Veterans' Affairs Legislation Amendment (Military Compensation Review and Other Measures) Bill 2013

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Law and Bills Digest Section

Note: This Digest is an historical Digest, published after the Bill was passed by Parliament and became an Act.

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Veterans' Affairs Legislation Amendment (Military Compensation Review and Other Measures) Bill 2013

Date introduced: 20 March 2013
House: House of Representatives
Portfolio: Veterans' Affairs

Commencement: The Bill has been passed by Parliament and is now an Act.\(^1\) The Bill was assented to on 28 June 2013. The provisions contained in the various schedules have the following commencement dates:

- Schedules 1–8, Schedule 10 and Schedule 12 on 1 July 2013
- Schedule 9 and Schedules 14–16 on 28 June 2013
- Schedule 11 on 10 December 2013 and
- Schedule 13 on 26 July 2013.

This Bills Digest treats the Bill as prospective.


Purpose of the Bill

The Veterans’ Affairs Legislation Amendment (Military Compensation Review and Other Measures) Bill 2013 (the Bill) amends several pieces of legislation, primarily the Military Rehabilitation and Compensation Act 2004 (the MRCA),\(^2\) to give effect to some aspects of the Government's response to the various recommendations arising from the Review of Military Compensation Arrangements (the Review) of 2011.\(^3\)

Structure of the Bill

The Bill contains sixteen schedules:

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1. The Bill passed the House of Representatives on 15 May 2013 and the Senate on 27 June 2013.
3. I Campbell (Chair), Review of Military Compensation Arrangements, Report to the Minister for Veterans' Affairs, Department of Veterans' Affairs, March 2011, accessed 19 August 2013.

Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
• Schedule 1 of the Bill amends the MRCA and the Safety, Rehabilitation and Compensation Act 1988 (SRCA) to move responsibility for rehabilitation and transition management under the military compensation system from service chiefs to the Chief of the Defence Force who, in turn, will be able to delegate functions

• Schedule 2 of the Bill amends the MRCA to allow for permanent impairment compensation payments to be made on the basis of each accepted condition rather than for all accepted conditions together, and to incorporate lifestyle factors into the calculation

• Schedule 3 amends the MRCA to expand lump sum options for wholly dependent partners. In addition, consequential amendments are made to the A New Tax System (Family Assistance) Act 1999, the Farm Household Support Act 1992, the Social Security Act 1991 and the Veterans’ Entitlements Act 1986 (the VEA)

• Schedule 4 amends the MRCA to provide a one-off increase to the amount payable to certain young persons who are dependent upon deceased military personnel, or former personnel

• Schedule 5 amends the MRCA so that compensation is payable for legal advice as well as for financial advice

• Schedule 6 amends the MRCA in relation to Special Rate Disability Pension (SRDP) to:
  – extend the scope of persons able to elect to take this pension in lieu of other compensation payments and
  – provide for recovery by the Commonwealth in certain cases of overpayment

• Schedule 7 amends the MRCA to alter superannuation rules so that certain Commonwealth-funded superannuation payments can be offset against compensation payments in order to prevent payment from two income sources to certain persons

• Schedule 8 amends the MRCA in relation to the remittal powers of the Veterans’ Review Board (VRB)

• Schedule 9 amends the MRCA to empower the Defence Minister to nominate an additional member of the Military Rehabilitation and Compensation Commission (the Commission)

• Schedule 10 amends the Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004 (the MRC (Consequential and Transitional Provisions) Act) and the VEA to remove certain rights to elect to have claims about aggravation of pre-existing injuries assessed under either the MRCA or the VEA

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• Schedule 11 amends the MRCA, the SRCA and the VEA to allow for the provision of new Repatriation Health Cards (to be known as White Cards) to assist certain former members of the Defence Force in relation to injuries accepted under the SRCA
• Schedule 12 amends the MRCA so that persons holding an honorary rank, and others who act at the request of the Defence Force, are included in the definition of ‘member of the Defence Force’
• Schedule 13 amends the Aged Care Act 1997,10 the Australian Participants in British Nuclear Tests (Treatment) Act 2006,11 the MRCA and the VEA to clarify the appropriation of costs for certain aged care services
• Schedule 14 amends the VEA in relation to certain travelling expenses
• Schedule 15 amends the MRCA and the VEA to permit the exchange of information to facilitate payments being made into clients’ bank accounts and
• Schedule 16 amends the Social Security Act to clarify which MRCA payments are ‘excluded income’ and amends the VEA to allow for further debt recovery.

Background

There are three key pieces of legislation governing compensation for injuries sustained through military service:

• the MRCA
• the VEA and
• the SRCA

Essentially, the VEA and SRCA provide compensation to those who undertook military service prior to 1 July 2004, and the MRCA covers those who undertook military service from 1 July 2004 onwards. However, there is considerable overlap between the three statutory schemes.

Military compensation arrangements review

On 8 April 2009, the then Minister for Veterans’ Affairs, Alan Griffin, announced that there would be a review of military compensation arrangements (the Review) to ensure that ‘Government is providing appropriate support and compensation to Australia’s veterans and ex-service personnel’.12 The Review was conducted by a steering committee chaired by the Secretary of the Department of Veterans’ Affairs, Ian Campbell PSM.

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The Review report was released on 18 March 2011.\(^\text{13}\) The Review found the military compensation system to be fundamentally sound but noted that certain improvements could be made.\(^\text{14}\) The report contained 108 recommendations covering a wide range of matters, including 28 legislative changes.\(^\text{15}\) Stakeholder feedback was sought.\(^\text{16}\)

**Government response**

The Government’s response to the Review was announced on 8 May 2012.\(^\text{17}\) Some $17.4 million was to be allocated over four years to implement 96 of the Review’s recommendations.\(^\text{18}\) Key measures included:

- a new methodology for calculating permanent impairment compensation
- some 6,000 former Australian Defence Force (ADF) members with chronic conditions accepted under the *SRCA* would receive new Repatriation Health Cards, to be known as White Cards to facilitate payments of compensation and benefits
- speedier access to compensation for permanent impairment under the *MRCA* for those with multiple conditions—money would become payable as each condition stabilises rather than waiting for all to stabilise
- an increase in the Eligible Young Person payment under the *MRCA* to equal the *SRCA* equivalent and
- greater flexibility to allow wholly dependent partners to convert part of their compensation into a lump sum.

This Bill relates to 19 of the Review recommendations which required legislative amendment to be put into effect.\(^\text{19}\)

**Committee consideration**

**Senate Foreign Affairs, Defence and Trade Legislation Committee**

The Bill was referred to the Senate Foreign Affairs, Defence and Trade Legislation Committee (the Senate Committee) on 21 March 2013 for inquiry and report by 14 May 2013. This deadline was extended to 17 June 2013.\(^\text{20}\)

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15. Ibid., pp. 45–55.
18. Ibid., p. 4.
The Senate Committee called for submissions and wrote to interested stakeholders advising them of the inquiry. Eleven submissions were received. There were no hearings. The Senate Committee’s report was presented on 17 June 2013. The Senate Committee unanimously recommended that the Senate pass the Bill.

The Senate Committee concluded that the Bill did implement aspects of the Government’s response to the Review and that these reforms would benefit clients of the military compensation system. The Committee made specific concluding comments on certain topics.

First, the Senate Committee was concerned there was only one member of the Review Steering Committee who was not a public servant. While acknowledging that extensive consultation did take place, the Committee recommended that future bodies include representatives from Ex-Service Organisations (ESOs).

Second, the Senate Committee noted the concerns of some members of the veteran community about offsetting certain superannuation payments in relation to some compensation. The Senate Committee noted the Government’s policy not to pay two income sources to the same person and did not consider a case had been made to change this policy.

Third, the Senate Committee encouraged the Department of Veterans’ Affairs (DVA) to continue to negotiate with the Office of the Australian Information Commissioner in relation to privacy issues.

Fourth, the Senate Committee recommended that consequential amendments be made to military compensation legislation in the event that the Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, which relates to the definitions of ‘financial advisor’ and ‘financial planner’ is passed, in order to achieve legislative consistency.

Fifth, in relation to time-frames, the Senate Committee noted that efforts were being made to address delays in determining and processing claims. If no improvement becomes evident in the near future, the Senate Committee recommended that consideration be given to legislated timeframes.

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20. Details of the inquiry including the terms of reference for the inquiry, submissions to the Committee and the final report are on the inquiry website, accessed 19 August 2013.
23. Ibid.
24. Ibid., p. 34.
25. Ibid.
26. Ibid. Information about the Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013—which has now lapsed—is available on the Bill homepage.
27. Foreign Affairs, Defence and Trade Legislation Committee, op. cit., p. 35.
Parliamentary Joint Committee on Human Rights

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considered that the Bill is compatible.

The Bill was considered by the Parliamentary Joint Committee on Human Rights (the Joint Human Rights Committee) which noted that the provisions of the Bill:

... that provide for more effective delivery of services or treatment to injured and ill Defence Force members promote the right to health under article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and many of the rights contained in the Convention on the Rights of Persons with Disabilities. The committee also agrees that increases in the amount of compensation payable and expansion of eligibility criteria for members promotes the right to social security under article 9 of the ICESCR.

That said, the Joint Human Rights Committee resolved to write to the Minister for Veterans’ Affairs in relation to two human rights concerns, being:

- whether provisions contained in Schedules 2, 10 and 11 of the Bill might lessen amounts received by certain persons and
- whether information sharing powers contained in proposed section 151A of the SRCA are consistent with the right to privacy.

That said, the Joint Human Rights Committee resolved to write to the Minister for Veterans’ Affairs in relation to two human rights concerns, being:

- whether provisions contained in Schedules 2, 10 and 11 of the Bill might lessen amounts received by certain persons and
- whether information sharing powers contained in proposed section 151A of the SRCA are consistent with the right to privacy.

The Chair of the Joint Human Rights Committee accordingly wrote to the Minister on 15 May 2013 setting out these concerns. The Minister for Veterans’ Affairs, Warren Snowden, replied on 6 June 2013. He stated that the changes contained in Schedule 2 concerning compensation for permanent impairment ought not to result in lower payments because:

- amendments in items 1–13 will not lessen amounts payable and in fact will allow for earlier payment and
- a new methodology is to be adopted in relation to claims assessments to be made from 1 July 2013 onwards.

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28. The Statement of Compatibility with Human Rights (the Statement) can be found at pages 70-83 of the Explanatory Memorandum to the Bill.
30. Ibid., p. 89.
31. Proposed section 151A is inserted into the Safety, Rehabilitation and Compensation Act by item 15 of Schedule 11 of the Bill.
This will be used to recalculate all transitional impairment calculations made under the MRCA between 1 July 2004 and 30 June 2013. If this adjustment retrospectively benefits the client then this difference will be payable. If the adjustment does not benefit the client then it will only apply prospectively. Implicit in the Minister’s answer, however, is the possibility that with decisions made after 1 July 2013, the new methodology might reduce an amount payable in certain cases.

In relation to Schedule 10 issues (the aggravation provisions), the Minister stated that the present system of election available to certain persons under section 12 of the MRC (Consequential and Transitional Provisions) Act is a complex process which is difficult for administrators to explain and for claimants to understand. The Minister’s reply did not directly address possible reductions in amounts to be received. However it was noted that this is a transitional issue only.

The Minister’s reply in relation to Schedule 11 issues noted that the amendments allow for a more streamlined and client-friendly provision of services, so that clients of the DVA will be able to access treatment for SRCA injuries through DVA procedures. The possibility of reduced amounts payable was not addressed.

In relation to the concerns expressed by the Joint Human Rights Committee about information sharing powers contained in proposed section 151A and their possible impact on the right to privacy, the Minister stated that clients will be advised of information sharing arrangements on claim forms and on Repatriation Treatment Cards. The Minister also advised this had been discussed with the Office of the Australian Information Commissioner.

In light of the information provided by the Minister, the Joint Human Rights Committee had no further comment on the Bill.

**Position of major interest groups**

The Senate Committee received eleven submissions from interested parties in connection with the inquiry noted above. Several were from ESOs. Most of the submissions from ESOs supported the Bill in principal, with some qualifications. Those qualifications are discussed under the relevant Schedule heading in the ‘Key issues and provisions’ section of this Bills Digest.

The Royal Australian Air Force Association strongly supported the Bill, as did the Returned and Services League of Australia Limited (RSL)—with a minor reservation about wording contained in the

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35. Inserted by Item 15 of Schedule 11 of the Bill.
37. Details of the submissions to the Senate Committee are contained on the inquiry homepage, accessed 19 August 2013.

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Schedule 8 provisions. The RSL requested that proposed subsection 353A(1) of the MRCA (discussed below), be amended so that the VRB ‘shall’ remit rather than ‘may’ remit.39

Another ESO to provide a submission was the Australian Peacekeeper and Peacemaker Veterans’ Association (APPVA).40 The submission is a reply to the Government’s response to the Review, rather than a submission addressing the contents of the Bill itself. Concerns were expressed as to the adequacy and impartiality of the Review as ESO representation was thought to be insufficient.41 The Review was chaired by the Secretary of the Department of Veterans’ Affairs and this was thought to involve a significant conflict of interest.42

The Defence Force Welfare Association (DFWA) supported the amendments proposed in the Bill but did not accept that incapacity payments should be seen as income maintenance.43 Rather, they should be seen as compensatory in nature. Similarly, the DFWA disputed whether military superannuation should be seen as income maintenance. These matters are discussed below in relation to the amendments in Schedules 6 and 7 of the Bill.

Submissions were provided from both the Melbourne and Brisbane offices of Slater and Gordon, Lawyers. The firm also provided a copy of its 2009 submission to the Review. The firm suggested that time frames for making decisions could usefully be included in the legislation. The firm also objected to offsetting Commonwealth contribution to military superannuation against payments for incapacity, particularly in relation to the SRDP.

Financial implications

There is a Financial Impact Statement contained in the Explanatory Memorandum to the Bill which sets out figures for each schedule over the financial years 2012–13 to 2015–16.44 The figures were not aggregated to provide an overall picture of the net cost. When this is done, the following figures emerge:

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41. Ibid., p. 1.
42. Ibid., p. 2.
44. Explanatory Memorandum, pp. v–vi.
The financial impact of each Schedule to the Bill is set out under the relevant Schedule heading in the ‘Key issues and provisions’ section of this Bills Digest.

**Key issues and provisions**

**Schedule 1—rehabilitation and transition management**

The provisions in Schedule 1 of the Bill amend the *MRCA*. They commenced on 1 July 2013.

The *MRCA* provides for compensation and other benefits to be provided for current and former members of the Defence Force who suffer a service injury or disease. It also provides for compensation and other benefits to the dependants of some deceased members.45

Most of the items in Schedule 1 of the Bill are mechanical in nature, in particular replacing references to ‘service chiefs’ with references to ‘the Chief of the Defence Force’. The effect of these amendments is that the Chief of the Defence Force has the designation for all of the responsibilities under the *MRCA*. This is a direct response to the recommendation of the Review which stated:

> To improve consistency and oversight of transition services under the tri-service management structure, the Committee recommends that responsibilities assigned to the Service chiefs (particularly as rehabilitation authorities and appointers of transition case managers) be transferred to the Chief of the Defence Force.46

**Item 75** of Schedule 1 of the Bill repeals and replaces section 438 of the *MRCA*, which contains delegation provisions. **Proposed section 438** provides that the Chief of the Defence Force may delegate any of his, or her, functions and powers under the *MRCA* to the service chief of an arm of the Defence Force.47 A service chief to whom functions and powers have been delegated may in turn delegate those functions and powers to public servants in the Departments of Defence and Veterans’ Affairs performing relevant duties. A service chief may also delegate to members of the Defence Force performing relevant duties.48 Functions and powers performed by a delegate are taken to have been performed by the Chief of the Defence Force.49

**Item 84** inserts **proposed subsections 152(2)–(4)** into the *SRCA* which are equivalent in effect to **proposed section 438** of the *MRCA*.

In addition, the expression ‘continuous full-time reservist’ is replaced with ‘continuous full-time Reservist or part-time Reservist’50 and the term ‘Reservist’s service chief’ is replaced with ‘Chief of the Defence Force’. The effect of these changes is that a part-time Reservist will be able to access

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46. I Campbell (Chair), *Review of Military Compensation Arrangements*, op. cit., volume 1, p. 16.
47. **Proposed subsection 438(1)** of the *Military Rehabilitation and Compensation Act*.
48. **Proposed subsection 438(2)** of the *Military Rehabilitation and Compensation Act*.
49. **Proposed subsection 438(3)** of the *Military Rehabilitation and Compensation Act*.
50. **Items 6 and 13** of Schedule 1 of the Bill.
early rehabilitation intervention and transition services (that is, for the period from discharge from the ADF to re-entering civilian life) under sections 39 and 64 of the MRCA respectively.

Financial implications

According to the Explanatory Memorandum,\(^5^1\) the amendments in Schedule 1 of the Bill will have the following implications for the Government:

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Schedule 2—compensation for permanent impairment

The provisions in Schedule 2 of the Bill amend the MRCA. They commenced on 1 July 2013.

The Review considered a number of issues arising from the permanent impairment compensation provisions of the MRCA including the date of effect provisions. The problem arising from the provisions was outlined as follows:

Weekly permanent impairment compensation under the MRCA becomes payable from either the date the claim for liability was lodged or the date that the claimant’s condition(s) are found to have become permanent and stable, whichever is the later. The Committee has found inequities for claimants with multiple conditions where the conditions become stable at different points in time. The Committee recommends that permanent impairment compensation become payable on the basis of each individual accepted condition, rather than on the basis of all accepted conditions.\(^5^2\)

Part 2 of Chapter 4 of the MRCA (sections 66-83) provides for compensation for permanent impairment that occurs as a result of one or more service injuries or diseases. Currently, it is a requirement of the MRCA that payment of permanent impairment compensation cannot be made until each and every one of the person’s accepted service injuries or diseases has stabilised.\(^5^3\)

The amendments to sections 75 and 77 of the MRCA contained in Schedule 2 of the Bill allow for permanent impairment compensation payments for a service injury or disease to be made on the basis of each accepted condition rather than for all accepted conditions together, and to incorporate lifestyle factors into the calculation of the amount payable. According to DVA:

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 conditions meets the requirements for payment of permanent impairment compensation. All conditions will be compensable including any that individually do not meet the relevant threshold.\(^5^4\)

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\(^5^1\) Explanatory Memorandum, p. v.
\(^5^2\) I Campbell (Chair), Review of Military Compensation Arrangements, op. cit., volume 1, p. 19.
\(^5^3\) Subparagraphs 68(1)(b)(iii), 71(1)(b)(iv) and 71(2)(a)(v) of the Military Rehabilitation and Compensation Act.
\(^5^4\) Department of Veterans’ Affairs, Answers to written Questions on Notice, undated, p. 1, accessed 20 August 2013.
Key issue—calculating permanent impairment compensation

When the MRCA was enacted, it was necessary to determine how persons whose injuries had already been accepted under the VEA or the SRCA would be treated. That being the case, the MRC (Consequential and Transitional Provisions) Act provided that the impairment rating for the old injury or disease, whether liability was accepted under the VEA or the SRCA, would be determined under the MRCA guide and deemed to have been impairment under the MRCA.\(^55\)

Subsection 13(2) of the MRC (Consequential and Transitional Provisions) Act requires the Commission to use the guide authorised under section 67 of the MRCA to determine an impairment rating for the old injury or disease. The relevant guide is the *Guide to determining impairment and compensation* (GARP M).

The Explanatory Memorandum to this Bill states:

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

> As a consequence the methodology has been changed and will be applied both prospectively and retrospectively.\(^57\)

This is reflected in transitional provisions in Schedule 2 of the Bill. The effect of item 14 is that certain transitional impairment calculations made under the MRCA from 1 July 2004 to 30 June 2013 will be recalculated under the new formula. Past payments will be adjusted retrospectively if the recalculated amount results in a benefit to a recipient. In that case he, or she, will be paid the difference between the amount originally paid and the new amount. This does not require a legislative amendment.

Financial implications

According to the Explanatory Memorandum,\(^58\) the amendments in Schedule 2 of the Bill will have the following implications for the Government:

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55. The *Guide to determining impairment and compensation (GARP M)*, which is prepared by the Commission, sets out the criteria to be used in deciding the degree of impairment of a person resulting from a service injury or disease and methods by which the degree of that impairment can be expressed in impairment points on a scale from 1–100.


58. Ibid., p. v.

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Schedule 3—expanded lump sum options for wholly dependent partners

The provisions in Part 1 of Schedule 3 of the Bill amend the MRCA. The provisions in Part 2 of Schedule 3 of the Bill are consequential amendments to other Acts. All of the amendments commenced on 1 July 2013.

Whilst the Review considered that ‘the death benefit package provided by the MRCA is probably the most beneficial and comprehensive of any Australian compensation jurisdiction’, it acknowledged the need to ‘make the package simpler and easier to understand’.  

Part 2 of Chapter 5 of the MRCA (sections 232-248) provides for compensation of wholly dependent partners for the death of members of the Defence Forces. At present, section 235 of the MRCA requires the Commission to notify the partner in writing that he, or she, can choose to receive either a lump sum or a weekly amount. Section 236 of the MRCA provides that a wholly dependent partner who receives such a notice may make that choice.

Items 7–13 of Schedule 3 of the Bill amend sections 235 and 236 of the MRCA to allow such a partner to choose to convert 25 per cent, 50 per cent, 75 per cent or 100 per cent of the weekly amount to a lump sum. In particular, the formula for calculating the amount of the lump sum which is based on the partner’s age at the date of the member’s death is set out in proposed subsection 236(5). If a percentage of a weekly amount payable to a partner is converted to a lump sum, the weekly amount payable is immediately adjusted to take this into account.

The amendments in Part 1 of Schedule 3 of the Bill are a response to the Review which proposed that ‘more flexibility be allowed in the choice between a pension and a lump sum to allow dependent partners to structure compensation to meet their financial priorities’. The Government accepted the Review’s recommendation with modification. The amendments in Schedule 3 of the Bill ‘replicate the provisions available to those in receipt of permanent impairment payments for 20 per cent or more of the maximum permanent impairment compensation’.

Consequential amendments to other pieces of legislation are provided for in items 17–48 in Part 2 of Schedule 3 of the Bill. These amendments accommodate the possibility that a wholly dependent partner converts a percentage of a weekly amount into a lump sum, altering the weekly payment amount accordingly. The Acts altered are the A New Tax System (Family Assistance) Act 1999, the

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59. I Campbell (Chair), Review of Military Compensation Arrangements, op. cit., volume 2, p. 87.
60. Proposed subsections 236(7) and (8) of the Military Rehabilitation and Compensation Act.
61. I Campbell (Chair), Review of Military Compensation Arrangements, op. cit., volume 1, p. 20 and recommendation 9.3.

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The savings and transitional provisions contained in items 49–56 in Part 3 of Schedule 3 of the Bill provide that the old law continues to apply to lump sum choices made before 1 July 2013. If a ‘lump sum choice’ in relation to an existing matter was not made before that date, a new notice under section 235 is to be given and the new provisions will apply.

Financial implications

According to the Explanatory Memorandum, the amendments in Schedule 3 of the Bill will have the following implications for the Government:

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Schedule 4—weekly compensation for eligible young persons

The provisions in Schedule 4 of the Bill amend the MRCA. They commenced on 1 July 2013.

The Review noted that the periodic payment to eligible young persons under the MRCA was $82.71 per week compared to an amount of $121.60 per week under the SRCA. However, the Review considered that this discrepancy was justified on the grounds 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 but the MRCA does. That being the case, the Review recommended the rate should not be increased.

Despite that recommendation, the Government decided that an increase was appropriate on the grounds that there had been ‘a break in the relativity’ between the relevant payments under the MRCA and the SRCA.

Part 3 of Chapter 5 of the MRCA (sections 250-260) provides for compensation to certain young persons who were dependent upon military personnel who are now deceased, or upon former personnel. Existing section 254 of the MRCA sets the amount payable to eligible young persons at $66 per week, and this figure is indexed in accordance with section 404. Items 1 and 2 of Schedule 4 of the Bill amend section 254 of the MRCA so that the amount of weekly compensation payable to

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63. Explanatory Memorandum, p. v.
64. I Campbell (Chair), Review of Military Compensation Arrangements, op. cit., volume 2, p. 100.
65. Ibid., recommendation 9.6.
an eligible young person is increased to $135.34. This is ‘a one-time increase’ so that ‘the rate aligns with similar payments under the SRCA’.

Item 3 is an application provision which operates to prevent indexation of the amount under section 404 of the MRCA for the financial year commencing on 1 July 2013.

Financial implications

According to the Explanatory Memorandum, the amendments in Schedule 4 of the Bill will have the following implications for the Government:

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Schedule 5—compensation for financial advice and legal advice

The provisions in Part 1 of Schedule 5 of the Bill amend the MRCA. The provisions in Part 2 of Schedule 5 of the Bill are consequential amendments to the Income Tax Assessment Act. All of the amendments commenced on 1 July 2013.

The MRCA contains provisions about compensation for the cost of financial advice provided to:

- permanent impairment claimants
- persons deciding whether to take a SRDP and
- wholly dependent partners of deceased personnel.

The amount payable for financial advice was set as $1,200 with effect from 1 July 2004. The amount is indexed in line with the CPI annually. The items in this Schedule expand the scope of compensation entitlements to cover legal advice as well.

Under proposed subsection 81(2) of the MRCA, the Commonwealth is liable to pay for the cost of legal advice obtained by a person only if all of the following conditions are satisfied:

- the Commonwealth is liable to pay compensation to that person under sections 68, 71 or 75 (these are the permanent impairment compensation provisions)

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68. Explanatory Memorandum, p. v.
69. Part 2 of Chapter 4 of the Military Rehabilitation and Compensation Act.
70. Part 6 of Chapter 4 of the Military Rehabilitation and Compensation Act.
72. Subsections 82(1) and 206(1) and section 240 of the Military Rehabilitation and Compensation Act.
73. Proposed subsection 81(2) is inserted by item 5 of Part 1 of Schedule 5 of the Bill.
74. Section 68 is about entitlement to compensation for permanent impairment.

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• the relevant impairment constitutes at least 50 impairment points
• the advice has been obtained by a **practising lawyer** after the impairment determination is made\(^\text{77}\)
• the advice relates to the choice to be made under section 78 of the **MRCA**\(^\text{78}\) and
• a claim for compensation has been made under section 319.\(^\text{79}\)

**Proposed subsections 205(2) and 239(2)** of the **MRCA**, inserted by **items 18 and 33** of Schedule 5 of the Bill, set out the Commonwealth’s liability to pay for the cost of legal advice obtained by a person in similar terms. That is, the advice was obtained from a practicing lawyer, was obtained in connection with a choice to be made by the person under the **MRCA** and is relevant to a claim for compensation made under section 319.

**Items 11, 24 and 39** of Schedule 5 of the Bill amend **subsections 82(2) and 206(2)** and **section 240** of the **MRCA** respectively to allow for the Commission to determine an amount of compensation for the cost of legal advice which it considers reasonable. The total amount of compensation for legal and financial advice is not to exceed $2,400 and this figure is to be indexed under **section 404** of the **MRCA**.

This amendment is an enhancement on the recommendation of the Review to increase the amount payable for financial advice to $2,400. According to the Government the decision to allow the payment to be made in respect of advice from a legally qualified person adds flexibility.\(^\text{80}\)

**Item 47** of Part 1 of Schedule 5 is an application provision which operates to prevent indexation of those amounts in the financial year commencing on 1 July 2013.

**Financial implications**

According to the Explanatory Memorandum,\(^\text{81}\) the amendments in Schedule 5 of the Bill will have the following implications for the Government:

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75. Section 71 is about additional compensation.
76. Section 75 is about interim compensation.
77. The definition of the term **practising lawyer**, inserted into section 5 of the **Military Rehabilitation and Compensation Act** by item 1 of Part 1 of Schedule 5 of the Bill, means a person who is admitted to the legal profession by a federal court or a Supreme Court of a state or territory and who holds a practising certificate (however described) entitling the person to practise that profession.
78. The choice is whether to convert a weekly amount to a lump sum which is calculated using the formula in subsection 78(5) of the **Military Rehabilitation and Compensation Act**.
79. This is the standard ‘making a claim provision’ in the **Military Rehabilitation and Compensation Act**.
81. Explanatory Memorandum, p. v.

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Schedule 6—special rate disability pension

The provisions in Schedule 6 of the Bill amend the MRCA in relation to former members of the Defence Force whose payments are calculated under Part 4 of Chapter 4 of the MRCA. They commenced on 1 July 2013:

A former member unable to work because of accepted disabilities may choose the Special Rate Disability Pension (SRDP) 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 pension under the VEA and there are offsets for Commonwealth superannuation and permanent impairment compensation payments. The SRDP was built into the MRCA as a safety net payment.\(^82\)

That safety net was included in the MRCA to ‘ensure that a former member unable to work because of accepted disabilities would have access to benefits at least the equivalent of the Special Rate pension’ under the VEA.\(^83\)

Extension of eligibility

Existing subsection 199(1) of the MRCA provides that to be eligible for SRDP, a person must satisfy all of the following requirements:

- the person is receiving compensation under Part 4 of Chapter 4 of the MRCA for service injuries or disease
- as a result of the injuries or disease, the person has an impairment which is likely to continue indefinitely
- the Commission has determined an impairment level of at least 50 impairment points and
- the person is unable to work more than ten hours per week and rehabilitation is unlikely to assist.

Section 200 of the MRCA allows a person to make an irrevocable choice about whether to receive SRDP or payment of compensation under Part 4 of the MRCA.

The difficulty arises in that a person who has converted their weekly rate of incapacity compensation to a lump sum\(^84\) or who is receiving a nil rate of incapacity compensation because the amount is fully offset by Commonwealth superannuation, is not considered to be receiving compensation. This Schedule of the Bill extends the scope of persons able to elect to take SRDP in lieu of other compensation payments.

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82. I Campbell (Chair), Review of Military Compensation Arrangements, op. cit., volume 2, p. 135.
84. Section 138 of the Military Rehabilitation and Compensation Act.
Proposed subparagraphs 199(1)(a)(ii) and (iii) expand eligibility beyond those persons already receiving compensation under Part 4 of Chapter 4 of the MRCA to include:

- retiring persons receiving Commonwealth superannuation who are entitled to incapacity compensation, but who do not receive any compensation payments as the amount that they are entitled to is fully offset by Commonwealth superannuation.
- persons who have converted small amounts of weekly compensation payments into a lump sum under section 138 of the MRCA.

Recovery of overpayments

Section 204 of the MRCA provides that the maximum weekly amount of SRDP payable to a person may be reduced by certain amounts. In particular, subsection 204(5) of the MRCA provides that where a person has retired voluntarily, or has been compulsorily retired, the amount of SRDP payable to the person is reduced. Subsection 204(6) of the MRCA provides that the rate of reduction in SRDP for any superannuation received by the person under a Commonwealth superannuation scheme is 60 per cent of the reduction that would apply if the person were receiving incapacity payments under the MRCA.

Proposed subsection 204(7) confirms that section 204 does not limit the application of subsection 415(4) to the SRDP. Proposed subsection 204(7) of the Military Rehabilitation and Compensation Act is inserted by item 6 of Schedule 6 of the Bill. Subsection 415(4) of the MRCA provides for recovery of past overpayments.

Item 7 of Schedule 6 of the Bill inserts proposed section 204A into the MRCA so that if the Commission makes an SRDP determination under subsection 203(1), a portion of a lump sum which has been calculated in accordance with section 138, is to be treated as a compensation amount which should not have been paid, and this portion is to be calculated in accordance with the Commission’s SRDP determination. This amount then becomes recoverable. The purpose of proposed section 204A is to prevent double-dipping (or overcompensation).

Key issue—ongoing relevance of SRDP

The Review noted the low rate of uptake of SRDP and considered its ongoing relevance:

The Committee believes that the SRDP may still be of relevance to injured part-time Reservists and those approaching retirement. All aspects of the SRDP including its relevance, eligibility criteria and the effectiveness of rehabilitation should be evaluated as more data become available after a further five years.

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85. Proposed subsection 204(7) of the Military Rehabilitation and Compensation Act is inserted by item 6 of Schedule 6 of the Bill.
86. Section 138 of the Military Rehabilitation and Compensation Act sets out the method for converting small amounts of weekly compensation into lump sum compensation.
87. I Campbell (Chair), Review of Military Compensation Arrangements, op. cit., volume 1, p. 23.
The Government accepted this recommendation with modification on the timing of the review and evaluation of all aspects of the SRDP. It considered that the review and evaluation should be undertaken within the next two years.\(^{88}\)

**Key issue—rate reduced by an amount of Commonwealth superannuation**

Some of the submissions to the Senate Committee commented on the reduction in the rate of SRDP payable to a person having regard to the amount of Commonwealth superannuation received. For instance, Slater and Gordon recommended that the Senate Committee ‘consider amendment to the Bill that would safeguard superannuation (retirement payments) from offsetting provisions’.\(^ {89}\) Similarly, the Australian Peacekeeper and Peacemaker Veterans’ Association opined that COMSUPER ‘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’.\(^ {90}\)

The Senate Committee acknowledged that there were ongoing concerns by members of the veteran community in relation to offsetting Commonwealth superannuation in relation to some compensation. The Senate Committee noted that ‘it reflects a long-standing policy that the Australian Government should not pay two income sources to the same person’. That being the case, the Senate Committee did not consider that a case had been made for a change in the policy at this time.\(^ {91}\) This view is consistent with the Review recommendation that ‘the offset of incapacity payments and SRDP by the Commonwealth-funded superannuation received by the member should continue’.\(^ {92}\)

**Financial implications**

According to the Explanatory Memorandum,\(^ {93}\) the amendments in Schedule 6 of the Bill will have the following implications for the Government:

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93. Explanatory Memorandum, p. v.
Schedule 7—superannuation

The provisions in Schedule 7 of the Bill amend the MRCA in relation to current members of the Defence Force whose payments are calculated under Part 3 of Chapter 4 of the MRCA. They commenced on 1 July 2013.

Where a current serving member is in receipt of both Commonwealth superannuation and an incapacity payment under the MRCA there may be circumstances where offsetting does not take place. For example ‘where a member discharges after 20 or more years’ service, transfers to the Reserves and becomes incapacitated while still a serving member of the part-time Reserves or on continuous full-time service’. 94

According to the Review, the MRCA should be amended to apply superannuation offsetting against incapacity payments for current members receiving Commonwealth superannuation, as well as former members. The provisions contained in Schedule 7 of the Bill address this recommendation. 95

Item 15 of Schedule 7 of the Bill inserts proposed section 89A into Part 3 of Chapter 4 of the MRCA so that the weekly amount of compensation payable under section 85 (incapacitated full-time members), section 86 (incapacitated reservists), or section 87 (incapacitated cadets and declared members) to persons receiving a pension and/or lump sum under a Commonwealth superannuation scheme is worked out in accordance with the provisions that are inserted by item 16 of the Schedule.

Item 16 inserts proposed Division 7 (comprising proposed sections 116A–116E) into Part 3 of Chapter 4 of the MRCA. The method for calculating the amount of compensation payable is as follows:

- to a person receiving only a Commonwealth superannuation pension—proposed section 116B applies so that the compensation amount payable is the amount calculated under subsection 89(1) of the MRCA less the superannuation pension amount 96
- to a person who has received a Commonwealth superannuation lump sum—proposed section 116C applies so that the compensation amount payable is the amount calculated under subsection 89(1) of the MRCA less the amount determined by dividing the person’s superannuation lump sum amount 97 by the person’s superannuation age-based number 98

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94. Ibid., p. 29.
95. I Campbell (Chair), Review of Military Compensation Arrangements, op. cit., recommendation 12.3.
96. The superannuation pension amount is defined in proposed subsection 116B(2) of the Military Rehabilitation and Compensation Act.
97. The superannuation lump sum amount is defined in proposed subsection 116C(2) of the Military Rehabilitation and Compensation Act.
98. The superannuation age-based number is defined in proposed subsection 116C(2) as the number that is advised by the Australian Government Actuary by reference to the person’s age on the day on which the lump sum is paid.
• to a person who has received a lump sum and is receiving a person—proposed section 116D applies so that the compensation amount payable is the amount calculated under subsection 89(1) of the MRCA less the amount determined by adding the person’s superannuation pension amount to the person’s superannuation lump sum amount divided by the person’s superannuation age-based number.

Proposed section 116E provides that in cases where the above formulas lead to a nil or negative amount, no compensation will be payable.

Items 1–5 of Schedule 7 of the Bill make consequential amendments to the definition of Commonwealth superannuation scheme in subsection 5(1) of the MRCA. In particular item 1 inserts proposed paragraph (aa) to make reference to proposed section 89A and proposed Division 7 of Part 3 of Chapter 4 of the MRCA.

Key issue—rate reduced by an amount of Commonwealth superannuation

As with submissions in relation to the rate of SRDP, there were concerns about offsetting an amount of Commonwealth superannuation against the rate of compensation payable to current members of the Defence Force. In particular, the Defence Force Welfare Association argued that the offsetting of the Commonwealth contribution to military superannuation against payments for incapacity is ‘illogical and unjust’. It made clear, in its submission to the Senate Committee, that it does not accept the characterisation of the Commonwealth contribution component of superannuation as income maintenance.99

The Review acknowledged this argument but stated:

Superannuation offsetting under the MRCA ensures that the Australia Government does not pay two income replacement payments to the same person.

... the MRCA’s incapacity payment provisions are the most beneficial of any Australian compensation scheme. It is, of course, important to ensure that an appropriate level of income maintenance is provided to a former member who is incapacitated for work by service injury or disease. However, the level of income maintenance must be balanced with the need to maximise the circumstances in which a former member will remain in or return to the workforce.100

Financial implications

According to the Explanatory Memorandum,101 the amendments in Schedule 7 of the Bill will have the following implications for the Government:


100. I Campbell (Chair), Review of Military Compensation Arrangements, op. cit., volume 2, p. 166.

Schedule 8—remittal powers of Veterans’ Review Board

The provisions in Schedule 8 of the Bill amend the MRCA to expand the powers of the VRB. They commenced on 1 July 2013.

Most determinations made by the Commission can be reconsidered and reviewed. There are two possible paths in the reconsideration and review process depending on the type of reconsideration sought by the claimant. 102

A claimant who has received notice of an original determination can ask the Commission to reconsider it, or ask the VRB to review it. In either case, if the claimant is dissatisfied with the determination on reconsideration or review, the claimant can apply to the Administrative Appeals Tribunal (AAT) for further review.

The problems faced by claimants are summarised by the Review in the following terms:

The VRB path can be seen as a lengthy and daunting process and, therefore, some claimants seek [Commission] reconsideration, only then realising the irrevocability of the decision and the fact that legal aid will not be available at the [Commission] or at the AAT, other than for claims relating to operational service. Confusion also arises from the different time limits applying for lodgement of applications and for subsequent actions in the two paths. 103

The Review recommended a single appeal path to the VRB and then the AAT as a means of a more timely review that is less complex and less costly. 104 This recommendation acknowledged the need to introduce the relevant amendments incrementally.

Currently, where liability for an injury or disease is rejected by the Commission, but subsequently accepted by the VRB, the VRB does not have the power to remit a matter to the Commission to conduct a needs assessment and determine the person’s compensation entitlements under the MRCA. Instead, the VRB must adjourn the hearing, request the Commission to conduct an investigation and then provide a report to the VRB about relevant matters. 105

That being the case, the provisions in Schedule 8 of the Bill expand the powers of the VRB to remit matters to the Commission for reconsideration in light of favourable decisions the VRB has made.

Proposed subsection 353A, inserted into the MRCA by item 1 of Schedule 8 of the Bill, sets out the remittal power of the VRB in two circumstances. The first, in accordance with proposed subsection 353A(1), is where a person makes a joint claim under paragraph 319(1)(a) (acceptance of

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102. Section 344 of the Military Rehabilitation and Compensation Act.
103. I Campbell (Chair), Review of Military Compensation Arrangements, op. cit., volume 1, p. 29.
104. Ibid., recommendation 17.1.
liability for a service injury or service disease) and paragraph 319(1)(d) (compensation)—and the Commission rejects the claim. If, on review, the VRB makes a determination in favour of the person in relation to that part of the claim which is made under paragraph 319(1)(a), then the VRB may require the Commission to reconsider that part of the claim which relates to paragraph 319(d) of the MRCA.

The second in accordance with proposed subsection 353A(3) is where a person makes a claim under paragraph 319(1)(a) in respect of a service injury or service disease and, before the claim is determined, the person makes a separate claim under paragraph 319(1)(d) of the MRCA—and the Commission rejects both of those claims. If, on review, the VRB makes a determination in favour of the person in relation to the claim under paragraph 319(1)(a), then the VRB may require the Commission to reconsider the claim that was made under paragraph 319(d) of the MRCA.

Proposed subsections 353A(2) and (4) require the Commission to reconsider the relevant claims, to carry out assessment of the person’s needs and to make a determination accordingly.

Financial implications

According to the Explanatory Memorandum, this measure will have no financial impact for the Government.  

Schedule 9—membership of the Commission

The provisions in Schedule 9 of the Bill amend the MRCA. They commenced on 28 June 2013.

Chapter 9 of the MRCA establishes the Commission. Section 364 of the MRCA provides that the Commission is comprised of:

- persons who hold the position of President of the Repatriation Commission, Deputy President of the Repatriation Commission and a member of the Repatriation Commission (other than the President or Deputy President) nominated by the Veterans’ Affairs Minister
- a person who is nominated by the SRC Minister and
- a person who is nominated by the Defence Minister, is either a Permanent Forces member or engaged under the Public Service Act 1999 and performing duties in the Defence Department.

The Review recommended that the membership of the Commission be expanded by ‘including a second member nominated by the Minister for Defence from the Department of Defence or the

106. Explanatory Memorandum, p. v.
107. The SRC Minister is defined in section 5 of the Military Rehabilitation and Compensation Act as the Minister administering Division 3 of Part VII of the Safety, Rehabilitation and Compensation Act 1988.
ADF, given the advantages this would bring for both Defence and [the Commission] especially in facilitating improvements in information sharing between DVA and Defence.  

The amendments to paragraph 364(1)(b) and section 367 of the MRCA which are set out in Schedule 9 of the Bill give effect to this recommendation.

The Review made the recommendation having formed the view that the addition of a second part-time Defence member to the Commission:

... would have little effect on its proceedings. The quorum of four members would still be appropriate. The addition of another member may increase the occurrence of a split vote, but the power of the deliberating member to make a casting vote does not change the balance of power.

Financial implications

According to the Explanatory Memorandum, this measure will have no financial impact for the Government.

Schedule 10—aggravation of or material contribution to injury or disease

The provisions in Schedule 10 of the Bill amend the MRC (Consequential and Transitional Provisions) Act and the VEA. They commenced on 1 July 2013.

When the MRCA was enacted, the intention was not to interfere with compensation entitlements to VEA beneficiaries. Section 12 of the MRC (Consequential and Transitional Provisions) Act in its original form, applied to a person who was suffering from a war-caused or defence-caused injury or disease (within the meaning of the VEA). If the person suffered an aggravation of, or material contribution to that injury or disease, subsection 12(2) of the MRC (Consequential and Transitional Provisions) Act required the Commission to give the person a written notice advising that he, or she, must choose between either making a claim under section 319 of the MRCA or applying under section 15 of the VEA for an increase in a rate of pension in respect of the aggravated injury or disease.

In circumstances where the person elected to apply under the VEA, section 9 of the MRC (Consequential and Transitional Provisions) Act provided that the MRCA would not apply.

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109. I Campbell (Chair), Review of Military Compensation Arrangements, op. cit., recommendation 18.4.
110. I Campbell (Chair), Review of Military Compensation Arrangements, op. cit., volume 2, pp. 255–256.
111. Explanatory Memorandum, p. v.
112. I Campbell (Chair), Review of Military Compensation Arrangements, op. cit., volume 1, p. 33.
The Review recognised that a number of problems arose from the election process, including that it was ‘complex and can cause confusion and anxiety for claimants, and administrative burden for DVA’. It considered two options for action being:

- all aggravations of VEA conditions caused by service on or after 1 July 2004 could be compensated under the MRCA using a date of injury approach or
- all aggravations of VEA conditions that relate to service can only be compensated under the VEA, regardless of when that service occurred—in line with the principle that enactment of the MRCA would not interfere with VEA entitlements.

The Committee recommended the latter of these options and that the election provisions be removed.

Item 5 of Schedule 10 of the Bill repeals and replaces section 9 of the MRC (Consequential and Transitional Provisions) Act. Proposed subsection 9(1) of the MRC (Consequential and Transitional Provisions) Act provides that if, prior to the commencement of the amendments contained in the Bill, a person suffers from a war-caused or defence-caused injury or disease within the meaning of the VEA, an aggravation of or material contribution to that injury or disease on or after 1 July 2013 will not be covered by the MRCA.

Proposed subsection 9(3) of the MRC (Consequential and Transitional Provisions) Act provides that if, prior to the commencement of the amendments contained in the Bill, a person suffers from a war-caused or defence-caused injury or disease within the meaning of the VEA, an aggravation of or material contribution to that injury or disease prior to 1 July 2013 will not be covered by the MRCA unless a choice is made under current section 12 to commence or continue with a claim under the MRCA.

Section 29 of the MRCA provides for liability for injuries, diseases and death caused by treatment paid for or provided for by the Commonwealth. Proposed subsection 9(5) of the MRC (Consequential and Transitional Provisions) Act provides that if, prior to the commencement of the amendments contained in the Bill, a person suffers from a war-caused or defence-caused injury or disease within the meaning of the VEA, an aggravation of or material contribution to that injury or disease on or after 1 July 2013 will not be covered by the MRCA where such aggravation or material contribution occur as an unintended consequence of treatment covered by section 29 of the MRCA. This is regardless of whether the treatment was provided before, on or after 1 July 2013.

Proposed subsection 9(7) of the MRC (Consequential and Transitional Provisions) Act provides that if, prior to the commencement of the amendments contained in the Bill, a person suffers from a war-caused or defence-caused injury or disease within the meaning of the VEA, an aggravation of or material contribution to that injury or disease prior to 1 July 2013 will not be covered by the MRCA.
where such aggravation or material contribution occur as an unintended consequence of treatment covered by section 29 of the MRCA. This is regardless of whether the treatment was provided before, during, or after, 1 July 2013. The MRCA will apply however where a choice was made under the current section 12 to commence or continue with a claim under the MRCA.

Section 13 of the MRC (Consequential and Transitional Provisions) Act provides for bringing across impairment points from a VEA or SRCA injury or disease. If a person makes a claim under section 319 of the MRCA arising from an injury or disease within the meaning of the VEA or SRCA, the Commission must determine impairment points using the guide issued under section 67 of the MRCA. Proposed paragraph 13(1)(b) expands the scope of the existing provision concerning claims in respect of aggravation of or material contribution to VEA and SRCA diseases and injuries to a sign or symptom of such conditions. This broadens the scope of claims which might be made under the MRCA by the military and veteran community and is therefore beneficial in nature.

Financial implications

According to the Explanatory Memorandum, the amendments in Schedule 10 of the Bill will have the following implications for the Government:

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Schedule 11—treatment for certain SRCA injuries

The provisions in Schedule 11 of the Bill amend the MRCA, the SRCA and the VEA to allow for the provision of new Repatriation Health Cards (to be known as White Cards) to assist certain former members of the Defence Force in relation to injuries accepted under the SRCA. They will commence on 10 December 2013.

The Review noted that Defence-related claims under the SRCA can include medical expenses reasonably required for the compensable condition—usually by way of reimbursement of costs or otherwise by direct billing. However, according to some submitters to the Review, this process gives rise to the following health care access issues:

- the need to constantly seek prior approval for treatment and/or medication
- the need for repeated medical appointments to gather evidence of illness or injury
- the need to constantly repeat the process for the existing illness or injury
- the financial impact of payment being required upfront delaying treatments (sometimes indefinitely) and

117. Explanatory Memorandum, p. vi.
118. I Campbell (Chair), Review of Military Compensation Arrangements, op. cit., volume 2, p. 333.

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• long delays in reimbursement of such expenses by DVA.\textsuperscript{119}

In response to these concerns, the Review recommended that Repatriation Health Cards—For Specific Conditions be issued to defence-related claimants who come under Part XI of the SRCA. The rationale for the recommendation was that it would achieve consistency in treatment arrangements for all former ADF members.\textsuperscript{120}

Part 3 of Chapter 6 (sections 278-287) of the MRCA allows for treatment to be provided for the injuries and diseases of certain current and former members and dependants of deceased members.\textsuperscript{121}

Item 2 of Schedule 11 inserts proposed section 280A into the MRCA to provide that persons will be entitled to be provided with treatment under Part 3 of Chapter 6 for an SRCA injury if Table items 1 or 2 of the table in proposed subsection 144B(3) of the SRCA apply to them.

Item 14 of Schedule 11 inserts proposed sections 144A, 144B and 144C into the SRCA. Proposed subsection 144A(1) provides that as a general rule, the Commission will not be liable to pay compensation under subsection 16(1) of the SRCA for the cost of medical treatment in relation to an employee’s injury if that person is entitled to be provided with treatment under certain provisions of the MRCA or the VEA. However, if the Commission is satisfied that there are exceptional circumstances the Commission may determine that proposed subsection 144A(1) does not apply to that person and injury.\textsuperscript{122} The Commission must notify the person in writing within seven days of such a determination being made.\textsuperscript{123}

Broadly, proposed section 144B of the SRCA allows treatment of certain defence-related injuries to be provided under the MRCA or the VEA. Provided that a SRCA member has made a claim for compensation for a SRCA injury and the Commission has accepted liability for the SRCA injury, the section applies in three separate circumstances:

• first—between 1 January 2012 and 9 December 2013, the SRCA member received treatment for which the Commission was liable to pay compensation for medical expenses
• second—the Commission accepts liability to pay compensation for the SRCA injury on or after 10 December 2013 or

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\textsuperscript{119}. Ibid., volume 2, p. 335.
\textsuperscript{120}. Ibid., recommendation 24.1.
\textsuperscript{121}. Section 278 of the Military Rehabilitation and Compensation Act.
\textsuperscript{122}. Proposed subsection 144A(2) of the Safety, Rehabilitation and Compensation Act.
\textsuperscript{123}. Proposed subsection 144A(3) of the Safety, Rehabilitation and Compensation Act.

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third—the Commission determines in accordance with proposed subsection 144B(2) that the section applies to the SRCA member and the SRCA injury. The relevant determination under proposed subsection 144B(2) is made if the Commission accepted liability to pay compensation for the SRCA injury on or before 9 December 2013 and between 1 January 2012 and 9 December 2013 the MRCA was not liable to pay compensation for medical expenses because no treatment was obtained in relation to the relevant injury.

In each of the above circumstances the table in proposed subsection 144B(3) will apply to the SRCA member and his, or her, SRCA injury. The table allows for three possibilities.

First, an SRCA member who is not otherwise entitled to treatment under the MRCA or the VEA will be subject to proposed section 280A of the MRCA and, therefore, entitled to be provided with treatment under Part 3 of Chapter 6 of the MRCA.

Second, a SRCA member who is entitled to treatment under sections 279 or 280 of the MRCA (that is, the standard treatment entitlement provisions) for another injury, but not a SRCA injury, will be entitled to be provided with treatment under Part 3 of Chapter 6 of the MRCA.

Third, for a SRCA member who is eligible for treatment under subsections 85(1) or 85(2) of the VEA (but not sections 279 or 280 of the MRCA) for another injury or disease, but not the SRCA injury, will be eligible for treatment under the VEA under proposed subsection 85(2A) of the VEA (inserted by item 18 of Schedule 11 of the Bill).

Proposed section 151A of the SRCA (inserted by item 15 of Schedule 11 of the Bill) empowers the Commission and its staff members to provide information to the Department of Health and the Department of Human Services, in relation to matters relevant to such agencies (including Medicare and Centrelink issues). Recipients of such information must use it only for the purposes of the relevant agency and not further disclose it for purposes other than those purposes. Disclosures in accordance with this proposed section are taken to have been authorised by law for the purposes of the Privacy Act 1988.

The submission to the Senate Committee from the Office of the Australian Information Commissioner, expressed concern that:

... it is not clear what personal information the [Commission] 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.  


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In the circumstances then, the Office of the Australian Information Commissioner recommended that a Privacy Impact Assessment might usefully be considered and that in its absence, consideration could be given to recommending proposed section 151A be amended to confer a limited discretion on the Commission to disclose personal information where it is necessary to achieve the intention of the Bill.

However, the Senate Committee noted that there were privacy controls in place around the use of the Repatriation Treatment Card and appeared to accept that a Privacy Impact Assessment was not required.125

The comments under the heading ‘Parliamentary Joint Committee on Human Rights’ of this Bills Digest make reference to that Committee’s concern about the effect of this section and the Minister’s response to that concern.

Financial implications

According to the Explanatory Memorandum,126 the amendments in Schedule 11 of the Bill will have the following implications for the Government:

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It would appear then, that Schedule 11 of the Bill is a savings measure (albeit a small one). This is acknowledged by the Review which noted that the recommendation put into effect under Schedule 11 ‘will mean that access to certain types of treatment, such as remedial massage or gym programs will be more limited than under the current SRCA provisions’.127

Schedule 12—members

The provisions in Schedule 12 of the Bill amend the MRCA. They commenced on 1 July 2013. Under section 5 of the MRCA before this Bill was enacted the term member meant:

- a member of the Defence Force
- a cadet
- a person declared to be a member by way of Ministerial determinations under section 8 of the MRCA.

The provisions contained in this Schedule expand the scope of the term to allow for persons holding honorary ranks or appointments in the Defence Force and those who perform acts at the request of

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125. Foreign Affairs, Defence and Trade Legislation Committee, op. cit., p. 25.
126. Explanatory Memorandum, p. vi.
127. I Campbell (Chair), Review of Military Compensation Arrangements, op. cit., volume 2, p. 333.

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the Defence Force to be members.\textsuperscript{128} The provisions also expand the scope of the term member to include persons acting at the request or direction of the Defence Force as an accredited representative of a registered charity,\textsuperscript{129} as well as persons being assisted under the Career Transition Assistance Scheme established under a determination made under section 58B of the Defence Act 1903.\textsuperscript{130}

Financial implications

According to the Explanatory Memorandum, this measure will have no financial impact for the Government.\textsuperscript{131}

**Schedule 13—treatment costs**

The provisions in Schedule 13 of the Bill amend the Aged Care Act, the Australian Participants in British Nuclear Tests (Treatment) Act, the MRCA and the VEA. They commenced on 26 July 2013.

The amendments in Schedule 13 ‘clarify and confirm that the Repatriation Commission and Commission may limit their financial responsibility to particular costs in relation to certain aged care services’.\textsuperscript{132}

Financial implications

According to the Explanatory Memorandum, this measure will have no financial impact for the Government.\textsuperscript{133}

**Schedule 14—travelling expenses**

The provisions in Schedule 14 of the Bill amend the VEA. They commenced on 28 June 2013.

Prior to the enactment of this Bill section 110 of the VEA provided for the payment of travelling expenses of veterans and dependants of deceased veterans.

Proposed subsection 110(1A) of the VEA extends entitlement to be paid travelling expenses to a veteran’s partner where the veteran is travelling with the approval of the Commission for the purpose of obtaining treatment, the treatment is of a kind prescribed by legislative instrument under proposed subsection 110(6) of the VEA and the veteran’s partner is travelling for the purpose of participating in that treatment.

Financial implications

\begin{itemize}
\item 128. Proposed paragraph 7A(a) of the Military Rehabilitation and Compensation Act.
\item 129. Proposed paragraph 7A(b) of the Military Rehabilitation and Compensation Act.
\item 130. Proposed paragraph 7A(c) of the Military Rehabilitation and Compensation Act.
\item 131. Explanatory Memorandum, p. vi.
\item 132. Explanatory Memorandum, p. 59.
\item 133. Ibid., p. vi.
\end{itemize}
According to the Explanatory Memorandum, this measure will have no financial impact for the Government.\textsuperscript{134}

**Schedules 15 and 16**

The amendments in Schedules 15 and 16 of the Bill commenced on 28 June 2013. These are consequential and administrative amendments which will have no financial impact for the Government.\textsuperscript{135}

**Concluding comments**

The Bill implements the Government’s response to the Review of Military Compensation Arrangements and as a whole must be considered beneficial to the military and veteran communities. The Bill was supported across the political spectrum and while further topics of concern have been raised, none acted as an impediment to the passage of this legislation.

\textsuperscript{134}. Ibid.
\textsuperscript{135}. Ibid.
Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2500.