their own contributions. ESO Round Table delegates rated this matter as one of the highest priorities for the ESOs, referring to military superannuation as a basic condition of service paid for by ADF members.

12.18 The Committee does not support this view, as it is only the value of the employer contribution to military superannuation that is offset against SRCA and MRCA payments, and this amount is funded by the Australian Government, not the member. The purpose of superannuation offsetting under the SRCA and the MRCA is to prevent the Australian Government paying two income sources to the same person. Because the Commonwealth pays the employer contribution amount under military superannuation, this is offset against incapacity payments paid by the Australian Government under the SRCA or the MRCA. However, the benefits and earnings derived from the member’s own contributions are quarantined from any offsetting. The member continues to receive the full benefit from the personal contributions they have made to DFRDB or MSBS.

12.19 The Australian Government Actuary periodically reviews the military superannuation schemes. The latest calculation by the Actuary shows that the cost of military superannuation to the Commonwealth is an average of 27.6 per cent of members’ salaries (DFRDB 33.4 per cent; MSBS 27 per cent).

12.20 The benefit that a person may be receiving from (for example) the MSBS provides up to 75.5 per cent of final salary. The MRCA pays 100 per cent of normal weekly earnings plus $135.46 remuneration loading per week (as at 1 July 2010) for the first 45 weeks, then 75 per cent if the former member is not working any hours. To pay superannuation and compensation benefits without offset could lead to an income of more than 175.5 per cent of pre-discharge salary for the first 12 months, and 150.5 per cent until retirement age. Therefore, the Committee considers that the offset of incapacity payments and the SRDP by the Commonwealth-funded superannuation received by the member should continue.

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1 Section 204 of the MRCA.
4 The actual amount varies with actual and prospective years of service to give a lump sum, all or part of which can be converted to pension. The result will differ for individual members.
12.21 ESO Round Table representatives also argued that members who are receiving superannuation retirement benefits, as opposed to disability benefits, should not have their superannuation reduced, as they are entitled to the full amount as a condition of service.

12.22 ESO Round Table representatives believe that the purpose of superannuation offsetting is to prevent a former member from ‘double dipping’ for a service-related incapacity. They argued that no double dipping occurs where a former member is receiving both incapacity payments under the MRCA and a voluntary retirement benefit under a Commonwealth superannuation scheme, as the retirement benefit is not paid as a result of the former member’s incapacity for work.

12.23 It was argued that there is an inconsistency in the fact that a former member can receive a voluntary retirement benefit under a Commonwealth superannuation scheme and normal earnings from employment, whereas weekly incapacity compensation under the MRCA is offset by voluntary retirement benefits received under a Commonwealth superannuation scheme.

12.24 This is not the first time these concerns have been raised in relation to this aspect of superannuation offsetting under the MRCA. The Senate Report of the Foreign Affairs, Defence and Trade Legislation Committee into the Provisions of the Military Rehabilitation and Compensation Bill 2003 and the Military Rehabilitation and Compensation Consequential and Transitional Provisions Bill 2003 observed:

… Most witnesses who discussed the issue supported the Bill’s provisions with respect to people who leave the service on the grounds of incapacity, cease work, receive an incapacity payment and have it offset against superannuation.

7.17 They opposed the provisions as they relate to people who leave the service healthy, with a superannuation package, obtain civilian work from which they are [sic] obliged to retire through a service-related injury or illness, and who subsequently have the benefits from the superannuation package offset against incapacity payment. They argue that in the latter case the Bill treats military superannuation for retirement as income maintenance, a proposition which they reject …

12.25 While acknowledging these concerns, the Senate report did not make any recommendations on the matter.

12.26 As stated earlier in this chapter, the purpose of superannuation offsetting under the SRCA and the MRCA is more accurately described as being to prevent the Australian Government paying two income sources to the same person, rather than to prevent a person double dipping for the same incapacity.

12.27 In support of this view, the Senate report states:

Superannuation offsetting

7.15 The Bill stipulates that incapacity payment will be offset, dollar for dollar, against the employer component of Commonwealth superannuation. The rationale for this provision is that the Commonwealth should not duplicate payments for loss of income, a position in the SRCA since its inception.

12.28 Therefore, it must be stressed that superannuation offsetting serves a very different purpose than compensation offsetting under the VEA (as discussed in Chapter 19).
12.29 Under the VEA, compensation offsetting ensures that a pension recipient is not compensated twice for the same incapacity. Superannuation offsetting under the MRCA ensures that the Australian Government does not pay two income replacement payments to the same person. It is not relevant whether or not both payments are made in relation to the same incapacity. While it is true that a person may receive a superannuation retirement benefit and a civilian wage, this does not necessarily lead to the conclusion that, where that person is incapacitated, the Australian Government should provide that person with two income maintenance payments, in the form of incapacity compensation and Commonwealth-funded superannuation.

12.30 As discussed in Chapter 10, the MRCA’s incapacity payment provisions are the most beneficial of any Australian compensation scheme. It is, of course, important to ensure that an appropriate level of income maintenance is provided to a former member who is incapacitated for work by service injury or disease. However, the level of income maintenance must be balanced with the need to maximise the circumstances in which a former member will remain in or return to the workforce.

12.31 As stated in Chapter 6, contemporary evidence shows that the health, quality of life and self-esteem of an injured person are all improved by participation in the workforce. The benefit provisions in the MRCA are structured in a way that financially recognises the economic and non-economic effect of an injury where appropriate, but primarily focuses on maximising the potential to restore a person to the same vocational, social and educational status he or she had before the injury.

12.32 Ameliorating the superannuation offsetting provisions in respect to voluntary retirement benefits will make the MRCA more beneficial than it currently is. This, in turn, may create disincentives for former members to remain in or return to the workforce. Therefore, the Committee considers that the offsetting of incapacity payments and the SRDP by the Commonwealth-funded retirement benefits received by a former member under a superannuation scheme should continue.

**The Veterans’ Entitlements Act and superannuation offsetting**

12.33 The SRDP is linked to the same payment amount as the Special Rate of pension under the VEA. However, there is no offset of superannuation against the Special Rate of pension. This reflects the era in which the veterans’ legislation evolved, as superannuation was limited and most ADF members were volunteers or conscripts who served only for the period of a conflict or for short terms.

12.34 The June 2003 Exposure Draft for the new Military Rehabilitation and Compensation Scheme included provision to offset future grants of the Special Rate of pension by the Commonwealth-funded component of military superannuation. The ESO community opposed this measure strongly and, due to the inequity between those who had already claimed under the VEA and future claimants, who would have their Special Rate of pension reduced, the proposed VEA amendment was not included in the Military Rehabilitation and Compensation Bill tabled in December 2003.

12.35 It is noted that former members entitled to the service pension will be subject to the income and assets test. The income streams from military superannuation are part of the income test and may reduce the service pension.
Whose superannuation is offset?

12.36 In the MRCA, superannuation offset provisions are in two categories, according to the status of the member on discharge from the ADF:

a. Former members who left the ADF as Reservists or continuous full-time Reservists: superannuation is offset against MRCA incapacity payments and the SRDP, where they receive income from:

… any superannuation scheme under which the Commonwealth, a Commonwealth authority or a licensed corporation (within the meaning of the Safety, Rehabilitation and Compensation Act 1988) makes contributions on behalf of employees (other than members of the Defence Force) and includes a superannuation scheme established or maintained by the Commonwealth, a Commonwealth authority or a licensed corporation.

b. All others: offset for superannuation paid to them under any scheme where the Commonwealth makes contributions on behalf of members of the Defence Force.⁵

12.37 In opposing the offset of military superannuation, submissions have pointed out that a former ADF member who undertakes civilian employment after discharge is relatively better off, as their private superannuation benefits do not offset against incapacity payments and the SRDP.

12.38 In arguing this point, ESOs are seeking abolition of the offset. But it also raises the question as to why it is only Commonwealth superannuation that offsets MRCA economic loss payments. Some point to the fact that state government superannuation does not offset MRCA economic loss, as discriminatory against former Commonwealth employees.

12.39 The principle of the Australian Government not doubling-up on compensation over superannuation is not applicable in the case of corporations that are not Commonwealth funded. However, the ‘normal earnings’ less ‘actual earnings’ calculation (the basis for incapacity payments) clearly does not take into account any income the former member is receiving from private employer-funded superannuation, and is therefore more beneficial for such members than those receiving only Commonwealth superannuation.

12.40 The superannuation guarantee arrangements form a point of comparison. All civilian employers are required to pay a minimum of 9 per cent⁶ of salary into the employee’s superannuation fund. The Australian Government pays a 3 per cent productivity benefit for full-time ADF members, and this becomes a component of the employer benefit. The MRCA offset rules mean that the public sector employee’s employer benefit is offset, but the benefits gained by private employees through their superannuation guarantee payments are not.

12.41 The Committee discussed this matter but determined not to recommend change. It is worth emphasising again that only employer contributions paid under superannuation schemes are offset under the MRCA, because it is this component that is funded by the Australian Government. Offsetting amounts paid under superannuation schemes that are of a private, non-Commonwealth nature is not needed to meet the principle of avoiding double payments by the Australian Government. It is noted that compensation received from statutory schemes and through litigation for the same

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⁵ Section 5 of the MRCA.
⁶ The Australian Government announced in the 2010 Budget the intention to increase the 9 per cent contribution in stages to 12 per cent in 2019–20, commencing with an increase to 9.25 per cent in 2013–14.
injury, disease or death are offset under Chapter 10 of the MRCA, but privately purchased income loss and personal injury policies are not invoked. Any change would be very difficult to administer and would add greater complexity to the scheme. There would be cross-government implications for such a move that would need to be considered by a larger forum.

Licensed corporations

12.42 The Committee draws attention to the fact that the current definition of Commonwealth schemes, at least as it applies to members discharged as part-time or full-time Reservists, includes licensed corporations. These are corporations that are licensed to self-insure or manage their workers’ compensation liabilities within the framework of Commonwealth legislation, rather than the various state compensation schemes.

12.43 Superannuation schemes of corporations that are no longer funded by the Commonwealth (such as Telstra), or indeed have never been funded by the Commonwealth (private companies that have chosen to come under the SRCA), are covered by the definition in section 5 of the MRCA. Members of such schemes are in the same position as members of Commonwealth-funded schemes, but at a disadvantage compared to members of other private schemes.

12.44 The impact of this provision is that full-time members could gain benefits while working for such corporations after discharge and these would not offset incapacity payments or the SRDP, while members discharged as part-time or full-time Reservists do have these payments offset. It would not have been an intention in the legislation to introduce this difference in approach.

12.45 As it is not necessary to meet the principle of the Australian Government not doubling-up in compensation and superannuation, the Committee recommends that the MRCA definition of Commonwealth superannuation scheme be amended to exclude licensed corporations.

12.46 Implementation of change to this definition may also affect the operation of the SRCA, and any policy change will need to be discussed with the relevant ministers.

Retirement savings accounts

12.47 From 1 July 2006, the Superannuation Guarantee (Administration) Act 1992 requires employers to offer eligible employees the choice of a complying superannuation fund or retirement savings account to receive their superannuation guarantee contributions. The SRCA was amended in 2007 to extend the superannuation offset of any Commonwealth contributions made to retirement savings accounts in the same manner as superannuation funds. This change to the SRCA recognised that Australian Government employer contributions are no longer paid exclusively into designated Commonwealth schemes.

12.48 The Committee believes that, to be equitable between Australian Government employees who also serve in the ADF, generally as Reservists, the MRCA should contain the same provision as the SRCA to offset the Commonwealth contributions to retirement savings accounts against incapacity payments and the SRDP.
Superannuation offsets for current members

12.49 The superannuation offsetting provisions of the MRCA for incapacity payments are in Part 4 of Chapter 4 of the MRCA. This part covers compensation for incapacity for work for former members only. The SRCA does not have separate provisions for current and former members, and is not at issue here.

12.50 There are some circumstances where current serving members may be in receipt of both Commonwealth superannuation and an incapacity payment under the MRCA. Examples where offsetting does not currently apply to the MRCA (but does in the SRCA) are:

• where a member discharges after 20 or more years Permanent Forces service, transfers to the Reserves and becomes incapacitated while still a serving member of the part-time Reserves or on continuous full-time service;

• where a current serving member is medically discharged from the Permanent Forces, but receives a critical skills waiver that enables transfer to the Reserves. In most of these cases, the member will have an entitlement to incapacity payments immediately following discharge from the Permanent Forces, but remains a member for the purposes of the MRCA; and

• where a part-time Reservist continues to serve after being superannuated from their full-time Commonwealth civilian employment with an Australian public service department or statutory authority following retirement, redundancy or resignation.

12.51 The MRCA should be amended to apply the principle and practice of superannuation offsetting against incapacity payments for current as well as former members.

Australian Government employer contributions on incapacity payments

12.52 The Committee noted that submissions from a number of parties asked why the Australian Government does not pay superannuation for people on incapacity payments. This is not relevant to long-term ADF members with military superannuation scheme entitlements, as they become entitled to life-long superannuation benefits. Both the SRCA and MRCA provide compensation for lost income pre-retirement, with the Commonwealth civilian and military superannuation schemes providing retirement income for eligible former members.

12.53 Former members who are limited to the age pension and any private superannuation in retirement include:

• those who served only short terms in the ADF (but may have seen active training and overseas service), who were discharged before manifestation of the compensable condition;\(^7\) and

• former cadets and members injured on part-time Reserve service who have no military superannuation entitlement.

\(^7\) There is provision for review of the grounds for retirement (section 37 of the Defence Force Retirement and Death Benefits Act 1973 and Rule 30 of the MSBS Rules). Broadly, the former member must show that at the time of retirement, grounds existed on which the member could have been retired as an invalid.
12.54 The following case study put a personal face on this situation when the Committee conducted consultations in Melbourne.

**Case study**

A participant in the public consultations for the Review in Melbourne had been a tetraplegic since suffering an accident as a cadet at age 16, some 37 years ago. He had raised a family on incapacity payments derived from the minimum wage provisions of the SRCA and the preceding Act. He drew attention to the fact that, when his incapacity payments cease at age 65, he would not have had the chance to contribute to superannuation and would have to apply for the age pension. He proposed that he should be able to make a superannuation contribution from his fortnightly payments.

The only Australian Government benefit available is the same benefit that applies to all low or middle income earners — the Commonwealth’s co-contribution for up to $1,000 per year for payments to a superannuation fund or retirement savings account. A tax deduction for superannuation contributions is also available for taxpayers earning less than 10 per cent of their income as an employee who make an after-tax contribution, but families at the minimum wage level would not often be in a position to arrange their affairs in this manner.

12.55 One submission\(^8\) recommended that the MRCA be amended to pay a top-up of superannuation contributions to a member’s fund for any loss of allowances. This submission quotes the example of a Reservist who loses sea-going allowance as a customs officer because of an injury received while on approved defence service leave. The Reservist receives an incapacity payment to compensate for the loss of salary and allowance, but he or she is not compensated for the loss of the civilian employer’s contribution towards superannuation on the salary and allowances lost.

12.56 The national superannuation guarantee scheme does not require employers to make contributions during periods of incapacity caused by work-related injury or illness. This issue was recognised in the recent review of the *Victorian Accident Compensation Act 1985* by Peter Hanks QC.\(^9\) While some make-up pay arrangements in industrial awards cover superannuation, none extend beyond 52 weeks. The Victorian Government has now accepted Mr Hanks’s recommendation that superannuation contributions be paid into a worker’s superannuation fund for injured workers who continue to receive benefits after 52 weeks, with contributions based on the superannuation guarantee rate (9 per cent).\(^10\) These WorkSafe Victoria arrangements can now extend until retirement age if there is no change in work capacity. The incapacitated employee is able to build up some post-retirement superannuation benefits through this means. No other state scheme has moved in this way to date.

12.57 Of the groups listed at paragraph 12.53 above, the most vulnerable ex-service group is the incapacity payment recipients who are not eligible for MSBS or DFRDB benefits. This could be as high as 70 per cent of payees (see Table 12.5), as this is the proportion whose incapacity payments are currently not being offset. Some of this group may become eligible for a lump sum benefit at preservation age, derived from contributions made before their discharge from the ADF.

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\(^8\) Returned & Services League of Australia.


12.58 One option to improve the post-retirement age position of long-term incapacity payees would be to allow such members to join the MSBS or Public Sector Superannuation accumulation plan and attract a Commonwealth contribution towards future superannuation. Alternatively, the Australian Government could adopt a similar approach to WorkSafe Victoria, to contribute the percentage of incapacity payments that would be payable under the superannuation guarantee arrangements as if it were still paying a salary.

12.59 This matter should be considered across government, as there is wider input needed (for example, from social security, revenue and taxation agencies) than the agencies represented in this Review. It should form part of the deliberations of the task force to examine the incapacity payments regime, as recommended in Chapter 10.

Administration

Invalidity benefits

12.60 It is questionable why there are two legislative arrangements and two Australian Government agencies to administer unique invalidity benefits for former ADF members.

12.61 Superannuation benefits are managed within the compliance umbrella of the Superannuation Industry (Supervision) Act 1993. It is important that ADF members continue to have the same level of assurance that this Act provides, but it is not impossible to envisage effective administration arrangements being managed predominantly within the ambit of the Military Rehabilitation and Compensation Commission (MRCC).

12.62 While this Review has not examined the superannuation legislation or operations in any depth, there does appear to be a fundamental gap, in that there is no rehabilitation component after discharge from the ADF. The invalidity benefit level increases with higher incapacity levels. There is little incentive for improving the quality of life through participation in the workforce.

12.63 The complexity of a former member receiving military superannuation benefits in full for life and top-up benefits from the MRCC until age 65 under a rehabilitation regime would be reduced if the legislation was more integrated and a single agency held responsible.

12.64 DVA and ComSuper officials have consulted on the issues involved in streamlining the administration of invalidity benefits, following previous reviews. It is recommended that a strategy be developed to reinvigorate these discussions and prepare a proposal to be considered by the Australian Government.

Death benefits

12.65 One submission is critical of the lack of cooperation between agencies in the administration of death benefits. Stress was caused to the family of a Special Air Service Regiment soldier killed in Afghanistan in 2005 when DVA accepted a widow’s claim, but Comsuper did not do so for some time afterwards. Comsuper, as the

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11 The Australian Special Air Service Association.
administrator, could only pay a benefit in line with the requirements of the rules or trust deed of the relevant scheme.

12.66 DVA is likely to have an ongoing relationship with the surviving partner through the issue of a Repatriation Health Card – For All Conditions (Gold Card), additional weekly payments and education benefits for the children. The Superannuation Industry (Supervision) Act 1993 precludes DVA directing scheme trustees on how or to whom a superannuation death benefit is to be paid. However, there appears to be some advantage in the Department of Defence and then DVA taking on case management coordination in regard to deceased members’ families.

12.67 While the primary decision making would need to be undertaken by trustees authorised under the rules of the superannuation scheme, an administrator for all Commonwealth benefits would assist the bereaved in negotiating the system. Once a death claim is determined, there may be advantages in using one system or another (DVA or ComSuper) for payment of pension benefits to the surviving partner and children.

12.68 The Committee recommends that the scope for streamlining the administration of superannuation and compensation invalidity and death benefits, by aligning legislative definitions and consolidating service delivery, should be further considered across government.

Conclusions

12.69 The Committee acknowledges the principle that the Australian Government should not pay two income sources (one under compensation and another under superannuation) to the same person. No change is recommended to superannuation offset provisions, other than certain technical amendments to the MRCA that are necessary to meet the original intentions.

12.70 The Committee notes that, in common with compensation schemes other than WorkSafe Victoria, there are no SRCA or MRCA provisions for ongoing employer contributions to superannuation funds for incapacity payees. While not relevant to former members with military superannuation entitlements, this is of particular concern to those injured on part-time service while earning minimal civilian income or while a student. This matter should be examined further in the context of the review of the incapacity payments regime, recommended in Chapter 10.

Recommendations

The Committee recommends that:

12.1 the offset of incapacity payments and the Special Rate Disability Pension by the Commonwealth-funded superannuation received by the member should continue;

12.2 the definition of Commonwealth superannuation under the Military Rehabilitation and Compensation Act 2004 (MRCA) should be amended to exclude licensed corporations and include Commonwealth payments into retirement savings accounts, in line with the SRCA definition;

12.3 the MRCA should be amended to apply superannuation offsetting against incapacity payments for current members who are in receipt of Commonwealth-funded superannuation payments, as well as former members (for example, former Permanent Force members who later become part-time Reservists);
12.4 The payment by the Australian Government of an employer’s contribution on incapacity payments for former Australian Defence Force members not able to work because of their compensable conditions (including former cadets and Reservists not covered by military superannuation) should be considered as part of the cross-agency working group on incapacity payments (see recommendation 10.2); and

12.5 The scope for streamlining the administration of superannuation and compensation invalidity and death benefits, by aligning legislative definitions and consolidating service delivery, should be further considered across government.