

Senate Standing Committee on Foreign Affairs, Defence and Trade – Inquiry into the provisions of the Veterans’ Affairs Legislation Amendment (Military Compensation Review and Other Measures) Bill 2013

Department of Veterans’ Affairs Submission

Introduction

The Veterans’ Affairs Legislation Amendment (Military Compensation Review and Other Measures) Bill 2013 (the Bill) amends:

- ✦ the *Military Rehabilitation and Compensation Act 2004* and other legislation to give effect to initiatives that form part of the Government response to the Review of Military Compensation Arrangements; and
- ✦ Veterans’ Affairs legislation to enable travelling expenses to be paid for the partners of certain eligible persons, clarify arrangements relating to bank accounts and in relation to certain treatment costs.

Review of Military Compensation Arrangements

The *Military Rehabilitation and Compensation Act 2004* (MRCA) brought together rehabilitation and compensation provisions for all members of the Australian Defence Force (ADF), including cadets, cadet instructors and members of the Reserve Forces, for injuries/diseases or deaths resulting from all types of service post 1 July 2004. When introduced, the MRCA adopted the most beneficial features from the *Veterans’ Entitlements Act 1986* (VEA) and the *Safety, Rehabilitation and Compensation Act 1988* (SRCA). Unlike the VEA and the SRCA which provide whole of life compensation and health care, the MRCA focuses on whole person rehabilitation in addition to the provision of compensation and health services.

The Review of Military Compensation Arrangements was a Labor election commitment in the leadup to the 2007 election. It had broad terms of reference to examine not only the MRCA but also supporting policies and the performance of the Departments of Veterans’ Affairs and Defence in administering the Act. It also examined specific issues raised by stakeholders about transition from the SRCA and VEA to the MRCA, and interaction between the VEA and SRCA.

The Review commenced on 8 April 2009 and its report was presented to the Minister for Veterans’ Affairs on 25 February 2011. The report concluded that the objectives of the MRCA are sound. It also confirmed that the unique nature of military service justified rehabilitation and compensation arrangements specific to the needs of the military. However, not unexpectedly given the relative complexity and period of operation of the MRCA (five years before the start of the Review), the Review found opportunities for improvements. It made 108 recommendations (eight of which were four pairs of recommendations with alternate options) ranging from retaining the status quo, support for current initiatives, clarification of policy, further work and monitoring, to legislative change. The Minister publicly released the report on 18 March 2011 and invited feedback up to 30 June 2011.

The Government responded to the report in the 2012-13 Budget. It decided to implement 96 recommendations flowing from the 108 recommendations, accepting 94 recommendations, either in full or with modification/enhancement, and replacing two recommendations with favourable outcomes. In addition, the Government addressed an anomaly that was identified from an observation in the report, but that was not addressed with a recommendation.

The Government allocated \$17.4 million over four years to implement the package responding to the Review. An additional \$39.6 million of expenditure over four years will be offset by the initiative to issue Repatriation Health Cards to SRCA clients with long term treatment needs, which will generate savings of \$22.2 million over four years.

The bulk of the recommendations will be implemented by 1 July 2013. Of these, nineteen recommendations and the observation from the report require legislative changes, and are covered in thirteen of the schedules in the Bill. The relevant recommendations and Government responses are listed at Attachment A to this submission. Background and an explanation of the changes for each schedule is at Attachment B to this submission.

Extensive consultation was undertaken with the veteran and Defence communities both during and after the Review. On commencement of the Review, submissions were invited and 52 in scope submissions were received from individuals, ex-service and other organisations. The Steering Committee appointed to undertake the Review visited twelve Australian Defence Force bases and held nine public meetings to ensure that all relevant issues were identified for its consideration. The Committee also met five times with a small group of four ex-service organisation representatives nominated by the Ex-service Organisation Round Table to represent their views. Following release of the report by the Minister for Veterans' Affairs a further 43 submissions were received, providing feedback on the recommendations. Major ex-service organisations were briefed in the lead up to the Government's response in the 2012 Budget and again before the introduction of this Bill into Parliament.

Other amendments

Other amendments in the Bill will:

- ✦ clarify and confirm that the Repatriation Commission and the Military Rehabilitation and Compensation Commission may limit their financial responsibility for treatment to particular costs in relation to treatment, in particular certain aged care services;
- ✦ extend the entitlement for travelling expenses to the partner of certain eligible persons under certain circumstances; and
- ✦ enable the Department to pay new types of payments into an existing nominated bank account of a person who is already in receipt of a payment under either the Military Rehabilitation and Compensation Act or the Veterans' Entitlements Act.

Attachments

- A Government response to Review recommendations
- B Background and explanation of changes

ATTACHMENT A

Review Recommendation	Government Response	Schedule
<p>7.2 The responsibilities assigned in the MRCA to the Service Chiefs should be redesignated to the Chief of the Defence Force (CDF) as a means of achieving greater consistency and oversight through tri-Service administration.</p>	<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>1</p>
<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.</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 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>1</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>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. Implementation for this recommendation will be from 1 July 2013, subject to legislation being passed.</p>	<p>1</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>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</p>	<p>1</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>involuntary (on medical grounds). Implementation will be from 1 July 2013, subject to the passage of legislative amendment.</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>	2
<p>8.7 Decision makers make greater use of the interim permanent impairment compensation provisions of the MRCA.</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 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>	2
<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).</p>	<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>	3

	<p>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>9.6 The MRCA's current pension rate for dependent children prescribed at sections 253 and 254 be maintained.</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. The new rates will be introduced on 1 July 2013, subject to legislation being passed.</p>	4
<p>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.</p>	<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. The new limit and the new criteria will apply from 1 July 2013, subject to legislation being passed.</p>	5
<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.</p>	<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. This recommendation will be implemented on 1 July 2013, subject to legislation being passed.</p>	7
<p>12.3 The MRCA should be amended to apply superannuation offsetting against incapacity</p>	<p>The Government accepts this recommendation. Superannuation offsetting of incapacity payments should apply to current members of the ADF in receipt of</p>	7

<p>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).</p>	<p>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>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.</p>	<p>11 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>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>8 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>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.</p>	<p>9 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>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</p>	<p>10 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.</p>

<p>the subject of an application for increase under the VEA, and cannot be claimed under the MRCA.</p>	
<p>24.1 Repatriation Health Cards – For Specific Conditions (White Cards) for specific claimants 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.</p>	<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>24.2 The DVA fee schedule be adopted for treatment provided to defence-related claimants under Part XI of the SRCA.</p>	<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>24.3 The supplementary payment for pharmaceuticals be extended to defence-related claimants under Part XI of the SRCA with White Cards.</p>	<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>30.1 Members undergoing career transition assistance and personnel holding honorary ranks should be defined under the MRCA as ‘members’.</p>	<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>Eligibility for Special Rate Disability Pension</p>	<p>The Government agrees that those former members who have either redeemed</p>

	<p>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>	(SRDP) when not in receipt of incapacity payments.
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Schedule 1 – Rehabilitation and transition management

Purpose

The amendments in Schedule 1 give effect to the Government decision, in response to the Review of Military Compensation Arrangements, to enhance rehabilitation services and transition management.

Commencement

The amendments in Schedule 1 will commence on and from 1 July 2013.

Background

The ADF provides rehabilitation to all full-time serving members through the Australian Defence Force Rehabilitation Program (ADFRP), with no requirement to establish liability under any compensation scheme. Under the existing legislation, where liability has been determined, the Service Chief is the rehabilitation authority for all full-time members, unless the member has been identified as being likely to be discharged for medical reasons. In these circumstances, the Military Rehabilitation and Compensation Commission (MRCC) is the rehabilitation authority.

For part-time Reservists not on continuous full-time service and former members of the ADF, rehabilitation is provided by the MRCC; however, liability for the injury or disease must first be accepted under the Military Rehabilitation and Compensation Act or the Safety, Rehabilitation and Compensation Act.

The introduction of the Military Rehabilitation and Compensation Act meant that for the first time, transition services were recognised in legislation with section 64 of the Military Rehabilitation and Compensation Act requiring the service chief to appoint a case manager to assist a member identified as 'likely to discharge for medical reasons'. Medical reasons can relate to both service-related and non-service-related conditions.

Rehabilitation is provided for in Chapter 3 of the Military Rehabilitation and Compensation Act. Part 5 of Chapter 3 provides for Transition Management.

Explanation of the changes

The amendments are intended to:

- achieve greater consistency and oversight through the three branches of the ADF by redesignating the responsibilities of the Service Chiefs to the Chief of the Defence Force. The Chief of the Defence Force will have the power to delegate and the Service Chiefs to sub-delegate responsibilities including those relating to rehabilitation and transition management;
- provide flexibility in the timing of the transfer of responsibility for rehabilitation for members by allowing the MRCC to be appointed as the rehabilitation authority on the recommendation of the Chief of the Defence Force;
- achieve visibility of care for part-time Reservists by making the Chief of the Defence Force the rehabilitation authority for serving part-time Reservists; and
- providing access to a transition advisory case manager for part-time Reservists.

Schedule 2 – Compensation for permanent impairment

Purpose

The amendments in Schedule 2 give effect to the Government decision, in response to the Review of Military Compensation Arrangements, to make the date of effect for periodic impairment compensation to be on the basis of each accepted condition rather than all accepted conditions and to incorporate a lifestyle factor in the calculation of interim permanent impairment compensation.

The Schedule also includes a transitional provision applicable to the recalculation of the amount of permanent impairment compensation a person is to be paid for the period prior to 1 July 2013, where the person already has an injury or disease accepted under the VEA and/or SRCA.

Commencement

The amendments in Schedule 2 will commence on and from 1 July 2013.

Date of effect and inclusion of lifestyle factor amendments

Background

A member or former member of the Australian Defence Force may suffer permanent impairment as a result of a service injury or service disease. Where the MRCC has accepted liability for a service injury or service disease under Chapter 2 of the Military Rehabilitation and Compensation Act and the member or former member suffers a permanent impairment, Part 2 of Chapter 4 of the Military Rehabilitation and Compensation Act provides for the payment of permanent impairment compensation.

Permanent impairment compensation payments are non-economic loss payments as they are paid to compensate for pain, suffering, functional loss or dysfunction and the effects of the injury or disease on lifestyle. The effects of the injury or disease are assessed using the “Guide to determining impairment and compensation” (GARP M) under section 67 of the Military Rehabilitation and Compensation Act.

The Guide uses a scale from 0 to 100 to express the degree of impairment. The impairment points are then combined with a lifestyle rating to determine the rate of permanent impairment compensation. Sections 69, 70, 71 and 75 of the Military Rehabilitation and Compensation Act specifies the minimum impairment point threshold that must be met before permanent impairment compensation may become payable.

Section 68 of the Military Rehabilitation and Compensation Act applies to a person’s initial claim (or claims) for permanent impairment compensation for service injuries or diseases that have stabilised.

Section 71 of the Military Rehabilitation and Compensation Act applies to a person’s claim (or claims) for additional permanent impairment compensation for service injuries or diseases that have stabilised.

An existing requirement, under subparagraphs 68(1)(b)(iii), 71(1)(b)(iv) and 71(2)(a)(iv) of the Military Rehabilitation and Compensation Act, for the payment of permanent impairment compensation is that all of the person’s accepted service injuries or diseases have stabilised.

Where one or more of the person's accepted service injuries or disease have not stabilised, interim permanent impairment compensation may be payable under section 75 of the Military Rehabilitation and Compensation Act.

Explanation of the changes

The amendments to permanent impairment compensation will:

- make permanent impairment compensation payable for a service injury or disease to which section 68 or 71 applies from the later of the following dates:
 - the date the injury or disease meets the criteria in whichever of subsection 68(2)(b), 71(3)(a) or 71(3)(b) applies; and
 - the date liability for the injury or disease was claimed under the Military Rehabilitation and Compensation Act;
- make compensation payable for each stable service injury or disease to which section 75 applies from the later of the following dates:
 - the date the injury or disease met the required impairment point threshold; and
 - the date liability for the injury or disease was claimed under the MRCA; and
- include a lifestyle component in the calculation for interim compensation.

Transitional permanent impairment compensation

Background

Section 13 of the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004* provides for a methodology to be included in the *Guide to determining impairment and compensation* (GARP M) under section 67 of the Military Rehabilitation and Compensation Act, to calculate the amount of permanent impairment compensation a person is to be paid under the Act where the person already has an injury or disease accepted under the Veterans' Entitlements Act and/or the Safety, Rehabilitation and Compensation Act.

It has been found that the methodology that has been used may have resulted in a lower or higher net permanent impairment compensation payment than expected (when considered in light of the impairment points suffered as a result of conditions accepted under the Military Rehabilitation and Compensation Act), or in a nil payment. This may occur because of differences in the assessment methodologies and the calculation of compensation under the three Acts, and changes in the Veterans' Entitlements Act or Safety, Rehabilitation and Compensation Act conditions over time.

As a consequence the methodology will be changed, subject to a new instrument, and will be applied both prospectively and retrospectively.

Successful claims made on or after 1 July 2013 will be calculated using the new methodology. DVA will commence reviews of claims made between 1 July 2004 and 30 June 2013 from 1 January 2014. Where retrospective application of the new methodology results in a lower amount of compensation for an existing recipient, the existing rate will apply until a new assessment results in a higher amount. Where the retrospective application of the new methodology results in a higher amount of compensation for an existing recipient, the additional amount will be paid to the recipient as soon as is practicable.

Explanation of the changes

The new methodology will be provided for through the GARP M and therefore no amendments are required to any of the Acts. However, a transitional provision is required for the retrospective recalculation under GARP M of the weekly amount of permanent impairment compensation where:

- before 1 July 2013 either weekly compensation under Part 2 of Chapter 4 or a lump sum under section 78 of the Military Rehabilitation and Compensation Act, or both, was payable to the person; and
- the MRCC has before, on or after amended or substituted Chapter 25 of GARP M with the amendments to take effect from 1 July 2013; and
- as a consequence of the amendments the MRCC has recalculated the weekly amount, the lump sum or both amounts; and
- as a result of that recalculation a lump sum arrears amount is payable to the person;

so that section 79 of the MRCA (specifying when interest is payable on a delayed lump sum payment for permanent impairment) will not be applicable to the payment of the lump sum.

Schedule 3 – Expanded lump sum options for wholly dependent partners

Purpose

The amendments in Schedule 3 give effect to the Government decision, in response to the Review of Military Compensation Arrangements, to expand the options for lump sum compensation for wholly dependent partners of deceased members.

Commencement

The amendments in Schedule 3 will commence on and from 1 July 2013.

Background

Section 12 of the Military Rehabilitation and Compensation Act describes deceased members whose dependants may be entitled to benefits under Chapter 5 of the Military Rehabilitation and Compensation Act. Part 2 of Chapter 5 provides for compensation for wholly dependent partners (WDP) of deceased members.

Paragraph 234(1)(a) provides a lump sum payment in respect of a member where the Commission has accepted liability for the member's death. This relates to service-related deaths under subsection 12(1) and there are no changes being made to this lump sum payment. The WDP of a member whose death is accepted as service related will continue to automatically receive the lump sum payment provided for in paragraph 234(1)(a).

Paragraph 234(1)(b) of the MRCA, applies to all WDPs entitled to death benefits. It provides a choice between receiving a weekly amount of compensation for life or converting 100% of the weekly compensation payment to an age-based lump sum payment. The weekly rate is equivalent to half the fortnightly rate of war widow/er pension payable under subsection 30(1) of the *Veterans' Entitlements Act 1986* (VEA). The fortnightly rate of war widow/er pension, as at 20 March 2013, is \$820.70, including the clean energy payment.

As per section 236, a WDP has six months to choose between the weekly compensation or the lump sum payment from the time they receive a written notice under section 235. However, this period can be extended by the Commission if it considers that there are special circumstances.

As a WDP has up to six months to make a choice following acceptance of the claim for compensation, the Department pays the WDP the weekly amount until such time as the WDP makes their decision. If the WDP subsequently chooses to take the lump sum payment, then the weekly payment amounts already paid are deducted from the lump sum amount. This is provided for in section 237.

Explanation of the changes

The Government agreed to a modified version of Recommendation 9.3 of the Review. From 1 July 2013, the options available to WDPs under paragraph 234(1)(b) will be expanded so that a WDP may choose to convert either 25%, 50%, 75% or 100% of the weekly compensation amount to an age-based lump sum payment. A similar arrangement is presently available for certain permanent impairment payments made under section 78 of the MRCA.

WDPs who are eligible to make an election during a period extending beyond 1 July 2013 but have not made an election by that date will also have access to the new choices. The notice issued under

section 235 will lapse and a new notice will be issued. They will have a further six months to make a choice. DVA is identifying these WDPs and advising them of the proposed changes.

WDPs who have already made an election will not have access to the expanded options.

Schedule 4 – Weekly compensation for eligible young persons

Purpose

The amendments in Schedule 4 give effect to the Government decision, in response to the Review of Military Compensation Arrangements, to apply a one-time increase to the rate of periodic compensation payable for dependent children so the rate aligns with similar payments under the Safety, Rehabilitation and Compensation Act.

Commencement

The amendments in Schedule 4 will commence on and from 1 July 2013 to all payments from that date.

Background

Section 12 of the Military Rehabilitation and Compensation Act provides that compensation for death may be payable to dependants if:

- the MRCC has accepted liability for the member's or former member's death, or
- the deceased person satisfied the eligibility criteria in section 199 for SRDP during some period of his or her life, or
- the person was assessed at 80 or more impairment points before their death.

An eligible young person who was wholly or mainly dependent on the deceased member is eligible to receive an ongoing weekly benefit of \$87.57 (as at 1 July 2012 and indexed annually).

The periodic payment to eligible young persons payable under section 253 of the Military Rehabilitation and Compensation Act at \$87.57 per week is below the payment made in similar circumstances under section 17 of the Safety, Rehabilitation and Compensation Act, which is \$130.89 per week (as at 1 July 2012).

The weekly rates of compensation payable under both Acts to persons defined as an eligible young person had been closely aligned from the commencement of the Military Rehabilitation and Compensation Act in 2004 until 13 May 2008 when amendments to the Safety, Rehabilitation and Compensation Act made by the *Employment and Workplace Relations Amendment Act 2009* increased the then weekly rate from \$72.98 to \$110.00. At that time the weekly rate payable under section 253 of the Military Rehabilitation and Compensation Act was \$75.84.

The Government has agreed that on 1 July 2013, the weekly rate payable under section 254 of the Military Rehabilitation and Compensation Act be increased to match the amount payable under the SRCA. This decision relates to Recommendation 9.6 of the Government's Response to the Military Compensation Review.

The rate under subsection 17(5) of the Safety, Rehabilitation and Compensation Act is indexed annually on 1 July under section 13AA of the Safety, Rehabilitation and Compensation Act and uses the Wage Price Index.

The rate under section 254 of the Military, Rehabilitation and Compensation Act is indexed annually on 1 July under section 404 of the Military Rehabilitation and Compensation Act and uses the Consumer Price Index.

Explanation of the changes

The amounts payable under both Acts will be aligned as at 1 July 2013. Because there are different indexation arrangements under the Military Rehabilitation and Compensation Act and the Safety, Rehabilitation and Compensation Acts over time the rates will not remain aligned.

Schedule 5 – Compensation for financial advice and legal advice

Purpose

The amendments in Schedule 5 give effect to the Government decision, in response to the Review of Military Compensation Arrangements, to increase the amount of compensation for financial advice and to include legal advice within the new limit.

Commencement

The amendments in Schedule 5 will commence on and from 1 July 2013 in respect of advice obtained on and from 1 July 2013.

Background

The MRCA provides in certain circumstances for compensation for the provision of financial advice. Those circumstances are:

- under section 81 for the member suffering permanent impairment of 50 impairment points or more;
- under section 205 for the member to choose between SRDP and ongoing incapacity payments; and
- under section 239 for a wholly dependent partner.

These sections relate to a choice to be made by an eligible person about how a benefit is received i.e. a periodic or lump sum payment of permanent impairment compensation; receiving incapacity payments (taxable to age 65) in lieu of the Special Rate Disability Pension (tax free for life); or a periodic or lump sum payment of compensation following death.

With the commencement of the Military Rehabilitation and Compensation Act on 1 July 2004, the amount of compensation payable was set at \$1,200. This amount has been indexed annually in line with the CPI so that the current maximum (as at 1 July 2012) is \$1,592.31.

Explanation of the changes

The amendments made by this Schedule will extend compensation to cover legal advice that is relevant to the choice being made under sections 78, 200 or 236. It is not intended to cover legal advice that may be required in dealing with other matters such as family court disputes and other legal matters tied to the administration of the estate, nor legal representation of the claim for compensation.

The amendments provide for the total amount of compensation for financial and legal advice to be provided under sections 81, 205 and 239 of the Military Rehabilitation and Compensation Act to be increased to \$2,400 for advice obtained after 1 July 2013, with that amount to continue to be indexed annually by the CPI.

Schedule 6 – Special Rate Disability Pension

Purpose

The amendments in Schedule 6 give effect to the Government decision in response to the Review of Military Compensation Arrangements to expand the eligibility criteria for Special Rate Disability Pension (SRDP). The expanded criteria will include a person who would otherwise meet the criteria in section 199 of the Military Rehabilitation and Compensation Act except for the person having received a lump sum incapacity payment under section 138 of the Military Rehabilitation and Compensation Act or the person is receiving a nil rate of incapacity payment because the amount of the incapacity payment is fully offset by Commonwealth superannuation.

Commencement

The amendments in Schedule 6 will commence on 1 July 2013.

Background

SRDP, payable under Part 6 of Chapter 4 of the Military Rehabilitation and Compensation Act is based on the Special Rate disability pension payable under section 24 of the Veterans' Entitlements Act. It was included in the Military Rehabilitation and Compensation Act to ensure that a former member unable to work because of accepted disabilities would have access to benefits at least the equivalent of the Special Rate pension under the Veterans' Entitlements Act.

Briefly, a person is eligible to choose SRDP under section 199 of the Military Rehabilitation and Compensation Act if the person:

- a) is in receipt of incapacity compensation under Division 2 of Part 4; and
- b) has an impairment as a result of the service injuries or diseases that is likely to continue; and
- c) is assessed at 50 or more impairment points; and
- d) is unable to undertake paid work for more than 10 hours per week and rehabilitation is unlikely to assist in increasing their capacity to work.

Under the existing provisions outlined above, a person must be "receiving" incapacity compensation to be eligible for SRDP. This means that a person who meets paragraphs 199(1)(b), (c) and (d) but who either:

- converted their weekly rate of incapacity compensation to a lump sum under section 138 of the Military Rehabilitation and Compensation Act; or
- is receiving a nil rate of incapacity compensation because the amount is fully offset by Commonwealth superannuation;

is not eligible for SRDP as they are not "receiving" incapacity payments.

Explanation of the changes

The Government agreed that a person who otherwise meets the eligibility criteria of subsection 199(1), but who is not receiving incapacity compensation because the person either received a lump sum incapacity compensation payment or their incapacity compensation is offset to nil as a result of Commonwealth superannuation being offset dollar for dollar, should be eligible for SRDP.

This will mean that, in relation to a person who converted their incapacity compensation to a lump sum and chooses to receive SRDP in lieu of incapacity payments, that part or all of the lump sum payment will need to be repaid as a person cannot be entitled to SRDP and incapacity compensation for the same injury or disease at the same time.

Schedule 7 – Superannuation

Purpose

The amendments in Schedule 7 will give effect to the Government decision in response to the Review of Military Compensation Arrangements to make changes to certain superannuation provisions so that they apply equally to both serving and former members and to amend the definition of “Commonwealth superannuation scheme”.

Commencement

The changes to apply superannuation offsetting for current serving members in receipt of Commonwealth superannuation will apply to claims for incapacity payments made on and from 1 July 2013.

The changes to include “retirement savings account” in the definition of “Commonwealth superannuation scheme” will apply to claims for incapacity payments made on or after 1 July 2013, and offers of the choice to take Special Rate Disability Pension made on or after 1 July 2013.

The changes to remove “licenced corporation” from the definition of “Commonwealth superannuation scheme” will apply to claims for incapacity payments before, on or after 1 July 2013.

Background

It is Government policy that duplicate income maintenance payments are not to be made by the Commonwealth to an individual through both superannuation and compensation schemes. Incapacity payments under the Safety, Rehabilitation and Compensation Act or the Military Rehabilitation and Compensation Act and Special Rate Disability Pension (SRDP) under the Military Rehabilitation and Compensation Act, are offset by the value of Commonwealth contributions towards superannuation benefits.

Paragraph (a) of the current MRCA definition of “Commonwealth superannuation scheme” in subsection 5(1) applies only to former serving members whose incapacity payments are worked out under Part 4 of Chapter 4 of the MRCA. Incapacity payments for current serving members are worked out under Part 3 of Chapter 4 of the MRCA and currently no superannuation offsetting applies under this chapter.

As it is possible for current serving members to be in receipt of both Commonwealth superannuation and an incapacity payment under the MRCA there are circumstances where offsetting does not take place currently under the MRCA. Those circumstances, for example, might include:

- where a member discharges after 20 or more years service, transfers to the Reserves and becomes incapacitated while still a serving member of the part-time Reserves or on continuous full-time service;
- where a current serving member is medically discharged, but receives a critical skills waiver that enables transfer to the Reserves. In most of these cases, the member will have an entitlement to incapacity payments immediately following discharge, but remains a member of the ADF for the purposes of the MRCA; and

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

Explanation of the changes

The Government accepted recommendation 12.3 of the Review, that, on the grounds of equity, superannuation offsetting of incapacity payments should apply to current serving members in receipt of Commonwealth superannuation whose incapacity payments are worked out under Part 3 of Chapter 4 of the MRCA, as well as former members whose incapacity payments are worked out under Part 4 of Chapter 4 of the MRCA.

Paragraph (a) of the definition includes a “licensed corporation” within the meaning of the SRCA, but excludes a “retirement savings account.”

The reference to a “licensed corporation” is to corporations such as Telstra that are licensed to self-insure or manage their workers’ compensation liabilities within the framework of the Commonwealth legislation instead of under the various state compensation schemes.

Currently, the inclusion of the reference to superannuation schemes operated by a “licensed corporation” within the definition of a “Commonwealth superannuation scheme” has the effect that contributions made by a licensed corporation to a superannuation scheme for the benefit of an ADF member would offset incapacity payments or the SRDP.

The Government accepted, as part of recommendation 12.2 of the Review, that reference to a “licensed corporation” be removed from the definition of a “Commonwealth superannuation scheme” and that benefits related to such contributions no longer be offset. This is because in these circumstances the Commonwealth cannot be said to be making duplicate income maintenance payments, as it is the licensed corporation, not the Commonwealth, making contributions to the scheme.

Likewise, the Government accepted as part of recommendation 12.2 of the Review that “retirement savings account” should be included in the definition of “Commonwealth superannuation scheme”. This is because, where the Commonwealth is contributing to a retirement savings account and providing incapacity payments or SRDP, the Commonwealth can be said to be making duplicate income maintenance payments.

Schedule 8 – Remittal power of Veterans’ Review Board

Purpose

The amendments in Schedule 8 will give effect to the Government decision in response to the Review of Military Compensation Arrangements to provide the Veterans’ Review Board with an explicit power to remit a matter to the MRCC for needs assessment and compensation.

Commencement

The amendments in Schedule 8 will commence on and from 1 July 2013.

Background

Chapter 8 of the *Military Rehabilitation and Compensation Act 2004* (MRCA) provides for the reconsideration and review of determinations made by the MRCC.

Briefly, there are two pathways for review under the MRCA. The claimant may choose between having the decision reviewed by the MRCC or the Veterans’ Review Board (VRB). If dissatisfied with this subsequent decision, the claimant can apply to the Administrative Appeals Tribunal.

Part 4 of Chapter 8 of the MRCA provides for the review by the VRB of original determinations. Section 353 of the MRCA sets out which provisions of Part IX of the VEA are applicable under the MRCA and the context in which those provisions are applicable.

The jurisdiction of the VRB in reviewing a claim for liability or compensation under the MRCA, extends to making whatever determination the MRCC could have made.

Section 325 of the MRCA provides that a needs assessment must be undertaken before the determination of a claim for compensation. In the circumstances where the MRCC has accepted liability for the injury or disease, and has conducted the needs assessment, the information would be available to the VRB.

However, where liability for the injury or disease was rejected by the MRCC, but subsequently accepted by the VRB, the information required to determine the claimants entitlements under the MRCA (compensation) would not be available to the VRB as the MRCC would not have conducted a needs assessment.

Item 5 of the table in subsection 353(2) of the MRCA modifies section 139 of the VEA for the purposes of the MRCA so that the VRB may remit a matter to the MRCC to assess the rate of compensation payable to a person. However, this is only possible in limited circumstances where the MRCC has accepted liability for the injury or disease and has determined the rate of compensation payable and that rate is the matter at issue.

Where liability for the injury or disease (and consequently any concurrent claim for compensation) was rejected by the MRCC, but subsequently accepted by the VRB, the VRB currently does not have the power to remit a matter to the MRCC to conduct a needs assessment and determine the person’s compensation entitlements under the MRCA. Instead, the VRB must adjourn the hearing upon accepting liability for the injury of disease, request the MRCC to conduct an investigation and provide a report to the VRB in respect of the relevant matters, such as needs assessment, rehabilitation and compensation. The request to the MRCC is made under section 152 of the VEA as modified by section 353 of the MRCA.

Explanation of the changes

These amendments will, where the VRB has accepted liability for the injury or disease that was initially rejected by the MRCC, enable the VRB to remit the matter to the MRCC to conduct the needs assessment and subsequent investigations and determine compensation.

Schedule 9 – Membership of the Military Rehabilitation and Compensation Commission

Purpose

The amendments in Schedule 9 will give effect to the Government decision in response to the Review of Military Compensation Arrangements to increase the membership of the MRCC.

Commencement

The amendments in Schedule 9 will commence on the day the Act receives Royal Assent.

Background

The MRCC was established under Chapter 9 of the Military Rehabilitation and Compensation Act as a five-person commission with responsibility for administering the Military Rehabilitation and Compensation Act and defence related claims under the Safety, Rehabilitation and Compensation Act.

Membership of the MRCC is set out in section 364 of the Military Rehabilitation and Compensation Act and consists of the three members of the Repatriation Commission, a member nominated by the Minister administering the Safety, Rehabilitation and Compensation Act, and a member nominated by the Minister for Defence.

Given the breadth and complexity of the OHS and compensation issues facing the ADF, it was proposed that an additional Defence member be appointed to the MRCC as the second member nominated by the Minister for Defence from the Department of Defence or the ADF.

The Government agreed that such an appointment would be of significant benefit to both the MRCC and Defence as it would, for example, facilitate the improvements necessary to allow DVA and Defence to share information more effectively.

Explanation of the changes

The amendment will allow the Minister for Defence to nominate two persons as members of the MRCC, increasing the membership to six persons.

Schedule 10 – Aggravation of or material contribution to war-caused or defence-caused injury or disease

Purpose

The amendments in Schedule 10 will give effect to the Government's decision in response to the Review of Military Compensation Arrangements to require all claims for conditions accepted under the Veterans' Entitlements Act and aggravated by defence service after 1 July 2004 to be determined under the Veterans' Entitlements Act, rather than offering a choice between the Veterans' Entitlements Act and the Military Rehabilitation and Compensation Act, which is currently the case.

Commencement

The amendments in Schedule 10 will commence on and from 1 July 2013.

Background

At the time the Military Rehabilitation and Compensation Act was enacted it was intended that it would not interfere with the compensation entitlements of Veterans' Entitlements Act beneficiaries. This intention was achieved by the inclusion of transitional provisions in the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004* (CTPA) which clarified the interaction between the Military Rehabilitation and Compensation Act, the Veterans' Entitlements Act and the Safety, Rehabilitation and Compensation Act.

A claim for the aggravation of an injury or disease accepted under the Veterans' Entitlements Act, where the aggravation occurred as a result of service rendered on or after 1 July 2004, requires the claimant to make a choice under section 12 of the CTPA (known as a section 12 election). Those choices are to either:

- make an application for an increase under the Veterans' Entitlements Act for the aggravation of the injury or disease which will mean that both the underlying injury and disease and the aggravated component will be pensionable under the Veterans' Entitlements Act; or
- make a claim under the Military Rehabilitation and Compensation Act for acceptance of liability for the aggravation which will mean that the underlying injury or disease will remain pensionable under the Veterans' Entitlements Act, while the aggravated component may be compensated under the Military Rehabilitation and Compensation Act.

The first option involves an exception to the general date of injury approach that usually applies under the Military Rehabilitation and Compensation Act transitional provisions. However, it ensures that the operation of the Military Rehabilitation and Compensation Act does not interfere with the entitlements of Veterans' Entitlements Act beneficiaries.

The section 12 election process is complex and can result in confused and anxious claimants and is administratively burdensome for the Department.

Since the commencement of the Military Rehabilitation and Compensation Act most section 12 claimants have elected to proceed under the Veterans' Entitlements Act rather than claim under the Military Rehabilitation and Compensation Act. A number of other issues relating to the difficulties in the administration of section 12 elections were also identified during the conduct of the MRCA Review.

Explanation of the changes

The amendments to the CTPA made by this Schedule remove the section 12 election provisions and replaces them with provisions stipulating that all claims relating to an existing VEA injury or disease aggravated by service on or after 1 July 2004 must be claimed under the Veterans' Entitlements Act and cannot be claimed under the Military Rehabilitation and Compensation Act.

The amendments also repeal and substitute section 9 of the CTPA with the new provision clearly stating that the Military Rehabilitation and Compensation Act will not apply to the aggravation or material contribution of a war or defence-caused injury or disease accepted under the Veterans' Entitlements Act that has been aggravated by service on or after 1 July 2004.

These amendments will remove the choice for new claimants on or after 1 July 2013. It will also remove the choice for claims made prior to 1 July 2013 where the claimant has not made an election before 1 July 2013. DVA is identifying and advising those clients whose choice will be removed, to ensure that they have the opportunity to make a choice before 1 July 2013.

Paragraph 13(1)(b)(i) of the CTPA is repealed and a new paragraph substituted that provides that the section will apply to a claim made under section 319 of the Military Rehabilitation and Compensation Act in respect of an aggravation of, or a material contribution to a war-caused or defence caused injury or disease that is within the meaning of the Veterans' Entitlements Act.

The Schedule also includes a number of consequential amendments to the Veterans' Entitlements Act.

Schedule 11 – Treatment for certain SRCA injuries

Purpose

The amendments in Schedule 11 give effect to the Government decision, in response to the Review of Military Compensation Arrangements, to issue Repatriation Health Cards – For Specific Conditions (White Cards) to Part XI defence-related claimants under the Safety, Rehabilitation and Compensation Act (SRCA members). This initiative is intended to achieve consistency in treatment arrangements for all former ADF members. SRCA members with an injury accepted under the Safety, Rehabilitation and Compensation Act as being related to service (SRCA injury) who have an ongoing need for treatment, will be entitled to treatment for a SRCA injury under either the Military Rehabilitation and Compensation Act or the Veterans' Entitlements Act in accordance with the arrangements established under those Acts.

Commencement

The amendments in Schedule 11 will commence on and from 10 December 2013.

Background

Under both the Military Rehabilitation and Compensation Act and the Veterans' Entitlements Act, the MRCC and Repatriation Commission respectively have established arrangements with health care providers, hospitals and other institutions for the provision of treatment to veterans, former members and their dependants. This arrangement includes issuing Treatment Cards, known as Gold and White Cards, to clients for payment purposes. Under the existing arrangements for the Safety, Rehabilitation and Compensation Act, the MRCC is liable to pay compensation for medical expenses reasonably incurred for injuries, including diseases, accepted under the Safety, Rehabilitation and Compensation Act as related to defence service. This requires the client to pay up front and receive reimbursement or arrange for their health professional to invoice the Department of Veterans' Affairs directly.

Explanation of the changes

Under this initiative, treatment for a SRCA injury will be provided to SRCA members under either the Veterans' Entitlements Act or the Military Rehabilitation and Compensation Act. The initiative will initially be implemented in relation to SRCA members who have received treatment between 1 January 2012 and 9 December 2013 and SRCA members lodging defence-related claims for injury on and from 10 December 2013.

The arrangements will be similar to those that applied to veterans and members when the Military Rehabilitation and Compensation Act was enacted in 2004, whereby a person entitled to treatment under both the Veterans' Entitlements Act and the Military Rehabilitation and Compensation Act receives treatment under the Military Rehabilitation and Compensation Act.

This means that, on and after 10 December 2013, a SRCA member who is entitled to treatment for all conditions (Gold Card) under the Military Rehabilitation and Compensation Act or the Veterans' Entitlements Act, will receive treatment for any SRCA injury under that Act (VEA or MRCA). If a SRCA member is entitled to treatment for all conditions (Gold Card) under both the Military Rehabilitation and Compensation Act and the Veterans' Entitlements Act, the person will receive treatment for any SRCA injury under the Military Rehabilitation and Compensation Act. On and after 10 December 2013, Gold Card holders will not be entitled to claim compensation for medical expenses under the Safety, Rehabilitation and Compensation Act for a SRCA injury. However, provision has been made to enable the MRCC to, in exceptional circumstances, determine that a

SRCA member may continue to claim compensation for medical expenses under the Safety, Rehabilitation and Compensation Act for a SRCA injury.

Similarly, on and after 10 December 2013, a SRCA member who has received treatment for a SRCA injury between 1 January 2012 and 9 December 2013, and who is entitled to treatment for specific conditions (White Card) under the Military Rehabilitation and Compensation Act, will receive treatment under the Military Rehabilitation and Compensation Act for any SRCA injury.

On and after 10 December 2013, a SRCA member who has received treatment for a SRCA injury between 1 January 2012 and 9 December 2013, and who is entitled to treatment for specific conditions (White Card) under the Veterans' Entitlements Act but not under the Military Rehabilitation and Compensation Act, will receive treatment under the Veterans' Entitlements Act for any SRCA injury.

From 10 December 2013, a SRCA member who has been treated for a SRCA injury between 1 January 2012 and 9 December 2013, and who has no existing entitlement to treatment under either the Military Rehabilitation and Compensation Act or Veterans' Entitlements Act, will receive treatment under the Military Rehabilitation and Compensation Act for any SRCA injury.

The same exemption provision for exceptional circumstances that applies for Gold Card holders also applies to White Card holders.

For SRCA members who have not received treatment for a SRCA injury or disease during the period 1 January 2012 and 9 December 2013, when a person claims compensation under 16(1) of the Safety, Rehabilitation and Compensation Act on or after 10 December 2013, the MRCC may determine that the person will receive treatment under either the Military Rehabilitation and Compensation Act or Veterans' Entitlements Act, depending on any existing entitlement of the SRCA member under those Acts.

SRCA members will be entitled to the full range of treatment services available under the applicable Act in accordance with the Treatment Principles, Private Patient Principles and Pharmaceutical Benefits Schemes determined under the Act.

There will be no changes to other Safety, Rehabilitation and Compensation Act entitlements such as attendant care services, household service or travel for treatment provisions.

Schedule 12 – Members

Purpose

The amendments in Schedule 12 give effect to the Government's decision in response to the Review of Military Compensation Arrangements to define members undergoing career transition, personnel holding honorary ranks and authorised representatives of philanthropic organisations as 'members' under the Military Rehabilitation and Compensation Act.

Commencement

The amendments in Schedule 12 will commence on and from 1 July 2013.

Background

Currently, section 8 of the Military Rehabilitation and Compensation Act provides a mechanism for certain categories of persons to be declared 'members' for the purposes of the Act. This mechanism has been used to provide coverage for groups such as philanthropic organisations, former ADF members undergoing career transition and those holding honorary rank performing official duties.

Explanation of the changes

These categories of persons will be included as 'members' in the Military Rehabilitation and Compensation Act. This will provide certainty about access to rehabilitation and compensation for these defined groups, who are currently given access to the Military Rehabilitation and Compensation Act through a Ministerial determination. An instrument will also be required to cease eligibility for these categories of persons under section 8 from 1 July 2013.

Schedule 13 – Treatment costs

Purpose

The amendments in Schedule 13 will clarify the appropriation of costs for certain aged care services between the Veterans' Entitlements Act, the Australian Participants in British Nuclear Tests (Treatment) Act and the Military Rehabilitation and Compensation Act (the Veterans' Affairs Acts) and the *Aged Care Act 1997* and the *Aged Care (Transitional Provisions) Act 1997* (the Aged Care Acts).

Commencement

The amendments in Schedule 13 will commence on the 28th day after Royal Assent.

Background

Aged care services for eligible Veterans' Affairs clients are regulated by both the Aged Care Acts and the Veterans' Affairs Acts. The Aged Care Acts provide for subsidies for aged care services generally and the Veterans' Affairs Acts provide for treatment, including aged care services, for eligible Veterans' Affairs clients. Because a person who is entitled to treatment under the Veterans' Affairs Acts may also be a person eligible for aged care services under the Aged Care Acts, arrangements had been established under the different portfolio Acts for the appropriation of costs for aged care services for eligible Veterans' Affairs clients. Under the arrangements, the Repatriation Commission or the MRCC accept financial responsibility for the amount of the subsidy for certain aged care services, where that subsidy would otherwise be payable under the *Aged Care Act 1997*.

Explanation of the changes

The proposed amendments to the Veterans' Affairs Acts will clarify and confirm that the Repatriation Commission and the Military Rehabilitation and Compensation Commission may limit their financial responsibility for treatment to particular costs in relation to treatment e.g. certain aged care services. The amendments will provide that the Treatment Principles authorised under the Veterans' Affairs Acts may specify the circumstances in which and the extent to which, the relevant Commission may accept limited financial responsibility for particular costs in relation to specified kinds of treatment. The specified particular costs may include amounts of subsidy otherwise payable under the Aged Care Acts. Consequential amendments are also required to the *Aged Care Act 1997* to clarify and confirm that a subsidy is not payable under the *Aged Care Act 1997*, if the Repatriation Commission or the Military Rehabilitation and Compensation Commission has accepted financial responsibility, under a Veterans' Affairs Act, for the amount of the subsidy.

Schedule 14 – Travelling expenses

Purpose

The amendments in Schedule 14 will extend the entitlement for travelling expenses to the partner of certain eligible persons under certain circumstances.

Commencement

The amendments in Schedule 14 will commence on the day the Act receives Royal Assent.

Background

Part V of the Veterans' Entitlements Act provides for treatment for eligible persons, including medical, allied health and hospital treatment. Section 110 of the Veterans' Entitlements Act provides for eligible persons to be paid travelling expenses for travel to obtain treatment under Part V. Where necessary, it further provides for travelling expenses for an attendant to accompany the eligible person.

Section 112 of the Veterans' Entitlements Act specifies a time limit for claiming travelling expenses.

A small number of post-traumatic stress disorder treatment programs require the partner of the veteran or member (the eligible person) to participate in the veteran's or member's treatment.

Under the existing legislation, there is no provision to enable the payment of travelling expenses for the partner of an eligible person where the partner is required to travel to participate in the eligible person's treatment.

Explanation of the changes

The amendments will extend the entitlement for travelling expenses to the partner of certain eligible persons under certain circumstances.

Schedule 15 – Payments into accounts

Purpose

The amendments made by Schedule 15 clarify and streamline the administrative arrangements for the payment of pensions, compensation and other pecuniary benefits under the Veterans' Entitlements Act and the Military Rehabilitation and Compensation Act into bank accounts.

Commencement

The amendments in Schedule 15 will commence on the day the Act receives Royal Assent.

Background

The amendments will clarify the administrative arrangements for the nomination of bank accounts for payments under the Veterans' Entitlements Act and the Military Rehabilitation and Compensation Act and will minimise the associated administrative obligations of veterans, members and their dependants.

Explanation of the changes

The changes in this Schedule will enable the Department to pay new types of payments into an existing nominated bank account of a person who is already in receipt of a payment under either the Military Rehabilitation and Compensation Act or the Veterans' Entitlements Act. The amendments will make it clear that, if a person is receiving a payment from the Department, the person does not need to provide the Department with bank account details each time the person receives a new type of payment. For example, where a recipient has nominated an account for compensation paid under the Military Rehabilitation and Compensation Act, and the recipient becomes eligible for a payment under the Veterans' Entitlements Act but has not nominated an account under the Veterans' Entitlements Act, then the Repatriation Commission can direct the Veterans' Entitlements Act payment, to the person's account that was nominated under the Military Rehabilitation and Compensation Act.

Schedule 16 – Other amendments

Purpose

The amendments in this Schedule include a minor and consequential amendment to the Social Security Act that clarifies which payments made under the Military Rehabilitation and Compensation Act are excluded income for the purposes of the Social Security Act.

The Schedule also includes amendments to the Veterans' Entitlements Act to provide for the recovery from payments made under that Act of overpayments made under the Military Rehabilitation and Compensation Act.

Commencement

The amendments in Schedule 16 will commence on the day the Act receives Royal Assent.

Explanation of the changes

The changes in this schedule clarifies which payments made under the Military Rehabilitation and Compensation Act are excluded income for the purposes of the Social Security Act and amends the Veterans' Entitlements Act to provide for the recovery from payments made under that Act of overpayments made under the Military Rehabilitation and Compensation Act.