

# Chapter 2

## Provisions of the bill and other issues

### Introduction

2.1 The provisions of the bill make a number of amendments to the MRCA and other pieces of legislation related to military compensation arrangements, to give effect to initiatives that form part of the Government response to the Review of Military Compensation Arrangements.<sup>1</sup> The bill's amendments are contained in 16 schedules. While many submissions focused on the provisions of the bill, several submissions also raised related issues including: the conduct of the Review, the service differential and time frames.

### Schedule 1—Rehabilitation and transition management

2.2 The Explanatory Memorandum (EM) to the bill states that Schedule 1 contains amendments to the MRCA and SRCA 'to enhance rehabilitation services and transition management'. The amendments are intended to:

- achieve greater consistency and oversight through the three branches of the Defence Force 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 [Military Rehabilitation and Compensation Commission] 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
- provide access to a transition advisory case manager for part-time Reservists.<sup>2</sup>

2.3 In particular, the amendments to redesignate the responsibilities of the Service Chiefs to the Chief of the Defence Force reflect the recommendations of the Review. The Review found:

Rehabilitation, a matter of critical importance to members being discharged on medical grounds, is coordinated by a tri-Service management structure. However, the MRCA appoints each Service Chief as the rehabilitation authority and the authority for appointment of transition advisory case managers. Greater consistency across the Services is more likely to be

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1 EM, p. ii.

2 EM, p. 1.

achieved if responsibility is assigned under the MRCA to the Chief of the Defence Force (CDF).<sup>3</sup>

2.4 The aim of the proposed changes to rehabilitation providers were welcomed by Mr Greg Isolani, KCI Lawyers. He stated:

This transitional management is, in my experience of great assist to the serving member transiting out of the ADF and into a civilian capacity when it is effectively executed. It can assist the discharging member to be positively retrained and assisted to find work subject to their medical conditions and opportunities in the labour market as opposed to being 'compensated' which for many can be demoralising.<sup>4</sup>

2.5 However, Mr Isolani maintained some reservations, noting the example of client who was discharged without adequate transitional management being put in place and highlighted the difficulties veterans can face in accessing tertiary rehabilitation.<sup>5</sup>

## **Schedule 2—Compensation for permanent impairment**

### ***Date of effect and lifestyle factor***

2.6 The EM to the bill states that the amendments contained in Schedule 2 are intended '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'.<sup>6</sup>

2.7 The amendments in Schedule 2 reflect recommendation 8.6 of the Review. The government's response to the Review's recommendation stated:

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.<sup>7</sup>

2.8 Slater and Gordon Lawyers considered that clarification was needed in the bill to ensure that 'payments in relation to stabilized conditions that meet the 10 "whole person impairment" points threshold, do not result in failure to compensate conditions

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3 DVA, *Review of Military Compensation Arrangements*, Volume 2, February 2011, p. 58.

4 *Submission 10*, p. 2.

5 *Submission 10*, p. 3.

6 EM, p. 6.

7 Government response, p. 15.

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that stabilize later but on their own, do not meet the impairment threshold'. It explained:

Currently, the claimant receives compensation for the combined 15 points when both impairments are stable. Under the amendments as they are currently worded, if the 10 points [whole person impairment] condition was stable and the 5 point was not, the MRCC could pay compensation for the 10 points condition immediately. Our concern is that, when the 5 point condition stabilizes and the claimant seeks payment, unless the Bill is clarified, lump sum compensation could be denied on the basis that the impairment is less than the 10 points threshold.<sup>8</sup>

2.9 It recommended that the bill be 'clarified to ensure that conditions assessed following an initial condition that has stabilized and that meet the 10 points whole person impairment threshold, be compensated even though on its own, the subsequent condition is less than 10 points'.<sup>9</sup>

2.10 DVA disagreed with this analysis of the provisions in Schedule 2, stating that '[w]here a claim for multiple conditions is made, the changes will not result in each condition being required to meet the threshold in order to attract compensation'. It noted that '[p]rovided that the combined impairment of the conditions meets the threshold, their effects will be compensated'.<sup>10</sup> In its response, DVA included additional detail on the benefits intended to be achieved by the amendments:

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

The amendments proposed in this Bill will apply an imputed lifestyle effect as part of the calculation of any interim payment of compensation. On stabilisation of all conditions, a final assessment will then be made to determine if any additional compensation is payable. This proposal will ensure a person receives compensation for lifestyle effects as part of the interim payment.<sup>11</sup>

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

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

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8 *Submission 9*, p. 3.

9 *Submission 9*, p. 3.

10 DVA, answers to written questions on notice, p. 1.

11 DVA, answers to written questions on notice, p. 1.

This proposal will ensure a person receives their maximum compensation for each condition from the earliest date.<sup>12</sup>

### ***Transitional permanent impairment compensation***

2.11 Schedule 2 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 the SRCA.<sup>13</sup>

2.12 The EM to the bill provided further background to these amendments:

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 [MRCA], 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 [VEA] and/or the [SRCA].

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 [MRCA]), 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 [VEA] or [SRCA] conditions over time.

As a consequence the methodology has been changed and will be applied both prospectively and retrospectively. 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.

The new methodology will be provided for through the GARP M and therefore no amendments are required to any of the Acts.<sup>14</sup>

2.13 Mr Greg Isolani, KCI Lawyers, characterised the amendments as modifying the 'offsetting' of permanent impairment (lump sum/periodic payments) for injuries payable under the MRCA for different injuries that have been under the SRCA or pensions under the VEA. However, he noted that offsetting 'to a lesser degree' will remain:<sup>15</sup>

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12 DVA, answers to written questions on notice, p. 1.

13 EM, p. 6.

14 EM, pp. 7–8.

15 *Submission 10*, p. 3.

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The *Military Rehabilitation (Consequential and Transitional Provision) Act 2004* provides a 'method' of calculating permanent impairment i.e. lump sum payments under the MRCA so 'Offsetting' or reducing compensation is achieved by taking into account different injuries for which compensation has been paid under different Acts i.e. SRCA and VEA.<sup>16</sup>

2.14 Mr Isolani argued that while the MRCA was intended to benefit veterans, older and more experienced veterans would be 'penalised for remaining in the ADF after 1 July 2004'. The changes in Schedule 2 could mean these veterans 'receive less compensation for the NEW and **different injury** arising after 1 July 2004 due to offsetting'.<sup>17</sup>

### **Schedule 3—Expanded lump sum options for wholly dependent partners**

2.15 The amendments contained in Schedule 3 expand the options for lump sum compensation for wholly dependent partners of deceased members.<sup>18</sup> The DVA submission noted that the amendments in Schedule 3 reflected the Government's agreement to a modified version of recommendation 9.3 of the Review.<sup>19</sup> Recommendation 9.3. of the Review was that:

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).<sup>20</sup>

2.16 The Review made this recommendation recognising the 'requirement for flexibility for a dependent partner to structure his or her compensation so that they meet immediate and long-term financial priorities'.<sup>21</sup>

2.17 In his Second Reading Speech, the Minister also described the amendments in Schedule 3:

The bill will provide greater flexibility for wholly dependent partners of deceased members under the [MRCA].

From 1 July 2013, instead of a single choice between receiving ongoing compensation payments or a lump sum payment, wholly dependent partners will be able to choose to convert either 25 per cent, 50 per cent, 75 per cent or 100 per cent of the periodic compensation amount to an age based lump sum payment.

This increased flexibility will enable a wholly dependent partner to better meet their immediate and long-term financial priorities, and applies to

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16 *Submission 10*, p. 4.

17 *Submission 10*, p. 5 (emphasis in original).

18 EM, p. 12.

19 *Submission 5*, Attachment B, p. 5.

20 DVA, *Review of Military Compensation Arrangements*, Volume 1, February 2011, p. 48.

21 DVA, *Review of Military Compensation Arrangements*, Volume 2, February 2011, p. 97.

future partners and to existing partners who have yet to make their choice as to how to receive their compensation.<sup>22</sup>

#### **Schedule 4—Weekly compensation for eligible young persons**

2.18 Schedule 4 contains amendments intended '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 [SRCA]'.<sup>23</sup> Section 12 of the MRCA provides that compensation for death may be payable to dependents in certain circumstances. As at 1 July 2012, the rate was \$87.57 per week (indexed annually against Consumer Price Index). This is below the payment made under similar circumstances under section 17 of the SRCA which is \$130.89 per week (indexed against Wage Price Index).<sup>24</sup>

2.19 On this subject, the Review recommended that the 'MRCA's current pension rate for dependent children...be maintained'. While it noted the differences between the schemes it stated that 'the SRCA does not provide the additional benefits of a separate lump sum payment, Gold Card or non-means tested education assistance to eligible young persons, as the MRCA does'.<sup>25</sup> However, the Review's recommendation was rejected in the Government's response. Instead, it was replaced with a 'favourable outcome' to make a one-time increase in the payment under the MRCA to align them with the corresponding payments under the SRCA. The Government response stated:

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.<sup>26</sup>

2.20 The amendments would match the payment under the MRCA to the amount payable under the MRCA on 1 July 2013. However, the EM notes that, as there are different indexation arrangements under the MRCA and the SRCA, the rates for this payment will not remain aligned over time.<sup>27</sup>

2.21 DVA provided the committee additional information on this amendment:

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

Although both the MRCA and the SRCA provide periodic payments to dependent children, these payments form only one component of the packages available to eligible children under each Act. In addition to

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22 *Senate Hansard*, 20 March 2013, p. 17.

23 EM, p. 19.

24 EM, p. 19.

25 DVA, *Review of Military Compensation Arrangements*, Volume 2, February 2011, p. 100.

26 Government response, p. 17.

27 EM, p. 20.

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periodic payments, the MRCA also provides wholly and mainly dependent children with a lump sum payment, access to a Repatriation Health Card—For All Conditions (Gold Card), education assistance and a MRCA supplement. Partially dependant eligible young persons are provided with lump sum compensation and education assistance, but not the periodic payment. In contrast, eligible SRCA claimants will receive part of an overall lump sum for dependants and periodic payments. An additional death benefit lump sum is also available to these SRCA claimants under the *Defence Act 1903*.<sup>28</sup>

### **Schedule 5—Compensation for financial advice and legal advice**

2.22 The amendments to Schedule 5 to the MRCA increase the amount of compensation for financial advice and include access to legal advice within the new limit.<sup>29</sup> In his Second Reading Speech, the Minister stated:

The bill provides for an increase in the amount of compensation paid for financial advice for those persons who are required to make a choice under the [MRCA] about the nature of the benefits they receive. The maximum compensation available will increase from \$1,592 to \$2,400 and legal advice related to that choice can also be covered within the new limit.<sup>30</sup>

2.23 The MRCA currently provides for compensation to certain eligible persons for the provision of financial advice. DVA stated:

These [circumstances] 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.<sup>31</sup>

2.24 The Government's response not only accepted, but enhanced, the original recommendation made by the Review that the 'amount of compensation for financial advice...be increased to at least \$2,400 and continue to be indexed by the [Consumer Price Index]'.<sup>32</sup> The Government's response stated:

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

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28 DVA, answers to written questions on notice, p. 2.

29 EM, p. 21.

30 *Senate Hansard*, 20 March 2013, p. 17.

31 DVA, *Submission 5*, Attachment B, p. 9.

32 DVA, *Review of Military Compensation Arrangements*, Volume 1, February 2011, p. 48.

to pay for advice received from a legally qualified person, when it relates to the choices previously described.<sup>33</sup>

2.25 While the Review acknowledged that some persons in these situations would 'benefit from obtaining legal advice' it did not consider this was 'necessarily the role of a compensation scheme such as the MRCA'.<sup>34</sup> DVA explained that the amendments in Schedule 5 are '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'.<sup>35</sup>

2.26 The Financial Planning Association of Australia (FPAA) noted that Parliamentary Joint Committee on Corporations and Financial Services (PJC) was undertaking an inquiry on the Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013. Schedule 2 of that Bill restricts the use of the expressions 'financial planner' and 'financial adviser' to those who are appropriately licensed to provide financial advice to retail clients. The FPAA stated:

The need to restrict the use of the terms financial planner and financial adviser in the Corporations Act will close a significant gap in consumer protection, which currently leaves trusting consumers open to influence by unprofessional and inappropriately qualified individuals portraying to provide financial advice, especially unsolicited advice from people with whom consumers may or may not have a relationship with.<sup>36</sup>

2.27 The FPAA recommended the adoption of a consistent approach to the definition of 'financial adviser', and recommended that Schedule 5 of the Bill be amended to require financial advice to be obtained from a 'financial planner' or 'financial adviser' who meets all the licensing and competency requirements in the new legislation.<sup>37</sup>

2.28 However, DVA stated that the amendments will not change the requirements that already exist for the financial advice to be provided by a person qualified and able to provide financial advice. Further, DVA argued:

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

Nevertheless, it is the view of DVA that there will be sufficient restrictions in the MRCA to prevent payment of compensation for advice sought from persons who do not have appropriate licences or qualifications. The proposed amendments in the Corporations Amendment (Simple Corporate

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33 Government response, p. 18.

34 DVA, *Review of Military Compensation Arrangements*, Volume 2, February 2011, p. 104.

35 DVA, *Submission 5*, Attachment B, p. 9.

36 *Submission 6*, p. 1.

37 *Submission 6*, p. 2.



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Bonds and Other Measures) Bill 2013, if passed, may provide additional protection, and a consequent amendment to the MRCA could also be considered at that time.<sup>38</sup>

## **Schedule 6—Special Rate Disability Pension**

2.29 The Review report included a brief description of the Special Rate Disability Pension (SRDP):

A former member unable to work because of accepted disabilities may choose the Special Rate Disability Pension in lieu of incapacity payments. Under the SRDP, they are paid an ongoing, tax free amount for life. The SRDP rate is equivalent to the Special Rate of the pension under the [VEA]<sup>39</sup>...and there are offsets for Commonwealth superannuation and permanent impairment compensation payments. The SRDP was built into the [MRCA] as a safety net.<sup>40</sup>

2.30 The EM to the bill outlines that a person is eligible to choose the SRDP under section 199 of the [MRCA] if the person:

- is in receipt of incapacity compensation...; and
- has an impairment as a result of the service injuries or diseases that is likely to continue; and
- is assessed at 50 or more impairment points; and
- 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.<sup>41</sup>

2.31 The EM highlights that under the existing provisions a person must be 'receiving' incapacity compensation to be eligible for SRDP. Consequently, a person will not be eligible if they had:

- converted their weekly rate of incapacity compensation to a lump sum; or
- is receiving a nil rate of incapacity compensation because the amount is fully offset by Commonwealth superannuation.<sup>42</sup>

2.32 As part of its consideration of the SRDP, the Review Committee noted that 'the commutation of a small amount of weekly compensation into lump sum compensation under section 138 of the MRCA will result in a person to become ineligible to make a choice to receive the SRDP, in circumstances where they would have otherwise been eligible'. The Review described this situation as 'anomalous' but

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38 DVA, answers to written questions on notice, p. 3.

39 The current rate effective 20 March 2013 is \$1238.20, DVA, 'New pension rates', <https://myaccount.dva.gov.au/new-pension-rates.html> (accessed 8 May 2013).

40 DVA, *Review of Military Compensation Arrangements*, Volume 2, February 2011, p. 135.

41 EM, p. 26.

42 EM, p. 26.

did not make a recommendation on this matter.<sup>43</sup> Nonetheless, the Government response to the Review addressed this anomaly:

The Government agrees that those former members who have either redeemed small incapacity payments under s138 of the MRCA or whose incapacity payments have been reduced to nil purely because of the value of Commonwealth superannuation, can still be found eligible for SRDP, if all other SRDP criteria are met.<sup>44</sup>

2.33 Consequently, Schedule 6 contained amendments 'to expand the eligibility criteria for Special Rate Disability Pension (SRDP)'.<sup>45</sup> The Minister, in his Second Reading Speech, described the amendments:

From 1 July 2013 the eligibility criteria for special rate disability pension under the [MRCA] will be expanded to include certain persons who are not currently eligible because the person converted their incapacity compensation payments to a lump sum or because the incapacity payment is reduced to nil because it is fully offset by Commonwealth superannuation.

This measure will also result in the person being entitled to additional benefits that are associated with eligibility for special rate disability pension, including a gold card, education assistance for eligible young persons and a MRCA supplement.<sup>46</sup>

2.34 The DVA submission provided further background information:

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.<sup>47</sup>

2.35 The expanded criteria will include 'a person who would otherwise meet the criteria in section 199 of the [MRCA] except for the person having received a lump sum incapacity payment under section 138 of the [MRCA] or the person is receiving a

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43 DVA, *Review of Military Compensation Arrangements*, Volume 2, February 2011, p. 143.

44 Government response, p. 34.

45 EM, p. 26.

46 *Senate Hansard*, 20 March 2013, p. 17.

47 DVA, *Submission 5*, Attachment B, pp. 10–11.

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nil rate of incapacity payment because the amount of the incapacity payment is fully offset by Commonwealth superannuation'.<sup>48</sup>

2.36 Mr Greg Isolani, KCI Lawyers, agreed that allowing veterans who otherwise satisfy the SRDP criteria to receive the benefit notwithstanding that they are receiving weekly payments. However he disagreed that there should be 'offsetting' of a ComSuper pension:

With respect to offsetting 'lump sum payments', from the SRDP this misconstrues the nature of a lump sum payment which is clearly for pain, suffering, lifestyle effects and the permanent effects of an injury or disease upon a person's body part, organ or psychiatric state. Therefore it has no relevance or comparison to the SRDP payment which is for loss of earnings.<sup>49</sup>

### **Schedule 7—Superannuation**

2.37 The EM states that the amendments contained in Schedule 7 will '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"'.<sup>50</sup> In his Second Reading Speech, the Minister described these as '[t]echnical amendments' to the definition of Commonwealth superannuation scheme under the MRCA 'to exclude contributions made by a licences corporation and to include Commonwealth contributions into retirement savings accounts'.<sup>51</sup>

2.38 The Government's response to the Review noted that this 'will ensure that relevant Commonwealth funded superannuation can be offset against incapacity payments and [Special Rate Disability Pension] so that the Government is not paying two income sources to the one person'.<sup>52</sup> The DVA submission noted that 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'. It also highlighted that '[a]s 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'.<sup>53</sup>

2.39 While broadly supportive of the other amendments of the bill, the Defence Force Welfare Association expressed a 'major reservation' in relation to the treatment of superannuation. It disputed the characterisation in the Government's response of military superannuation as 'income maintenance' and did not support the acceptance of

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48 EM, p. 26.

49 *Submission 10*, p. 6.

50 EM, p. 29.

51 *Senate Hansard*, 20 March 2013, p. 17.

52 Government response, p. 20.

53 DVA, *Submission 5*, Attachment B, p. 12.

recommendation 12.1 of the Review.<sup>54</sup> This recommendation was that '[t]he offset of incapacity payments and the [Special Rate Disability Pension] by the Commonwealth-funded superannuation received by the member should continue'.<sup>55</sup> In the view of the Defence Force Welfare Association, military superannuation should have the character of retirement pay, and proposed amendments to the bill which would have the effect of insulating retirement pay from its current offsetting provisions.<sup>56</sup>

2.40 The Australian Peacekeeper and Peacemaker Veterans' Association (APPVA) also raised concerns regarding the offsetting of the Special Rate Disability Pension:

[I]t is wrong for the Government to penalise those members on [Special Rate Disability Pension], in comparison to those who have Special Rate under the VEA. Those members have paid for their COMSUPER over the period of their service. It should not be used to reduce the compensation payment from 100% of the General Rate to the Special Rate by 60 cents in every COMSUPER dollar.<sup>57</sup>

2.41 The APPVA described the offsetting of the Special Rate Disability Pension for veterans in receipt of ComSuper as a 'double-dip for the Government against the Veteran' and recommended it be removed.<sup>58</sup>

2.42 Slater and Gordon Lawyers also recommended the committee consider amendments to the bill 'that would safeguard superannuation (retirement payments) from offsetting provisions':

We note that the Bill does not address the current practice of offsetting the Commonwealth contribution to military superannuation (retirement pay) against payments for incapacity, especially in relation to the SRDP. This is disappointing in light of the Government's overall commitment to encouraging the preservation of retirement incomes. We believe that superannuation should be protected and not treated as pre-retirement income maintenance.<sup>59</sup>

2.43 Similarly, Mr Greg Isolani, KCI Lawyers, considered that there was 'confusion' in DVA's treatment of a superannuation payment as the same as an income support payments under the MRCA. He also questioned the differential treatment of Commonwealth superannuation:

[A] person who is discharged, may work in a civilian job and then medically retires under an Industry or State based superannuation scheme and receives a pension or lump sum under that scheme does NOT have that taken into account by DVA to reduce their incapacity payments under the MRCA. Clearly it is recognised that this type of Super i.e. non

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54 *Submission 4*, p. 4.

55 Government response, p. 20.

56 *Submission 4*, p. 4.

57 *Submission 3*, p. 4.

58 *Submission 3*, p. 5.

59 *Submission 9*, p. 2.

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Commonwealth is not 'double dipping' when receiving both that payment and MRCA incapacity payments.<sup>60</sup>

2.44 In response to these concerns, DVA stated that this issue was 'comprehensively addressed' in Chapter 12 of the Review's report and confirmed that the 'superannuation offsetting provisions in the MRCA reflect broader Australian Government policy that was established in the SRCA, that the Australian Government should not pay two income sources to the same person'.<sup>61</sup> It noted:

Only the Commonwealth-funded portion of superannuation payments are offset against incapacity payments and the Special Rate Disability Pension. The individual's own contributions are excluded from the offsetting arrangements. The policy also excludes from the offsetting arrangements all non-Commonwealth superannuation payments including those paid by State Governments or private funds.

These provisions ensure that there are consistent outcomes between those receiving similar benefits under the MRCA and the SRCA.<sup>62</sup>

### **Schedule 8—Remittal power of Veterans' Review Board**

2.45 The DVA submission notes that one of the pathways for the review of decisions made under the MRCA is via the Veterans' Review Board (VRB). The VRB is an independent tribunal with jurisdiction to review a claim for liability or compensation under the MRCA which extends to making whatever determination the Military Rehabilitation and Compensation Commission (MRCC) could have made.<sup>63</sup>

2.46 The DVA submission also highlighted the issue that the amendments in Schedule 8 are intended to remedy:

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...

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

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60 *Submission 10*, p. 6 (emphasis in original).

61 DVA, answers to question on notice, p. 4.

62 DVA, answers to question on notice, p. 4.

63 *Submission 5*, Attachment B, p. 14.

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.<sup>64</sup>

2.47 The amendments in Schedule 8 will 'provide the Veterans' Review Board with an explicit power to remit a matter to the [Military Rehabilitation and Compensation Commission] (MRCC) for needs assessment and compensation'.<sup>65</sup> The EM to the bill notes that the amendments will enable the Veterans' Review Board, where it has accepted liability for the injury or disease that was initially rejected by the MRCC, to remit the matter to the MRCC to conduct the needs assessment and subsequent investigations and determine compensation. The EM characterises this change as a 'more effective process'.<sup>66</sup> In accepting the Review's recommendation on this subject, the Government's response pointed out 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'.<sup>67</sup>

2.48 The Returned and Services League of Australia (RSL) was largely satisfied with the provisions of the bill except for a 'small exception':

The small exception concerns the use of one word in Schedule 8: Remittal power of Veterans' Review Board. At section 353A (1), the wording '...the Board may require the Commission to reconsider the claim, to the extent it relates to paragraph 319(1)(d)' is ambiguous and could lead to uncertainty.<sup>68</sup>

2.49 In relation to this point, the RSL recommended that the word 'may' be replaced by 'shall'. It argued 'the use of the word "may" in Schedule 8 does not accurately reflect the implied intention of either the EM or the recommendations of the Review'.<sup>69</sup>

2.50 However, DVA did not agree that the wording in new subsection 353A(1) was 'ambiguous and could lead to uncertainty'. It noted that the proposed wording aligns with the intent of the Review's recommendations and that the Board's remittal power was intended to be discretionary. Further:

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

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64 *Submission 5*, Attachment B, p. 14.

65 EM, p. 37.

66 EM, p. 38.

67 Government response, p. 25.

68 *Submission 2*, p. 1.

69 *Submission 2*, p. 1.

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The preference of the Principal Member is for this power to be discretionary.<sup>70</sup>

2.51 Slater and Gordon Lawyers observed that it has 'previously submitted that [having] two appeal paths creates unsatisfactory outcomes and have raised particular concerns in relation to the VRB producing outcomes that are less beneficial to claimants'. In this context, it was disappointed that the bill increased the VRB's powers.<sup>71</sup>

### **Schedule 9—Membership of the Military Rehabilitation and Compensation Commission**

2.52 Under the amendments in Schedule 9 'the membership of the Military Rehabilitation and Compensation Commission (MRCC) will be increased by an additional member, to be nominated by the Minister for Defence'.<sup>72</sup> The EM to the bill notes that currently the membership of the MRCC is provided under section 364 of the MRCA. Membership of the MRCC 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'.<sup>73</sup>

2.53 The amendments reflect the recommendation of the Review that:

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.<sup>74</sup>

2.54 The DVA submission also commented on the rationale for the amendment:

Given the breadth and complexity of the [occupational, health and safety] 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.<sup>75</sup>

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70 DVA, answers to written questions on notice, p. 4.

71 *Submission 9*, p. 3.

72 *Senate Hansard*, 20 March 2013, p. 17.

73 EM, p. 40.

74 DVA, *Review of Military Compensation Arrangements*, Volume 2, February 2011, p. 256.

75 *Submission 5*, Attachment B, p. 16.

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## **Schedule 10—Aggravation of or material contribution to war-caused or defence-caused injury or disease**

2.55 The amendments in Schedule 10 will 'require all claims for conditions accepted under the [VEA] and aggravated by defence service after 1 July 2004 to be determined under the [VEA], rather than offering a choice between the [VEA] and the [MRCA], which is currently the case'.<sup>76</sup>

2.56 The EM to the bill notes that a claim for the aggravation of an injury or disease accepted under the VEA, where the aggravation occurred as a result of service rendered on or after 1 July 2004, requires the claimant to make a choice to make an application under the VEA scheme or make a claim under the MRCA (also referred to as a 'section 12 election'). It states that this election process is 'complex and can result in confused and anxious claimants and is administratively burdensome for the Department'. It notes further that since the commencement of the MRCA most claimants have elected to proceed under the VEA rather than claim under the MRCA.<sup>77</sup>

2.57 The DVA submission outlined that this issue had developed from measures intended to ensure that, at the time the MRCA was enacted, it would not interfere with the compensation entitlements of VEA beneficiaries. It also noted that a number of other issues relating to the difficulties in the administration of claimant elections were also highlighted during the Review.<sup>78</sup>

2.58 In accepting the Review's recommendation on this subject, the Government response also stated that '[i]mplementation 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'.<sup>79</sup>

2.59 However, Slater and Gordon Lawyers characterised removing the entitlement to claim under the MRCA, simply because an earlier claim was made under the VEA, as 'unjust':

An earlier VEA claim may have been made prior to enactment of MRCA, so it cannot be suggested that the claimant made a choice between the Acts when submitting an initial claim. The following inequities and concerns result from this amendment:

- for an aggravated injury after [1 July 2004] (and previously accepted under VEA) the claimant is limited to the pension options available under VEA and cannot claim a lump sum under MRCA; and

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76 EM, p. 41.

77 EM, p. 41.

78 *Submission 5*, Attachment B, p. 17.

79 Government response, p. 28.



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- the election may have been confusing for claimants, but this was most likely due to poor written advice and poorly drafted letters from the Department to claimants and lack of understanding of the MRCA.<sup>80</sup>

2.60 Similarly, Mr Greg Isolani, KCI Lawyers, recommended the choice between the VEA and MRCA should 'not be taken away'. He highlighted the benefits for veterans in being able to make an 'informed decision' in relation to this issue:

Currently, I provide this advice to Veterans and it is extremely beneficial taking into account the individual's particular needs, age, likelihood of incapacity occurring later in their service life i.e. that it may be more beneficial that they remain under the VEA as opposed to a younger Veteran whereby rehabilitation, a higher rate of incapacity payment and a lump sum/periodic payment may be more attractive under the MRCA.<sup>81</sup>

2.61 In response to these issues DVA outlined the assessments and benefits under the MRCA and VEA, and acknowledged that '[t]here will be some claimants who would have been better off having their claim determined under the MRCA rather than the VEA'.<sup>82</sup> However, DVA also highlighted the complexities behind the rationale for the amendment and the consideration of this subject by the Review:

[I]t is not possible, at the time the choice must be made, to determine which package will offer the better value to a particular claimant. This is because many of the factors that will impact on access to the various benefits will not be known for many years, some not until after the claimant's death. DVA can only provide information on the benefits that would be available if certain circumstances arise. Consequently, the choice must ultimately be a subjective choice by the claimant, based on their assessment of the likelihood of circumstances arising that will enable them to access benefits under each of the Acts.

The Review noted that there is merit in providing flexibility for claimants, but given the confusion and anxiety caused to clients and the administrative burden for DVA. [The Review] took the view that the provisions should be simplified, and that aggravations of a VEA condition should be compensated under the VEA. This approach will maximise claimants' VEA entitlements. The Government accepted this view and the Bill will implement the recommendation.<sup>83</sup>

2.62 Responding to the statements made regarding deficient advice to claimants, DVA emphasised the complexity of providing advice to claimants in relation to the choice between the VEA and MRCA in this situation. It stated:

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

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80 *Submission 9*, p. 4.

81 *Submission 10*, p. 7.

82 DVA, answers to written questions on notice, pp. 4–5.

83 DVA, answers to written questions on notice, p. 5.

In terms of the actual choice, a decision-maker must provide not just information on the benefits available under two very different Acts, but also decide upon the date of aggravation and make a claimant aware of the implications of their irrevocable decision. Effectively, a decision-maker is required to assess the likelihood that liability will be accepted under the MRCA, the likely incapacity that would arise under each Act, the range of benefits that would result and convey this to the client. Claimants then have to make a choice without any certainty of the outcome.<sup>84</sup>

### **Schedule 11—Treatment for certain SRCA injuries**

2.63 The amendments in Schedule 11 provide for Repatriation Health Cards—For Specific Conditions (White Cards) to be issued to Part XI defence-related claimants under the [SRCA] (SRCA members). The DVA submission provided some further background to these amendments:

Under both the [MRCA] and the [VEA], 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.<sup>85</sup>

2.64 The EM to the bill notes that the 'initiative is intended to achieve consistency in treatment arrangements for all former Defence Force members. SRCA members with an injury accepted under the [SRCA] as being related to service (SRCA injury), will be entitled to treatment for a SRCA injury under either the [MRCA] or the [VEA] in accordance with the arrangements established under those Acts'.<sup>86</sup>

#### ***Financial impact***

2.65 The Financial Impact Statement for the bill indicates that the amendments in Schedule 11 are the most significant in terms of financial impact. It lists the impact for the year 2012-13 as \$3.0 million, but the three subsequent years have negative financial impacts (-\$3.4 million, -\$10.1 million and -\$11.7 million).<sup>87</sup> The DVA submission stated that:

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.<sup>88</sup>

2.66 In an answer to a question on notice, DVA provided additional information on the financial impacts of the amendments in Schedule 11:

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84 DVA, answers to written questions on notice, p. 6.

85 *Submission 5*, Attachment B, p. 19.

86 EM, p. 47.

87 EM, p. vi.

88 *Submission 5*, p. 2.

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

The reduction in expenditures occurs because the fees and charges sought by providers under the former reimbursement arrangements have exceeded those applying to services provided through the treatment card arrangements. Treatment card arrangements are widely accepted by doctors and other health professionals providing services to the majority of DVA clients.<sup>89</sup>

2.67 Mr Greg Isolani, KCI Lawyers welcomed the extension of the treatment card to SRCA recipients, noting that it will 'reduce the delays and uncertainty experienced by many SRCA recipients who often complain of delays to be reimbursed for medical treatment'. However, he cautioned that DVA needs to be aware of the number of medical providers who do not accept the White or Gold card and prefer to be paid at the time of the consultation.<sup>90</sup>

2.68 Mr Mark Raison, an advocate with the Royal Australian Air Force Association Queensland Branch and a pension officer with the Pine Rivers RSL Sub-Branch, also raised concerns regards to 'the issuing of white cards to ex-military members that have medical conditions accepted for ongoing treatment, under [the SRCA]'. He requested that 'if a person is currently covered under SRCA [they] be permitted to keep their current entitlement to have supplementary medications prescribed to them and that they pay the recommended co-payment of \$5.80'.<sup>91</sup>

### ***Privacy issues***

2.69 Item 15 of Schedule 11 inserts new section 151A after existing section 151 into the SRCA. The EM to the bill notes:

New subsection 151A provides that the MRCC, or a staff member assisting the MRCC, may provide any information obtained in the performance of duties under [the SRCA] to the persons specified in paragraphs 151A (a) to (e) for the purposes of the applicable Department or agency. The persons specified in paragraphs 151A(a) to (e) are:

- the Secretary of the Department administered by the Minister who administers the *National Health Act 1953*;
- the Secretary of the Department administered by the Minister who administers the *Aged Care Act 1997*;
- the Secretary of the Department administered by the Minister who administers the *Human Services (Centrelink) Act 1997*;

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89 DVA, answers to written questions on notice, p. 7.

90 *Submission 10*, p. 8.

91 *Submission 7*, pp. 1–2 (emphasis in original).

- the Chief Executive Centrelink (within the meaning of the *Human Services (Centrelink) Act 1997*);
- the Chief Executive Medicare (within the meaning of the *Human Services (Medicare) Act 1973*).<sup>92</sup>

2.70 The Office of the Australian Information Commissioner (OAIC) raised concerns with these amendments in Schedule 11. It noted that 'the effect of this provision may be to authorise disclosures of personal information that would not otherwise be permitted under the Privacy Act'.<sup>93</sup> In the OAIC submission, Mr Timothy Pilgrim, the Privacy Commissioner stated:

I am concerned that the breath of the proposed s 151A may limit the ability of current and former ADF members to control how their personal information is handled. It is not clear why the inclusion of such a broad discretion is necessary to give effect to the intention of the amendments...

More specifically, it is not clear what personal information the MRCC may obtain through the performance of their duties and, therefore, what personal information may be disclosed under the proposed s 151A. Further, although the proposed s 151A(2) prohibits the recipient Department, Centrelink or Medicare from using or disclosing the information for purposes other than the purposes of the relevant body, the broad range of functions undertaken by those bodies and the scope of their own disclosure powers mean the extent of those purposes is unclear. As a result, it is difficult to discern what impact such uses or disclosures might have on the privacy of current and former members of the ADF.

These circumstances could also lend themselves to increasing the risk of function creep — where information collected for one purpose is used for other unrelated purposes outside the individual's expectations.<sup>94</sup>

2.71 Mr Pilgrim recommended a privacy impact assessment (PIA) of the proposed amendments be undertaken. In the absence of an PIA being undertaken, he suggested:

[Section] 151A be amended to confer a limited discretion on the MRCC to disclose personal information where it is necessary to achieve the intention of the Bill. The Committee may also wish to consider recommending that the Government outline, in the Explanatory Memorandum to the Bill, the purposes for which the MRCC can disclose personal information and limitations on the purposes for which a recipient Department, Centrelink or Medicare can use or disclose that information. This could, for example, be achieved through limiting the further use or disclosure of that information to purposes related to the original purpose of collection.<sup>95</sup>

2.72 In relation to these privacy issues, DVA stated that new section 151A replicates a similar provision in the VEA and the MRCA and provides for the

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92 EM, p. 55.

93 *Submission 8*, p. 2.

94 *Submission 8*, p. 3.

95 *Submission 8*, p. 4.

exchanges of information to: support administrative arrangement for treatment cards (Medicare Australia); to check clients are not already receiving a pension supplement (Centrelink); and for the purposes of establishing eligibility for new dementia and veterans' supplements.<sup>96</sup> Further, DVA explained that SRCA clients, like VEA and MRCA clients, would be advised of the collection, use and disclosure of information. Consequently:

As this proposed section extends DVA's existing administrative arrangements under the current treatment card system to the SRCA cohort, DVA does not consider that a privacy impact assessment is required. Appropriate use of information protocols are outlined [in] a Memorandum of Understanding (MOU) with the Department of Human Services.<sup>97</sup>

2.73 DVA also indicated that it had discussed the privacy controls in place around the use of the Repatriation Treatment Card with the OIAC and undertaken to provide an explanation on these matters to the committee.<sup>98</sup>

### **Schedule 12—Members**

2.74 Schedule 12 contains amendments 'to define members undergoing career transition, personnel holding honorary ranks and authorised representatives of philanthropic organisations as "members" under the MRCA'.<sup>99</sup>

2.75 This was a recommendation of the Review which was accepted and 'enhanced' in the Government response. While the Review's recommendation was limited to members undergoing career transition assistance and personnel holding honorary ranks, the Government response added 'authorised representatives of philanthropic organisations, in support of the ADF' to be defined as 'members' under the MRCA. The Government response stated that this would 'provide certainty about access to rehabilitation and compensation for these defined groups who are currently given access to the MRCA via Ministerial determination'.<sup>100</sup>

### **Schedule 13—Treatment costs**

2.76 The amendments in Schedule 13 'clarify the appropriation of costs for certain aged care services between the VEA, the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* and the MRCA (the Veterans' Affairs Acts) and the *Aged Care Act 1997* and the *Aged Care (Transitional Provisions) Act 1997* (the Aged Care Acts)'.<sup>101</sup>

2.77 The background to the amendments provided in the DVA submission stated:

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96 DVA, answers to written questions on notice, p. 7.

97 DVA, answers to written questions on notice, p. 7.

98 DVA, answers to written questions on notice, p. 8.

99 EM, p. 57.

100 Government response, p. 32.

101 EM, p. 59.

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*.<sup>102</sup>

2.78 The EM to the bill also highlights that aged care services for eligible Veterans' Affairs clients are regulated by both the Aged Care Acts and the Veterans' Affairs Acts. It notes:

Proposed amendments to the Veterans' Affairs Acts will clarify and confirm that the Repatriation Commission and the MRCC may limit their financial responsibility to particular costs in relation to 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.<sup>103</sup>

2.79 Mr Greg Isolani, KCI Lawyers agreed that the amendments would be beneficial for Australian Participants of the British Nuclear Tests, but described it as a 'missed opportunity' not to extend 'the range of benefits payable under the MRCA or the SRCA to include for example reasonable funeral expenses for those who die, wholly dependent benefits and lump sums for those with permanent impairments'.<sup>104</sup>

#### **Schedule 14—Travelling expenses**

2.80 The amendments in Schedule 14 'extend the entitlement for travelling expenses to the partner of certain eligible persons under certain circumstances'.<sup>105</sup> The EM to the bill states that '[u]nder 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'. This amendment does not appear to arise from the recommendations of the Review.

2.81 In relation to these amendments the DVA submission outlined:

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102 *Submission 5*, Attachment B, p. 22.

103 EM, p. 59.

104 *Submission 10*, p. 9.

105 EM, p. 63.

Part V of the [VEA] provides for treatment for eligible persons, including medical, allied health and hospital treatment. Section 110 of the [VEA] 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 [VEA] 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.<sup>106</sup>

### **Schedule 15—Payments into accounts**

2.82 The amendments in Schedule 15 will 'clarify and streamline the administrative arrangements for the payment of pensions, compensation and other pecuniary benefits under the Veterans' Entitlements Act and the MRCA into bank accounts'.<sup>107</sup> The EM to the bill notes that the amendments will mean 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'.<sup>108</sup> The DVA submission stated that the amendments in Schedule 15 'will clarify the administrative arrangements for the nomination of bank accounts for payments under the [VEA] and the [MRCA] and will minimise the associated administrative obligations of veterans, members and their dependants'.<sup>109</sup>

2.83 Mr Pilgrim, the Australian Privacy Commissioner, identified that the amendments in Schedule 15 also had privacy implications. However, he considered the handling of personal information permitted by the provisions in Schedule 15 is 'more closely aligned with the protections afforded to that information by the Privacy Act'.<sup>110</sup>

### **Schedule 16—Other amendments**

2.84 The amendments in Schedule 16 include:

- 'a minor and consequential amendment to the Social Security Act that clarifies which payments made under the [MRCA] are excluded income for the purposes of the Social Security Act'.<sup>111</sup>
- 'amendments to the Veterans' Entitlements Act to provide for the recovery from payments made under that Act of overpayments made under the [MRCA]'.<sup>112</sup>

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106 *Submission 5*, Attachment B, p. 22.

107 EM, p. 65.

108 EM, p. 65.

109 *Submission 5*, Attachment B, p. 24.

110 *Submission 8*, p. 1.

111 EM, p. 69.

## **Commencement**

2.85 Clause 2 provides that Schedules 1 to 8, 10 and 12 commence on 1 July 2013. Schedule 11 dealing with treatment for certain SRCA injuries commences on 10 December 2013. Schedules 9, 14, 15 and 16 commence on Royal Assent, while Schedule 13 commence on the 28<sup>th</sup> day after Royal Assent.

## **Other issues**

2.86 In addition to the specific amendments of the schedules of the bill, a number of other broader issues relating to the legislation and military compensation arrangements were raised in submissions.

### ***Support for reform***

2.87 In broad terms, several of the submissions received by the committee supported the amendments, or the majority of the amendments, made by the bill.<sup>113</sup> Many organisations had previously contributed to the Review of Military Compensation Arrangement and some been involved in later consultation conducted by DVA in the development of the draft legislation. For example, the Royal Australian Air Force Association noted that it and representatives of the Ex-Service Organisation roundtable had been provided the opportunity to participate in the finalisation of the draft bill.<sup>114</sup> Similarly, the Defence Force Welfare Association, with one 'major reservation' (in relation to the treatment of superannuation), supported the legislative changes in the bill. However, it did note that even as amended the MRCA was not 'free of defect' and contended there were still improvements which could be made.<sup>115</sup>

2.88 DVA highlighted that extensive consultation had been undertaken with veteran and Defence communities during the Review and the development of the bill:

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

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112 EM, p. 69.

113 For example, Returned and Services League of Australia, *Submission 2*, p. 1.

114 *Submission 1*, p. 1.

115 *Submission 4*, p. 4.



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the 2012 Budget and again before the introduction of this Bill into Parliament.<sup>116</sup>

### ***Conduct of the Review and consultation***

2.89 Concerns were also expressed regarding the Review of Military Compensation Arrangements and the process of consultation and consideration of the recommendations of its recommendations.

2.90 The Australian Peacekeeper & Peacemaker Veterans' Association (APPVA) held a number of concerns regarding the conduct of the Review. These concerns focused on the independence of the Review Committee. In particular, it noted that the Review Committee was chaired by the Secretary of DVA and that 'the Review was conducted by DVA, reviewed by DVA, recommendations made by DVA and finally the Government response written by DVA'.<sup>117</sup> Consequently, APPVA did not believe that 'the Review was conducted in an impartial manner and failed to address some [k]ey areas that have concerned current and ex-serving members since the enactment of the MRCA'.<sup>118</sup> In relation to the impartiality of the Review, Mr Greg Isolani, KCI Lawyers, also pointed out the Review 'could have included at least some Ex-Service Organisation representatives to balance out the composition of the Review team'.<sup>119</sup>

2.91 Mr Isolani also questioned the timing of a Senate inquiry into the proposed changes to the MRCA.

[I]t would in my view have been of greater benefit for the stakeholders concerned for a Senate inquiry into all the recommendations including those which were rejected by the government as opposed to those that have been accepted and now proposed in the amendments

The issues that could have been raised before the Senate Committee at that point i.e. post May 2012 would also have included what appears to be a substantial focus on the 'cost' of proposed changes that was the focus of the Review team as opposed to the 'value' of compensating Veterans, their families and their dependents for rendering military service in our name.<sup>120</sup>

2.92 DVA made the point that the Australian Government undertook to examine the military compensation system in response to requests from the veteran and ex-service community. Further:

Steering Committee members were chosen on the basis of their expertise to consider a wide range of rehabilitation and compensation issues, the whole of government implications, and to provide expertise from their Departments. The Steering Committee also included an independent

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116 *Submission 5*, p. 2.

117 *Submission 3*, p. 2.

118 *Submission 3*, p. 2.

119 *Submission 10*, p. 2.

120 *Submission 10*, p. 2.

member, Mr Peter Sutherland, a Visiting Fellow at the Australian National University College of Law.

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

The Government consulted on the report with the veteran and defence community before it formulated its response, and feedback was received from 43 ex-service organisations, other organisations and individuals.<sup>121</sup>

### *Service differential*

2.93 The Review observed that 'the MRCA continues the tradition of recognising members injured on overseas service by providing higher permanent impairment compensation payments for injuries and diseases related to warlike and non-warlike service compared to peacetime service (known as the compensation differential)'. Despite differences of opinion between members of the Review regarding where the service differential should apply, the Review recommended that 'the existing permanent impairment compensation differential for warlike and non-warlike service (or operational service) as opposed to peacetime service be maintained'.<sup>122</sup>

2.94 The Government response accepted the Review's recommendation regarding the maintenance of the service differential noting that 'it confirms its gratitude and recognition of the nature of warlike and non-warlike service (formerly known as operational service) where personnel are intentionally exposed to harm from belligerent enemy or dissident forces'.<sup>123</sup>

2.95 Slater and Gordon Lawyers opposed the service differential:

We believe that the compensation scheme should treat people similarly, regardless of where and when they served. Prior to the enactment of the MRCA, there was no service differentiation for the purpose of permanent impairment benefit rates under the VEA or SRCA.

We also believe that there should not be a differentiation in relation to compensation following loss of life. We contend that needs of families and dependants following the death of an ADF member are not altered by the location or type of service that resulted in a tragic loss of life.<sup>124</sup>

2.96 The APPVA also opposed the service differential:

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121 DVA, answers to written questions on notice, p. 8.

122 DVA, *Review of Military Compensation Arrangements*, Volume 2, February 2011, p. 86.

123 Government response, p. 13.

124 *Submission 9*, p. 2.

The Service Differential has been a significant issue for current and ex-serving members of the ADF. The Government has failed to recognise the equality of Permanent Impairment and like injuries/illness, regardless of the area served. The Government refused to accept that prior to the enactment of MRCA, that there was no such Service Differential under the VEA or SRCA for Permanent Impairment.

Whilst the Government supported the Review Committee's recommendations to retain the status quo for the Service Differential, it failed to recognise the significant and substantial allowances that are paid to ADF members, along with veteran entitlements to those who serve on Warlike service.<sup>125</sup>

### *Time frames*

2.97 Slater and Gordon Lawyers highlighted their concerns that DVA 'all too often fails to meet voluntary timeframes for decision making' and that this 'leads to delays in the resolution of claims and creates unnecessary stress and hardship for injured Veterans'.<sup>126</sup> It recommended that time frames for making decisions should be included in the legislation in line with other compensation schemes:

Despite the best will of the many people involved, and despite the *Service Charter*, claims, correspondence and even whole files continue to be lost in the system, causing delay and frustration for injured and ill personnel...[T]he system would be improved for claimants if time frames were inserted in the MRCA and the SRCA modelled on those in the *Seafarers Act*.<sup>127</sup>

2.98 Slater and Gordon Lawyers also drew the committee's attention to the recommendations of the Hank Review of the SRCA. The Hank Review recommended that 'the [SRCA] be amended to include statutory timeframes for the determination of claims and that, on failure to meet those timeframes, the claim be deemed rejected'.<sup>128</sup> Slater and Gordon Lawyers argued:

We note that the Comcare scheme deals with a number of public sector employers and self-insured licensees. We submit that given all veterans' and military compensation claims are handled by the one agency, namely the Department of Veterans' Affairs, it should be straightforward for a single agency to adhere to mandatory time frames. Further, if the scheme is being well administered, the measure should save administrative and legal costs as disputes in relation to claims will be resolved more efficiently as a result of timely decision making.<sup>129</sup>

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125 *Submission 3*, pp. 2–3.

126 *Submission 9A*, p. 1.

127 *Submission 9*, pp. 1–2.

128 Mr Peter Hank QC, 'Safety, Rehabilitation and Compensation Review', *Report*, February 2013, p. 163.

129 *Submission 9A*, p. 1.

2.99 The Review report considered delays in the processing and review of claims for military compensation, and made a number of recommendations in this area (which were accepted by the Government response), but did not recommend establishing time frames in legislation.<sup>130</sup> Nonetheless it noted, at that time, that legislation to amend the SRCA and include provisions for time limits within which Comcare claims and reconsideration must be determined (to be prescribed by regulation), would be considered by the Parliament in the future. The Review also considered it was 'reasonable for similar statutory reporting provisions to be built into the MRCA requirements'.<sup>131</sup>

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130 Government response, pp. 22–24.

131 DVA, *Review of Military Compensation Arrangements*, Volume 2, February 2011, p. 218.