22 Permanent impairment claims that cross multiple Acts

Chapter summary

Chapter 25 of the Guide to determining impairment and compensation (GARP M) sets out the method to be used where a person has already has a condition accepted under the Safety, Rehabilitation and Compensation Act 1988 (SRCA) and/or the Veterans' Entitlements Act 1986 (VEA) for a condition, and suffers a further condition that is to be assessed for permanent impairment compensation under the Military Rehabilitation and Compensation Act 2004 (MRCA). The legal authority for this process is provided in section 13 of the Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004 (CTPA). The process involves:

• assessing the VEA or SRCA and the MRCA condition(s) using GARP M as at the current date and combining them according to GARP M to derive a total impairment rating;
• using the total impairment rating to determine a gross MRCA amount; and
• offsetting this gross amount by any compensation payment(s) under the VEA or SRCA.

The purpose of this method is to guarantee that impairment suffered as a result of previous VEA and/or SRCA conditions will be counted towards eligibility thresholds under the MRCA. Secondly, the method ensures that the whole person impairment methodology is applied across all three Acts. However, the method is complex and not easily understood by claimants, and was the subject of a number of submissions to the Review.

Submissions argued that the methodology is only about cutting costs and is detrimental to members, and suggested that claimants should be compensated for each individual injury. Ex-Service Organisation Round Table representatives requested no offsetting at all under Chapter 25 of GARP M. The Committee does not support this position, since to remove consideration of previous conditions under the VEA or SRCA completely would not be in accordance with the intent of the whole person impairment methodology of the MRCA. Total compensation under all three Acts should not exceed the maximum compensation intended to be paid by the Commonwealth for a person’s defence service under the MRCA. Compensation should therefore remain capped at the maximum permanent impairment compensation payment under the MRCA.

However, the Committee found that the methodology used to calculate permanent impairment compensation for the MRCA condition under GARP M may result in a lower or higher net MRCA permanent impairment compensation payment than expected (when considered in light of the impairment points suffered as a result of the MRCA conditions), or no payment. This may occur because of differences in assessment methodologies and the calculation of compensation under the three Acts, and changes in VEA or SRCA conditions over time.

The Committee investigated whether the method of offsetting should be amended. The Committee was divided in opinion:

• Committee members from the Department of Veterans’ Affairs (DVA) and the Australian Defence Organisation, and Mr Peter Sutherland, believe that the current method is inappropriate because members who suffer an increase in whole person impairment as a result of new MRCA conditions may not receive additional compensation for that increased permanent impairment. They believe that the low or
nil outcomes produced by the current method could not have been foreseen and were not intended at the time the MRCA was introduced.

- Committee members from the Department of Finance and Deregulation, the Treasury and the Department of Education, Employment and Workplace Relations believe that the current method is appropriate because it ensures that compensation outcomes for transitional claimants and MRCA-only claimants with the same levels of whole person impairment are equalised to the extent possible under the MRCA.

The Committee recommends that the government consider these two views. The Committee also recommends that there be an education campaign in conjunction with ex-service organisations to facilitate greater understanding of the arrangements and ensure claimants are aware of the effect that these provisions may have on their compensation.

As an appendix to this chapter, an alternative method of offsetting is presented that, for the purposes of calculating the amount of compensation payable for the new impairment level, the SRCA or VEA conditions be treated as if they were being compensated under the MRCA. It addresses the reasons for low or nil outcomes by ensuring that like is offset against like, while still meeting the policy principles of whole person impairment. The alternative method would, if adopted, increase administered expenditure by approximately $25.5 million over four years, assuming any pre-existing cases where the claimant will be better off are not prevented from seeking a reassessment. There were approximately 700 cases considered before 1 December 2010 that have had the current method applied, and around 250 transitional permanent impairment claims can be expected per year, with that number increasing slowly.

Introduction

22.1 This chapter outlines an issue raised in submissions in relation to the payment of permanent impairment compensation under the Military Rehabilitation and Compensation Act 2004 (MRCA) for claimants with conditions accepted and compensated under the Veterans’ Entitlements Act 1986 (VEA) or the Safety, Rehabilitation and Compensation Act 1988 (SRCA).

Background

22.2 The issue relates to the requirement under legislation to offset the dollar value of compensation paid for accepted conditions under the VEA and the SRCA against the dollar value under the MRCA for all conditions accepted under the VEA, the SRCA and the MRCA. In many cases, this can leave little or no amount of additional compensation payable for any new conditions accepted under the MRCA.

22.3 Three sound policy principles underpin this legislative requirement:

- it maximises a claimant’s overall impairment rating, so that impairment ratings for conditions accepted under the VEA or the SRCA count towards eligibility for benefits under the MRCA, such as the Special Rate Disability Pension or eligibility for a Repatriation Health Card – For All Conditions (Gold Card);
- it applies the whole person impairment assessment methodology (defined below) to all conditions accepted under the VEA, the SRCA and the MRCA for the purposes of calculating permanent impairment compensation payable under the MRCA; and
- it ensures that a claimant with eligibility under the MRCA and the VEA, or the MRCA and the SRCA, does not receive more compensation for impairment than another claimant might receive under the MRCA alone, for the same level of impairment.
Submissions

22.4 Submissions to the Review argued that compensation for the conditions accepted under the MRCA should not be offset against compensation for conditions accepted under the VEA or the SRCA.¹

22.5 One submission states:

The method of assessing lump sum payments for new injuries since 2004 by applying offsets for disability payments being received in relation to old injuries accepted under the VEA or SRCA is a particularly objectionable aspect of the MRC(CT) Act. It is almost impossible for an ordinary person to comprehend the reasoning behind it, or the justice in its application. The scheme should be altered to remove the use of S13 of the MRC(CT) Act for this purpose.²

22.6 Another submission states:

The decision to implement offsetting between VEA/SRCA payments [and MRCA payments] for wholly unrelated conditions appears to have been designed with cost cutting in mind, and has been implemented to the considerable detriment of members. The system of narrow interpretation of the term ‘whole person impairment’ needs to be revised, and a more fair system implemented whereby the claimant is compensated for each individual injury they suffer.³

22.7 Ex-Service Organisation Round Table representatives who met with the Committee requested no offsetting at all.

22.8 The Committee does not support these views. The Committee believes that the requirement for an offsetting method in these transitional scenarios is necessary and that the Military Rehabilitation and Compensation Commission (MRCC) had sound policy principles in mind when it determined the current method.

22.9 However, while the Committee is unanimous in its belief that offsetting is required, some members of the Committee recognise that other policy principles should be considered that may lead to alternative methods of offsetting. These views are expressed in more detail towards the end of this chapter.

22.10 This is a complex and technical issue. In order to fully appreciate it, some preliminary information must be understood about:

• permanent impairment compensation under the MRCA;
• the whole person impairment assessment methodology;
• compensation offsetting;
• the transitional provisions under the MRCA; and
• the method for determining permanent impairment under the MRCA for claims that are transitional in nature.

² Defence Force Welfare Association.
³ Wyatt Attorneys.
Permanent impairment compensation under the Military Rehabilitation and Compensation Act

22.11 As discussed in Chapter 8, permanent impairment compensation payments under the MRCA are non-economic loss payments; that is, they are paid to compensate for functional loss or dysfunction and the effects of the service-related condition on lifestyle.

22.12 Functional loss and lifestyle effects are assessed using the Guide to determining impairment and compensation. This guide is known as GARP M, because it is a modified version of the Guide to the Assessment of Rates of Veterans’ Pensions, fifth edition (GARP V), used to assess the extent of incapacity under the VEA.

22.13 Under GARP M, the degree of impairment is expressed in impairment points, on a scale from 0 to 100. Impairment points are combined with a lifestyle rating of 0 to 7 to determine a percentage of the maximum permanent impairment payment.

22.14 A claimant must suffer a service-related impairment that constitutes at least 10 impairment points before they can be paid permanent impairment compensation. An exception to this is in cases of hearing loss, loss of the sense of taste or smell, or impairment of the fingers or toes, where a minimum of five impairment points is required.

22.15 Once an initial permanent impairment compensation payment is paid to a claimant, additional permanent impairment payments can only be paid if a new service-related condition, or a deterioration of a current accepted condition, results in an increase in the claimant’s total impairment of five impairment points or more.

Whole person impairment assessment methodology

22.16 Also outlined in Chapter 8 is the fact that the assessment of impairment under the MRCA, like the VEA, is based on whole person impairment methodology. That is, where multiple service-related conditions exist, the impairment resulting from all service-related conditions is not simply added, but must be combined by applying the following formula, where A and B are separate conditions:

$$\text{Combined value of } A \text{ and } B = A + B(1 - \frac{A}{100})$$

rounded to the nearest integer.\(^4\)

22.17 For example, a member suffers a condition that constitutes 60 impairment points; that is, 60 per cent of whole person. The same member suffers a subsequent condition that constitutes 50 impairment points. This subsequent injury will be worth an additional 20 impairment points — 50 per cent of the person’s remaining 40 per cent of whole person. The member’s impairment rating will be 80 impairment points as a result of the two conditions.

22.18 The whole person impairment assessment methodology ensures that a claimant cannot receive additional compensation if they have already received the maximum amount (i.e. 100 per cent) of compensation for all their service conditions.

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\(^4\) Chapter 18 of GARP M.
22.19 Furthermore, under the whole person impairment assessment methodology, no additional impairment points will be attributed for a new condition that has not resulted in a greater degree of functional loss or impact on lifestyle.

22.20 For example, a member suffers a lower limb condition that results in a moderately reduced walking pace. This results in 20 impairment points. If a new lower limb condition has no further effect on the member’s walking pace, and no other impacts on function or lifestyle, then no further impairment points will be attributed for that condition. The member’s total impairment rating will remain at 20 impairment points.

22.21 The whole person impairment method is not a new concept, and was part of the VEA when it was introduced in 1986.

22.22 The SRCA introduced a similar method in 1988, replacing the ‘table of maims’ approach that was used under previous Commonwealth employees compensation legislation. However, under the SRCA, the whole person impairment approach no longer applies, because in Canute v. Comcare and Fellowes v. Military Rehabilitation and Compensation Commission, the High Court found that each condition resulting in impairment must be assessed separately.

22.23 In the Canute case, the High Court found that the whole person impairment methodology contained within Comcare’s Guide to the assessment of degree of permanent impairment was in contravention of the SRCA, which did not allow a whole person assessment, but required each injury to be assessed separately.

22.24 This is not the case under the MRCA. The concept of ‘whole person impairment’ is reflected in various provisions of the primary legislation, such as the definition of impairment in section 5 of the MRCA; the definition of ‘impairment points of a person’ in section 5 of the MRCA; sections 67, 68, 69, 70 and 71 of the MRCA (noting especially the meaning of ‘compensable condition’); and section 13 of the Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004 (CTPA) (see the discussion of James v. Military Rehabilitation and Compensation Commission later in this chapter).

22.25 The concerns raised in submissions arise from the application of the whole person impairment assessment methodology to assess conditions being compensated across two or three pieces of legislation, as opposed to under one piece of legislation.

Compensation offsetting

22.26 As discussed in Chapter 19, offsetting compensation for members of the Australian Defence Force (ADF) has been in place since 1973 (with effect from December 1972), when dual eligibility under the VEA and the SRCA was introduced for peacetime service. Compensation offsetting continued to be applied when dual eligibility was extended to operational service in April 1994.

22.27 The driving principle behind compensation offsetting is equity, in that it ensures that an ADF member with eligibility under two or more pieces of legislation does not receive more compensation for impairment compared to what another member might

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7 [2010] FCAFC 95.
receive under one piece of legislation for the same impairment. More generally, compensation offsetting is also intended to ensure an individual is only compensated once for incapacity resulting from accepted conditions.

**Transitional provisions under the Military Rehabilitation and Compensation Act**

22.28 As discussed in preceding chapters of this report, the MRCA commenced on 1 July 2004 and provides compensation coverage for conditions related to service rendered on or after this date. Conditions related to service rendered before 1 July 2004 continue to be covered by the VEA or the SRCA. Therefore, it is possible for a claimant under the MRCA, with service that spans 1 July 2004, to already have conditions accepted under the VEA or the SRCA.

22.29 As discussed in Chapter 21, the CTPA contains transitional provisions that clarify the interaction between the MRCA, the VEA and the SRCA in these circumstances.

22.30 Section 13 of the CTPA provides that, where a claim for permanent impairment compensation is lodged under the MRCA by a claimant with an accepted condition under the VEA or the SRCA, the MRCC must determine the impairment points attributed to the condition accepted under the VEA or the SRCA using GARP M, and count those impairment points towards the claimant’s total impairment points under the MRCA.

22.31 Section 13 of the CTPA also provides that the MRCC may include in GARP M one or more methods of working out the amount of permanent compensation the claimant is entitled to under the MRCA for the MRCA condition. This method may, but does not have to, include a method of offsetting payments made to the claimant under the VEA or the SRCA for conditions accepted under those Acts.

22.32 Section 13 of the CTPA has two purposes. Firstly, it requires an overall impairment assessment that includes a claimant’s impairment ratings for conditions accepted under the VEA, the SRCA and the MRCA. This maximises a claimant’s overall impairment rating, so that impairment ratings for conditions accepted under the VEA or the SRCA count towards eligibility for benefits under the MRCA, such as the Special Rate Disability Pension or Gold Card.

22.33 For example, a person will be eligible for a Gold Card under the MRCA if the impairment resulting from one or more service-related conditions constitutes 60 or more impairment points. Therefore, if a claimant has 40 impairment points under the VEA and 33 impairment points under the MRCA, giving a combined total of 60, they will be provided with a Gold Card under the MRCA.

22.34 This ensures that a person with conditions accepted under the VEA or the SRCA is not disadvantaged by the introduction of the MRCA. It also ensures that impairment suffered as a result of VEA and/or SRCA conditions will be counted towards eligibility thresholds under the MRCA.
22.35 Secondly, section 13 ensures that the whole person impairment methodology is applied across all three pieces of compensation legislation administered by DVA. This ensures that:

- where a condition under the MRCA has not resulted in a greater degree of functional loss or impact on lifestyle than was already suffered as a result of conditions under the VEA or SRCA, no further permanent impairment compensation is payable; and
- a member cannot receive additional compensation under the MRCA if they have already received the maximum amount of compensation available under Commonwealth legislation for their service conditions under all three pieces of legislation.

Method of calculating permanent impairment under the Military Rehabilitation and Compensation Act for claims that are transitional in nature

22.36 The MRCC, under section 13 of the CTPA, determined Chapter 25 of GARP M as the method to be used for calculating permanent impairment under the MRCA for claims that are transitional in nature.

22.37 Chapter 25 of GARP M sets out the process to follow where a person who has an accepted condition under either the SRCA or the VEA suffers a further condition that is to be assessed for permanent impairment compensation under the MRCA. The fundamental elements of this process are:

(i) assessing the VEA or SRCA and the MRCA condition(s) using GARP M as at the current date and combining them according to GARP M to derive a total impairment rating;

(ii) using the total impairment rating to determine a gross MRCA permanent impairment amount; and

(iii) offsetting this gross amount by any compensation payment(s) under the VEA or the SRCA.

22.38 The major issue of concern identified by submissions occurs in step (iii), where the adjustment for previous payments can reduce the entitlement to a low amount compared to the impairment being compensated as a result of the MRCA condition or, in some cases, to zero.

Example A

22.39 A claimant, born on 24 February 1979, has the following accepted conditions:

<table>
<thead>
<tr>
<th>Condition</th>
<th>Legislation</th>
<th>Date of determination</th>
</tr>
</thead>
<tbody>
<tr>
<td>Osteoarthrosis of the left ankle</td>
<td>SRCA</td>
<td>July 2005</td>
</tr>
<tr>
<td>Amputation of the great right toe</td>
<td>MRCA</td>
<td>October 2007</td>
</tr>
</tbody>
</table>

22.40 The claimant’s left ankle condition was assessed under the SRCA in July 2005 using Comcare’s Guide to the assessment of degree of permanent impairment. He was assessed at 20 per cent impairment and received a lump sum of $46,292.51.
22.41 Under section 13 of the CTPA, both conditions must be assessed using GARP M in October 2007 when he claims under the MRCA. He is assessed at 24 impairment points for his MRCA condition. His SRCA condition is reassessed at 6 impairment points. Therefore the combined impairment rating is 29 (under the combined values formula in Chapter 18 of GARP M, not arithmetically). The claimant is assessed at a lifestyle rating of 2. This translates to a gross amount of $45.26 per week.

22.42 The claimant’s SRCA lump sum is converted to a current weekly equivalent of $36.27. The MRCA payment for the new condition is calculated as:

\[
\text{New assessment – previous compensation} = \text{new compensation}
\]

Therefore, $8.99 is payable per week in respect to the MRCA compensable condition. This can be converted to an age-based lump sum of $11,780.50.

\[
\begin{align*}
\text{Gross MRCA compensation} & = 45.26 \\
\text{Weekly equivalent SRCA} & = -36.27 \\
\text{Net MRCA compensation} & = 8.99
\end{align*}
\]

(or $11,780.50)

**Example B**

22.43 A claimant, born on 4 December 1944, has the following accepted conditions:

<table>
<thead>
<tr>
<th>Condition</th>
<th>Legislation</th>
<th>Date of determination</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rotator cuff syndrome of the right shoulder</td>
<td>VEA</td>
<td>August 2003</td>
</tr>
<tr>
<td>Solar keratosis and non-melanotic neoplasm of skin</td>
<td>MRCA</td>
<td>January 2007</td>
</tr>
</tbody>
</table>

22.44 In August 2003, the VEA conditions were assessed at 20 impairment points using GARP V. The claimant was in receipt of a disability pension of $63.24 per week (40 per cent of the General Rate of Pension) when he lodged his claim under the MRCA.

22.45 The claimant is assessed as having an impairment rating of 10 points for his VEA conditions and 13 points for the MRCA new condition, which combines (under the combined values formula in Chapter 18 of GARP M, not arithmetically) for a total of 22 impairment points. The claimant is assessed at a lifestyle rating of 2. The gross MRCA permanent impairment compensation entitlement is $51.08 per week.

22.46 This new total assessment is offset by the weekly disability pension of $63.24, leaving no net MRCA permanent impairment compensation.

\[
\begin{align*}
\text{Gross MRCA compensation} & = 51.08 \\
\text{VEA disability pension} & = -63.24 \\
\text{Net MRCA compensation} & = 0.00
\end{align*}
\]

300 Review of Military Compensation Arrangements
Example C

22.47 A claimant, born on 26 June 1980, has the following accepted conditions:

<table>
<thead>
<tr>
<th>Condition</th>
<th>Legislation</th>
<th>Date of determination</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gastrointestinal condition</td>
<td>VEA</td>
<td>March 2005</td>
</tr>
<tr>
<td>Spinal injury</td>
<td>MRCA</td>
<td>November 2008</td>
</tr>
</tbody>
</table>

22.48 The claimant’s gastrointestinal condition was assessed under the VEA in March 2005 using GARP V. He was assessed at less than 10 impairment points and 1 lifestyle rating and began receiving payments of 20 per cent of the General Rate of Pension — $35.45 per week as at November 2008.

22.49 Under GARP M, both of the claimant’s conditions must be reassessed in November 2008. He is assessed at 10 impairment points for his MRCA condition. His VEA conditions are reassessed at 15 impairment points (a worsening of 5 points). This results in a combined impairment rating of 24 (under the combined values formula in Chapter 18 of GARP M, not arithmetically). The claimant is assessed at a lifestyle rating of 2. This translates to a gross amount of $70.89 per week.

22.50 Under the current method, once the former member’s disability pension is subtracted, he is left with $35.44 compensation payable per week in respect to the MRCA compensable condition. This can be converted to an age-based lump sum of $46,440.58.

| Gross MRCA compensation | $70.89 |
| VEA disability pension  | –$35.45|
| Net MRCA compensation   | $35.44 |
| (or $46,440.58)          |

Recent case law

22.51 The Full Court of the Federal Court has recently dealt with a challenge to the validity of Chapter 25 of GARP M. The Federal Court considered an argument that Chapter 25 of GARP M was not valid because the offsetting process may result in no compensation being payable in particular cases. The applicant argued that the method in Chapter 25 of GARP M was contrary to power conferred upon the MRCC by the primary legislation. The Federal Court decided that the methodology in Chapter 25 is lawful under the provisions of section 13 of the CTPA, and it was within the powers of the MRCC to determine the method contained within Chapter 25 of GARP M.

Revisiting the offsetting method

22.52 Committee members agree that, where a new MRCA condition does not lead to an increase in a claimant’s whole person impairment, taking into account previous conditions accepted under the VEA and the SRCA, then no permanent impairment compensation should be payable. This accords with the whole person impairment approach.

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22.53 However, the driver for many of the lower than expected or nil outcomes under the current method is the fact that conditions compensated under the VEA or the SRCA are being treated differently under steps (i) and (iii) of the current method, set out at paragraph 22.37.

22.54 In step (i), an impairment rating is determined for conditions compensated under the VEA or the SRCA at the current date using GARP M; however, the amount offset at step (iii) has been determined at an earlier point in time using an assessment tool other than GARP M (GARP V for conditions under the VEA and Comcare’s Guide to the assessment of degree of permanent impairment for conditions accepted under the SRCA).

22.55 This creates three sources of potential difference:

(i) the assessment tools are different (i.e. different ratings can be given for the same impairment);

(ii) the translation of that impairment into a compensation payment is different (i.e. the same impairment rating would give rise to a different payment); and

(iii) the impairment arising from the pre-existing condition may have changed between the time of the original assessment and the date of assessment under the MRCA (this can work both ways to give rise to either an excessive or inadequate payment for the new MRCA condition, depending on whether the previous condition has deteriorated or improved).

22.56 The Committee confirms that the requirement for an offsetting method is based on sound policy principles. However, given the sources of differences identified above, the Committee also considered whether the existing offsetting method was appropriate, or whether an alternative offsetting method should be considered. The Committee was divided on this issue.

**Argument for a revised offsetting method**

**Compensation should be paid where impairment exceeds a threshold**

22.57 One of the purposes of the MRCA is to provide compensation in respect to permanent impairment suffered as a result of a service injury or service disease, if that impairment exceeds a required level (see Chapter 8). Therefore, it can be argued that an increase in an overall impairment rating of five or more impairment points arising from a condition accepted under the MRCA should give rise to a permanent impairment compensation payment. This is consistent with the approach applied to other claims for permanent impairment compensation under the MRCA that are not transitional in nature.\(^9\)

22.58 Example B, above, shows how the current method does not meet this purpose. In that example, the MRCA condition has contributed an additional 12 impairment points to the claimant’s total impairment rating. However, the methodology in Chapter 25 of GARP M resulted in no compensation being payable for that MRCA condition.

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\(^9\) Section 71 of the MRCA.
The Military Rehabilitation and Compensation Act claim should not reduce previous compensation

22.59 The second reading speech for the Military Rehabilitation and Compensation Bill 2003 states: 10

[The MRCB] has no impact on current veterans or war widows who are receiving benefits under the [VEA]. Current beneficiaries under the [SRCA] will continue to receive their benefits under that act.

22.60 Given this intention it could be argued that a claim for permanent impairment compensation under the MRCA should not be affected by the fact that earlier compensation paid or being paid under either the VEA or SRCA is no longer commensurate with the level of impairment assessed under the methodology developed after 1 July 2004.

22.61 The current method does not directly reduce a VEA or SRCA compensation payment on the basis of a reassessment of the VEA or SRCA condition under GARP M, because there is no retrospective reduction actually applied to those payments. However, it can be argued that the current method has the effect of indirectly reducing a VEA or SRCA compensation payment when calculating compensation for a new MRCA condition, by adjusting compensation for the MRCA condition accordingly.

22.62 Effectively, the amount of compensation calculated under the MRCA takes into account the fact that VEA or SRCA compensation payments may no longer be commensurate with the level of impairment for those conditions under the assessment methodology in GARP M. Committee members from DVA and the Australian Defence Organisation (Defence), and Mr Peter Sutherland believe this does not accord with the intention to leave the current benefits being received intact.

Recommendation for revision of the method

22.63 Based on these considerations, the Committee members representing DVA and Defence, and Mr Peter Sutherland, believe that, although the MRCC designed the current method around sound policy considerations, the low or nil outcomes produced by the current method could not have been foreseen and were not intended at the time the MRCA was introduced. In this respect, it is the view of these Committee members that the outcomes from the application of Chapter 25 of GARP M are a true anomaly.

22.64 These members believe that the current method should be amended. One possible alternative method for calculating permanent impairment compensation in transitional cases is presented and analysed in the appendix to this chapter.

Argument for retaining the current method

22.65 There are differing views among Committee members on the appropriateness of implementing an alternative method for calculating permanent impairment compensation claims that are transitional in nature. Committee members from the Department of Finance and Deregulation (Finance), the Treasury and the Department of Education, Employment and Workplace Relations (DEEWR) support the retention of the current method based on the following arguments.

22.66 The current transitional arrangements apply the whole person methodology in a way that equalises compensation for transitional claimants and MRCA-only claimants, to the extent possible. This method minimises the extent to which transitional claims are advantaged or disadvantaged over MRCA-only claimants.

22.67 Under these arrangements, no one is financially worse off. The current method also accounts for instances where a transitional client’s past condition(s) have deteriorated, and recognises this deterioration in compensation outcomes.

22.68 Submissions received on this issue focus on the apparent inequity of a person receiving no additional compensation payment, despite their submission of a compensation claim for a new injury, the liability for which is ultimately accepted. The technical reasons for this have been detailed earlier in this chapter and are considered to be reasonable and appropriate.

22.69 Reasonably, however, a person who is assessed as having a new accepted injury will have an expectation of receiving an additional compensation payment. In many cases under the current arrangements, this is what occurs. However, this view ignores the fact that, where no additional compensation is paid, this person has already received an aggregate compensation amount under previous claims that is equal to or higher than what they would be able to receive if all of their injuries were assessed under the MRCA. Therefore, this person is not disadvantaged relative to their MRCA-only counterparts — in fact they are advantaged. The technical reasons for this have been detailed earlier in this chapter. They result from instances where either the new MRCA whole of person assessment, which is based on more modern medical information, assigns a lower impairment rating or dollar value to an old injury, or where a person’s past injury is found to have improved. These provide clear justification for not increasing a person’s aggregate compensation payment.

22.70 A more appropriate solution to this issue is to maintain the status quo and more effectively explain how the current transitional permanent impairment arrangements operate.

Summary of arguments for and against the current method

22.71 The preceding arguments can be summarised as follows:

- committee members from Finance, the Treasury and DEEWR believe that the current methodology is appropriate because no-one is financially worse off under these arrangements and they ensure that compensation outcomes for transitional claimants and MRCA-only claimants are equalised to the greatest extent possible.

- committee members from the Department of Finance and Deregulation, the Treasury and the Department of Education, Employment and Workplace Relations believe that the current method is appropriate because it ensures that compensation outcomes for transitional claimants and MRCA-only claimants are equalised to the extent possible.

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11 This is because money is not recovered under the SRCA or VEA where a MRCA assessment produces a lower outcome.
Conclusions

22.72 This chapter discusses the method for calculating permanent impairment compensation payments under the MRCA that are transitional in nature. While all Committee members agree on the need for an offsetting method, the Committee is divided on the appropriateness of the current method. Some of the Committee believe that the method is appropriate and based on sound principles. Other members of the Committee believe that, while the method was designed around sound principles, outcomes under the current method are anomalous and the MRCC should review the method. In that regard, an alternative method has been presented for consideration.

Recommendations

The Committee recommends that:

22.1 recognising the complexity of the transitional arrangements, there be an education campaign in conjunction with ex-service organisations to facilitate greater understanding of the arrangements and ensure claimants are aware of the effect that these provisions may have on their compensation; and

22.2 the Government consider that:

(a) the Military Rehabilitation and Compensation Commission be asked to review the current method of calculating transitional permanent impairment compensation claims, noting the arguments that it produces unintended consequences that are not appropriate — favoured by the Department of Veterans’ Affairs and the Australian Defence Organisation representatives and Mr Peter Sutherland; or

(b) the current method be retained, noting the arguments that outcomes under the current method are intended and appropriate — favoured by the Department of Finance and Deregulation, the Treasury and the Department of Education, Employment and Workplace Relations representatives.