



**The Australian Peacekeeper & Peacemaker Veterans' Association  
Reply to:**

**The Government Response to The Military Rehabilitation & Compensation  
Arrangements Review, dated May 2012.**

**1. Background.**

1.1 The APPVA has provided input into the MRCA since the ESO Working Group in 2003. We have regularly participated in consultation with the Government and the Department of Veterans' Affairs through a range of Forums including Foreign Affairs, Defence and Trade (DFAT) Legislative Hearings; and the Operational Working Party.

1.2 The APPVA holds a high degree of Subject Matter Expertise in the field of multiple-eligibility, which includes the Veteran Entitlement Act 1986 (VEA); the Safety Rehabilitation & Compensation Act 1988 (SRCA); The Commonwealth Employees Act (CEA 1931 and 1971); the Military Rehabilitation & Compensation Act 2004 (MRCA); The Defence Force Retirement Benefit and Death Fund (DFRDB); and the Military Superannuation Benefits Scheme (MSBS).

1.3 The APPVA consulted extensively with the Review Secretary, Neil Bayles OAM, for this Review and feedback from the Review Committee Findings.

1.4 The APPVA was represented by Michael Quinn within a small ESO Advisory Group. Mr Quinn also represented the Injured Service Persons Association (ISPA); the Defence Force Welfare Association (DFWA) and the Viet Nam Veterans' Association of Australia (VVAA).

**2. Conduct of the Review.**

2.1 The APPVA holds concerns as to the conduct of the MRCA Arrangements Review in the following areas:

2.1.1 The Review Committee comprised solely of Government Agencies. Whilst there was the allowance of a small ESO representation, this was only after Primary ESO complained to the Secretary and the Minister that ESO were not involved in the consultation with this committee.

- 2.1.2 The impartiality of the Review appears to be compromised by the composition of the Committee, particularly with Treasury and Finance being members. This provides the interpretation that there was no intention to make necessary improvements identified by ESO that would cost money.
- 2.1.3 The Committee did not provide full transparency in that ADF Forums to their members was not published online. The concern is also that current serving members are not fluent with the ramifications of MRCA and are able to make comparisons to what was available under the VEA and SRCA.
- 2.1.4 We question the relevance by having the Department of Employment and Workplace Relations and COMCARE representatives. This is a specific Legislation that recognises the unique nature of military service, not civilian compensation.
- 2.1.5 The Committee was Chaired by the Secretary of DVA. We feel that there exists a significant conflict of interest.
- 2.1.6 Finally, we question as to who or which Agency in Government provided the Government response. It would appear that the Review was conducted by DVA, reviewed by DVA, recommendations made by DVA and finally the Government response written by DVA. In other words it was strongly Government influenced.
- 2.2 Therefore, we do not believe that the Review was conducted in an impartial manner and failed to address some Key areas that have concerned current and ex-serving members since the enactment of the MRCA.
- 2.3 The APPVA has taken the liberty to copy the Table of Recommendations and Government Responses, with highlighted comments from a Panel of Subject Matter Experts from the APPVA. This is at Annex A to this Paper.

### **3. Service Differential.**

- 3.1 The Service Differential has been a significant issue for current and ex-serving members of the ADF. The Government has failed to recognise the equality of Permanent Impairment and like injuries/illness, regardless of the area served.
- 3.2 The Government refused to accept that prior to the enactment of MRCA, that there was no such Service Differential under the VEA or SRCA for Permanent Impairment.
- 3.3 Whilst the Government supported the Review Committee's recommendations to retain the status quo for the Service Differential, it failed to recognise the significant and

substantial allowances that are paid to ADF members, along with veteran entitlements to those who serve on Warlike service.

3.4 A copy of the points for the Service Differential is attached as Annex B to this response paper.

#### **4. Compensation following Death, Service Differential.**

4.1 The APPVA does not support such a Service Differential. We highlight that this was attempted to be placed into the Legislation in the Bill of 2004. The Senate Legislative Hearing Committee rejected the Government position on this matter and hence, the matter was not placed into the MRCA.

4.2 There should be no difference of those who die as a result of their service to Australia. ADF members put themselves at high risk in training, Field Exercises and other occupational hazards. A point to reinforce this was the largest single loss of soldiers since the Battle of Long Tan, which occurred on 12 June 1996 with the Blackhawk Tragedy in Townsville.

4.3 After some lobbying, the Government of the time accepted that the payments for the Dependents of those 18 soldiers killed were inadequate under the SRCA and an amendment was made to introduce the Additional Death Benefits (ADB) under the Defence Act 1903.

4.4 The above is evidence that those who die as a result of their service in Peacetime Australia is a loss just as significant as a soldier Killed in Action in Afghanistan. Their death in the service of Australia should be no less significant nor demeaned to their families by not providing equal compensation benefits.

#### **5. Permanent Impairment Compensation across multiple acts.**

5.1 We are pleased to note that the Government recognises this as a problematic area. We have assisted veterans who have experienced the inequitable process of bridging compensation claims within multiple Acts. The end result has been extreme frustration and significant financial disadvantage to veterans and their families.

5.2 The Impairment Point system within the MRCA does not equate to Impairment under the VEA. In fact it provides distinct disadvantages to veterans, particularly if they have Peacetime service caused conditions.

5.3 The GARP M needs to be removed and brought online with the VEA Impairment Tables to provide such equity. The cross-pollination of SRCA claims to MRCA also requires an equitable system that provides equal Impairment Points to the disability.

## **6. Non-Liability Health Care for certain psychiatric conditions.**

6.1 We note with interest that this was a matter raised by DEEWR, Treasury and Finance. This is obviously an area where the representatives of these Government Agencies have not had the experience nor empathy to understand the significant stress that can be placed on ADF members during service.

6.2 It is easy for a Public Servant to count dollars and be oblivious to the impact of service life on individuals who may in turn develop mental illness as a direct consequence of such service.

6.3 The Health Care provisions were previously provided under the VEA as a beneficial approach to treat certain mental health conditions and cancer for veterans. We contend that this should be the case regardless of service rendered.

6.4 In terms of non-liability, the most difficult period is for a veteran to access such Health Care to provide an immediate intervention to further self-harm, harm to others or the ultimate decision to take one's life.

6.5 The Government must be seen to re-emphasise its position with the Dunt Report into Suicides and the numerous Mental Health Studies that have been conducted over the last decade.

6.6 Such support also provides for the existence of the Veterans' and Veteran's Families Counselling Service (VVCS). It is a commitment and promise that was made by the Government, which recognised the difficulties of access to veteran orientated counselling for former ADF members.

## **7. Special Rate Disability Pension Offsetting.**

7.1 SRDP Offsetting is comprehensively covered in the APPVA Submission to the Review Committee within Part A (MRCA), s10. However suffice to say that it is wrong for the Government to penalise those members on SRDP, in comparison to those who have Special Rate under the VEA.

7.2 SRDP is an unfair section of the MRCA. Those members have paid for their COMSUPER over the period of their service. It should not be used to reduce the compensation payment from 100% of the General Rate to the Special Rate by 60 cents in every COMSUPER dollar.

7.3 The above was not disclosed by the Government during the ESOWG in 2003 and was never consulted to the ESO or Veteran Community. It has been contested since its inception and there has been a reluctance of the Government to accept that this is an unfair feature of the MRCA.

## **8. Conclusion.**

8.1 Whilst the APPVA accepts a number of recommendations that were approved by Government, there exist some significant issues that require resolution. They are:

- 8.1.1 Removal of the Service Differential for Peacetime Service to equal that of warlike and non-warlike service.
- 8.1.2 That the existing arrangements for Death Benefits, regardless of Service classification remain as the status quo.
- 8.1.3 Equality and fairness is returned to Permanent Impairment compensation.
- 8.1.4 Liability of Health Care for Psychiatric conditions as has been provided under the VEA. That the recommendations of the Dunt Review are used as consistent guidelines and the retention of the VVCS.
- 8.1.5 Remove the offsetting provisions of the SRDP for veterans in receipt of COMSUPER. The current arrangements are a double-dip for the Government against the Veteran.

8.2 Until the listed matters are resolved, there will be ongoing frustration within the Younger Veteran community toward the Government.

### **Annexes:**

- A. Table of APPVA Responses.
- B. Benefits and Entitlements of Warlike Service.

**Australian Peacekeeper & Peacemaker Veterans' Association (APPVA) response to the Review of Military Compensation Arrangements**

Recommendation	Response	
<b>Chapter 4 Unique Nature of Military Service</b>		
4.1 The Military Rehabilitation and Compensation Commission (MRCC) should constantly monitor and review the <i>Military Rehabilitation and Compensation Act 2004</i> (MRCA) to ensure it appropriately reflects and recognises the unique nature of military service.	Accept	<p>The Government accepts this recommendation. This action will ensure that the MRCA continues to have the ability to provide rehabilitation and compensation appropriate for the unique nature of military service for which it was designed.</p> <p style="background-color: yellow;">This is agreed by the APPVA, however does not take into account the unique nature of military service whilst the two compensation factor tables exist. In other words the unique nature of military service in Peacetime Service has been undervalued.</p>
4.2 The MRCC should periodically review developments in Australian workers' compensation jurisdictions and international military compensation arrangements at least every five years to ensure the MRCA's financial benefits and associated policies and procedures remain contemporary.	Accept	<p>The Government accepts this recommendation. These continuing reviews, at least every five years, will ensure that the MRCA remains contemporary with reference to civilian work health and safety laws, including workers' compensation, as well as international military compensation arrangements while acknowledging any changes in the nature of ADF service.</p> <p style="background-color: yellow;">APPVA accepts.</p>
4.3 Department of Veterans' Affairs (DVA) representation and participation on the Heads of Workers' Compensation Authorities continues.	Accept	<p>The Government accepts this recommendation. Continued participation in the Heads of Workers' Compensation Authorities provides the opportunity for DVA to contribute to discussions with senior representatives of Australian and New Zealand peak bodies responsible for workers' compensation, and be informed about planned developments.</p> <p style="background-color: yellow;">APPVA accepts.</p>
<b>Chapter 5 Initial Liability and the Statements of Principles</b>		
5.1 There should be no change to the current Statements of Principles regime.	Accept	<p>The Government accepts this recommendation. The Statements of Principles (SoPs) are legislative instruments that set out the factors which can connect particular injuries, diseases or death with service. SoPs are determined by the Repatriation Medical Authority (RMA). SoPs state what factors could cause a medical condition that is the subject of a claim. In order for a claim to succeed at least one of the SoP factors must be related to service.</p> <p>The Government is satisfied that the strengths of the SoPs regime lie in the consistency of outcomes and</p>

		<p>reliance on sound medical scientific evidence.</p> <p>The APPVA agrees with this matter in principle however numerous changes to the SOPs occurred during with the review process to align with the liability decisions under the SRCA toward MRCA liability. Because of this situation, the RMA should be constantly reviewing SOP against SRCA decisions, which are Balance of Probability and more stringent in application.</p>
<p>5.2 The MRCC should monitor the situation in relation to injuries sustained by members at the time they are rendering defence service to ensure that the MRCA liability provisions are operating fairly.</p>	Accept	<p>The Government accepts this recommendation. The Government is satisfied that the current requirements for causal relationship between the injury and service, and not just a temporal relationship, is valid and appropriate. However, accepting this recommendation confers a responsibility on the MRCC to monitor the operation of the liability provisions.</p> <p>The MRCA liability provisions would be deemed by the APPVA as operating fairly when the Compensation Factor Tables are removed; hence Peacetime Service differential is removed and brought up to the same levels of Warlike/Non-Warlike Service.</p>
<p>5.3 The MRCC should review its policy in relation to off-duty personal fitness regimes, and consider whether, in light of relevant case law, it is appropriate to deny liability for injuries sustained or diseases contracted as a result of sporting activities that are not part of a formal training program designed by an Australian Defence Force (ADF) Physical Training Instructor.</p>	Accept	<p>The Government accepts this recommendation. This recommendation provides recognition of the high level of fitness required of members of the ADF, both permanent members and Reserve members. It will be appropriate for DVA to liaise with Defence about Defence's policies so that consistent and complementary policy is developed by the MRCC for injuries arising from both sporting activities and personal fitness regimes.</p> <p>The APPVA agrees, however we insist that this Association is consulted of any Physical Training Policy that has been developed.</p>
<p>5.4 Information Technology (IT) systems should be improved to monitor and report information relating to the application of the exclusion provisions under the MRCA.</p>	Accept	<p>The Government accepts this recommendation. The development of improved IT systems with the capability to record and report on liability determination outcomes, where the exclusion provisions have been considered, will provide more transparency of the decision making process.</p> <p>This is not clearly defined in legislation and is more defined by Defence Policy. The Policy regarding this matter should be made clear and transparent for ESO to make comment.</p>

Chapter 6 Rehabilitation		
6.1 Research into rehabilitation, and the formulation of the research outcomes into improved policies and practices in the ADF and DVA, be continued.	Accept	<p>The Government accepts this recommendation. This recommendation acknowledges DVA’s active research into its rehabilitation services and best practice in rehabilitation. It also encourages inclusion of research outcomes into improved policies and practices in DVA and the ADF.</p> <p>Currently, the Government’s research into rehabilitation has not been best practice. The processing contracting and forced rehabilitation programs that are done without medical consultation is providing a negative rehabilitation effect. Consultation with ESO to discuss permanent damages to clients should be conducted as an ongoing forum.</p>
6.2 DVA rehabilitation pamphlets and websites should highlight the MRCC policies on vocational training aimed at restoring potential, based on individual abilities and assessed capacity; examples (de-identified) of successful vocational programs undertaken by former ADF members should be publicised.	Accept	<p>The Government accepts this recommendation. This recommendation is aimed at improving the information available to former ADF members about opportunities for vocational training.</p> <p>The APPVA agrees with this recommendation.</p>
6.3 Rehabilitation providers should be fully briefed on the opportunities available for vocational training under MRCC rehabilitation.	Accept	<p>In accepting this recommendation the Government acknowledges that an opportunity exists to ensure that rehabilitation providers understand the unique circumstances of members and former members of the ADF and the range of opportunities that the MRCC will provide to assist injured personnel to return to work, where possible. Rehabilitation providers need to understand that the MRCC policy may differ from the policies of other compensation jurisdictions.</p> <p>Rehabilitation Providers need to ensure that the beneficial approach is taken with returning members to gain full employment. This is to be without long-term damage to the veteran and to have his/her wellbeing put forward of any Department productivity measurements.</p>
6.4 DVA should improve the information in its pamphlets and on the website on the availability of holistic assistance, including psychosocial services, in addition to the traditional and important role of job-related programs.	Accept	<p>The Government accepts this recommendation. This recommendation is aimed at improving knowledge about all of the support that can be provided by DVA through rehabilitation programs. In addition to job-related (vocational) programs, DVA rehabilitation services include referral to community support services, basic skills training, lifestyle programs, attendant care services, drug and alcohol management programs, and household aids and appliances for daily living which are provided to meet an assessed need.</p> <p>The APPVA agrees with the Government’s position.</p>



<p>6.5 Performance reports for the MRCC should be expanded to show the volume and outcomes for relevant subcategories of holistic rehabilitation.</p>	<p>Accept</p>	<p>The Government accepts this recommendation. Implementation of this recommendation will ensure that DVA provides the MRCC with a broader range of data on rehabilitation outcomes.</p> <p>The APPVA agrees with the Government’s position; however the statistical data does not show time taken from lodgement of primary claim to the initiation of Incapacity Payments (IP), permanent and stable, or engagement for rehabilitation planning. This particular concern is made toward external rehabilitation agencies, which should also be liable for investigation by the Ombudsman, should complaints arise.</p>
<p>6.6 The Australian Defence Organisation (Defence) and DVA should develop options to further the aim of early intervention and ensure that the timing and effectiveness of rehabilitation are improved, and provide advice to government.</p>	<p>Accept</p>	<p>The Government accepts this recommendation. This tasks DVA and Defence to consider options for providing timely and effective rehabilitation in the interests of improved rehabilitation outcomes. DVA and Defence are asked to provide further advice to Government.</p> <p>The APPVA accepts the Government’s position; however any DVA or Defence Policy should be made in consultation with Primary ESO at the Operational Working Party (OWP).</p>
<p>6.7 The ADF Rehabilitation Program should provide performance reports on ADF rehabilitation assessments and program outcomes to assist the MRCC to fulfil its functions under the MRCA.</p>	<p>Accept</p>	<p>The Government accepts this recommendation. The MRCA defines the responsibilities of the MRCC, which includes functions associated with minimising the duration and severity of service injuries and diseases, as well as promoting return to suitable work, for both members and former members of the ADF. While the MRCC is not the rehabilitation authority for members of the ADF, it requires reports from the ADF Rehabilitation Program to assist in fulfilling its functions under the MRCA.</p> <p>The APPVA believes that this recommendation and subsequent Government response is technically incorrect. The ADF MRCC is a Rehabilitation Authority for current serving ADF members, however is not authorised to decide on matters of compensation under the MRCA. The DVA MRCC is responsible for decision making of both the Rehabilitation and Compensation aspects of the MRCA for both current and ex-serving members.</p> <p>Therefore, we interpret the Government response as requesting the ADF MRCC to on-forward ADF Rehabilitation Program (ADFRP) information to the DVA MRCC.</p> <p>We seek clarification of this matter.</p>
<p>6.8 A long-term study of the effectiveness of MRCA rehabilitation arrangements within both the ADF and DVA, with respect to the level of rehabilitation services needed and the importance of the nexus with incapacity payments, should be</p>	<p>Accept</p>	<p>The Government accepts this recommendation and DVA will work with Defence in conducting a long-term study into the effectiveness of the range of rehabilitation offered by the ADF Rehabilitation Program and DVA. An important part of the study will be an investigation of the role of incapacity payments as an incentive, or disincentive, to participation in whole of person rehabilitation that culminates in return to work,</p>

undertaken.		<p>where possible.</p> <p>This study will commence from 1 July 2013.</p> <p>The APPVA agrees with the Government's position, however we insist that we have the opportunity to provide input into the Study and also for the Study to have a Consultative Forum consisting of ESO that have experience and knowledge of the MRCA.</p>
<b>Chapter 7 Transition Management</b>		
7.1 Defence and DVA continue the current initiatives addressing the strategic objective to provide a seamless transition.	Accept	<p>The Government accepts this recommendation. This recommendation acknowledges and encourages the initiatives being implemented by DVA and Defence, individually and jointly, that are contributing to a seamless transition for members separating from the ADF, either voluntarily or on the basis of medical discharge.</p> <p>The APPVA agrees with the Government's response.</p>
7.2 The responsibilities assigned in the MRCA to the Service Chiefs should be re-designated to the Chief of the Defence Force (CDF) as a means of achieving greater consistency and oversight through tri-Service administration.	Accept	<p>The Government accepts this recommendation. The implementation of this recommendation to amend the MRCA to reassign responsibilities from the relevant Service Chief to the Chief of Defence Force (with powers to delegate and sub-delegate) will improve consistency across the three services. This includes the responsibilities assigned to the rehabilitation authority and the management of transition to civilian life. Implementation will be from 1 July 2013 subject to the passage of legislative amendment.</p> <p>The APPVA agrees with the Government's response.</p>
7.3 Section 39 of the MRCA should be amended to allow the appointment of the MRCC as the rehabilitation authority on the recommendation of the CDF, thus adopting the same discretion as applies under section 279 for the MRCC to take over responsibility for arrangements for treating diseases and injuries after considering advice from the Service Chief.	Accept with modification	<p>The Government accepts this recommendation with the modification that the section of the MRCA to be amended should not be cited as this could interfere with achieving the appropriate legislative amendment. The intent of the recommendation is to provide flexibility in the timing of the transfer of responsibility for rehabilitation for discharging members to account for individual needs. Implementation will be from 1 July 2013, subject to the passage of legislative amendment.</p> <p>The APPVA insists that we are able to scrutinise and have the opportunity to provide any subsequent input into the proposed Legislative Amendments prior to being lodged through the House.</p>

<p>7.4 Section 64 of the MRCA should similarly be amended, to allow earlier appointment of a transition advisory case manager.</p>	<p>Accept with modification</p>	<p>The Government accepts this recommendation with the modification that the section of the MRCA to be amended should not be cited as this could interfere with achieving the appropriate legislative amendment. The intent of this recommendation is to provide flexibility in the timing of the appointment of a transition advisory case manager. Implementation will be from 1 July 2013, subject to the passage of legislative amendment.</p> <p style="background-color: yellow;">The APPVA insists that we have scrutinisation and any subsequent input into the proposed Legislative Amendments prior to being lodged through the House.</p>
<p>7.5 Section 39 of the MRCA be amended to allocate to the CDF the responsibility as rehabilitation authority for serving part-time Reservists.</p>	<p>Accept with modification</p>	<p>The Government accepts this recommendation with a technical modification. The specific section of the MRCA should not be included so that legislative amendment is not restricted. In accepting this recommendation, the Government acknowledges that it is important for the CDF to have visibility of the care being provided to Reservists not undertaking continuous full-time service.</p> <p>Implementation for this recommendation will be from 1 July 2013, subject to legislation being passed.</p> <p style="background-color: yellow;">The APPVA insists that we have scrutinisation and any subsequent input into the proposed Legislative Amendments prior to being lodged through the House.</p>
<p>7.6 Section 64 of the MRCA be amended to include part-time Reservists in the required group to be offered a transition advisory case manager.</p>	<p>Accept with modification</p>	<p>The Government accepts this recommendation with the modification that the section of the MRCA to be amended should not be cited as this could interfere with achieving the appropriate legislative amendment. The intent of this recommendation is to make provision for a Reservist, irrespective of their type of service, to be offered a transition advisory case manager to assist with transition out of the ADF. This service is of particular importance when the separation is involuntary (on medical grounds). Implementation will be from 1 July 2013, subject to the passage of legislative amendment.</p> <p style="background-color: yellow;">The APPVA insists that we have scrutinisation and any subsequent input into the proposed Legislative Amendments prior to being lodged through the House.</p>
<p>7.7 Ex-service organisation (ESO) pension officers who have access to ADF members should have a demonstrated understanding of the MRCA and transition and rehabilitation programs.</p>	<p>Accept with modification</p>	<p>The Government accepts this recommendation. The Government has asked DVA to scope a more professional advocacy service for claims under the MRCA and <i>Safety, Rehabilitation and Compensation Act 1988</i> (SRCA) and multiple Act claims, to complement the existing network of ESO pension officers. Implementation is expected from 1 July 2014 in conjunction with a single appeal pathway for MRCA, as per Recommendation 17.1.</p> <p style="background-color: yellow;">The APPVA is deeply concerned with the severe cuts to ESO of the Building Excellence in Support and</p>

		<p>Training (BEST) Grant Program. This inhibits our ability to service veterans who have multiple-eligibility. In terms of the Government's response, this is interpreted as a significant contradiction, by placing such a demand to complement the existing network of ESO practitioners (not pension officers).</p> <p>The BEST situation requires significant restoration and recognition of those ESO who specialise in Multiple-Eligibility as primary beneficiaries of such funding initiatives. Increased funding for paid practitioners is required to handle the increased demand and complexity of these multiple-eligibility cases.</p>
<p>7.8 DVA initiatives for MRCA training and accreditation of staff be considered for extension to Defence transition and advisory officers, and to ESO pension officers and advocates.</p>	<p>Accept</p>	<p>The Government accepts this recommendation and DVA will work with Defence to provide opportunities for Defence transition and advisory officers to receive training and accreditation, as well as continuing to work with the ESO pension officers. This will be included in the scoping work planned with Recommendation 7.7.</p> <p>Inclusive of our comments in response to Recommendation 7.7, the APPVA has always insisted on a Competency Based Training and Assessment (CBTA) regime within the Training Information Program (TIP) training model. This was a recommendation of the Dunt Review, particularly toward recommendation 8.1 and 8.2 (Dunt Review into Suicide in the Ex-Service Community including the Government Response – May 2009). We have yet to see any development of these recommendations.</p> <p>TIP and DVA presenters (Facilitators, Trainers, and/or Assessors) would benefit from qualifications of Certificate IV in Training and Assessment (TAE 40110).</p>
<p>7.9 The role of each person who deals with a member going through transition, such as a case manager or case coordinator, should be clearly explained to the member.</p>	<p>Accept</p>	<p>The Government accepts this recommendation. This recommendation acknowledges that a member of the ADF undergoing transition from the ADF to civilian life, and possibly to the care of DVA (in the case of medical discharge) will have to deal with a number of different people, from Defence and DVA, who have specific roles in the process. However, the need for different people and their roles may be confusing to the transitioning member. Implementing this recommendation will see better information products and communication of the purpose and roles of everybody involved in the transition process.</p> <p>The APPVA agrees with the Government response and will monitor the outcomes of ADF Transition.</p>
<p>7.10 In the event of any possible future changes to transition management, comprehensive monthly performance reports on transition services to the MRCC by either DVA or Defence should be maintained.</p>	<p>Accept with modification</p>	<p>The Government accepts this recommendation with qualification. At the time of writing the report, DVA was still operating a voluntary Transition Management Service, on behalf of Defence, for those members discharging on medical grounds. On 1 October 2011, Defence resumed responsibility for all transition services, therefore, the implementation of this recommendation will be the responsibility of Defence to provide comprehensive monthly performance reports on transition services to the MRCC.</p>

		<p>The APPVA agrees with the Government response and will monitor the outcomes of ADF Transition.</p>
<p>7.11 The transition pages of the Defence and DVA websites be refined to better meet the needs of ADF members planning their transition to civilian life.</p>	<p>Accept</p>	<p>The Government accepts this recommendation. This recommendation is a response to criticism of the dissemination and clarity of information available on transition from the ADF to civilian life, whether voluntary or involuntary (including medical discharge).</p> <p>The APPVA agrees with the Government response and will monitor the outcomes of ADF Transition.</p>
<p><b>Chapter 8 Permanent impairment compensation</b></p>		
<p>8.1 The existing permanent impairment compensation differential for warlike and non-warlike service, as opposed to peacetime service, be maintained.</p>	<p>Accept</p>	<p>The Government accepts this recommendation to retain a service differential. The Government acknowledges that there are divergent views in the veteran community about having a service differential, however it is the Government's view that it confirms its gratitude and recognition of the nature of warlike and non-warlike service (formerly known as operational service) where personnel are intentionally exposed to harm from belligerent enemy or dissident forces.</p> <p>The APPVA disagrees with the Government Response for the retention of the permanent impairment compensation differential, particularly without the Government's specific consideration toward the unique nature of service for peacetime service.</p> <p>The intent of the MRCA was not to be detrimental to previously eligible Acts such as the VEA or SRCA or a combination of both (dual-eligibility).</p> <p>Within the VEA or SRCA, there is no service differential for Permanent Impairment. Within the VEA there are however benefits for warlike and non-warlike service, such as the Reasonable Hypothesis. Warlike service has further benefits than non-warlike service, such as War Service Pension, issue of the Gold Card at age 70 and early retirement at age 60.</p> <p>The ADF Allowances and Taxation benefits for ADF personnel deployed on warlike or non-warlike service compensate for such service. These were explained in some detail within the APPVA &amp; VVAA Response to the MRCA Review Recommendations dated 25 July 2011.</p> <p>In addition, it was the unanimous view of the ESO Representation to the MRCA Review Steering Committee, to remove the Peacetime Compensation Factor Table.</p> <p>Although Defence has agreed with the maintenance of the service differential, this contradicts the general sentiment of the Defence Community.</p>

		<p>We view the maintenance of the Permanent Impairment Compensation Differential as a money saving exercise and ignores the unique nature of service of ADF personnel.</p>
<p>8.2(a) The Government considers: a model that revises the current differential, by having a standard 10 per cent permanent impairment differential for 71 or more impairment points (and for death benefits, see Chapter 9) — favoured by DVA and Department of Defence representatives and Mr Peter Sutherland; or</p>	<p>Reject</p>	<p>The Government rejects this recommendation, preferring the alternative in Recommendation 8.2(b). There was no unanimous support in the veteran and defence communities to support a change to the status quo.</p> <p>The APPVA disagrees with the Government response and clearly believes that there should be no Permanent Impairment Compensation Differential.</p>
<p>8.2(b) The Government considers: not altering the current arrangements, noting the issues associated with removing the existing differential and the range of views in the broader veteran community — favoured by the Department of Finance and Deregulation (Finance), the Treasury and Department of Education, Employment and Workplace Relations (DEEWR) representatives.</p>	<p>Accept</p>	<p>The Government accepts the recommendation that the current arrangements be retained. As noted above, in the response to Recommendation 8.1, the existing differential confirms the Government’s gratitude and recognition of the nature of warlike and non-warlike service.</p> <p>The APPVA disagrees with the Government response, of which this matter stands further with the view that cost cutting measures are in place at the sacrifice of Peacetime service personnel.</p>
<p>8.3 Permanent impairment compensation under the MRCA continues to be paid either by way of periodic payments or an age-based lump sum payment, or a combination of the two.</p>	<p>Accept</p>	<p>The Government accepts this recommendation. This recommendation retains the election by eligible MRCA beneficiaries to convert all or part of a periodic permanent impairment payment into an age-based lump sum. The conversion of the periodic payment to a lump sum utilises Life Tables produced by the Government Actuary with the aim of ensuring that a person receives the same amount of compensation, irrespective of the method of payment.</p> <p>It is the view of the APPVA that Lump Sum payments are causing many financial problems for Younger Veterans. They are tending to spend the money and becoming financially destitute.</p> <p>The APPVA suggests an option be represented to extend the time given to deciding on the Lump Sum payment. This provides a mature age of younger veterans who would therefore be in a position to responsibly decide.</p> <p>The point is to receive the pension and later converting to a lump sum past the six month limitation with the MRCA.</p>

<p>8.4 Claimants continue to be allowed six months to make an election to receive an age-based lump sum in lieu of periodic payments, and the MRCC should provide clear policy and guidelines regarding what constitutes ‘special circumstances’ for the purposes of an extension.</p>	<p>Accept</p>	<p>The Government accepts this recommendation. The statutory time period allowed to make this choice can be extended by the MRCC in ‘special circumstances’ and this decision is reviewable. Policy and guidelines will be prepared by 1 July 2013.</p> <p>It is the view of the APPVA that pensions be available indefinitely, with a decision to convert to lump sum at any time.</p>
<p>8.5 The whole person impairment methodology continues to be applied under the MRCA.</p>	<p>Accept</p>	<p>The Government accepts this recommendation to continue to apply the whole person impairment methodology. The whole person impairment methodology combines the impairment resulting from all conditions caused by military service and ensures that compensation does not exceed 100 per cent of the whole person. This methodology is used in calculating the rate of disability pension under the VEA.</p> <p>The APPVA accepts the Government’s view, however notes there are current differences under the VEA and MRCA, when being assessed for Impairment Levels.</p> <p>Therefore, the Impairment Points under VEA are more beneficial than that of the Impairment Points under the MRCA.</p> <p>Assessments of VEA Impairment Points should be transferred over to MRCA, without detriment.</p>
<p>8.6 The date of effect for commencement of periodic permanent impairment compensation payments under the MRCA be on the basis of each accepted condition rather than all accepted conditions.</p>	<p>Accept</p>	<p>The Government accepts this recommendation as it will allow the earlier payment of compensation for permanent impairment under the MRCA, for those with more than one accepted condition (under the SRCA, VEA or MRCA), where not all have stabilised to their lowest level of impairment expected after all reasonable rehabilitative treatment. This initiative will also allow the lifestyle effects of the impairment to be compensated at an earlier date. This is an improvement on current access to compensation where all conditions have to be stable before the lifestyle impact can be compensated. This recommendation will be implemented, prospectively, from 1 July 2013, subject to legislation being passed.</p> <p>The APPVA agrees with the Government response.</p>
<p>8.7 Decision makers make greater use of the interim permanent impairment compensation provisions of the MRCA.</p>	<p>Accept with enhancement</p>	<p>The Government accepts this recommendation with enhancement. An interim payment of compensation for permanent impairment can be made when the medical evidence can predict a final minimum level of impairment that is above the relevant threshold. Currently, there is no payment of lifestyle effect compensation until the condition has stabilised. The enhancement to this recommendation is to allow the payment of a minimum imputed lifestyle effect, from the tables in Chapter 23 of GARP M, that matches the</p>

		<p>level of impairment. When the condition stabilises, the compensation for both the impairment and lifestyle effects will be adjusted.</p> <p>This recommendation will be implemented, prospectively, from 1 July 2013, subject to legislation being passed.</p> <p>The APPVA agrees with the Government's response, however Interim Payments should not be limited to six months for the member's to convert to lump sum.</p>
<p>8.8 No changes be made to existing provisions relating to the limit on damages against the Commonwealth or other liable parties for non-economic loss.</p>	<p>Accept</p>	<p>The Government accepts this recommendation. This recommendation supports the position that the MRCA should take precedence over the common law as the system for seeking non-economic loss compensation for most, if not all, conditions related to defence service. The MRCA provides generous benefits, many of which are payable, as needed, for life.</p> <p>The APPVA disagrees with the Government. The capping of the limit to damages against the Commonwealth should be reviewed. This is consistent with the present situation of SRCA maximum liability amount, which was not indexed for some years after 1988.</p> <p>MRCA holds the \$110,000 limit for compensation.<sup>1</sup> However it is understood that this will be for the whole person impairment, rather than individual conditions as is the case with SRCA. In addition, the maximum compensable amount for damages is not reflective of the maximum payment for Impairment of \$397,790.22.<sup>2</sup></p> <p>Of additional concern, is that SRCA has an indexation of maximum payment of lump sum for damages against the Commonwealth. Within the MRCA s404, there is no inclusion of the amount of s389(5) to be indexed accordingly.</p> <p>Therefore, there are significant concerns toward the poor level of the compensable amount for damages against the Commonwealth within MRCA.</p>
<p>8.9 No changes be made to existing provisions relating to the choice to institute action for damages against the Commonwealth or other liable parties for non-economic loss.</p>	<p>Accept</p>	<p>The Government accepts this recommendation. The choice to institute common law action should only be available where permanent impairment compensation is payable.</p> <p>The APPVA disagrees with the Government's response and refers to commentary in 8.8.</p>

<sup>1</sup> MRCA s389(5).

<sup>2</sup> Maximum MRCA compensation Lump Sum amount from DVA Fact Sheet MRC04 dated 26 March 2012.



<b>Chapter 9 Death Benefit Provisions</b>		
9.1 The lump sum payment, as prescribed at subsection 234(4) of the MRCA, paid in lieu of the pension equivalent to the <i>Veterans' Entitlements Act 1986</i> (VEA) war widow(er)'s pension, and the additional death benefit (ADB), as prescribed at subsection 234(2), be combined.	Reject	<p>The Government rejects this recommendation. Although designed to simplify the benefits payable to a wholly dependent partner following death, there were concerns raised by some ex-service organisations.</p> <p style="background-color: yellow; margin-top: 10px;">The APPVA agrees with the Government response.</p>
9.2 The proposed new lump sum payment be age-based in a manner consistent with the existing lump sum prescribed at subsection 234(4) of the MRCA and indexed in accordance with the Wage Price Index.	Reject	<p>The Government rejects this recommendation, as it was conditional on the acceptance of Recommendation 9.1 that has been rejected.</p> <p style="background-color: yellow; margin-top: 10px;">The APPVA agrees with the Government response.</p>
9.3 Dependent partners be offered the one-off choice of converting either the whole of the lump sum payment, 75 per cent, 50 per cent or 25 per cent thereof, into a lifetime pension (tax free).	Accept with modification	<p>The Government accepts the basis of this recommendation in that it offers flexibility for the wholly dependent partner to choose the way in which to receive compensation following death. As written, the recommendation was conditional on the acceptance of Recommendation 9.1, however the Government is proposing a similar range of flexibility by offering the capacity for a one-time election to convert 25, 50, 75 or 100 percent of the periodic payment compensation into an age-based lump sum. This new provision will replicate the provisions available to those in receipt of permanent impairment payments for 20 percent or more of the maximum permanent impairment compensation. There will be no change to the period of time in which to make a choice.</p> <p style="margin-top: 10px;">This recommendation will be implemented prospectively to existing dependants in receipt of periodic payments and new claims from 1 July 2013, subject to legislation being passed.</p> <p style="background-color: yellow; margin-top: 10px;">The APPVA agrees with the Government's response.</p>
9.4(a) The Government considers: if recommendation 8.2(a) in Chapter 8 is accepted, that the lump sum death benefit be increased by 10 per cent for deaths related to warlike or non-warlike service — favoured by DVA and Defence representatives, and Peter Sutherland; or	Reject	<p>As this recommendation was conditional on the Government accepting Recommendation 8.2(a), Recommendation 9.4(a) is rejected. Our response reflects the fact that there was no unanimous support in the veteran and defence communities to support a change to the status quo.</p> <p style="background-color: yellow; margin-top: 10px;">The APPVA agrees with the Government's response.</p>
9.4(b) The Government considers: if recommendation 8.2(b) in Chapter 8 is accepted, that no change be made to current death benefit arrangements, which do not currently differentiate	Accept	<p>The Government accepts the recommendation that the current arrangements be retained, and there was no unanimous support to change the status quo.</p>

<p>between the nature of the partner's death — favoured by the departments of Finance and Deregulation, Treasury and DEEWR representatives.</p>		<p>The APPVA agrees with the Government's response.</p>
<p>9.5 The proposed new lump sum payment be reduced by an amount equivalent to the ADB for deaths relating to those categories of members or former members who would not be eligible for the lump sum payment prescribed at subsection 234(2) of the MRCA.</p>	<p>Reject</p>	<p>The Government rejects this recommendation, as it was conditional on the acceptance of Recommendation 9.1 that has been rejected.</p> <p>There is no change to the current provisions where the additional lump sum (also known as the additional death benefit (ADB)) is only payable when the cause of death is linked to service. This lump sum is not payable with other compensation following death where the deceased member or former member was eligible for, or in receipt of, Special Rate Disability Pension or permanent impairment compensation at 80 or more impairment points.</p> <p>The APPVA agrees with the Government response.</p>
<p>9.6 The MRCA's current pension rate for dependent children prescribed at sections 253 and 254 be maintained.</p>	<p>Reject but replace with favourable outcome</p>	<p>The Government rejects Recommendation 9.6. It has decided upon a one-time increase to the pensions prescribed at sections 253 and 254 so that they re-align with the corresponding payments for dependent children paid under the SRCA. The Government acknowledges that, at the commencement of the MRCA, the rates under the SRCA and MRCA were the same, however, changes to the SRCA in 2008 resulted in a break in the relativity.</p> <p>The new rates will be introduced on 1 July 2013, subject to legislation being passed.</p> <p>The APPVA agrees with the Government response.</p>
<p>9.7 The MRCC consider further the question of compensation for former partners and provide advice to the Government, taking account of whole-of-government issues and legal matters.</p>	<p>Accept</p>	<p>The Government accepts this recommendation. This recommendation will allow the MRCC to further consider whether a former partner should be entitled to compensation following the death of a member.</p> <p>The APPVA disagrees with this response. It has always been our view that compensation is payable to partners of veterans and their children/dependents. This matter of Government acceptance goes against the philosophy of the compensation of dependents.</p> <p>In other words, if the former partner has divorced the veteran, then there is not entitlement to compensation. The full benefits of compensation should remain with the current partner and children and identified</p>

		dependents.
9.8 The amount of compensation for financial advice provided under sections 81, 202 and 239 of the MRCA be increased to at least \$2,400 and continue to be indexed by the CPI.	Accept with enhancement	<p>The Government accepts this recommendation to increase the amount of compensation provided under sections 81, 202 and 239 of the MRCA to \$2,400. This compensation is payable for financial advice provided by a suitably qualified financial adviser when that advice relates to the choices about benefits related to permanent impairment (lump sum or periodic payment); the choice between SRDP and incapacity payments and the choice by wholly dependent partners between periodic payments and lump sum. The Government has decided to offer additional flexibility within the new limit to pay for advice received from a legally qualified person, when it relates to the choices previously described.</p> <p>The new limit and the new criteria will apply from 1 July 2013, subject to legislation being passed.</p> <p>The APPVA agrees with the Government's decision.</p>
<b>Chapter 10 Incapacity payments</b>		
10.1 No change be made to the current approach used to calculate normal earnings (NE) under the MRCA to account for career progression.	Accept	<p>The Government accepts this recommendation. Incapacity payments are calculated based on "normal earnings" (NE) which for a former member is the salary at date of discharge. This recommendation responds to the calls to adjust the NE to account for career progression that might have occurred, but for the injury. Adjusting payments to account for career progression would be arbitrary and require speculation on likely career progression. An important principle of compensation for inability to work is that the compensation for lost wages as a result of injury reflects that employee's wage level at the time of injury.</p> <p>The APPVA agrees in principle, however the current approach of paying at the qualified rate for those who are undergoing Recruit or Initial Employment Training be maintained.</p>
10.2 Because many of the issues raised in relation to incapacity payments under the MRCA also relate to the administration of incapacity payments in other state, territory and Commonwealth jurisdictions, as well as whole-of-government superannuation issues, a cross-agency working group should be established to conduct more detailed analysis of existing incapacity payment provisions under the MRCA and provide advice to the MRCC on:	Accept	<p>The Government accepts this recommendation. The proposed cross-agency working group will examine the issues raised about incapacity payments, including their relationship with effective rehabilitation and other payments and provisions, and identify opportunities to streamline calculation and payments. The issues identified in the recommendation are not unique to the MRCA and the Government sees that there will be value from DVA working with other jurisdictions and agencies.</p> <p>The APPVA agrees in principle to the Government's response, however there will need to be ongoing consultation with the ESO community in terms of identifying areas where a veteran maybe disadvantaged as a result of losing NE, for example rate of pay at discharge being lost in value over time.</p>
<ul style="list-style-type: none"> <li>the relationship between the current incapacity payments</li> </ul>		

<p>structure and effective vocational and psychosocial rehabilitation;</p> <ul style="list-style-type: none"> <li>• options for implementing more efficient methods of determining NE in respect of ADF pay and pay-related allowances;</li> <li>• options for simplifying payments to long-term incapacity payees, who have little prospect of returning to the workforce; and</li> <li>• the practicality and implications of redefining NE for self-employed Reservists employed on continuous full-time service</li> </ul>		
<b>Chapter 11 Special Rate Disability Pension (SRDP)</b>		
<p>11.1 The MRCA be amended to address the lack of employment history restrictions on applications for the Special Rate Disability Pension (SRDP) after age 65.</p>	<p>Defer</p>	<p>The Government defers its decision on this recommendation. The recommendation refers to “employment history restrictions after age 65”, which is a reference to eligibility criteria under the VEA for those over the age of 65. The Government believes that it is appropriate for this issue to be considered, with the other eligibility criteria for SRDP, in the review of SRDP proposed in Recommendation 11.2.</p> <p style="background-color: yellow;">The APPVA agrees in principle, however the entire issue of SRDP needs to be reviewed with ESO consultation. The SRDP only currently provides for provision for concessions related to TPI status.</p> <p style="background-color: yellow;">The rate of take-up of SRDP is extremely low, which reflects that in general terms it is not beneficially viable or offered too late, after Lump Sum offers have been taken.</p>
<p>11.2 All aspects of the SRDP, including its relevance, eligibility criteria and the effectiveness of rehabilitation, should be evaluated as more data become available, or after a further 5 years.</p>	<p>Accept with modification</p>	<p>The Government accepts this recommendation with a modification on the timing of the review and evaluation of all aspects of the Special Rate Disability Pension (SRDP). In light of additional information obtained since the release of the report, and the need to consider another recommendation from Chapter 11 in the context of all aspects of the SRDP, the MRCC has decided that this review and evaluation should be undertaken within the next two years.</p> <p style="background-color: yellow;">The APPVA agrees with the Government. Consideration must also be given toward the concessional benefits of TPI embossed Gold Cards.</p>
<p>11.3 SRDP recipients and SRDP-eligible former members should have automatic eligibility for invalidity service pension in the same manner as recipients of the Special Rate of pension</p>	<p>Accept with modification</p>	<p>The Government accepts this recommendation with the addition of the words “who have qualifying service for service pension purposes” to clarify that the “automatic eligibility” is a reference to the former member not</p>

<p>under the VEA.</p>		<p>requiring additional evidence of incapacity for work, if they are eligible for, or receiving, SRDP.</p> <p>This recommendation will be implemented on 1 July 2013, subject to a legislative instrument.</p> <p>The APPVA agrees with the Government's response.</p>
<p>11.4 The rate of offset of Commonwealth superannuation against the SRDP should be retained at 60 cents in the dollar until age 60, and after age 60 the offset should be increased to 70 cents in the dollar to take account of the reduced taxation on superannuation benefits after that age.</p>	<p>Reject</p>	<p>The Government rejects this recommendation. Taxation changes are only one of a number of variable factors that have impacted on SRDP since 2004. The Government believes that the existing rate of offset should be retained for all ages.</p> <p>The APPVA rejects the Government's response. We have always held the view that the SRDP offsetting of COMSUPER is discriminatory and does not follow-on from the benefits previously available to TPI veterans under the VEA prior to 1 July 2004.</p> <p>The Government in fact draws on offsetting from SRDP in two instances if the veteran has Qualifying Service for the War Service Pension. The COMSUPER matter does not represent a fair situation for the SRDP recipient, particularly if they are in receipt of Retirement Pay.</p> <p>In terms of Retirement Pay, it is the contribution made by the veteran in accordance with Superannuation Law which in turn represents a part payment of the veteran during his/her working life toward Commonwealth superannuation.</p> <p>The Government dips into this Commonwealth retirement or Commonwealth superannuation savings by offsetting the SRDP amount. This is an inequitable situation for the veteran.</p> <p>Secondly, in terms of the War Service Pension, the Government again dips into the recipient by offsetting superannuation or other income streams as the WSP is means assets tested. This is the norm for all WSP recipients.</p> <p>Therefore, the SRDP recipient is twice offset in comparison to those TPI veterans who are eligible under the VEA. The situation with the SRDP Offsetting was not consulted with the ESO MRCA Working Group at the time and was covertly inserted.</p>

Chapter 12 Military Superannuation and related compensation issues		
12.1 The offset of incapacity payments and the SRDP by the Commonwealth-funded superannuation received by the member should continue.	Accept	<p>The Government accepts this recommendation. This retains the principle that the Government should not make duplicate income maintenance payments to the same person through superannuation and compensation. The Commonwealth-funded superannuation benefits that are offset against incapacity payments or SRDP are not the contributions made by the individual.</p> <p style="background-color: yellow;">The APPVA rejects the Government's response. We have always held the view that the SRDP offsetting of COMSUPER is discriminatory and does not follow-on from the benefits previously available to TPI veterans under the VEA prior to 1 July 2004.</p>
12.2 The definition of Commonwealth superannuation under the MRCA should be amended to exclude licensed corporations and include Commonwealth payments into retirement savings accounts, in line with the <i>Safety, Rehabilitation and Compensation Act 1988</i> (SRCA) definition.	Accept	<p>The Government accepts this recommendation. It will ensure that relevant Commonwealth funded superannuation can be offset against incapacity payments and SRDP so that the Government is not paying two income sources to the one person.</p> <p>This recommendation will be implemented on 1 July 2013, subject to legislation being passed.</p> <p style="background-color: yellow;">The APPVA rejects this response. As for 12.1, the veteran contributes into COMSUPER and is again penalized for such contributions within MRCA.</p>
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).	Accept	<p>The Government accepts this recommendation. Superannuation offsetting of incapacity payments should apply to current members of the ADF in receipt of Commonwealth superannuation, as well as former members on the grounds of equity. At this time DVA has not been able to identify anyone receiving incapacity payments who will be affected by this change, therefore it is not expected that there will be any savings achieved in the forecast period. This recommendation will be implemented on 1 July 2013, subject to the passage of legislation.</p> <p style="background-color: yellow;">The APPVA rejects this response as the principle of this matter is the same that we have proposed in 12.1 and 12.2.</p> <p style="background-color: yellow;">The Offsetting is not an equitable situation in any circumstances for COMSUPER recipients.</p>
12.4 The payment by the Australian Government of an employer's contribution on incapacity payments for former ADF members not able to work because of their compensable conditions (including former cadets and Reservists not covered	Accept	<p>The Government accepts this recommendation which will see this issue considered by the cross-agency working group established under Recommendation 10.2 from this Review. There is a clear distinction between wages/salary, that attract both employee and employer contributions to a superannuation fund, and compensation for incapacity for work and therefore the ability to earn a wage/salary. The latter are not paid</p>

<p>by military superannuation) should be considered as part of the cross-agency working group on incapacity payments (see recommendation 10.2).</p>		<p>by an employer, however those receiving incapacity payments are concerned about their inability to build retirement income, and are seeking contributions to a superannuation fund. This is not unique to military compensation.</p> <p>The APPVA cautiously accepts this response, however we would need to know the details and Terms of Reference of such a cross-agency group.</p> <p>Our experience with SRCA, where a “Superannuation Contribution”<sup>3</sup> of 5%, has been used as a figure to subtract a given Incapacity Payment amount is of great concern. The Government has been unable to advise where this “Superannuation Contribution” goes to and it is evident that it is not used in a Superannuation Fund for the IP recipient within SRCA.</p> <p>The APPVA would like clarification from the Department to the Superannuation Contribution of 5%, as has been requested many times in the past, however regrettably with no response.</p> <p>The APPVA is enthusiastic to be involved in a consultative role in this proposed cross-agency working group.</p>
<p>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.</p>	<p>Accept</p>	<p>The Government accepts this recommendation. The legislative and administrative responsibilities of both ComSuper and DVA are unique and complex and there are interactions between the benefits paid by both agencies. This consideration, across government, provides the mechanism to scope opportunities for streamlining the administration of superannuation and compensation invalidity and death benefits by aligning legislative definitions and consolidating service delivery.</p> <p>The APPVA agrees with the Government response. We were involved in the initial inter-Governmental Agency Working Group in 2007. The matter particularly focused on veterans in receipt of TPI and who were required to be reviewed by COMSPUPER (either in receipt of MSBS or DFRDB Class B or Class A Invalidity Pensions).</p> <p>The intention is to have COMSUPER consult with DVA as to whether the COMSUPER recipient is currently in receipt of TPI, given the permanency of that veterans’ condition. Where the veteran remains in receipt of TPI, the COMSUPER Agency therefore negates the necessity to review the veteran’s Invalidity Pension.</p> <p>This is an acceptable practice to the APPVA and we encourage that some form of advice to TPI veterans who</p>

<sup>3</sup> SRCA s20 (Compensation for injuries resulting in incapacity where employee is in receipt of a superannuation pension), s21 (Compensation for injuries resulting in incapacity where employee is in receipt of a lump sum benefit), and s21A (Compensation for injuries resulting in incapacity where employee is in receipt of a lump sum benefit)

		may be in receipt of COMSUPER Invalidation Pensions are made to provide open communication of this matter.
<b>Chapter 13 Ancillary Benefits</b>		
13.1 The MRCC develop guidelines on when household services and attendant care compensation may be paid to the spouse or other household member under the MRCA and the SRCA.	Accept	<p>The Government accepts this recommendation. Guidelines would assist delegates and eligible persons by providing increased certainty and consistency about the circumstances under which it is appropriate to pay compensation to the spouse of other household members. Guidelines should be developed by the MRCC.</p> <p>The APPVA accepts the Government's response, however the Guidelines should be written for each separate Act in line with the Legislated entitlements.</p>
<p>13.2 The MRCA Treatment Principles be amended to provide that:</p> <ul style="list-style-type: none"> <li>where a person is eligible to be both compensated for household services under section 214 of the MRCA and receive domestic assistance and home and garden maintenance under the Treatment Principles, they may only receive the compensation payable under section 214; and</li> <li>where a person is eligible to be both compensated for attendant care under section 217 of the MRCA and receive personal care under the Treatment Principles, they may only receive the compensation payable under section 217.</li> </ul>	Accept	<p>The Government accepts this recommendation. The recommendation would remove the potential for an overlap in access to services that can be provided under the MRCA Treatment Principles and the MRCA Home Care program for members and former members of the ADF. Wholly dependent partners will continue to access their services through the MRCA Home Care Program. There are no losers from the implementation of this recommendation.</p> <p>Implementation will be from 1 July 2013, subject to legislative amendment.</p> <p>The APPVA rejects this Government response. It is deemed that the current arrangements within the MRCA is satisfactory and s214 through to s220 are adequate and require no change.</p> <p>We are puzzled as to why a person who needs high care would forego the need for Attendant care, or household services, garden maintenance and home maintenance. We insist that both s214 and s217 is needed for these severely disabled veterans.</p>
13.3 No change be made to the weekly statutory limit for reimbursement for household services or attendant care under the MRCA.	Defer	<p>The Government will defer a decision on this recommendation until after DVA has concluded a review of the needs of severely wounded/injured members and former members, and their families.</p> <p>The APPVA accepts the Government's response, as we are concerned from advice received that there have been problems with returning severely incapacitated service personnel from Iraq/Afghanistan.</p> <p>We understand that a review is underway and request that we are invited to consult to the review.</p>



Chapter 14 Treatment provisions		
14.1 The MRCC should continue to encourage a stronger review mechanism for the issue of Repatriation Health Cards, and should conduct ongoing quality assurance reviews of decisions to retain clients on reimbursement of treatment costs (Treatment Pathway 1).	Accept	<p>The Government accepts this recommendation. Treatment Pathway 2 (where treatment is provided via a Repatriation Health Card) has cost, workload and treatment management advantages. This recommendation addresses data that suggests that former members are being retained on Treatment Pathway 1 (reimbursement pathway) for longer than necessary.</p> <p style="background-color: yellow;">The APPVA accepts the Government response.</p>
14.2 The MRCC should review the need for the dual treatment pathways approach in three years time, with a review strategy to be developed in the near term.	Accept	<p>The Government accepts this recommendation. It responds to calls for a single treatment pathway to reduce complexity. More data is required to determine the implications of such an approach and a review strategy should be developed to provide the mechanism for gathering the evidence in advance of the MRCC review in 2015.</p> <p style="background-color: yellow;">The APPVA rejects the Government's response. We insist that both Treatment pathways remain as treatment cards do not allow for extra treatment required for some veterans.</p> <p style="background-color: yellow;">In other words there exists a cap or treatment schedule within the VEA, which has in some instances become arduous to a veteran who requires high-end treatment.</p> <p style="background-color: yellow;">The Provisions within MRCA Chapter 6 (Treatment for Injuries and Diseases) must be retained to allow such flexibility of treatment options to the veteran.</p>
14.3 The MRCC should review the need for former members with both VEA and MRCA entitlements to hold multiple cards and, if necessary, seek legislative change for greater simplicity.	Accept	<p>The Government accepts this recommendation. Currently, former members are only issued with a single Repatriation Health Card (white or Gold) with which to access treatment, for their VEA or MRCA accepted conditions, and other card related benefits. Implementing this recommendation will provide legislative clarity and support current practice/systems which prevent multiple cards being issued to a single person. There is another recommendation in Chapter 24 that proposes providing eligible SRCA beneficiaries with access to the Repatriation Health Card system and so this clarification will be timely. Implementation will be from 1 July 2013, subject to legislative amendment.</p> <p style="background-color: yellow;">The APPVA accepts this Government response.</p>
Chapter 15 Administration		
15.1 DVA continues to improve both the quality and timeliness of its compensation claims processing under the SRCA and the	Accept	<p>The Government accepts this recommendation. DVA should continue current initiatives to improve both quality and timeliness of compensation claims processing and client service.</p>

<p>MRCA, as well as its client service.</p>		<p>The APPVA supports the Government’s response, noting that there have been instances where quality decision from Delegates, due to imposed time taken to process limitations, which have had the consequence of lengthy appeals.</p> <p>The process must be monitored to ensure quality decisions are made without the pressure to the delegate, which may provide compromised quality of decisions, hence added time taken to process of a veteran’s claim.</p>
<p>15.2 DVA continues to identify better Key Performance Indicators (KPIs), particularly for time taken to process (TTTP) claims.</p>	<p>Accept</p>	<p>The Government accepts this recommendation. The recommendation acknowledges that DVA is working to identify appropriate KPIs for measuring the outcomes and outputs of its claims processing work.</p> <p>The APPVA accepts the Government’s decision, noting however with KPIs, there needs to be comparative data with Quality Assurance.</p> <p>This matter particularly pertains to decisions made versus the amount of over-turned decisions at appeal (Either Reconsiderations, VRB or AAT). The feedback of the decisions would ideally be made to the Delegate in order to provide improvement of quality decisions.</p>
<p>15.3 The Military Rehabilitation and Compensation Commission (MRCC) should monitor the timeliness for the conduct of needs assessments, with adjustments where the client is unable to be contacted.</p>	<p>Accept</p>	<p>The Government accepts this recommendation. The MRCA requires a Needs Assessment to be conducted prior to the payment of any compensation or provision of rehabilitation services. Conducting the Needs Assessments in a timely manner is important as it allows a member’s priority needs to be addressed.</p> <p>The APPVA agrees with the Government’s response.</p>
<p>15.4 The KPI for time taken to process (TTTP) should be adjusted for permanent impairment compensation cases awaiting stabilisation.</p>	<p>Accept</p>	<p>The Government accepts this recommendation. The KPI for TTTP is distorted by the requirement for a condition to be stable before permanent impairment compensation is payable. Currently, it is a requirement that all conditions being assessed for permanent impairment compensation must be stable before compensation can be paid under the MRCA. There are other recommendations in Chapter 8 of the Review that deal with the requirements for stability of the condition prior to compensation being paid. The Government has accepted Recommendations 8.6 and 8.7.</p> <p>The APPVA agrees with the Recommendations of Chapter 8 (8.6 &amp; 8.7), however Permanent Impairment should always be included within the TTTP.</p>
<p>15.5 DVA implements the recommendations from the recent internal audit and consultant reviews of TTTP and quality</p>	<p>Accept</p>	<p>The Government accepts this recommendation. DVA should incorporate the recommendations from these audits and reports in the work that it is doing to improve the quality of claims and effective use of staff</p>

<p>decision making and, in doing so, address the concerns outlined in submissions on staffing and claims processing.</p>		<p>resources for claims processing.</p> <p>The APPVA agrees with the Government’s response, however we have held concerns for some time over the Average Staffing Levels (ASL) within the Department.</p> <p>Staff cut-backs as a result of what was stated by the Department as the reduction of WWII veterans and War Widows does not equate to the increased demand and complexity of multiple-eligibility cases and the tempo of operations undertaken by the ADF for over 20 years.</p>
<p>15.6 DVA and Defence continue to modernise their business processes and IT systems for SRCA and MRCA compensation-related processing and management systems, including scope for client lodgement and monitoring of claims, and IT links between DVA and Defence.</p>	<p>Accept</p>	<p>The Government accepts this recommendation. DVA and Defence will continue to work together to develop compatible and complementary IT systems and processes that will be considered within each agency’s IT strategic plans.</p> <p>The APPVA agrees with the Government’s response.</p>
<p><b>Chapter 16 Claims</b></p>		
<p>16.1 The MRCC should consider a modular approach for claims under the MRCA, dealing firstly with initial liability and needs assessment (subject to clarification of policies and practices after the Federal Court decision on <i>Irwin v. Military Rehabilitation and Compensation Commission</i> [2009] FCAFC 33 (20 March 2009)).</p>	<p>Accept</p>	<p>The Government accepts this recommendation. A modular approach would simplify the claims process by firstly dealing with the question of initial liability and Needs Assessment and then addressing claims that will satisfy the identified needs.</p> <p>The APPVA rejects the Government’s response to this matter. It is our belief that the case of Irwin was to seek liability of the Commonwealth for damages at the AAT, of which the case was appealed at the FCAFC.</p> <p>The APPVA believes that the provisions of seeking damages is a right of the Applicant and that the proposition in this case is inappropriate, particularly as a decision has yet to be finalised.</p>
<p>16.2 For serving members, the ADF should provide information on the circumstances of the incident from which the initial liability claim arises, and related health and rehabilitation issues, with the claim for liability.</p>	<p>Accept</p>	<p>The Government accepts this recommendation. Provision of this information by the ADF, for serving members, would expedite claims processing and contribute to lower times taken to process, but more importantly, speedier access to benefits.</p> <p>The APPVA rejects this proposition. The ADF should not be required to provide additional information. There are concerns of Operational Security; overlapping judgement on unlawful and willing acts.</p> <p>This proposition is outside and beyond normal evidence required for claims under the VEA, SRCA and</p>

		MRCA.
16.3 The MRCC should consider a shortened MRCA claim form to be available for claimants who have service only after 1 July 2004 and have all the accompanying ADF endorsements, incident reports, medical and service records.	Accept	<p>The Government accepts this recommendation. The MRCA covers all service after 1 July 2004, and some information required for those with entitlements under more than one Act is not required from those who have service only after 1 July 2004.</p> <p>The APPVA cautiously supports this proposition, however documentation should not be made compulsory, due to circumstances that are experienced on warlike, non-warlike service.</p> <p>Such evidence may not necessarily be made available due to operational circumstances and we are concerned that the beneficial approach toward the Reasonable Hypothesis may be eroded accordingly.</p>
16.4 The average lag time between injury or exposure and lodgement of a claim for compensation should be reduced for ADF safety and compensation evidential purposes; the MRCC should establish a KPI to be reported on by Defence so that the efforts to reduce the time lag can be monitored on an annual basis and reported in the MRCC annual report.	Accept	<p>The Government accepts this recommendation. Reducing the time between injury and claim would assist the ADF to better manage workplace safety issues and the evidence required to support a claim will be more readily available.</p> <p>The APPVA rejects this proposition. The MRCA or DVA MRCC is solely responsible within the Legislation to administer the respective Rehabilitation and Compensation of current and ex-serving ADF members.</p> <p>We find it difficult to comprehend why the DVA MRCC would demand from the ADF reporting to it on the reduction of risk or the ADF OHS or WHS practices. These OHS or WHS policy and procedures is the sole responsibility of the ADF to ensure that all members of the ADF and those who go there are protected against workplace accidents, deaths, injuries and/or illness.</p> <p>The basic principles and responsibility of OHS Law rests with the employer, not the insurer or in this case the DVA MRCC.</p> <p>This proposition introduces nothing but an added layer of bureaucracy to a given claim within the MRCA.</p>
16.5 The MRCC should establish a KPI for the timeliness of provision of information by Defence to support compensation claims, and this KPI be monitored and reported in the MRCC annual report.	Accept	<p>The Government accepts this recommendation. Timely access to information, in the control of Defence, that is required in the investigation of a claim for initial liability or compensation is essential to allow timely outcomes of claims.</p> <p>The APPVA agrees with the Government's response. This proposition has been noted as problematic in terms of obtaining ADF information in terms of service eligibility, medical files and pay records has been an</p>

		ongoing for some years.
16.6 Reporting provisions (to Parliament) for times taken to process initial liability and permanent impairment compensation claims, with adjustment for times not within MRCC control, be developed for the MRCC similar to those being considered for Comcare under the SRCA.	Defer	<p>The Government defers a decision on this recommendation for 12 months. The amendments to the SRCA to introduce statutory time limits for processing claims received Royal Assent in December 2011, but the regulations required to implement the reporting have not yet been developed. In the next 12 months, DVA will have the opportunity to observe the effects of the change and provide advice to the Government about the Comcare experience, and other DVA initiatives underway to improve times taken to process claims.</p> <p>The APPVA agrees with the Government's response and we await the outcome from this proposition to provide any further comment.</p>
<b>Chapter 17 Reconsideration and Review</b>		
17.1 The MRCA determining system be refined to a single appeal path to the Veterans' Review Board (VRB) and then the Administrative Appeals Tribunal (AAT), as a means of a more timely review that is less complex and less costly.	Accept	<p>The Government accepts this recommendation in principle but defers its response (along with a response to Recommendation 17.2) pending the outcome of consultation with stakeholders and full consideration of the detail and implications of this complex change. The planned implementation date is 1 July 2014, subject to consultation with stakeholders, further decision by Government in the 2014 Budget, and legislative change.</p> <p>The APPVA agrees with this recommendation. As stated by the APPVA for some time this is a matter that requires timely resolution and should not be deferred.</p> <p>The Reconsiderations pathway only benefits lawyers and not necessarily the veteran. The provisions within the VRB and AAT are adequate and are beneficial to the veteran.</p> <p>The single pathway is also beneficial to the Department as it reduces the requirement for added staff or mechanisms to administer the reconsiderations pathway.</p>
17.2 Internal reconsideration by the MRCC be the first step in the review process, and the process for section 31 reviews under the VEA be adopted, to help ensure the quality of decisions that are considered by the VRB and reduce VRB workloads and costs.	Accept	<p>The Government accepts this recommendation in principle but defers its response (along with its response to Recommendation 17.1) pending the outcome of consultation with stakeholders, consideration of resource and other implications and a further decision in the 2014 Budget.</p> <p>The APPVA agrees with this recommendation. We believe that this matter should not be deferred, as there is a requirement for a more streamlined and less complex system in administering reviews and appeals within the MRCA.</p>

<p>17.3 There be access to a case conference process by the VRB so that, wherever possible, the key questions and relevant evidence are established as early as possible and the hearings can proceed without any unnecessary delay.</p>	<p>Accept</p>	<p>The Government accepts this recommendation. Case conferencing is part of the Alternative Dispute Resolution (ADR) process, increasingly used in the broader legal community. The VRB issued a General Practice Direction (GPD) in January 2011 allowing the VRB to refer a case to an ADR process, including conferencing or neutral evaluation.</p> <p style="background-color: yellow;">The APPVA agrees with the Government's response.</p>
<p>17.4 In advance of the adoption of a single path, a formal service level agreement between the MRCC and the VRB be negotiated to define a comprehensive case conference process within current legislation.</p>	<p>Accept with modification</p>	<p>The Government accepts this recommendation with the modification that the VRB and the MRCC should establish agreed national administrative and procedural arrangements, including case conferencing and other alternative dispute mechanisms, designed to improve timeliness. To respect the independence of the VRB, this recommendation will be achieved by mechanisms other than a formal service level agreement. The arrangements are to be in place before 1 July 2014.</p> <p style="background-color: yellow;">The APPVA agrees with the Government's response.</p>
<p>17.5 The MRCA be amended to provide the VRB with explicit powers to remit a matter to the MRCC for needs assessment and compensation.</p>	<p>Accept</p>	<p>The Government accepts this recommendation. This will overcome the current situation where the VRB has to adjourn a case to ask a delegate of the MRCC to conduct investigations and relay the evidence to the VRB. The implementation date is 1 July 2013, subject to legislation being passed.</p> <p style="background-color: yellow;">The APPVA agrees with the Government's response.</p>
<p><b>Chapter 18 Governance arrangements</b></p>		
<p>18.1 The Minister for Veterans' Affairs continues to be responsible for administering the MRCA.</p>	<p>Accept</p>	<p>The Government accepts this recommendation that continues the current arrangements with the Minister for Veterans' Affairs being responsible for administering the MRCA.</p> <p style="background-color: yellow;">The APPVA agrees with the Government's response.</p>
<p>18.2 Subject to section 7 of the <i>Occupational Health and Safety Act 1991</i> (OHS Act), service within the ADF continues to come under the OHS Act and be regulated by the Safety, Rehabilitation and Compensation Commission, Comcare and the Australian Radiation Protection and Nuclear Safety Agency.</p>	<p>Accept with modification</p>	<p>The Government accepts this recommendation with the necessary modification that acknowledges that on 1 January 2012 the OHS Act was replaced by the <i>Work Health and Safety Act 2011</i> (WHS Act). This continues the existing governance arrangements for work health and safety. Section 12D of the WHS Act is the equivalent of section 7 of the OHS Act, Comcare is now the regulator for the WHS Act and the Australian Radiation Protection and Nuclear Safety Agency is the regulator for the <i>Australian Radiation Protection and Nuclear Safety Act 1998</i>.</p>

		No comment – we fail to see the relevance toward the MRCA Review.
18.3 Greater effort and resources be devoted by Defence and DVA to introduce comprehensive and effective management information systems for occupational health and safety and military compensation within and between both agencies.	Accept with modification	<p>The Government accepts this recommendation as it acknowledges the relationship between work health and safety issues and subsequent compensation claims. Defence and DVA will continue to work together to ensure that complementary systems are developed that improve information management within the two agencies. The Government acknowledges that the term “occupational health and safety” has been replaced by “work health and safety” from 1 January 2012.</p> <p>No comment.</p>
18.4 The Government consider expanding the membership of the MRCC by including a second member nominated by the Minister for Defence from the Department of Defence or the ADF, given the advantages this would bring for both Defence and the MRCC, especially in facilitating improvements in information sharing between DVA and Defence.	Accept	<p>The Government accepts this recommendation. This additional member will increase the MRCC from five members to six. The MRCC was established by the MRCA and has responsibility for administering the MRCA and claims for defence related claims under the SRCA. The additional member will be appointed as soon as practicable after the passage of the required legislative amendment.</p> <p>The APPVA agrees with the Government’s response.</p>
18.5 Defence and DVA jointly determine the most appropriate mechanism for regulating their relationship, including defining their respective roles and responsibilities, in relation to the future administration of the MRCA.	Accept	<p>The Government accepts this recommendation. Defence, as the employer, and DVA staff, under delegation from the MRCC as the administrator of the employee compensation scheme, have different responsibilities, but common goals. It is essential that they work collaboratively to improve effectiveness and accountability.</p> <p>The APPVA agrees with the Government’s response.</p>
<b>Chapter 19 Compensation offsetting between the Veterans’ Entitlements Act and the Safety, Rehabilitation and Compensation Act</b>		
19.1 Existing offsetting arrangements be maintained.	Accept	<p>The Government accepts this recommendation that refers to maintaining the offsetting of compensation received for the same incapacity under the VEA and the SRCA.</p> <p>The APPVA accepts the Government’s response.</p>
19.2 Ongoing efforts by DVA aimed at improving advice to clients regarding the effect offsetting provisions will have on their compensation entitlements be continued.	Accept	<p>The Government accepts this recommendation that supports ongoing work within DVA aimed at improving advice to clients regarding the effect offsetting provisions (between the VEA and SRCA) on their compensation entitlements.</p>

		The APPVA accepts the Government's response.
19.3 DVA should examine the viability of providing claimants with the option to repay the actuarial value of a lump sum previously received under the SRCA at the time an offset of a pension is determined under the VEA, taking into account the benefits of increased flexibility while maintaining simplicity.	Reject	<p>The Government rejects this recommendation. Examination of the recommendation identified that the veteran/widow(er) would need a considerable amount of money up front to repay the actuarial value of a lump sum previously received under the SRCA, in order to receive a full VEA pension without offset.</p> <p>The APPVA rejects the Government's position. The proposition within the Recommendation would appease people who made ill-informed decisions due to the information given by the Department at the time.</p>
<b>Chapter 20 Ceasing new claims under the Safety, Rehabilitation and Compensation Act</b>		
20.1 The date of injury approach be maintained and no action be taken to cease future claims under the <i>Safety, Rehabilitation and Compensation Act 1988</i> (SRCA) by treating them as claims under the <i>Military Rehabilitation and Compensation Act 2004</i> (MRCA).	Accept	<p>The Government accepts this recommendation, and the conclusion of the Review that, at this time, there are too many complex, sensitive and potentially controversial issues that would need to be overcome to move away from the date of injury approach to decide which Act is applicable for rehabilitation and compensation for an injury. The date of injury approach sees injuries caused by service before 1 July 2004 addressed under the SRCA (where that service does not give rise to an entitlement under the VEA), and injuries caused by service after 1 July 2004 addressed under the MRCA.</p> <p>The APPVA seeks refined definition by amendment to the <i>Consequential, Transitional and Provisions Act 2004</i> (CTPA 2004). The proposition is too complex and technical to provide a definitive answer.</p> <p>Our concerns pertain to specific degenerative conditions, that may have delayed clinical onset. Examples are osteoarthritis clinically onset after a trauma from date of injury. Mental illness in particular would need identified from date of injury/illness, as these illnesses tend to become clinically onset some years after the date of the trauma.</p>
20.2 DVA and Defence undertake more education of claimants and ESO representatives on the three pieces of legislation that govern military compensation and continue to simplify the front-end claims process for potential claimants.	Accept	<p>The Government accepts this recommendation. Such an education process will be designed to ensure that those with eligibility under more than one of the three Acts administered by DVA (VEA, SRCA and MRCA) – and their representatives – understand the potential interaction between benefits received under each Act. This recommendation will be implemented in association with Recommendation 28.1 after all legislation changes arising from the Review have been made.</p> <p>The APPVA accepts the Government's response, however insists that funding for TIP and BEST Grant Programs is restored to levels that allow for ESO to provide for such education and services to assist veterans and their families in making life-changing decisions.</p>



		More paid practitioners who specialize in Multiple Eligibility and COMSUPER are needed to provide a higher level of service in a complex and difficult environment.
<b>Chapter 21 Aggravations of conditions accepted under the Veterans' Entitlements Act related to service after 1 July 2004</b>		
21.1 The section 12 election provisions be removed. The election provisions should be replaced with provisions that stipulate that all aggravations of a condition accepted under the VEA that relate to service after 1 July 2004 be the subject of an application for increase under the VEA, and cannot be claimed under the MRCA.	Accept	The Government accepts this recommendation. Implementation of this recommendation will simplify the claims process for a person with an aggravation (by service after 1 July 2004) of a condition already accepted under the VEA. This will be implemented from 1 July 2013, subject to legislation being passed.  The APPVA accepts the Government's response.
<b>Chapter 22 Permanent impairment claims that cross multiple Acts</b>		
22.1 Recognising the complexity of the transitional arrangements, there be an education campaign in conjunction with ESOs to facilitate greater understanding of the arrangements and ensure claimants are aware of the effect that these provisions may have on their compensation.	Accept with modification	The Government accepts this recommendation, noting that the reference to "transitional arrangements" in the recommendation is a reference to the provisions for calculating permanent impairment compensation under the MRCA, where previous compensation has previously been received under the VEA and/or SRCA. This situation might be described as transitional permanent impairment compensation or permanent impairment across multiple Acts. The education campaign will occur in conjunction with implementation of Recommendation 28.1.  The APPVA accepts the Government's response, however insists that funding for TIP and BEST Grant Programs is restored to levels that allow for ESO to provide for such education and services to assist veterans and their families in making life-changing decisions.  More paid practitioners who specialize in Multiple Eligibility and COMSUPER are needed to provide a higher level of service in a complex and difficult environment.
22.2(a) The Government consider that: the MRCC 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 —	Accept with enhancement	The Government accepts this recommendation and further agrees that the methodology should be changed and to adopt and fund the alternative methodology that was presented in the appendix to Chapter 22 of the report, as recommended by the MRCC. This new methodology will be applied both prospectively and retrospectively. Where application of the new methodology results in a lower amount of compensation, the

<p>favoured by DVA and Defence representatives and Mr Peter Sutherland; or</p>		<p>existing rate of MRCA permanent impairment compensation will apply until a new assessment, results in a higher amount. The planned implementation date is 1 July 2013, subject to a legislative instrument, with retrospective reassessments to be made over two and a half years from January 2014.</p> <p>The APPVA agrees with the Recommendation, however hold grave concerns over the 5 Impairment Points required before a claim is assessed within the Model.</p> <p>Any applicant who has an accepted condition or acceptance of the worsening of a condition, should be assessed for compensation regardless of the Impairment Points, under the MRCA.</p>
<p>22.2(b) The Government consider that: the current method be retained, noting the arguments that outcomes under the current method are intended and appropriate — favoured by the Finance, the Treasury and DEEWR representatives.</p>	<p>Reject</p>	<p>The Government rejects this recommendation, having accepted the alternative in Recommendation 22.2(a), and being satisfied that the outcome of the review by the MRCC confirmed that the current methodology produced unintended outcomes and concluded that the best methodology is the alternative proposed in the report.</p> <p>No comment.</p>
<p><b>Chapter 23 Other perceived anomalies</b></p>		
<p>23.1 No change is necessary to adjust benefits between the applicable Acts, as these differences are not unintended. This relates specifically to:</p> <ul style="list-style-type: none"> <li>• household and attendant care services under the VEA;</li> <li>• the Motor Vehicle Compensation Scheme under the MRCA;</li> <li>• lump sum payments for VEA recipients;</li> <li>• MRCA telephone allowances;</li> <li>• private vehicle travel for treatment expenses;</li> <li>• funeral benefits;</li> <li>• fortnightly payments for child dependants under the VEA;</li> <li>• education allowances under the SRCA;</li> <li>• the MRCA benefits derived from specific impairment levels; and</li> <li>• the automatic grant of death benefits for dependants of deceased prisoners of war.</li> </ul>	<p>Accept with modification</p>	<p>The Government accepts this recommendation with qualification that the MRCA telephone allowance has been replaced by the payment known as the MRCA supplement. The Government is satisfied that the differences between Acts examined are all justifiable differences and not anomalies, and, therefore, status quo remains.</p> <p>The APPVA does not necessarily agree with the implication that these were intended. Differences between the Acts apply to veterans with their relevant eligibility, of which one Act may be more beneficial than another.</p>

Chapter 24 Treatment cards for Safety, Rehabilitation and Compensation Act clients		
24.1 Repatriation Health Cards – For Specific Conditions (White Cards) for specific conditions be issued to Part XI defence-related claimants under the SRCA to achieve consistency in treatment arrangements for all former ADF members. Cards should be provided subject to a needs assessment showing long-term treatment needs, and the current reimbursement arrangements for the treatment of short-term conditions should be retained.	Accept	<p>The Government accepts this recommendation. Implementation of this recommendation will result in a consistent method of access for medical treatment for all former members of the ADF whose conditions accepted under the VEA, SRCA and MRCA are chronic and there is evidence of long-term treatment needs. Issuing a Repatriation Health Card – For Specific Conditions (White Card) to SRCA clients will simplify access to treatment for them and simplify administration for providers, particularly for those former members with conditions accepted under more than one Act. This recommendation will require consultation with the medical and allied health provider communities, and IT systems changes within DVA. The planned implementation date for this initiative is 10 December 2013, subject to legislation being passed.</p> <p style="background-color: yellow;">The APPVA agrees with the Government’s response, however the matter should be further enhanced to include Gold Cards and the embossing of TPI to provide concessional benefits equal across all of the Acts and in line with Centrelink Concessions; or depending upon the concessions within the relevant State or Territory of residence of the veteran.</p>
24.2 The DVA fee schedule be adopted for treatment provided to defence-related claimants under Part XI of the SRCA.	Accept	<p>The Government accepts this recommendation, which flows from Recommendation 24.1. This recommendation will result in a common fee for treatment of conditions irrespective of the Act that the treatment is provided under. The planned implementation date for this initiative is 10 December 2013, subject to legislation being passed.</p> <p style="background-color: yellow;">The APPVA agrees with the Government Response, however the combined pathways should exist as for the MRCA Chapter 6, in order to be able to retain flexibility from some of the restrictions of the VEA Treatment provisions.</p>
24.3 The supplementary payment for pharmaceuticals be extended to defence-related claimants under Part XI of the SRCA with White Cards.	Accept	<p>The Government accepts this recommendation, associated with Recommendation 24.1. The supplement is designed to offset, in part, the pharmaceutical co-payment required under the Repatriation Pharmaceutical Benefits Scheme. The planned implementation date for this initiative is 10 December 2013, subject to legislation being passed.</p> <p style="background-color: yellow;">The APPVA accepts this Government Response.</p>
Chapter 25 Non-liability health cover for certain conditions		
25.1(a) The Government consider: providing non-liability health cover under the MRCA for certain psychiatric conditions to all former members of the ADF and part-time Reservists who have served after 1 July 2004 — favoured by DVA and Defence	Reject	<p>The Government rejects this recommendation, preferring the alternative provided in recommendation 25.1(b). The Government acknowledges that those former members with warlike or non warlike service after 1 July 2004 already have access to non liability health care for certain psychiatric conditions via provision in the VEA.</p>

representatives and Mr Peter Sutherland; or		The APPVA does not accept the Government's Response. This is a direct erosion of VEA treatment entitlement which has provided benefit in many circumstances to gain treatment for conditions whilst establishing relationship to service.
25.1(b) The Government consider: 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 Finance, the Treasury and DEEWR representatives.	Accept	The Government accepts this recommendation in preference to the alternative provided in Recommendation 25.1(a). The Government is asking Defence and DVA to gather further evidence to establish both the benefit and need for additional psychiatric care for those former members of the ADF and part-time Reservists with peacetime service after 1 July 2004. The departments will report back to Government, including options for the best mechanism for addressing any identified need.  The APPVA does not accept the Government's Response. This is a direct erosion of VEA treatment entitlement which has provided benefit in many circumstances to gain treatment for conditions whilst establishing relationship to service.
<b>Chapter 26 Compassionate payment scheme</b>		
26.1 An Australian Defence Force (ADF) compassionate payment scheme should not be introduced.	Accept	The Government accepts this recommendation and the response should be read in conjunction with the response to Recommendation 26.2. The outcome is that a compassionate payment scheme will not be introduced.  The APPVA agrees to the Government's Response.
26.2 The payment of compensation to families in relation to the service-related deaths of ADF members continue to be managed by the Australian Defence Organisation in accordance with existing arrangements as considered appropriate to the circumstances.	Accept	The Government accepts this recommendation for the Australian Defence Organisation to continue making compensation payments, on a case by case ex gratia basis, to non-dependent parents and other close family members following the death of a member of the ADF in service.  The APPVA accepts this Government Response.
<b>Chapter 27 Coverage for Australian Federal Police</b>		
27.1 Australian Federal Police members not be given access to the MRCA.	Accept	The Government accepts this recommendation. It is not appropriate to provide access to Australian Federal Police (AFP) members to a scheme that has been designed to provide for the unique nature of military service.

		<p>The APPVA accepts this Government Response, noting that previous eligibility of Police Peacekeepers was made under the VEA – providing a beneficial approach and recognising the dangers of Peacekeeping Operations.</p> <p>The APPVA is concerned that the Government has yet to enact a beneficial stand-alone Overseas Compensation Scheme for Police who serve in some of the most dangerous countries on earth.</p>
<b>Chapter 28 Death and disability insurance in the context of military compensation</b>		
28.1 Defence and DVA jointly undertake a comprehensive communication strategy aimed at providing education to serving members of the ADF on the full range of financial benefits provided under the MRCA and military superannuation.	Accept	<p>The Government accepts this recommendation. This recommendation recognises the complexity that exists for a member (or former member) of the ADF who may be eligible for compensation under one or more of the three Acts administered by DVA (VEA, SRCA and MRCA), and at time of transition from the ADF (to civilian life) either voluntarily, or involuntarily (medical discharge), will also have an entitlement from the relevant military superannuation scheme administered by ComSuper. The proposed communication strategy will be implemented following the passage of all legislative changes arising from the Review. It would also include information proposed in Recommendations 20.2 and 22.1.</p> <p>The APPVA accepts the Government’s response, however insists that funding for TIP and BEST Grant Programs is restored to levels that allow for ESO to provide for such education and services to assist veterans and their families in making life-changing decisions.</p> <p>More paid practitioners who specialize in Multiple Eligibility and COMSUPER are needed to provide a higher level of service in a complex and difficult environment.</p>
28.2 Defence should work to resolve the insurance issue external to the Review process.	Accept	<p>The Government accepts this recommendation. The Government is satisfied that the benefits provided by the MRCA are generous and it is, therefore, appropriate that the issue of death and disability insurance should be resolved by Defence.</p> <p>No Comment.</p>
<b>Chapter 29 Reconsideration of compensation-related recommendations from the Review of Veterans’ Entitlements</b>		
29.1 No further action is required on the unimplemented recommendations of the Review of Veterans’ Entitlements (Clarke Review) referred to this Committee.	Accept	<p>The Government accepts this recommendation. It is satisfied that no further action is required on the 22 unimplemented recommendations of the Review of Veterans’ Entitlements (Clarke Review) referred to the Review of Military Compensation Arrangements.</p>

		No Comment.
29.2 DVA, the Repatriation Commission and MRCC review the Veterans' Vocational Rehabilitation Service with the aim of improving rehabilitation options for those who have eligibility under the VEA and are younger than 50 years.	Accept with enhancement	<p>The Government accepts this recommendation with enhancement, that DVA, the Repatriation Commission and MRCC will review the delivery of rehabilitation services under the VEA, SRCA and MRCA, with a specific focus on those under the age of 50 with VEA eligibility. This review would provide the opportunity to address rehabilitation gaps for VEA beneficiaries, who currently only have access to a voluntary scheme, and could present the opportunity for early rehabilitation intervention, irrespective of the Act that covers the service when the injury occurred. The review will commence from 1 July 2012.</p> <p>The APPVA rejects this Government Response. This approach would provide a loss of possible income by the extension of time spent on Loss of Earnings (LOE) or TTI, given that the applicants will not be able to receive the extra top-up of WSP or DFISA whilst undergoing Vocational Training. The maintenance of income will need to be introduced and not removed, if forced rehabilitation is to take place.</p>
<b>Chapter 30 Suitability of access to military compensation schemes for non-members</b>		
30.1 Members undergoing career transition assistance and personnel holding honorary ranks should be defined under the MRCA as 'members'.	Accept with enhancement	<p>The Government accepts this recommendation with enhancement. In addition to the groups specified, the Government agrees that authorised representatives of philanthropic organisations, in support of the ADF, will be defined in the MRCA as 'members'. This will provide certainty about access to rehabilitation and compensation for these defined groups who are currently given access to the MRCA via Ministerial determination. Implementation will be from 1 July 2013, subject to legislation being passed.</p> <p>The APPVA accepts the Government's Response.</p>
<p>30.2 Civilians required to support the ADF, who are not Commonwealth, state or territory government employees and do not have statutory workers' compensation cover, be provided with access to the MRCA where they are:</p> <ul style="list-style-type: none"> <li>• integrated with the ADF in an area of operations;</li> <li>• employed and subject to military command and control; and</li> <li>• subject to the relevant provisions of the <i>Defence Force Discipline Act 1982</i>.</li> </ul>	Reject but replace with favourable outcome	<p>The Government rejects this recommendation. In lieu of this recommendation, and as further recognition of the unique nature of military service deserving its own rehabilitation and compensation scheme (the MRCA), the Government agrees the following overarching principles for use in determining who should have access to the MRCA. These principles are:</p> <ol style="list-style-type: none"> <li>1. MRCA coverage should be provided to those defined in the MRCA as a "member".</li> <li>2. Government employees should use their existing statutory rehabilitation and compensation cover, unless the Minister for Defence has made a declaration under section 8 of MRCA.</li> <li>3. Other civilians working independently in the same location as the ADF will be expected to have their own workers' compensation coverage.</li> </ol> <p>Further work needs to be undertaken to develop a fourth principle covering the mechanism for providing compensation coverage for other civilians, in support roles to the ADF, and currently given access to the</p>

		<p>MRCA through a section 8 determination.</p> <p>It should be noted that existing determinations under s8 of MRCA will preserve access for those people currently covered by these determinations for past periods.</p> <p>The Departments of Defence, Education, Employment and Workplace Relations and Veterans' Affairs will report back to Government before the end of the 2012 calendar year with details of the final principle.</p> <p>The APPVA accepts the Government's position as the MRCA should remain as unique to the rigours of military service.</p>
<p><b>Observation from paragraph 11.43</b></p>		
<p>Eligibility for Special Rate Disability Pension (SRDP) when not in receipt of incapacity payments.</p>	<p>Accept</p>	<p>The Government agrees that those former members who have either redeemed small incapacity payments under s138 of the MRCA or whose incapacity payments have been reduced to nil purely because of the value of Commonwealth superannuation, can still be found eligible for SRDP, if all other SRDP criteria are met. The first part addresses an anomaly that a person who had an entitlement to receive incapacity payments until age 65 as an ongoing payment could be found to not be receiving that payment because it had in effect been cashed out. The second part provides equity of access for ancillary benefits, associated with being found SRDP eligible, for a person who is incapacitated for work, but not receiving incapacity payments purely because of the value of their Commonwealth funded superannuation/invalidity benefits. Implementation will be from 1 July 2013, subject to legislation being passed.</p> <p>The APPVA welcomes this amendment by the Government.</p>



## **Service Differential – Points of Contention.**

### **Public Comments on Service Differential:**

#### **Sydney Public Hearing, 24 September 2009.**

ISPA raised the service differential and explain that this complicated the MRCA.

Dr Pezzutti raised the issue of the Blackhawk Payout, which at the time was inadequate. *“I really don’t think it matters for a member of the ADF whether they’re injured on warlike service or training exercises, or in the Barracks.”*

#### **Brisbane, 9 November 2009.**

David Moore: that the act needs to look at those touched in “Harms Way” and looking after dependents.

Benchmarking. Suggested that the benchmark be a fully qualified Private soldier salary, or cost of an average house and single pension and costs of raising children on the Child Support Agency Formula.

*“Every life is valued the same”.*

Reasonable Lifestyle is afforded in terms of compensation.

Sutherland (Committee): *“Substantial feedback in our public consultations that a life is a life, a death is a death – should be equally compensated whether it’s a Peace Force – in a Peacetime Situation or a War Situation.”*

Moore: Suggested that War Service should be placed higher.

#### **Townsville, 10 November 2009.**

Only comment from a current serving member is that he believed that the compensation should be equal, particularly when on exercise or lead-up training.

#### **Perth, 9 December 2009.**

Perth Legacy: *“People who die on operations, they are going to be the very small proportion of people who are dealt with by this Act.”*

#### **Darwin, 4 February 2010.**

Mr Ronevich: *“Dead is dead... I don’t see a need for a different scale”.*



Mr Sirani: *“Mission Rehearsal Exercises (MRE) training is rigorous. Some of the lead-up training that we do to go overseas is quite vigorous and we could get hurt during that lead-up training that we do to go to that country.”*

**Canberra, 12 March 2010.**

Peter Burn (Naval Association): *“An inherent high risk for all service personnel, the day they put a uniform on until the day they retire.”*

Impairment disadvantage MRCA vs. VEA for Peacetime Service was opposed by a RAN Veteran.

BRIG Kerry Mellor (DFWA): *“War service should be higher than Peacetime service, due to the very very high levels of risk.”*

Afterward: *“The basis of risk is a mistake. Argue the case on the basis of risk is to miss the crucial difference of risk versus obligation.”*

**Hobart, 8 April 2010.**

**No Transcript.**

**Melbourne, 9 April 2010.**

W. Anderson (Snr): *“It doesn’t matter that it happened in Australia or in East Timor..”*

Greg Isolani (Solicitor): *“Full Federal Court of James and Cunningham for zero compensation.”*

Mr Mason (Slater & Gordon): Time taken to process SRCA & MRCA is a critical problem.

*“In relation to the quantum payable for warlike service and non-warlike service impairments, let me say simply that a lost arm is a lost arm.”*

*“That it might be there is no sustainable reason for preserving that quantum discrimination in MRCA.”*

Dr Willcox: *“You wear the green, you’re part of the military it shouldn’t really matter.”*

**Adelaide, 27 April 2010.**

Mr Ian Smith (S.A. Veteran Advisory Committee): Supports DFWA submission.

**“Reasonable Expectation”** for career progression of Junior Leaders. Suggest SGT/CAPT for relevant NCO/Officer rank.

Paul Teague (20 year current serving Army Reservist): *“Warlike service, non-warlike service and Peacetime service is irrelevant to the situation.”*

## Service Bias.

1.1 Within *MRCA s67(1)(e)*, (Guide to Determining impairment and compensation), methods by which the impairment points of a person, and the effect on a person's lifestyle, from a service injury or disease can be used to determine the compensation payable to the person under this Part (Part 2 – Permanent Impairment);

**Comment:** This is viewed as a fair statement within the determination of impairment and compensation for Permanent Impairment, however, s67 goes on to discriminate this statement within s67(2):

1.2 The Guide must:

(a) specify different methods under s67(1)(e) for:

- (i) service injuries or diseases that relate to warlike service or non-warlike service; and
- (ii) other service injuries or diseases; and

(b) specify a method for determining the compensation payable to a person who has both:

- (i) a service injury or disease that relates to warlike service or non-warlike service; and
- (ii) another service injury or disease.

1.3 **Explanation:** Therefore, the MRCA is service biased within the GARP (M)<sup>1</sup> with a 2-tiered service approach. Utilising the two tables within Chapter 23, Table 23.1 Compensation Factors for Calculating Permanent Impairment Compensation – Warlike and Non-warlike Service; and Table 23.2 Compensation Factors for Calculating Permanent Impairment Compensation – Peacetime Service.

1.4 This means the highest amount of PI is paid to members who have been injured/ill/wounded accepted on warlike service and on non-warlike service; and lastly, the lowest end of the scale for those who are ill/injured or wounded accepted under Peacetime service.

**Comment:** This approach toward service type is recommended to be abolished or repealed and the same aggregated amount retained, particularly Peacetime Service, at the highest level (warlike service & non-warlike service tier) for all three service types.

1.5 It is noted that those veterans who deploy on Warlike service have generous intrinsic compensation in terms of financial incentives. These include tax-free pay and allowances, which are considerable benefits for warlike service. This is placed in a context of “Danger Pay”, to compensate for the risks of warlike service.

1.6 “Danger Pay” is also applicable to those who serve in high risk employment such as

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<sup>1</sup> Military Rehabilitation Compensation Commission (MRCC), Instrument No M9 of 2005, Guide to Determining Impairment and Compensation (GARP (M)).

Special Operations, which is included in the salary package, whether they serve on warlike service or peacetime service.

1.7 Therefore, high-risk employment or deployment to warlike or non-warlike service operations is adequately compensated by generous allowances, tax-free (in some cases) and even tax-concessions for not residing in Australia for a designated period of time.

1.8 Further entitlements for warlike service include Qualifying Service eligibility for War Service Pension (Retirement Age 60; or Special Rate of Pension or unable to work more than 8 hours per week – even the disability is not service related).

1.9 In addition to the above, is free treatment for cancer, psychological conditions, tuberculosis,<sup>2</sup> and the beneficial approach of the Reasonable Hypothesis for the Onus of Proof. Veterans with Qualifying service are eligible for the Gold Card at age 70, regardless if the conditions are service related or not.

1.10 In comparison to Peacetime Service compensation, it is clear that there are significant benefits, including salary and allowances for warlike service which carry on for the life of the veteran. However, Peacetime veterans are at a significant disadvantage within the MRCA.

1.11 Never has there been a Compensation Scheme or Act that has discriminated against the type of service rendered. In terms of Peacetime Service the veteran has to undergo the more onerous task of the Burden of Proof. This in turn is not a beneficial approach in comparison to warlike service veterans.

1.12 The Burden of Proof is the Balance of Probabilities, which has more stringent evidence criteria. The Peacetime claimant does not have the benefits of Qualifying Service, unlike the warlike service veteran, the Peacetime claimant is not entitled to War Service Pension as an Income Support Supplement or income stream per se.

1.13 The only advantage for a Peacetime Service veteran is if they hold eligibility toward the Defence Force Income Support Allowance (DFISA), which is managed through Centrelink if they are incapacitated for work.

1.14 It is interesting to note the various comments in the ESO Submissions and the Executive Summary of the Military Rehabilitation and Compensation Arrangements Review Committee, in relation to the “differentials of service.”

1.15 One ESO leader put the argument that if Australia was ever to be mobilised as was the case for World War II, then no man or woman would be encouraged to join the cause due to the lesser value of compensation entitlements under the MRCA.

1.16 The above is viewed as antiquated and was made by a Korean War Veteran, of which in any case this was not a consideration of many service personnel at that time. Even in today's terms, the level of compensation for warlike service Vis a Vis peacetime service is generally not a consideration by an individual when enlisting or joining the ADF. This is also the case for those ADF members who are posted to warlike service.

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<sup>2</sup> Sections 85(2) and 88A VEA.

1.17 It appears that those who have Qualifying Service or warlike service will prefer to retain the service differential, obviously because of the tangible benefit, on top of a significant number of other DVA and ADF benefits from warlike service.

1.18 The same can be said for the number of ESO submissions that were authored by Veterans, who are not Younger Veterans or Contemporary Veterans, nor consistently represent the issues of Younger Veterans. The MRCA will not affect them or their members, where in our case and that of the Injured Service Persons Association (ISPA), (particularly Peacetime Service incapacitated members), and it has a significant effect.

1.19 Other ESO claim that warlike service is above and beyond that of normal service during Peacetime. Whilst this is agreed, it is interesting to note that one particular ESO in favour of retaining the Service discrimination has a high number of Peacetime Service members who are incapacitated due to their dangerous training in the ADF.

1.20 Regardless of various beliefs, the problem with these views for the retention of discrimination of service for warlike and peacetime service, is that it is insulting to those who serve Australia and who have not had the opportunity to deploy or have acquired the condition during peacetime service, who have been incapacitated as a result of their service and are placed on a lower level of compensation.

1.21 This treatment of Peacetime veterans does not happen anywhere else in the world, except for Australia and particularly since the implementation of the MRCA 2004. The expectation of serving members is that they will be given equal treatment, which includes equal compensation for incapacity if caused by their service to Australia.

1.22 We hear Federal Politicians and Bureaucrats commenting that Australia has a world class compensation entitlement scheme for its veterans and serving members of the ADF. However in comparison to our cousins in the United Kingdom, there are significant differences in terms of benefits toward those who are incapacitated as a result of their service, regardless where they served.<sup>3</sup>

1.23 Compensation for a Severely Incapacitated British soldier can be up to almost \$900,000 AUD, with a monthly Income Stream that is Tax Free, along with Superannuation entitlements.

1.24 So the question must be asked – why has the Australian Government chosen to discriminate against Peacetime Service personnel/veterans as opposed to warlike service eligible veterans? This was not the case in Permanent Impairment payments or pensions under the SRCA or the VEA.

1.25 Our conjecture also looks into the case of Incapacity, rather than where the medical condition was contracted or clinically onset. In terms of Incapacity, it does not matter where the actual condition was clinically onset. It is the effect to lifestyle, the effects toward a person's quality of life, the ability to function as was previously the case prior to a service-related condition and the effects of family and social parameters that dictate the incapacity.

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<sup>3</sup> Website Link: <http://www.veterans-uk.info/pensions/afcs.html>

1.26 Therefore, no matter where the person served, Incapacity will remain at the same level. The risks of warlike service are recognised in terms of the beneficial approach of Qualifying Service, pay and allowances.

1.27 A Modern Military Compensation Scheme needs to demonstrate equality of Permanent Impairment compensation entitlements, no matter where the ADF person serves. This is consistent in any compensation scheme and in particular with other countries such as the approach toward veterans and service members of the United Kingdom.

## **2. Legal aid provisions (Differentials).**

2.1 Within Chapter 11, para 11.13 The Defence, Foreign Affairs & Trade (DFAT) Legislative Hearing Committee of 2004, discussed the Legal aid provisions for differential service.

*“The Bill retains the existing situation where legal aid is available to claimants before the AAT but not earlier in the process. For claimants with warlike or non-warlike service a merit test will apply to applications for legal aid. For claimants with peacetime service both a merit and a means test will apply. Again, many witnesses opposed the differential with respect to the provision of legal aid. Legal aid should be available to all based on merit only. Legal aid should be available to all injured members appealing decisions under the MRCB. If not, some other form of financial assistance should be provided.”*

## **3. Differential Service for Deaths.**

3.1 Within the Defence Foreign Affairs & Trade (DFAT) Recommendation 1 (The Committee recommends that further efforts be made to explain the implications of the legislation to serving personnel), is quoted as the following:

*“One of the most contentious aspects of the Bill is the distinction it makes between types of service, distinctions affecting a range of benefits as well as standards of proof and mechanisms for review. Some witnesses opposed the distinctions, saying that they were not warranted and that entitlements should be paid on the basis of ‘like Compensation for like injury’. Others believed the differences should be maintained so that the unique position of soldiers who had served in combat could be adequately recognised and rewarded.”*

*“This division of opinion was most marked with respect to the differential lump sum death benefit for widowed partners, but it also arose in connection with other payments, reflecting the different philosophical positions of those providing evidence. The difference was largely generational, with Organisations representing younger, serving members generally less likely to support maintenance of the distinctions and veterans’ Organisations supporting existing differentials or, in some cases, advocating additional differentiation. Even some of the strongest advocates for the retention of differential compensation payments held a different view with respect to the death benefit for widowed partners.”*

## **4. Differential Service of Appeal Pathways and Widows (ers).**

4.1 The DFAT Chapter 11 (Reconsiderations and Review), went into some detail of removing the one pathway for review for Peacetime service.

4.2 Veterans who hold eligibility for warlike or non-warlike service were able to have a choice of two pathways. These were the following:

- a. The appeal pathway as per the VEA, through the Repatriation Commission, which is Appeal through the Veteran Review Board (VRB), then to the Administrative Appeals Tribunal (AAT), upon application.
- b. The appeal pathway as per the SRCA, which is a Reconsideration through the MRCC, then to the AAT upon application.

4.3 Peacetime service claimants were only given the choice of the appeal pathway as per the SRCA. This was argued by the overwhelming majority of ESO to be changed and that Peacetime service Differential is given the same two choices as for warlike/non-warlike service differential.

## **5. Other Points:**

5.1 **Service Differential.** This issue is the most contested within the ESO community. It was the case during the ESOWG into the MRCA 2003, highlighted in the FADT Senate Legislation Hearing Committee and continues to this day. Suffice to say that this organisation has robustly contended the position of the Government to treat Peacetime Service as less than other service places a wedge into the ADF and Veteran community. There are a number of benefits or “rewards” for warlike service in comparison to peacetime service and these are listed in the following paragraphs.

### **Legislative differences.**

- 5.1.1 An unfair and complex system by discriminating Peacetime Service for equal payment to that of warlike/non-warlike service.
- 5.1.2 Warlike/Non-warlike service has significant benefits in terms of the “Beneficial Approach” relating to the Onus of Proof being placed to DVA, within the Reasonable Hypothesis.
- 5.1.3 Peacetime Service veterans must have the Burden of Proof under a much harder approach, in the form of the Balance of Probabilities.
- 5.1.4 The Reasonable Hypothesis has benefits in Review, Appeal and at the level of the Federal Court of Australia, whereas Peacetime Service does not.
- 5.1.5 The Reasonable Hypothesis is very beneficial in terms of the Statements of Principles (SOP), in comparison to Peacetime Service.
- 5.1.6 There are separate SOPs specifically for eligible Defence Service or Peacetime Service, which are more arduous in nature in comparison to

warlike/non-warlike service SOP.

5.1.7 **Warlike Service has the following MRCA benefits:**

- 5.1.7.1 Gold Card issued at age 70 years.
- 5.1.7.2 Qualifying Service (QS) for War Service Pension (WSP).
- 5.1.7.3 Invalidity Service Pension (WSP) is payable if the veteran is unable to work more than 10 hours per week from disabilities that are not necessarily war caused or service related. Invalidity service pension may be granted at any age up to the age of 65 years, **or**
- 5.1.7.4 WSP is available if the veteran is on the Special Rate of Pension, **or**
- 5.1.7.5 WSP is available if the veteran is 60 years of age. This recognises the intangible effects of **war** that may result in premature ageing of the veteran and/or loss of earning power.
- 5.1.7.6 WSP is a Single (\$729.30) or Partnered pension (\$549.70 each), which is means and assets tested and tax-free.<sup>4</sup>
- 5.1.7.7 A Warlike service veteran is entitled to free treatment for Cancer.
- 5.1.7.8 A Warlike service veteran is entitled to free treatment for psychiatric illness.
- 5.1.7.9 A Warlike service veteran is entitled to free treatment for Tuberculosis.

**6. ADF Conditions of Service – Pay and Allowances.**

- 6.1 Warlike service, in terms of salary and allowances is tax-free.
- 6.2 Warlike service provides for Separation Allowance (if categorised as Married or recognised De Facto) of \$7.85 per day.
- 6.3 Warlike service attracts Field Allowance of Tier 1 (\$51.59 per day); or Tier 2 (\$30.27 per day).<sup>5</sup>

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<sup>4</sup> As at 23 July 2011. These amounts are indexed twice per year in line with movements in the cost of living and/or average wages.

<sup>5</sup> Department of Defence People Strategies and Policy ADF Pay and Conditions Manual (PACMAN) as of 23 July 2011. Website: <http://www.defence.gov.au/dpe/pac/>

6.4 Warlike service attracts Operational Allowance of \$200 per day, \$125 per day if in a supporting role, for example Al Minhad Air Base in the United Arab Emirates (UAE).<sup>6</sup>

6.5 Warlike service attracts Pre-Deployment Leave Travel, which allows a member to travel when pre-deployment leave has been granted. A member may be granted leave travel within Australia to their home address when pre-deployment leave is granted. This travel is free and paid by the Government.

6.6 Pre-deployment leave allows a member going on duty to a prescribed area overseas to finalise their personal affairs and make their farewells before they leave Australia. The CDF may grant a member pre-deployment leave of up to seven days. This period includes weekends and public holidays.

6.7 Warlike service attracts War Service Leave Credits, of 1.13 days per month and is paid with the Operational Allowance (daily rate) and is tax-free.<sup>7</sup> War service leave is an additional leave entitlement for a member who is on warlike service. It allows them to adjust to living back in Australia and to recover from the demands of that service.

6.8 Warlike service attracts Extra Recreational Leave (ERL) for arduous or prolonged duty. This is up to 3.5 days during an 8 month deployment (5 days every 12 months).<sup>8</sup>

## **7. Warlike service benefits for Home Loans.**

7.1 Warlike service attracts additional credits under the Defence Service Home Ownership Assistance Scheme (DHOAS 2008), from 3 months warlike service of 2 years to over 9 months warlike service of 5 years. This provides for a discounted interest expense rate of 37.5% subsidy payable to the veteran.<sup>9</sup>

7.2 Warlike service attracts additional benefits under the DHOAS 2008. DHOAS is available to a person of the old ADF Home Loan Scheme (ADFHLS), if that person served on Operational (warlike) Service.<sup>10</sup>

## **8. Recognition of Warlike Service.**

8.1 Warlike service is recognised by the Australian Active Service Medal with Clasp of operation or country served.

8.2 Warlike service is recognised by the issue of the Returned from Active Service Badge (RASB).

8.3 Warlike service is recognised, if an infantryman posted to a Battle Group or Combat Team with the award of the Infantry Combat Badge.

8.4 Warlike service is recognised, if an ADF member serving in a Battle Group or

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<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> Defence Force Home Ownership Assistance Scheme Act 2008, s48 (Service Credits – Additional allowance for warlike service).

<sup>10</sup> Defence Home Ownership Assistance Scheme Regulations 2008, s26.



Combat Team with the award of the Army Combat Badge.

8.5 Warlike service is additionally recognised with a campaign medal.<sup>11</sup>

## **9. Appeal Pathways for warlike Service.**

9.1 Up to the writing of this paper, we understand that there will be changes made to the choice of appeal pathways. However, the beneficial pathway is available to warlike/non-warlike service veterans through s31 (VEA); VRB; and AAT.

9.2 Peacetime Service only has the choice of the more rigorous appeal pathway through Reconsideration and the AAT.

## **10. Legal Aid to warlike service veterans.**

10.1 Free legal Aid is available to warlike service veterans, through the AAT and Federal Court levels of appeal. A Peacetime service member does not have this benefit.

## **11. Warlike Service has a higher rate of Payment.**

11.1 80% advantage for warlike/non-warlike service. Therefore the amounts of compensation levels are 80% higher in monetary value than that of Peacetime Service up to the 71 Impairment Point Thresholds to 80 Impairment Points.

## **12. Repatriation from Warlike or Non-warlike Service.**

12.1 If a veteran is Repatriated to Australia due to Wound(s), Injury or Illness, he/she is entitled to tax-free salary for the duration of the period of hospitalisation and convalescence.

12.2 If a veteran is Repatriated to Australia due to the above, he/she is entitled to claim for loss of earnings in terms of the allowances paid during the deployment.

## **13. Service Differentiation – Incapacity.**

13.1 This organisation contends that in considering the Service Differential, it does not matter where the injury or illness occurred. The same incapacity is affected to the individual. This is articulated in the APPVA Submission of 2009, Part A (MRCA), section 6 (Service Bias), or in Annex B to this Paper.

13.2 The Service Differentiation complicates the MRCA, causing further unnecessary complexities in terms of case management and understanding by the serving or ex-serving member.

13.3 The Service Differentiation discriminates service rendered by serving and ex-serving members of the ADF.

13.4 The Service Differentiation has no appreciation of the dangers involved in Peacetime Service, particularly those with high risk.

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<sup>11</sup> Afghanistan, Iraq or International Force East Timor Campaign Medals as at 23 July 2011.

13.5 The Service Differentiation provides for significantly less payment for incapacity for Peacetime Service than that of a member who had the clinical onset of a given incapacity for warlike or non-warlike service. Whilst it is acknowledged that this meets at the Serious Injury (71 up to 80 Impairment Points), this system of service discrimination and bias is unfair to those who train to maintain a capability for the ADF.

13.6 Peacetime service is undervalued by the Government within MRCA, in terms of no full appreciation of the efforts made by ADF members to maintain their fitness in order to meet service physical fitness requirements.

13.7 Peacetime service is undervalued by the Government within MRCA, in terms of a lack of understanding that peacetime service is arduous over a long period of time, particularly for combat units.

13.8 Peacetime service is undervalued by the Government within MRCA, in terms of the requirement of the ADF to maintain a high level of training and fitness to be ready to meet any contingency and operational requirement.

13.9 Peacetime service is undervalued in terms of not fully appreciating the high risk of military training; particularly combat training, of which many ADF members have been incapacitated.

13.10 Peacetime service has ADF members who are prepared to sacrifice their health and wellbeing in order to protect Australia.

13.11 Peacetime service is not appreciated by the Government within MRCA, particularly when ADF members are expected to maintain high levels of operational capability that places individuals in high risk injury and death.

13.12 Some captions of the relevance of the arduous and long standing approach by the ADF and ADF members and ex-serving members is the following:

*“Train Hard – Fight Easy,*

*“The more you bleed in peace, the less you bleed in war”,*

*“When the going gets tough the tough get going”,* and

*“Do what you do in peace as to what you will do in war”.*

#### **14. Conclusion to Service Differentiation.**

14.1 The Review Report states that Service Members supported the Service Differentiation. However there are no transcripts available to analyse these comments. It is suggested that if these comments were made by serving members, they were made without the full realisation of the benefits of warlike service in terms of Legislated Beneficial Approach (Reasonable Hypothesis, SOPs etc); The Free Treatment entitlements; The Qualifying Service benefits; Conditions of Service Entitlements and Recognition of service.

14.2 It is quite evident that Peacetime service does place an individual in harm's way. At the time of writing there have been nine (9) ADF members injured in an Armoured Personnel Carrier (APC) roll-over in Shoalwater Bay Training Area (SWBTA). Of those, one is seriously injured. This is the type of risk and the dedication of individuals that keep the ADF combat ready. This service should not be cast aside as being less in terms of Compensation. To do so is an insult to the many who have been incapacitated due to their selfless and dedicated service to Australia.