Question 1. Schedule 2

Slater and Gordon Lawyers considered that the bill needs to be clarified to ensure that 'payments in relation to stabilized conditions that meet the 10 "whole person impairment" points threshold, do not result in failure to compensate conditions that stabilize later but on their own, do not meet the impairment threshold' (*Submission 9*, p. 3).

Will persons in this situation be disadvantaged?

DVA response

No. Where a claim for multiple conditions is made, the changes will not result in each condition being required to meet the threshold in order to attract compensation. Provided that the combined impairment of the conditions meets the threshold, their effects will be compensated.

The Bill makes two changes that affect claims for multiple conditions where one or more of the conditions are not stable at the time of the claim.

(i) Under the existing legislation, where one or more of the conditions have not stabilised at the date the claim is determined, an interim payment of compensation may be made. This interim payment does not include a factor for lifestyle effects. On stabilisation of all conditions, a final assessment is made, and compensation for lifestyle effects of all conditions is included from the date all of the conditions stabilised.

The amendments proposed in this Bill will apply an imputed lifestyle effect as part of the calculation of any interim payment of compensation. On stabilisation of all conditions, a final assessment will then be made to determine if any additional compensation is payable.

This proposal will ensure a person receives compensation for lifestyle effects as part of the interim payment.

(ii) Under the existing legislation, all conditions claimed must have stabilised in order to determine a date of effect.

The amendments proposed in this Bill will enable each condition to have its own date of effect that will depend on the date of the claim and the date the condition meets the requirements for payment of permanent impairment compensation. All conditions will be compensable including any that individually do not meet the relevant threshold.

This proposal will ensure a person receives their maximum compensation for each condition from the earliest date.

Question 2. Schedule 4

Amendments in Schedule 4 apply a one-time increase to rate of periodic compensation payable for dependent children so the rate aligns with similar payments under the *Safety, Rehabilitation and Compensation Act 1988* [SRCA]. However, the Explanatory Memorandum to the bill notes that, as these payments continue to be indexed differently, the payments will not remain aligned over time (p. 20). Why was the rate of indexation for the payment not also matched?

DVA response

The rate for eligible young persons under the MRCA on its commencement was close to the rate that applied to dependent children under the SRCA, but not identical. As at 1 July 2004 the weekly rate was $69.61 for the MRCA and $66.99 for the SRCA.

For the one-off increase provided for under the Bill, the indexation method used by the MRCA was not matched to that used by the SRCA because, in general, periodic payments made under the MRCA are indexed using the Consumer Price Index. In contrast, the SRCA has indexed such payments using the Wage Price Index since 2008.

Although both the MRCA and the SRCA provide periodic payments to dependent children, these payments form only one component of the packages available to eligible children under each Act. In addition to periodic payments, the MRCA also provides wholly and mainly dependent children with a lump sum payment, access to a Repatriation Health Card – For All Conditions (Gold Card), education assistance and a MRCA supplement. Partially dependant eligible young persons are provided with lump sum compensation and education assistance, but not the periodic payment. In contrast, eligible SRCA claimants will receive part of an overall lump sum for dependants and periodic payments. An additional death benefit lump sum is also available to these SRCA claimants under the *Defence Act 1903*.

A comparison of these benefits for a primary school-age child who was living with the deceased person and therefore deemed to have been a wholly dependent eligible young person, where there was an eligible partner and no other eligible young persons, is shown in the following table.

Comparison of current benefits for a wholly dependent eligible young person (Primary school aged)			
Benefits under MRCA		**Benefits under SRCA**	
Benefits following death	Not available[&]	Percentage of SRCA Death benefit[#]	$47,596.28
Dependant child lump sum	$79,615.94	Additional death benefit lump sum (paid under the *Defence Act 1903*[^])	$77,235.63
Weekly benefit	$87.57	Weekly benefit	$130.89
MRCAETS	$245.45 annually[@]	Education assistance	Not available
Treatment benefits	Gold Card	Treatment benefits	Not available
Additional Tuition	Yes	Additional tuition	Not available
Guidance and Counselling available	Yes	Guidance and Counselling available*	Not available
Family Tax Benefit (via Centrelink) [+]	Yes	Family Tax Benefit (via Centrelink) [+]	Yes

[&] No benefit provided for the child, but compensation is provided to the eligible partner

[#] Current MRCC policy is that the share of the total lump sum amount will vary according to the number of dependants. The partner of the deceased receives not less than 75% of the total amount. This amount assumes that there was an eligible partner and there was a sole dependent child - so the child would receive 10% of the total lump sum;

[^] *Defence Act 1903* payments are not available to civilians compensated under the SRCA;

[@] Assumes child attends primary school – higher benefits are payable to children attending high school

[*] In the event that a SRCA beneficiary is in receipt of the Severe Injury Adjustment payment under the *Defence Act 1903*, dependent children can access guidance and counselling under the VCES.

[+] subject to family means test

Question 3. Schedule 5

The Financial Planning Association of Australia has highlighted the need for consistency in relation to the use of the terms 'financial advisor' and 'financial planner' in light of proposed legislation which will regulate these expressions (*Submission 6*, p. 2). Will there be any restrictions on where a person will be able to seek financial or legal advice under the amendments in Schedule 5? Can those entitled to compensation under these amendments seek advice from persons who do not have appropriate licences or qualifications?

DVA response

Under the existing legislation, compensation is payable under the MRCA for the cost of financial advice obtained from a suitably qualified financial adviser in respect of certain choices that must be made under the MRCA. It is important to note that this is a re-imbursement of costs incurred by the claimant, rather than a direct payment to the provider of the advice.

The proposed amendment will extend the type of advice that can be reimbursed to include legal advice. The amendment will include a definition of "a practising lawyer" to ensure only those qualified to practice law can provide the legal advice.

The amendments will not change the requirement that already exists for the financial advice to be provided by a person qualified and able to provide financial advice.

DVA considers that it would be pre-emptive for the Veterans' Affairs Legislation Amendment (Military Compensation Review and Other Measures) Bill 2013 to include the amendment proposed by the Financial Planning Association of Australia before a formal government decision is made on the use of the expression 'financial adviser' in legislation.

Nevertheless, it is the view of DVA that there will be sufficient restrictions in the MRCA to prevent payment of compensation for advice sought from persons who do not have appropriate licences or qualifications. The proposed amendments in the Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, if passed, may provide additional protection, and a consequent amendment to the MRCA could also be considered at that time.

Question 4. Schedules 6 & 7 (offsetting Commonwealth superannuation)

Some submitters opposed the offsetting of Commonwealth superannuation in relation to military compensation arrangements (for example, APPVA, *Submission 3*, p. 5 and Slater and Gordon Lawyers, *Submission 9*, p. 2). Can you provide further information in relation to this policy? How does this offsetting approach apply to other non-Commonwealth superannuation entitlements which a person may have earned?

DVA response

This issue was comprehensively addressed in Chapter 12 of the Review's report (pp160-168). The superannuation offsetting provisions in the MRCA reflect broader Australian Government policy that was established in the SRCA, that the Australian Government should not pay two income sources to the same person. Only the Commonwealth-funded portion of superannuation payments are offset against incapacity payments and the Special Rate Disability Pension. The individual's own contributions are excluded from the offsetting arrangements. The policy also excludes from the offsetting arrangements all

non-Commonwealth superannuation payments including those paid by State Governments or private funds.

These provisions ensure that there are consistent outcomes between those receiving similar benefits under the MRCA and the SRCA.

The views of the ex-service community on this issue were previously noted by the Foreign Affairs, Defence and Trade Legislation Committee when it inquired into the provisions of the Military Rehabilitation and Compensation Bill 2003 and the Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Bill 2003. However, it did not make any recommendations at that time.

Question 5. Schedule 8

In the Schedule 8 amendments, the Returned and Services League of Australia (RSL) has proposed the word 'may' be changed to 'shall' in new subsection 353A(1) in relation to the capacity of the Veterans' Review Board to remit matters to the Military Rehabilitation and Compensation Commission for needs assessment and compensation. Does the Department dispute the RSL's view that the proposed new subsection 353A(1) is 'ambiguous and could lead to [un]certainty' (*Submission 2*, p. 1)?

DVA response

DVA does not agree that the new subsection 353A(1) is ambiguous and could lead to uncertainty. The wording of section 353A(1) aligns with the intent of the Review's recommendation accepted by Government. The Board's remittal power was intended to be discretionary and the use of the word 'may' is appropriate.

The Principal Member of the Veterans' Review Board has advised that there would be very limited circumstances in which a matter would not be sent back to the Department i.e. only if there is sufficient information to make a determination on the file and the Board is pressed by the applicant to make a decision. It would be more usual to return the matter to the Department. The preference of the Principal Member is for this power to be discretionary.

Question 6. Schedule 10

(a) Slater and Gordon Lawyers (*Submission 9*, p. 4) and KCI Lawyers (*Submission 10*, p. 7) opposed the amendments in Schedule 10. Are there circumstances where a person may benefit from being able to make a 'section 12 election' to have their claim processed under the MRCA, rather than the VEA?

DVA response

Benefits available under the VEA and the MRCA are different in nature and frequency and length of payment. Under the VEA, compensation is payable in the form of a lifelong payment of disability pension, provision of medical treatment for accepted conditions under White Card arrangements for life, and access to several allowances and voluntary vocational rehabilitation assistance. Those with 100 percent disability pension will be provided with a Gold Card to access medical treatment for all conditions, whether accepted or not as service-related.

Under the MRCA, after acceptance of liability for a condition an initial needs assessment is undertaken to identify rehabilitation, medical treatment and compensation needs. Incapacity payments may be payable for economic loss up to the age of 65. When the condition has stabilised a lump sum payment to compensate for permanent impairment may be paid. In

addition, medical treatment will be provided for accepted conditions either by covering treatment expenses or under White Card arrangements for life. Those with a permanent impairment rating of 60 or more impairment points or are eligible to choose Special Rate Disability Pension will be provided with a Gold Card to access medical treatment for all conditions.

The choice between being compensated under the VEA or the MRCA will be affected by an individual's preferences and circumstances. Some of the factors that may influence a person's decision include:

- the uncertainty of liability being accepted for the aggravation under the MRCA. If the person elects to be compensated under the MRCA but liability is not subsequently accepted, the aggravation could not then be compensated under the VEA, as the election under section 12 is irrevocable. This compares to an election for compensation under the VEA, where liability for the condition has already been accepted and compensation would be payable if incapacity has increased;
- a preference for permanent impairment lump sum payments (only available under the MRCA) or periodic payments (available under both Acts);
- other income streams of the individual;
- the duration of benefits and the age of the person – MRCA incapacity payments are only available generally to age 65 whereas VEA disability pensions are provided for life; and
- reversionary superannuation benefits.

There will be some claimants who would have been better off having their claim determined under the MRCA rather than the VEA. However, it is not possible, at the time the choice must be made, to determine which package will offer the better value to a particular claimant. This is because many of the factors that will impact on access to the various benefits will not be known for many years, some not until after the claimant's death. DVA can only provide information on the benefits that would be available if certain circumstances arise. Consequently, the choice must ultimately be a subjective choice by the claimant, based on their assessment of the likelihood of circumstances arising that will enable them to access benefits under each of the Acts.

The Review noted that there is merit in providing flexibility for claimants, but given the confusion and anxiety caused to clients and the administrative burden for DVA, took the view that the provisions should be simplified, and that aggravations of a VEA condition should be compensated under the VEA. This approach will maximise claimants' VEA entitlements. The Government accepted this view and the Bill will implement the recommendation.

(b) These submissions also identified deficiencies in DVA's communications in relation to this issue as the reason there were 'confused and anxious claimants'. How did the Department advise claimants required to make a 'section 12 election'?

DVA response

The intention of section 12 is to provide maximum flexibility for claimants.

While it would appear a simple matter to advise a claimant of the different benefits available if they were to be compensated under one Act or the other. In reality, however, this is problematic.

In terms of the actual choice, a decision-maker must provide not just information on the benefits available under two very different Acts, but also decide upon the date of aggravation and make a claimant aware of the implications of their irrevocable decision. Effectively, a decision-maker is required to assess the likelihood that liability will be accepted under the MRCA, the likely incapacity that would arise under each Act, the range of benefits that would result and convey this to the client. Claimants then have to make a choice without any certainty of the outcome.

DVA provides advice to claimants in writing. This advice needs to be individually tailored for each claimant.

Further, the complexity for decision-makers is not confined to the choice itself. Chapter 21 of the Review's report outlines two instances where DVA must undertake further investigation or encourage clients to take steps even before a notice can be issued.

The first is outlined at paragraphs 21.29 to 21.31 of the report. Where a person with both pre-1 July 2004 service and post-1 July 2004 service and an accepted VEA condition applies for an increase in the disability pension, a decision-maker will need to investigate the cause of any increased incapacity. Prior to introduction of the MRCA, such an application only required an assessment of whether incapacity has increased. Since the introduction of the MRCA, the treatment of such an application is dependant on whether the increase was due to VEA or MRCA service. The result is increased investigation by DVA, and inconvenience for claimants who are not required to make a section 12 election or who do make an election and choose to be compensated under the VEA.

The second is where what is referred to as a 'cleanskin' claim is made. This issue is outlined in paragraphs 21.21 to 21.26 of the report. Where a claim is made for a new condition under the VEA with clinical onset prior to 1 July 2004 but aggravated by service after 1 July 2004, the decision-maker will need to determine liability under the VEA and invite the claimant to lodge an application for increase or lodge a claim under the MRCA, before a notice under section 12 can be issued.

The report also notes at paragraphs 21.32 to 21.34 that it is also possible for multiple aggravations of a condition, requiring a section 12 election each time, to be compensated under both Acts. Depending on the choice made at each occasion the claimant may have different impairments 'sandwiched' together because the person elects to be compensated under different Acts for different aggravations (ref Vol 2, p. 288).

The report noted at paragraph 21.35 that the vast bulk of claimants select the VEA compensation (ref Vol 2, p. 288).

The Government acknowledged the complexity and the impact on both claimants and decision-makers, agreeing with the Review's recommendation that the section 12 provision should be removed.

It should be noted that this is a transitional issue and only affects those who have both pre-1 July 2004 and post-1 July 2004 service. Over time, there will be less claimants with such service.

Question 7. Schedule 11

(a) Can the Department provide further details regarding the financial impacts created by the amendments in Schedule 11 – Treatment for certain SRCA injuries? How have these savings been calculated (EM, p. vi)?

DVA response

The amendments in Schedule 11 provide for SRCA clients whose condition is long term to access health care treatment through DVA's longstanding treatment card arrangements, rather then being required to seek prior authority for treatment and reimbursement of treatment expenses. This change provides both health providers and DVA clients with a more streamlined approach to addressing long term health care needs.

The reduction in expenditures occurs because the fees and charges sought by providers under the former reimbursement arrangements have exceeded those applying to services provided through the treatment card arrangements. Treatment card arrangements are widely accepted by doctors and other health professionals providing services to the majority of DVA clients.

(b) The Office of the Australian Information Commissioner has recommended a privacy impact assessment of the proposed arrangements in new subsection 151A of the SRCA, or the amendment of the bill to restrict the disclosure of personal information (*Submission 8*, p. 4). What privacy protections exist for the personal information of those benefiting from military compensation arrangements?

DVA response

This proposed amendment is also linked to the Schedule 11 change that will see SRCA clients whose condition has stabilised access health care treatment through DVA's longstanding treatment card arrangements. The proposed new section 151A replicates a similar provision in the VEA and the MRCA. It provides for an exchange of information with:

- Department of Human Services (Medicare Australia) – to support the administrative arrangements for treatment cards;
- Department of Human Services (Centrelink Program) – to check that clients are not already in receipt of a pension supplement;
- Department of Health and Ageing (DoHA) – for the purposes of establishing eligibility for the new dementia and veterans' supplements.

The pension supplements are payable to the treatment card holder to assist with the costs of pharmaceutical benefits for those conditions accepted as service related.

As this proposed section extends DVA's existing administrative arrangements under the current treatment card system to the SRCA cohort, DVA does not consider that a privacy impact assessment is required. Appropriate use of information protocols are outlined a Memorandum of Understanding (MOU) with the Department of Human Services.

As is the case with VEA and MRCA clients, SRCA clients will be advised of the collection, use and disclosure of information in two ways. The compensation claim form includes a Information Privacy Principle (IPP 2) notice which sets out the usual disclosure of information. In addition, when the Repatriation Treatment Card is issued to the client, the

accompanying letter also provides an IPP 2 notice setting out the usual disclosure of information.

Finally, the reverse of the card notes:

> *By using this card, the person named consents to disclosure to DVA of the details of any treatment, treatment related services and financial information associated with its use and warrants that any services claimed for that use have been provided.*

The Department has discussed with the Office of the Australian Information Commissioner (OAIC) the privacy controls in place around use of Repatriation Treatment Cards under the VEA and the MRCA. It was agreed with the OAIC that DVA would provide an explanation to the Senate FADT Legislation Committee. This answer meets that agreement.

Question 8. Membership and independence of the Review

Could the Department respond to the criticism contained in some submissions regarding the membership and independence of the [Review] (for example, APPVA, Submission 3, p. 2 and KCI Lawyers, Submission 10, p. 2)? On what basis were the members of the Review committee selected?

DVA response

The Government undertook to examine the military compensation system in response to requests from the veteran and ex-service community. By the time the Review began the MRCA had been in operation for five years.

Military rehabilitation and compensation arrangements have complex interactions with a number of other matters, including superannuation, workers' compensation, occupational health and safety, taxation, health care, the Australian Defence Force (ADF) remuneration system, and other ADF conditions of service and entitlements.

Steering Committee members were chosen on the basis of their expertise to consider a wide range of rehabilitation and compensation issues, the whole of government implications, and to provide expertise from their Departments. The Steering Committee also included an independent member, Mr Peter Sutherland, a Visiting Fellow at the Australian National University College of Law.

There was extensive consultation with the veteran and defence community during the Review. Sixty eight submissions were received, 52 of which raised matters within the scope of the Review. In addition, the Committee visited ADF bases and held public meetings in all capital cities and Townsville. Two members of the Prime Ministerial Advisory Council attended most meetings of the Steering Committee as observers and the Committee met with representatives nominated by the Ex-service Organisation Round Table on five occasions. The Committee took those views into account in formulating its report.

The Government consulted on the report with the veteran and defence community before it formulated its response, and feedback was received from 43 ex-service organisations, other organisations and individuals.