Senate Foreign Affairs, Defence and Trade Committee inquiry into Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Bill 2016

Introduction

Opportunity is taken to thank the senate standing committee to allow me to contribute toward this inquiry.

My name is I am 27 years of age, a veteran with qualifying war like service in Afghanistan.

I am a practicing Level 2 pension's officer at the Hervey Bay Veterans Advice and Social Centre. I believe the knowledge and information I can provide to the committee is of value. It seems I am the only practicing veteran's representative under the age of 30, for the committee's information my service come entirely under the Military, Rehabilitation and Compensation Act 2004 (MRCA).

This submission is presented on behalf of the Hervey Bay Veterans Advice and Social Centre.

Summery

1. The purpose of submission is to identify crucial points with the proposed Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Bill 2016 (DRCA).

2. It is submitted that with the introduction of the DRCA bill that opportunity be made to address major short comings of the Safety, Rehabilitation and Compensation Act 1988 (SRCA) that do not address the unique nature of military service whatsoever.

3. It is contended that coverage under the VEA be extended to include those with defence service up until 1 July 2004 (MRCA commencement) under the SRCA or the intended DRCA to rightfully recognise the unique nature of military service.

Legislation taken into account;

- Veterans Entitlement Act 1987 (VEA),
- Safety, Rehabilitation and Compensation Act 1988 (SRCA),
- Military, Rehabilitation and Compensation Act 2004 (MRCA); and,
- Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004 (CTPA).

Disadvantages of the current Safety, Rehabilitation and Compensation Act 1988. (SRCA)

4. It is now well known that the SRCA was never designed to recognise the unique nature of military service – It was designed to cover those who work in the public service and that alone.

5. The government at the time decided to revoke coverage under the VEA for 'eligible defence service' to anyone who joined on or after 7 April 1994 and the SRCA was put in place, thus disadvantaging the veteran community astronomically.

6. This totally abolished all recognition of the unique nature of military service, the Military Personnel who have the heartache of suffering defence caused injury, illness or disease with sole coverage under the SRCA are by far the most disadvantage of all DVA clients.

7. The law cohort would strongly disagree with the statement above and would presumably put forward a far more advanced argument opposing based on education training and experience. Why; because the SRCA is rather beneficial in that area when it comes to veteran's legal aid funding and lump sum compensation payments.

8. The loss of entitlements for any military personnel with liability accepted under the SRCA unfathomable. These personnel did not even have access to the DVA 'White Card' until a few years ago, they to this day are unable to access the benefits of the DVA 'Gold Card' in no way shape or form.

9. Without access to the Gold Card claimants under the SRCA are unable to access the full health care benefits of the Gold Card, they are unable to access local, state or territory concessional rates and they are unable to access any federal concessions.

10. When comparing this to veterans who have been awarded the Gold Card for disability, the SRCA Claimant is discriminated against purely because he/she was injured under the SRCA rather than the VEA or MRCA.

11. Including denied access to the Gold Card claimants under the SRCA are also excluded from; veterans' children's' education assistance, any special rate pensions known as Totally and Permanently Incapacitated (T&PI), Special Rate Disability Pension (SRDP), Intermediate rate or Extreme Disablement Adjustment (EDA).

12. For those under the current SRCA and the proposed DRCA access is still denied to the Gold Card and War Widows Pensions (VEA) or the equivalent of under MRCA for eligible spouses and the Gold Card for dependants.

13. The short falls of the SRCA can only be compared to tragic for the claimant.

14. It is of great concern that opportunity has not been struck upon by Minister Tehan to provide the same level of care and benefits to claimants under the SRCA as to those with service under the VEA and MRCA.

Ex-service organisation round table (ESORT)

15. Submission was made by Advocate Mr. Tom Jehn OAM JP (Qual) to the ex-service organisation round table (ESORT) in August 2016 addressing the complexities of those with coverage under multiple entitlement Acts.

16. DVA responded by eluding to the fact that allowances can be made for those with eligibility under multiple acts under the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004* (CTPA). To combine impairment points so the claimant can have access to the DVA gold card.

17. It is recommended that the standing committee speak to any service personal who is covered under the SRCA whether this is case, as these 'allowances' seem non-existent.

18. I am willing to stand before the committee, with any of my defence cohort whose service is only under the SRCA to assist.

19. I refer to Minister Tehans second reading he recognises the support he has had in relation to the DRCA bill by the ex-service community and the ESORT.

"I want to acknowledge the strong support for the establishment of the Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 from the Ex-Service Organisation Round Table (ESORT) and the Department of Defence and I am privileged to have the opportunity to bring about a change that will allow the government to ensure that the changing needs of our injured and ill Defence Force members and their families are appropriately met into the future."

20. In an attempt to gain access to the minutes of the ESORT, to actively contribute to any discussion. Advice was given by the ex-service organisation I am a member of the 'Vietnam Veterans Association of Australia' (VVAA) that these minutes are 'confidential' and they will not be distributed.

21. This is not an isolated case as I was advised by the VVAA that this is also the case in the Queensland State Forum known as 'QVAC' (Queensland Veterans' Advisory Council).

22. How is one to contribute to any discussion in relation to the veteran community if access to Minutes is denied to anyone but those who hold seat on the ESORT.

23. It is noted that a summary is provided of any meeting, however this does not adequate inform readers what information is being spoken it only stipulates the topic of any given discussion that took place. However this is inadequate.

Introduction of DRCA

24. Minister Tehan and the DVA purvey that the introduction of DRCA will recognise the unique nature of military service when compared to other Commonwealth Employees covered under the current Safety, Rehabilitation and Compensation Act 1988. As stated above this is clearly not the case as the DRCA is simply a replica of the SRCA however DVA is to administer the entirety of the Act.

25. Minister Tehan has opportunity to address the issue of those covered under the SRCA/DRCA not having access to the Gold Card, War Widows Pension, Children's education assistance and eligible dependant assistance. If making transition from SRCA to DRCA will be of benefit to the veteran community, then the opportunity must be made to do so.

26. In Minister Tehans second reading speech, he states; "no person is disadvantaged by the enactment of this act". No person will be disadvantage… there is clear opportunity to advantage and grant access to the equivalent level of care and benefits to those covered under the VEA or MRCA.

Proposal

27. It is contended that the introduction of the DRCA bill does not go ahead, due to the short falls within both the SRCA and DRCA which are of clear disadvantage to the claimant when compared to the VEA and/or MRCA.

28. That 'eligible defence service' be extended to those with service under the current SRCA until 1 July 2004, in order to recognise the unique nature of military service, and to bring entitlements and benefits to of similarity if not in line with the VEA and MRCA.

I thank you for taking the time to read my submission, if there are any further questions or requests please contact me.

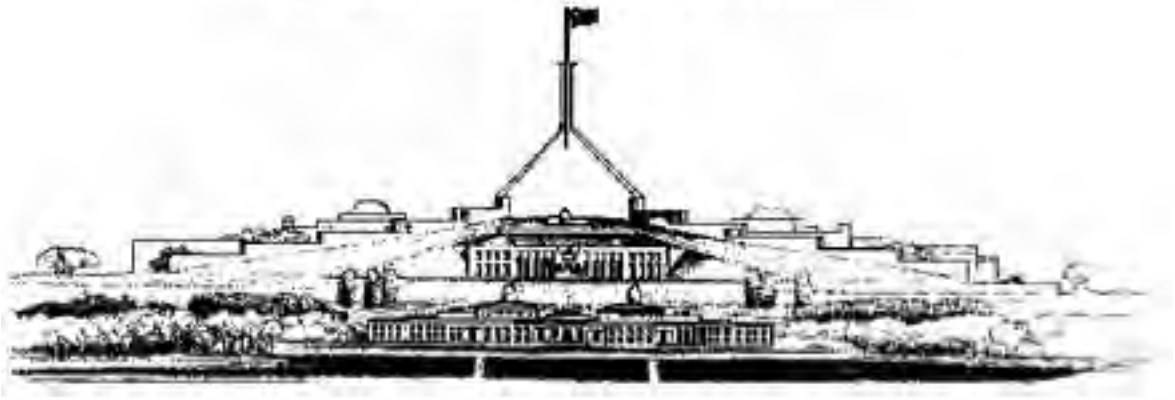
Regards,

Pensions/Welfare
Hervey Bay Veterans Advice and Social Centre

Incl;
Minister Tehan's second reading,
Tom Jehn – ESORT Submission; and,
DVA – ESORT Submission response.

COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

BILLS

Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Bill 2016

Second Reading

SPEECH

Wednesday, 9 November 2016

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

Date	Wednesday, 9 November 2016	**Source**	House
Page	3279	**Proof**	No
Questioner		**Responder**	
Speaker	Tehan, Dan, MP	**Question No.**	

Mr TEHAN (Wannon—Minister for Veterans' Affairs, Minister Assisting the Prime Minister for the Centenary of ANZAC, Minister Assisting the Prime Minister for Cyber Security and Minister for Defence Personnel) (09:44): I move:

That this bill be now read a second time.

I am pleased to present a bill which will excise compensation coverage for Australian Defence Force members and former members with service prior to 1 July 2004 from other Commonwealth employees, providing a 'military specific' scheme for the long-term administration of claims for Defence Force members.

The bill will duplicate the existing Safety, Rehabilitation and Compensation Act 1988 (SRCA) as a standalone act, with appropriate amendments to give full control of the act to the Minister for Veterans' Affairs.

Importantly, eligibility and benefits under the standalone act will be the same as those currently available to serving and former ADF members under the existing SRCA. I will just repeat that because it is very important: importantly, eligibility and benefits under the standalone act will be the same as those currently available to serving and former ADF members under the existing SRCA.

There are no other changes to benefits or entitlements in the new act or the enabling bill. The new act will simply replicate the SRCA and retain the provisions that currently apply to members and former members of the ADF. Indeed, section 121B specifically operates to protect the entitlements of those covered by the SRCA and to ensure that no person is disadvantaged by the enactment of this act.

It will not apply to (or impact on) veterans with eligibility under the Veterans' Entitlements Act 1986 (VEA) or the Military Rehabilitation and Compensation Act 2004 (MRCA).

The VEA and the MRCA will remain in place and DVA clients with entitlements under these acts will be unaffected by the commencement of the new act.

The Safety, Rehabilitation and Compensation Act 1988 currently provides compensation coverage to all Commonwealth employees and is administered by Comcare on behalf of the Department of Employment.

The current act is also administered by the Department of Veterans' Affairs, with part XI extending coverage to Australian Defence Force members and former members for injuries and illnesses linked to service prior to 1 July 2004.

Members and former members with conditions linked to service from 1 July 2004 onwards, are covered by the Military Rehabilitation and Compensation Act 2004.

While the Safety, Rehabilitation and Compensation Act 1988 ceased to apply to new periods of Defence Force service from 1 July 2004, a significant proportion of ongoing compensation and treatment expenditure under the act continues to apply to current and former Defence Force personnel.

The development of a standalone SRCA for ADF members and veterans was announced by government nearly two years ago, during which time DVA has been consulting with Defence and ex-service representatives (both of which have been supportive of a standalone act).

The duplication of the Safety, Rehabilitation and Compensation Act 1988 in the form of the Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 is important for DVA as it will give the Minister for Veterans' Affairs responsibility for all compensation acts covering ADF members. Once again, this is worth

highlighting: these changes will give the Minister for Veterans' Affairs responsibility for all compensation acts covering ADF members.

It is a foundational step towards broader reform being undertaken by the Department of Veterans' Affairs to significantly improve services for veterans and their families by re-engineering DVA business processes. To enable this veteran-centric reform to occur, it is essential that policy responsibility for relevant legislation sits with the Minister for Veterans' Affairs.

It will also allow DVA to consult with the veteran and Defence communities in the future on areas of potential alignment with the Military Rehabilitation and Compensation Act 2004 once the standalone act commences.

I want to acknowledge the strong support for the establishment of the Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 from the Ex-Service Organisation Round Table (ESORT) and the Department of Defence and I am privileged to have the opportunity to bring about a change that will allow the government to ensure that the changing needs of our injured and ill Defence Force members and their families are appropriately met into the future.

Debate adjourned.

Australian Government
Department of Veterans' Affairs

ESO Round Table

Member Submission Coversheet

Date: **Meeting No. 37**
Wednesday 10 August 2016

Agenda Item #: <<SECRETARIAT USE ONLY>>

AGENDA ITEM SUBMISSION

Title

MRCA + SRDP Inconsistencies

Purpose of Submission

Inconsistencies in the application of MRCA + SRDP + Occupational Rehabilitation Assessments overriding medical specialist opinions relating to capacity to work.

Background

A veteran in receipt of or being entitled to receive incapacity payments becomes eligible to be assessed for SRDP on reaching 50 points of permanent impairment and is automatically referred to the "specialist delegate" for assessment.

This assessment process includes information provided by either the veterans' treating specialist/s or as is the usual practice sent to a medico-legal for review under the permanent impairment process.

The section 44 rehabilitation assessment is undertaken by an external provider at the direction of a DVA delegate to determine eligibility for SRDP as section 44 & 45 provides the power to refer a person for a rehabilitation assessment.

There is a contradiction with this process in that unless the veteran requests the assessment for SRDP in writing, there is no requirement for DVA to issue a formal determination in writing. In this case the assessment is done and the decision made and recorded all without the veteran knowing and no information sent to the veteran with appeal rights.

Often following the section 44 and SRDP not being granted due to adverse rehab provider report, the veteran may be referred to the same rehab provider for ongoing medical management, psychosocial or return to work rehabilitation.

Access to SRDP will be denied

- If the veteran is still receiving incapacity and is within the 45 week window. (Incapacity is paid at the full rate of the last pay point from Defence for 45 weeks when it reduces to 75%).
- The 75% is comprised of their MilSuper pension topped up by incapacity payment.
- Veterans granted a Class A pension often stop receiving incapacity payments because their MilSuper pension equals 75% however they are still considered eligible to receive incap.
- The external provider indicates that the veteran may have capacity for employment over 10 hours per week or the veteran has not participated in a rehabilitation program. (this includes return to work rehab)

The issue is that there is often specialist medical evidence stating the veteran will never work again or may be unfit for employment for up to a 3 year period with a recommendation to review again within the 3 years.

Even though this medical evidence may state the veteran will never work again, the rehab provider section 44 assessment with recommendations of 10 hours of work per week or that the veteran potentially could work with rehab assistance is used to override the medical opinion.

The oddity is that if the veteran requested consideration for SRDP in writing, the assessment process is the same however there is a determination made in writing and that includes the appeal rights. The irony of the situation is that for many veterans' the amount of their MilSuper often means that there is no money attached to the granting of SRDP.

While rehabilitation is a good process and veterans are encouraged to get the maximum from a rehab program, the reality is that for some veterans' a return to work is just not a viable option.

A veteran may be referred for an Employment Services Assessment if they have medical conditions or other barriers to work, have a reduced work capacity, or do not have participation requirements and are volunteering for employment services assistance.

A Job Capacity Assessment is to determine the impact of medical conditions and disabilities on the veterans' ability to work and whether the veteran would benefit from employment assistance and is also used by DVA to help determine medical eligibility for SRDP.

As previously stated, many disabled veterans are not informed that once they reach 50 points of permanent impairment and are in receipt of or eligible to receive incapacity payments that their claim is automatically referred to a specialist delegate for further assessment.

This assessment process includes information provided by either the veterans own treating specialist/s or as is the usual practice medico-legal reviews used for the DVA permanent impairment process and a rehabilitation assessment carried out by an external rehabilitation provider at the direction of DVA to determine eligibility for SRDP.

It is again stressed there is inconsistency with this process in that unless the veteran formally requests the assessment for SRDP in writing there is no requirement for DVA to issue a formal determination in writing, resulting in the assessment being carried out and the decision made recorded without the veteran knowing anything about it as it appears there is no legal requirement for DVA to send this information to the veteran to explain the veterans appeal rights following rehabilitation assessments.

In fact the veteran may be referred back to the same provider supplying adverse reports to DVA without the veterans knowledge for ongoing medical management, psychosocial or return to work rehabilitation even though the veteran who is under a Rehabilitation Program may have had their Incapacity Payments removed based on the recommendations of the same Occupational Physician due to a reported non-stabilisation of their condition.

The purpose of an Initial Occupational Rehabilitation Assessment is to obtain specific information that identifies barriers to return to work (physical, psychosocial workplace) or to establish the most appropriate course of action to achieve the earliest possible, safe and sustainable return to work goal.

The issue is that if a rehabilitation assessment completed by a rehabilitation provider states the veteran may be able to work 10 hours per week, or could potentially work for 10 hours per week with rehabilitation assistance can be used to override reports and medical opinion of treating psychiatrists or medical specialists stating the condition is stable (permanent) and the veteran will never work again or may be unfit for employment to work in the foreseeable future.

When the veteran is deemed not able to work 10 hours per week by his/her treating specialist or LMO who state in their reports that they wish to review the veteran's work capacity in one to three years, SRDP is denied as this is interpreted as the disability not being stable. (may show possible improvement often due to the young age of the veteran)

If the Occupational Rehabilitation Assessment states the veteran is capable of working in excess of 10 hours per week, again SRDP is denied and in many cases medical impairment points may be reduced to zero as the accepted disability is not deemed to be stable and the decision cannot be reviewed for a period of 12 months. Where there are multiple impairments relating to the same injury, at present a final assessment cannot be done until all of the impairments are stable.

Since the *Canute* decision, discrete injuries are assessed separately even if they arise from the same incident. It is therefore allowable to make final assessments for each injury once all its associated impairments have stabilised and it is permissible to do an interim assessment in relation to one or several of the impairments provided the criteria for making an interim assessment are met. At the present time this direction is not being applied when assessing SRDP if one or more of the veteran's accepted conditions have not stabilised.

References *Canute v Comcare* (2006) HCA 47: injuries to be assessed separately.

Issues for consideration

That any rehabilitation assessment completed by a rehabilitation provider stating the veteran may be able to work in excess of 10 hours per week, or could potentially work for 10 hours per week with rehabilitation assistance cannot be used to override reports and medical opinion of treating psychiatrists and/or medical specialists stating the condition is stable (permanent) and the veteran will never work again or may be unfit for employment to work in the foreseeable future.

For the provision of a temporary SRDP to be included in the MRCA for veteran's deemed not able to work 10 hours per week by his/her treating specialist or LMO. This temporary SRDP to be subject to review at a time determined by the delegate. At the present time if doctors state in reports that they wish to review the veterans work capacity in one to three years the incapacity is interpreted as the disability not being stable. *(this may possibly be due to the younger age of the veteran when assessing stability)*

DEPARTMENT OF VETERANS' AFFAIRS

Current and Former Members of the ADF – Emerging Issues Forum

That that veterans in receipt of, or being entitled to receive incapacity payments become eligible to be assessed for SRDP on reaching 50 points of permanent impairment and the claim automatically being referred to the "specialist delegate" for assessment are informed in writing of any formal determination relating to the assessment for SRDP and for this information to be sent to the veteran explaining their appeal rights following "specialist delegate" rehabilitation assessments.

Submitted by

Tom Jehn JP(Qual)
Advocate

Are you making this submission on behalf of an organisation?
☐ No

X Yes - Organisation name: **Veterans Association of Australia Inc.**

Ex-Service Organisations Round Table

Australian Government
Department of Veterans' Affairs

Response *Out of Session*: **Action Item 34/12**

Vietnam Veterans Association of Australia agenda items: MRCA and SRDP inconsistencies; and service pension, Gold Card and SRDP TTI.

Special Rate/Gold Card for veterans with disabilities accepted under Multiple Acts
Member Submission proposed changes to be made to allow veterans who have service-related disabilities accepted under multiple Acts to be granted either the disability pension at the Special Rate or the DVA Health Card - All Conditions (Gold Card).

Conditions accepted under the *Safety, Rehabilitation and Compensation Act 1988* (SRCA) and the *Military Rehabilitation and Compensation Act 2004* (MRCA) are treated as non-accepted conditions under the *Veterans' Entitlements Act 1986* (VEA) for the purposes of consideration for a disability pension at the Special Rate. However, under the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004* (CTPA) impairment points from VEA and SRCA conditions are brought into the MRCA as part of the assessment process for permanent impairment compensation. The combination of MRCA, VEA and SRCA combined points are known as 'total impairment points' for MRCA purposes. It is these total impairment points that are used to establish eligibility for certain special provisions under the MRCA such as the Gold Card, Special Rate Disability Pension (SRDP) and additional compensation for permanent impairment.

MRCA permanent impairment points when an impairment is not yet stable
Member Submission raised concerns about impairments under the MRCA that are not yet stable being reduced to "0", and the impact this may have on eligibility for a Gold Card.

Eligibility for MRCA permanent impairment requires the accepted condition to be both permanent and stable. Where medical evidence indicates that a MRCA impairment is not yet permanent or stable, final assessment of the condition may be deferred for a period specified by the assessing medical practitioner. In these circumstances there will be no MRCA impairment points awarded as there is no decision at this stage. Where medical evidence indicates an impairment is permanent and meets the minimum threshold, but a final assessment cannot be completed as one or more of the impairments are not yet stable, an interim impairment decision may be considered. In these circumstances the total impairment points will be a combination of any SRCA, VEA and MRCA interim impairment points and the minimum points that can be considered to be permanent and ongoing. If the combined interim points are at least 60, then this will result in the threshold being met for a Gold Card.

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Temporary payment of SRDP

Member Submission suggested a provision to allow a person to receive a temporary SRDP under the MRCA similar to temporarily totally incapacitated (TTI) under section 25 of the VEA.

Where disability pension at the Special Rate under the VEA is provided for a limited period of time it is known as TTI. The duration of payment for TTI is determined by medical evidence and is subject to review before the end of the determined period. A TTI pension would not normally be payable for more than six months.

There are no similar provisions under the MRCA for temporary SRDP payments. However, the MRCA provides incapacity payments which are for those people who are unable to work or have a reduced capacity for work as a result of their accepted conditions. The availability of these payments removes the necessity for consideration of temporary SRDP provisions as a person's financial loss due to their accepted conditions is met via other provisions. Incapacity payments are not time limited and can be paid in addition to permanent impairment (non-economic loss) payments.

The SRDP is intended as a financial safety net payment for those unable to work due to their accepted conditions. A temporary SRDP would not act as a financial safety net as there are already other financial provisions in place to support those who do not satisfy the SRDP eligibility criteria.

Evidence used to establish SRDP eligibility

Member Submission raised an issue concerning establishing a person's eligibility for SRDP using evidence from a rehabilitation service provider, and specifically a concern that this evidence is used to override the opinion of the person's treating medical providers.

In order to meet the eligibility criteria under Section 199 of the MRCA, a person must be unable to undertake remunerative work for more than 10 hours per week and rehabilitation be unlikely to increase this work capacity. It is important to note that section 199(1)(d) asks the Commission to consider if rehabilitation is likely to increase a person's capacity for work and that is a question that is best answered by a rehabilitation service provider and not a medical specialist. Specialist medical evidence alone is not sufficient to address whether a person's capacity for remunerative work could increase with rehabilitation intervention. A rehabilitation service provider:

- provides an expert opinion on a person's eventual capacity for paid employment in consultation with a person's medical specialist and with due consideration to all relevant medical evidence; and
- has an understanding of the conditions of the labour market and the skills necessary in order to perform various types of work that a medical specialist may not.

In some cases, if there is not sufficient contemporary evidence to establish a person meets the SRDP criteria, additional evidence may be required. This evidence may be from a rehabilitation service provider via an assessment of the person. The rehabilitation assessment will include a review of the person's medical restrictions based on existing medical evidence and liaison with the person's treating doctor/s.

There is currently a review of all aspects of the SRDP. This review was a recommendation of the Review of Military Compensation Arrangements. A particular focus of the review has been consideration of the policy around the application of

199(1)(d) to ensure greater consistency in assessment and decision making on SRDP eligibility.

Issuing a determination when a person does not meet all the criteria to become SRDP eligible

Member Submission raised the issue that currently a formal determination on whether a person is SRDP eligible is only provided after a client meets all the criteria for SRDP eligibility or if a person has lodged a request to be assessed for SRDP eligibility. If a person does not meet the criteria there is no legislative obligation on DVA to make a determination. This alleviates the requirement to make determinations when a person may have only satisfied one or two of the criteria under section 199 of the MRCA, for example a person may have been assessed at 50 impairment points but is not receiving incapacity payments, or they are working more than 10 hours per week.

However, DVA will consider further the Member Submission suggestion of issuing a formal determination where a person who has not lodged a request to be assessed for SRDP is found ineligible. This determination could include an indication of the person's appeal rights.

The complexities of three Acts

Member Submission has indicated that the complexities of DVA administering three Acts can get very confusing to veterans who are unaware of what Act is the most beneficial to their circumstances.

The circumstances and eligibility of veterans whose service and injuries in the ADF span across the three Acts administered by DVA can be very confusing. In an effort to reduce the number of Acts someone in these circumstances is covered under, the CTPA was introduced at the same time as the MRCA. The transitional provisions of the CTPA clarify the interaction between the MRCA, the VEA and the SRCA. It aims to prevent anomalies and dual entitlements for people receiving, or eligible to claim, benefits under the MRCA and the VEA and/or the SRCA.

In relation to the suggestion about streamlining of the three Acts, each of the Acts administered by DVA recognise the unique nature and circumstances of the military service for which they provide coverage. These arrangements have resulted from Australia's long history of military service and decisions taken by Governments at the time to provide particular benefits to veterans and their families.