



The Australian Peacekeeper & Peacemaker Veterans' Association

With

The Viet Nam Veterans Association of Australia

Response Paper to

**The Military Rehabilitation and Compensation Arrangements
Review Recommendations**



“LEST WE FORGET”

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Thanks to: Neil Bayles OAM; Glenda Mann and Wendy Clifford (Review Secretariat).

MEMORANDUM

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MEMORANDUM

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MEMORANDUM



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Commemorating 20 Years of The Gulf War

25th July 2011

Military Rehabilitation Compensation Commission

APPVA Recommendations from the MRC Arrangements Review

The Australian Peacekeeper & Peacemaker Veterans' Association (APPVA) after extensive talks with delegates from the MRCC and further review of Military Compensation Arrangements Review Volume 1 and 2 of the report to the Minister of Veterans' Affairs, have now concluded our recommendations in response to the Military Rehabilitation and Compensation Commission's (MRCC) review.

Since the inception of the Military Rehabilitation Compensation Act 2004 (MRCA) the APPVA has been involved with a range of submissions to Government and Senate relating to Military Rehabilitation and Compensation through the complex Legislation available to current and ex-serving members of the ADF, including Federal Police Peacekeepers.

The APPVA is hopeful that our key points within the recommendation are consistent amongst other ESO who also show concerns within MRCA 2004, the APPVA in 2009 make recommendations to the MRCC showing concerns which related to entitlements, offsetting and liability for both operational and peacetime ADF members.

In our recommendation to the MRCC we have addressed areas such as the Service Differential, Offsetting under the SRDP, having a more simplified compensation legislation (MRCA); more appropriate compensation and impairment point methodology and the government to provide the APPVA to have a more interactive consultation in relation to development of streamlined process for MRCA; including SRCA and VEA eligibility matters.

The APPVA looks forward to the MRCC feedback regarding our recommendations to the Review of Military Compensation Arrangements.

Kind Regards

A handwritten signature in black ink, appearing to read 'Allan Thomas', written in a cursive style.

Allan Thomas JP
National President

“Looking After Our Own”



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25 July 2011

To Whom it May Concern,

Support for Submission on Review of MRCA.

The Vietnam Veterans Association of Australia (VVAA) supports the submission of the Australian Peacekeepers Peacemakers Veteran Association in relation to the review of the Military Rehabilitation & Compensation Act (MRCA).

Both organizations have worked closely in this field and have worked in a co-operative manner to formulate this submission.

Both the APPVA and the VVAA consider that these matters should be addressed in this review.

Yours Sincerely,

Ron Coxon OAM
National President.

'HONOUR THE DEAD BUT FIGHT LIKE HELL FOR THE LIVING'

MEMORANDUM



**The Australian Peacekeeper & Peacemaker Veterans' Association
The Vietnam Veterans Association of Australia
Response to the Military Rehabilitation and Compensation Review
Recommendations.**

“The scheme that comes into effect on 1 July represents the best of both worlds, relying on the respective strengths of the Safety, Rehabilitation and Compensation Act and the Veterans’ Entitlements Act to create a scheme able to meet the needs of any ADF member, reservist or cadet who was injured in the course of their service. In keeping with our Government’s commitment, benefits in the new scheme at least match, or in many cases enhance, those provided under the existing two pieces of legislation.”

The Hon Dana Vale, MP, Minister for Veterans’ Affairs, 2004.

1. Introduction.

1.1 The Australian Peacekeeper and Peacemaker Veterans’ Association (APPVA), have been in consultation with Government since the inception of the Ex-Service Organisation Working Group (ESOWG) to the Military Rehabilitation Compensation Bill 2003 (MRCB).

1.2 In addition to this consultation at the very humble beginnings of the Military Rehabilitation & Compensation Act 2004 (MRCA), the APPVA has been involved with a range of submissions to Government and Senate relating to Military Rehabilitation and Compensation through the complex Legislation available to current and ex-serving members of the ADF, including Federal Police Peacekeepers.

1.3 The following is an overview of such consultation:

1.3.1 Submission and Appearance to the Foreign Affairs Defence and Trade (FADT) Senate Legislative Hearing Committee in 2003/2004 toward the MRCB;

1.3.2 ongoing consultation with the changes to the Permanent Impairment Guide (PIG) for the Second Edition (PIG 2), to the Safety Rehabilitation & Compensation Act 1988 (SRCA) COMCARE - 2005;

1.3.3 ongoing consultation at the Operational Working Party (primarily with the Veteran Entitlement Act 1986 (VEA)) (2003 onward);

1.3.4 Submission and appearance to the Veterans’ Entitlement Review Committee (aka The Clarke Review), 2002;

- 1.3.5 Submission and appearance to the FADT Senate Estimates Hearing into the Offsetting of SRCA and VEA Compensation Payments (2002);
- 1.3.6 Placed submissions of concern as to the MRCA to a number of Ministers and at DVA National Forums, in terms of a number of areas that we believe fall short of making the MRCA an equal replacement to either the SRCA and/or the VEA pre 1 July 2004;
- 1.3.7 Submission and Appearance to the FADT Senate Hearing into Australia's involvement in Peacekeeping Operations (2007-2008) highlighting in this case Rehabilitation and Compensation; and
- 1.3.8 A significant and comprehensive Submission to the Military Rehabilitation & Compensation Arrangements Review in 2009;

1.4 The above list is by no means exhaustive. Ongoing lobbying by the APPVA has seen little in terms of active correction to the anomalies raised over a period of almost ten years. This is viewed as disappointing, although perhaps acknowledging that there is a range of ESO that have a bigger voice to lobby for issues outside of our constituents. At times, this will drown out the issues that we have lobbied to seek resolution.

1.5 Notwithstanding the above, the collective prioritisation of issues raised by the National ESO community does not necessarily reflect those who have served in Defence Service, Police Peacekeeping Service and other Operations. There is a well-known generational difference in a range of issues, which appear to attract better attention from the Government, than the needs of those of which MRCA truly affects.

1.6 The APPVA is fortunate to have the apparent support in the issues raised in this Response Document by a number of ESO, including the Viet Nam Veterans Association of Australia (VVAA); The Injured Service Person's Association (ISPA); the Defence Force Welfare Association (DFWA); and the Returned & Services League of Australia (RSL).

1.7 The APPVA is a key stakeholder in this Review, along with a lead agency in multiple eligibility and MRCA primary Claims, Reviews and Tribunal Advocacy.

2. Key Issues.

2.1 The Key Issues raised in this paper, in response to the Military Rehabilitation & Compensation Arrangements Review Recommendations are the following:

- 2.1.1 Remove the Service Differentiation, this will simplify the Impairment Rating process and provide equal compensation for Permanent Impairment for all service types;
- 2.1.2 Remove the Special Rate Disability Pension (SRDP) Offsetting under s204 of MRCA, this will provide equity to what was a previous entitlement within the VEA for Special Rate Veterans pre 1 July 2004;

- 2.1.3 Streamline the MRCA into a more simpler Legislation;
- 2.1.4 Create appropriate compensation and Impairment Point methodology to bridge SRCA and VEA into MRCA;
- 2.1.5 The Government to provide the opportunity for the APPVA to have an interactive consultation in relation to the development of streamlined processes for MRCA, including SRCA and VEA eligibility matters.

3. Overview.

3.1 The APPVA has reviewed submissions ranging from the MRCB 2003 FADT Senate Legislative Hearing Committee; ESO Submissions to the both the FADT Legislative Hearing Committee and the Review of 2009; The Public Consultation phase of the Review Committee; and the Review Recommendations.

3.2 The APPVA had an extensive consultation with the Military Rehabilitation & Compensation Review Committee Secretariat in relation to the Recommendations, of which a number of Recommendations are supported, and others not supported. A copy of these recommendations and the APPVA and VVAA position on those recommendations is attached at **Annex A** to this paper.

3.3 The APPVA has also consulted a wide range of veterans who have been affected by the current Legislation for VEA, SRCA and MRCA; with complex multiple eligibility claims for liability and compensation; in our role as Advocates. Of particular concern to the APPVA is the Service Differential for warlike/non-warlike service versus peacetime service. An overview of the APPVA position and the Committee public comments relating to the service differential matter is attached at **Annex B** to this paper. This is in addition to the warlike service points raised in 4.2.

3.4 We have noted that the Review Recommendations have not been conclusive, in terms of addressing the number of Key Messages made by the APPVA in our Submission in 2009 to the Review Committee. These issues remain extant to our constituents, of which we seek further consideration toward resolving a number of problematic areas of concern. A Table depicting the support of Recommendations by the APPVA and the VVAA is attached to this paper as **Annex C**.

3.5 The APPVA holds concerns toward the equal treatment of veterans who are eligible for the SRDP, who are penalised for receiving their COMSUPER entitlements (Retirement or Disability Pensions); in comparison to those veterans who are not penalised under the VEA for the same Special Rate payment and do not incur reduction of their Special Rate by 60 cents in every COMSUPER dollar. This is further articulated in **Annex D** to this paper.

4. Key Messages to Issues.

4.1 For the sake of brevity, of which the Key Issues will be discussed later in this paper or as Annexed, the APPVA places a number of simple Key Messages to highlight some of the Key Issues that we have raised.

4.2 **Service Differential.** This issue is the most contested within the ESO community. It was the case during the ESOWG into the MRCA 2003, highlighted in the FADT Senate Legislation Hearing Committee and continues to this day. Suffice to say that this organisation has robustly contended the position of the Government to treat Peacetime Service as less than other service places a wedge into the ADF and Veteran community. There are a number of benefits or “rewards” for warlike service in comparison to peacetime service and these are listed in the following paragraphs.

Legislative differences.

- 4.2.1 An unfair and complex system by discriminating Peacetime Service for equal payment to that of warlike/non-warlike service.
- 4.2.2 Warlike/Non-warlike service has significant benefits in terms of the “Beneficial Approach” relating to the Onus of Proof being placed to DVA, within the Reasonable Hypothesis.
- 4.2.3 Peacetime Service veterans must have the Burden of Proof under a much harder approach, in the form of the Balance of Probabilities.
- 4.2.3 The Reasonable Hypothesis has benefits in Review, Appeal and at the level of the Federal Court of Australia, whereas Peacetime Service does not.
- 4.2.4 The Reasonable Hypothesis is very beneficial in terms of the Statements of Principles (SOP), in comparison to Peacetime Service.
- 4.2.6 There are separate SOPs specifically for eligible Defence Service or Peacetime Service, which are more arduous in nature in comparison to warlike/non-warlike service SOP.
- 4.2.7 **Warlike Service has the following MRCA benefits:**
 - 4.2.7.1 Gold Card issued at age 70 years.
 - 4.2.7.2 Qualifying Service (QS) for War Service Pension (WSP).
 - 4.2.7.3 Invalidity Service Pension (WSP) is payable if the veteran is unable to work more than 10 hours per week from disabilities that are not necessarily war caused or service related. Invalidity service pension may be granted at any age up to the age of 65 years, **or**
 - 4.2.7.4 WSP is available if the veteran is on the Special Rate of Pension, **or**
 - 4.2.7.5 WSP is available if the veteran is 60 years of age. This recognises the intangible effects of war that may

result in premature ageing of the veteran and/or loss of earning power.

- 4.2.7.6 WSP is a Single (\$729.30) or Partnered pension (\$549.70 each), which is means and assets tested and tax-free.¹
- 4.2.7.7 A Warlike service veteran is entitled to free treatment for Cancer.
- 4.2.7.8 A Warlike service veteran is entitled to free treatment for psychiatric illness.
- 4.2.7.9 A Warlike service veteran is entitled to free treatment for Tuberculosis.

ADF Conditions of Service – Pay and Allowances.

- 4.2.8 Warlike service, in terms of salary and allowances is tax-free.
- 4.2.9 Warlike service provides for Separation Allowance (if categorised as Married or recognised De Facto) of \$7.85 per day.
- 4.2.10 Warlike service attracts Field Allowance of Tier 1 (\$51.59 per day); or Tier 2 (\$30.27 per day).²
- 4.2.11 Warlike service attracts Operational Allowance of \$200 per day, \$125 per day if in a supporting role, for example Al Minhad Air Base in the United Arab Emirates (UAE).³
- 4.2.12 Warlike service attracts Pre-Deployment Leave Travel, which allows a member to travel when pre-deployment leave has been granted. A member may be granted leave travel within Australia to their home address when pre-deployment leave is granted. This travel is free and paid by the Government.
- 4.2.13 Pre-deployment leave allows a member going on duty to a prescribed area overseas to finalise their personal affairs and make their farewells before they leave Australia. The CDF may grant a member pre-deployment leave of up to seven days. This period includes weekends and public holidays.
- 4.2.14 Warlike service attracts War Service Leave Credits, of 1.13 days per month and is paid with the Operational Allowance (daily rate)

¹ As at 23 July 2011. These amounts are indexed twice per year in line with movements in the cost of living and/or average wages.

² Department of Defence People Strategies and Policy ADF Pay and Conditions Manual (PACMAN) as of 23 July 2011. Website: <http://www.defence.gov.au/dpe/pac/>

³ *Ibid.*

entitlement and is tax-free.⁴ War service leave is an additional leave

for a member who is on warlike service. It allows them to adjust to living back in Australia and to recover from the demands of that service.

- 4.2.15 Warlike service attracts Extra Recreational Leave (ERL) for arduous or prolonged duty. This is up to 3.5 days during an 8 month deployment (5 days every 12 months).⁵

Warlike service benefits for Home Loans.

- 4.2.16 Warlike service attracts additional credits under the Defence Service Home Ownership Assistance Scheme (DHOAS 2008), from 3 months warlike service of 2 years to over 9 months warlike service of 5 years. This provides for a discounted interest expense rate of 37.5% subsidy payable to the veteran.⁶

- 4.2.17 Warlike service attracts additional benefits under the DHOAS 2008. DHOAS is available to a person of the old ADF Home Loan Scheme (ADFHLS), if that person served on Operational (warlike) Service.⁷

Recognition of Warlike Service.

- 4.2.18 Warlike service is recognised by the Australian Active Service Medal with Clasp of operation or country served.
- 4.2.19 Warlike service is recognised by the issue of the Returned from Active Service Badge (RASB).
- 4.2.20 Warlike service is recognised, if an infantryman posted to a Battle Group or Combat Team with the award of the Infantry Combat Badge.
- 4.2.21 Warlike service is recognised, if an ADF member serving in a Battle Group or Combat Team with the award of the Army Combat Badge.
- 4.2.22 Warlike service is additionally recognised with a campaign medal.⁸

Appeal Pathways for warlike Service.

- 4.2.23 Up to the writing of this paper, we understand that there will be changes made to the choice of appeal pathways. However, the beneficial pathway is available to warlike/non-warlike service veterans

⁴ *Ibid.*

⁵ *Ibid.*

⁶ Defence Force Home Ownership Assistance Scheme Act 2008, s48 (Service Credits – Additional allowance for warlike service).

⁷ Defence Home Ownership Assistance Scheme Regulations 2008, s26.

⁸ Afghanistan, Iraq or International Force East Timor Campaign Medals as at 23 July 2011.

through s31 (VEA); VRB; and AAT.

4.2.24 Peacetime Service only has the choice of the more rigorous appeal pathway through Reconsideration and the AAT.

Legal Aid to warlike service veterans.

4.2.25 Free legal Aid is available to warlike service veterans, through the AAT and Federal Court levels of appeal. A Peacetime service member does not have this benefit.

Warlike Service has a higher rate of Payment.

4.2.26 80% advantage for warlike/non-warlike service. Therefore the amounts of compensation levels are 80% higher in monetary value than that of Peacetime Service up to the 71 Impairment Point Threshold to 80 Impairment Points.

Repatriation from Warlike or Non-warlike Service.

4.2.27 If a veteran is Repatriated to Australia due to Wound(s), Injury or Illness, he/shd entitled to tax-free salary for the duration of the period of hospitalisation and convalescence.

4.2.28 If a veteran is Repatriated to Australia due to the above, he/she is entitled to claim for loss of earnings in terms of the allowances paid during the deployment.

4.3 **Service Differentiation – Incapacity.** This organisation contends that in considering the Service Differential, it does not matter where the injury or illness occurred. The same incapacity is affected to the individual. This is articulated in the APPVA Submission of 2009, Part A (MRCA), section 6 (Service Bias), or in Annex B to this Paper.

4.4 The Service Differentiation complicates the MRCA, causing further unnecessary complexities in terms of case management and understanding by the serving or ex-serving member.

4.5 The Service Differentiation discriminates service rendered by serving and ex-serving members of the ADF.

4.6 The Service Differentiation has no appreciation of the dangers involved in Peacetime Service, particularly those with high risk.

4.7 The Service Differentiation provides for significantly less payment for incapacity for Peacetime Service than that of a member who had the clinical onset of a given incapacity for warlike or non-warlike service. Whilst it is acknowledged that this meets at the Serious Injury (71 up to 80 Impairment Points), this system of service discrimination and bias is unfair to those who train to maintain a capability for the ADF.

4.8 Peacetime service is undervalued by the Government within MRCA, in terms of no full appreciation of the efforts made by ADF members to maintain their fitness in order to meet service physical fitness requirements.

4.9 Peacetime service is undervalued by the Government within MRCA, in terms of a lack of understanding that peacetime service is arduous over a long period of time, particularly for combat units.

4.10 Peacetime service is undervalued by the Government within MRCA, in terms of the requirement of the ADF to maintain a high level of training and fitness to be ready to meet any contingency and operational requirement.

4.11 Peacetime service is undervalued in terms of not fully appreciating the high risk of military training; particularly combat training, of which many ADF members have been incapacitated.

4.12 Peacetime service has ADF members who are prepared to sacrifice their health and wellbeing in order to protect Australia.

4.13 Peacetime service is not appreciated by the Government within MRCA, particularly when ADF members are expected to maintain high levels of operational capability that places individuals in high risk injury and death.

4.14 Some captions of the relevance of the arduous and long standing approach by the ADF and ADF members and ex-serving members is the following:

“Train Hard – Fight Easy,

“The more you bleed in peace, the less you bleed in war”,

“When the going gets tough the tough get going”, and

“Do what you do in peace as to what you will do in war”.

Conclusion to Service Differentiation.

4.15 The Review Report states that Service Members supported the Service Differentiation. However there are no transcripts available to analyse these comments. It is suggested that if these comments were made by serving members, they were made without the full realisation of the benefits of warlike service in terms of Legislated Beneficial Approach (Reasonable Hypothesis, SOPs etc); The Free Treatment entitlements; The Qualifying Service benefits; Conditions of Service Entitlements and Recognition of service.

4.16 It is quite evident that Peacetime service does place an individual in harm's way. At the time of writing there have been nine (9) ADF members injured in an Armoured Personnel Carrier (APC) roll-over in Shoalwater Bay Training Area (SWBTA). Of those, one is seriously injured. This is the type of risk and the

dedication of individuals that keep the ADF combat ready. This service should not be cast aside as being less in terms of Compensation. To do so is an insult to the many who have been incapacitated due to their selfless and dedicated service to Australia.

Special Rate Disability Pension Offsetting.

4.16 SRDP Offsetting is comprehensively covered in the APPVA Submission to the Review Committee within Part A (MRCA), s10. However suffice to say that it is wrong for the Government to penalise those members on SRDP, in comparison to those who have Special Rate under the VEA.

4.17 SRDP is an unfair section of the MRCA. 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.

4.18 The above was not disclosed by the Government during the ESOWG and was never consulted to the ESO or Veteran Community. It has been contested since its inception and there has been a reluctance of the Government to accept that this is an unfair feature of the MRCA.

Streamline the MRCA to make it Simple.

4.19 It is necessary for the Government to simplify the MRCA. The removal of the Section 23 of GARP M for Service Differentials; the removal of the Offsetting provisions in s204 of the MRCA; the necessity to place a fair compensation system for multiple eligibility is certainly most urgently required; the Time Taken To Process MRCA Claims needs to be expedited; and the confusing nature of stability needs to be addressed.

4.20 The APPVA Submission of 2009 significantly and comprehensively addresses a number of these areas. It is highly recommended that the Government considers these matters from our Submission in order to resolve the many problematic areas that have been detected by APPVA Practitioners.

Gold Card issues.

4.21 The Gold Card should be considered on the same lines for any service in line with the Impairment or incapacity of an individual within the VEA. Impairment Point score of 58 IP is under the VEA. The current threshold under the MRCA is 60 Impairment Points as opposed to the round-up of the 58 under VEA, a further 7 impairment Points are needed to reach 60 IP under MRCA. The proposed adjustment to 58 Impairment Points places the fairness of the VEA into a transparent function into the MRCA.

Stamping of TPI.

4.22 Whilst the Department is reluctant to continue the term of TPI into the MRCA system, it is evident that TPI Card holders have access to generous concessions within the community. These Concessions assist TPI or Special Rate recipients in meeting

the costs of living, along with the various States providing the recognition of the veteran's service and sacrifice of their health and wellbeing in serving Australia during times of war and peace.

4.23 Those on SRDP are suggested to ideally have their Gold Cards with the TPI embossing. 40 IP is considered under VEA as the threshold for Special Rate. To increase this threshold within MRCA, there needs to be 16 IP to reach the required 50 IP to be offered SRDP. This

Methodology to Bridge SRCA and VEA Impairment into MRCA.

4.24 It is proposed that a simple methodology to bridge SRCA and/or VEA Impairment over to MRCA would be to utilise the GARP M. Whilst this may present a challenge to those who have liability and compensation paid under SRCA, the assessment of the Whole Person Impairment (WPI) is suggested to be made within the GARP M.

4.24.1 Threshold 60 Impairment Points should be 40 Impairment Points for eligibility of Gold Card.

4.24.2 Rounding Up of Impairment Points. For example 8 Impairment Points does not get rounded up to 10 Impairment Points. The requirement for MRCA compensation in terms of Impairment Points for acceptance is 10 Impairment Points or above in lots of 10. The beneficial approach of rounding up is needed to be a consistent quantum and consistent with the VEA.

4.25 The system or methodology is available in terms of GARP assessment. This would also be ideal if the GARP M is no longer used due to the Service Differentiation removal. Therefore, simplifying the process for impairment assessment.

APPVA as a Key Stakeholder in Consultation.

4.26 The APPVA recognises that there are significant improvements needed to make the MRCA operationally effective within the Department and also to provide simplicity to applicants.

4.27 It is understood that the Department is considering an ongoing Work Group of MRCA in the future and it would be most beneficial to both DVA and APPVA to have representation of a competent MRCA and Multi-eligibility Practitioner as a technical adviser and representative of those ADF current and ex-serving members that MRCA is focussed.

5. Police Compensation.

5.1 The APPVA understands that Police will not be included as eligible members within the MRCA. This is accepted on the grounds that the MRCA is military specific.

5.2 However, our concerns are toward the long and ongoing position of the Government toward compensation Legislation for Police Peacekeepers or those Police who serve overseas in a range of operations. The Legislation for Overseas Police service has long been touted by successive Governments since the inception of MRCA, without any firm Legislation in place.

5.3 The previous approach where a Police Peacekeeper Veteran was eligible for VEA has now been vanquished. This means that Police appear to no longer be the responsibility of DVA, and therefore lose their status as veterans. The obvious loss in this regard is the Beneficial Approach provided within the Reasonable Hypothesis for claimants.

5.4 Discussion with the Police Federation of Australia (PFA) CEO Mark Burgess has indicated a desire to have Police Overseas Service remain on the VEA, until a new Police Overseas Rehabilitation and Compensation Legislation is enacted. Therefore, the service of Police Peacekeepers and veterans will continue within the VEA.

5.5 The APPVA is aware that the Chief Commissioner for the Australian Federal Police (AFP) has signed an Instrument that Police Overseas veterans will have a 50% loading on the Permanent Impairment (PI) of SRCA (COMCARE). We do not hold the details of this disclosed action, as it was very recently advised to us by the Review Secretariat.

5.6 The concerns that the APPVA have with the placement of Police Overseas veterans on COMCARE is the loss of the previous Beneficial Approach within the VEA. Therefore, the Police Veteran who claims through COMCARE must provide evidence within the Burden of Proof of the Balance of Probabilities. This is an undesirable outcome.

5.7 We therefore put to the Government that the VEA remains eligible to Police Overseas Veterans, until a Beneficial Legislation is enacted that follows the principles of the Beneficial Approach. We also seek further details of the Instrument signed by the AFP Chief Commissioner for COMCARE arrangements.

6. Miscellaneous Points.

6.1 Definition of Permanent and Stable. Needs to be included into the MRCA.

6.2 Chapter 17 Reconsideration and Review. The importance of timely Review. It has been observed by our Practitioners that the time taken for Review has been at extraordinary lengths, with significant time delays in processing by the Department for processes unknown.

6.3 Other Points as per the APPVA Submission of July 2009.



**Recommendations from the MRC Arrangements Review
APPVA Comments on Review of Military Compensation Arrangements
Volume One - OVERVIEW**

Chapter 4 - Unique Nature of Service.

General Comment: It is re-emphasised that the MRCA is a specific Military Compensation Entitlement Scheme, designed to provide the beneficial approach toward ADF personnel, who have unique service requirements that places the individual in considerable danger. This is a significant point, of which there should be no confusion or potential reference to normal worker's compensation.

Part 2. Operation of the Military Rehabilitation Compensation Act.

Chapter 5 – Initial Liability and the Statements of Principles.

5.1 Statement of Principles (SOP) require an interactive approach for individual's in the appeals process to provide clarification on definitions and wording used, rather than have it tested through the legal system prior to change.

For example a veteran who has had an injury to his neck, by the SOP he requires a discreet injury; however no firm definition of discreet injury is available. It has been our experience if simple matters could be clarified by the Repatriation Medical Authority (RMA), the need for lengthy appeal can be annulled.

Note: The RMA is costly to the Department, because the term of "discreet injury" is argued at the AAT and/or the Federal Court. The VRB has no problem with interpretations, but at the AAT it has the technical problem with the terminology. More interaction with the RMA is highly recommended.

It was noted that the Committee did not involve the RMA in terms of maintaining their independence and/or impartiality under the Act (VEA) in terms of SOP review.

The APPVA emphasises that the RMA should be able to intervene for the matter at the AAT or in the Federal Court for the term of "discreet injury." Discreet Injury is only one example in relation to a fault at law in the case which will involve the condition in the SOP.

There was an acknowledgement by the Committee for a running condition, under the Condramalacial Patella (CMP) to Knees factor and was addressed by the RMA, which is now accepted under the SOP.

5.2 MRCC Monitoring situation to injuries sustained by members at the time they are rendering defence service to ensure that MRCA liability provisions are operating fairly.

Liability exclusions within the MRCA to capture data. Stats for Peacetime Service are requested to be raised in the monitoring of the analysis of the data.

Conditions that are rejected are not placed into the Information Systems. There is a requirement to emphasise the need for better data capture, analysis and reporting.

5.3 In reviewing the policy of off-duty physical training, Defence and Ex-Service Organisations (ESO), should be consulted to establish what would be deemed as a reasonable expectation of the maintenance of physical fitness for employment and compensation applied to this outcome.

Liability should not be restricted to a program designed by an ADF Physical Training Instructor (PTI); as the requirements of military service is that of elite sports people who require training outside of normal working hours, to meet the physical fitness requirements of the ADF.

This point is pertinent toward those ADF members who do not have access to a PTI; and to maintain the level of fitness demanded by ADF Fitness Standards. Other considerations are that ADF members who are undergoing extra physical training in order to meet Special Operations physical fitness standards.

Another point of contention is that ADF Reservists are also required to maintain fitness standards to continue serving and meet the demands of service physical fitness criterion. Reservists generally do not undergo a specific fitness regime that is under the supervision of a PTI.

Rather, they are expected to undergo their own fitness regimes outside of their normal service hours or days, in order to meet the military requirements for fitness tests and remain Deployable.

Specific detail in Commanding Officer's approvals for ADF members participating in sport and PT after hours, relate it to service. For example the member is approved for training in their own time that is specific military fitness regime. Running in their own time, attending gym, swimming and other activities that are considered to be relevant to the maintenance of fitness for Defence Members.

5.4 We seek clarification in relation to the Information Technology (IT) systems improvement to monitor and report information relating to the application of the exclusion provisions under the MRCA.

Within s32 (Exclusions relating to serious defaults or wilful acts etc); of the MRCA, we have concerns toward the breaches of discipline or wilful act while a member. An example is the recent case of two Commandos who were charged for manslaughter by the Defence Prosecutor for the deaths of civilians and non-combatants. If one or both of these members suffered PTSD or psychological effects as a result of the incident, it is interpreted within this section that if found guilty, these commandos may be denied compensation.

The issue in s32 extends to alcohol being consumed on operations culminating in a breach of discipline, combined with operational stress. The use of illegal drugs as a masking agent(s)

for a psychological condition, or the conduct of self-harm, of which the individual contracts a disease/illness/injury; it is considered that this would be service related.

However, given the above within s32, it would appear that the veteran may be denied compensation entitlements, if charged for misconduct or dismissed from the ADF.

Capture of data of exclusion provisions. Use for the input into the development of policy into the MRCC.

The APPVA looks forward to being a part of the consultation into the MRCC.

Page 14, Volume 1 Para 21.

Chapter 6 – Rehabilitation.

Please refer to the APPVA Submission PART A, Section 12, dated 26 July 2009.

6.1 to 6.7 **Supported.**

6.8 **Rehabilitation arrangements.** Although we do not disagree with the reduction of Incapacity Payments (IP) to encourage rehabilitation and return to work; there is an issue of an imposed financial hardship on the veteran by imposing this nexus before the payment of Permanent Impairment (PI). It is suggested that PI be paid prior to the reduction of IP to encourage further rehabilitation.

Note Interim PI Payments to veterans. The permanency of the condition is dependent upon the receipt of PI.

Acceptance of Recommendations 8.6 & 8.7.

This in turn will provide not only financial relief and stability of the veteran, but will also benefit the veteran's family and well-being.

Chapter 7 – Transition Management.

Please review the APPVA Submission PART B, Section 13, dated 26 July 2009.

7.1 **Supported.**

7.2 **Supported.** Designation of the MRCC from the three service chiefs to the CDF. This is supported; however we would like to see the initiatives of the Army transferred to the other two services (RAAF & RAN), which reduce fragmentation of organisation. The army initiatives are the Army Personnel Coordination Detachment Commanders (APCD); and the Regional Casualty Administrative Support Officers (RCASO).

The army initiatives, including the RAAF Military Compensation Liaison Officers (MCLO), and any potential initiative from the RAN, would be ideally centrally managed; retain consistency of experience and knowledge; retain standards of training and management; and be of additional benefit to the three services, rather than separately.

Inclusive of this would be the simplicity of management in terms of the Director General Personnel Capability; and Defence Health Services, reporting to the one MRCC.

This will therefore prevent replication of effort by the three services with better management of resources.

7.3 **Supported.** We reinforce the necessity for the development of a workable pathway to Transition Management.

7.4 **Supported.**

7.5 **Supported.**

7.6 **Strongly Supported.** Reservists have been overlooked in terms of participation into the TMS and pathways to transition.

7.7 **Strongly Supported.** A problem exists with the Integrated People Support Strategy (IPSS), of which is controlled by the RSL. It has been our experience that the IPSS, which was launched in August 2007, is not working as intended. We have observed that a number of cases, particularly multiple-eligibility and single case MRCA Claims are being referred to Lawyers, rather than competent ESO Practitioners.

APPVA seeks further involvement into the IPSS. TIP Chairs may have a degree of leaning toward their ESO, rather than encompassing and involving other ESO that have Subject Matter Expertise or Competency in Multiple Eligibility and MRCA.

7.8 **Strongly Supported.** It is suggested that a Competency Based Training and Assessment (CBTA) strategy is adopted, conducted by identified qualified people who possess the Certificate IV in Workplace Training and Assessment (Either TAA40104 or TAE10 coded qualifications).

The funding restrictions of TIP/BEST Programs in terms of 80% funding for paid practitioners, of which we will need to have an increase in funding to attract professionals conducting the Training and course development.

Problematic in terms of seeking volunteers and that other veterans are reluctant to attend or undergo such extensive training. Suggest the Train Small Groups (TSG) as a start to be involved, in today's terms most young veterans will hold these qualifications. This course takes 2 days to complete.

The APPVA seeks to have access to the training programs, teaching modules and course material that is used by TIP, in order to design Units of Competency (UC) for a structured course qualification.

We want to remove the wording of "Pension Officer" because it is not appealing to Younger Veterans. It is viewed as a name for older veterans or retirees, where they are not.

We suggest that Pension Officers are changed in terminology to "Veteran and Military Compensation Entitlement Practitioners" or simply "Compensation Practitioners."

7.9 **Supported.** This perhaps could be a responsibility of the RCASO through the levels of Transition Management and continues upon DVA responsibility.

That all steps in the process from primary claim through to ongoing steps within the Compensation and Rehabilitation be supported in terms of full briefing of responsibilities.

7.10 **Supported.**

7.11 **Supported.**

Chapter 8 – Permanent Impairment Compensation.

Differentiation of Service Matters.

The Department's Position:

“So the way it was structured was when the Department brought the MRCA in, the warlike and non-warlike scale was designed to mirror the VEA disability pension rate for the same, for the top of the shaded area, the same impairment and lifestyle ratings. So that was a continuation of those rates. And the peacetime rates were designed as a continuation of the SRCA amounts, albeit as a periodic payment, which can be converted to a lump sum using an actuary calculation. So the two scales were designed to be a continuation of the VEA on one hand, and the SRCA on the other. And then the additional death benefit, which used to be paid under the Defence Act was built in to the scale of 50 impairment points. So the peacetime rate starts to go up at 50 impairment points and it meets the warlike/non-warlike rate at 80 impairments points and the amount payable is the same at 80 impairment points. So there's no differential for warlike/non-warlike service at 80 impairment points.”

8.1 **Not supported.**

During the ESO Working Group (2002-2004), that was conducted for the input and feedback into the Military Rehabilitation Compensation Bill 2003 (2002-2003) (MCRB); it was clearly stated by all parties, including senior bureaucrats (The Minister, Secretary and Deputy Secretary of DVA), that there will be **no disadvantage** to veterans who come under the Military Compensation Rehabilitation Compensation Act 2004 (MRCA), as in comparison to what was at the time available veteran entitlements.

The types of service – Warlike, Non-Warlike and Peacetime service needs to be defined as one service, particularly given the scope of Terrorist operations and the threat of these operations inside Australia. It is also considered that all service, no matter where served should be considered the same, in terms of Non-Economic Loss (NEL). It is believed that the Service bias is unrealistic in today's terms as ADF members are career professionals and the payment of such NEL should be made at the higher level of payment within the MRCA (warlike service) to all three service types. Although it is acknowledged that the “Generous Approach” toward Warlike and Non-Warlike Service under the “Reasonable Hypothesis” is favourable, Peacetime service claimants will suffer a reduction in NEL payment, in comparison to that of a veteran with Warlike service.

Remove the 3 tier service classifications, as this is discriminatory in the sense of

service rendered by the veteran, it is not consistent with the VEA and SRCA approaches toward compensation entitlements. This also causes concern by claimants as their service, if applying from a Peacetime Service related condition, is viewed as sub-standard to that of warlike service. The claimant is disadvantaged in terms of equality of compensation.

In its Recommendations The DFAT Legislative Hearing Committee within (Recommendation 2):

“The Committee recommends that the differential lump sum benefit for widowed partners be abolished and that the amount paid to all wholly dependent partners be calculated at the higher level.”

“The second is the dual review process proposed in the legislation, opposition to which was expressed by almost all Organisations. They preferred a unified system, better reflecting the Bill’s general philosophy of aligning more closely the disparate provisions of the VEA and the SRCA.”

This further enhances our position and argument that ESO and indeed the DFAT Legislative Hearing Committee and ultimately the Government, agreed that the differential of Peacetime Service in terms of the Lump Sum Benefit for widowed partners and only one type of Review in terms of the freedom of choice for Appeal Pathways – was not consistent nor fair for Peacetime service veterans and widows (ers).

Therefore, as a result of these recommendations, the Peacetime Widows (ers) have the beneficial Lump Sum to the value of warlike service amount and the differential of Peacetime Service toward the choice of the two Review Pathways became available within the MRCA 2004 after Government approval through the Senate.

These recommendations remain consistent with our conjecture to remove the Service Differential in total from the MRCA.

80-85% of claimed conditions in MRCA are from Peacetime Service injuries or illness. This is considered to be a move by Finance to restrict the amount of payment or money available to those who serve on Peacetime Service, rather than the remaining 15-20% warlike and non-warlike service.

8.3 Supported.

8.4 Supported.

8.5 Whole of Person Impairment (WPI) Methodology can only continue to be applied if the one Combined Value Table remains, otherwise *Fellowes v Military Rehabilitation and Compensation Commission*¹ and *Canute v COMCARE*,² should be applied to the Peacetime Injuries as per SRCA 1988.

¹ *Fellowes v Military Rehabilitation and Compensation Commission* [2009] HCA 38 (23 September 2009)

² *Canute v Comcare* [2006] HCA 47; (2006) 229 ALR 445; (2006) 80 ALJR 1578 (28 September 2006)

The logic behind this is that without assessing separate injuries there is a loss of value of the compensation amount compared to the SRCA 1988 to MRCA 2004.

It is preferable to have the one assessment tool and method (8.5).

8.6 **Supported.**

8.7 **Supported in principle**, however reduction in Incapacity Payments (IP), to encourage return to work should not take place until Permanent Impairment (PI) has been paid.

8.8 **Not Supported.** Limit should be increased to the maximum compensable amount, therefore for each condition in like circumstances to that of SRCA 1988; the payment for Government Liability is the full rate of Permanent Impairment Lump Sum under MRCA 2004. This retains consistency with indexation, or original intent of the SRCA, which has been subsequently indexed as per CPI.

To retain the liable compensation amount of \$110,000 is considered to be the rate that was available under the SRCA from 1988 onward, without indexation.

Therefore, the maximum Common Law damages against the Government should be at the level of the maximum Lump Sum payment of the MRCA PI being in July 2011 being \$397,790.22.

8.9 **Supported.**

Chapter 9 – Death Benefit Provisions.

9.1 **Supported.**

9.2 **Supported.**

9.3 **Supported.**

9.4 **Not supported** in option (a). **Supported** in option (b).

We provide the argument(s) that were made within the Contention and Discussion as per the FADT Legislative Hearing Committee into the Military Rehabilitation Compensation Bill 2003 – Chapter 9: Compensation for Dependents. This saw the successful removal of the Service Differential for Peacetime and Non-warlike Service Deaths.

Refer to Chapter 12 of the FADT Legislative Hearing Committee Report into the Military Rehabilitation & Compensation Bill 2003:

Chapter 12: Conclusions and Recommendations:

Recommendation 2:

12.7 The Committee recommends that the differential lump sum benefit for widowed partners be abolished and that the amount paid to all wholly dependent partners be calculated at the higher level.

9.5 **Reserved.**

9.6 **Supported.**

9.7 **Not Supported.** Former partners should not be considered as they were not originally dependent on the income stream or earnings from the respective veteran. The Children to retain, or be provided compensation on death of the veteran.

9.8 **Supported.**

Chapter 10 Incapacity Payments.

10.1 **Not Supported.** We argue that there is a “**Reasonable Expectation**” that an ADF junior leader if incapacitated, may be able to have a benchmarked salary for the rank of SGT(E) (Other Ranks) and CAPT(E) for Junior Officers. That such a benchmark is taken in addition to the Normal Earnings (NE).

10.2 **Supported.** APPVA is requested to be a Key Stakeholder in the proposed Cross-agency working Group.

Chapter 11 – Special Rate Disability Pension (SRDP).

11.1 **Reserved.**

11.2 **Not Supported.** The SRDP has been in operation since 2004. We have been unable to evaluate the Safety Net, because the assessment eligibility criterion is too high in terms of Impairment Points. This is evident by the 22 offers as quoted by this review.

The serious problematic application of the SRDP remains with the reduction of the amount between 100% of the General Rate of Pension to the top end of the Special Rate by 60 cents in the dollar for those in receipt of COMSUPER or Federal Superannuation.

As elaborated in our Submission, we are deeply concerned that this applies to Young Veterans, where the previously enjoyed TPI or Special Rate entitlement within the VEA, by veterans’ eligible under the VEA, was previously able to have the Special Rate, the COMSUPER pension, in addition, if in receipt of Qualifying Service, the War Service Pension.

11.3 **Supported.**

11.4 **Not supported.**

Chapter 12 – Military Superannuation and related compensation issues.

12.1 **Not Supported.** As per Discussion for SRDP. However, note that there may be consideration for increases to be commensurate of career progression. **Reasonable**

Expectation should be included.

12.2 **Not supported.**

12.3 **Supported.**

12.4 **Reserved.** In terms of a Cross-Agency Working Group, however we would be against any erosion or devaluing of Compensation as a result of Commonwealth funded Superannuation.

12.5 **Supported.**

Chapter 13 – Ancillary Benefits.

13.1 **Supported,** so long as there is no detriment to previous entitlements.

13.2 **Not Supported.**

13.3 **Not Supported.** Cite the cases of the most Severely Incapacitated that require ongoing care. (ISPA).

Chapter 14 Treatment Provisions.

14.1 **Supported.**

14.2 **Supported.**

14.3 **Supported.** Note the difficult matter of obtaining Gold Card and TPI stamping on Gold Cards for those who have been offered SRDP.

Chapter 15 - Administration.

15.1 **Supported.**

15.2 **Supported.**

15.3 **Supported.**

15.4 **Supported.** Note on Rehabilitation of those ADF members who have undergone Rehabilitation under the Service MRCC and deemed Stabilised and completed Needs Assessment (Ideally should be made in the primary level request for Rehabilitation and immediately after Rehabilitation). That if the member has been deemed to have stabilized whilst serving, then there is no requirement to undergo further Needs Assessment in terms of Stabilisation.

Therefore, claims for Permanent Incapacity should be made whilst the member is still in service, awaiting discharge. There should be no further requirement to undergo such PI assessments outside of the ADF when the condition has been stabilized.

This will save TTP on PI claims and also aid in the resettlement of the veteran and their

family.

15.5 **Supported**, however we would like to view the report of the recent internal audit.

15.6 **Supported**.

Chapter 16 – Claims.

16.1 **Supported**. Need to view the Federal Court case of *Irwin v. Military Rehabilitation and Compensation Commission* [2009] FCAFC 33 (20 March 2009). What is the delay? Should have been by the AAT by now.

16.2 **Supported**. The initial or primary claim, after liability is accepted, is recommended to have following after determination (whether it is accepted nor not) a Needs Assessment; Rehabilitation Plan with goals; Return to Work strategy; Needs Assessment after completion of this particular Rehabilitation Plan, with the view to consider Stability and Permanency of the condition.

The Service MRCC is responsible for Rehabilitation, regardless if it is accepted under the MRCA or other Legislation. This responsibility must continue through the Rehabilitation plan of the individual, along with a Return to Work Strategy if required. This is consistent with the ADF Rehabilitation Plan (ADFRP).

16.3 **Supported**.

16.4 **Supported**. The reporting of the progression of Rehabilitation, Needs Assessment and Return to work strategies is strongly recommended to be included in this reporting data.

16.5 **Supported**.

16.6 **Supported**.

Chapter 17 – Reconsideration and Review.

17.1 **Strongly Supported**.

17.2 **Supported**

17.3 **Supported**.

17.4 **Supported**.

17.5 **Supported**.

Chapter 18 – Governance Arrangements.

18.1 **Supported**.

18.2 **Supported**.

18.3 **Supported.** Of particular concern is lack of listing of the Occupational Hazards for ADF members relevant to their Trade/Mustering/Rating. This includes Environmental risks during deployments and field exercises; maintenance of physical fitness; and Occupational Exposures. Should also include hazard exposures Chemicals; inoculations; Radio Hazard; dust; Depleted Uranium; Carcinogens etc.

This has been lobbied by the ADF some years ago and has not progressed due to the size of the task at hand. However, past cases and particularly the F-111 Deseal/Reseal program have indicated toxic exposures and the evidence required to prove exposure.

18.4 **Supported.** We would prefer to see a person who is at the Warrant Officer level, who is on the coal-face of the intrinsic mechanisms of the MRCA. That the person has extensive experience with the MRCA and is available not only to advocate for practitioner level matters; but to also provide technical advice to the MRCC.

18.5 **Supported.** An inter-departmental working group between Defence and DVA is recommended to be established, along with the inclusion of selected MRCA Practitioners from the Veteran and Defence communities.

Chapter 19 – Compensation offsetting between the Veterans’ Entitlements Act and the Safety, Rehabilitation and Compensation Act.

19.1 **Not Supported.** Separate conditions under separate Acts should remain inalienable. Therefore a Left Knee Condition accepted under VEA should not be offset if a Right Arm Condition has been accepted under the SRCA. The conditions are separate and are not aligned. Under the CTPA 2004, has made these consequences, which previous to the implementation of the MRCA 2004 on 1 July 2004, was able to be not offset in terms of the case mentioned above.

19.2 **Supported** – however the Department has not taken the recommendations of the FADT Senate Hearing Committee into Military Compensation (MCRS) Offsetting in June 2003. Chapter 3 of the FADT Senate Legislative Hearing Report provides the following recommendation:

The Committee recommends:

- *that the Department of Veterans Affairs ensures that all staff responsible for providing advice on offsetting have access to up to date information and appropriate training;*
- *that the Department creates a centre of expertise for delivery of expert advice to staff, veterans and widows about the operation of sections 30C and 74 of the Veterans Entitlements Act 1986, and for quality assurance on the final calculations of offsets. This will ensure that appropriately trained staff, with the required specialised knowledge, are responsible for making veterans and widows fully aware of their entitlements under the Act; and*
- *that the Department must ensure that all potential recipients of lump sum compensation understand the implications for their pension of accepting a compensation lump sum; that upon accepting a lump sum, their pension will be offset for life.*

We contest that these recommendations have yet to be included in any VEA & SRCA Offsetting.

19.3 **Cautiously Supported.** We would need to see the detail on this recommendation.

Chapter 20 – Ceasing new claims under the Safety, Rehabilitation and Compensation Act.

20.1 **Not Supported.** Unless the Service differentiation is removed, there will be no benefit to an individual, particularly if the condition has been caused by Peacetime Service. *Fellowes and Canute* provided for separate compensation amounts for separate injuries.

MRCA is a whole-person impairment approach. The principles of SRCA should not be taken away that have been proved at the Federal Court, particularly if the individual has eligible liability within SRCA. The choice should remain.

20.2 **Supported.** As previously discussed the APPVA highly recommends an accreditation process, in-line with the Dunt Review Recommendations 8.1 & 8.2. A Competency Based Training and Assessment (CBTA) approach to all training and development of DVA Delegates; ESO and Defence Practitioners/Case Officers would greatly improve knowledge and quality of claims from the Primary Level upward.

Chapter 21 – Aggravations of conditions accepted under the Veterans’ Entitlement Act related to service rendered after 1 July 2004.

21.1 **Supported.**

Chapter 22 – Permanent Impairment claims that cross multiple Acts.

22.1 **Supported.** This is recommended to include the impact of Invalidity or Retirement pay from COMSUPER Pensions.

22.2 **Supported in Option a.**

Chapter 23 Other perceived anomalies.

23.1 **Reserved.**

Chapter 24 - Treatment cards for Safety, Rehabilitation and Compensation Act Clients.

24.1 **Supported.** White Card (Specific Treatment Entitlement Card).

24.2 **Supported.**

24.3 **Supported.**

Note: We highly recommend that the Gold Card (For All Conditions), be considered for those with Severe Incapacity Adjustment (SIA). To include the embossing of TPI, in order to

gain the benefits associated in the respective State for TPI concessions.

Chapter 25 – Non-Liability health cover for certain conditions.

25.1 Sub-para (a) is **highly Supported**.

Chapter 26 – Compassionate Payment Scheme.

26.1 **Supported**.

26.2 **Supported**.

Chapter 27 – Coverage for Australian Federal Police.

27.1 **Supported**.

Note: The APPVA firmly believes that the continuation of the Veteran Entitlement Act 1986 eligibility should continue for Police Peacekeepers until the final resolution of the Police Overseas Compensation Act is finalised.

Chapter 28 - Death and disability insurance in the context of military compensation.

28.1 **Supported**.

28.2 **Supported**.

Chapter 29. Reconsideration of compensation-related recommendations from the review of veterans' entitlements.

29.1 **Not Supported**.

29.2 **Supported**.

Chapter 30 – Suitability of access to military compensation schemes for non-members.

30.1 **Supported**.

30.2 **Supported**, however they must be declared as “Defence Civilians” under the Defence Force Discipline Act 1982.



Service Differential

Public Comments on Service Differential.

Sydney Public Hearing, 24 September 2009.

ISPA raised the service differential and explain that this complicated the MRCA.

Dr Pezzutti raised the issue of the Blackhawk Payout, which at the time was inadequate. *“I really don’t think it matters for a member of the ADF whether they’re injured on warlike service or training exercises, or in the Barracks.”*

Brisbane, 9 November 2009.

David Moore: that the act needs to look at those touched in “Harms Way” and looking after dependents.

Benchmarking. Suggested that the benchmark be a fully qualified Private soldier salary, or cost of an average house and single pension and costs of raising children on the Child Support Agency Formula.

“Every life is valued the same”.

Reasonable Lifestyle is afforded in terms of compensation.

Sutherland (Committee): *“Substantial feedback in our public consultations that a life is a life, a death is a death – should be equally compensated whether it’s a Peace Force – in a Peacetime Situation or a War Situation.”*

Moore: Suggested that War Service should be placed higher.

Townsville, 10 November 2009.

Only comment from a current serving member is that he believed that the compensation should be equal, particularly when on exercise or lead-up training.

Perth, 9 December 2009.

Perth Legacy: *“People who die on operations, they are going to be the very small proportion of people who are dealt with by this Act.”*

Darwin, 4 February 2010.

Mr Ronevich: *“Dead is dead... I don’t see a need for a different scale”.*

Mr Sirani: *“Mission Rehearsal Exercises (MRE) training is rigorous. Some of the lead-up training that we do to go overseas is quite vigorous and we could get hurt during that lead-up training that we do to go to that country.”*

Canberra, 12 March 2010.

Peter Burn (Naval Association): *“An inherent high risk for all service personnel, the day they put a uniform on until the day they retire.”*

Impairment disadvantage MRCA vs. VEA for Peacetime Service was opposed by a RAN Veteran.

BRIG Kerry Mellor (DFWA): *“War service should be higher than Peacetime service, due to the very very high levels of risk.”*

Afterward: *“The basis of risk is a mistake. Argue the case on the basis of risk is to miss the crucial difference of risk versus obligation.”*

Hobart, 8 April 2010.

No Transcript.

Melbourne, 9 April 2010.

W. Anderson (Snr): *“It doesn’t matter that it happened in Australia or in East Timor..”*

Greg Isolani (Solicitor): *“Full Federal Court of James and Cunningham for zero compensation.”*

Mr Mason (Slater & Gordon): Time taken to process SRCA & MRCA is a critical problem.

“In relation to the quantum payable for warlike service and non-warlike service impairments, let me say simply that a lost arm is a lost arm.”

“That it might be there is no sustainable reason for preserving that quantum discrimination in MRCA.”

Dr Willcox: *“You wear the green, you’re part of the military it shouldn’t really matter.”*

Adelaide, 27 April 2010.

Mr Ian Smith (S.A. Veteran Advisory Committee): Supports DFWA submission.

“Reasonable Expectation” for career progression of Junior Leaders. Suggest SGT/CAPT for relevant NCO/Officer rank.

Paul Teague (20 year current serving Army Reservist): *“Warlike service, non-warlike service and Peacetime service is irrelevant to the situation.”*

Service Bias.

1.1 Within s67(1)(e), (Guide to Determining impairment and compensation), methods by which the impairment points of a person, and the effect on a person's lifestyle, from a service injury or disease can be used to determine the compensation payable to the person under this Part (Part 2 – Permanent Impairment);

Comment: This is viewed as a fair statement within the determination of impairment and compensation for Permanent Impairment, however, s67 goes on to discriminate this statement within s67(2):

1.2 The Guide must:

(a) specify different methods under s67(1)(e) for:

- (i) service injuries or diseases that relate to warlike service or non-warlike service; and
- (ii) other service injuries or diseases; and

(b) specify a method for determining the compensation payable to a person who has both:

- (i) a service injury or disease that relates to warlike service or non-warlike service; and
- (ii) another service injury or disease.

1.3 **Explanation:** Therefore, the MRCA is service biased within the GARP (M)¹ with a 2-tiered service approach. Utilising the two tables within Chapter 23, Table 23.1 Compensation Factors for Calculating Permanent Impairment Compensation – Warlike and Non-warlike Service; and Table 23.2 Compensation Factors for Calculating Permanent Impairment Compensation – Peacetime Service.

1.4 This means the highest amount of PI is paid to members who have been injured/ill/wounded accepted on warlike service and on non-warlike service; and lastly, the lowest end of the scale for those who are ill/injured or wounded accepted under Peacetime service.

Comment: This approach toward service type is recommended to be abolished or repealed and the same aggregated amount retained, particularly Peacetime Service, at the highest level (warlike service & non-warlike service tier) for all three service types.

1.5 It is noted that those veterans who deploy on Warlike service have generous intrinsic compensation in terms of financial incentives. These include tax-free pay and allowances, which are considerable benefits for warlike service. This is placed in a context of “Danger Pay”, to compensate for the risks of warlike service.

¹ Military Rehabilitation Compensation Commission (MRCC), Instrument No M9 of 2005, Guide to Determining Impairment and Compensation (GARP (M)).

1.6 “Danger Pay” is also applicable to those who serve in high risk employment such as Special Operations, which is included in the salary package, whether they serve on warlike service or peacetime service.

1.7 Therefore, high-risk employment or deployment to warlike or non-warlike service operations is adequately compensated by generous allowances, tax-free (in some cases) and even tax-concessions for not residing in Australia for a designated period of time.

1.8 Further entitlements for warlike service include Qualifying Service eligibility for War Service Pension (Retirement Age 60; or Special Rate of Pension or unable to work more than 8 hours per week – even the disability is not service related).

1.9 In addition to the above, is free treatment for cancer, psychological conditions, tuberculosis,² and the beneficial approach of the Reasonable Hypothesis for the Onus of Proof. Veterans with Qualifying service are eligible for the Gold Card at age 70, regardless if the conditions are service related or not.

1.10 In comparison to Peacetime Service compensation, it is clear that there are significant benefits, including salary and allowances for warlike service which carry on for the life of the veteran. However, Peacetime veterans are at a significant disadvantage within the MRCA.

1.11 Never has there been a Compensation Scheme or Act that has discriminated against the type of service rendered. In terms of Peacetime Service the veteran has to undergo the more onerous task of the Burden of Proof. This in turn is not a beneficial approach in comparison to warlike service veterans.

1.12 The Burden of Proof is the Balance of Probabilities, which has more stringent evidence criteria. The Peacetime claimant does not have the benefits of Qualifying Service, unlike the warlike service veteran, the Peacetime claimant is not entitled to War Service Pension as an Income Support Supplement or income stream per se.

1.13 The only advantage for a Peacetime Service veteran is if they hold eligibility toward the Defence Force Income Support Allowance (DFISA), which is managed through Centrelink if they are incapacitated for work.

1.14 It is interesting to note the various comments in the ESO Submissions and the Executive Summary of the Military Rehabilitation and Compensation Arrangements Review Committee, in relation to the “differentials of service.”

1.15 One ESO leader put the argument that if Australia was ever to be mobilised as was the case for World War II, then no man or woman would be encouraged to join the cause due to the lesser value of compensation entitlements under the MRCA.

1.16 The above is viewed as antiquated and was made by a Korean War Veteran, of which in any case this was not a consideration of many service personnel at that time. Even in today’s terms, the level of compensation for warlike service Vis a Vis peacetime service is generally not a consideration by an individual when enlisting or joining the ADF. This is also the case for those ADF members who are posted to warlike service.

² Sections 85(2) and 88A VEA.

1.17 It appears that those who have Qualifying Service or warlike service will prefer to retain the service differential, obviously because of the tangible benefit, on top of a significant number of other DVA and ADF benefits from warlike service.

1.18 The same can be said for the number of ESO submissions that were authored by Veterans, who are not Younger Veterans or Contemporary Veterans, nor consistently represent the issues of Younger Veterans. The MRCA will not affect them or their members, where in our case and that of the Injured Service Persons Association (ISPA), (particularly Peacetime Service incapacitated members), and it has a significant effect.

1.19 Other ESO claim that warlike service is above and beyond that of normal service during Peacetime. Whilst this is agreed, it is interesting to note that one particular ESO in favour of retaining the Service discrimination has a high number of Peacetime Service members who are incapacitated due to their dangerous training in the ADF.

1.20 Regardless of various beliefs, the problem with these views for the retention of discrimination of service for warlike and peacetime service, is that it is insulting to those who serve Australia and who have not had the opportunity to deploy or have acquired the condition during peacetime service, who have been incapacitated as a result of their service and are placed on a lower level of compensation.

1.21 This treatment of Peacetime veterans does not happen anywhere else in the world, except for Australia and particularly since the implementation of the MRCA 2004. The expectation of serving members is that they will be given equal treatment, which includes equal compensation for incapacity if caused by their service to Australia.

1.22 We hear Federal Politicians and Bureaucrats commenting that Australia has a world class compensation entitlement scheme for its veterans and serving members of the ADF. However in comparison to our cousins in the United Kingdom, there are significant differences in terms of benefits toward those who are incapacitated as a result of their service, regardless where they served.³

1.23 Compensation for a Severely Incapacitated British soldier can be up to almost \$900,000 AUD, with a monthly Income Stream that is Tax Free, along with Superannuation entitlements.

1.24 So the question must asked – why has the Australian Government chosen to discriminate against Peacetime Service personnel/veterans as opposed to warlike service eligible veterans? This was not the case in Permanent Impairment payments or pensions under the SRCA or the VEA.

1.25 Our conjecture also looks into the case of Incapacity, rather than where the medical condition was contracted or clinically onset. In terms of Incapacity, it does not matter where the actual condition was clinically onset. It is the effect to lifestyle, the effects toward a person's quality of life, the ability to function as was previously the case prior to a service-related condition and the effects of family and social parameters that dictate the incapacity.

³ Website Link: <http://www.veterans-uk.info/pensions/afcs.html>

1.26 Therefore, no matter where the person served, Incapacity will remain at the same level. The risks of warlike service are recognised in terms of the beneficial approach of Qualifying Service, pay and allowances.

1.27 A Modern Military Compensation Scheme needs to demonstrate equality of Permanent Impairment compensation entitlements, no matter where the ADF person serves. This is consistent in any compensation scheme and in particular with other countries such as the approach toward veterans and service members of the United Kingdom.

2. Legal aid provisions (Differentials).

2.1 Within Chapter 11, para 11.13 The Defence, Foreign Affairs & Trade (DFAT) Legislative Hearing Committee of 2004, discussed the Legal aid provisions for differential service.

“The Bill retains the existing situation where legal aid is available to claimants before the AAT but not earlier in the process. For claimants with warlike or non-warlike service a merit test will apply to applications for legal aid. For claimants with peacetime service both a merit and a means test will apply. Again, many witnesses opposed the differential with respect to the provision of legal aid. Legal aid should be available to all based on merit only. Legal aid should be available to all injured members appealing decisions under the MRCB. If not, some other form of financial assistance should be provided.”

3. Differential Service for Deaths.

3.1 Within the Defence Foreign Affairs & Trade (DFAT) Recommendation 1 (The Committee recommends that further efforts be made to explain the implications of the legislation to serving personnel), is quoted as the following:

“One of the most contentious aspects of the Bill is the distinction it makes between types of service, distinctions affecting a range of benefits as well as standards of proof and mechanisms for review. Some witnesses opposed the distinctions, saying that they were not warranted and that entitlements should be paid on the basis of ‘like Compensation for like injury’. Others believed the differences should be maintained so that the unique position of soldiers who had served in combat could be adequately recognised and rewarded.”

“This division of opinion was most marked with respect to the differential lump sum death benefit for widowed partners, but it also arose in connection with other payments, reflecting the different philosophical positions of those providing evidence. The difference was largely generational, with Organisations representing younger, serving members generally less likely to support maintenance of the distinctions and veterans’ Organisations supporting existing differentials or, in some cases, advocating additional differentiation. Even some of the strongest advocates for the retention of differential compensation payments held a different view with respect to the death benefit for widowed partners.”

4. Differential Service of Appeal Pathways and Widows (ers).

4.1 The DFAT Chapter 11 (Reconsiderations and Review), went into some detail of removing the one pathway for review for Peacetime service.

4.2 Veterans who hold eligibility for warlike or non-warlike service were able to have a choice of two pathways. These were the following:

- a. The appeal pathway as per the VEA, through the Repatriation Commission, which is Appeal through the Veteran Review Board (VRB), then to the Administrative Appeals Tribunal (AAT), upon application.
- b. The appeal pathway as per the SRCA, which is a Reconsideration through the MRCC, then to the AAT upon application.

4.3 Peacetime service claimants were only given the choice of the appeal pathway as per the SRCA. This was argued by the overwhelming majority of ESO to be changed and that Peacetime service Differential is given the same two choices as for warlike/non-warlike service differential.

Para	Item	Supported/Not Supported	Comment
Ch 4	Unique Nature of Service	Supported.	As per Annex A.
Part 2	Operation of the Military Rehabilitation Compensation Act.		
Ch 5	Initial Liability and the Statements of Principles.		
5.1	No change to SOP regime.	Not Supported.	Require interactive approach through Appeals.
5.2	MRCC Monitoring.	Supported.	Stats for Peacetime Service needed.
5.3	MRCC review policy on off-duty personal fitness regimes.	Cautiously Supported.	Consideration toward Reservists, Special Forces and other ADF members who do not have access to PTI.
5.4	IT Systems improved to monitor exclusion provisions (s32).	Cautiously Supported.	Areas highlighted to rectify identified problems within the exclusion provisions.
Ch 6	Rehabilitation		
6.1 – 6.7	Rehabilitation Provisions	Supported	
6.8	Rehabilitation arrangements.	Cautiously Supported.	Need to look at imposed financial hardship of a member during Rehabilitation.
Ch7	Transition Management		
7.1	Seamless Transition	Supported	
7.2	Designation of single MRCC for ADF, being the CDF.	Supported	Retain Army initiatives such as RCASO and APCD.
7.3	Amendment s39 MRCA for MRCC of CDF.	Supported	
7.4	Amendment of s64 MRCA, earlier appointment of transition advisory case manager.	Supported.	
7.5	Amendment of s39 MRCA, CDF Responsibility.	Supported.	
7.6	Amendment of s64 MRCA, inclusion of Reservists for offer of transition advisory case manager.	Strongly Supported	Reservists have been overlooked in the past in terms of TMS.
7.7	ESO pension officers to have demonstrated knowledge of MRCA, Transition and Rehabilitation Programs.	Strongly Supported.	The Integrated People Support Strategy (IPSS) requires review.
7.8	MRCA Accreditation of Staff and ESO Pension Officers.	Strongly Supported.	APPVA wishes to see Competency Based Training and Assessment (CBTA) included in training.
7.9	Clear explanation of roles of case managers or case coordinators to be clearly explained to the service member.	Supported.	APPVA suggests involvement of RCASO and APCD.

Para	Item	Supported/Not Supported	Comment
7.10	Changes to TMS.	Supported.	
7.11	TMS websites to be refined.	Supported.	
Ch 8	Permanent Impairment Compensation.		
8.1	Existing service differentials remain.	Not Supported	
8.2 (a)	Revise current differential by increase 10% PI for 71 + Impairment Points.	Not Supported.	
8.2 (b)	Not altering the current arrangements and noting issues removing the existing differential.	Strongly Supported.	
8.3	Permanent Impairment (PI) Compensation payment arrangement remains.	Supported.	
8.4	Claimants continue with 6 months to elect to receive lump sums.	Supported.	
8.5	Whole Person Impairment methodology continues under MRCA.	Reserved.	Consideration to past case law of SRCA WPI.
8.6	Date of effect for PI compensation periodic payments be on the basis of each accepted condition, rather than all conditions.	Supported.	Consistent with VEA.
8.7	Decision makers make greater use of the interim PI compensation.	Supported in Principle.	Not to reduce Incapacity Payments (IP) until PI compensation is paid.
8.8	No change to existing provisions for limit on damages against the Commonwealth or other liable parties for Non-Economic Loss (NEL).	Not Supported	Limit should be increased to the maximum compensable amount of \$397,790.22 (as at 24 July 2001) with indexation as per s404 MRCA.
8.9	No changes to choice to sue for damages against the Commonwealth or other liable parties for NEL.	Supported.	
Ch 9	Death Benefit Provisions.		
9.1	Lump Sum and Additional Death Benefit (ADB) be combined.	Supported.	
9.2	Proposed new Lump Sum is age-based.	Supported.	
9.3	Dependent partners offered one-off choice of converting either lump-sum or lifetime tax-free pension.	Supported.	
9.4 (a)	If recommendation 8.2 (a) is accepted that the lump sum increased for warlike or non-warlike service by 10%.	Not Supported.	This is a service differentiation which is not supported by the APPVA.
9.4 (b)	If recommendation 8.2 (b) is accepted that no change be made to current death benefits.	Supported.	
9.5	The proposed new lump sum payment be reduced by an amount equivalent to the ADB for deaths.	Reserved.	Further information is required to determine our response.

Para	Item	Supported/Not Supported	Comment
9.6	MRCA Current pension rate for dependent children be maintained.	Supported.	
9.7	MRCC consideration to compensate former partners of dead service members.	Not Supported.	Deceased service member's children continue to receive compensation under MRCA.
9.8	Financial advice is increased to at least \$2,400 and indexed as per s404.	Supported.	
Ch 10	Incapacity Payments.		
10.1	No change to calculation of normal earnings (NE) to account for career progression.	No Supported.	We cite the Reasonable Expectation of career progression for REC(E) to SGT(E) or SCDT(E) to CAPT(E).
10.2	Establishment of a cross-agency working group.	Supported.	APPVA requested to be identified as a Key Stakeholder.
Ch 11	Special Rate Disability Pension.		
11.1	MRCA amended to address lack of employment history restrictions for SRDP after age 65.	Reserved.	Working retirement age to be increased to 67 in 2017.
11.2	SRDP to be evaluated in five years.	Not Supported.	The SRDP has been in effect since 1 July 2004. It is considered that there is data available to evaluate its effectiveness.
11.3	SRDP recipients to have automatic eligibility to service pension as per Special Rate recipients under VEA.	Supported.	
11.4	Offsetting provisions of COMSUPER be retained at 60 cents per dollar until age 60. Increase to 70 cents per dollar after age 60.	Not Supported.	This is further double – dipping by the Government. The APPVA does not support the current offsetting arrangements within s204.
Ch 12	Military Superannuation and related compensation issues.		
12.1	Offset of Incapacity Payments and SRDP should continue.	Not Supported.	As per 11.4 and Annex D to this paper.
12.2	Definition of COMSUPER under MRCA to be amended to exclude licensed corporations and include Commonwealth payments into retirement savings accounts in line with SRCA definition.	Not Supported.	<i>retirement savings account</i> means a retirement savings account within the meaning of the <i>Retirement Savings Accounts Act 1997</i> . SRCA s4 (Interpretation).
12.3	MRCA amended to apply Super offsetting against IP, for current members receiving COMSUPER (Former Permanent members serving as Reservists).	Supported.	

Para	Item	Supported/Not Supported	Comment
12.4	Consideration of Employer Contribution on IP for ADF members unable to work.	Reserved.	To be discussed at cross-agency working group.
12.5	Streamlining administration of COMSUPER and compensation.	Supported.	As long as there is no detriment to entitlements.
Ch 13	Ancillary Benefits.		
13.1	MRCC develop guidelines on household services and attendant care.	Supported.	As long as there is no detriment to entitlements.
13.2	Amendment of MRCA Treatment Principles.	Not Supported.	Severely Incapacitated members require ongoing care. Respite is needed for primary carer.
13.3	No change to weekly statutory limit for reimbursement for household services or attendant care.	Not Supported.	This is a problematic matter for severely incapacitated members.
Ch 14	Treatment Provisions.		
14.1	MRCC to continue to encourage review for Treatment Pathway 1.	Supported.	
14.2	MRCC to review the need for dual treatment pathways approach in three years time.	Supported.	
14.3	MRCC review the need for former members with both VEA and MRCA entitlements to hold multiple cards.	Supported.	One card should be allocated, in order to save confusion.
Ch 15	Administration.		
15.1	DVA continues to improve quality and TTTP of claims processing within SRCA, MRCA and client service.	Supported.	
15.2	DVA continues to identify better KPI for TTTP of claims.	Supported.	
15.3	MRCC should monitor timeliness for Needs Assessments with adjustments when client is unable to be contacted.	Supported.	
15.4	KPI for TTTP be adjusted for PI Compensation cases awaiting stabilisation.	Supported.	If ADF member is deemed stabilised during service, there is no need to undergo further Needs Assessment for PI.
15.5	DVA implements recent internal audit and consultant reviews of TTTP and decision making.	Reserved.	We have yet to see these reports to comment.
15.6	DVA and Defence continue to modernise business processes and IT Systems for SRCA and MRCA and improve IT links between DVA and Defence.	Supported.	
Ch 16	Claims.		
16.1	MRCC consider modular approach to Claims.	Supported.	

Para	Item	Supported/Not Supported	Comment
16.2	ADF service members should have information provided on the AC564.	Supported.	
16.3	MRCC consider shortened MRCA Claim form.	Supported.	
16.4	Lag times for lodgement of claims for safety and compensation evidence should be addressed by MRCC KPI.	Supported.	
16.5	MRCC establish KPI for timely provision of information by Defence to support compensation claims. KPI monitored by MRCC and included in Annual Report.	Supported.	
16.6	Reporting provisions to Parliament for TTTP and PI for MRCC.	Supported.	
Ch 17	Reconsideration and Review.		
17.1	MRCA be refined to single appeal path to VRB and AAT.	Strongly Supported.	
17.2	Internal reconsideration by MRCC be the first step in review process, and s31 VEA review process be adopted to reduce VRB workloads.	Supported.	
17.3	Case Conference access for VRB.	Supported.	
17.4	A Service Level Agreement (SLA) be adopted for MRCC and VRB.	Supported.	
17.5	MRCA be amended to provide VRB with explicit powers to remit a matter to the MRCC for needs assessment and compensation.	Supported.	
Ch 18	Governance arrangements.		
18.1	The Minister for Veterans' Affairs to be responsible for administering MRCA.	Supported.	
18.2	Subject to section 7 of OHS Act 1991, service within ADF continues to be regulated under the OHS Act by the SRCA and COMCARE.	Supported.	OHS Act 1991, s7 – Act not to prejudice Australia's Defence.
18.3	Greater resources to Defence and DVA for effective management for OHS.	Supported.	Occupational Hazards for all members required to be registered.
18.4	Membership expanded of MRCC to include a second member nominated by the Minister of Defence.	Supported.	Preference is for a Warrant Officer level to represent coal-face and technical advice.
18.5	Defence and DVA determine mechanisms for regulating relationships.	Supported.	Inter-departmental working group is recommended to be established.

Para	Item	Supported/Not Supported	Comment
Part 3	Legislative schemes that government military compensation before the MRCA and anomalies that exist.		
Ch 19	Compensation offsetting between VEA and SRCA.		
19.1	Existing Offsetting arrangements be maintained.	Not Supported.	Separate conditions under separate Acts should not be offset. CTPA 2004 requires amendment.
19.2	DVA to provide improved advice of offsetting provisions to clients.	Supported.	Refer to FADT Senate Legislative Hearing into MRCA 2003 Chap 3 recommendation.
19.3	DVA examine possibility for offsetting claimants to repay the actuarial amount of lump sum under SRCA for pension under VEA.	Supported.	With caution. We would like to see the detail of this recommendation.
Ch 20	Ceasing new claims under SRCA.		
20.1	Date of injury approach be maintained.	Not Supported.	Unless the Service Differentiation is removed.
20.2	DVA and Defence educate claimants and ESO representatives of the three pieces of legislation.	Supported.	The APPVA places that in line with the Dunt Review Recommendations 8.1 & 8.2, that a CBTA approach is undertaken.
Ch 21	Aggravations of conditions accepted under the VEA related to service rendered after 1 July 2004.		
21.1	The section 12 election provisions be removed.	Supported.	CTPA 2004 s12 - Choice between the MRCA and the VEA for an aggravation of a VEA injury or disease
Ch 22	Permanent Impairment claims that cross multiple Acts.		
22.1	Education campaign in conjunction with ESO to facilitate greater understanding of the arrangements and effects to compensation.	Supported.	COMSUPER effects to be included.
22.2 (a)	MRCC review the current method of calculating transitional PI claims.	Supported.	
22.2 (b)	The current method be retained.	Not Supported.	
Ch 23	Other Perceived Anomalies.		
23.1	No change to adjust benefits between the applicable Acts as these differences are not intended.	Reserved.	

Para	Item	Supported/Not Supported	Comment
Part 4	Level of medical and financial care provided to Australian Defence Force personnel injured during Peacetime Service.		
Ch 24	Treatment cars for SRCA Clients.		
24.1	Repat Health Cards for STEC (White Cards) be issued.	Supported.	Gold Card be also considered for issue to SRCA recipients. TPI embossing for SIA.
24.2	DVA fee schedule be adopted for treatment for SRCA claims.	Supported.	
24.3	The supplementary payment for pharmaceuticals be extended to defence-related claims under SRCA.	Supported.	
Ch 25	Non-Liability health cover for certain conditions.		
25.1 (a)	Provide non-liability health cover under MRCA for certain psych conditions to all former members of the ADF who have served on and after 1 July 2004.	Highly Supported.	
25.1 (b)	Request further evidence to be established for the need for additional psychiatric care.	Not Supported.	
Part 5	Implications of an ADF compassionate payment scheme for non-dependants.		
Ch 26	Compassionate payment scheme.		
26.1	An ADF compassionate payment scheme not be introduced.	Supported.	
26.2	Payment to families on service-related deaths of ADF members continue to be managed by Defence.	Supported.	
Part 6	Suitability of access to military compensation schemes for members of the Australian Federal Police who have been deployed overseas.		
Ch 27	Coverage for Australian Federal Police.		
27.1	AFP members not be given access to MRCA.	Supported.	VEA entitlements to be continued until Legislation of Police Overseas Service Rehabilitation and Compensation Act.

Para	Item	Supported/Not Supported	Comment
Part 7	Miscellaneous Issues.		
Ch 28	Death and Disability insurance in the context of military compensation.		
28.1	Defence and DVA educate serving ADF members of full range of benefits and entitlements of MRCA and COMSUPER.	Supported.	
28.2	Defence work to resolve the insurance issue external to the Review.	Supported.	
Ch 29	Reconsideration of compensation-related recommendations from the review of veterans' entitlements.		
29.1	No further action to Clarke Review.	Not Supported.	
29.2	DVA, Repat Commission and MRCC review the VVRS with the aim to improving rehabilitation options for those who have VEA and younger than 50 years.	Supported.	
Ch 30	Suitability of access to military compensation schemes for non-members.		
30.1	Members undergoing transition assistance and personnel holding honorary ranks should be defined under MRCA as 'members.'	Supported.	
30.2	Civilians supporting ADF who are not Federal or State/Territory employees are provided with access to MRCA.	Supported.	However, they must be declared "Defence Civilians" under the Defence Force Discipline Act 1982.

**MRCA Benefits for Severely Incapacitated
and Inability to work more than 10 hours per week.**

Special Rate Disability Pension Offsetting against COMSUPER Pensions.

The Special Rate Disability Pension (SRDP) will be offset 60 cents to each dollar of received COMSUPER Pension (either Invalidity or Retirement), under the Military Rehabilitation & Compensation Act 2004 (MRCA), s204(5) &(6).

Having studied the COMSUPER Home pages (www.comsuper.gov.au) and gleaning information in support of this contention, that the SRDP, or “Safety Net”, under the MRCA is unfair and reduces the prospective veterans’ income for life.

To support the above comment, the following rationale is provided:

1. **DFRDB.** The scheme ceased to new ADF members in 1991. The provisions of the Scheme are complex, however some principle provisions are:
 - a. Contributions by members are at 5.5% of salary.
 - b. Invalidity benefits (Class A, Class B and Class C).
 - c. Redundancy or Retrenchment benefits.
 - d. Death Benefits.
 - e. Commutation of Lump Sum.
 - f. Pensions paid for life.
2. **MSBS.** The MSBS scheme is compulsory for all members of the ADF since 1991.
 - a. Member Contributions are at 5%, with increase available as an option to members at 1% increments, to a maximum of 10% of salary. The Member Component of the MSBS Structure is Member Contributions plus accumulated earnings on the contributions.
 - b. Employer Contributions consists of a defined benefit equal to Total Accrued Multiple X Final Average Salary over a period of three (3) years (FAS 3).
 - c. 3% Benefit is Employer contribution of 3% of salary less 15% employer contribution tax together with accumulated earnings. The 3% forms part of the employer component.

The member contributions from DFRDB are deposited into the Commonwealth Consolidated Revenue Fund (CRF), and is paid after the member retires after 20 years service (15 years if enlisted at 40 years of age), upon invalidity or to the family of the member on death. The CRF is not a wealth created or invested fund and it is used by the Commonwealth as necessary by the Department of Finance. The DFRDB is more or less a deal that was made with the ADF member that service length, rank, contributions and retirement will provide generous benefits to those members of the DFRDB, who would be enticed to stay in the ADF for 20 years. One would say excellent personnel retainer, given today's competitive job market and falling ADF member retention.

MSBS.

The member contributions of MSBS however, are placed into a very different situation that those in DFRDB. The MSBS member contributions are governed by a Trust Deed and rules set out the full membership, contributions and benefits of the *MSBS Act 1991*. Therefore, in contrast to DFRDB, which is Legislation, the MSBS Trust is able to change Rules and conditions, as has been witnessed in the past. The Member Contributions of MSBS are invested by the Trust into Global Share markets and other investment strategies, similar to investment strategies for other Superannuation and Investment entities in Australia.

If a loss is recorded for MSBS, then the Member's fund will suffer that loss. For example from FY 01/02, the MSBS Fund earned -8.7%, in FY 02/03, the MSBS Fund earned -2.0%, as a result of market pressures. In contrast to DFRDB, the Fund did not lose its base, as it is CPI indexed, whereas the MSBS fund is not CPI. Another consideration to note is that the Public Sector Superannuation Scheme (PSS) is legislated to not provide losses for its contributing members in accordance in with the legislation. So, when MSBS members lost -8.7% in FY 01/02, PSS remained on 0% earnings, as the loss below 0% is legislated to be provided by the Government. Hence, the Government does not provide this safety measure to the MSBS Fund, which any loss is borne by the Contributing ADF members and the superannuants of the Scheme.

The relevance of the above comparisons of schemes is deemed necessary to understand how the member's contributions are not counted by the Government in the case of Offsetting IAW *s204 (5) & (6) of the MRCA 2004*. The Government has stated in its reasons behind this Offsetting Provision, is that the COMSUPER Pensions are solely provided by the Government, and therefore constitutes "***Double Dipping***" of entitlements to entitled members. This is because the Government provides a Non-Economic Loss payment/pension of the SRDP, and believes the veteran in receipt of COMSUPER is taking double payment.

MSBS members who elect to take the Safety Net of the *MRCA, Chapter 4 Part 6*, will be fundamentally disadvantaged, as the Government has stated that they also fund the Superannuation. This is not exactly correct, as the Member Contributions are invested by the MSBS Board, is market reactive and market dependant. The Government Contributions (Employer Contributions) are as a result of Superannuation Guarantee

Legislation, in which they are obliged to contribute to its employee's superannuation, as much as the employee him/herself.

The SRDP is to be calculated using the current Totally & Permanently Incapacitated (TPI) Special Rate (SR) of pension under the *Veterans' Entitlement Act 1986 (VEA)*. Within the *VEA*, it does not appear to breakdown SR from 100% of General Rate up to the Special Rate as an earnings loss. In Clarke, SR was described as Non-Economic Loss (NEL) for loss of function, Lifestyle effects, pain and suffering.

Economic Loss (EL) is deemed to be income lost, due to the inability to work – therefore veterans with Qualifying Service (QS) are entitled to War Service Pension (WSP), which is Income Support Supplement (ISS) to assist veterans to achieve a quality of life. Those veterans without QS do not have ISS; however the Government has initiated the Defence Force Income Support Allowance (DFISA), in order to provide a form of ISS to veterans under Schedule 3 (Non-warlike or Peacetime service) of the *VEA*. DFISA is provided after application by the veteran to Centrelink for the Disability Support Pension (DSP), which reimburses the amount of SRDP loss when the DSP is means and assets tested.

Regardless, the EL or Superannuation is Income and Assets tested, in which the ISS is reduced according to Assets and Income that the veteran holds.

Therefore, the veteran will be hit twice with offsetting in the form of *s204 (6) (Offsets)*, which will be the reduction of the SR value by 60 cents in the dollar **and** having their COMSUPER reduced in the means and assets testing of WSP, or Disability Support Pension (DSP)/DFISA.

SR under the VEA is not reduced because of income received from COMSUPER.

Therefore, in consideration of the above, a veteran who is Severely Incapacitated as a result of their service on or after 1 July 2004, who elect the Safety Net Provisions under the *MRCA Chapter 4 Part 6*, will be significantly disadvantaged, in comparison to a TPI veteran under the *VEA*.

The offsetting provisions of MRCA under the election to choose the option of the SRDP (*Chapter 4 Part 6*), with severe penalty for receiving either or both a pension or lump sum under a Commonwealth Superannuation (COMSUPER) scheme as a result of the retirement under *s204 (Offsets) (5) & (6)* is considered unfair and harsh. It is also noted that further reduction may be inflicted if the person has retired voluntarily, or has been compulsorily retired, from his or her work, under *s204 (5) (a)* of the MRCA. This is seen as a brutal reduction to a given veteran under the MRCA. Under the *VEA* and/or *SRCA* (if the member has dual eligibility or not), the Special Rate of pension and/or Lump sum Permanent Impairment (PI) is **not offset** as for *s204 of MRCA*.

This is an anomaly that requires rectification to make the SRDP a viable option for those who are in receipt of COMSUPER pensions or lump sums and wish to make the election toward an attractive option within the MRCA, and provide a reasonable quality of life for a veteran.

Within the Legislation of the VEA, TPI or Special Rate recipients are not penalised for Commonwealth Superannuation (COMSUPER), which is inclusive of Military Superannuation Benefits Scheme (MSBS) and/or Defence Force Retirement and Death Benefits Scheme (DFRDB) pensions, as the two are viewed not as compensation, but Compensation entitlement for severely impaired veterans and superannuation for invalidity or retirement.

The situation that has been presented has had the distinct disadvantage financially in comparison to a VEA TPI recipient with COMSUPER and a MRCA SRDP recipient with COMSUPER. The 100% General Rate is \$359.50 and Special Rate \$1,011.90 as at 3 June 2009. The difference is \$652.40. From this amount it is then reduced by 60%, for every COMSUPER dollar, which will be at full value of COMSUPER income¹ which equates to a loss of \$391.44 per fortnight.

This is a significant loss of income in terms of comparing the situation with a VEA TPI veteran who has COMSUPER. For an illogical reason(s), the Government has stated that the COMSUPER is provided by the Government to the veteran, who has elected to take SRDP, is a form of compensation and that it is “Double Dipping” by a Young Veteran to be at the same standard or consideration to that of pre 1 July 2004 TPI veterans.

The MRCA s204(5) & (6) Offsetting provisions is considered a harsh approach by the Government toward Younger Veterans eligible under the MRCA, by which many thousands of TPI veterans eligible under the VEA, are not penalised for having their COMSUPER pensions together with their TPI Pension.

¹ This is dependant upon the amount of COMSUPER (MSBS or DFRDB) received if it is higher than the amount given in this example.