

## **COMPENSATION AND REHABILITATION MILITARY REHABILITATION AND COMPENSATION ACT 2004**

### **Introduction**

In the last two volumes of *Wings* I have outlined some of the key provisions of the *Veterans' Entitlements Act 1986 (VEA)* and the *Safety Rehabilitation and Compensation Act 1988 (SRCA)*.

In this article, I follow up with a companion outline of the *Military Rehabilitation and Compensation Act 2004 (MRCA)*. (DVA Factsheets *MRC01* introduces the MRCA, and *MRC02* the compensation coverage under the Act. To remind, open on your browser <[www.dva.gov.au](http://www.dva.gov.au)>, look for <Quick Links> on the right hand side of the DVA homepage, open the <Factsheets> link, then open the window, scroll down to the factsheet you want to open and left click.)

As you read this article you may be struck by the similarity between MRCA, and the provisions legislated variously in VEA and SRCA. This is because MRCA is, with some developments, a combination of the previous Acts.

### **What is MRCA?**

MRCA has been the legislation under which eligible members and former members of the ADF and their dependents have been able to access rehabilitation and compensation for injury or death that occurred, or for disease contracted, on or after 1 July 2004.

### **Am I Eligible under MRCA?**

You are eligible to claim compensation under MRCA for injury, disease, or death on or after 1 July 2004 as a result of defence service, if you are/were:

- a member of the permanent Defence Force;
- a member of the ADF Reserve forces;
- a Cadet, or Officer or Instructors of Cadets; and
- a person, or one of a class of people declared in writing by the Minister to be a member of the ADF (eg, authorised war artist or photographer or entertainer).

### **Some Definitions**

There are a few terms that you will encounter under MRCA that have not arisen in earlier articles. Some of the key terms are:

- *Warlike Service* means service in which force will be applied in pursuit of military objectives and casualties can be expected.
- *Non-warlike Service* means service short of warlike service in which casualties may occur but are not expected.
- *Peacetime Service* is any service other than warlike and non-warlike service.

- *Defence Service* is a catch-all term that includes warlike, non-warlike and peacetime service.
- *Impairment* means the loss, loss of use, damage to, or malfunction of your body or part of your bodily system or function.
- *Incapacity* means your inability to engage in defence service or work at the same level you were able before the injury or disease.

### **When/Where am I Covered by MRCA?**

Noting that each claim is determined individually, you are generally eligible for compensation under MRCA when you are:

- travelling by the most direct route between:
  - your normal or temporary place of residence and place of work, or
  - your normal place of work and another place of your employment, or
  - places of residence or work and attendance at an approved course of education;
- on duty, including attendance at approved education courses (but not if you are on LWOP) or authorised sporting activities;
- between places of work, including travelling on posting;
- between work or residence and any other place to receive your pay or in relation to a claim for compensation.

You are covered by MRCA 24 hours per day when you are deployed on warlike and non-warlike service, and during periods of extended duty and on training exercises.

### **What about my Dependants?**

Certain dependants may be entitled to compensation if your death is accepted as defence service caused. The Act requires that the dependant must be, or were it not for your incapacity due to an accepted disease or injury would be, wholly or partly dependent on you. *Dependency* means that your dependants are (or were it not for your accepted incapacity, would be) dependent on you for their economic wellbeing.

Those who can be wholly or partly economically dependent on you are, your partner, your or your partner's children or step-children, your grand-children, parents or step-parents, grandparents, and siblings or step-siblings. Your relationship with possible dependants includes those established by adoption, or by pregnancy at the time of, or the initiation of adoption before, your death.

### **What are the Triggers for MRCA Compensation?**

The trigger for Commonwealth acceptance of liability is clear evidence that your injury, disease or death is:

- related to your defence service; or

- the result of certain treatment provided by the Commonwealth; or
- the result of aggravation of, or contributed to a material degree by, your defence service.

At this point in this outline it is worth amplifying the relationship between your defence service and your injury, disease or death.

Within the range of places and periods outlined above, your impairment is accepted as being related to your defence service if it:

- is the result of an occurrence during your defence service; and/or
- arose out of or was attributable to your defence service; and/or
- would not have eventuated but for your defence service, or changes in your environment arising from your defence service.

### **Exclusions**

Liability will not be accepted if your injury or disease is the result of a willful act or serious default (eg, being intoxicated or under the influence of illicit drugs), or of a serious breach of discipline, or is an intentionally self-inflicted injury. Note, however, that where you have been seriously and permanently impaired by the injury or disease, these exclusions will not be applied.

Other exclusions include not being on the most direct route, being delayed or interrupting your journey for a non-service related reason, increasing risk by your actions, and having smoked being the only cause for your condition.

### **How are MRCA Claims Determined?**

Claims under MRCA are made in the same way and using the same tests as under the VEA (see: *MRC28* for more details):

- A Delegate of the MRCC (Military Rehabilitation and Compensation Commission; viz, a DVA Claims/Assessment Officer) investigates each claim individually and on its merits.
- The same SOPs are used (see: Factsheet *DP22 Statements of Principles*),
- as are the same Standards of Proof - which are, in turn, related to the nature of your service:
  - Warlike and Non-Warlike Service: *Reasonable Hypothesis* (this means that unless the Delegate can disprove a causal link with your warlike/non-warlike service, he/she must accept your claim).
  - Peacetime Service: *Balance of Probabilities* (this means that the Delegate must be reasonably satisfied that the cause was more likely than not related to your peacetime service).

The process by which your claim is progressed reflect the combining in MRCA of provisions from VEA and SRCA:

- Having received your/your dependant's claim, the Delegate will determine whether the Commonwealth is liable for your injury, disease or death.
- If liability is accepted for:
  - your injury or disease, the Delegate will contact you and ascertain your needs (see *MRC34 Needs Assessment* for details), and will advise in writing the rehabilitation, and/or compensation and/or other benefits (outlined below) you will be provided; or
  - your death, your dependants will receive written notification of the compensation and other benefits they will receive (outlined further below).

### **How do Lodge a MRCA Claim?**

You must lodge a claim under MRCA using the approved Forms; viz:

- *D2051 Claim for Liability and/or Reassessment of Compensation*; and
- *D2049 Injury or Disease Details Sheet*.

In the event of your death, your dependants must use *Form D2053 Claim for Compensation for Dependants of Deceased Members and Former Members*.

A copy of each form can be downloaded from the DVA website through the <Forms> link. (*Factsheet MRC25 How to Make a Claim Under the Military Rehabilitation and Compensation Act* provides more details.)

### **What Supporting Information Do I Need?**

In addition to completing Forms D2051 and D2049/2053, to fully support your (or your dependant's) claim you/they will need the following:

- proof of identity documentation;
- any injury report, an AC563 ADF OH&S Incident Report, and eye-witness reports completed at the time you were injured or died;
- your service and service medical records, including your Enlistment and Discharge Medical Board questionnaires and reports;
- copies of written orders or authorisations or directives related to your employment or activities at the time or injury, disease or death;
- personal statement of attribution (viz, why you/your dependants believe your injury, disease or death is attributable to your defence service);
- where the injury, disease or death occurred away from your place of work, maps showing the shortest route between your place of work (or education or sporting venue) and your place of residence, and (if applicable) the route you took with an explanation of any variance;
- (if applicable) traffic accident report;

- Investigating Officer's report;
- completed Questionnaires related to your injury or disease (eg, solar damage, lifting and squatting, trauma to spine or limb, etc)
- (where applicable) details of pre-enlistment and post-discharge employment;
- any other current and historical medical reports, including civilian doctors/specialists reports, audiograms, vision reports, skin cancer clinic or other information that will help establish your entitlement.

### **MRCA Benefits**

When the MRCC has accepted liability for your injury, disease or death the benefits available under MRCA include:

- Transition Management: if you are currently in the process of being discharged on invalidity grounds, you will be offered advice and support under the Transition Management Scheme, which will include advice and assistance on:
  - civilian employment,
  - compensation,
  - superannuation,
  - financial planning,
  - transition adjustment issues, and
  - health insurance and community support arrangements.
- Rehabilitation: two tailored rehabilitation options are possible:
  - if your level of incapacity permits, return to work support (viz, vocational rehabilitation), including education and training, and workplace aids and appliances; and/or
  - non-vocational rehabilitation to improve your quality of life, including physical and psychological support, household services (but not maintenance), attendant care, and (following assessment by an Occupational Therapist) house alterations, appliances and aids.
- Permanent Impairment Compensation: PI is intended to compensate you for the permanent physical and/or psychological impairment you are suffering permanently because of your accepted conditions. The total impairment of all your conditions, the type of service you were providing when you were injured and the consequential lifestyle rating are combined to determine the compensation that is payable, either as a fortnightly payment or as a lump sum, Note that, while you are given time to decide, once you make a decision it is irrevocable.
- Incapacity Payments: INCAP is intended to compensate you for wages and/or allowances that you have actually lost as a result of accepted incapacity/ies.

Payments are taxable (with exceptions) and may be either received fortnightly (normally ceasing at age 65) or, in some circumstances, at your choice (again, irrevocable) converted either in part or in total into a lump sum determined on the basis of your age at the time of injury and the legislated retirement age (65).

- **Interim Compensation:** if your degree of impairment cannot yet be determined at the time of the Delegates determination of liability because (for example) your condition has not stabilised, you may be entitled to compensation payment at an interim rate.
- **Additional Compensation:** if your level of impairment increases through additional injury or disease, or if an existing impairment is aggravated, once the new conditions have stabilised you may receive additional compensation.
- **Former Defence Force Members:**
  - you are not eligible for compensation if you are over 65 years of age, but may be for a maximum of 104 weeks only if you are over 63; and
  - the amount of compensation you will be paid will be determined by reference to your weekly earnings (be it from salary or wages, or Commonwealth superannuation lump sum or pension) and payable fortnightly, or may be paid as a lump sum if you are already receiving a small compensation payment, are still working and elect to receive a lump sum.
- **Severely Impaired.** If you have at least 50 impairment points and are unable to work more than 10 hours per week, you may chose (again, irrevocably once decided) to accept the Commission's written offer of a Special Rate Disability Pension (SRDP), which is a safety net payment to those whose other incapacity and permanent impairment payments and Commonwealth superannuation fall short of the Special Rate (TPI) disability pension payable under the VEA. SRDP is payable for life.
- **Additional Amounts Payable for Serious Impairment:** if your level of impairment from accepted injuries or disease totals 80 or more impairment points, your partner and children will each receive a prescribed (but indexed) additional lump sum payment.
- **If your impairment warrants, you may be offered one of more of the following:**
  - subsidised purchase, and/or modification or maintenance and repair of your private motor vehicle under the Motor Vehicle Compensation Scheme;
  - household and attendant care services;
  - telephone allowance;
  - compensation for the loss of or damage to your medical aids; and
  - essential modifications, aids and appliances.
- **Compensation on your Death:** Your dependants will be entitled to claim if you die during defence service. The compensation they may receive includes:
  - your partner's choice of either a lump sum or a fortnightly payment, as well as the cost of professional financial advice on that choice, a Gold Card, and receipt of a telephone allowance;

- in some circumstances, a compensation amount equivalent to 12 times the weekly compensation amount for the deceased member's permanent impairment or incapacity payments or Special Rate Disability Pension;
  - a lump sum and fortnightly payment (both amounts indexed), a compensation amount equivalent to 12 x the weekly compensation amount for the deceased member's permanent impairment or incapacity payments or Special Rate Disability Pension, a Gold Card, and education and training for each eligible child; and
  - compensation (to a statutory limit) for those who were dependent, but not wholly dependent on you at the time of your death.
  - funeral expenses (to a statutory limit).
- Medical and Dental Treatment: You are entitled to compensation of the "reasonable cost" of the treatments related to your accepted conditions. You are entitled to a Gold Card (for all medical conditions) under MRCA if you are:
    - a former member in receipt of SRDP, or with an impairment rating of 60 points or more; or
    - a former member with an impairment rating of 30 points or more AND receiving a Service Pension under the VEA AND have assets and income below prescribed limits; or
    - are over 70 years of age AND have rendered warlike service on or after 1 July 2004.

The preceding outline of MRCA benefits misses a lot of the detail in the Act. Further information is available on the following pdf link:

<<http://www.dva.gov.au/aboutDVA/publications/rehabilitation/Documents/MRCinfobook.pdf> >

or the following Factsheets:

<i>IS160</i>	<i>Overview of Cards Available to Veterans and their Dependants</i>
<i>HSV59</i>	<i>Eligibility for the Repatriation Health Card – for All Conditions (Gold)</i>
<i>HSV61</i>	<i>Repatriation Health Card – For Specific Conditions (White)</i>
<i>HSV92</i>	<i>Repatriation Pharmaceutical Benefits Scheme</i>
<i>MRC05</i>	<i>Rehabilitation</i>
<i>MRC08</i>	<i>Benefits for Incapacity for Service or Work</i>
<i>MRC07</i>	<i>Permanent Impairment Compensation Payments</i>
<i>MRC09</i>	<i>Special Rate DP Safety Net Payment</i>

MRC10	<i>Motor Vehicle Compensation Scheme</i>
MRC14	<i>Partners</i>
MRC17	<i>Funeral Assistance</i>
MRC18	<i>Bereavement Payments</i>
MRC20	<i>Permanent Impairment Payment Choices</i>
MRC30	<i>Information for Reservists</i>
MRC44	<i>Compensation for Dependants of Deceased Serving and Former Members of the ADF</i>
MRC46	<i>Medical Treatment</i>
MRC47	<i>Education Scheme</i>

Alternatively, the Act itself may be accessed through the following weblink:

< <http://www.comlaw.gov.au/Details/C2012C00127> >

### **Follow-Up Needs Assessment**

Similarly to SRCA, DVA will follow-up on your compensation, rehabilitation and other arrangements at any time your circumstances change or a review is required.

As well, if your needs change as a result of accepted conditions, you can make contact with DVA to renegotiate your current needs analysis.

### **What if I served before, and on or after 1 July 2004?**

If you have eligible service during the periods covered by VEA and SRCA as well as MRCA, you may have entitlements under each Act. If so, you should seek the advice of an authorised Pension Officer or Advocate to help you progress your claim(s) as there are interactions between, and differing benefits available through, each Act. In outline, if you are eligible to claim under MRCA, you will not have an entitlement under VEA or SRCA for any conditions where:

- clinical onset of a condition occurred on or after 1 July 2004, and
- clinical onset of that condition is the result of injury or aggravation sustained during defence service before, on, or after, 1 July 2004.

### **Rights of Reconsideration and Review**

If you disagree with a decision or the reasons given for a decision, or have more evidence in support of your claim, you may request review within 30 days of receipt of the decision. Most of the decisions made under the MRCA may be reconsidered or reviewed if you are dissatisfied. If you decide to seek reconsideration or review, you have two options:

- initial reconsideration by a different Delegate of the MRCC who was not involved in



the original decision, after which, if you are still dissatisfied, you can apply to the Administrative Appeals Tribunal for review; or

- initial review by the Veterans' Review Board (VRB), followed by a right of review by the AAT if you are not satisfied with the Board's decision.

See *MRC27 Reconsideration and Review of Decision* and *DP68* for more details on your rights of reconsideration or review.

Beyond the AAT, only points of law can be appealed. The Federal Court will, in the first instance, convene as a single judge and, at the next level of appeal, the Full Court will sit with three judges. If *special leave* is granted, the final level of appeal is the High Court of Australia.

Although you may seek the support of a non-legally qualified Advocate to represent you at the AAT, you may be well advised to appoint a solicitor. You will certainly need the support of a barrister to present a case to the Federal Court. Subject to means testing, you may be entitled to Legal Aid should you appoint a solicitor and/or barrister

## **Conclusion**

This article<sup>1</sup> concludes the series of articles on the legislation open to current and former serving members. Some of the key considerations and benefits for which you or your dependents might be eligible under the MRCA in the event of your injury, disease or death being defence-service caused have been outlined above.

Clearly, therefore, this article is an overview – the complexity of MRCA does not allow all the provisions that may relate to your circumstances to be covered. Before preparing a claim under MRCA, please seek the support of a trained and authorised MRCA-Pension Officer or Advocate. Your Division Secretary or Welfare Officer can help you locate a practitioner.

Finally, some refinements of the provisions outlined above may eventuate when the Government tables its response to the Military Compensation Review. You can access the Recommendations, Executive Summary, and full Report under < Useful Links > on the DVA Home Page, left clicking: < Military compensation review >. (The Government received the Report in February 2011 and sought response before 30 June 2011. Tabling of the Government response is pending.)

March 2012

---

<sup>1</sup> This article has been prepared by R. N. (Dick) Kelloway, Pension Officer and Advocate.