





# **Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004**

**No. 52, 2004**

**An Act to amend laws, and to deal with transitional  
matters, in connection with the *Military  
Rehabilitation and Compensation Act 2004*, and for  
other purposes**

Note: An electronic version of this Act is available in SCALEplus  
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)



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**No. 52, 2004**

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**An Act to amend laws, and to deal with transitional matters, in connection with the *Military Rehabilitation and Compensation Act 2004*, and for other purposes**

[Assented to 27 April 2004]

The Parliament of Australia enacts:

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*Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004*

*No. 52, 2004 1*

## Part 1—Introduction

### 1 Short title

This Act may be cited as the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004*.

### 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	27 April 2004
2. Sections 4 to 24	At the same time as section 3 of the MRCA commences.	
3. Schedules 1 and 2	At the same time as section 3 of the MRCA commences.	
4. Schedule 3, items 1 to 7	At the same time as section 3 of the MRCA commences.	
5. Schedule 3, items 7A and 7B	The later of: (a) the time when section 3 of the MRCA commences; and (b) the time when the <i>Age Discrimination Act 2004</i> commences.	
6. Schedule 3, items 8 to 105	At the same time as section 3 of the MRCA commences.	

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
7. Schedule 4	At the same time as section 3 of the MRCA commences.	

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Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

### 4 Definitions

- (1) In this Act:

**commencement date** means the date on which section 3 of the *Military Rehabilitation and Compensation Act 2004* commences.

**MRCA** means the *Military Rehabilitation and Compensation Act 2004*.

**old injury or disease** has the meaning given by section 13.

**relates to defence service** has the meaning given by section 5.

**SRCA** means the *Safety, Rehabilitation and Compensation Act 1988*.

**VEA** means the *Veterans' Entitlements Act 1986*.

- (2) Expressions used in this Act that are defined in the MRCA have the same meanings as they have in that Act.

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**5 Definition of *relates to defence service***

*Definition of relates to defence service for injuries, diseases and deaths*

- (1) For the purposes of this Act, an injury, disease or death ***relates to defence service*** rendered by a person if:
- (a) it resulted from an occurrence that happened while the person was rendering that service; or
  - (b) it arose out of, or was attributable to, that service; or
  - (c) it resulted from an accident that occurred while the person was travelling, while rendering that service but otherwise than in the course of duty, on a journey:
    - (i) to a place for the purpose of performing duty; or
    - (ii) away from a place of duty upon having ceased to perform duty; or
  - (d) in the case of an injury—it resulted from an accident that would not have occurred:
    - (i) but for the rendering of that service by the person; or
    - (ii) but for changes in the person’s environment consequent upon his or her having rendered that service; or
  - (e) in the case of a disease—it would not have occurred:
    - (i) but for the rendering of that service by the person; or
    - (ii) but for changes in the person’s environment consequent upon his or her having rendered that service; or
  - (f) in the case of a death of a person—it was due to an accident that would not have occurred, or to a disease that would not have been contracted:
    - (i) but for the rendering of that service by the person; or
    - (ii) but for changes in the person’s environment consequent upon his or her having rendered that service.

*Definition of relates to defence service for aggravations and material contributions*

- (2) For the purposes of this Act, an aggravation of, or a material contribution to, an injury or disease, or a sign or symptom of an

injury or disease, *relates to defence service* rendered by a person if:

- (a) it resulted from an occurrence that happened while the person was rendering that service; or
- (b) it arose out of, or was attributable to, that service; or
- (c) it resulted from an accident that occurred while the person was travelling, while rendering that service but otherwise than in the course of duty, on a journey:
  - (i) to a place for the purpose of performing duty; or
  - (ii) away from a place of duty upon having ceased to perform duty; or
- (d) in the case of an aggravation of, or a material contribution to, an injury, or a sign or symptom of an injury—it resulted from an accident that would not have occurred:
  - (i) but for the rendering of that service by the person; or
  - (ii) but for changes in the person’s environment consequent upon his or her having rendered that service; or
- (e) in the case of an aggravation of, or a material contribution to, a disease, or a sign or symptom of a disease—it would not have occurred:
  - (i) but for the rendering of that service by the person; or
  - (ii) but for changes in the person’s environment consequent upon his or her having rendered that service.

## **6 Defence service relating to duties before the commencement date**

To avoid doubt, defence service may be rendered on or after the commencement date even if the service relates to the performance of a duty that ended before that date.

Example: A member finishes duty just before the commencement date and is injured in an accident while travelling home just after the commencement date. The member is covered by the MRCA.

## **Part 2—Application of the MRCA to certain injuries, diseases, deaths, losses and damage**

### **7 Application of the MRCA to certain injuries, diseases and deaths**

- (1) The MRCA applies to a person's injury, disease or death if:
- (a) the injury is sustained, the disease is contracted, or the death occurs, on or after the commencement date; and
  - (b) the injury, disease or death either:
    - (i) relates to defence service rendered by the person on or after that date; or
    - (ii) relates to defence service rendered by the person before, and on or after, that date.

Note: After the commencement date, benefits stop being provided under the VEA and the SRCA for such injuries, diseases and deaths (see section 9A of the VEA and section 4AA of the SRCA).

- (2) The MRCA applies to an aggravation of, or a material contribution to, a person's injury or disease, or a sign or symptom of a person's injury or disease, if:
- (a) the aggravation or material contribution occurs on or after the commencement date (even if the original injury is sustained, or the original disease is contracted, before that date); and
  - (b) the aggravation or material contribution either:
    - (i) relates to defence service rendered by the person on or after that date; or
    - (ii) relates to defence service rendered by the person before, and on or after, that date.

Note 1: After the commencement date, benefits stop being provided under the VEA and the SRCA for such aggravations and material contributions (see section 9A of the VEA and section 4AA of the SRCA).

Note 2: The MRCA does not apply to an aggravation or material contribution if a person instead applies under section 15 of the VEA for an increase in a pension because of the aggravation or material contribution (see section 9 of this Act).

- (3) To avoid doubt, defence service is rendered before, and on or after, the commencement date whether the service spans the commencement date or is rendered during separate periods before and on or after that date.

## **8 Application of the MRCA to injuries, diseases and deaths etc. caused by certain treatment**

- (1) The MRCA applies to an injury, disease or death if:
- (a) the injury is sustained, the disease is contracted, or the death occurs, on or after the commencement date; and
  - (b) the injury, disease or death occurs as an unintended consequence of treatment of a kind mentioned in section 29 of the MRCA; and
  - (c) the treatment is provided either:
    - (i) on or after the commencement date; or
    - (ii) before, and on or after, the commencement date.

Note: After the commencement date, benefits stop being provided under the VEA and the SRCA for such injuries, diseases and deaths (see section 9A of the VEA and subsection 6A(2A) of the SRCA).

- (2) The MRCA applies to an aggravation of, or a material contribution to, an injury or disease, or a sign or symptom of an injury or disease, if:
- (a) the aggravation or material contribution occurs on or after the commencement date (even if the original injury is sustained, or the original disease is contracted, before that date); and
  - (b) the aggravation or material contribution occurs as an unintended consequence of treatment of a kind mentioned in section 29 of the MRCA; and
  - (c) the treatment is provided either:
    - (i) on or after the commencement date; or
    - (ii) before, and on or after, the commencement date.

Note 1: After the commencement date, benefits stop being provided under the VEA and the SRCA for such aggravations and material contributions (see section 9A of the VEA and subsection 6A(2A) of the SRCA).

Note 2: The MRCA does not apply to an aggravation or material contribution if a person instead applies under section 15 of the VEA for an increase

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in a pension because of the aggravation or material contribution (see section 9 of this Act).

- (3) To avoid doubt, treatment is provided before, and on or after, the commencement date whether the treatment spans the commencement date or is provided during separate periods before and on or after that date.

### **9 MRCA does not apply to certain aggravations of, or material contributions to, VEA injuries and diseases**

The MRCA does not apply to a person's aggravation or material contribution if:

- (a) the person is given a notice under section 12 of this Act; and
- (b) after receiving the notice, the person applies under section 15 of the VEA (or continues with an application already made under that section) for an increase in a rate of a pension on the ground that the person's incapacity has increased because of the aggravation or material contribution.

Note: Under section 12, a person who has a war-caused or defence-caused injury or disease that is aggravated etc. by defence service after the commencement date can choose whether the MRCA or the VEA will apply to the aggravated injury or disease.

### **10 Subsection 7(4) of the SRCA does not apply**

Subsection 7(4) of the SRCA does not apply in determining the day on which a disease is contracted, or aggravated or materially contributed to, for the purposes of paragraph 7(1)(a) or (2)(a) or 8(1)(a) or (2)(a).

Note: The Commission must determine the day on which a disease is contracted, or aggravated or materially contributed to, rather than using the day that is deemed by subsection 7(4) of the SRCA.

### **11 Application of the MRCA to loss or damage to medical aids**

The MRCA applies to the loss of, or damage to, a member's medical aid if the loss or damage results from an occurrence that happens on or after the commencement date.

Note: After the commencement date, benefits stop being provided under the SRCA for such loss and damage (see section 15A of the SRCA).

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## **Part 3—Persons who have both VEA/SRCA and MRCA injuries and diseases**

### **12 Choice between the MRCA and the VEA for an aggravation of a VEA injury or disease**

- (1) This section applies to a person if:
  - (a) the person is suffering from a war-caused or defence-caused injury or disease (within the meaning of the VEA); and
  - (b) after the commencement date:
    - (i) a claim is made under section 319 of the MRCA in respect of an aggravation of, or a material contribution to, the war-caused or defence-caused injury or disease (the *aggravated injury or disease*); or
    - (ii) the person applies under section 15 of the VEA for an increase in a rate of pension on the ground that the incapacity of the person has increased because of an aggravation of, or a material contribution to, the war-caused or defence-caused injury or disease (the *aggravated injury or disease*), being an aggravation or material contribution to which subsection 7(2) or 8(2) of this Act applies; and
  - (c) a notice has not previously been given to the person under this section in respect of the aggravated injury or disease.
- (2) The Commission must give the person a written notice as soon as practicable advising the person that he or she must choose between:
  - (a) making a claim under section 319 of the MRCA for acceptance of liability for the aggravated injury or disease; or
  - (b) applying under section 15 of the VEA for an increase in a rate of pension in respect of the aggravated injury or disease.

Note: A person makes the choice by making a claim or applying, or continuing with a claim or application, under one of those sections.

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**13 Bringing across impairment points from a VEA or SRCA injury or disease**

- (1) This section applies if:
  - (a) a claim is made under section 319 of the MRCA in respect of a person who also has:
    - (i) a separate war-caused or defence-caused injury or disease (within the meaning of the VEA) (the *old injury or disease*); or
    - (ii) a separate injury or disease (within the meaning of the SRCA) (the *old injury or disease*); or
  - (b) a claim is made under section 319 of the MRCA in respect of an aggravation of, or a material contribution to:
    - (i) a war-caused or defence-caused injury or disease of a person (within the meaning of the VEA) (the *old injury or disease*); or
    - (ii) an injury or disease of a person (within the meaning of the SRCA) (the *old injury or disease*);or a sign or symptom of such an injury or disease.
- (2) The Commission must determine the impairment points constituted by the impairment suffered by the person from the old injury or disease using the guide under section 67 of the MRCA.
- (3) For the purposes of determining under the MRCA the number of impairment points constituted by an impairment suffered by a person, the Commission must count the impairment points determined for the old injury or disease under subsection (2) towards the person's total impairment points.
- (4) The Commission may include in the guide under section 67 of the MRCA one or more methods of working out the amount of compensation a person is entitled to under Part 2 of Chapter 4 of the MRCA (permanent impairment) for the service injury or disease. A method may (but does not have to) include a method of offsetting payments made to the person under the VEA or the SRCA in respect of the old injury or disease.

Note: The regulations may also include a method of converting lump sum amounts into weekly amounts for the purposes of offsetting (see paragraph 24(3)(b)).

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#### **14 Offsetting VEA and SRCA payments against a Special Rate Disability Pension**

- (1) For the purposes of section 204 of the MRCA, the maximum weekly amount of a Special Rate Disability Pension that could be payable to a person, at a time, must also be reduced by one half of the fortnightly rate at which any pension because of paragraph 13(1)(b) or 70(1)(b) of the VEA is payable to the person at that time.
- (2) For the purposes of section 204 of the MRCA, the maximum weekly amount of a Special Rate Disability Pension that could be payable to a person must also be reduced by the sum of any previous payments of a lump sum to the person under section 24, 25 or 27 of the SRCA, converted to a weekly amount in accordance with regulations made for the purposes of paragraph 24(3)(b) of this Act.

## Part 4—Other transitional provisions

### 15 No dual entitlement for similar benefits

*No dual entitlement for injuries and diseases*

- (1) A person who, at a particular time, would otherwise be entitled to:
- (a) a benefit under a VEA or SRCA provision mentioned in column 1 of the table; and
  - (b) a benefit under an MRCA provision mentioned in column 2;
- is instead only entitled to the benefit under the MRCA provision at that time.

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**Equivalent entitlements for injuries and diseases under the VEA or SRCA and the MRCA**

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<b>Item</b>	<b>Column 1 VEA or SRCA provision</b>	<b>Column 2 MRCA provision</b>
1	Subsection 13(4) of the VEA	Section 253 of the MRCA
2	Section 98 of the VEA	Section 217 of the MRCA
3	Section 105 of the VEA	Section 212 of the MRCA
4	Section 107 of the VEA	Part 3, 4 or 6 of Chapter 4 of the MRCA
5	Section 108 of the VEA	Part 3, 4 or 6 of Chapter 4 of the MRCA
6	Part VII of the VEA	Section 258 of the MRCA
7	Section 19, 20, 21, 21A or 31 of the SRCA	Part 3, 4 or 6 of Chapter 4 of the MRCA
8	Section 22 of the SRCA	Section 127 of the MRCA
9	Subsection 29(1) of the SRCA	Section 214 of the MRCA
10	Subsection 29(3) of the SRCA	Section 217 of the MRCA

Note: Payments of Commonwealth superannuation that are being offset under section 20, 21 or 21A of the SRCA might instead be offset under Part 4 or 6 of Chapter 4 of the MRCA (see section 16 of this Act).

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*No dual entitlement for travel expenses for treatment*

- (2) A person who would otherwise be entitled to:
- (a) a benefit under a VEA or SRCA provision mentioned in column 1 of the table in respect of a journey or accommodation; and
  - (b) a benefit under an MRCA provision mentioned in column 2 in respect of the journey or accommodation;
- is instead only entitled to the benefit under the MRCA provision in respect of the journey or accommodation.

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**Equivalent entitlements for travel expenses for treatment under the VEA or SRCA and the MRCA**

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<b>Item</b>	<b>Column 1 VEA or SRCA provision</b>	<b>Column 2 MRCA provision</b>
1	Subsection 110(1) of the VEA	Subsection 290(1) or 291(1) of the MRCA
2	Subsection 110(2) of the VEA	Subsection 290(2) or 291(2) of the MRCA
3	Subsection 16(6) of the SRCA	Division 2 of Part 4 of Chapter 6 of the MRCA
4	Subsection 16(9) of the SRCA	Section 297 of the MRCA

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*No dual entitlement for treatment expenses*

- (3) A person who would otherwise be entitled to compensation under subsection 16(1) of the SRCA, and Part 2 of Chapter 6 of the MRCA, in respect of the same treatment is instead only entitled to the compensation under the MRCA for the treatment.

*No dual entitlement for modifications of aids and appliances etc.*

- (4) A person who would otherwise be entitled to:
- (a) a benefit under an SRCA provision mentioned in column 1 of the table in respect of a modification, alteration, repair, replacement or provision of a thing; and

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(b) a benefit under an MRCA provision mentioned in column 2 in respect of the modification, alteration, repair, replacement or provision;  
is instead only entitled to the benefit under the MRCA provision in respect of the modification, alteration, repair, replacement or provision.

**Equivalent entitlements for modifications of aids and appliances etc. under the SRCA and the MRCA**

<b>Item</b>	<b>Column 1 SRCA provision</b>	<b>Column 2 MRCA provision</b>
1	Paragraph 39(1)(c), (d) or (e) of the SRCA	Section 56 of the MRCA
2	Paragraph 39(1)(d) or (e) of the SRCA	Section 212 of the MRCA

*No dual entitlement for deaths*

(5) A person who would otherwise be entitled to:  
(a) a benefit under a VEA or SRCA provision mentioned in column 1 of the table in respect of a person's death; and  
(b) a benefit under an MRCA provision mentioned in column 2 in respect of the death;  
is instead only entitled to the benefit under the MRCA provision in respect of the death.

**Equivalent entitlements for deaths under the VEA or SRCA and the MRCA**

<b>Item</b>	<b>Column 1 VEA or SRCA provision</b>	<b>Column 2 MRCA provision</b>
1	Section 98B of the VEA	Section 266 of the MRCA
2	Subsection 99(1) of the VEA	Section 266 of the MRCA
3	Subsection 99(2) of the VEA	Section 266 of the MRCA
4	Paragraph 99(4)(b) of the VEA	Section 297 of the MRCA
5	Subsection 16(9) of the SRCA	Section 297 of the MRCA
6	Subsection 17(3) of the SRCA	Parts 1 to 4 of Chapter 5 of the MRCA

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**Equivalent entitlements for deaths under the VEA or SRCA and the MRCA**

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<b>Item</b>	<b>Column 1 VEA or SRCA provision</b>	<b>Column 2 MRCA provision</b>
7	Subsection 17(4) of the SRCA	Part 4 of Chapter 5 of the MRCA
8	Subsection 17(5) of the SRCA	Section 253 of the MRCA
9	Section 18 of the SRCA	Section 266 of the MRCA

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- (6) To avoid doubt, if this section stops a person from being entitled, under a provision of an Act, to a benefit at a time or in respect of a thing, then compensation, an allowance, a pension or any other benefit is not payable, or to be granted, under the provision at that time or in respect of that thing to or for the benefit of the person.

## **16 Offsetting amounts of Commonwealth superannuation under the MRCA**

- (1) This section applies if:
- (a) item 7 of the table in subsection 15(1) stops a person from being entitled to compensation under section 20, 21 or 21A of the SRCA (compensation for incapacity if superannuation is paid); and
  - (b) apart from this section, the person would be entitled to compensation of an amount:
    - (i) that is worked out under Subdivision C of Division 2 of Part 4 of Chapter 4 of the MRCA (compensation for incapacity if no superannuation is paid); or
    - (ii) that would be worked out under that Subdivision if the person had not chosen to receive a Special Rate Disability Pension.
- (2) The superannuation scheme (within the meaning of the SRCA) is taken to be a Commonwealth superannuation scheme (within the meaning of the MRCA) for the purposes of the MRCA.

Note: This means that amounts of superannuation that are being offset under the SRCA are offset under the MRCA.

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- (3) For the purposes of the MRCA, the amounts mentioned in column 1 of the table are taken to be the same as the amounts under the SRCA mentioned in column 2.

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**Transferring superannuation amounts**

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<b>Item</b>	<b>Column 1 This MRCA amount...</b>	<b>Column 2 is taken to be the same as this SRCA amount...</b>
1	the superannuation pension amount mentioned in section 134 of the MRCA	the superannuation amount (in relation to a pension) mentioned in section 20 of the SRCA
2	the superannuation lump sum amount mentioned in section 135 of the MRCA	the superannuation amount (in relation to a lump sum benefit) mentioned in section 21 of the SRCA
3	the superannuation pension amount mentioned in section 136 of the MRCA	the weekly superannuation amount mentioned in section 21A of the SRCA
4	the superannuation lump sum amount mentioned in section 136 of the MRCA	the superannuation lump sum benefit mentioned in section 21A of the SRCA

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**17 Amount of compensation where a person has redeemed an amount under the SRCA**

- (1) This section sets out the amount of compensation for a week that a person who has previously redeemed an amount under section 30 of the SRCA is entitled to under Part 4 of Chapter 4 of the MRCA.
- (2) The amount is worked out using the following formula:

$$\text{Subdivision C or D compensation amount} - \text{Weekly amount}$$

where:

***Subdivision C or D compensation amount*** for a person for a week means the amount of compensation that person would have been paid for the week if Subdivision C or D of Division 2 of Part 4 of Chapter 4 of the MRCA had applied.

*weekly amount* means the amount for a week that was redeemed at the date of the determination under section 30 of the SRCA.

### **18 Rehabilitation under the MRCA for persons undergoing rehabilitation under the VEA or SRCA**

- (1) This section applies if:
  - (a) a person is undertaking a rehabilitation program under the VEA or the SRCA (the *old program*); and
  - (b) the rehabilitation authority for the person determines that the person is to undertake a rehabilitation program under the MRCA (the *new program*).
- (2) The person's rehabilitation authority may determine that the old program stops being provided under the VEA or the SRCA.
- (3) If the authority does so, the approved program provider may (but does not have to) incorporate all or part of the old program in designing or providing the new program.
- (4) If the approved program provider incorporates all or part of the old program, then the Commonwealth must pay all unpaid costs incurred in respect of the old program.

### **19 Bringing across current Statements of Principles determined under section 196B of the VEA**

- (1) For the purposes of the MRCA, a Statement of Principles that is in force under subsection 196B(2), (3), (11) or (12) of the VEA immediately before the commencement date is taken to have been made on the commencement date under that subsection for the purposes of the MRCA.

Note: The Statements of Principles continue in force for the purposes of the VEA in respect of injuries and diseases etc. to which that Act applies.

*Translating references in a subsection 196B(2) or (11) Statement of Principles*

- (2) For a Statement of Principles mentioned in subsection (1) that is made under subsection 196B(2) or (11), references in column 1 of

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the table have effect for the purposes of the MRCA as if they were the references in column 2.

<b>Translating references in a subsection 196B(2) or (11) Statement of Principles</b>		
<b>Item</b>	<b>Column 1 A reference in the Statement of Principles to this...</b>	<b>Column 2 is taken to include a reference to this...</b>
1	operational service, peacekeeping service or hazardous service as defined in the VEA	warlike service or non-warlike service as defined in the MRCA
2	paragraph 8(1)(e), 9(1)(e), 70(5)(d) or 70(5A)(d) of the VEA	paragraphs 27(d) and 28(1)(d) of the MRCA
3	section 120A of the VEA	section 338 of the MRCA

*Translating references in a subsection 196B(3) or (12) Statement of Principles*

- (3) For a Statement of Principles mentioned in subsection (1) that is made under subsection 196B(3) or (12), references in column 1 of the table have effect for the purposes of the MRCA as if they were the references in column 2.

<b>Translating references in a subsection 196B(3) or (12) Statement of Principles</b>		
<b>Item</b>	<b>Column 1 A reference in the Statement of Principles to this...</b>	<b>Column 2 is taken to include a reference to this...</b>
1	eligible war service (other than operational service) or defence service (other than hazardous service) as defined in the VEA	peacetime service as defined in the MRCA
2	paragraph 8(1)(e), 9(1)(e) or 70(5)(d) of the VEA	paragraphs 27(d) and 28(1)(d) of the MRCA
3	section 120B of the VEA	section 339 of the MRCA

## **20 Bringing across the current Veterans' Children Education Scheme**

- (1) For the purposes of the MRCA, the scheme in force under section 117 of the VEA immediately before the commencement date is taken to have been determined on that date under section 258 of the MRCA.

Note: The scheme continues in force for the purposes of the VEA in respect of eligible children to whom that Act applies.

- (2) A reference in the scheme to an eligible child as defined in the VEA is taken to be a reference to an eligible young person mentioned in section 258 of the MRCA.
- (3) A reference in the scheme to the Repatriation Commission is taken to be a reference to the Military Rehabilitation and Compensation Commission.

## **21 Bringing across the current Treatment Principles etc.**

For the purposes of the MRCA, the following documents that are in force under the VEA immediately before the commencement date are taken to have been determined on that date under section 286 of the MRCA:

- (a) the Treatment Principles in force under section 90 of the VEA;
- (b) the Repatriation Private Patient Principles in force under section 90A of the VEA;
- (c) the scheme for providing pharmaceutical benefits in force under section 91 of the VEA.

Note: The documents continue in force for the purposes of the VEA in respect of treatment to which that Act applies.

## **22 Bringing across declared member declarations**

For the purposes of the MRCA, a declaration in force under subsection 5(6A) of the SRCA immediately before the commencement date is taken to have been made on that date under section 8 of the MRCA.

## Section T23T

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Note: A declaration under subsection 5(6A) continues in force for the purposes of the SRCA in respect of injuries and diseases etc. to which that Act applies.

### **23 Decisions reviewable under Chapter 8 of the MRCA**

A decision made under or in respect of this Act (other than a decision made under or in respect of a provision being inserted or amended by Schedule 1 or 2 to this Act) is taken to be an original determination for the purposes of Chapter 8 of the MRCA.

Note: This means that the review provisions in Chapter 8 of the MRCA apply to a decision made under or in respect of this Act. (The review provisions under or in respect of the VEA or the SRCA apply to a decision made under a provision being inserted or amended by Schedule 1 or 2 to this Act respectively.)

### **24 Regulations may provide for transitional etc. issues**

- (1) The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) arising out of the enactment of the MRCA or this Act.
- (2) Despite subsection 48(2) of the *Acts Interpretation Act 1901*, regulations made under this section within 1 year after commencement of this section may commence on a day earlier than the day on which they are made, but not earlier than the commencement of this section.
- (3) Without limiting subsection (1), the regulations may provide:
  - (a) that persons who are entitled to compensation under the MRCA cease to be entitled to a similar benefit under the VEA or the SRCA; and
  - (b) a method of converting a lump sum amount into weekly amounts for the purpose of working out an amount of compensation payable for a service injury or disease under Parts 2 and 6 of Chapter 4 of the MRCA.

## **Schedule 1—Amendment of the Veterans' Entitlements Act 1986**

### **Part 1—Main amendments relating to transitional and application issues**

#### **1 Section 5 (index of definitions)**

Insert in their appropriate alphabetical positions, determined on a letter-by-letter basis:

<u>CTPA</u>	<u>5Q(1)</u>
<u>Military Rehabilitation and Compensation Commission</u>	<u>5Q(1)</u>
<u>MRCA</u>	<u>5Q(1)</u>
<u>MRCA commencement date</u>	<u>5Q(1)</u>
relates to service	5Q(1B) and (1C)

#### **2 After paragraph 5H(8)(b)**

Insert:

- (ba) a payment of an instalment of an allowance under section 118A, 118F or 118Q (pharmaceutical and telephone allowance);

#### **3 Paragraph 5H(8)(zb)**

Omit “to a veteran”.

#### **4 At the end of subsection 5H(8)**

Add:

- ; (zo) a payment under section 47, 56, 81, 205, 214, 217, 226, 239 or 266 of the MRCA to reimburse costs incurred in respect of the provision of goods or services (other than a payment to the person who provided the goods or service);
- (zp) a payment (either as a weekly amount or a lump sum) under section 68, 71, 75 or 80 of the MRCA (permanent impairment);

- (zq) a payment of a Special Rate Disability Pension under Part 6 of Chapter 4 of the MRCA;
- (zr) if subsection 204(5) of the MRCA applies to a person—an amount per fortnight, worked out under section 5I of this Act, that would, apart from this paragraph, be income of the person;
  - Note: Subsection 204(5) of the MRCA reduces a Special Rate Disability Pension by reference to amounts of Commonwealth superannuation that the person has received or is receiving.
- (zs) a payment under the Motor Vehicle Compensation Scheme under section 212 of the MRCA;
- (zt) a payment of an allowance under section 221, 245 or 300 of the MRCA (telephone and pharmaceutical allowance);
- (zu) a payment of a lump sum mentioned in paragraph 234(1)(a) or subparagraph 234(1)(b)(i), or of a weekly amount mentioned in subparagraph 234(1)(b)(ii), of the MRCA (wholly dependent partner payment);
- (zv) a payment under section 242 or 255 of the MRCA (continuing permanent impairment and incapacity etc. payments);
- (zw) a payment under section 251 or 253 of the MRCA (eligible young person payment);
- (zx) a payment under the scheme set up under section 258 of the MRCA (education scheme for eligible young persons);
- (zy) a payment under section 262 of the MRCA (compensation for other dependants);
- (zz) a payment under Part 2 of Chapter 6, or Division 2 or 3 of Part 4 of Chapter 6, or subsection 328(4), of the MRCA (compensation for treatment etc.);
- (zza) a payment under section 424 of the MRCA (special assistance).

Note: However:

- (a) some of the amounts referred to in paragraphs (8)(zp), (zq), (zr) and (zu) are counted for the purposes of the hardship rules (see subsection 52Z(3A)); and
- (b) the amounts referred to in paragraph (8)(zp) are counted for the purposes of rent assistance (see Module C of the Rate Calculator).

## **5 After section 5H**

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Insert:

### **5I Special Rate Disability Pension reduction amount**

For the purposes of paragraphs 5H(8)(zr) and 5Z(3A)(i), the amount per fortnight is:

$$\frac{\text{Special Rate Disability Pension}}{\text{reduction amount}} \times \frac{10}{6}$$

where:

*Special Rate Disability Pension reduction amount* means the amount by which the Special Rate Disability Pension (as reduced under subsection 204(3)) is reduced under subsection 204(6) of the MRCA (but not below zero).

### **6 Subsection 5Q(1)**

Insert:

*CTPA* means the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004*.

### **7 Subsection 5Q(1)**

Insert:

*Military Rehabilitation and Compensation Commission* means the Military Rehabilitation and Compensation Commission established under section 361 of the MRCA.

### **8 Subsection 5Q(1)**

Insert:

*MRCA* means the *Military Rehabilitation and Compensation Act 2004*.

### **9 Subsection 5Q(1)**

Insert:

*MRCA commencement date* means the date on which section 3 of the MRCA commences.

### **10 After subsection 5Q(1A)**

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Insert:

*Definition of **relates to service** for injuries, diseases and deaths*

- (1B) For the purposes of this Act, an injury, disease or death **relates to service** rendered by a person if:
- (a) it resulted from an occurrence that happened while the person was rendering that service; or
  - (b) it arose out of, or was attributable to, that service; or
  - (c) it resulted from an accident that occurred while the person was travelling, while rendering that service but otherwise than in the course of duty, on a journey:
    - (i) to a place for the purpose of performing duty; or
    - (ii) away from a place of duty upon having ceased to perform duty; or
  - (d) in the case of an injury—it resulted from an accident that would not have occurred:
    - (i) but for the rendering of that service by the person; or
    - (ii) but for changes in the person's environment consequent upon his or her having rendered that service; or
  - (e) in the case of a disease—it would not have occurred:
    - (i) but for the rendering of that service by the person; or
    - (ii) but for changes in the person's environment consequent upon his or her having rendered that service; or
  - (f) in the case of a death of a person—it was due to an accident that would not have occurred, or to a disease that would not have been contracted:
    - (i) but for the rendering of that service by the person; or
    - (ii) but for changes in the person's environment consequent upon his or her having rendered that service.

*Definition of **relates to service** for aggravations and material contributions*

- (1C) For the purposes of this Act, an aggravation of, or a material contribution to, an injury or disease **relates to service** rendered by a person if:
- (a) it resulted from an occurrence that happened while the person was rendering that service; or
  - (b) it arose out of, or was attributable to, that service; or
-

- (c) it resulted from an accident that occurred while the person was travelling, while rendering that service but otherwise than in the course of duty, on a journey:
  - (i) to a place for the purpose of performing duty; or
  - (ii) away from a place of duty upon having ceased to perform duty; or
- (d) in the case of an aggravation of, or a material contribution to, an injury—it resulted from an accident that would not have occurred:
  - (i) but for the rendering of that service by the person; or
  - (ii) but for changes in the person's environment consequent upon his or her having rendered that service; or
- (e) in the case of an aggravation of, or a material contribution to, a disease—it would not have occurred:
  - (i) but for the rendering of that service by the person; or
  - (ii) but for changes in the person's environment consequent upon his or her having rendered that service.

### **11 Subsections 8(1) and 9(1)**

Omit "Subject to this section," substitute "Subject to this section and section 9A,".

### **12 After section 9**

Insert:

### **9A Most war-caused injuries, diseases and deaths no longer covered by this Act**

- (1) A veteran's injury, disease or death is taken not to be war-caused if:
  - (a) the injury is sustained, the disease is contracted, or the death occurs, on or after the MRCA commencement date; and
  - (b) the injury, disease or death either:
    - (i) relates to service rendered by the person on or after that date; or
    - (ii) relates to service rendered by the person before, and on or after, that date.

Note: After the MRCA commencement date, compensation is provided under the MRCA (instead of this Act) for such injuries, diseases and deaths.

- (2) An injury or disease of a veteran that has been aggravated, or materially contributed to, by service is taken not to be war-caused if:
- (a) the aggravation or material contribution occurs on or after the commencement date (even if the original injury is sustained, or the original disease is contracted, before that date); and
  - (b) the aggravation or material contribution either:
    - (i) relates to service rendered by the person on or after that date; or
    - (ii) relates to service rendered by the person before, and on or after, that date; and
  - (c) if section 12 of the CTPA applies to the veteran—after receiving a notice under that section, the veteran makes a claim under section 319 of the MRCA (or continues with a claim already made under that section) in respect of the aggravated injury or disease.
- Note: After the MRCA commencement date, compensation is provided under the MRCA (instead of this Act) for such aggravations and material contributions.
- (3) To avoid doubt, service is rendered before, and on or after, the MRCA commencement date whether the service spans the commencement date or is rendered during separate periods before and on or after that date.

### **13 Paragraph 13(1)(b)**

Omit “has become incapacitated”, substitute “is incapacitated”.

### **14 After subsection 13(2A)**

Insert:

*Subsection (2A) ceases to apply*

- (2AA) The Commonwealth is not liable, under subsection (2A), to pay a pension to a dependant of a veteran in respect of the veteran's death if the death occurs on or after the MRCA commencement date.

### **15 After subsection 13(6)**

Insert:

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*Subsection (6) ceases to apply*

- (6A) The Commonwealth is not liable, under subsection (6), to pay a pension in respect of a person's death, or the incapacity of a person, if:
- (a) either:
    - (i) the occurrence resulting in the death or incapacity happened on or after the MRCA commencement date; or
    - (ii) the disease was contracted on or after the MRCA commencement date; and
  - (b) either:
    - (i) the occurrence or disease relates to service rendered by the person on or after that date; or
    - (ii) the occurrence or disease relates to service rendered by the person before, and on or after, that date (whether the service spans the commencement date or is rendered during separate periods before and on or after that date).

**16 After subsection 15(1)**

Insert:

- (1A) However, a veteran who:
- (a) receives a notice under section 12 of the CTPA in respect of an aggravation of, or a material contribution to, an injury or disease; and
  - (b) after receiving the notice, makes a claim under section 319 of the MRCA (or continues with a claim already made under that section) in respect of the aggravation or material contribution;
- is not entitled to apply for an increase in the rate of the pension on the ground that the veteran's incapacity has increased because of that aggravation or material contribution.

Note: Under section 12 of the CTPA, a veteran who has a war-caused or defence-caused injury or disease that is aggravated or materially contributed to by service after the MRCA commencement date can choose whether the MRCA or the VEA will apply to the aggravated injury or disease.

**16A Subsection 23(5)**

Repeal the subsection, substitute:

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- (5) The rate at which pension is payable to a veteran to whom section 115D applies (veterans working under rehabilitation scheme) is the reduced amount worked out using the following formula:

$$\text{General rate} + \left( 14 \times \frac{\text{Reduced daily pension amount worked out under section 115D}}{\text{}} \right)$$

### **16B Subsection 24(5)**

Repeal the subsection, substitute:

- (5) The rate at which pension is payable to a veteran to whom section 115D applies (veterans working under rehabilitation scheme) is the reduced amount worked out using the following formula:

$$\text{General rate} + \left( 14 \times \frac{\text{Reduced daily pension amount worked out under section 115D}}{\text{}} \right)$$

### **16C Application of items 16A and 16B**

The amendments made by items 16A and 16B apply from the pension period that begins after those items commence.

### **17 Subsection 38(1D)**

Repeal the subsection, substitute:

- (1D) Subsection (1B) does not apply to a person whose partner:
- (a) is a veteran to whom section 24 applies; or
  - (b) is receiving, or eligible to receive, a Special Rate Disability Pension under Part 6 of Chapter 4 of the MRCA.

Note: A person is still eligible to receive a Special Rate Disability Pension even if the amount of the pension is totally offset under section 204 of the MRCA.

### **18 After paragraph 52(1)(m)**

Insert:

- (ma) if the person is provided with a motor vehicle under the Motor Vehicle Compensation Scheme under section 212 of the MRCA—the value of that motor vehicle;

### **19 Subsection 52Z(3A)**

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After “following payments”, insert “and amounts”.

## **20 At the end of subsection 52Z(3A)**

Add:

- ; (g) a payment of a weekly amount under section 68, 71 or 75 of the MRCA (permanent impairment);
- (h) a payment of a Special Rate Disability Pension under Part 6 of Chapter 4 of the MRCA;
- (i) if subsection 204(5) of the MRCA applies to a person—an amount per fortnight worked out under section 5I of this Act;
- (j) a payment of a weekly amount mentioned in subparagraph 234(1)(b)(ii) of the MRCA (wholly dependent partner payment).

Note: Subsection 204(5) of the MRCA reduces a Special Rate Disability Pension by reference to amounts of Commonwealth superannuation that the person has received or is receiving.

## **21 Subsection 52Z(3A) (note)**

Omit “payments referred to in paragraphs (a) to (e)”, substitute “payments and amounts referred to in this subsection”.

## **22 Paragraphs 70(1)(b), 70(5)(d) and 70(5A)(d)**

Omit “has become incapacitated”, substitute “is incapacitated”.

## **23 At the end of subsections 85(1) and (2)**

Add:

Note: A veteran might stop being eligible to be provided with treatment under this Part for an injury or disease if the veteran is entitled to treatment under the MRCA for the injury or disease (see sections 85A and 85B of this Act).

## **24 Paragraph 85(4)(b)**

Before “a veteran”, insert “before the MRCA commencement date”.

## **25 After subsection 85(7)**

Insert:

- (7A) A veteran is eligible to be provided with treatment under this Part for any injury or disease if:
  - (a) the veteran is receiving a service pension under Part III; and

- (b) an impairment suffered by the veteran from one or more service injuries or diseases constitutes at least 30 impairment points (within the meaning of the MRCA); and
- (c) the treatment is provided after both paragraphs (a) and (b) begin to apply to the veteran; and
- (d) the veteran is not already being provided with treatment for any injury or disease under Chapter 6 of the MRCA.

## **26 After section 85**

Insert:

### **85A Treatment under section 279 or 280 of the MRCA for aggravated injuries or diseases**

- (1) This section applies if:
  - (a) a person is entitled to treatment for an aggravated injury or disease (within the meaning of the MRCA) under section 279 or 280 of the MRCA; and
  - (b) apart from this section, the person would also be eligible to be provided with treatment for the original injury or disease under subsection 85(1) or (2) of this Act.

Note: A person who is eligible to be provided with treatment under this Act for any injury or disease would continue to be provided with that treatment.

- (2) The person is entitled to treatment only under section 279 or 280 of the MRCA, and not under subsection 85(1) or (2) of this Act, for the original injury or disease during the period in which the person is provided with treatment for the aggravated injury or disease.
- (3) During this period, the treatment for the original injury or disease is taken to be treatment to which a person is entitled under Part 3 of Chapter 6 of the MRCA for the purposes of section 289 of that Act (*compensable treatment*) but not for the purposes of section 273 of that Act (compensation for those entitled to treatment).

### **85B Treatment under section 279 or 280 of the MRCA if a person is entitled to treatment under the VEA for a separate injury or disease**

- (1) This section applies if:
-

- (a) a person is entitled to treatment for a service injury or disease (within the meaning of the MRCA) under section 279 or 280 of the MRCA; and
- (b) apart from this section, the person would also be eligible to be provided with treatment for a separate war-caused or defence-caused injury or disease under subsection 85(1) or (2) of this Act.

Note: A person who is eligible to be provided with treatment under this Act for any injury or disease would continue to be provided with that treatment.

- (2) The person is entitled to treatment only under section 279 or 280 of the MRCA, and not under subsection 85(1) or (2) of this Act, for the war-caused or defence-caused injury or disease during the period in which the person is provided with treatment for the service injury or disease.
- (3) During this period, the treatment for the war-caused or defence-caused injury or disease is taken to be treatment to which a person is entitled under Part 3 of Chapter 6 of the MRCA for the purposes of section 289 of that Act (*compensable treatment*) but not for the purposes of section 273 of that Act (compensation for those entitled to treatment).

## **27 Paragraph 86(2)(c)**

Repeal the paragraph, substitute:

- (c) a deceased veteran was, before the MRCA commencement date, a prisoner of war at a time when the veteran was on operational service;

## **28 After subsection 88A(1)**

Insert:

- (1A) However, the Commission may only make a determination under subsection (1) in respect of veterans who render service before the MRCA commencement date.

Note: The Military Rehabilitation and Compensation Commission can arrange for treatment of a specified kind for veterans who render service after the MRCA commencement date, or for dependants of such veterans (see section 424 of the MRCA).

## **29 Subsection 91(6)**

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Omit "approved scheme," substitute "approved scheme or a determination under paragraph 286(1)(c) of the MRCA,".

### **30 Subsection 91(8)**

Repeal the subsection, substitute:

- (8) If the Pharmaceutical Benefits Remuneration Tribunal submits the recommendations and a copy of the report to the Minister:
- (a) the Commission may prepare an instrument under subsection (2) varying the approved scheme; or
  - (b) the Military Rehabilitation and Compensation Commission may vary the determination under paragraph 286(1)(c) of the MRCA;
- in any manner the relevant Commission considers desirable as a result of its consideration of the recommendations and the report.

### **31 Paragraph 98B(1)(d)**

After "veteran had", insert ", before the MRCA commencement date,".

### **32 Paragraph 99(2)(c)**

After "veteran was", insert ", before the MRCA commencement date,".

### **33 Subsection 99(3)**

Repeal the subsection, substitute:

- (3) A funeral benefit must not be granted under paragraph (1)(e) unless:
- (a) if subparagraph (1)(e)(i) or (ii) applies—treatment is or was provided in the institution; and
  - (b) in any case—the treatment is or was arranged:
    - (i) by the Commission under Part V of this Act; or
    - (ii) by the Military Rehabilitation and Compensation Commission under Chapter 6 of the MRCA.

### **34 Subparagraph 99(4)(b)(iii)**

After "the Commission", insert "or the Military Rehabilitation and Compensation Commission".

### **35 After subsection 100(1)**

Insert:

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(1A) The Commission may grant a benefit towards the funeral expenses incurred in respect of a person's funeral if:

(a) either:

- (i) the person was a wholly dependent partner of a deceased member; or
- (ii) the person was both an eligible young person, and a dependant of a deceased member, immediately before the member's death; and

(b) the person died in indigent circumstances; and

(c) section 12 of the MRCA applies in respect of the member.

Note: Expressions used in this subsection have the same meanings as they have in the MRCA (see subsection (4)).

### **36 At the end of section 100**

Add:

- (4) Expressions used in subsection (1A) have the same meanings as they have in the MRCA.

### **37 Subsection 106(2)**

Repeal the subsection, substitute:

- (2) The Commission must not grant assistance or benefits to a person under subsection (1):
  - (a) in circumstances in which the person is eligible to be granted an allowance or assistance under another provision of this Act; or
  - (b) to a veteran, or a dependant of a veteran or a deceased veteran, if the veteran is only a veteran because of service rendered after the MRCA commencement date.

Note: The Military Rehabilitation and Compensation Commission can grant assistance or benefits to veterans who render service after the MRCA commencement date, or to dependants of such veterans (see section 424 of the MRCA).

### **38 Subsection 115B(1)**

After "classes of veterans", insert "who render service before the MRCA commencement date".

### **39 At the end of subsection 115B(1)**

Add:

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Note: A rehabilitation program that is being provided to a veteran under the scheme might cease if the veteran is also provided with rehabilitation under the MRCA (see section 18 of the CTPA).

### 39A Section 115D

Repeal the section, substitute:

#### 115D Reduced daily pension amount—pensions under Parts II and IV

*Application and overview of this section*

- (1) This section applies to a veteran who is engaged in remunerative work of more than 8 hours per week as a result of undertaking a vocational rehabilitation program under the Veterans' Vocational Rehabilitation Program. The section sets out how to work out the veteran's reduced daily pension amount. This amount is used to work out the rate of pension payable under sections 23 and 24.

Note: This section does not apply to certain veterans (see subsections (5) and (6)).

*Reduced daily pension amount during the initial period*

- (2) A veteran's **reduced daily pension amount** for a pension period that occurs within the initial period is worked out using the following formula:

$$\frac{\text{Veteran's daily above general rate}}{2} \times \left( 1 + \frac{\text{Veteran's taper amount}}{\text{Veteran's taper amount}} \right)$$

Note 1: Expressions used in this subsection are defined in subsection (7).

Note 2: The Commission can increase a reduced daily pension amount under section 115F.

*Reduced daily pension amount during the second period*

- (3) A veteran's **reduced daily pension amount** for a pension period that occurs within the second period is worked out using the following formula:

$$\frac{\text{Veteran's daily above general rate}}{2} \times \left( 1 + \frac{\text{Veteran's taper amount}}{\text{Veteran's taper amount}} \right) \times \left( 2 - \text{CPI amount} \right)$$

Note 1: Expressions used in this subsection are defined in subsection (7).

Note 2: The Commission can increase a reduced daily pension amount under section 115F.

*Reduced daily pension amount 5 years after the initial period*

- (4) A veteran's **reduced daily pension amount** for a pension period that occurs more than 5 years after the end of the initial period is nil.

Note: The Commission can increase a reduced daily pension amount under section 115F.

*Veteran who is unemployed for at least 2 weeks*

- (5) This section does not apply to a veteran who is unemployed for a continuous period of at least 2 weeks in respect of the pension periods within that 2 week period.

*Veteran who is blinded in both eyes*

- (6) This section does not apply to a veteran for a pension period if the veteran is receiving a pension for the period at the special rate because of subsection 24(3).

*Definitions*

- (7) In this section:

**CPI amount** means the amount worked out using the following formula:

$$\frac{20}{20 - \text{Number of CPI indexation days that have occurred since the beginning of the second period}}$$

**daily above general rate** for a veteran means the rate worked out using the following formula:

Veteran's pension rate  
on commencement – General rate

14

***initial period*** for a veteran means the period:

- (a) that begins on the day after the day the veteran first commenced remunerative work as a result of undertaking a vocational rehabilitation program; and
- (b) that ends immediately before the first CPI indexation day that occurs more than 2 years after that day.

***pension rate on commencement*** for a veteran means the rate of pension under this Act that was payable to the veteran on the day on which the veteran commenced his or her vocational rehabilitation program.

***second period*** means the period:

- (a) that begins immediately after the initial period; and
- (b) runs for 5 years.

***taper amount*** for a veteran means:

- (a) if the veteran's average weekly hours are 40 hours or more—nil; and
- (b) otherwise—the amount worked out using the following formula:

40 – Veteran's average weekly hours

32

### **39B Subsection 115E(1)**

Omit “the application of the pension reduction amount to the rate”, substitute “the application of section 115D in respect of the rate”.

Note: The heading to section 115E is replaced by the heading “**Application for increase in reduced daily pension amount**”.

### **39C Subsection 115E(2)**

Omit “to have the pension reduction amount reduced”, substitute “to have the reduced daily pension amount under section 115D increased”.

**39D Subsection 115F(2)**

Repeal the subsection, substitute:

- (2) If this section applies, the Commission may increase in writing the veteran's reduced daily pension amount under section 115D, for a past, present or future pension period, to the amount that the Commission is satisfied results in the work and pension income rate being equal to the unaffected pension rate.

**40 At the end of subsection 116A(1)**

Add "However, the persons must be the children of veterans who render service before the MRCA commencement date."

**41 Paragraph 118R(a)**

After "Social Security Act", insert "or the MRCA".

**42 After subparagraphs 118S(2)(d)(i) and (4)(c)(i)**

Insert:

- (ia) the MRCA; or

**43 Subsection 120(7)**

Repeal the subsection, substitute:

- (7) In this section:

*hazardous service* means service in the Defence Force, before the MRCA commencement date, that is of a kind determined in writing by the Minister administering section 1 of the *Defence Act 1903* to be hazardous service for the purposes of this section.

**44 Saving determinations of hazardous service**

A determination in force under subsection 120(7) of the VEA immediately before the commencement of item 43 of this Schedule continues in force after that time despite the amendment made by that item.

**45 After point SCH6-C4**

Insert:

*No rent assistance if person receiving a Special Rate Disability Pension*

SCH6-C4A No additional amount is to be added to a person's maximum basic rate under point SCH6-C3 if the person chooses to receive a Special Rate Disability Pension under section 200 of the MRCA.

**46 Paragraph SCH6-C7(c)**

Omit "a disability pension", substitute "either or both a disability pension and permanent impairment compensation".

**47 At the end of point SCH6-C7**

Add:

Note 1: For *disability pension* see section 5Q.

Note 2: For *permanent impairment compensation* see point SCH6-C16.

**48 Point SCH6-C12**

Omit "disability pension", substitute "either or both a disability pension and permanent impairment compensation".

**49 Point SCH6-C12 (note)**

Omit "Note", substitute "Note 1".

**50 At the end of point SCH6-C12**

Add:

Note 2: For *permanent impairment compensation* see point SCH6-C16.

**51 Point SCH6-C13**

After "disability pension" (first occurring), insert "and permanent impairment compensation".

Note: The heading to point SCH6-C13 is altered by inserting "*and permanent impairment compensation*" after "*disability pension*".

**52 Point SCH6-C13 (step 1 of the method statement)**

After "disability pension" (first occurring), insert "and permanent impairment compensation".

**53 Point SCH6-C13 (step 1 of the method statement)**

Omit "*disability pension income*", substitute "*disability income*".

**54 Point SCH6-C13 (step 1 of the method statement, after note 1)**

Insert:

Note 1A: For *permanent impairment compensation* see point SCH6-C16.

**55 Point SCH6-C13 (step 1 of the method statement, note 2)**

After “disability pension”, insert “and permanent impairment compensation”.

**56 Point SCH6-C13 (step 3 of the method statement)**

Omit “disability pension income”, substitute “disability income”.

**57 Point SCH6-C13 (step 4 of the method statement)**

Omit “disability pension income”, substitute “disability income”.

**58 Point SCH6-C13 (step 5 of the method statement)**

Omit “disability pension income” (first and second occurring), substitute “disability income”.

**59 Point SCH6-C13 (step 5 of the method statement)**

Omit “*disability pension income excess*”, substitute “*disability income excess*”.

**60 Point SCH6-C13 (step 6 of the method statement)**

Omit “disability pension income excess”, substitute “disability income excess”.

**61 Point SCH6-C14**

Omit “disability pension” (first occurring), substitute “either or both a disability pension and permanent impairment compensation”.

Note: The heading to point SCH6-C14 is altered by adding at the end “*and permanent impairment compensation*”.

**62 Point SCH6-C14**

After “disability pension” (second occurring), insert “and permanent impairment compensation”.

**63 Point SCH6-C14**

Omit “disability pension income”, substitute “disability income”.

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**64 Point SCH6-C14 (note)**

Omit "Note", substitute "Note 1".

**65 At the end of point SCH6-C14**

Add:

Note 2: For *permanent impairment compensation* see point SCH6-C16.

**66 At the end of Module C in Schedule 6**

Add:

SCH6-C16 In this Module:

*permanent impairment compensation* means:

- (a) any payment of a weekly amount under section 68, 71 or 75 of the MRCA (permanent impairment); and
- (b) if the person was paid a lump sum under section 68, 71 or 75 of the MRCA (permanent impairment)—any weekly amounts that the person would have been paid if the person had not chosen the lump sum.

## **Part 2—Amendments relating to income support supplement**

### **67 Section 5 (index of definitions)**

Insert in its appropriate alphabetical position, determined on a letter-by-letter basis:

wholly dependent partner                      5E(1)

### **68 Subsection 5E(1) (definition of *war widow*)**

Repeal the definition, substitute:

*war widow* means a woman:

- (a) who was the partner of, was legally married to, or was the wholly dependent partner of:
  - (i) a veteran; or
  - (ii) a person who was a member of the Forces for the purposes of Part II or IV of this Act; or
  - (iii) a person who was a member (within the meaning of the MRCA);immediately before the death of the veteran or person; and
- (b) who:
  - (i) is receiving a pension payable under Part II or IV of this Act at a rate determined under or by reference to subsection 30(1); or
  - (ii) has received a lump sum mentioned in paragraph 234(1)(b) of the MRCA, or is receiving a weekly amount mentioned in that paragraph; or
  - (iii) is receiving a pension that is payable under the law of a foreign country, and that is, in the opinion of the Commission, similar in character to a pension referred to in subparagraph (i).

### **69 Subsection 5E(1) (definition of *war widower*)**

Repeal the definition, substitute:

*war widower* means a man:

- (a) who was the partner of, was legally married to, or was the wholly dependent partner of:
  - (i) a veteran; or
  - (ii) a person who was a member of the Forces for the purposes of Part II or IV of this Act; or
  - (iii) a person who was a member (within the meaning of the MRCA);immediately before the death of the veteran or person; and
- (b) who:
  - (i) is receiving a pension payable under Part II or IV of this Act at a rate determined under or by reference to subsection 30(1); or
  - (ii) has received a lump sum mentioned in paragraph 234(1)(b) of the MRCA, or is receiving a weekly amount mentioned in that paragraph; or
  - (iii) is receiving a pension that is payable under the law of a foreign country, and that is, in the opinion of the Commission, similar in character to a pension referred to in subparagraph (i).

#### **70 Subsection 5E(1)**

Insert:

*wholly dependent partner* has the meaning given by the MRCA.

#### **71 Subsection 5H(1) (after paragraph (c) of the definition of *adjusted income*)**

Insert:

- (ca) if the person was paid a lump sum mentioned in subparagraph 234(1)(b)(i) of the MRCA (wholly dependent partner payment)—any weekly amounts that the person would have been paid if the person had chosen the weekly amount mentioned in subparagraph 234(1)(b)(ii) of that Act; and
- (cb) any payment of a weekly amount mentioned in subparagraph 234(1)(b)(ii) of the MRCA (wholly dependent partner payment); and
- (cc) if the person was paid a lump sum under section 68, 71 or 75 of the MRCA (permanent impairment)—any weekly amounts

- that the person would have been paid if the person had not chosen the lump sum; and
- (cd) any payment of a weekly amount under section 68, 71 or 75 of the MRCA (permanent impairment); and
  - (ce) any payment of a Special Rate Disability Pension under Part 6 of Chapter 4 of the MRCA; and

**72 Subsection 5Q(1) (definition of *War widow/war widower—pensioner*)**

Repeal the definition, substitute:

*war widow/war widower—pensioner* means:

- (a) a person who is receiving a pension under Part II or IV of this Act at a rate determined under or by reference to subsection 30(1); or
- (b) a person who has received a lump sum mentioned in paragraph 234(1)(b) of the MRCA, or who is receiving a weekly amount mentioned in that paragraph.

**73 Paragraph 45B(1)(c)**

Omit “or a social security benefit”, substitute “, a social security benefit or another income support supplement”.

**74 After subsection 45D(1)**

Insert:

- (1A) Income support supplement is not payable to a person if the person is already receiving an income support supplement.

**75 At the end of subsection 45N(1)**

Add:

- ; and (d) a war widower or war widow who, immediately before receiving a lump sum mentioned in paragraph 234(1)(b) of the MRCA, or a weekly amount mentioned in that paragraph, was receiving a partner service pension.

**76 Paragraph 45R(2)(a)**

Repeal the paragraph, substitute:

- (a) any of the following applies:

- (i) a pension is payable to a person under Part II or IV at a rate determined under or by reference to subsection 30(1) from a particular day (the *benefit day*); or
- (ii) a lump sum mentioned in subparagraph 234(1)(b)(i) of the MRCA is payable to a person, in respect of the death of a deceased member on a particular day (the *benefit day*); or
- (iii) a weekly amount mentioned in subparagraph 234(1)(b)(ii) of the MRCA is payable to a person from a particular day (the *benefit day*); and

**77 Paragraphs 45R(2)(b) and (c)**

Omit “pension receipt day”, substitute “benefit day”.

**78 Paragraph 45R(2)(d)**

Omit “pension receipt day” (wherever occurring), substitute “benefit day”.

**79 Subsection 45R(2)**

Omit “pension receipt day” (last occurring), substitute “benefit day”.

**80 At the end of paragraph 45TB(3)(a)**

Add:

- (iii) if, after reaching the qualifying age, the person became entitled to be paid a lump sum or a weekly amount mentioned in paragraph 234(1)(b) of the MRCA—the date of the death of the member in respect of whom the lump sum or weekly amount was payable;

**81 At the end of section 45TB**

Add:

*2 or more special dates of eligibility*

- (5) For the purposes of this section, if a person would otherwise have 2 or more special dates of eligibility for a designated pension, only the first date is to be counted.

**82 Subsection 53M(5)**

After “paragraph (c)”, insert “, (ca) or (cb)”.

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## **Part 3—Amendments relating to the Statements of Principles**

### **83 At the end of subsection 196B(1)**

Add “The main function of the Authority is to determine Statements of Principles for the purposes of this Act and the MRCA.”.

### **84 After paragraph 196B(2)(c)**

Insert:

or (ca) warlike or non-warlike service rendered by members;

### **85 Subsection 196B(2) (note 2)**

Omit “see subsection 5Q(1A)”, substitute “referred to in paragraphs (2)(b) and (c), see subsection 5Q(1A)”.

### **86 Subsection 196B(2) (after note 2)**

Insert:

Note 2A: For *warlike service*, *non-warlike service* and *members* referred to in paragraph (2)(ca), see section 196KA. (These definitions are for the purposes of the MRCA.)

### **87 After paragraph 196B(3)(b)**

Insert:

or (ba) peacetime service rendered by members;

### **88 Subsection 196B(3) (note 2)**

Omit “see subsection 5Q(1A)”, substitute “referred to in paragraph (3)(b), see subsection 5Q(1A)”.

### **89 Subsection 196B(3) (after note 2)**

Insert:

Note 2A: For *peacetime service* and *members* referred to in paragraph (3)(ba), see section 196KA. (These definitions are for the purposes of the MRCA.)

### **90 After subsection 196B(3)**

Insert:

(3A) The Authority may determine a Statement of Principles under subsection (2) or (3) for the purposes of this Act, the MRCA, or both Acts.

**91 Paragraph 196B(4)(b)**

After "this Act", insert ", or the MRCA,".

**92 Paragraph 196B(4)(c)**

After "suffered", insert "or sustained".

**93 Paragraph 196B(4)(d)**

Repeal the paragraph, substitute:

(d) the extent (if any) to which:

- (i) the injury, disease or death may be war-caused or defence-caused; or
- (ii) the injury, disease or death may be a service injury, a service disease or a service death.

**94 At the end of subsection 196B(4)**

Add:

Note 3: For *service injury*, *service disease* and *service death* see section 196KA. (These definitions are for the purposes of the MRCA.)

**95 Paragraph 196B(7)(d)**

After "suffered", insert "or sustained".

**96 Paragraph 196B(7)(e)**

Repeal the paragraph, substitute:

(e) the extent (if any) to which:

- (i) the injury, disease or death may be war-caused or defence-caused; or
- (ii) the injury, disease or death may be a service injury, a service disease or a service death.

**97 At the end of subsection 196B(7)**

Add:

Note 1: For *war-caused* see sections 8 and 9.

Note 2: For *defence-caused* see section 69.

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Note 3: For *service injury*, *service disease* and *service death* see section 196KA. (These definitions are for the purposes of the MRCA.)

**98 Subsection 196B(11) (note)**

Omit "Note", substitute "Note 1".

**99 At the end of subsection 196B(11)**

Add:

Note 2: The Statement of Principles may be determined for the purposes of this Act, the MRCA, or both Acts, in accordance with the directions of the Council (see subsection 196W(4A)).

**100 Subsection 196B(12) (note)**

Omit "Note", substitute "Note 1".

**101 At the end of subsection 196B(12)**

Add:

Note 2: The Statement of Principles may be determined for the purposes of this Act, the MRCA, or both Acts, in accordance with the directions of the Council (see subsection 196W(4A)).

**102 After paragraph 196E(1)(a)**

Insert:

(aa) the Military Rehabilitation and Compensation Commission;

**103 At the end of paragraph 196E(1)(b)**

Add "of this Act".

**104 After paragraph 196E(1)(b)**

Insert:

(ba) a person eligible to make a claim for compensation under section 319 of the MRCA;

**105 Paragraph 196E(1)(c)**

After "members of Peacekeeping Forces", insert ", or members within the meaning of the MRCA,".

**106 Subsection 196F(1)**

Omit “any person referred to in paragraph 196E(1)(a) or (b) or organisation referred to in paragraph 196E(1)(c)”, substitute “any person or organisation referred to in any of paragraphs 196E(1)(a) to (c)”.

**107 Subsection 196F(3)**

After “the Commission” (first occurring), insert “, the Military Rehabilitation and Compensation Commission”.

**108 Subsection 196F(3)**

Omit “the Commission” (second occurring), substitute “the relevant Commission”.

**109 Subsection 196I(1)**

Omit “a person referred to in paragraph 196E(1)(a) or (b), or an organisation referred to in paragraph 196E(1)(c)”, substitute “any person or organisation referred to in any of paragraphs 196E(1)(a) to (c)”.

**110 Subsection 196J(1)**

After “the Commission”, insert “or the Military Rehabilitation and Compensation Commission (as the case requires)”.

**111 At the end of Division 1 of Part XIA**

Add:

**196KA Definitions for the purposes of the MRCA**

In this Division:

- (a) for the purposes of paragraphs 196B(4)(d) and 196B(7)(e), *service death* has the same meaning as in the MRCA; and
- (b) for the purposes of paragraphs 196B(4)(d) and 196B(7)(e), *service disease* has the same meaning as in the MRCA; and
- (c) for the purposes of paragraphs 196B(4)(d) and 196B(7)(e), *service injury* has the same meaning as in the MRCA; and
- (d) for the purposes of paragraphs 196B(2)(ca) and 196B(3)(ba), *members* has the same meaning as in the MRCA; and
- (e) for the purposes of paragraph 196B(3)(ba), *peacetime service* has the same meaning as in the MRCA; and

- (f) for the purposes of paragraph 196B(2)(ca), *non-warlike service* does not have the meaning given by this Act but instead has the same meaning as in the MRCA; and
- (g) for the purposes of paragraph 196B(2)(ca), *warlike service* does not have the meaning given by this Act but instead has the same meaning as in the MRCA.

**112 After subsection 196W(4)**

Insert:

- (4A) The Council may give directions under subsection (4) for the purposes of this Act, the MRCA, or both Acts.

**113 Paragraph 196X(2)(b)**

After “the Commission”, insert “, or the Military Rehabilitation and Compensation Commission,”.

**114 After paragraph 196Y(1)(a)**

Insert:

- (aa) the Military Rehabilitation and Compensation Commission;

**115 At the end of paragraph 196Y(1)(b)**

Add “of this Act”.

**116 After paragraph 196Y(1)(b)**

Insert:

- (ba) a person eligible to make a claim for compensation under section 319 of the MRCA;

**117 Paragraph 196Y(1)(c)**

After “members of Peacekeeping Forces”, insert “, or members within the meaning of the MRCA,”.

**118 Subsection 196ZA(1)**

Omit “any person referred to in paragraph 196Y(1)(a) or (b), or an organisation referred to in paragraph 196Y(1)(c),”, substitute “any person or organisation referred to in any of paragraphs 196Y(1)(a) to (c)”.

**119 Subsection 196ZA(3)**

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After "the Commission" (first occurring), insert ", the Military Rehabilitation and Compensation Commission".

**120 Subsection 196ZA(3)**

Omit "the Commission" (second occurring), substitute "the relevant Commission".

**121 Subsection 196ZA(4)**

After "the Commission" (first occurring), insert ", the Military Rehabilitation and Compensation Commission".

**122 Subsection 196ZA(4)**

Omit "the Commission" (second occurring), substitute "the relevant Commission".

**123 Subsection 196ZD(1)**

Omit "a person referred to in paragraph 196Y(1)(a) or (b), or an organisation referred to in paragraph 196Y(1)(c),", substitute "any person or organisation referred to in any of paragraphs 196Y(1)(a) to (c)".

## **Part 4—Amendments relating to offsetting permanent impairment payments under the SRCA**

### **124 Subsection 23(4)**

Omit “subsection (5)”, substitute “subsections (5) and (6)”.

### **125 Subsection 23(5)**

Omit “If”, substitute “Subject to subsection (6), if”.

### **126 Subsection 23(5)**

Omit “amount specified”, substitute “rate per fortnight specified”.

### **127 At the end of section 23**

Add:

- (6) If section 25A applies to a veteran, the rate at which pension is payable to the veteran is the rate per fortnight specified in subsection (4) or (5) of this section, reduced in accordance with section 25A.

### **128 Subsection 24(4)**

Omit “subsection (5)”, substitute “subsections (5) and (6)”.

### **129 Subsection 24(5)**

Omit “If”, substitute “Subject to subsection (6), if”.

### **130 Subsection 24(5)**

Omit “amount specified”, substitute “rate per fortnight specified”.

### **131 At the end of section 24**

Add:

- (6) If section 25A applies to a veteran, the rate at which pension is payable to the veteran is the rate per fortnight specified in subsection (4) or (5) of this section, reduced in accordance with section 25A.

**132 Subsection 24A(1)**

Omit "subsection (2)", substitute "subsections (1A) and (2)".

**133 After subsection 24A(1)**

Insert:

- (1A) However, subsection (1) does not prevent a rate applicable under subsection 24(4) or (5) from being reduced to give effect to subsection 24(6).

**134 Subsection 25(2)**

Omit "subsections 24(4) and (5)", substitute "subsection 24(4), (5) or (6)".

**135 After section 25**

Insert:

**25A Offsetting certain SRCA payments**

- (1) This section applies to a veteran:
- (a) to whom section 23, 24 or 25 applies; or
  - (b) who is granted a temporary incapacity allowance under section 107 or a loss of earnings allowance under section 108;
- for a war-caused injury or a war-caused disease if the veteran has received an amount of compensation, whether before or after the commencement of this section, under section 24, 25 or 27 of the *Safety, Rehabilitation and Compensation Act 1988* for some other injury or disease.
- (2) That amount of compensation is to be converted to a fortnightly amount in accordance with advice from the Australian Government Actuary.
- (3) The rate at which:
- (a) a pension is payable to the person under section 23, 24 or 25; or
  - (b) a temporary incapacity allowance under section 107 or a loss of earnings allowance under section 108 is payable to the person;
-

apart from this section, is reduced, but not below zero, by the fortnightly amount worked out under subsection (2) of this section.

**136 Subsection 27(3)**

Repeal the subsection, substitute:

- (3) If the rate calculated in accordance with subsection (2) in respect of the pension payable to a veteran exceeds:
- (a) if section 25A applies to the veteran—the rate specified in subsection 24(6); or
  - (b) otherwise—the rate specified in subsection 24(4);
- the rate must be reduced by the amount of the excess.

**137 Paragraph 30P(1)(b)**

Before “30C”, insert “25A,”.

**138 Paragraph 79(1)(b)**

Before “74”, insert “25A or”.

**139 Paragraphs 86(2)(a) and (b)**

After “24(4)”, insert “or (6)”.

**140 At the end of section 107**

Add:

Note: If section 25A applies to a veteran, the rate at which temporary incapacity allowance is payable to the veteran is reduced in accordance with that section.

**141 At the end of section 108**

Add:

Note: If section 25A applies to a veteran, the rate at which loss of earnings allowance is payable to the veteran is reduced in accordance with that section.

**142 Application of amendments**

The amendments made by this Part apply to claims under section 14, or applications under section 15, of the *Veterans' Entitlements Act 1986* made after the commencement of section 3 of the *Military Rehabilitation and Compensation Act 2004*.

## Schedule 2—Amendment of the Safety, Rehabilitation and Compensation Act 1988

### Part 1—Main amendments relating to transitional and application issues

#### 1 Subsection 4(1)

Insert:

*CTPA* means the *Military Rehabilitation and Compensation  
(Consequential and Transitional Provisions) Act 2004*.

#### 2 Subsection 4(1)

Insert:

*MRCA* means the *Military Rehabilitation and Compensation Act  
2004*.

#### 3 Subsection 4(1)

Insert:

*MRCA commencement date* means the date on which section 3 of  
the MRCA commences.

#### 4 At the end of subsection 4(3)

Add:

Note: However, members of the Defence Force with service after the  
MRCA commencement date might be taken not to have suffered a  
physical or mental injury or ailment (see section 4AA and subsection  
6A(2A)).

#### 5 After section 4

Insert:

**4AA Most injuries for members of the Defence Force no longer covered by this Act**

- (1) For the purposes of this Act (other than this section), an employee is taken not to have suffered an injury, or an aggravation of an injury, if:
- (a) the employee is a member (within the meaning of the MRCA); and
  - (b) the injury or aggravation is first suffered on or after the MRCA commencement date; and
  - (c) the injury or aggravation arises out of, or in the course of, the employee's employment as a member; and
  - (d) the employment occurs either:
    - (i) on or after the MRCA commencement date; or
    - (ii) before, and on or after, the MRCA commencement date.

Note: After the MRCA commencement date, compensation for members of the Defence Force is provided under the MRCA (instead of this Act) for such an injury or aggravation.

- (2) An employee is taken not to have suffered an injury, being a disease, or an aggravation of a disease, if:
- (a) the employee is a member (within the meaning of the MRCA); and
  - (b) the disease or aggravation is contracted on or after the MRCA commencement date; and
  - (c) the disease or aggravation is contributed to in a material degree by the employee's employment as a member; and
  - (d) the employment occurs either:
    - (i) on or after the MRCA commencement date; or
    - (ii) before, and on or after, the MRCA commencement date.

Note: After the MRCA commencement date, compensation for members of the Defence Force is provided under the MRCA (instead of this Act) for such a disease or aggravation.

- (3) To avoid doubt, employment occurs, before, and on or after, the MRCA commencement date whether the employment spans the commencement date or occurs during separate periods before and on or after that date.

- (4) Subsection 7(4) does not apply in determining the day on which a disease is contracted or aggravated for the purposes of paragraph (2)(b).

## **6 At the end of subsection 5(2)**

Add:

Note: However, members of the Defence Force with service after the MRCA commencement date might only be entitled to compensation under the MRCA and not this Act (see section 4AA and subsection 6A(2A) of this Act).

## **7 Subparagraph 5(6A)(a)(i)**

After “Defence Force”, insert “before the MRCA commencement date”.

## **8 Subparagraph 5(6A)(a)(ii)**

After “are”, insert “, before the MRCA commencement date,”.

## **9 Subparagraph 5(6A)(a)(iii)**

After “training”, insert “, before the MRCA commencement date,”.

## **10 At the end of subsection 5(6A)**

Add:

Note: Declarations in respect of these kinds of people can be made under the MRCA for service after the MRCA commencement date (see section 8 of the MRCA).

## **11 At the end of subsection 5(10)**

Add:

Note: Compensation and other benefits might also be available for a member of the Defence Force under the MRCA. Generally, an injury, disease or death that is covered by that Act would not be covered by this Act (see section 4AA and subsection 6A(2A) of this Act).

## **12 After subsection 6A(2)**

Insert:

- (2A) However, subsection (2) does not apply if:
- (a) the employee is a member (within the meaning of the MRCA); and
  - (b) the injury or aggravation is first suffered on or after the MRCA commencement date; and

- (c) the injury or aggravation is suffered as an unintended consequence of medical treatment paid for by the Commonwealth; and
- (d) the treatment is provided either:
  - (i) on or after the MRCA commencement date; or
  - (ii) before, and on or after, the MRCA commencement date (whether the treatment spans the commencement date or is provided during separate periods before and on or after that date).

Note: After the MRCA commencement date, compensation for members of the Defence Force is provided under the MRCA (instead of this Act) for such an injury or aggravation.

### **13 At the end of subsection 15(1)**

Add:

Note: However, members of the Defence Force with service after the MRCA commencement date might only be entitled to compensation under the MRCA and not this Act (see section 15A).

### **14 After section 15**

Insert:

### **15A Most loss or damage to property used by members of the Defence Force etc. no longer covered by this Act**

Loss of, or damage to, property used by an employee is taken not to have resulted from an accident arising out of, and in the course of, the employee's employment by the Commonwealth if:

- (a) the employee is a member (as defined in the MRCA); and
- (b) the loss or damage occurs on or after the MRCA commencement date; and
- (c) the loss or damage results from an accident arising out of, and in the course of, the employee's employment as a member.

Note: After the MRCA commencement date, compensation for members of the Defence Force is provided under the MRCA (instead of this Act) for such loss or damage.

### **15 At the end of subsection 37(1)**

Add:

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Note: A rehabilitation program that is being provided to a person under this section might cease if the person is also provided with rehabilitation under the MRCA (see section 18 of the CTPA).

## **Part 2—Defence-related injuries and deaths etc.**

### **16 After Part X**

Insert:

## **Part XI—Operation of this Act in relation to certain defence-related injuries and deaths etc.**

### **Division 1—Preliminary**

#### **140 Simplified outline of this Part**

This Part confers on the Military Rehabilitation and Compensation Commission the functions:

- (a) of determining and managing claims under this Act that relate to defence service that occurred before the MRCA commencement date; and
- (b) of managing the provision of compensation and rehabilitation provided as a result of the making of claims of that kind.

This Part also modifies the operation of this Act in relation to the Safety, Rehabilitation and Compensation Commission and in relation to the liabilities of Comcare and the Commonwealth for members of the Defence Force.

#### **141 Definitions**

In this Part:

***Defence Department*** has the meaning given by the MRCA.

***Defence Force*** has the meaning given by the MRCA.

***defence-related claim*** means a claim under this Act made before or after the MRCA commencement date (including a claim made but not determined before that date) in respect of an injury, loss, damage or death:

- (a) to which the MRCA does not apply; and
- (b) that relates to defence service that occurred before the MRCA commencement date.

Note 1: For injuries, diseases and deaths to which the MRCA applies, see Parts 2 and 3 of the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004*.

Note 2: Rehabilitation may be provided following a defence-related claim in respect of an injury.

***defence service*** has the meaning given by the MRCA.

***MRCC*** means the Military Rehabilitation and Compensation Commission established by section 361 of the MRCA.

***service chief*** has the meaning given by the MRCA.

***Veterans' Affairs Department*** means the Department of State that deals with veterans' affairs and that is administered by the Veterans' Affairs Minister.

***Veterans' Affairs Minister*** has the meaning given by the MRCA.

## **Division 2—Management of defence-related claims**

### **142 Functions of MRCC**

- (1) The functions of the MRCC include:
  - (a) determining defence-related claims under this Act accurately and quickly; and
  - (b) arranging the payment of compensation, and the provision of rehabilitation, as a result of the making of defence-related claims; and
  - (c) maintaining contact with the Safety, Rehabilitation and Compensation Commission and with Comcare to ensure that, as far as practicable, there is equity of outcomes resulting from administrative practices and procedures used by Comcare and the MRCC in the performance of their respective functions; and

- (d) doing anything the doing of which:
  - (i) is incidental to the performance of the function referred to in paragraph (a) or (b); and
  - (ii) would be required of Comcare if Comcare had responsibility for the performance of that function.
- (2) In performing the function referred to in paragraph (1)(a), the MRCC:
  - (a) is to be guided by equity, good conscience and the substantial merits of the case, without regard to technicalities; and
  - (b) is not required to conduct a hearing; and
  - (c) is not bound by the rules of evidence.
- (3) The performance by the MRCC of the functions referred to in subsection (1) is subject to the condition that the MRCC will not cause or permit to be made on its behalf to a court or tribunal a submission that Comcare or the Commission has requested not be made.
- (4) The MRCC has power to do all things necessary or convenient to be done for, or in connection with, the performance of functions conferred by subsection (1).
- (5) Paragraph 89B(a) has effect as if there were included in that paragraph a reference to the administrative practices and procedures used by the MRCC in the performance of its functions under this Part.

### **143 Giving copies of defence-related claims etc.**

- (1) The MRCC must give a copy of a defence-related claim made by or in respect of an employee to the employee's service chief if the employee was a member of the Defence Force at the time when the relevant injury or accident occurred or the relevant disease was contracted.
- (2) Comcare must give a copy of each defence-related claim made before the MRCA commencement date but not determined before that date, and a copy of any other document it has that is relevant to that claim, to the MRCC.
- (3) Comcare must also give to the MRCC a copy of each notice given to Comcare under section 53 before the MRCA commencement

date if the notice relates to an injury, loss or damage for which a defence-related claim might be made.

- (4) Subsection 54(4) does not apply to:
- (a) a defence-related claim made on or after the MRCA commencement date; or
  - (b) a defence-related claim made before the MRCA commencement date but not determined before that date.

#### **144 Provisions relating to management of claims etc.**

- (1) For a defence-related claim made before the MRCA commencement date:
- (a) a determination made by Comcare that is in force immediately before that date is taken, after that date, to have been a determination made by the MRCC in relation to that claim; and
  - (b) any other thing done by Comcare that is in force immediately before the MRCA commencement date is taken, after that date, to have been done by the MRCC in relation to that claim.
- (2) For any defence-related claim:
- (a) a notice or claim given or made under Part V after the MRCA commencement date is to be given or made to the MRCC; and
  - (b) a notice or claim given or made under Part V to Comcare and in force immediately before the MRCA commencement date continues in force, after that date, as if it had been given or made to the MRCC.
- (3) If, for a defence-related claim:
- (a) any proceedings (including proceedings under Part VI) to which Comcare is a party are brought in relation to a determination made, or thing done, by Comcare before the MRCA commencement date; and
  - (b) those proceedings have not been concluded before that date; those proceedings may be continued on or after that date. For the purpose of the proceedings as so continued, the MRCC replaces Comcare as a party to the proceedings.
- (4) If, on or after the MRCA commencement date:
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- (a) a determination made or other thing done by Comcare is treated under subsection (1) as having been made or done by the MRCC; or
- (b) a notice or claim given or made under Part V to Comcare is treated under subsection (2) as if it had been given or made to the MRCC; or
- (c) proceedings (including proceedings under Part VI) to which Comcare is a party are treated under subsection (3) as proceedings to which the MRCC is a party;

Comcare must inform the MRCC, as soon as practicable, of that determination made or other thing done, of that notice or claim, or of those proceedings.

- (5) If, under subsection (3), the MRCC replaces Comcare as a party to proceedings, the court or tribunal before which the proceedings have been brought must, on application by Comcare, join Comcare as a party to the proceedings.
- (6) Any proceedings (including proceedings under Part VI) that may be brought:
  - (a) in relation to a determination made, or taken to have been made, by the MRCC in managing such a claim; or
  - (b) in relation to any thing done, or taken to have been done, by the MRCC in managing such a claim;must be brought against the MRCC.
- (7) If proceedings are brought against the MRCC in accordance with subsection (6):
  - (a) the MRCC must inform Comcare as soon as practicable that the proceedings have been brought; and
  - (b) the court or tribunal before which the proceedings have been brought must, on application by Comcare, join Comcare as a party to the proceedings.
- (8) An application by Comcare under subsection (5) or (7):
  - (a) may be made by filing a notice in the registry of the court or tribunal concerned; and
  - (b) must be notified to the other parties to the proceeding by serving on them a copy of the notice so filed.

- (9) A decision in proceedings referred to in subsection (3) or (6) is binding on the MRCC and on Comcare, whether or not Comcare is joined as a party to the proceedings.
- (10) For proceedings referred to in this section:
  - (a) in which the MRCC replaces Comcare as a party; or
  - (b) brought against the MRCC;the Commonwealth is liable to pay any amounts for which the MRCC would otherwise be liable.

### **Division 3—Administrative matters**

#### **145 Relevant authority**

- (1) This Act applies in relation to an employee by whom or in respect of whom a defence-related claim has been made, and in relation to dependants of the employee, as if the MRCC were the relevant authority in relation to the employee for that claim.
- (2) However, for defence-related claims, this Act has effect as if references in this Act to a relevant authority, in relation to liability to pay an amount, in relation to a debt being due or in relation to the receipt of an amount, were references to the Commonwealth.

#### **146 Rehabilitation authority etc.**

- (1) This Act applies to the employee in relation to a defence-related claim as if the rehabilitation authority in relation to the employee were the rehabilitation authority applicable under subsection 39(3) of the MRCA.
- (2) Section 40 of the MRCA (rules where rehabilitation authority changes) applies for the purposes of the application of this Act to the employee in relation to a defence-related claim.
- (3) The duty under section 40 to take steps to provide suitable employment, or to assist in finding suitable employment, for a person who is undertaking, or has completed, a rehabilitation program must be performed by the person's rehabilitation authority rather than the Commonwealth.

**147 References to Comcare etc.**

- (1) For the purposes of applying this Act to defence-related claims and matters arising out of those claims:
- (a) Part II applies as if references in that Part to Comcare (except references in section 28 and references covered by paragraph (b)) were references to the MRCC; and
  - (b) this Act applies as if references in this Act to Comcare, in relation to liability to pay an amount, in relation to a debt being due or in relation to the receipt of an amount, were references to the Commonwealth; and
  - (c) this Act applies as if another reference in this Act to Comcare (other than in Division 2 of Part III, section 41 or Part VI, VII or VIII) were, unless the contrary intention appears, a reference to the MRCC.
- (2) In addition, this Act applies to defence-related claims and matters arising out of those claims with the modifications specified in this table:

<b>Modifications of this Act</b>		
<b>Item</b>	<b>Provision</b>	<b>Modification</b>
1	Paragraph 48(8)(a)	The paragraph does not apply
2	Section 52A	The section does not apply
3	Subsection 111(2)	The reference to a relevant authority has effect as a reference to the Commonwealth
4	Subsections 111(2A), (3) and (4)	The subsections do not apply
5	Sections 112 and 113	References to a relevant authority have effect as references to the Commonwealth
6	Paragraph 114B(1)(c)	The paragraph applies as if it read: (c) the MRCC is of the opinion that the retired employee may have been paid, or might be paid, amounts of compensation under this Act in excess of the amounts that he or she was entitled to receive because of section 20, 21 or 21A;
7	Paragraph 114B(2)(a)	The paragraph applies as if it read: (a) stating that the retired employee may receive, or may have received, an overpayment of compensation; and

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**Modifications of this Act**

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<b>Item</b>	<b>Provision</b>	<b>Modification</b>
8	Section 121A	The section does not apply

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**148 Rehabilitation programs**

- (1) Despite section 37, the MRCC or a service chief as the rehabilitation authority for an employee in relation to a defence-related claim may make arrangements for the provision of a rehabilitation program for the employee by:
  - (a) an approved program provider; or
  - (b) a person nominated in writing by the MRCC or the service chief, being a person the MRCC or service chief is satisfied has appropriate skills and expertise to design and provide rehabilitation programs.
- (2) Before nominating a person under paragraph (1)(b), the MRCC or service chief must consult with Comcare about the proposed nomination.

**149 Directions by Minister**

- (1) The Minister may, by notice in writing given to the Chair of the MRCC, give a direction to the MRCC with respect to the performance of its functions or the exercise of its powers under this Act, otherwise than in relation to a particular case.
- (2) The MRCC must comply with a direction given under subsection (1).

**150 Guidelines by Commission**

- (1) The Commission may prepare and issue to the Chair of the MRCC written general policy guidelines in relation to the operation of this Part.
- (2) The Commission must not issue guidelines that are inconsistent with any directions under section 149 of this Act or section 12A of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*.

- (3) Any guidelines that are inconsistent with a direction referred to in subsection (2) have no effect to the extent of the inconsistency.
- (4) The MRCC must comply with any guidelines issued and in force under subsection (1).
- (5) The guidelines, or variations or revocations of the guidelines, are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **151 Obtaining information**

- (1) The MRCC may, by notice in writing, require:
  - (a) the Secretary of the Defence Department; or
  - (b) the Secretary of the Veterans' Affairs Department; or
  - (c) a service chief;to give the MRCC, within the period specified in the notice, the documents or information (or both) specified in the notice, being documents or information in the possession, custody or control of that person that are relevant to a defence-related claim.
- (2) A person to whom a notice is given must comply with the notice without delay.

### **152 Delegation**

- (1) The MRCC may, by resolution, delegate any of its functions or powers under a provision of this Act to a person to whom it can, under section 384 of the MRCA, delegate functions or powers under that Act.
- (2) A service chief may, in writing, delegate any of his or her functions or powers under a provision of this Act to a person to whom the service chief can, under section 438 of the MRCA, delegate functions or powers under that Act.

### **153 Holding money on trust for person under a legal disability**

- (1) The MRCC may establish trust funds for the purposes of section 110.

- (2) Comcare must pay to the credit of a trust fund established under subsection (1) any money that it holds for the benefit of a person referred to in section 110 as a result of a defence-related claim.

**154 Settlements and determinations etc. under the 1912 Act, the 1930 Act or the 1971 Act**

- (1) Subsection (2) applies to a settlement that:
- (a) under subsection 127(1), is taken to be a determination made by the relevant authority under this Act; and
  - (b) is in force immediately before the MRCA commencement date; and
  - (c) concerns an injury that relates to defence service.
- (2) On and after the MRCA commencement date, the settlement is taken to be a determination made by the MRCC under this Act in respect of the corresponding liability of the Commonwealth to pay compensation or make a similar payment under this Part in respect of that injury, but Part VI does not apply in relation to that settlement.
- (3) Subsection (4) applies to a determination made or action taken that:
- (a) under subsection 127(2), is taken to be a determination made by the relevant authority under this Act; and
  - (b) is in force immediately before the MRCA commencement date; and
  - (c) concerns compensation or a payment that relates to defence service.
- (4) On and after the MRCA commencement date, the determination or action is taken to be a determination made or action taken by the MRCC under this Act in respect of the corresponding liability of the Commonwealth to pay compensation or make a similar payment under this Part.
- (5) If a determination or action referred to in subsection (3) is, or has been, varied by a court or a tribunal, subsection (4) has effect in relation to that determination or action as so varied.

## **Division 4—Reconsideration and review**

### **155 Reconsideration and review**

- (1) The MRCC is a party to proceedings instituted under Part VI in relation to a determination affecting a defence-related claim.
- (2) For the purposes of subsection 60(2), the MRCC is the body responsible for a reviewable decision in relation to a defence-related claim.
- (3) The MRCC is a responsible authority for the purposes of section 67 in relation to a determination affecting a defence-related claim. However, any costs for which the MRCC would be responsible under that section are to be paid by the Commonwealth.

## **Division 5—Modifications relating to Comcare and Defence Department for employees who are engaged in defence service**

### **156 Liabilities of Comcare and the Commission with respect to defence service**

Neither Comcare nor the Commission has any liability under this Act in respect of an injury, loss, damage or death that relates to defence service (whenever it occurred).

### **157 Application of certain provisions to Defence Department**

- (1) Sections 97, 97A, 97B, 97C and 97D do not apply to the Defence Department in relation to defence service on or after the MRCA commencement date.
- (2) Any payment made by the Defence Department under, or purportedly under, section 97H for a determination under section 97 or 97D in respect of defence service before the MRCA commencement date is taken to have been validly made.
- (3) Any payment made by the Defence Department under, or purportedly under, section 67H of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* in respect of

defence service before the MRCA commencement date is taken to have been validly made.

### **158 Regulatory contributions by Defence Department**

- (1) Comcare must make a determination of the regulatory contribution to be paid by the Defence Department for the financial year in which the MRCA commencement date occurs and later financial years in relation to employees engaged in defence service.
- (2) The amount of the regulatory contribution to be paid for a particular financial year under subsection (1) is the sum of:
  - (a) that part of the estimated cost incurred by the Commission and Comcare in carrying out their respective functions under this Act that Comcare determines, in accordance with guidelines under section 97E, to be referable to the Defence Department in relation to defence service; and
  - (b) that part of the estimated cost incurred by the Commission and Comcare in carrying out their respective functions under the *Occupational Health and Safety (Commonwealth Employment) Act 1991* that Comcare determines, in accordance with those guidelines, to be referable to the Defence Department in relation to defence service.

### **159 Modifications of provisions relating to contributions**

Sections 97E to 97P apply to the Defence Department in relation to employees engaged in defence service, but only so far as they relate to determinations under section 158.

## **Division 6—Appropriation**

### **160 Appropriation**

The Consolidated Revenue Fund is appropriated for the purposes of paying compensation and other amounts payable in relation to defence service under this Act.

## **Division 7—Annual report**

### **161 Annual report**

- (1) As soon as possible after each 30 June, the Chair of the MRCC must give the Minister, for presentation to the Parliament, a report of the MRCC's activities under this Act during the financial year that ended on that day.
- (2) A report under subsection (1) must include particulars of:
  - (a) any directions given by the Minister under section 149; and
  - (b) any guidelines issued by the Commission under section 150; during the financial year to which the report relates.

## Schedule 3—General consequential amendments

### *Aged Care Act 1997*

#### **1 Paragraph 44-25(a)**

Repeal the paragraph, substitute:

(a) either:

- (i) a person is receiving a pension under Part II or IV of the *Veterans' Entitlements Act 1986* at a rate determined under or by reference to subsection 30(1) of that Act; or
- (ii) a person is receiving a weekly amount mentioned in paragraph 234(1)(b) of the *Military Rehabilitation and Compensation Act 2004*, or would be receiving such a weekly amount if the person had not chosen to receive a lump sum under that paragraph; and

#### **2 Paragraph 44-25(b)**

After “pension”, insert “or weekly amount”.

#### **3 Paragraph 44-25(c)**

After “pension” (wherever occurring), insert “or weekly amount”.

#### **4 Paragraph 86-3(i)**

After “*Veterans' Entitlements Act 1986*”, insert “or Chapter 6 of the *Military Rehabilitation and Compensation Act 2004*”.

#### **5 Paragraph 86-6(a)**

Omit “or section 130 of the *Veterans' Entitlements Act 1986*”, substitute “, section 130 of the *Veterans' Entitlements Act 1986* or section 409 of the *Military Rehabilitation and Compensation Act 2004*”.

Note: The heading to section 86-6 is altered by omitting “or *Veterans' Entitlements Act 1986*” and substituting “, *Veterans' Entitlements Act 1986* or *Military Rehabilitation and Compensation Act 2004*”.

#### **6 Subsection 96-10(2)**

Repeal the subsection, substitute:

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- (2) This section does not apply to any amount payable in respect of:
- (a) treatment (within the meaning of Part V of the *Veterans' Entitlements Act 1986*) that the \*Repatriation Commission has arranged under section 84 of that Act; or
  - (b) treatment (within the meaning of section 13 of the *Military Rehabilitation and Compensation Act 2004*) that the \*Military Rehabilitation and Compensation Commission has arranged under Division 4 of Part 3 of Chapter 6 of that Act.

Note: Under the *Veterans' Entitlements Act 1986* and the *Military Rehabilitation and Compensation Act 2004*, the treatments that the \*Repatriation Commission and the \*Military Rehabilitation and Compensation Commission can arrange could include the provision of \*aged care for which subsidy is payable under Chapter 3 of this Act.

## 7 Clause 1 of Schedule 1

Insert:

***Military Rehabilitation and Compensation Commission*** means the Military Rehabilitation and Compensation Commission established under section 361 of the *Military Rehabilitation and Compensation Act 2004*.

## ***Age Discrimination Act 2004***

### 7A After paragraph 41(1)(f)

Insert:

- (fa) the *Military Rehabilitation and Compensation Act 2004*; or
- (fb) the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004*; or
- (fc) Part XI of the *Safety, Rehabilitation and Compensation Act 1988*; or

### 7B After subsection 41(2A)

Insert:

- (2B) This Part does not make unlawful anything done by a person in direct compliance with a regulation, scheme or other instrument under the *Military Rehabilitation and Compensation Act 2004* or the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004*.

## ***A New Tax System (Family Assistance) Act 1999***

### **8 After paragraph 7(h) of Schedule 3**

Insert:

- (ha) a Special Rate Disability Pension under Part 6 of Chapter 4 of the *Military Rehabilitation and Compensation Act 2004*;
- (hb) a payment of compensation under section 68, 71 or 75 of the *Military Rehabilitation and Compensation Act 2004*;
- (hc) a payment of compensation mentioned in paragraph 234(1)(b) of the *Military Rehabilitation and Compensation Act 2004*;

## ***A New Tax System (Family Assistance) (Administration) Act 1999***

### **9 Paragraph 84(1)(b)**

Omit “or the *Veterans’ Entitlements Act 1986*”, substitute “, the *Veterans’ Entitlements Act 1986* or the *Military Rehabilitation and Compensation Act 2004*”.

### **10 Subparagraphs 84A(1)(b)(ii), 92(1)(a)(i) and 92A(1)(a)(i)**

Omit “or the *Veterans’ Entitlements Act 1986*”, substitute “, the *Veterans’ Entitlements Act 1986* or the *Military Rehabilitation and Compensation Act 2004*”.

## ***A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999***

### **11 Subsection 13(2) (note)**

Omit “under the *Veterans’ Entitlements Act 1986*;”, substitute “under the *Veterans’ Entitlements Act 1986* or the *Military Rehabilitation and Compensation Act 2004*;”.

### **12 Subsection 14(2) (note)**

Omit “under the *Veterans’ Entitlements Act 1986*;”, substitute “under the *Veterans’ Entitlements Act 1986* or the *Military Rehabilitation and Compensation Act 2004*;”.

***Data-matching Program (Assistance and Tax) Act 1990***

**13 Subsection 3(1) (after paragraph (d) of the definition of *personal assistance*)**

Insert:

(daa) any compensation or other benefit given under the *Military Rehabilitation and Compensation Act 2004*;

***Defence Act 1903***

**14 Subsection 120B(16) (definition of *salary*)**

Omit “*Commonwealth Employees’ Rehabilitation and Compensation Act 1988*”, substitute “*Safety, Rehabilitation and Compensation Act 1988* or the *Military Rehabilitation and Compensation Act 2004*”.

***Defence Force (Home Loans Assistance) Act 1990***

**15 Section 3 (paragraph (a) of the definition of *compensable disability*)**

Omit “*Commonwealth Employees’ Rehabilitation and Compensation Act 1988*”, substitute “*Safety, Rehabilitation and Compensation Act 1988*”.

**16 Section 3 (after paragraph (b) of the definition of *compensable disability*)**

Insert:

(ba) the *Military Rehabilitation and Compensation Act 2004*; or

**17 Subsection 24(4) (subparagraph (b)(i) of the definition of *prescribed member*)**

Omit “*Commonwealth Employees’ Rehabilitation and Compensation Act 1989*”, substitute “*Safety, Rehabilitation and Compensation Act 1988*”.

**18 Subsection 24(4) (after subparagraph (b)(i) of the definition of *prescribed member*)**

Insert:

- (ia) the *Military Rehabilitation and Compensation Act 2004*;  
or

## ***Defence Reserve Service (Protection) Act 2001***

### **19 Section 9**

Repeal the section, substitute:

#### **9 Meaning of *dependant***

- (1) In this Act:

***dependant*** of a member who is or was rendering continuous full time service as a result of an order under section 50D, 51A, 51B or 51C of the *Defence Act 1903* means:

- (a) the member's partner; or
  - (b) a person who was wholly or partly dependent on the member for financial support immediately before the member's call out day; or
  - (c) a person who became, or becomes, wholly or partly dependent on the member for financial support while the member was or is rendering such service; or
  - (d) a person to whom:
    - (i) a pension is payable under the *Veterans' Entitlements Act 1986*; or
    - (ii) compensation is payable under the *Military Rehabilitation and Compensation Act 2004*; because of the member's incapacity or death; or
  - (e) if the member died while rendering such service—the widow or widower of the member.
- (2) In this section, the following expressions have the same meanings as in the *Veterans' Entitlements Act 1986*:
- (a) ***widow***;
  - (b) ***widower***.
- (3) In this section:

***partner*** has the same meaning as in the *Military Rehabilitation and Compensation Act 2004*.

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## ***Disability Discrimination Act 1992***

### **20 At the end of subsection 51(1)**

Add:

- ; or (h) the *Military Rehabilitation and Compensation Act 2004*; or
- (i) the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004*; or
- (j) the *Safety, Rehabilitation and Compensation Act 1988* so far as that Act applies to defence-related claims mentioned in Part XI of that Act.

## ***Farm Household Support Act 1992***

### **21 After subsection 12(4)**

Insert:

- (4A) Farm household support, exceptional circumstances relief payment or farm help income support is not payable to a person if the person is receiving a weekly amount mentioned in paragraph 234(1)(b) of the *Military Rehabilitation and Compensation Act 2004*, or has received a lump sum mentioned in that paragraph.

## ***Fringe Benefits Tax (Application to the Commonwealth) Act 1986***

### **22 After paragraph 6AA(c)**

Insert:

- or (d) a person who has received a lump sum under Part 2 of Chapter 4 of the *Military Rehabilitation and Compensation Act 2004* or who is receiving payments under that Part; or
- (e) a person who is receiving a Special Rate Disability Pension under Part 6 of Chapter 4 of the *Military Rehabilitation and Compensation Act 2004*;

### **23 Section 6AB**

After “Entitlements Act”, insert “or the *Military Rehabilitation and Compensation Act 2004*”.

Note: The heading to section 6AB is altered by adding at the end “**and the Military Rehabilitation and Compensation Act**”.

### ***Income Tax Rates Act 1986***

**24 Subsection 3(1) (definition of *prescribed non-resident*)**

Before “a pension,” (first occurring), insert “compensation or”.

**25 Subsection 3(1) (after paragraph (b) of the definition of *prescribed non-resident*)**

Insert:

(ba) the *Military Rehabilitation and Compensation Act 2004*; or

**26 Subsection 3(1) (definition of *prescribed non-resident*)**

Before “a pension,” (second occurring), insert “compensation or”.

**27 Subsection 16(1) (definition of *eligible pensioner*)**

Before “a pension,” (first occurring), insert “compensation or”.

**28 Subsection 16(1) (after paragraph (b) of the definition of *eligible pensioner*)**

Insert:

(ba) the *Military Rehabilitation and Compensation Act 2004*; or

**29 Subsection 16(1) (definition of *eligible pensioner*)**

Before “a pension,” (second occurring), insert “compensation or”.

### ***National Health Act 1953***

**30 Subsection 4(1) (paragraph (b) of the definition of *Repatriation nursing home patient*)**

Repeal the paragraph, substitute:

(b) under section 285 of the *Military Rehabilitation and Compensation Act 2004*.

**31 Subsection 84(1) (after paragraph (d) of the definition of *concessional beneficiary*)**

Insert:

(da) a person who is:

(i) an Australian resident within the meaning of the *Health Insurance Act 1973*; and

- (ii) entitled to treatment under section 284 of the *Military Rehabilitation and Compensation Act 2004*; or

**32 Paragraph 84C(4A)(a)**

Repeal the paragraph, substitute:

- (a) the repatriation pharmaceutical benefit is supplied:
- (i) under the scheme established under section 91 of the *Veterans' Entitlements Act 1986*; or
  - (ii) in accordance with a determination under paragraph 286(1)(c) of the *Military Rehabilitation and Compensation Act 2004*; and

***Registration of Deaths Abroad Act 1984***

**33 Subsection 3(1) (paragraph (d) of the definition of *prescribed person*)**

Omit "*Repatriation Act 1920*", substitute "*Veterans' Entitlements Act 1986*".

**34 Subsection 3(1) (at the end of the definition of *prescribed person*)**

Add:

- ; or (e) is receiving weekly amounts of compensation under the *Military Rehabilitation and Compensation Act 2004*.

***Social Security Act 1991***

**35 Subsection 4(1) (after paragraph (c) of the definition of *armed services widow*)**

Insert:

- or (d) a person who was a member within the meaning of the *Military Rehabilitation and Compensation Act* for the purposes of that Act;

**36 Subsection 4(1) (after paragraph (c) of the definition of *armed services widower*)**

Insert:

or (d) a person who was a member within the meaning of the Military Rehabilitation and Compensation Act for the purposes of that Act;

**37 Subsection 5(1) (after paragraph (e) of the definition of *prescribed educational scheme*)**

Insert:

(ea) the scheme to provide education and training under section 258 of the Military Rehabilitation and Compensation Act; or

**38 At the end of subsection 8(8)**

Add:

; (zo) a payment under section 217 or 266 of the Military Rehabilitation and Compensation Act to reimburse costs incurred in respect of the provision of goods or services (other than a payment to the person who provided the goods or service);

(zp) if subsection 204(5) of the Military Rehabilitation and Compensation Act applies to a person—an amount per fortnight, worked out under subsection (12) of this section, that would, apart from this paragraph, be income of the person;

Note: Subsection 204(5) of the Military Rehabilitation and Compensation Act reduces a Special Rate Disability Pension by reference to amounts of Commonwealth superannuation that the person has received or is receiving.

(zq) a payment under the Motor Vehicle Compensation Scheme under section 212 of the Military Rehabilitation and Compensation Act;

(zr) a payment under section 242 of the Military Rehabilitation and Compensation Act (continuing permanent impairment and incapacity etc. payments).

**39 At the end of section 8**

Add:

(12) For the purposes of paragraph 8(8)(zp), the amount per fortnight that is not income for the purposes of this Act is:

$$\text{Special Rate Disability Pension reduction amount} \times \frac{10}{6}$$

where:

***Special Rate Disability Pension reduction amount*** means the amount by which the Special Rate Disability Pension (as reduced under subsection 204(3)) is reduced under subsection 204(6) of the Military Rehabilitation and Compensation Act (but not below zero).

#### 40 After paragraph 10B(4)(c)

Insert:

- (ca) a payment under the Military Rehabilitation and Compensation Act that is exempt from income tax under Subdivision 52-CA of the *Income Tax Assessment Act 1997*; or

#### 41 Subsection 23(1)

Insert:

***Military Rehabilitation and Compensation Act*** or ***MRCA*** means the *Military Rehabilitation and Compensation Act 2004*.

#### 42 At the end of section 47

Add:

- (7) An age pension is not payable to a person who:
- (a) is an armed services widow or an armed services widower; and
  - (b) has received a lump sum, or is receiving weekly amounts, mentioned in paragraph 234(1)(b) of the MRCA; and
  - (c) is receiving income support supplement or would be eligible for income support supplement if he or she made a claim under section 45I of the VEA.

Note 1: For ***armed services widow*** and ***armed services widower*** see subsection 4(1).

Note 2: For ***MRCA*** and ***VEA*** see subsection 23(1).

#### 43 At the end of section 103

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Add:

- (7) A disability support pension is not payable to a person who:
- (a) is an armed services widow or an armed services widower; and
  - (b) has received a lump sum, or is receiving weekly amounts, mentioned in paragraph 234(1)(b) of the MRCA; and
  - (c) is receiving income support supplement or would be eligible for income support supplement if he or she made a claim under section 45I of the VEA.

Note 1: For *armed services widow* and *armed services widower* see subsection 4(1).

Note 2: For *MRCA* and *VEA* see subsection 23(1).

#### **44 At the end of section 151**

Add:

- (7) A wife pension is not payable to a woman who:
- (a) is an armed services widow; and
  - (b) has received a lump sum, or is receiving weekly amounts, mentioned in paragraph 234(1)(b) of the MRCA; and
  - (c) is receiving income support supplement or would be eligible for income support supplement if she made a claim under section 45I of the VEA.

Note 1: For *armed services widow* see subsection 4(1).

Note 2: For *MRCA* and *VEA* see subsection 23(1).

#### **45 At the end of section 202**

Add:

- (7) A carer payment is not payable to a person who:
- (a) is an armed services widow or an armed services widower; and
  - (b) has received a lump sum, or is receiving weekly amounts, mentioned in paragraph 234(1)(b) of the MRCA; and
  - (c) is receiving income support supplement or would be eligible for income support supplement if he or she made a claim under section 45I of the VEA.

Note 1: For *armed services widow* and *armed services widower* see subsection 4(1).

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Note 2: For *MRCA* and *VEA* see subsection 23(1).

#### **46 At the end of section 500S**

Add:

- (5) Parenting payment is not payable to a person if:
- (a) the person is an armed services widow or an armed services widower; and
  - (b) the person has received a lump sum, or is receiving weekly amounts, mentioned in paragraph 234(1)(b) of the *MRCA*.

Note 1: For *armed services widow* and *armed services widower* see subsection 4(1).

Note 2: For *MRCA* see subsection 23(1).

#### **46A At the end of section 552**

Add:

- (3) Youth allowance is not payable to a person if:
- (a) the person is an armed services widow or an armed services widower; and
  - (b) the person has received a lump sum, or is receiving weekly amounts, mentioned in paragraph 234(1)(b) of the *MRCA*.

Note 1: For *armed services widow* and *armed services widower* see subsection 4(1).

Note 2: For *MRCA* see subsection 23(1).

#### **47 Section 573A**

After “is receiving”, insert “or has received”.

#### **48 Paragraph 573A(a)**

Omit “or allowance”, substitute “, allowance or compensation”.

#### **49 Section 573A (table heading)**

Omit “and allowances”, substitute “, allowances and compensation”.

#### **50 Section 573A (table column heading relating to Type of pension, benefit and allowance)**

Omit “and allowance”, substitute “, allowance and compensation”.

#### **51 Section 573A (after table item 4)**

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Insert:

- 4A Compensation for an armed services widow or an armed services widower (Paragraph 234(1)(b) of the Military Rehabilitation and Compensation Act)

### **51A At the end of section 578**

Add:

- (4) An austudy payment is not payable to a person if:
- (a) the person is an armed services widow or an armed services widower; and
  - (b) the person has received a lump sum, or is receiving weekly amounts, mentioned in paragraph 234(1)(b) of the MRCA.

Note 1: For *armed services widow* and *armed services widower* see subsection 4(1).

Note 2: For *MRCA* see subsection 23(1).

### **52 After subsection 614(3A)**

Insert:

- (3B) A newstart allowance is not payable to a person if:
- (a) the person is an armed services widow or armed services widower; and
  - (b) the person has received a lump sum, or is receiving weekly amounts, mentioned in paragraph 234(1)(b) of the MRCA.

Note 1: For *armed services widow* and *armed services widower* see subsection 4(1).

Note 2: For *MRCA* see subsection 23(1).

### **53 At the end of section 660YCF**

Add:

- (6) A mature age allowance is not payable to a person if:
- (a) the person is an armed services widow or armed services widower; and
  - (b) the person has received a lump sum, or is receiving weekly amounts, mentioned in paragraph 234(1)(b) of the MRCA.

Note 1: For *armed services widow* and *armed services widower* see subsection 4(1).

Note 2: For *MRCA* see subsection 23(1).

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#### 54 After subsection 686(4)

Insert:

(4A) Sickness allowance is not payable to a person if:

- (a) the person is an armed services widow or an armed services widower; and
- (b) the person has received a lump sum, or is receiving weekly amounts, mentioned in paragraph 234(1)(b) of the MRCA.

Note 1: For *armed services widow* and *armed services widower* see subsection 4(1).

Note 2: For *MRCA* see subsection 23(1).

#### 55 At the end of section 735

Add:

(5) Special benefit is not payable to a person if:

- (a) the person is an armed services widow or an armed services widower; and
- (b) the person has received a lump sum, or is receiving weekly amounts, mentioned in paragraph 234(1)(b) of the MRCA.

Note 1: For *armed services widow* and *armed services widower* see subsection 4(1).

Note 2: For *MRCA* see subsection 23(1).

#### 56 At the end of section 771HI

Add:

(4) A partner allowance is not payable to a person if the person has received a lump sum, or is receiving weekly amounts, mentioned in paragraph 234(1)(b) of the MRCA.

Note: For *MRCA* see subsection 23(1).

#### 57 At the end of section 787

Add:

(5) A special needs pension is not payable to a person if:

- (a) the person is an armed services widow or an armed services widower; and
- (b) the person has received a lump sum, or is receiving weekly amounts, mentioned in paragraph 234(1)(b) of the MRCA.

Note 1: For *armed services widow* and *armed services widower* see subsection 4(1).

Note 2: For *MRCA* see subsection 23(1).

**58 After paragraph 1037(a)**

Insert:

- (aa) if the person is provided with a motor vehicle under the Motor Vehicle Compensation Scheme under section 212 of the MRCA—during any period during which the vehicle is provided; or

**59 Section 1037 (note)**

After “*VEA*”, insert “and *MRCA*”.

**60 Subsection 1061JD(2) (definition of *pharmaceutical allowance*)**

After “Veterans’ Entitlements Act”, insert “or the Military Rehabilitation and Compensation Act”.

**61 At the end of paragraph 1061PE(4)(e)**

Add:

- ; or (vi) has received, or is entitled to receive, compensation for permanent impairment under section 68, 71 or 75 of the Military Rehabilitation and Compensation Act; or
- (vii) is receiving a Special Rate Disability Pension under Part 6 of Chapter 4 of the Military Rehabilitation and Compensation Act; or
- (viii) is receiving, or has received, compensation mentioned in paragraph 234(1)(b) of the Military Rehabilitation and Compensation Act.

**62 At the end of subsection 1061PJ(1)**

Add:

- ; or (c) in the case of a person who has a dependent child—compensation under the Military Rehabilitation and Compensation Act set out in subsection (4).

**63 At the end of section 1061PJ**

Add:

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*Compensation under the Military Rehabilitation and Compensation Act*

- (4) For a person who has a dependent child, the compensation under the Military Rehabilitation and Compensation Act is the following:
- (a) compensation for permanent impairment paid as a weekly amount under section 68, 71 or 75 of the Military Rehabilitation and Compensation Act;
  - (b) a Special Rate Disability Pension under Part 6 of Chapter 4 of the Military Rehabilitation and Compensation Act;
  - (c) compensation of a weekly amount mentioned in subparagraph 234(1)(b)(ii) of the Military Rehabilitation and Compensation Act.

**64 Before paragraph 1061R(b)**

Insert:

- (a) if the person is receiving a telephone allowance under the Military Rehabilitation and Compensation Act; or

**65 Subsection 1061S(1) (table items 7 and 8)**

After “VEA”, insert “or MRCA”.

**66 After subsection 1064(6)**

Insert:

- (7) If:
- (a) an armed services widow or an armed services widower has received a lump sum, or is receiving a weekly amount, mentioned in paragraph 234(1)(b) of the Military Rehabilitation and Compensation Act; and
  - (b) one of the following is payable to the widow or widower:
    - (i) an age pension;
    - (ii) a disability support pension;
    - (iii) a wife pension;
    - (iv) a carer payment;
    - (v) a mature age allowance under Part 2.12B;
    - (vi) disability wage supplement;
- the rate of pension payable to the widow or widower is not to exceed \$3,247.40.

Note: For *armed services widow* and *armed services widower* see subsection 4(1).

### **67 At the end of point 1064-C2**

Add “or the Military Rehabilitation and Compensation Act”.

Note: The heading to point 1064-C2 is altered by adding at the end “*or the Military Rehabilitation and Compensation Act*”.

### **68 Paragraph 1064-C3(b)**

After “Veterans’ Entitlements Act”, insert “or the Military Rehabilitation and Compensation Act”.

Note: The heading to point 1064-C3 is altered by inserting “*or the Military Rehabilitation and Compensation Act*” after “*Veterans’ Entitlements Act*”.

### **69 Point 1064-C3 (at the end of the note)**

Add “or is receiving pharmaceutical allowance under the MRCA”.

### **70 Point 1064-C7 (at the end of the definition of *pharmaceutical allowance*)**

Add “or the Military Rehabilitation and Compensation Act”.

Note: The heading to point 1064-C7 is altered by inserting “*and MRCA*” after “*VEA*”.

### **71 After subsection 1065(5)**

Insert:

*Rate limited for certain armed services widows and widowers*

(6) If:

- (a) an armed services widow or an armed services widower has received a lump sum, or is receiving a weekly amount, mentioned in paragraph 234(1)(b) of the Military Rehabilitation and Compensation Act; and
- (b) an age or disability support pension is payable to the widow or widower;

the rate of pension payable to the widow or widower is not to exceed \$3,247.40.

Note: For *armed services widow* and *armed services widower* see subsection 4(1).

### **72 At the end of point 1065-C2**

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Add “or the Military Rehabilitation and Compensation Act”.

Note: The heading to point 1065-C2 is altered by adding at the end “*or the Military Rehabilitation and Compensation Act*”.

**73 Paragraph 1065-C3(b)**

After “Veterans’ Entitlements Act”, insert “or the Military Rehabilitation and Compensation Act”.

Note: The heading to point 1065-C3 is altered by inserting “*or the Military Rehabilitation and Compensation Act*” after “*Veterans’ Entitlements Act*”.

**74 Point 1065-C3 (at the end of the note)**

Add “or is receiving pharmaceutical allowance under the MRCA”.

**75 Point 1065-C7 (at the end of the definition of pharmaceutical allowance)**

Add “or the Military Rehabilitation and Compensation Act”.

Note: The heading to point 1065-C7 is altered by inserting “*and MRCA*” after “*VEA*”.

**76 At the end of point 1066-C2**

Add “or the Military Rehabilitation and Compensation Act”.

Note: The heading to point 1066-C2 is altered by adding at the end “*or the Military Rehabilitation and Compensation Act*”.

**77 Point 1066-C6 (at the end of the definition of pharmaceutical allowance)**

Add “or the Military Rehabilitation and Compensation Act”.

Note: The heading to point 1066-C6 is altered by inserting “*and MRCA*” after “*VEA*”.

**78 At the end of point 1066A-D2**

Add “or the Military Rehabilitation and Compensation Act”.

Note: The heading to point 1066A-D2 is altered by adding at the end “*or the Military Rehabilitation and Compensation Act*”.

**79 Paragraph 1066A-D3(b)**

After “Veterans’ Entitlements Act”, insert “or the Military Rehabilitation and Compensation Act”.

Note: The heading to point 1066A-D3 is altered by inserting “*or the Military Rehabilitation and Compensation Act*” after “*Veterans’ Entitlements Act*”.

**80 Point 1066A-D7 (at the end of the definition of *pharmaceutical allowance*)**

Add “or the Military Rehabilitation and Compensation Act”.

Note: The heading to point 1066A-D7 is altered by inserting “*and MRCA*” after “*VEA*”.

**81 At the end of point 1066B-D2**

Add “or the Military Rehabilitation and Compensation Act”.

Note: The heading to point 1066B-D2 is altered by adding at the end “*or the Military Rehabilitation and Compensation Act*”.

**82 Paragraph 1066B-D3(b)**

After “Veterans’ Entitlements Act”, insert “or the Military Rehabilitation and Compensation Act”.

Note: The heading to point 1066B-D3 is altered by inserting “*or the Military Rehabilitation and Compensation Act*” after “*Veterans’ Entitlements Act*”.

**83 Point 1066B-D7 (at the end of the definition of *pharmaceutical allowance*)**

Add “or the Military Rehabilitation and Compensation Act”.

Note: The heading to point 1066B-D7 is altered by inserting “*and MRCA*” after “*VEA*”.

**84 Paragraph 1067G-C2(b)**

After “Veterans’ Entitlements Act”, insert “or the Military Rehabilitation and Compensation Act”.

Note: The heading to point 1067G-C2 is altered by inserting “*or the Military Rehabilitation and Compensation Act*” after “*Veterans’ Entitlements Act*”.

**85 Paragraph 1067G-F3(a)**

Omit “or allowance”, substitute “, allowance or compensation”.

**86 Subparagraph 1067G-F23(a)(iii)**

Omit “or allowance”, substitute “, allowance or compensation”.

**87 Section 1067G (heading to Module L of the Youth Allowance Rate Calculator)**

Omit “and allowances”, substitute “, allowances and compensation”.

**88 Section 1067G (table heading in Module L of the Youth Allowance Rate Calculator)**

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Omit “and allowances”, substitute “, allowances and compensation”.

**89 Section 1067G (table column heading relating to Type of pension, benefit and allowance in Module L of the Youth Allowance Rate Calculator)**

Omit “and allowance”, substitute “, allowance and compensation”.

**90 Section 1067G (after table item 4 in Module L of the Youth Allowance Rate Calculator)**

Insert:

- |    |  |   |
|----|--|---|
| 4A | Compensation for an armed services widow who has no dependent children | (Paragraph 234(1)(b) of the Military Rehabilitation and Compensation Act) |
|----|--|---|

**91 Section 1067G (after table item 20 in Module L of the Youth Allowance Rate Calculator)**

Insert:

- |     |  |   |
|-----|--|---|
| 20A | Compensation for an armed services widow who has a dependent child | (Paragraph 234(1)(b) of the Military Rehabilitation and Compensation Act) |
|-----|--|---|

**92 Paragraph 1067L-C2(b)**

After “Veterans’ Entitlements Act”, insert “or the Military Rehabilitation and Compensation Act”.

- Note: The heading to point 1067L-C2 is altered by inserting “*or the Military Rehabilitation and Compensation Act*” after “*Veterans’ Entitlements Act*”.

**93 At the end of point 1068-D4**

Add “or the Military Rehabilitation and Compensation Act”.

- Note: The heading to point 1068-D4 is altered by adding at the end “*or the Military Rehabilitation and Compensation Act*”.

**94 Paragraph 1068-D5(b)**

After “Veterans’ Entitlements Act”, insert “or the Military Rehabilitation and Compensation Act”.

- Note: The heading to point 1068-D5 is altered by inserting “*or the Military Rehabilitation and Compensation Act*” after “*Veterans’ Entitlements Act*”.

**95 Point 1068-D9 (at the end of the definition of *pharmaceutical allowance*)**

Add “or the Military Rehabilitation and Compensation Act”.

Note: The heading to point 1069-D9 is altered by inserting “*and MRCA*” after “*VEA*”.

**96 At the end of point 1068A-C2**

Add “or the Military Rehabilitation and Compensation Act”.

Note: The heading to point 1068A-C2 is altered by adding at the end “*or the Military Rehabilitation and Compensation Act*”.

**97 Point 1068A-C6 (at the end of the definition of *pharmaceutical allowance*)**

Add “or the Military Rehabilitation and Compensation Act”.

Note: The heading to point 1068A-C6 is altered by inserting “*and MRCA*” after “*VEA*”.

**98 At the end of point 1068B-E2**

Add “or the Military Rehabilitation and Compensation Act”.

Note: The heading to point 1068B-E2 is altered by adding at the end “*or the Military Rehabilitation and Compensation Act*”.

**99 Paragraph 1068B-E3(a)**

After “Veterans’ Entitlements Act”, insert “or the Military Rehabilitation and Compensation Act”.

Note: The heading to point 1068B-E3 is altered by inserting “*or the Military Rehabilitation and Compensation Act*” after “*Veterans’ Entitlements Act*”.

**100 Point 1068B-E7 (at the end of the definition of *pharmaceutical allowance*)**

Add “or the Military Rehabilitation and Compensation Act”.

Note: The heading to point 1068B-E7 is altered by inserting “*and MRCA*” after “*VEA*”.

**101 Point 1071A-4 (at the end of paragraph (e) of the definition of *income*)**

Add “, including compensation within the meaning of the Military Rehabilitation and Compensation Act”.

**101A At the end of subsection 1130(3)**

Add:

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; and (e) any amounts that are not income of the person because of paragraph 8(8)(zp).

**101B At the end of subsection 1130C(3)**

Add:

; and (e) any amounts that are not income of the person because of paragraph 8(8)(zp).

**101C At the end of subsection 1132(3)**

Add:

; and (e) any amounts that are not income of the person because of paragraph 8(8)(zp).

**102 Section 1190 (table items 55 and 56)**

After “Veterans’ Entitlements Act”, insert “or the Military Rehabilitation and Compensation Act”.

**103 After paragraph 1228(2)(aa)**

Insert:

- (ab) a payment of compensation (within the meaning of the Military Rehabilitation and Compensation Act) under that Act; or

**104 Subsection 1229A(1)**

Repeal the subsection, substitute:

- (1) This section applies to a person:
  - (a) who receives a further notice given under subsection 1229(3); and
  - (b) who:
    - (i) is not receiving a social security payment; and
    - (ii) is not receiving a payment of pension or allowance under the Veterans’ Entitlements Act; and
    - (iii) is not receiving, and has not received, a payment of compensation (within the meaning of the Military Rehabilitation and Compensation Act) under that Act.

***Superannuation Act 1976***

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**104A After paragraph 51(2)(d)**

Insert:

- (da) a period of leave of absence because of a service injury or disease (within the meaning of the *Military Rehabilitation and Compensation Act 2004*) in respect of which the person is receiving compensation under section 86 (part-time Reservists) or 127 (former member maintained in hospital) of that Act;

**104B Section 54A (after paragraph (a) of the definition of compensation leave)**

Insert:

- (aa) if the *Military Rehabilitation and Compensation Act 2004* applies in relation to the eligible employee—compensation is payable under section 86 (part-time Reservists) or 127 (former member maintained in hospital) of that Act; or

**104C At the end of section 54G**

Add:

- (2) If the request to the Board was made in relation to a condition in respect of which the eligible employee is entitled to receive compensation under the *Military Rehabilitation and Compensation Act 2004*, the Board may, subject to subsection 54H(1), also ascertain the views of the Military Rehabilitation and Compensation Commission as to whether or not the employee be retired because he or she is totally and permanently incapacitated.

**104D Subsection 54H(1)**

After “a licensed administering authority”, insert “or the views of the Military Rehabilitation and Compensation Commission”.

**104E Paragraph 54H(2)(a)**

After “section 54G”, insert “and any views given to the Board under that section”.

**104F After subsection 54JA(6)**

Insert:

- (6A) If the matter under consideration relates to a condition in respect of which the person is, or was, entitled to receive compensation under the *Military Rehabilitation and Compensation Act 2004*, the Board may ascertain, in relation to that matter, the views of the Military Rehabilitation and Compensation Commission.

**104G Subsection 78A(1)**

After “*Safety, Rehabilitation and Compensation Act 1988*”, insert “or the *Military Rehabilitation and Compensation Act 2004*”.

***Taxation Administration Act 1953***

**105 After paragraph 12-110(1)(b) in Schedule 1**

Insert:

- (ba) specified in an item of the table in section 52-114 of that Act (Military Rehabilitation and Compensation Act payments); or

## Schedule 4—Consequential amendments of Income Tax Assessment Acts

### Part 1—Amendment of the Income Tax Assessment Act 1936

#### 1 Subsection 6(1) (after subparagraph (b)(iv) of the definition of *Commonwealth education or training payment*)

Insert:

- (iva) the scheme under section 258 of the *Military Rehabilitation and Compensation Act 2004* to provide education and training; or

#### 2 After paragraph 16(4)(g)

Insert:

- (gaa) the Military Rehabilitation and Compensation Commission established by section 361 of the *Military Rehabilitation and Compensation Act 2004*, for purposes consistent with the functions of that body under that Act;

#### 3 At the end of section 202CB

Add:

*Persons receiving benefits under Military Rehabilitation and Compensation Act*

- (8) Subsections (2) to (4) do not apply to a TFN declaration given to the Military Rehabilitation and Compensation Commission:
  - (a) by a person who is an applicant for compensation or an allowance under the *Military Rehabilitation and Compensation Act 2004*; or
  - (b) by a person who is a recipient for the purposes of this Part because the person receives, or expects to receive, such compensation or allowance.

#### 4 At the end of section 202CE

Add:

- (9) Subsection (6) does not apply to a TFN declaration given to the Military Rehabilitation and Compensation Commission:
- (a) by a person who is an applicant for compensation or an allowance under the *Military Rehabilitation and Compensation Act 2004*; or
  - (b) by a person who is a recipient for the purposes of this Part because the person receives, or expects to receive, such compensation or allowance.

**5 Subsection 221A(1) (definition of *prescribed non-resident*)**

Before “a pension”, insert “compensation or”.

**6 Subsection 221A(1) (after paragraph (b) of the definition of *prescribed non-resident*)**

Insert:

- (ba) the *Military Rehabilitation and Compensation Act 2004*; or

**7 Paragraph 251U(1)(b)**

After “*Veterans’ Entitlements Act 1986*”, insert “or the *Military Rehabilitation and Compensation Act 2004*”.

**8 Subsection 265A(3)**

Repeal the subsection, substitute:

- (3) The provisions of subsection (1) do not apply in any case where the death of the taxpayer has occurred in circumstances (including the circumstances of his or her service) in which the Commonwealth would not be liable to pay pensions or compensation:
- (a) under Part II or IV of the *Veterans’ Entitlements Act 1986* to the dependants of deceased members of the Forces or veterans; or
  - (b) mentioned in paragraph 234(1)(b) of the *Military Rehabilitation and Compensation Act 2004* to the wholly dependent partners of deceased members (within the meaning of that Act).

**9 Subsection 265A(4)**

After “Part II or IV of that Act,”, insert “or any decision of the Military Rehabilitation and Compensation Commission established under section 361 of the *Military Rehabilitation and Compensation Act 2004* on a question affecting the right of a dependant of a deceased member (within the meaning of that Act) to compensation under Chapter 5 of that Act,”.

## **Part 2—Amendment of the Income Tax Assessment Act 1997**

### **10 Sections 51-32 and 51-33**

Repeal the sections, substitute:

#### **51-32 Compensation payments for loss of tax exempt payments**

- (1) A compensation payment for the loss of pay or an allowance for your warlike service is exempt from income tax if:
  - (a) the compensation payment is made under the *Safety, Rehabilitation and Compensation Act 1988* in respect of an injury (as defined in that Act) you suffered; and
  - (b) you suffered your injury while covered by a certificate in force under paragraph 23AD(1)(a) of the *Income Tax Assessment Act 1936*; and
  - (c) your injury or disease caused the loss of your pay or allowance; and
  - (d) your pay or allowance was payable under the *Defence Act 1903* or under a determination under that Act.
- (2) A compensation payment for the loss of pay or an allowance for your warlike service is exempt from income tax if:
  - (a) the compensation payment is made under the *Military Rehabilitation and Compensation Act 2004* in respect of a service injury or disease (as defined in that Act); and
  - (b) you sustained your service injury or contracted your service disease, or your service injury or disease was aggravated or materially contributed to, while covered by a certificate in force under paragraph 23AD(1)(a) of the *Income Tax Assessment Act 1936*; and
  - (c) your injury or disease caused the loss of your pay or allowance; and
  - (d) your pay or allowance was payable under the *Defence Act 1903* or under a determination under that Act.
- (3) Subsections (4) and (5) apply to:
  - (a) a deployment allowance; or

- (b) some other allowance that is exempt from income tax specified in writing by the Minister administering section 1 of the *Defence Act 1903* for the purposes of this subsection; that is payable under a determination under that Act for your non-warlike service.
- (4) A compensation payment for the loss of the allowance is exempt from income tax if:
  - (a) the compensation payment is made under the *Safety, Rehabilitation and Compensation Act 1988* in respect of an injury (as defined in that Act) you suffered; and
  - (b) your injury caused the loss of your allowance.
- (5) A compensation payment for the loss of the allowance is exempt from income tax if:
  - (a) the compensation payment is made under the *Military Rehabilitation and Compensation Act 2004* in respect of a service injury or disease (as defined in that Act); and
  - (b) your injury or disease caused the loss of your allowance.

**51-33 Compensation payments for loss of pay and/or allowances as a Defence reservist**

- (1) A compensation payment for the loss of your pay or an allowance is exempt from income tax if:
  - (a) the compensation payment is made under the *Safety, Rehabilitation and Compensation Act 1988* in respect of an injury (as defined in that Act) you suffered; and
  - (b) you suffered your injury while serving as a member of the Naval Reserve, Army Reserve or Air Force Reserve (but not while on continuous full time service); and
  - (c) your pay or allowance was payable for service of a kind described in paragraph (b).
- (2) A compensation payment for the loss of your pay or an allowance is exempt from income tax if:
  - (a) the compensation payment is made under the *Military Rehabilitation and Compensation Act 2004* in respect of a service injury or disease (as defined in that Act); and
  - (b) you sustained your service injury or contracted your service disease, or your service injury or disease was aggravated or

- materially contributed to, while serving as a member of the Naval Reserve, Army Reserve or Air Force Reserve; and
- (c) your pay or allowance was payable for service of a kind described in paragraph (b); and
  - (d) the compensation payment is worked out by reference to your normal earnings (as defined in that Act) as a part-time Reservist (as defined in that Act).

## **11 After Subdivision 52-C**

Insert:

### **Subdivision 52-CA—Exempt payments under the Military Rehabilitation and Compensation Act 2004**

#### **Guide to Subdivision 52-CA**

##### **52-112 What this Subdivision is about**

This Subdivision tells you:

- (a) the payments under the *Military Rehabilitation and Compensation Act 2004* that are wholly or partly exempt from income tax; and
- (b) any special circumstances, conditions or exceptions that apply to a payment in order for it to be exempt; and
- (c) how to work out how much of a payment is exempt.

#### **Table of sections**

##### **Operative provisions**

- 52-114 How much of a payment under the Military Rehabilitation and Compensation Act is exempt?

*[This is the end of the Guide.]*

## Operative provisions

### 52-114 How much of a payment under the Military Rehabilitation and Compensation Act is exempt?

- (1) The table in this section tells you about the income tax treatment of payments under the *Military Rehabilitation and Compensation Act 2004*. References in the table to provisions are to provisions of that Act.
- (2) Expressions used in this Subdivision that are also used in the *Military Rehabilitation and Compensation Act 2004* have the same meanings as in that Act.
- (3) **Ordinary payment** means a payment other than a payment made because of a person's death.

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#### Income tax treatment of Military Rehabilitation and Compensation Act payments

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Item	Category of payment and provision under which it is paid	Ordinary payment	Payment because of a person's death
1	Alterations to aids and appliances relating to rehabilitation (section 57)	Exempt	Not applicable
2	Compensation for journey and accommodation costs (sections 47, 290, 291 and 297 and subsection 328(4))	Exempt	Not applicable
3	Compensation for permanent impairment (sections 68, 71, 75 and 80)	Exempt	Exempt
4	Compensation for financial advice (sections 81, 205 and 239)	Exempt	Not applicable

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**Income tax treatment of Military Rehabilitation and Compensation Act payments**

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<b>Item</b>	<b>Category of payment and provision under which it is paid</b>	<b>Ordinary payment</b>	<b>Payment because of a person's death</b>
5	Compensation for incapacity for Permanent Forces member or continuous full-time Reservist (section 85)	See section 51-32	Exempt
6	Compensation for incapacity for part-time Reservists (section 86)	See section 51-33	Exempt
7	Compensation by way of Special Rate Disability Pension (section 200)	Exempt	Not applicable
8	Compensation under the Motor Vehicle Compensation Scheme (section 212)	Exempt	Not applicable
9	Compensation for household services and attendant care services (sections 214 and 217)	Exempt	Not applicable
10	Telephone allowance (sections 221 and 245)	Exempt	Not applicable
11	Compensation for loss or damage to medical aids (section 226)	Exempt	Not applicable
12	Compensation for a wholly dependent partner for a member's death (section 233)	Not applicable	Exempt

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**Income tax treatment of Military Rehabilitation and Compensation Act payments**

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<b>Item</b>	<b>Category of payment and provision under which it is paid</b>	<b>Ordinary payment</b>	<b>Payment because of a person's death</b>
13	Continuing permanent impairment and incapacity etc. compensation for a wholly dependent partner (subparagraphs 242(1)(a)(i) and (iii))	Not applicable	Exempt
14	Compensation for eligible young persons who were dependent on deceased member (section 253)	Not applicable	Exempt
15	Continuing permanent impairment and incapacity etc. compensation for eligible young persons (subparagraphs 255(1)(c)(i) and (iii))	Not applicable	Exempt
16	Education and training, or a payment, under the education scheme for certain eligible young persons (section 258)	Exempt if provided for or made to a person under 16	Exempt
17	Compensation for other persons who were dependent on deceased member (section 262)	Not applicable	Exempt
18	Compensation for cost of a funeral (section 266)	Not applicable	Exempt

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**Income tax treatment of Military Rehabilitation and Compensation Act payments**

<b>Item</b>	<b>Category of payment and provision under which it is paid</b>	<b>Ordinary payment</b>	<b>Payment because of a person's death</b>
19	Compensation for treatment costs (sections 271, 272 and 273)	Exempt	Not applicable
20	Pharmaceutical allowance (section 300)	Exempt	Not applicable
21	Special assistance (section 424)	Exempt	Exempt

**12 After subparagraph 52-145(1)(b)(iii)**

Insert:

- (iiia) the scheme under section 258 of the *Military Rehabilitation and Compensation Act 2004* to provide education and training; or

**13 Subsection 995-1(1) (definition of *ordinary payment*)**

Omit “and 52-65”, substitute “, 52-65 and 52-114”.

## **Part 3—Application and amendment of assessments**

### **14 Application of amendments**

- (1) The amendments made by Part 1 of this Schedule apply to assessments for the 2004-05 year of income and later years of income.
- (2) Subject to subitem (3), the amendments made by Part 2 of this Schedule apply to assessments for the 2004-05 income year and later income years.
- (3) Subsections 51-32(1) and (4) and 51-33(1) of the *Income Tax Assessment Act 1997*, substituted by item 10 of this Schedule, apply to assessments for the 1996-97 income year and later income years.

### **15 Amendment of assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this item for the purposes of giving effect to subsections 51-32(1) and (4) and 51-33(1) of the *Income Tax Assessment Act 1997* substituted by item 10 of this Schedule.

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[Minister's second reading speech made in—  
House of Representatives on 4 December 2003  
Senate on 1 March 2004]

(210/03)

