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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**VETERANS' ENTITLEMENTS, TREATMENT AND SUPPORT
(SIMPLIFICATION AND HARMONISATION) BILL 2024**

EXPLANATORY MEMORANDUM

(DRAFT)

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Glossary

In this Explanatory Memorandum, the following abbreviations are used:

Abbreviation	Definition
AAT	Administrative Appeals Tribunal
ADA	Additional Disablement Amount
ADF	Australian Defence Force
CDF	Chief of Defence Force
DCP	Disability Compensation Payment
DRCA	<i>Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988</i>
DVA	Department of Veterans' Affairs
EDA	Extreme Disablement Adjustment
MC&TP	<i>Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004</i>
MRCA	<i>Military Rehabilitation and Compensation Act 2004</i>
MRCAETS	Military Rehabilitation and Compensation Act Education and Training Scheme
MRCC	Military Rehabilitation and Compensation Commission
PI	Permanent Impairment
RMA	Repatriation Medical Authority
SMRC	Specialist Medical Review Council
SoP	Statement(s) of Principles
SRCA	<i>Safety, Rehabilitation and Compensation Act 1988</i>
SRDP	Special Rate Disability Pension
VCES	Veterans' Children Education Scheme
VEA	<i>Veterans' Entitlements Act 1986</i>
VRB	Veterans' Review Board

Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024

Outline of Bill

This Bill will simplify and harmonise the existing tri-Act framework of legislation governing veterans' entitlements, rehabilitation and compensation arrangements that has long been in place. The legislation governing veterans' entitlements, rehabilitation and compensation is widely acknowledged as being complex and difficult to navigate and calls to simplify these arrangements are longstanding.

The Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024 (Simplification Bill) will provide for all claims for compensation and rehabilitation received from 1 July 2026 to be determined under the MRCA. To support this 'single ongoing Act' model, the VEA and the DRCA will continue in a limited form and be closed to new claims for compensation and rehabilitation.

The MRCA will operate as the single ongoing Act going forward and provide coverage for all future claims for compensation, irrespective of when and where the veteran served, or when their injury or illness occurred. This single Act will provide greater clarity and consistency around entitlements for veterans and their families.

Context of Amendments

The Government agreed on 26 September 2022, in its response to the Royal Commission into Defence and Veteran Suicide Interim Report, to develop a pathway for simplification and harmonisation of veteran compensation and rehabilitation legislation.

The pathway as reflected in this Bill seeks to simplify access to, and improve the understanding of, entitlements for veterans and families, producing an overall harmonised single scheme. The changes will also deliver positive administration outcomes for DVA, which means quicker, more-transparent, and more-consistent decisions for the veteran community.

Key features of the Bill

Transition to the single ongoing Act model

At present, there are three main pieces of legislation that operate to provide entitlements, compensation and rehabilitation support to veterans — the VEA, the DRCA and the MRCA. Under the single ongoing Act model, the VEA and the DRCA would be closed to claims for compensation and that new grants would be considered under the MRCA. Some parts of the old Acts (VEA and DRCA) will remain undisturbed, to ensure continued availability of certain benefits, for example, access to service pension subject to the means test.

Recipients of compensation payments on 1 July 2026 under the VEA and the DRCA will have their entitlements grand-parented. Their preserved benefits, VEA Disability Compensation payments, will continue to be indexed.

An enhanced MRCA will become the single ongoing Act, irrespective of where the veteran served or when their injury, illness or death occurred. Amendments are made to the MRCA to recognise previously determined compensable medical conditions, so there will be no need to re-establish liability for conditions already accepted under the old Acts. Any additional compensation due to the person (for either a new service-related condition or for a

deterioration of DRCA or VEA conditions) would be paid under the MRCA, regardless of under which Act the conditions were originally compensated.

The MRCA assessment methodology is whole-of-person impairment, with the impairment ratings for all of the person's conditions combined using a legislated formula, rather than each condition being assessed individually. For additional compensation to be paid, there is a requirement of an increase in the overall impairment rating of at least five points from the previous assessment.

This assessment will apply for veterans who have been compensated under the DRCA and/or the VEA who claim after the commencement date. Access to benefits such as the Veteran Gold Card or SRDP will be established upon acceptance of liability for a new medical condition under the MRCA, or where there has been a deterioration in the person's impairment that constitutes at least five impairment points following a reassessment.

It is recognised that there may be policy settings or practices that will need to be appropriately adjusted or exceptions be provided, in light of operational experience following commencement of the new model. To that end, there is scope in this Bill to provide urgent assistance to respond to unforeseen circumstances that arise with the implementation of the single ongoing Act.

Integrated support under one system

Compensation payments and support schemes will be consolidated under a contemporary framework. To accord with the general principle that individuals will not be worse off under the single ongoing Act model, a new periodic payment, known as the additional disablement amount, will be introduced to assist veterans who are age-pension age or older and have high levels of impairment and lifestyle impacts due to their service-related conditions. The payment is similar to the EDA payment available under the VEA.

The legislative provisions which support delivery of certain benefits such as treatment for certain conditions that do not require a link to service (Non-Liability Health Care), Victoria Cross allowance, prisoner of war payments and funeral compensation are incorporated under a single system. Similarly, administration of rehabilitation, household and attendant care services, vehicle assistance, acute support package and children's education assistance will be harmonised and consolidated under the MRCA, removing the different arrangements and multiple schemes that exist across veterans' portfolio legislation. The amalgamation will support common claim processes and benefit outcomes for veterans and their families. Existing beneficiaries and scheme participants will be transferred to the new streams.

Streamlined assessment and claims processes

To complement the new model, this Bill includes process improvements to assist with timeliness and consistency in claims determination.

The MRCA will adopt a presumptive liability mechanism for the connection between specified medical conditions and ADF service. The requirements for determining the date of effect for permanent impairment compensation will include treating doctors being able to provide a meaningful estimate of when an impairment met the requisite criteria of being permanent and stable, for payment to commence. These changes will remove some of the onerous claim requirements and ease the evidentiary burden on veterans.

Steps have been taken to harmonise provisions and practices to provide equitable outcomes. These include a single system for travel entitlements, removing the requirement for a return journey of 50 km before payment; aligning the cessation of Disability Compensation payment upon a veteran's death with the arrangements that apply to income support payments and MRCA compensation; and allowing permanent impairment in respect of a

deceased member compensation (excluding lifestyle effects) to be converted to a lump sum for payment to the estate. There will also be increased flexibility to allow certain payments to be made to carers of eligible young persons and to an authorised third party.

Unified administration and governance structure

There will be a single, consistent review pathway for all compensation claimants, with access to reviews by the VRB, and appealable to the AAT. Merits review in two separate bodies is a unique feature of veterans' law, in recognition of the complex nature of military service and the physical and mental health circumstances of the veteran cohort.

Information sharing provisions between the Department of Defence and DVA are also being improved as part of the Bill.

The VEA provisions that relate to pre-2004 service classification, and the SoPs framework for decision-making about injury, disease or death causation will be substantially replicated. The investigation and review roles of the two independent statutory bodies, the RMA and the SMRC, and their respective processes, are maintained and transferred to the MRCA.

The Bill will re-establish the Repatriation Commission under the MRCA as the single body to administer veterans' compensation legislation, consolidating the powers of the existing two Commissions, and simplify governance arrangements within the Veterans' Affairs portfolio.

The suite of changes in this Bill reflects the intent that the new model will enhance the responsiveness and efficiency of DVA in providing support to veterans and their families.

Outline of Schedules

Schedule 1 - Single ongoing Act main amendments

Part 1 - Closing eligibility to DRCA and VEA

This Part sets out that there will be no further grants of compensation under the old Acts and new claims will be assessed under the MRCA benefit structure of compensation for permanent impairment, and incapacity payments for economic loss.

The closure of Parts II and IV of the VEA do not affect the long-standing automatic grants of pensions to war widow(er)s and orphans, in circumstances where no claim is required. These pensions will continue to be administered under the VEA after commencement of the Simplification Act. A claim would need to be lodged under the MRCA to establish death as being service-related to access the additional lump sum for service-deaths.

Part 2 - Opening MRCA to pre-2004 conditions

This Part deals with pre-2004 operations, which are essentially service classifications under the VEA to be replicated under the MRCA.

Coverage for all types and periods of service in the VEA, including warlike, non-warlike, peacekeeping, operational, hazardous, and British nuclear test defence will be continued in the MRCA. Defence service as defined in Part IV of the VEA (as distinct from peacetime service under the MRCA) is brought forward into the MRCA, together with the associated benefits.

Compensation coverage for certain designated peacekeeping missions under the VEA will be continued under the MRCA, including for certain police members. The DRCA provisions specific to firefighters, and those which apply to ADF members associated with F-111 fuel-tank maintenance work will also be continued under the MRCA, with no change to eligibility requirements.

In addition, the MRCA is amended to avoid any need to recontest medical conditions already accepted under the VEA and/or DRCA. Upon lodgement of a new claim and acceptance of liability under the MRCA, all persons would undergo a needs assessment to identify the types of compensation, rehabilitation, and other assistance they may need.

Part 3 - Other amendments

This Part contains improvements to the MRCA which reduce the complexity and duration of claim investigations, integrate provisions from the old Acts, and provide greater flexibility for some payments. The changes include:

- simplifying permanent impairment compensation, with payments to commence from the first day of the month, based on the treating doctor's estimated date of effect;
- providing an exception for service prior to 1 January 1998 for the prohibition on the Commonwealth accepting liability where the injury, disease or death, aggravation or material contribution is related to defence service only because of the person's use of tobacco products (as per the VEA);
- allowing for Commonwealth liability to be accepted for injuries that were sustained while a member was on Defence duty by providing for a temporal connection between service and a medical condition (as per the DRCA arrangements);
- giving legal personal representatives the option to convert the deceased member's permanent impairment compensation entitlement excluding the lifestyle components to an age-based lump sum, for payment to the estate;

- consolidating the provisions for rehabilitation and motor vehicle compensation, and setting out the arrangements for those accessing an existing program or support to transition to the MRCA;
- standardising provisions to allow compensation payments to be made to an authorised third party;
- updating debt recovery powers under the MRCA so that they apply to overpayments under all three Acts; and
- streamlining the information sharing processes between the Commission, the Department of Defence and the ADF.

In addition, there are changes that relate to common law damages. Chapter 10 of the MRCA contains provisions that limit the capacity of a person to seek redress under the common law for a service injury, disease, death, or the loss or damage to a medical aid. An award of damages may lead to subsequent overpayment of compensation and necessitate offsetting or other recovery action.

Amendments are made to extend the operation of these provisions to have the same effect with regards to the preclusion and recovery of payments authorised under the DRCA or the VEA that are of a similar nature.

The MRCA also restricts damages that may be recovered through common law action for non-economic loss. The cap of \$110,000 was set at the commencement of MRCA, which is the same maximum that was set when the SRCA commenced on 1 December 1988. The Bill will increase this cap to \$177,000, noting that common law action has the additional risks of losing on liability, and/or a worsening of the impairment after settlement or judgement is finalised. The amount will remain unindexed.

Schedule 2 - Single Ongoing Act Enhancements

Part 1 - Amendments relating to allowances etc.

This Part contains changes to support a harmonised and integrated system for various allowances and support schemes, including:

- funeral compensation
 - From the commencement date dependants and legal personal representatives of deceased veterans may lodge a claim under the MRCA regardless of under which Act/s the deceased person was previously covered;
 - an increased cap of \$3,000 will apply for those who would have met the VEA automatic grant criteria, and a combined cap of \$14,062.53 for a service-death claimed on or after the date of commencement;
- acute support package – provision of assistances and services to vulnerable veterans and their families to adjust to challenging life circumstances, including access to support for grandparent carers, will be consolidated under the MRCA;
- compensation for household services and/or attendant care – assistance that is required due to the clinical needs of a person’s accepted service-related conditions will be accessed through the MRCA;
- payment of Victoria Cross allowance is transferred to new Division 6 of Part 4 of Chapter 7 (with no change to eligibility requirements), while new Division 7 will

provide an instrument-making power to facilitate the administration of decoration allowance;

- ex-gratia payments to former prisoners of war and the prisoner of war recognition supplement – provisions from various Acts to support the administration of these payments will be transferred to new Chapter 5AA of the MRCA, with no change to eligibility requirements;
- children’s education assistance – VCES will be incorporated into MRCAETS, with access extended to the eligible children of DRCA veterans who transition to the MRCA;
- additional payment for persons with severe impairment in respect of their children – changes will be made to allow the primary carer of the eligible dependent young person/s to be the payment recipient; and
- special assistance – the Commission’s discretion to grant reasonable benefits to a person will be expanded to include unforeseen circumstances upon transition to the single ongoing Act model.

Part 2 - Amendments relating to treatment

This Part transfers elements of the framework for the provision of treatment, including Non-Liability Health Care, and the Commission’s powers to determine specific treatment programs and classes of eligible persons, from the VEA to the MRCA, with no change in eligibility requirements.

Upon acceptance of a new or worsening compensable impairment under the MRCA, any existing VEA/DRCA impairment would be included for the points thresholds to be eligible for the relevant Veteran Card under the MRCA.

Travel entitlements will be integrated into a single system and be payable under the MRCA, with more beneficial arrangements, such as the removal of the 50 km round trip limit.

Part 3 - Presumptive liability

This Part streamlines claims processing by allowing for presumptive acceptance of liability for declared occupational injuries or diseases under the MRCA, with scope for conditions to be removed from, or added to, the list.

There are certain cohorts such as firefighters, who are covered by the *deemed diseases* provision in the DRCA, which allow liability to be accepted on presumed contribution by their employment, without the need to establish a causal link to service on a case-by-case basis.

Since 2006, the Commissions have also approved arrangements variously referred to as *decision-ready*, *streamlining* and *straight-through processing*, which apply to claims under the VEA and MRCA. There is a suite of approved medical conditions, known to be prevalent amongst veterans and have a high acceptance rate, or have a quantifiable SoP factor that can be associated with particular service requirements/duties.

The changes in this Part will ensure equity and consistency with DRCA liability provisions and enshrine into legislation the existing administrative practices that are aimed at reducing the evidentiary requirements for individual liability claims and the time taken to process those claims.

Part 4 - Additional disablement amount

This Part introduces the ADA into the MRCA, which is modelled on the EDA and the SRDP. The new payment will ensure there is equivalent coverage for veterans who are prevented from accessing EDA due to implementation of the single-ongoing Act model from 1 July 2026. Dependants of deceased veterans who were ADA-eligible will have access to a Veteran Gold Card, wholly dependent partner payment, and if applicable, compensation and access to MRCAETS assistance for an eligible young person.

Schedule 3 - Review pathway

Part 1 - Amendments commencing 60 days after Royal Assent

This Part sets out amendments in advance of broader changes in this Bill to remove the internal (DVA) reconsideration process and confer jurisdiction on the VRB for review of DRCA original determinations. A second tier of merits review to the AAT will remain in place.

Although DRCA reviews would cease under the model in the medium term, these changes would harmonise the review pathway across the Acts and provide consistency and certainty over the initial period of the model.

Part 2 - Amendments commencing 1 July 2026

This Part contains amendments to provisions inserted by Part 1 that are needed as a result of changes being made elsewhere in the Bill, to support the operation of the revised review pathway under the single ongoing Act model.

Schedule 4 - Merging commissions

Veterans' compensation legislation is administered by two independent statutory bodies — the Repatriation Commission established by the *Repatriation Act 1920* and continued under the VEA, and the MRCC established under the MRCA.

This Schedule will transfer the powers and functions of the MRCC to the Repatriation Commission and continue with a single governance body, the Repatriation Commission, under the MRCA.

Schedule 5 - Repatriation Medical Authority and Specialist Medical Review Council

SoPs are used to determine whether a claimed medical condition can be causally linked to service. A causal connection between service and a medical condition must be established before liability can be accepted and compensation can be paid in relation to that medical condition.

This Schedule transfers the administration of the SoPs from the VEA to the MRCA. It includes the framework which provides for the RMA to determine SoPs for any disease, injury or death that could be related to military service, and for the role of, and service provided by, the SMRC.

Schedule 6 - Disability compensation cessation date

Under the VEA, there is no DCP payable for the 14-day pension period in which the person dies. When a veteran in receipt of DCP dies, there is an inconsistent outcome with the final pension amount, where payments may be adjusted to cease in the previous fortnight.

This Schedule amends the VEA to harmonise the cessation date for DCP and associated allowances with arrangements under the MRCA, as well as income support payments, by extending the payment cut-off to the veteran's date of death.

Schedule 7 - Application and transitional provisions

The Schedule sets out when particular provisions of this Bill will come into effect and the interaction with the law that was in force immediately prior to the commencement of the Simplification Act. It will address circumstances which span a period before and after commencement date, for example, claims which may be undetermined on the day of commencement, or a claim lodged after the new Act commences with respect to a member who died before commencement date.

Schedule 8 - Consequential amendments

The Schedule contains amendments to legislation in portfolios such as Social Services, Treasury, and Health, to reflect the MRCA as the primary statute for veteran matters and the merging of the Commissions.

The most significant consequential amendments are the updates to the *Social Security Act 1991* and the *Income Tax Assessment Act 1997* to take account of the new payment of ADA and the compensation payments and support schemes that have been shifted from the VEA to the MRCA. The consequential amendments will ensure the same policy for the payments (and payments of a similar nature) currently listed is applied to the tax and means test treatment for payments issued under the single ongoing Act.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill/Disallowable Legislative Instrument

The *Military Rehabilitation and Compensation Act 2004* (MRCA; the Act) provides for compensation and other benefits to be provided for current and former members of the Defence Force who suffer a service injury or disease; rehabilitation programs for current or former members of the Defence Force (including some who have made a claim for acceptance of liability by the Commission for a service injury or disease and some who have not made such a claim and who need not have a service injury or disease); compensation and other benefits for the dependants of some deceased members; and certain assistance (such as child care, counselling and household services) to members or former members or to related persons of members, former members or deceased members.

The current framework of legislation underpinning the provision of compensation, rehabilitation and other entitlements for Australian veterans and their families is widely acknowledged as complex, difficult to navigate and challenging to administer. The legislative complexity and confusion impacts veterans, their advocates and families and DVA staff, directly contributing to delayed and inconsistent processing and claims backlogs. This complexity has developed over decades, so three different pieces of veterans' entitlements legislation can apply to a veteran's circumstances.

The proposed amendments to the Act will simplify access to and understanding of entitlements for veterans and families, producing an overall harmonised scheme of entitlements for veterans going forward.

Under the modified framework, the VEA and the DRCA will be closed to new claims, with the MRCA remaining as the sole ongoing scheme for all new claims, irrespective of where the veteran served or when their injury, illness or death occurred.

Veterans and dependants currently in receipt of compensation under the VEA and/or the DRCA will continue to receive those payments under grand parenting arrangements. Some parts of the old Acts will also remain undisturbed, including provisions in the VEA that are not considered compensation (e.g. means-tested income support payments).

Human rights implications

The Bill engages the following human rights:

- The right to social security, under article 9 of the International Convention on Economic, Social and Cultural Rights (ICESCR).
- The right to an independent, impartial and competent court or tribunal, under article 14(1) of the International Covenant on Civil and Political Rights (ICCPR).
- The right to privacy and reputation, under article 17 of the ICCPR.
- The right to health, under article 12(1) of the ICESCR.
- The right to education, under article 13 of the ICESCR.

- The right to safe and healthy working conditions, under article 9 of the ICESCR.

The right to social security

The majority of amendments contained in this Bill contribute to the provision of access to the right to social security. Measures that are considered to provide social security include non-contributory schemes, such as pensions, which can apply to everyone in a particular group or be targeted at people with specific needs

Article 9 of the ICESCR provides for the right of everyone to social security, including social insurance. Elaborating on Article 9, the Committee on Economic, Social and Cultural Rights provided in General Comment 19 that ‘States parties should ... ensure the protection of workers who are injured in the course of employment or other productive work’. Military compensation is analogous to social insurance in that it provides payment of wages and medical costs in respect of injuries, diseases or death occurring as a result of service.

The amendments to the liability provisions of the Act are intended to improve the physical and mental health outcomes for former ADF personnel covered by the three Acts, by simplifying their access to compensation.

These improvements are achieved by making the most modern Act, the MRCA, the only legislation that will apply to new compensation claims going forward from 1 July 2026, with existing VEA/DRCA entitlements operating to preserve existing payments. The proposed single ongoing Act model will address longstanding complexities and difficulties inherent in the current legislative framework, and ensure maximum simplification for the administration of claims by removing complexities associated with the existing tri-Act framework. This would result in a system that veterans, families and advocates find easier to navigate and less confusing, as well as being more efficient and streamlined for DVA to administer.

The right to an independent, impartial and competent court or tribunal

The MRCA, DRCA and the VEA will be amended to standardise the review pathway for all veteran compensation claims, ahead of the commencement of the single ongoing act.

The amendments are compatible with the right to an independent, impartial and competent court or tribunal, by making consistent the application of a common appeal pathway for all veterans and by making the Veterans’ Review Board, which is a less adversarial, veteran-friendly environment, where matters can be resolved without the involvement of lawyers, available to all veterans.

Veterans currently in receipt of compensation under the DRCA and/or the VEA will transition to the MRCA only upon the acceptance of a new claim for liability under the MRCA or where there has been a deterioration in a veteran’s impairment that constitutes at least five impairment points under the MRCA since their last assessment. This minimal limitation on the right to social security operates to provide certainty to veterans and leaves the decision to claim under the MRCA to each individual veteran, and in no way diminishes veterans’ capacity to maintain their existing levels of benefits.

Right to privacy and reputation

The legislative basis for the exchange of information between DVA and Defence varies between each of the current Acts. Amendments to the Act will continue the existing authority relating to the exchange of information between, to facilitate the investigation and determination of claims, promoting the right to privacy.

Right to health

The proposed amendments operate to continue the availability of medical treatment for veterans (and some dependants), usually on the basis that the Commonwealth has accepted liability for medical conditions that were caused by service in the Australian Defence Force. Treatment of some additional conditions, however, is provided on a non-liability basis.

Amendments to the liability provisions of the Act are intended to improve the physical and mental health outcomes for former ADF personnel covered by the three Acts, by simplifying their access to compensation. The broad access to medical treatment for veterans and some dependants is compatible with the right to health.

Right to education

Both the MRCA and the VEA have Education Schemes which offer financial assistance, student support services and counselling to the children of certain eligible veterans. The DRCA does not have an equivalent scheme in place.

Amendments will be made to the Act to allow access to DVA education schemes for eligible children of DRCA veterans who transition across to the MRCA via the acceptance of a new claim or a five-impairment point deterioration/worsening of an existing impairment. These amendments are compatible with the right to an education, and extend education access to children of additional veterans.

Right to work

Existing firefighter-specific compensation coverage (including for certain cohorts, and defined cancers and other diseases) in the DRCA will be continued under the MRCA, with no change to eligibility requirements. This coverage will include the support scheme established under the DRCA for ADF personnel who participated in fire training at the Royal Australian Air Force Base Point Cook Fire Training School between 1 January 1957 and 31 December 1986.

Existing compensation coverage for ADF members associated with F-111 fuel-tank maintenance work (commonly referred as the 'Deseal/Reseal' programs) in the DRCA will be continued under the MRCA, with no change to eligibility requirements and benefits.

Although serving to continue existing coverage, these amendments directly recognise that the right to safe and healthy working conditions may not have always been available to certain veteran cohorts.

The existing blanket exclusion in the MRCA for conditions relating to the use of tobacco products will be modified to introduce an exception to the exclusion, for service up to 1 January 1998, to align with the current VEA provision.

These amendments support the right to a healthy environment and acknowledge that exposure to tobacco smoke is not always voluntary.

Conclusion

The Bill is compatible with human rights. It advances the right to social security, to health, to education, and to safe and healthy working conditions, along with the right to an independent, impartial and competent court or tribunal, and the right to freedom from arbitrary and unlawful interference with privacy. To the extent that the Bill limits any human rights, those limitations are reasonable, necessary, and proportionate.

Notes on Clauses

Schedule 1 - Single ongoing Act main amendments

Part 1 - Closing eligibility to DRCA and VEA

Military Rehabilitation and Compensation Act 2004

Items 1 and 2 amend section 3 which describes the general purpose and practices of the Act, to set out that from 1 July 2026, compensation would be provided under the MRCA regardless of nature of service or time of injury and that the DRCA and VEA would be closed to new claims for compensation from that date. It also adds two notes to inform readers that consequential and transitional arrangements are set out in the MC&TP Act, Part IA of the DRCA, and Part IA of the VEA. To reflect modern drafting practices, the abbreviation VEA replaces for all references to the *Veterans' Entitlements Act 1986*.

Items 3 and 6 amend subsection 5(1) to set out that *date of commencement* means 1 July 2026. A signpost definition for *de facto relationship* in section 19A, and the abbreviations for the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* and the *Veterans' Entitlements Act 1986* are also added.

Item 4 amends subparagraph (c)(i) of the definition of *partner* to insert the updated reference to section 19A, in relation to de facto relationship. (See item 9.)

Item 5 amends the definition of *pharmaceutical benefits* in subsection 5(1) to replicate the definition from subsection 91(9) of the VEA, instead of referring readers to the VEA, reflecting the intent that this Act would be the primary statute for military compensation.

Item 6 – see item 3

Item 7 repeals the definition of *Veterans' Affairs Minister* in subsection 5(1) which refers to the Minister administering the VEA, as a distinction from the Minister responsible for this Act is unnecessary. The term is primarily used in Part 5 of this Act in relation the Repatriation Commission and those provisions are being updated with the merging of the Commissions. (See also Schedule 5 – Merging Commissions and related updated by item 30 for the use of the term in subparagraph 438(a)(i).)

Item 8 repeals subsection 5(2) in relation to determining a de facto relationship, as the full definition is inserted at new section 19A by the item below.

Item 9 inserts new section 19A to replicate section 11A of the VEA on matters to be considered in forming an opinion on whether a relationship is de facto, where a provision of this Act refers to a *partner* (as per the amendment by item 4.) This amendment does not alter any interpretation and is intended to reflect that the MRCA would be the primary statute for military compensation, instead of referring readers to the VEA.

Items 10, 11, 12, 13, 14, 15, 16, 20, 24, 25, 27, 28 and 29 are minor technical updates to adopt the abbreviation VEA for references to the *Veterans' Entitlements Act 1986* in section 197, subsection 198(2); subsection 204A(2) (note 3), sections 221 to 224, paragraphs 234(5)(a) and 245(b), sections 246 to 248, subsection 258(7), subsection 280A(1) (note 1), sections 301 to 303, paragraph (g) of the definition of *receiving Commonwealth body*, in subsection 409(5), paragraph 424L(2)(b), paragraph 430(3E)(b), and subsection 430A(2).

Items 17, 18, 19, 21, 22, 23 and 26 are minor technical updates to adopt the abbreviation DRCA for references to the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* in section 278, section 280A (heading), subsection 280A(1), subsection 280A(1) (note 2), subsection 280A(2), section 300 (note 2) and section 423.

Item 30 amends subparagraph 438(a)(i) consequential to the repeal of the term *Veterans' Affairs Minister* by item 7. The omission of the words 'Veterans' Affairs' has no material impact on the delegation by the Chief of the Defence Force, as the VEA and this Act are both responsibilities of the same Minister.

Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988

Item 31 amends subsection 4(1) to set out that *date of commencement* means 1 July 2026.

Item 32 inserts new *Part IA—Operation of this Act on and after date of commencement*, to provide for the operation of the DRCA upon commencement of the Simplification Act.

Section 14AA provides that new claims under Part V (general claim provisions of the DRCA) would be prevented on or after the commencement of the new Act. Similarly, there would be no new acute support package instruments under section 41B from that date.

Two guidance notes are added to inform readers that new claims for compensation and grants of acute support package could be made under the MRCA instead.

Items 33 and 34 amend the note at the end of subsection 41B(1) with a technical change and the addition of Note 2 to inform readers that no new instruments could be made under section 41B in relation to acute support package on or after commencement date, as set out in section 14AA.

Item 35 amends subsection 54(1) to insert a guidance note to inform readers that no claims for compensation could be made under section 54 on or after commencement date, as set out in section 14AA.

Item 36 amends subsection 124(1A) to insert a guidance note to inform readers that no claims for compensation could be made under the DRCA with respect to an injury, loss or damage under a predecessor Act to the DRCA on or after commencement date, as set out in section 14AA.

Veterans' Entitlements Act 1986

Item 37 amends subsection 5Q(1) to set out that *date of commencement* means 1 July 2026.

Item 38 inserts new *Part IA—Operation of this Act on and after date of commencement*, to provide for the operation of the VEA upon commencement of the Simplification Act.

Subsection 12AA(1) provides that new claims or applications under the VEA and instruments made under the VEA would be prevented, subject to subsection (2), on or after the commencement of the new Act. Similarly, there would be no acute support package instruments under section 115S from that date.

Two guidance notes are added to inform readers that from that date, certain new claims could be made under the MRCA and that grants of acute support package could also be made under the MRCA instead.

Subsection 12AA(2) provides for exceptions to the bar on claims or applications under the following provisions of the VEA:

- Division 2A of Part II – for restoration of a war widow’s pension which was granted under a repealed Act and was cancelled due to the person’s remarriage (reinstated pensioner);
- Part III, IIIA, IIIAA or IIIAB and instruments made under these Parts – for service pensions, income support supplement, veteran payment and pension bonus, as income support provisions would continue to be administered under the VEA;
- Section 111 – for bereavement payments under section 98AA, in respect of certain single veterans who died in financial difficulty.

These exceptions reflect the intent that apart from income support benefits, compensation claims that remain under the VEA would only apply in limited circumstances. The majority of claims following commencement of the new Act would be administered under the MRCA.

The effect of subsection 12AA is that there would be no new claims or applications, other than the exceptions in subsection (2), for:

- compensation payments under Part II and IV;
- allowances and other benefits under Part VII, which includes clothing allowance, attendant allowance, funeral benefits, decoration allowance, Victoria Cross allowance, recreation transport allowance, Vehicle Assistance Scheme, special assistance, loss of earnings allowance and travelling expenses;
- Veterans' Vocational Rehabilitation Scheme under Part VIA

While there would be no new claims or applications, a benefit being paid to a person under these Parts as at commencement date would be preserved under the VEA including indexation arrangements. This allows existing payments to continue without interruption and the person may lodge new claims under the MRCA for which they may be eligible.

There are provisions in other schedules of this Bill to integrate many of these benefits into the MRCA. However, as some of the VEA allowances have been unchanged since the 1920s, clothing allowance, attendant allowance and recreation transport allowance which are paid to relatively small groups, are not being brought forward into the single ongoing Act model. This is consistent with the MRCA providing a modern suite of support, with a streamlined and targeted approach to meet the needs of injured persons.

Item 39 amends subsection 14(1) to repeal existing notes 1 and 2 which refer to claims and dependants that are no longer necessary. A replacement note is inserted to inform readers that Part II is closed to new claims and applications, as set out in section 12AA.

Item 40 amends subsections 15(1) and (2) which deal with applications for increase in a Part II pension, inserting a guidance note to inform readers that a claim could not be made on or after date of commencement, as set out in section 12AA.

Item 41 amends section 93P which deals with claiming for a pharmaceutical benefits card, inserting a guidance note to inform readers that a claim could not be made on or after commencement date, as set out in section 12AA.

Item 42 amends subsection 111(2) which sets out the procedural requirements for claiming certain benefits, inserting a guidance note to inform readers that a claim could not be made on or after commencement date, except for bereavement payment under section 98AA, as set out in section 12AA.

Items 43 and 44 amend the note at the end of subsection 115S(1) with a technical change and insert Note 2 to inform readers that no new instruments could be made under section 115S in relation to acute support package on or after commencement date, as set out in section 12AA.

Part 2 - Opening MRCA to pre-2004 conditions

Division 1 - Accepted DRCA and VEA conditions

Military Rehabilitation and Compensation Act 2004

Items 45 and 45 amend sections 21 and 22 which outline the provisions of Chapter 2 and the approach for the Commission to accept liability under and Part 2 respectively, to reflect the addition of the deemed liability provision.

Item 47 inserts new section 24A to provide that if liability for the injury or disease has been accepted under the DRCA or VEA, the Commission is taken to have accepted liability for an injury or disease, and the injury or disease is taken to be a service injury or disease.

Subsection 24A(1) refers to a claim submitted prior to commencement date, where the primary or review decision on that claim results in DRCA compensation or a pension under Part II or IV of the VEA being payable. In essence, these are decisions that the Commission has accepted liability for one of more conditions that is the subject of the claim. Subsection 24A(2) follows to set out that accepted conditions – including those arising from claims determined under the DRCA or the VEA – apply for the purposes of the MRCA and the injury or disease is taken to be a service injury or disease. A note informs readers that the person is not required to re-claim, and the Commission is not required to reassess liability for that injury or disease.

However, new subsection 24A(3) draws out an important distinction. Despite deemed liability, a person who is receiving or has received DRCA compensation or a pension under Part II or IV of the VEA for an injury or disease, has no MRCA compensation entitlement with respect to that same injury or disease, unless expressly provided for by another provision of this Act.

This reflects the transition approach where a person's accepted conditions under the DRCA or the VEA are recognised under the MRCA and that there are thresholds to be met to access particular MRCA entitlements. This allows existing compensation payments to continue without interruption and the person can make the choice to test their eligibility for MRCA benefits.

Item 48 amends section 27 to insert a guidance note in relation to the definitions of service injury and service disease. Readers should be aware of section 24A for circumstances where the Commission is taken to have accepted liability for an injury or disease. That is, an injury or disease accepted under the DRCA or VEA is taken to be accepted by the Commission and regarded as a service injury or disease.

Division 2 - Classifying pre-2004 operations

Military Rehabilitation and Compensation Act 2004

Part 1 - Preliminary

Item 49 inserts a new heading within Chapter 1 to set out Part 1 to contain sections 1 to 5 of this Act.

Items 50, 51, 52, 53 and 54 replicate in subsection 5(1) a number of definitions from the VEA, which relate to compensation for certain cohorts of the Defence Force or of Peacekeeping force and their dependants, and related updates are made to some existing definitions. They include:

- *Australian contingent, Australian member, authorised travel, and British nuclear test defence service* are drawn from subsection 68(1) of the VEA and are relevant for the purposes of establishing coverage under the MRCA for peacetime service contingents (such as police) and for the nuclear test cohort.
- *defence service* is updated to reference subsection 6(1A) where the expanded explanation of the applicable kinds of service is located.
- signpost definitions are inserted for *domicile* and *hazardous service* which refers readers to section 19B and section 6C respectively.
- the definition of *member* is amended to include a reference to *member of a Peacekeeping Force*, a new defined term inserted into this subsection.
- *operational service, Peacekeeping Force, and peacekeeping service* are inserted as signpost definitions, referring readers to sections 444 to 450, and subsections 6A(3) and 6A(1) respectively.

Item 55 inserts a new heading within Chapter 1 to set out *Part 2— Kinds of service to which this Act applies* to contain sections 6 to 20 of this Act.

Items 53, 57, 58 and 59 make a number of changes to section 6:

- amend the heading to section 6 to Defence service
- insert new subsection 6(1A) to provide that as well as warlike service and non-warlike service, defence service includes **British nuclear test defence service** and **peacetime service**
- insert a note after section 6(1A) to inform readers that section 443 provides for this Act to regard operational service as if it were warlike service and non-warlike service
- extends the meaning of **non-warlike service** in paragraph 6(1)(b) to include peacetime service
- replace paragraph 6(1)(c) to insert **peacetime service** to mean any other service with the Defence Force that is not warlike service, non-warlike service or British nuclear test defence service.

Item 60 inserts a number of new sections into Part 2 of Chapter 1.

Peacekeeping Force

It is intended that the designation be applied to a force raised for service outside Australia in a peacekeeping capacity or in a monitoring or observation capacity in a situation that may lead to an outbreak of hostilities. In recent years, following the introduction of warlike and

non-warlike service, operations that would have previously been declared peacekeeping service are instead declared non-warlike service.

Section 6A provides the meaning of *peacekeeping service* and *Peacekeeping Force*, based on the definitions of these terms in subsections 68(1) and 68(2) of the VEA. In order for a person to have rendered peacekeeping service, they must have served outside Australia as a member of a Peacekeeping Force. A table setting out a list of all declarations of Peacekeeping Forces under section 68(1) of the VEA that are in force and the additional Peacekeeping Forces from Schedule 3 of the VEA is inserted at subsection 6A(3).

To date, those declared to be members of a Peacekeeping Force include mainly members of the ADF and members of Federal, State and Territory Police. Australian employees of the United Nations Organisation or of private or government welfare organisation during a peacekeeping mission are neither part of an Australian contingent nor members of a Peacekeeping Force.

British Nuclear Tests in Australia

A series of British nuclear weapons tests were conducted in Australia at Monte Bello Island, off the coast of Western Australia, and at Emu Field and Maralinga in South Australia between October 1952 and October 1957. Minor trials were also conducted at Emu Field and Maralinga between 1953 and 1963. Both Australian and British personnel were involved in the tests and those involved included military and civilian participants.

Section 6B provides the meaning of *British nuclear test defence service*, based on section 69B of the VEA. In order for a person to have rendered British nuclear test defence service, they must have been a member of the Defence Force in a nuclear test area or involved in the related activities, at a specified time.

The tables from the VEA which set out the relevant geographic areas and periods are brought forward into subsections 69B(2) and (3). This is a distinct category of eligible service providing former ADF members who participated in the British nuclear tests and related activities, with compensation entitlements for service-related injury, disease or death, equivalent to those for non-warlike, hazardous service or defence service.

Other provisions

Section 6C provides the meaning of *hazardous service*, based on subsection 120(7) of the VEA, to be service prior to 1 July 2004 as determined by the Minister of Defence in writing to be hazardous service. This service classification generally involves activities exposing individuals or units to a degree of hazard above and beyond that for normal peacetime duty. In recent years, following the introduction of warlike and non-warlike service, operations that would have previously been declared hazardous service are instead declared non-warlike service.

Unlike other defence service, hazardous service does not involve a 3-year minimum of service in the Defence Force before a person becomes eligible.

Item 61 inserts new section 19B to set out the concept of domicile of choice, replicating section 11B of the VEA. The provision was intended to primarily cover those Australians who were travelling or studying overseas at the time World War Two broke out, could not return to Australia to enlist in the Australian armed services, and served instead with British, Commonwealth or Allied (BCAL) defence forces. The term is also relevant for determining civilians who may be entitled to prisoner of war payments. (See Part 1 of Schedule 2.)

Items 62 and 63 amend subsection 335(1) including the heading, to reflect the inclusion of British nuclear test defence service and hazardous service under this Act, and that the more beneficial reasonable hypothesis standard of proof [disproving a claim beyond reasonable doubt] would apply to claims relating to these service types, along with warlike and non-warlike service.

Item 64 amends subsection 338(1) to provide a similar change to the items above, that the operation of reasonable hypothesis by reference to SoPs would apply to claims for acceptance of liability for injury, disease or death relating to British nuclear test defence service or hazardous service, as well as warlike and non-warlike service.

Items 65 and 66 amend paragraph 340(2)(c) to set out that in the circumstance where there is no relevant SoPs, the requirements on the Commission for making a reasonable hypothesis determination would apply to claims for acceptance of liability for an injury, disease or death relating to British nuclear test defence service or hazardous service, as well as warlike and non-warlike service.

Item 67 insets new Chapter 12 to deal with the application of this Act to operational service. As warlike service and non-warlike service are categories of operational service, the approach taken is to replicate definitions and provisions contained in, and relevant to Part II of the VEA.

Section 441 provides a simplified outline of Chapter 12 to note that this Act would apply to operational service as if it were warlike service/non-warlike service.

Section 442 contains in subsection (1) a series of defined terms brought across from sections 5B and 5C of the VEA that are related to operational service. The definitions include:

- allied country
- allotted for duty in an operational area
- Australian mariner
- Commonwealth country
- continuous full time operational service
- eligible civilian
- enemy
- fishing vessel
- member of a unit of the Defence Force
- member of the Defence Force
- member of the Interim Forces
- operational area
- period of hostilities
- special mission
- unit of the Defence Force
- World War 1
- World War 2
- Australia

In order for a person to have operational service, they must have served in an operational area and the individual (or their unit or ship) must have been *allotted for duty* in that area.

An instrument of allotment is issued expressly for use in determining eligibility for compensation entitlements.

Subsection 442(2) sets out that an instrument of allotment may be produced by the ADF, signed by the Vice Chief of the Defence Force, or the Minister for Defence, depending on operational area described in the specific item of the table in new section 451. Being allotted for duty is a formal process that involves a person, or their unit being included in such an instrument.

Subsection 442(3) is inserted to assist readers to note that an instrument of allotment is not a legislative instrument, as per the exemption status for the corresponding VEA provision under items 31(a), (b) and (c) of the Legislation (Exemptions and Other Matters) Regulation 2015.

Subsection 442(4) provides eligibility for the Australian Army Nursing Service, which was formed as part of the Australian Army Medical Corps.

Subsection 442(5) provides the Minister with discretionary power to make a determination deeming a person to have continuous full-time service or to be a member of unit of the Defence Force, whilst the person is undertaking the specified service or activities.

Members of the Australian Army, Navy and Air Force Reserves are generally the subject of continuous full-time service determinations, while the deeming of civilians to be members of the Forces is equivalent to a declared member under section 8(1). Such a determination on its own does not confer eligibility to benefits, but allows a person or persons covered by the determination to meet the continuous full-time service or member of the Defence Force component of the eligibility criteria to an entitlement.

These determinations are not legislative instruments as per the exemption status for the corresponding VEA provision under item 31(d) of the Legislation (Exemptions and Other Matters) Regulation 2015.

Subsection 442(7) provides the end dates for World War 1 and 2 for the application of Chapter 12.

Section 443 in *Part 2—Application of this Act to operational service* provides that persons who have rendered operational service are regarded as persons who have warlike service/ non-warlike service under this Act.

Division 1 of *Part 3—Service that is operational service* contains provisions which deals with operational service divided by the conflicts or forms of service to which they applied. They replicate sections 6A to 6F of the VEA in the following manner:

• Inserted in the MRCA at...	• VEA provision
Section 444 Operational service—world wars	Section 6A
Section 445 Operational service—Australian mariners	Section 6B
Section 446 Operational service—post World War 2 service in operational areas	Section 6C
Section 447 Operational service—other post World War 2 service	Section 6D
Section 448 Operational service—minesweeping and bomb/mine clearance service	Section 6DA

Section 449 Operational service—service on submarine special operations	Section 6DB
Section 450 Operational service—Korean demilitarised zone and Vietnam	Section 6E
Section 451 Meaning of operational area	Section

Section 444 deals with operational service in the world wars. Subsection (1) includes a table covering certain service by members of the Defence Force. Subsection (2) covers special mission, eligible civilians and members of the Defence Force incapacitated as a result of enemy action. Subsections (3) and (4) set out cut-off dates, after which operational service do not apply.

Section 445 deals with operational service by Australian mariners (as defined in section 442) through employment outside Australia or within Australia. Subsection (7) contains a definition which excludes an external Territory.

Section 446 deals with post World War 2 service in operational areas. A person has operational service, if they were allotted for duty in an operational area and have service in the area during a defined period of hostilities. It also applies to a member of a BCAL Defence Force, who was domiciled in Australia before enlistment and the person has rendered continuous full-time service in an operational area.

Section 447 deals with other operational service after World War 2, referring to members or units included in written instruments by the ADF as being assigned for service in Singapore, Japan or North-East Thailand, or attached to the Far East Strategic Reserve, during particular periods. Such determinations are not legislative instruments as per the exemption status for the corresponding VEA instrument under item 31(e) of the Legislation (Exemptions and Other Matters) Regulation 2015.

Section 448 deals with operational service by persons who have been awarded or are eligible to be awarded the specified minesweeping and bomb/mine clearance service awards.

Section 449 deals with certain submarine special operations that were undertaken between 1978 to 1997 which were re-classified as operational service, provided the member who served on such operations was eligible for, or in receipt of, the Australian Service Medal with Clasp ‘Special Ops’.

Section 450 deals with operational service in the Korean demilitarised zone and in Vietnam, including on HMAS *Vampire* or *Quickmatch*.

Division 2 of Part 3 contains section 451 which lists 17 operational areas, the first being item 1, Korea, commencing on 27 Jun 1950 and the final being item 17, the Red Sea, from 13 to 19 January 1993. The list is based on Schedule 2 of the VEA with renumbering and modernised drafting practices in relation to geographic coordinates references.

Division 3 - Retesting claims

Military Rehabilitation and Compensation Act 2004

Items 68 and 69 amend subsection 319(1) to insert a note to inform readers that for claims rejected under the VEA or DRCA, an application may be made for consideration under the MRCA, provided the claimant can present new evidence to support their claim. The guidance

note reflects the operation of section 322 (as amended) which specify that a new claim for liability or compensation must be supported by new evidence.

Item 70 amends section 322 to make clear the interactions between the claim provisions under this Act and claims made under the DRCA or the VEA before commencement date.

New subsection (5A) precludes a claim under this Act for an injury or disease while a claim under the DRCA or VEA in respect of the same injury or disease has not yet been finally determined. A claim is *finally determined* when a claimant has no possible further avenue for any form of appeal. New subsection (5B) requires that a claim for acceptance of liability for an injury or disease previously claimed under the DRCA or VEA must be supported by new evidence.

These amendments are consistent with the principles that already apply to “MRCA only” claims to facilitate timely and efficient resolution of claims.

Division 4 - Needs assessment

Military Rehabilitation and Compensation Act 2004

Item 71 inserts a note to inform readers that subsection 325(2) means that a needs assessment must be carried out before a compensation determination is made under this Act, including where liability for an injury or disease has been accepted under the DRCA or VEA.

Part 3 - Other amendments

Division 1 - Permanent impairment

Military Rehabilitation and Compensation Act 2004

Items 72 and 73 amend section 68 to set out the date of effect rules regarding entitlement to compensation for permanent impairment. A technical change is made to paragraph 68(2)(b) consequential to the insertion of subsection 68(3), which clarifies how to determine when a person’s entitlement commences. Subsection (3) provides that the date of effect for the condition is the latter of the date of the liability claim, and the date that condition became permanent and stable according to the estimate by the person’s treating doctor.

Item 74 amends section 71 to repeal and replace existing subsection (3) and inserts new subsections (4) and (5) to set out the same approach for determining the date of effect where an additional payment is made for compensation for another condition, or a worsening of an existing condition. New subsection (6) makes clear that in working out the amount of additional compensation, that permanent impairment payments under the DRCA and pensions under Part II or IV of the VEA are taken into account.

Items 75, 76, 77, 78, 79 and 80 amend section 77 consequential to the changes above, to allow the date of effect to be backdated to the nearest month where it is based on the estimation of the person’s medical doctor of when that condition became permanent and stable, for commencement of entitlement to weekly permanent impairment compensation and additional weekly compensation.

Division 2 - Liability restrictions on tobacco use

Military Rehabilitation and Compensation Act 2004

Item 81 amends section 36 which relates to the restrictions on liability for an injury, disease or death arising from a person's use of tobacco products. The policy intent is to replicate the restrictions set out in subsections 8(6), 9(7) and 70(9A) of the VEA to ensure that, after the commencement of the 'date of claim' approach, veterans who would have been able to link the use of tobacco products prior to 1998 to their ADF service under the VEA, could continue to do so under the MRCA. It would remain the case that a claim relating to smoking that commenced or increased thereafter cannot be founded to be service related.

Division 3 - Medical event on service

Military Rehabilitation and Compensation Act 2004

Item 82 insert new paragraph 27(da) in relation to the definition of service injury, that an injury can be accepted on the basis that it occurred while the member was on Defence duty regardless of whether or not the injury was a result of the member's duties. The approach is broadly modelled on section 6 of the DRCA, for an injury that took place 'in the course of employment'. This would allow conditions such as heart attacks and other acute occurrences to be accepted as service related under the MRCA as they are under the DRCA.

Item 83 inserts a guidance note at the end of section 27 to inform readers that certain service injury circumstances are not to be assessed by reference to SoPs under section 338 (reasonable hypothesis) and section 339 (reasonable satisfaction). They include:

- where the Commission is satisfied that an injury was sustained because of an accident (such as a vehicle turnover) that would not have occurred but for the person performing Defence duty;
- an injury that was sustained while the person was on Defence duty, whether or not as a result of performing that duty; and
- an injury that was sustained from an accident that occurred while the person was travelling to or from a place where they perform Defence duty.

The note aligns with the amendment to subsections 338(1) and 339(1) by items 41 and 59.

Item 84 inserts new paragraph 28(1)(ea) in relation to the definition of service death, that similar to item 49 for a service injury, a death can be accepted on the basis that it occurred while the member was on Defence duty, regardless of whether or not the death was a result of the member's duties. The approach is broadly modelled on section 6 of the DRCA, for a death which occurs 'in the course of employment'.

Item 85 inserts a guidance note at the end of subsection 28(1) to inform readers that certain service death circumstances are not to be assessed by reference to SoPs under section 338 (reasonable hypothesis) and section 339 (reasonable satisfaction). They include:

- where the Commission is satisfied that the death was due to an accident (such as a vehicle turnover) that would not have occurred but for the person performing Defence duty;
- the death occurred while the person was on Defence duty, whether or not as a result of performing that duty; and

- the death resulted from an accident that occurred while the person was travelling to or from a place where they perform Defence duty.

The note aligns with the amendment to subsections 338(1) and 339(1) by items 56 and 59.

Item 86 amends subsection 338(1) in relation to the operation of reasonable hypothesis to exclude the specified provisions from the requirement of being assessed by reference to SoPs. Those provisions, including new paragraphs 27(da) and 28(1)(e), refer to an injury or death which occurred while the member was on Defence duty (or but for the member being on duty).

The nature of these occurrences would be determined independent of the SoPs and the requirement to meet a SoP factor that supports a connection of that injury or death to service. Following the reasoning in *Zickar v MGH Plastic Industries Pty Ltd* (1996) 187 CLR 310, the claimant would not need to show that the injury arose out of their Defence service but would need to establish that it occurred while they were on Defence duty.

Item 87 makes changes to subsection 339(1), on the same basis as item 87.

Division 4 - Posthumous permanent impairment (PI) payments

Military Rehabilitation and Compensation Act 2004

Item 88 repeals and replaces subsection 78(7) to insert provisions giving a legal personal representative the option to convert the weekly rate of PI compensation that would have been payable to a lump sum posthumously, excluding any compensation for lifestyle effects. The conversion is only available where the deceased member before they died, submitted the claim, and did not make a choice to convert their weekly compensation payment.

A note is inserted to inform readers that section 321 provides for a claim to continue to have effect after the claimant dies. Where a person makes a claim and then dies, their legal personal representative may make a claim for any compensation (including for PI compensation) that could have been payable up until the date of death.

The legal personal representative must make the choice to convert the compensation to a lump sum within six months of being notified of the weekly amount, which is the same interval that applies to members/formers members.

The conversion formula specifies that the lump sum is to exclude any compensation for the effects of a service injury or disease on the lifestyle of the deceased member. The conversion would use tables provided by the Australian Government Actuary, using the age of the person at their date of death, applied to 100 per cent of the weekly amounts.

The outcome is that where a weekly amount of compensation would have been payable, that instead of the sum of those amounts from the date of effect to the date the person died, the weekly payment (less lifestyle effects) converted to an adjusted age-based lump sum could be paid to the estate. This would potentially provide families of a deceased person with additional financial support.

Items 89 and 90 amend section 79 to make clear that the provisions for the payment of a lump sum and interest apply to conversions including choices made by a legal personal representative.

Item 91 repeals and replaces note 1 in subsection 321(2) to inform readers that the legal personal representative has the option to convert the periodic payment that is payable to a lump sum.

Division 5 - Overpayments and debts

Military Rehabilitation and Compensation Act 2004

Item 92 amends paragraphs 415(1)(a), (b) and (c) to insert references to the DRCA, enabling the recovery under the MRCA amounts of compensation that were overpaid under the DRCA. The objective is to bring forward into the MRCA the recovery power under section 114 of the DRCA, despite the repeal of operative sections that provided compensation and benefits.

Item 93 amends subsection 415(4) to insert a reference to the DRCA, enabling the recovery amount to be deducted from payments made to, or for the benefit of, the person under the DRCA, as well as the MRCA.

Item 94 amends paragraph 416(1)(a) to extend the requirement on a person who is a member of a Commonwealth superannuation scheme to notify the Commission of their retirement, where the person is receiving or is entitled to receive compensation under the DRCA, as well as the MRCA. The amendment replicates section 114A of the DRCA, which enables an overpayment of compensation to be recovered directly from the superannuation fund if required.

Item 95 amends subsections 428(1) and 429(1), to insert references to the DRCA in relation to a debt that is due to the Commonwealth arising from the DRCA, as well as the MRCA. The amendment replicates the effect of sections 428 and 429 of the DRCA, whereby the Commission has the discretion to write off, or to waive the right to recover from a person, the whole or a part of a debt due to the Commonwealth.

Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988

Item 96 amends the definition of *determination* in section 60 to omit the reference to paragraph 114B(5)(a), consequential to the repeal of that provision by the item below.

Item 97 repeal sections 114 to 114D which deal with the recovery of overpayments, and the Commission's discretion to write off or waive debts. These provisions are no longer necessary, as the arrangements are consolidated under the MRCA.

Division 6 - Payment to solicitor's trust account

Item 98 repeals and replaces subsection 430(3D), removing the requirement that the payment account must be maintained by the compensation recipient or by the recipient jointly or in common with another person.

In *Hansen vs Military Rehabilitation and Compensation Commission* [2007] QSC 360, Mullins J held the view that section 430 is permissive and does not prohibit the Commission making the payment to the solicitors' trust account as requested and authorised by the applicant who has full capacity.

The revised wording of subsection 430(3D) is intended to avoid any confusion and is consistent with the outcome of *Hansen*. The practice of making payments to a nominated third-party is already available under the DRCA and this amendment would allow a

consistent approach where persons may authorise for their MRCA compensation to be made to a third party, such as their legal representative.

This change does not affect payments to trustees under section 432. If a trustee has been appointed on behalf of the client under section 432, the payments must be made to the trustee.

Division 7 - Common law damages

Military Rehabilitation and Compensation Act 2004

Item 99 amends subsection 389(5) to update the cap from \$110,000 to \$177,000, for the maximum amount that a member or a former member can recover, should they elect to sue the Commonwealth or a potentially liable member at common law for damages for non-economic loss in the circumstances set out in subsection 389(5).

The amended value reflects an adjustment to maintain parity with permanent impairment compensation, as the sum of \$110,000 has been unchanged since the MRCA was enacted. The amount is not otherwise indexed.

Division 8 - Information Sharing

Military Rehabilitation and Compensation Act 2004

Item 100 amends subsection 5(1) to add the definition of the *Australian Defence Force* as is defined in the *Defence Act 1903*.

Items 101, 102 amends section 405 to clarify this provision relates to a claimant and amends subsection 406(1) to include the VEA and DRCA.

Item 103 inserts new section 407A to allow the Department of Defence to disclose information to the Commission for the purpose of assisting the Commission to perform its functions, duties or exercise its powers. It also inserts new section 407B which allows the Commission to use or disclose information if the use or disclosure is for the purposes of the Commission performing its functions, duties or exercising its powers.

The changes are designed to consolidate and standardise the authority for information exchange, and support efficient investigation and determination of compensation claims, and the provision of appropriate services.

Items 104, 105, and 106 amend subsections 409(2) and (2A) to authorise the Commission, and staff assisting the Commission, to give information to a specified person or agency for the purposes of the VEA and DRCA, as well as the MRCA.

The table in subsection (2A) specifies receiving parties and the purpose for which information may be provided. Items 1 and 2 of the table refer to the provision of information to Defence and the ADF respectively, which allows certain information relating to claims to be provided. A broad strategy will allow the information provision to be unencumbered by the requirements to only disclose information for specific purposes and ensure the framework does not become obsolete.

Item 107 amends paragraph (b) of the definition of *receiving Commonwealth body* in relation to the National Disability Insurance Scheme to omit an outdated reference.

Item 108 inserts new section 409A to operate alongside section 331, setting out the requirement for the Commission to provide certain documents relating to a claim or application made under the VEA. Section 143 of the DRCA obviates the need to extend this provision to claims and applications under that Act.

Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988

Item 109 repeal sections 151, 151AA and 151A which deal with the authority of the Commission to obtain and to provide information under the DRCA. These provisions are no longer necessary, as the arrangements are consolidated under the MRCA.

Division 9 - Offsetting

Military Rehabilitation and Compensation Act 2004

Items 110 and 111 amend section 386 which the outline the provisions of Chapter 10, to reflect that a compensable loss includes payment of compensation under the DRCA and Part II and IV of the VEA, and that this Chapter deals with liabilities arising apart from this Act, the DRCA and the VEA.

Items 112, 113 and 114 amend subsections 388(5) and (6) to expand the scope of compensation such that section 388 would apply to a dependant who receives damages in respect of the service death and has already received compensation under this Act or the DRCA, or a Part II or IV pension under the VEA.

Paragraph (5)(a) is repealed and updated to set out all applicable amounts includes the DRCA and the VEA. Subsection (6) is similarly updated to include the DRCA and VEA.

Items 115 and 116 amend paragraphs 389(1)(a) and (4)(b) in relation to the choice for a member/former member to elect to sue the Commonwealth or a potentially liable member at common law for damages for non-economic loss. The option is updated to apply if compensation payable for permanent impairment under this Act or the DRCA has not been paid, and no impairment compensation under these Acts will be paid once an election is made.

Items 117 repeals and replaces paragraph 390(1)(a) to set out that the circumstances when a person is required to advise the Commission if they institute proceedings against the Commonwealth or a potentially liable member. The existing reference to the types of MRCA compensation being payable is restated at subparagraph (a)(i), with DRCA compensation added at subparagraph (a)(ii, and a Part II or IV pension under the VEA at subparagraph (a)(iii). A failure to notify of such damages may lead to subsequent overpayment of compensation and necessitate recovery action from the person or dependant.

Item 118 repeal and replace paragraphs 391(1)(a) and 392(1)(a) to expand the scope of compensation - *cause of action*, to include relevant payments under the VEA and the DRCA for the purposes of requiring notice of common law claims against third parties and the application of Division 2 of Part 3 of Chapter 10.

The notice requirement on claims for damages and the circumstances when the Commission could take over common law action against third parties, would apply in relation to compensation paid/payable for:

- a service injury, service disease or service death under the MRCA;
- the loss or damage to a medical aid under the MRCA;
- an injury, disease or death of a person under the DRCA;

- the loss of, or damage to, certain property under the DRCA (such as an artificial limb, medical appliance); or
- an injury, disease or death of a person under Part II or IV of the VEA.

Items 119, 120, 121, 122, and 123 are technical amendments complementary to item 119, making clear that section 397 applies to a pension, and compensation under the DRCA or the VEA, as well as the MRCA.

Where the Commission makes or takes over the person's (the plaintiff's) claim against a third party, section 397 would empower the Commission to suspend the payment of compensation or pension for the relevant injury, disease, death, or loss until the plaintiff complies with a reasonable requirement of the Commission in relation to the claim. This provision operates only as a last resort to encourage compliance. Treatment cannot be suspended, recognising that such suspension could pose a health risk to the plaintiff.

Item 124 repeals and replaces paragraphs 398(2)(a) to expand the scope of compensation to include relevant payments under the VEA and the DRCA to be deducted from damages awarded or agreed upon, where the Commission has taken over or made a claim on the plaintiff's behalf.

Paragraph 398(2)(a) is restructured and sets out the amounts to be deducted according to the causes of action mentioned in paragraph 392(a). That is:

- for a claim mentioned in subparagraph 392(1)(a)(i) or (ii), the existing provision which includes compensation for non-economic loss, income replacement payments, treatment and rehabilitation under this Act, relating to the plaintiff is replicated. Subparagraph 398(2)(a)(i) continues to exclude those payments that are reimbursements for costs incurred by the person, allowances to cover expenses, or compensation payments made to the plaintiff in relation to his or her dependants.
- for a claim mentioned in subparagraph 392(1)(a)(iii) or (iv), compensation amounts paid to the plaintiff under the DRCA before the payment of damages;
- for a claim mentioned in subparagraph 392(1)(a)(v), compensation amounts paid to the plaintiff under Part II or Part IV of the VEA before the payment of damages.

Items 125 and 126 are technical amendments, complementary to item 125, and make clear that paragraph 398(3)(b) applies to compensation under the MRCA, the DRCA or pensions under Part II or IV of the VEA.

The outcome is that the plaintiff is not entitled to any further compensation under the MRCA, the DRCA or the VEA until the amount of compensation that would have been payable equals the amount of damages that has been recovered. The intention is that the plaintiff cannot receive double payments for the same injury, disease, death or loss and can only resume compensation payments once the damages have been exhausted.

Item 127 amends the heading to Division 3 of Part 3 of Chapter 10 to reflect the expanded coverage and that the provisions on the effect of recovering damages apply to entitlements beyond this Act, to include the DRCA and VEA.

Item 128 repeals and replaces paragraphs 399(a) to expand the scope of compensation - *cause of action*. The amendment is similar in operation to item 119, except that it applies where the person or a dependant recovers damages (including the settlement of a claim) from a third party, rather than when the Commission takes over common law action against third parties.

Paragraph 399(a) is re-structured to set out that Division 3 would apply in relation to compensation payable in respect of:

- a service injury, service disease or service death under the MRCA;
- the loss or damage to a medical aid under the MRCA;
- an injury, disease or death of a person under the DRCA;
- the loss of, or damage to, certain property under the DRCA (such as an artificial limb, medical appliance); or
- an injury, disease or death of a person under Part II or IV of the VEA.

Items 129 and 130 amend the heading to section 401 and paragraph 401(1)(a) to reflect the expanded coverage and that the repayment of compensation apply to entitlements beyond this Act and includes the DRCA and VEA.

Item 131 repeals and replaces paragraphs 401(2)(a) in a similar manner to item 125, setting out the amounts under the MRCA, DRCA and VEA to be deducted according to the causes of action. That is:

- for a claim mentioned in subparagraph 392(1)(a)(i) or (ii), the existing provision which includes compensation for non-economic loss, income replacement payments, treatment and rehabilitation under this Act, relating to the plaintiff is replicated. Subparagraph 398(2)(a)(i) continues to exclude those payments that are reimbursements for costs incurred by the person, allowances to cover expenses, or compensation payments made to the plaintiff in relation to his or her dependants.
- for a claim mentioned in subparagraph 392(1)(a)(iii) or (iv), compensation amounts paid to the plaintiff under the DRCA before the payment of damages;
- for a claim mentioned in subparagraph 392(1)(a)(v), compensation amounts paid to the plaintiff under Part II or Part IV of the VEA before the payment of damages.

Item 132 amends subsection 410(3) to provide that the repayment only applies to so much of the damages in respect of which compensation is payable under the DRCA, the VEA, as well as the MRCA, as determined by the Commission.

Items 133 amends the heading to section 402 to reflect the expanded coverage to entitlements beyond this Act.

Items 134 and 135 amend subsection 402(1) to make clear that section 402 applies to preclude compensation after damages are recovered in respect of the cause of action, regardless of whether or not MRCA or DRCA compensation, or a VEA pension under Part II or IV had been paid, to or for the benefit of the person, for that cause of action.

Item 136 repeals and replaces subsection 404(2) to set out the types of compensation that are not payable after the day on which the damages are recovered. The existing reference to MRCA compensation (and the exceptions) is restated at paragraph (2)(a), with DRCA compensation at paragraph (2)(b), and a Part II or IV pension under the VEA at paragraph (2)(c).

Item 137 inserts new paragraphs 403(1)(aa) and 403(1)(ab) to provide circumstances where DRCA compensation and VEA pensions have been paid respectively, that the Commission may pursue the recovery of damages against a third party (the defendant).

The outcome is that besides MRCA compensation having been paid, section 403 is also applicable where a third party (the *defendant*) appears to the Commission to be liable to pay damages in respect of:

- an injury or death of a person, or the loss of, or damage to, certain property, for which compensation has been paid under the DRCA; or
- an injury, disease or death of a person, for which a pension has been paid under Part II or IV of the VEA.

Item 138 repeals and replaces paragraph 403(3)(b) to provide the compensation amounts to be compared against the amount of the damages as per paragraph 403(3)(a), as the defendant is to pay the Commonwealth whichever amount is the lesser. The compensation paid excludes the same classes of payments listed under section 398.

Division 10 - Rehabilitation

Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988

Item 139 repeals the definitions of *approved program provider* and *rehabilitation authority* in subsection 4(1), as the terms are no longer necessary with the consolidation of rehabilitation provisions under the MRCA.

Item 140 amends subsection 4(1) to insert the defined term *transferred DRCA rehabilitation program* to preserve an existing DRCA rehabilitation program on or after date of commencement, until completion or it is otherwise ceased or varied by the rehabilitation authority. Upon a re-assessment being undertaken, a new rehabilitation program would be prepared and be provided under the MRCA.

Item 141 amends subparagraphs 6(1)(f)(iii) and (g)(iii) to extend coverage to include a *transferred DRCA rehabilitation program*, such that an injury that was sustained while the person was at, or travelling to or from, a place for the purpose of participating in such a program, is deemed to be a service-related injury.

Item 142 repeals Part III which contains the provisions relating to rehabilitation for members and former members of the ADF. The provisions are no longer necessary, and they are very similar to those contained in Chapter 3 of the MRCA.

Item 143 omits references to sections 36, 37 or 39 in the definition of *determination* in section 60, consequential to the repeal of Part III of this Act.

Item 144 repeals the definition of *reviewable decision* in section 60, as the term no longer has effect, consequential to the repeal of Part III and changes to section 60 in Schedule 3 - Review Pathway.

Item 145 repeals sections 146 and 148 which set out the administrative arrangements relating to the rehabilitation authority and rehabilitation program, as the sections are no longer necessary, with the consolidation of the provisions under the MRCA.

Item 146 repeals subsection 160(1A) regarding appropriation for an employment support scheme, consequential to the repeal of Part III of this Act.

Veterans' Entitlements Act 1986

Items 147 and 148 amend section 5Q(1) to insert a signpost definition for *transferred VEA rehabilitation program* referring readers to subsection 115A(1) and repeals the definition of *Veterans' Vocational Rehabilitation Scheme* which is effectively superseded.

Items 149, 150, and 151 amend subsection 24(5A), subsection 24A(2) and paragraph 37AAA(b) to replace references to VVRS with references to *transferred VEA rehabilitation program*. The intent is that veterans working under such a program remains eligible for special rate and intermediate rate of disability compensation pension, and invalidity service pension respectively.

Item 152 amends subsection 115A(1) to insert the defined term *transferred VEA rehabilitation program* to preserve an existing VEA rehabilitation program on or after date of commencement, until completion or it is otherwise ceased or varied by the rehabilitation authority. Upon a re-assessment being undertaken, a new rehabilitation program would be prepared and be provided under the MRCA.

Items 153, 155, 156, 157, and 158 — these items update provisions including definitions in Part VIA— Rehabilitation to refer to the *transferred VEA rehabilitation program* instead of the VVRS. The intent is to allow the VVRS safety net arrangements for various VEA pensions to have effect for rehabilitation programs that are transitioned to the MRCA under the Simplification Act. The updated references include:

- *unaffected pension rate* as defined in subsection 115A(1), to be the veteran's rate of disability compensation pension but for their participation in a *transferred VEA rehabilitation program*
- subsection 115C(1) which provides for veterans to retain the rates of pension they would otherwise have received if they were not undertaking rehabilitation, subject to sections 115D or 115G;
- subsections 115D(1) and (1A), which provide for intermediate rate veterans who work more than 20 hours per week, and special rate veterans who work more than 8 hours a week, as a result of participating in a *transferred VEA rehabilitation program*, to be eligible for the safety net formula;
- *initial period* and *pension rate on commencement* as defined in subsection 115D(7), to apply from, or as at the commencement of the veteran's *transferred VEA rehabilitation program*
- subsection 115G(1) which provides for an excluded income amount in relation to invalidity service pensions, to have effect from the commencement of the veteran's *transferred VEA rehabilitation program*

Item 154 repeals section 115B which enables the establishment of the VVRS, as the Scheme would be closed to new entrants.

Item 155 — see item 153

Item 156 — see item 153

Item 157 — see item 153

Item 158 — see item 153

Items 159, 160, 161, 162, 163, and 164 amend section 115H, which provides for the recovery of rehabilitation costs from another source of compensation or damages received

that the Commission considers to be similar in nature to the compensable injury or disease for which rehabilitation was provided. Subsections (1) and (2), paragraphs (4)(a), (4)(b), (5)(a), (5)(b) and subsection 115H(6) are updated to omit references to the VVRS and to refer to *VEA rehabilitation program* (as inserted by item 166) to maintain the broad scope of costs that may be recovered, without being limited by amendments in this Schedule or the commencement of the Simplification Act.

Item 165 inserts subsection 115H(8) to establish the encompassing term *VEA rehabilitation program* for a *transferred VEA rehabilitation program* or a rehabilitation program under the VEA undertaken before commencement date that was not a transferred program.

Items 166 and **167** update the VVRS references in subsection 115L(1) and paragraph 115L(3)(c) to refer to *VEA rehabilitation program* for the purposes of the Commission making a determination as to the amount of the cost of, or incidental to, a transferred or non-transferred rehabilitation program. This determination operates as prima facie evidence that this was the recoverable cost.

Item 168 repeals paragraph 199(da) regarding appropriation for payments under the VVRS, consequential to the closure of the Scheme to new entrants under this Act and existing participants of a transferred program would be provided for under the MRCA.

Division 11 - Motor vehicle compensation scheme

Military Rehabilitation and Compensation Act 2004

Item 169 inserts new paragraph 212(1)(ba) to set out that the MVCS as determined by the Commission excludes a person who is participating in the VEA Vehicle Assistance Scheme immediately before commencement. The intent is to preclude access at the same time to more than one scheme that provides vehicle compensation.

Item 170 inserts new subsection 212(1A) to clarify the MVCS access arrangements for a person who has received or is receiving DRCA compensation or a Part II or IV pension under the VEA in respect of one or more medical conditions.

Paragraph 212(1A)(c) states that an injury or disease where liability is deemed to be accepted through section 24A is not applicable for the purposes of MVCS eligibility. Instead, the person must have:

- liability accepted under the MRCA for an injury or disease other than their DRCA or VEA compensable condition; or
- an increase in their overall impairment rating of at least five points from their previous assessment.

These amendments reflect the transition approach which allows a person's existing DRCA or VEA compensation entitlements (such as VAS) to continue without interruption, and access to particular MRCA entitlements are dependent on certain thresholds being met.

Schedule 2 - Single ongoing Act enhancements

Part 1 - Amendments relating to allowances etc.

Division 1 - Compensation for funeral expenses

Military Rehabilitation and Compensation Act 2004

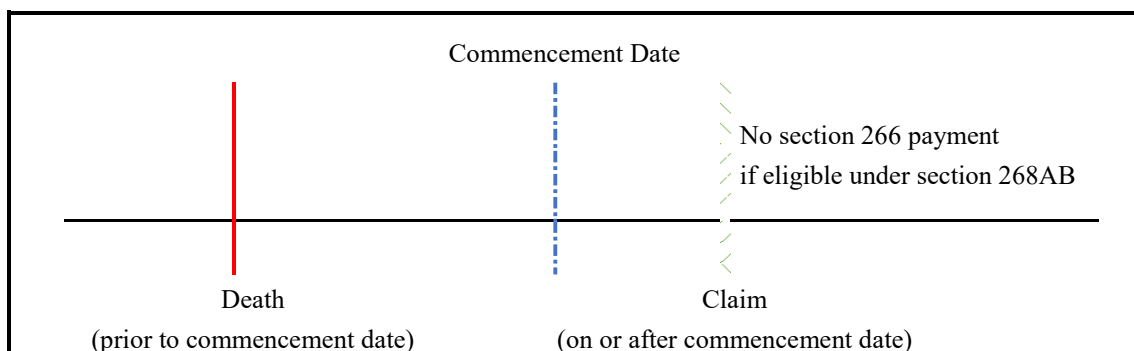
Item 1 amends section 231 which outlines the types of compensation payable to dependants of deceased members under Chapter 5, to revise the description for payments made in relation to funerals, to reflect the extension of benefits to persons previously covered by the DRCA and the incorporation of the VEA provisions into the MRCA.

Item 2 inserts a title for *Division 1—Simplified outline of this Part* to reflect the new structure for Part 5.

Item 3 repeals and replaces section 265, to revise the description for compensation paid under Part 5 of Chapter 5 in relation to funerals. Division 1 contains the simplified outline. Division 2 provides payment for the funeral of a deceased member where section 12 applies, while Division 3 provides compensation in respect of the funeral of certain other deceased persons.

Item 4 inserts *Division 2—Deceased members to whom section 12 applies*, to contain new sections 266A and 267A.

Item 5 inserts new section 266A to preclude compensation under section 266 in respect of a person who died before commencement date, makes a claim on or after commencement date and new section 268AB applies.



The provision reflects the intended outcome where the events occur pre and post transition to the new Act. For a death that occurs before commencement of the single ongoing Act, there is no detriment for persons who were eligible for a funeral benefit under section 99 of the VEA, as they would instead have access to funeral compensation under section 268AB of the MRCA.

Item 6 inserts new section 267A to detail offsets that are made against compensation for the cost of a funeral under section 266, where there is entitlement to funeral compensation under more than one provision:

- subsection (1) provides that the section 266 amount be reduced by the amount paid to the estate under section 268AA in respect of the funeral for the same deceased member.
- subsection (2) provides that the section 266 amount be reduced by the amount paid under section 268AB in respect of the funeral for the same deceased member.

Section 266 provides for funeral compensation in respect of a person to whom section 12 applies. Circumstances may arise where the person is also eligible for funeral compensation under sections 268AA or 268AB, as well as section 266. The provision ensures that compensation in respect of a person's funeral is not duplicated.

For example, subsection (2) may arise where a member who was eligible for Special Rate Disability Pension died in financial difficulty; or a member with 80 impairment points died in hospital while receiving treatment arranged by the Commission.

Item 7 inserts new *Division 3—Other deceased members and dependants of deceased members*, to preserve and transfer to the MRCA certain provisions from Part VI of the VEA that relate to funeral compensation.

Automatic payment of funeral compensation to estate of certain deceased members

Section 268AA replicates section 98B of the VEA and provides for payment of funeral compensation to the estate of deceased members, where immediately before they died:

- the member was in receipt of a VEA pension –
 - at the special rate (section 24);
 - at the extreme disablement adjustment rate (subsection 22(4));
 - at an increased rate because of multiple amputations, or multiple amputations and blindness (subsection 27(1) items 1 to 8); or
- the Commissioner was satisfied that the member was a prisoner of war before 1 July 2004.

Upon notification of death, the compensation is automatically paid to the estate.

Funeral compensation for certain other deceased members

Section 268AB replicates section 99 of the VEA and provides further circumstances where funeral compensation is available.

Compensation under section 268AB is precluded if section 268AA applies in respect of the deceased member, to precluded dual payments. A claim in accordance with section 319 must be made by a dependant who incurred the costs of the funeral, or the legal representative of the deceased.

Compensation under this section applies where the deceased member died in any of the following circumstances:

- from an accepted service injury or disease;
- in financial difficulty;
- in a hospital, nursing home or other institution, to receive treatment;
- travelling to or from an institution, to receive treatment;
- after discharge from an institution where they received treatment for a terminal illness; or
- while being treated at home for a terminal illness.

References to treatment means medical treatment provided by the Commission under Part V of the VEA or Chapter 6 of this Act.

Compensation is also payable where a determination is made after the death,

- that the deceased member was eligible prior to their date of death, to be granted a VEA pension, or have their rate of pension increased –
 - at or to the special rate (section 24);
 - at or to the extreme disablement adjustment rate (subsection 22(4));
 - at or to an increased rate because of multiple amputations, or multiple amputations and blindness (subsection 27(1) items 1 to 8); or
- that the Commission was unaware of the person’s service and was satisfied with information received after the death, that the member was a prisoner of war before 1 July 2004.

Funeral compensation for certain dependants of deceased members

Section 268AC replicates section 100 of the VEA to provide funeral compensation to certain dependants of deceased members and extends eligibility to persons who are in similar circumstances and meet the requirements set out in this Act.

Compensation for the cost of a funeral is payable under this section where a claim is made in accordance with section 319, by the legal representative of the deceased or another person approved by the Commission, and the criteria about the dependant and the deceased member are all met. In all cases, the dependant must have died in financial difficulty for the compensation to be payable.

The categories of eligible dependants are:

- a person who was not a reinstated pensioner and,
 - the member’s death was war-caused (as defined under the VEA), or
 - immediately before the member’s death, the member was in receipt of a VEA pension under section 24 (Special Rate), or at an increased rate because of multiple amputations, or multiple amputations and blindness (subsection 27(1) items 1 to 8);
- a reinstated pensioner;
- a wholly dependent partner, or an eligible young person dependent on the member prior to the member’s death and,
 - the member’s death was a service death,
 - the member was SRDP eligible, or
 - the member had 80 impairment points.

A reinstated pensioner refers a provision under the VEA for the restoration of a war widow’s pension which was granted under a repealed Act and was cancelled due to the person’s remarriage.

Amount of funeral compensation

Subsection 268AD (1) provides for the amount to be \$3,000, where funeral compensation is payable under section 268AA direct to the estate of the deceased member. This is an increase to the funeral benefit paid under the corresponding provision of the VEA.

Subsection 268AD(2) provides for payment of up to a maximum of \$3,000, where funeral compensation is payable under section 268AB for certain other deceased members. An additional amount may be paid in association with section 268AB for the reasonable costs of

transporting the deceased member's body from the place of death to their usual place of residence.

Subsections 268AD(3) and (4) specify that transport costs are payable where there is an express charge from the funeral director in respect of transporting the body of a member, and

- the member died whilst absent from their usual place of residence,
 - to obtain or receive medical treatment arranged by the Commission, including travel to or from the person's usual place of residence for such purpose; or
 - on the recommendation of the member's doctor as a form of treatment for an injury or disease;
- excludes costs relating to transport within the metropolitan area or outside Australia.

In circumstances where funeral compensation of up to \$3,000 is to be determined, any amount paid or payable in respect of the funeral by the deceased's contributory funeral benefit fund is taken into account. This means the funeral compensation amount payable is the lesser of the out-of-pocket expenses after any payment from the deceased's contributory funeral benefit fund for the funeral costs, and \$3,000.

Section 268AE mirrors section 268 and provides that funeral compensation is payable to the person who made the claim. That person may direct the money to be paid to the person carrying out the funeral or whoever incurred the cost of the funeral. Two guidance notes inform readers of circumstances with different arrangements – trustee appointment under section 432, and payment to the estate under section 268AA.

Item 8 updates the note after subsection 320(1) which refers to claimants for funeral compensation, to add references to subsections 268AB and 268AC.

Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988

Item 9 omits from the definition of *relevant amount* in subsection 13(1) which deals with indexation, the reference to paragraph 18(4)(a) on compensation for funeral expenses, consequential to the repeal of section 18 by item 11.

Item 10 amends subsections 17(2), (3) and (4) which deal with compensation for injuries resulting in death, to omit references to section 18 on compensation for funeral expenses, consequential to its repeal by item 11.

Item 11 repeals section 18 on compensation for funeral expenses which is no longer necessary, as the payment is administered under the MRCA.

Item 12 omits from the definition of *determination* in subsection 60(1) the reference to section 18, which is no longer necessary, as funeral compensation determinations are made under the MRCA and subject to the review arrangements under that Act. (See also Schedule 3—Review Pathway.)

Item 13 amends subsections 124(8) and (9) which deal with the application of the DRCA to pre-existing injuries, to omit references to section 18 on compensation for funeral expenses, consequential to its repeal by item 11.

Veterans' Entitlements Act 1986

Item 14 repeals sections 98B, 99 and 100 which are no longer necessary, as those provisions dealing with funeral benefits have been replicated at new sections 268AA, 268AB and 268AC of the MRCA respectively.

Item 15 repeals paragraph 111(1)(c) which refers to funeral benefits under sections 99 and 100, as the inclusion in the procedural requirements for making an application is no longer necessary, with funeral compensation provided under the MRCA.

Item 16 repeals section 113 which sets out timeframes for funeral benefits application. The section is no longer necessary, with funeral compensation provided under the MRCA.

Item 17 and 18 repeal paragraphs 115(1)(b) and subsection 115(6) which relate to review of decisions on funeral benefits applications. The provisions are no longer applicable, as determinations about funeral compensation are made under the MRCA and subject to review arrangements under that Act.

Division 2 - Acute support package

Military Rehabilitation and Compensation Act 2004

Items 19 amends subsection 268B(2) consequential to item 24 which inserts new subsections 268B(5AA) and (5AB).

Item 20 repeals and replaces paragraph 268B(3)(b) to set out the requirement that the member or former member is receiving or is eligible to receive certain types of payments. Besides compensation for incapacity under Part 3 or 4 of Chapter 4, and a Special Rate Disability Pension which are restated at subparagraphs (i) and (ii) respectively, the other payments are:

- a pension by reference to section 23, 24 or 25 of the VEA;
- a Veteran Payment in accordance with section 45B of the VEA

These VEA payment types replicate the criterion at paragraph 118S(3)(b) of that Act.

Item 21 repeals and replaces paragraph 268B(4)(b) in the same manner as item 20, to set out the corresponding criteria for a related person of a member or former member, with the requirement that the member or former member is receiving or is eligible to receive those same types of payments as listed for paragraph 268B(3)(b).

Item 22 amends subsection 268B(5) to make clear that certain wholly dependent partners are subject to the separate eligibility rule set out in new subsection (5AA).

Item 23 inserts new subparagraph 268B(5)(c)(iii) to provide access to the acute support package under this Act for a wholly dependent partner of a deceased member, where the deceased member's death resulted from an injury as determined under the DRCA. This amendment replicates the criterion at paragraph 41B(5)(d) of the DRCA.

Item 24 inserts new subsections 268B(5AA) and (5AB) to provide access rules for working age widowed partners of deceased veterans and former partners under certain circumstances.

Subsection 268B(5AA) replicates subsection 115S(5) of the VEA and provides that a war widow or war widower must be under 65 years of age at the time their eligibility for the acute support package is determined.

Subsection 268B (5AB) replicates subsection 41B(5) of the DRCA with regards to a person who was a partly dependent partner of the deceased member whose death was related to service. The person must be under 65 years of age at the time their eligibility for the acute support package is determined, with access to support for the two years following the death.

The amendments in Part 3 ensures that support to those veterans and their families who are eligible under the DRCA and the VEA are made available under the MRCA.

Division 3 - Household services and attendant care

Military Rehabilitation and Compensation Act 2004

Item 25 amends subsections 214(1) and 217(1) to insert a guidance note under each subsection to inform readers that under section 24A, the Commission is deemed to have accepted liability for the person's injury or disease in certain circumstances. Section 24A applies with respect to an injury or disease under the DRCA or VEA for which liability was accepted prior to commencement date.

Paragraphs 214(1)(a) and 217(1)(a) provide respectively, that compensation for household services and attendant care services can be claimed by a person who has liability accepted for an injury or disease. In the absence of an exclusion clause, persons with an accepted service injury or disease under the VEA or DRCA would meet the requirement in those paragraphs.

Division 4 - Victoria Cross allowance and decoration allowance

Military Rehabilitation and Compensation Act 2004

Item 26 amends Section 3, which describes the general purpose and practices of this Act by reference to its Chapter, and includes a cross-reference to the VEA, regarding the continued effect for certain pensions and allowances under that Act. The reference to 'Victoria Cross allowance' is omitted, as the payment would be made under the MRCA and discontinued under the VEA.

Item 27 inserts a signpost definition for *allowance period* in subsection 5(1) to inform readers to refer to new subsection 230A(2).

Items 28 and 29 amend section 65, which outlines the provisions of Chapter 4, to insert references to service awards and decorations being provided under Part 7.

Items 30, 31 and 32 amend section 211, which outlines the provisions of Part 7 of Chapter 4, to insert references to service awards and decorations, being other benefits for members and former members contained in this Part. Victoria Cross allowance is provided under new Division 6 and the arrangements for decoration allowance is set out in new Division 7.

Item 33 inserts in Part 7 of Chapter 4, Division 6 to contain the provisions for the Victoria Cross allowance, and Division 7 to contain the provisions for the payment of decoration allowance.

Subsection 230A(1) sets out the eligibility criteria for the Victoria Cross allowance, based on section 103 of the VEA. The annual allowance is payable to a person who has been awarded the Victoria Cross or the Victoria Cross of Australia, if at the start of the allowance period, the person is alive, and the award has not been rescinded.

Subsection 230A(2) sets out that the allowance period is a 12-month interval commencing on 20 September.

Section 230B provides the amount of Victoria Cross allowance to be \$5,373 and a guidance note informs readers that the amount is indexed under section 404A.

Section 230C enables the Minister to arrange for the payment of decoration allowance by legislative instrument. Such instrument may provide the circumstances for payment, the medallic requirements, the amount of the allowance (such as how it is calculated or adjusted), and persons who would be eligible. Rather than replicating the decoration allowance provisions in section 102 of the VEA, this mechanism allows sufficient administrative flexibility and responsiveness for determining the allowance that is to be provided under this Act.

Item 34 inserts new section 404A to provide for the indexation of Victoria Cross allowance in accordance with the CPI where the factor is greater than one. The approach is based on section 198FA of the VEA which has a June reference quarter, and the provisions are updated to reflect modern drafting practices. The methodology is set out separate to section 404, which provides for the indexation of other amounts under this Act with reference to a December quarter.

Veterans' Entitlements Act 1986

Items 35 and 36 amend subsection 5H(8), which lists payments that are to be treated as excluded or exempt income for the purposes of the income test applicable under the VEA. Paragraph 5H(8)(faa) is updated to reflect that decoration allowance is provided under a section 230C instrument and Victoria Cross allowance is provided under section 230A of the MRCA. The updates retain the effect that those payments are excluded income.

Items 37 and 38 amend section 52Z, which applies the hardship rules in the circumstances where a person or the person's partner holds an unrealisable asset. Paragraph 52Z(3A)(f) is updated to reflect that decoration allowance is provided under a section 230C instrument and Victoria Cross allowance is provided under section 230A of the MRCA. The amendment retains the outcome that these payments are to be included in the determination of the ordinary income of a person when the hardship rules are applied.

Item 39 omits from paragraph 96(2)(f) the reference to subparagraph 102(1)(b)(ii) which relates to the eligibility for decoration allowance, consequential to that provision being repealed by the item below.

Item 40 repeals sections 102 and 103 which are no longer necessary, as decoration allowance and Victoria Cross allowance are provided under the MRCA.

Item 41 repeals paragraph 111(1)(d) which refers to Victoria Cross allowance, as the inclusion in the procedural requirements for making a claim is no longer necessary, with the allowance being provided under the MRCA.

Item 42 repeals paragraphs 115(1)(c) and (d) which refer to review of decisions on decoration allowance and Victoria Cross allowance applications respectively. These provisions are no longer applicable, as determinations about these allowances are made under the MRCA and any reviews would be subject to the arrangements under that Act.

Item 43 amends the definition of *pension* in subsection 121(7) to omit the reference to Victoria Cross allowance in relation to instalments of pension, which is no longer applicable, with the allowance being provided under the MRCA

Item 44 amends subsection 177(6) to omit the reference to sections 102 and 103, consequential to their repeal by item 40. The reference relates to Tribunal review of decisions on decoration allowance and Victoria Cross allowance which are no longer applicable, as determinations about these allowances are made under the MRCA and the provisions for Tribunal review of decisions under that Act would apply.

Item 45 repeals section 198FA which sets out the indexation of Victoria Cross Allowance, which is no longer necessary as the allowance is administered under the MRCA.

Division 5 - Prisoner of war ex gratia payments

Military Rehabilitation and Compensation Act 2004

Item 46 inserts a reference to prisoner of war recognition supplement under Part 3 of Chapter 5AA in paragraph (d) of the definition of ***compensation*** in subsection 5(1).

Item 47 inserts new Chapter 5AA to consolidate under the MRCA, provisions from other Acts relating to compensation to prisoners of war.

Ex-gratia payments

Section 268AF provides a simplified outline to inform readers that this Chapter deals with compensation payments (under Part 2) and a prisoner of war recognition supplement (under Part 3) payable to, or in respect of, former members and civilians who were interned by certain military forces during designated war periods.

Section 268AG replicates in subsection (1) the defined terms from subsection 115M(7) of the VEA:

- ***civilian***
- ***enemy State***
- ***interned***
- ***military forces***

The subsection introduces the terms ***compensation eligibility date***, ***designated war period*** and ***relevant military forces*** for the purposes of section 268AH.

Section 268AG(2) makes clear that the term ***partner*** as defined in section 5 of this Act is applicable with respect to a civilian, as this Chapter covers former members and civilians who were interned.

Section 268AH sets out a table to provide that a former member or civilian must have been interned by the relevant military forces (referred to in column 1), at any time during the designated war period (referred to in column 2), and the eligible person was alive on the compensation eligibility date (referred to in column 3).

Item 1 of the table refers to internment by enemy forces in Europe during World War 2, as per the provisions in Schedule 5 of the *Social Security and Veterans' Affairs Legislation Amendment (One-off Payments and Other 2007 Budget Measures) Act 2007*.

Item 2 of the table refers to internment by the Japanese military forces at any time between 7 December 1941 and 29 October 1945 inclusive, as per the *Compensation (Japanese Internment) Act 2001*.

Item 3 of the table refers to internment by the North Korean military forces at any time between 27 June 1950 and 19 April 1956 inclusive, as per the Part 2 of the *Veterans' Entitlements (Clarke Review) Act 2004*.

Section 268AI provides a simplified outline to inform readers that Part 2 deals with compensation payments in respect of former members and civilians who were interned by certain military forces during designated war periods.

Section 268AJ sets out the different categories of eligible persons: subsection (1) for former members; subsection (2) for partners of deceased members; subsection (3) for civilians; subsection (4) for partners of deceased civilians; and subsection (5) for dependants (other than partners and children) of deceased members.

The common requirement is that the former member or civilian must have been interned by the relevant military forces during the designated war period. If the former member or civilian had died before the compensation eligibility date, then the person who was their partner immediately before the death, may be eligible if they are alive on the compensation eligibility date. The eligible person must make a claim for compensation in accordance with section 319.

In addition, civilian eligibility as set out in subsections (3) and (4) is limited to items 1 or 3 of the table in section 268AH, and the requirement that the civilian/deceased civilian was domiciled in Australia immediately before their internment.

Eligibility of other dependants set out in subsection 268AJ(5) is limited to item 3 of the table in section 268H and requires the person to be a dependant (within the meaning of the VEA) but not a partner or a child, of the deceased member immediately before the member's death. This provision replicates the entitlement provided for in the *Veterans' Entitlements (Compensation—Japanese Internment) Regulations 2001*.

Subsection (6) makes clear that an eligible person is only entitled to one payment under this Part regardless of whether they meet the criterion for an eligible person under more than one subsection. A person is also precluded from a payment under this Part if a payment has already been made under the specified statutes in respect of the person who was interned.

Section 268K provides that the compensation is a payment of \$25,000.

Prisoner of war recognition supplement

The Supplement is in recognition of the severe hardship and deprivations prisoners of war experienced. It is not an income support pension or a compensation payment for incapacity.

Section 268AL provides a simplified outline to inform readers that Part 3 deals with the prisoner of war recognition supplement, which is payable to former members and civilians who were interned by certain military forces during designated war periods. The provisions replicate Part VIB of the VEA.

Section 268AM sets out the two categories of eligible persons: subsection (1) for former members and subsection (2) for civilians. The common requirement is that the former member or civilian must have been interned by the relevant military forces during the designated war period. Civilian eligibility is limited to items 1 or 3 of the table in section 268AH, and the requirement that the civilian was domiciled in Australia immediately before their internment. Subsection (3) means that even if a person meets more than one eligibility criterion, a person is not entitled to more than one supplement.

Section 268AN provides that the rate of the prisoner of war recognition supplement is \$673 per fortnight. A Note is inserted to inform readers that to the amount of the supplement is indexed under the provisions of section 404.

Section 268A0 refers to the need for a claim for the supplement to be made in accordance with section 319.

Item 48 is a consequential amendment to section 343, which provides that where Commission determines liability for death exists, it must determine the date of that death.

This is for the purpose of providing eligible dependants with periodic and lump sum compensation under Chapter 5 and access to treatment under Chapter 6. A reference is inserted to include new Chapter 5AA, that the date is also applicable in respect of compensation relating to prisoners of war.

Item 49 is a consequential amendment to section 404, which provides for the annual indexation (using the CPI number) of the *relevant rate* of certain payments made under this Act. New paragraph 404(1)(n) is inserted to provide that the prisoner of war recognition supplement would be indexed annually by CPI on 1 July.

Social Security and Veterans' Affairs Legislation Amendment (One off Payments and Other 2007 Budget Measures) Act 2007

Item 50 repeals Schedule 5 which is no longer necessary as the arrangements in relation to prisoners of war compensation are consolidated and dealt with under Chapter 5AA of the MRCA.

Veterans' Entitlements Act 1986

Items 51 and 52 amend subsection 5H(8), which lists payments that are to be treated as excluded or exempt income for the purposes of the income test applicable under the VEA. Paragraph 5H(8)(faaa) is updated to reflect that the prisoner of war recognition supplement is provided under section 268AM of the MRCA and retains the outcome that the payment is excluded income. New paragraph (zya) referring to section 268AJ of the MRCA ensures that the compensation payment in respect of internment is excluded from the income test.

Item 53 amends the definition of *Australia* in subsection 5Q(1) to omit the reference to Part VIB, consequential to that Part being repealed by item 55.

Item 54 amends section 52Z, which applies the hardship rules in the circumstances where a person or the person's partner holds an unrealisable asset. Paragraph 52Z(3A)(fa) is updated to reflect that the prisoner of war recognition supplement is provided under section 268AM of the MRCA and retains the outcome that the supplement is to be included in the determination of the ordinary income of a person when the hardship rules are applied.

Item 55 repeals Part VIB which is no longer necessary as the arrangements in relation to prisoners of war compensation dealt with under Chapter 5AA of the MRCA.

Items 56 and 57 make technical amendments to omit the reference to Part VIB in the definition of *claim* in subsection 119(2), consequential to the Part being repealed by item 55.

Items 58, 59 and 60 make technical amendments to omit references to Part VIB in section 121 which refers to instalments of pension, consequential to the Part being repealed by item 55. Subsection (4A) is repealed, and a related change is made to subsection (4). The definition of *pension* in subsection 121(7) is updated to omit the reference to prisoner of war recognition supplement under Part VIB.

Items 61 and 62 make technical amendments to omit references to section 115P in subsection 198D(1), which deals with indexation of certain payments. Paragraph (e) of the definition of *relevant rate* is repealed, and a related change is made to paragraph (d), to omit the section reference which is contained Part VIB and repealed by item 55.

Veterans' Entitlements (Clarke Review) Act 2004

Item 63 repeals Part II which is no longer necessary as the arrangements in relation to prisoners of war compensation are consolidated and dealt with under Chapter 5AA of the MRCA.

Division 6 - Education schemes

Military Rehabilitation and Compensation Act 2004

Item 64 inserts signpost definitions for *VEA eligible child* and *VEA eligible grandchild* and refers the readers to subsection 275A(1).

Items 65 amends the heading to Division 6 of Part 3 of Chapter 5 to *Education Scheme to certain eligible young persons and other children*, to simplify the heading and to reflect the extension of MRCAETS to include persons covered by different terminology under the VEA and DRCA.

Item 66 sets out *Subdivision A - Preliminary* and inserts new section 257A to contain definitions that are applicable to Division 6.

A definition of *VEA eligible child* is inserted to recognise persons who would have become eligible under the VCES, had that scheme not been closed to new entrants, for the purpose of gaining education assistance under the MRCA. This definition consolidates the meaning of *eligible child of a member of the Forces, or of a deceased member of a Peacekeeping Force* and *eligible child of a veteran* from subsection 116(1) of the VEA under paragraphs 257A(1)(a) to (f), with an updated reference to subsection 257B(1) for a class of persons as determined by the Commission.

The term *VEA eligible grandchild* is introduced into this Act. A particular person is included in a class of persons by determination under subsection 257C(4). A class of persons for the purpose of this definition is determined by the Commission under subsection 257B(2).

Subsections 257A(2) and (3) replicate subsections 116(2) and (3) of the VEA. Subsection (4) and (5) further provides that a person is regarded as a child if there is, or was before the member's death, a degree of financial dependency on the member, including maintenance liability. The VEA terms *member of the Forces, member of a Peacekeeping Force* and *veteran* apply for the purposes of this section.

In summary, the section transfers access from the VCES to the MRCAETS for a person who is a dependent child of a veteran, and the veteran parent:

- is, or was prior to their death, receiving a VEA Part II or IV pension:
 - at the special rate (VEA section 24);
 - at the extreme disablement adjustment rate (VEA subsection 22(4));
 - at an increased rate because of multiple amputations, or multiple amputations and blindness (VEA subsection 27(1) items 1, 2, 3, 4, 5 or 6); or
- whose death was determined as war or defence caused; or
- was an Australian prisoner-of-war and is now deceased; or

The Commission has power under section 257B to specify additional classes of persons who may have access to education assistance:

- under subsection (1), for *VEA eligible child* with respect veterans with service prior to 1 July 2004; and
- under subsection (2), for *VEA eligible grandchild*, which replicates subsection 116CA of the VEA, to enable a student who is the grandchild of a Vietnam veteran, to be

eligible to apply and be granted, in particular, a scholarship under the Long Tan Bursary scheme.

Subsection (3) makes any determination of the types described disallowable by the Parliament. This section replicates similar powers in the VEA and is designed to enable assistance to be provided to needy groups of young persons who would not otherwise qualify for education assistance.

New section 257C prescribes that an application for a determination that a person is included in a class of *VEA eligible child* or a class of *VEA eligible grandchild* may be made on their behalf with their approval, by their legal personal representative, by another person approval by the Commission if the person is unable to grant the approval themselves. For a person under 18 years of age, the application may be their parent or guardian, or a person with the approval of a parent or guardian, or another person approval by the Commission in the absence of a parent or guardian. The lodgement provisions in section 323(2) apply.

Upon an application has been made, the Commission must decide whether the person is in the class of eligible child or grandchild. As an original determination, notice would need to be given under section 346 and the determination would be subject to reconsideration (at the Commission's initiative) and review in accordance with that Chapter.

The title Subdivision B— Education scheme for certain eligible young persons and other children is added, which would contain sections 258 (as amended) and 259.

Item 67 amends the heading to section 258 to 'Education scheme for certain eligible young persons and other children' to inform readers to whom the education scheme may provide assistance.

Item 68 inserts paragraphs 258(1)(c) and (d) to enable the Commission to determine an education and training scheme to provide assistance to a VEA eligible child and a VEA eligible grandchild. The effect of is that persons who meet these definitions may also access the MRCAETS.

Item 69 inserts new subsection 258(1A) to clarify that for a member or former member who has received/is receiving DRCA compensation for an injury, the education scheme would only apply where:

- liability has been accepted under the MRCA for an injury or disease other than a DRCA compensable condition; or
- the person has an increase in their overall impairment rating of at least five points due to the worsening of their DRCA condition or a new condition.

The intent is to provide access to dependants upon the member or former member transitioning from the DRCA to the MRCA by meeting the liability or impairment threshold.

Item 70 amends subsection 258(2) to set out that the MRCA claim requirements also apply for education assistance in respect of a VEA eligible child or a VEA eligible grandchild.

Item 71 amends subsection 258(3) to provide that all of the existing benefits that may be available to eligible young persons under MRCAETS would also apply to VEA eligible children and VEA eligible grandchildren.

Items 72 and 73 amend subsection 345(2) in relation to determinations that are not *original determinations*. New paragraph 345(2)(db) provides that a determination by the Commission under subsection 257B which prescribes classes of VEA eligible child or classes of VEA

eligible grandchild, is not reviewable. Any determination must be approved by the Minister and is subject to disallowance by the Parliament.

A technical amendment is also made to paragraph 345(e) to reflect an education scheme determined under section 258 applies to other children, as well as to certain eligible young persons.

Veterans' Entitlements Act 1986

Items 74 and 75 amend subsection 5H(8), which lists payments that are to be treated as excluded or exempt income for the purposes of the income test applicable under the VEA. Paragraph (fa) which provides for scholarships under the VCES to be exempt income is no longer necessary, as the Scheme would be closed, and existing recipients transferred to the corresponding scheme under the MRCA. A technical amendment is also made to paragraph (zx) for exemption of payments under MRCAETS to reflect that an education scheme determined under section 258 applies to other children, as well as to certain eligible young persons.

Items 76 repeals the definition of ***Veterans' Children Education Scheme*** in subsection 5Q(1), consequential to the closure of the Scheme.

Items 77 repeals and replaces paragraph 13(7)(h) to update the reference from VCES to MRCAETS. Subsection 13(7) sets out a number of government education or youth allowance that would preclude payment of a pension under subsection 13(4) to a non-maintained child of a deceased veteran with operational service, who is over 16 years of age.

Items 78 repeals sections 67W and 67ZV

Items 79 repeals and replaces paragraph 70(10A)(e) to update the reference from VCES to MRCAETS. Subsection 70(10A) sets out a number of government education or youth allowance that would preclude payment of a pension under subsections 70(1) or (2) to child of a deceased veteran in certain circumstances, who is over 16 years of age.

Items 80 repeals Part VII which contains the Veterans' Children Education Scheme, consequential to the closure of the Scheme.

Items 81 omits the reference in subsection 128A(2) regarding the provision of tax file numbers by persons eligible to receive an allowance under the VCES, consequential to the closure of the Scheme.

Items 82 repeals subsection 175(5) regarding review applications to the Tribunal for certain VCES decisions, consequential to the closure of the Scheme.

Items 83 omits the reference to Part VII in paragraph 197(2)(c) regarding the exclusion of VCES for certain dependants of Defence Force members who served during World War 2, consequential to the closure of the Scheme.

Division 7 - Additional compensation for children of severely impaired veterans

Provisions are added to set out the criteria for persons with DRCA/VEA conditions and to allow the option of payments to be made to primary carers.

Military Rehabilitation and Compensation Act 2004

Section 80 deals with additional compensation for children who are eligible young persons of severely impaired veterans.

Item 84 amends subsection 80(1) to set out that an additional amount is payable with respect to eligible dependants of the impaired person, where the person has:

- liability accepted under the MRCA for an injury or disease other than a DRCA or VEA compensable condition or section 80(1A) applies; and
- the person's impairment from service injuries or diseases constitutes at least 80 impairment points.

New section 80(1A) requires that a person who has received/is receiving DRCA compensation or a Part II or IV pension under the VEA for a compensable condition, has an increase in their overall impairment rating of at least five points due to the worsening of their DRCA or VEA condition or a new condition. The intent is to provide access for VEA and DRCA veterans who transition into MRCA by meeting the liability or impairment threshold.

Item 85 amends subsection 80(2) consequential to the change by item 86 and omits the reference to the payment being made to the impaired person.

Item 86 inserts new section 80A so that the additional amount can be paid either to the impaired person or to the primary carer of the eligible young person or child. This provides flexibility in different family arrangements to serve the interest of the eligible young person or child.

Division 8 - Unforeseen circumstances

Provisions for special assistance are modified to ensure they are broad enough to cover any unforeseen transitional situations in moving to the single ongoing Act model.

Military Rehabilitation and Compensation Act 2004

Items 87 and 88 amend subsection 424, which provides the Commission with discretion to grant assistance or benefits that it considers reasonable to a person as specified. Subsection 424(2) is repealed, and a consequential technical change is made to subsection 424(1).

It is anticipated that there may be a need to fine-tune the transition arrangements and retaining those limits in the legislation may hamper DVA's ability to provide relevant and effective support. This modification removes the preclusion on assistance being granted to a person who has entitlement to compensation or another benefit (or would have if a claim was made) under this Act or the VEA. The intent is to afford the Commission the necessary flexibility to grant reasonable benefits to a person, including in unforeseen circumstances upon the transition to the single ongoing Act, where they fall outside the ambit of the liability and compensation provisions under that model.

Division 9 - Repeals

Compensation (Japanese Internment) Act 2001

Item 89 repeals this Act which is no longer necessary as the arrangements in relation to prisoners of war compensation are consolidated and dealt with under Chapter 5AA of the MRCA.

Part 2 - Amendments relating to treatment

Division 1 - Travel for treatment arrangements

Military Rehabilitation and Compensation Act 2004

Item 90 repeals and replaces the definition of *compensable treatment* in section 289 to extend coverage to include under this Act, persons with treatment entitlement under section 16 of the DRCA and Part V of the VEA.

Items 91, 92, 93 and 93 amend paragraphs 290(1)(b) and (2)(c) to effect a beneficial change to travel entitlements. Provisions that specify a 50 km round trip requirement are repealed for both the patient's journey and the journey of an approved attendant who accompanies the patient on a journey. The outcome is that travel entitlements relating to treatment are harmonised.

Item 95 inserts new section 291A to empower the Commission to determine a scheme to provide payments in advance in relation to travel for treatment entitlements under section 290 (journey costs) or 291 (accommodation). The provision mirrors subsection 110(4) of the VEA.

Subsections 291A(1) and (2) enable the Commission to determine in writing a scheme to make provision for, and in relation to, an advance of travelling expenses. Under subsections (3) to (6), the Commission has the power to amend or repeal the scheme, from time to time. The determination and any amendment to, or repeal of the scheme is also a disallowable instrument and has effect upon approval by the Minister.

Item 96 amends section 297 to insert a guidance note to inform readers that under section 24A, the Commission is deemed to have accepted liability for the person's injury or disease in certain circumstances. Section 24A applies with respect to an injury or disease under the DRCA or VEA for which liability was accepted prior to commencement date. (See item 47 in Part 2 of Schedule 1.)

Section 297 deals with compensation for the provision of transport to a person who was injured or died in certain circumstances and refers to the requirement that liability was accepted for that injury, disease or death. In the absence of an exclusion clause, where the injury or disease was accepted under the VEA or DRCA, it would meet the liability requirement in that section.

Item 97 inserts new paragraph 415(ba) to enable the recovery of an amount of overpaid travel advance, which may arise as the expenses were not incurred, or were less than the amount to the advance. This mirrors the power under subparagraph 205(1)(c) of the VEA.

Item 98 inserts new paragraph 423(cab) to provide that the Consolidated Revenue Fund is appropriated for advance payments made under the scheme determined by the Commission in section 291A.

Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988

Items 99 and 100 repeal subsections 16(6) to (9) and subsection 144B(6) which are no longer necessary, as the compensation arrangements in relation to travel for treatment are dealt with under Part 4 of Chapter 6 of the MRCA.

Veterans' Entitlements Act 1986

Items 101 repeals section 110 which is no longer necessary, as the compensation arrangements in relation to travel for treatment are dealt with under Part 4 of Chapter 6 of the MRCA.

Items 102, 103, 104, 105, 106 and 107 repeal various provisions in subsections 111 and 112 and make related technical changes, consequential to the repeal of section 110, and the consolidation of arrangements in relation to travel for treatment under Part 4 of Chapter 6 of the MRCA.

Division 2 - Treatment arrangements

Military Rehabilitation and Compensation Act 2004

Item 108 amends the simplified outline in section 278 which assists readers to understand the substantive provisions of Part 3 to include a reference to new Division 3A, which sets out the Commission's discretion to specify treatment arrangements in certain circumstances.

Item 109 amends paragraphs 279(a) and 280(b) to exclude where Commission is deemed to have accepted liability for the person's DRCA or VEA injury or disease under section 24A.

Sections 279 and 280 enables the Commission to provide certain Defence personnel with treatment for their compensable condition through the issue of a White or Gold Card, in the specified circumstances.

The amendment makes clear where liability is accepted through section 24A, that injury or disease is excluded for the purposes of these provisions. That is, there is no treatment entitlement under sections 279 or 280 with respect to an injury or disease for which liability was accepted under the DRCA or VEA prior to commencement date. The intent is to preclude dual coverage, as the person already has access to medical treatment for that injury or disease under another Act.

Items 110, 111 and 112 amend section 281 to set out the circumstances under which a person who is or has been compensated under the DRCA in respect of an injury may be entitled to treatment and the issue of a Gold Card under the MRCA.

Treatment can be provided under section 281 to a person for all injuries or diseases, as opposed to only compensable conditions. This is done through the issue of a Gold Card if the Commission has determined that the person has a permanent impairment rating of 60 or more points.

Subsection 281(1) is amended to clarify that treatment entitlement is subject to the conditions set out in subsections (2) and (3). Subsection 281(2) is about aggravation. Where the compensable injury or disease arises from an aggravation, or is contributed to by an aggravation, treatment can only be provided under this section where the aggravation causes an impairment to be rated at 60 impairment points or more. A minor wording change is made which does not affect the operation of subsection (2).

New subsection 281(3) sets out the treatment eligibility for a person who is receiving or has received compensation under the DRCA for an injury. Treatment under this section would only be available, either through the person establishing liability for a new condition under MRCA (excluding section 24A) or having at least a 5 impairment point worsening of an existing condition. Upon such a determination being made and that the person's permanent

impairment (or the aggravation) is assessed at 60 points, a Veteran Gold Card would then be provided.

There is no need to refer to VEA injuries or diseases as the treatment card arrangements already exist under that Act. On and after commencement date, a Veteran White Card or Gold Card issued under the VEA would continue to operate without change. When a VEA veteran has liability accepted for a new condition under the MRCA after commencement date, or an existing condition deteriorates which increase their overall rating by at least 5 impairment points, all of their accepted conditions would be covered by their Veteran Card and a Gold Card would be issued if not already held and the relevant MRCA thresholds are met.

Item 113 inserts new subsection 284(3) to set out an exclusion on the treatment entitlement of wholly dependent partners and eligible young persons. The intent is that for members being paid compensation under the DRCA immediately before they died, coverage of dependants would only apply in respect of deaths which occur on or after commencement date.

Item 114 inserts new Division 3A into Part 3 of Chapter 6 to contain new section 284A, which enables the Commission to determine other circumstances where treatment entitlement may arise. Section 284A equates to section 88A of the VEA and sets out the Commission's power under the MRCA as the single ongoing Act.

An existing VEA determination sets out that a veteran or other person may be eligible to be provided with treatment for mental health conditions, such as post-traumatic stress disorder, alcohol use disorder or substance use disorder, and other specified conditions. The treatment is known as 'Non-Liability Health Care' (NLHC) because it does not need to be linked to a condition arising from the service of the eligible person. It is intended that NLHC be transferred to the MRCA and enable eligible persons to access treatment at the expense of DVA for the specified conditions, without needing to establish a link to service or lodge a claim for compensation.

Subsection 284A(1) enables the Commission to determine by legislative instrument, specified treatment for a person who is included in a specified class of:

- members or former members;
- dependants of a member or former member
- persons who were dependants of a member or former member
- other persons not covered above.

A specified class is a group with identified similarities. This provision allows Commission the flexibility to consider the circumstances not already covered by this Act and make the decision that a particular group is entitled to provision of certain medical treatment.

Subsection (2) provides that a legislative instrument made under subsection 284A(1) has effect in accordance with the conditions it contains, regardless of other provisions of this Act that would ordinarily preclude treatment entitlement.

Item 115 and 116 update subsections 287(1) and (2) to reflect the addition of a determination under section 284A for the provision of treatment.

Item 117 inserts new section 287B and 287C for the provision of treatment services equivalent to sections 88B and 92 of the VEA respectively. These amendments consolidate the provision of treatment under the single ongoing Act model.

New subsection 287B(1) sets out that a person is eligible to be provided with treatment under Part 3, which is services under the Veteran Suicide Prevention pilot, if the person is included in a class of persons determined under subsection 287B(2). Subsection (2) enables the Commission to specify the eligibility criteria a person must satisfy in order to receive treatment under this Pilot. Subsection (3) would override subsection 14(2) of the *Legislation Act 2003* to enable an instrument made under subsection (2) to incorporate relevant guidelines or other material through publicly available documents, relevant to the effective administration of the Veteran Suicide Prevention pilot.

As established under the VEA, the Veteran Suicide Prevention pilot provides mental health support for veterans who have been hospitalised for attempted suicide, suicide ideation, or a mental health condition and clinically assessed as being at an increased risk of suicide. Support includes access to treatment and services to help improve mental health, and to provide social support to reduce the risk of suicide and enhance quality of life.

New section 287C provides that the Commission may, with the approval of the Minister, arrange for the provision of counselling services and/or psychiatric assessment, to persons such as partners, ex-partners, children, or former children up to a specified age, by way of a written determination.

Veterans' Entitlements Act 1986

Items 118 and 119 amend the notes in subsections 85(1) and (2) to remove references to section 85B, consequential to its repeal.

Item 120 repeals section 85B which is no longer necessary, with transitional provisions for treatment arrangements to take place instead, on and after commencement date.

Part 3 - Presumptive Liability

Military Rehabilitation and Compensation Act 2004

Items 121 and 122 amend the simplified outline in section 22 which assists readers to understand the substantive provisions of Chapter 2 regarding the determination of injuries, diseases and deaths that are service-related and when liability must not be accepted. Besides the two standards of proof, a reference is added about presumptive liability for establishing a service relationship to injuries and diseases, detailed in subsections 27A (1) and (2).

Item 123 inserts Note 3 at the end of subsection 23(1) to signpost the interaction with section 335, and that the standard of proof provisions are not applicable where Commission makes a determination about a person's injury or disease based on presumptive liability. (See also item 136.)

Item 124 inserts a note after paragraph 27(b) to bring attention to readers that subsections 27A(1) and (2) for presumptive liability are relevant to the definitions of *service injury* and *service disease*.

Item 125 inserts new section 27A which sets out the substantive provisions that enables the Commission to accept claims for specified injuries and diseases on a presumptive basis, without the need to identify the particular contributing factor to establish a causal link to service on a case-by-case basis.

Section 27A is consistent with the approach in force through subsections 7(1) and 7(2) of the DRCA, which enable the Minister to make determinations which specify diseases that can be presumed to have been contributed to, by the individual's employment. Cohorts covered by

the existing provisions include Point Cook ADF firefighters, other ADF firefighters, and aircraft maintenance workers attached to the F-111 Deseal/Reseal Program at RAAF Base Amberley, for particular employment periods.

Additionally, the provision formalises the liability-determination policy in place for VEA and MRCA claims that involve medical conditions known to have a common causal connection with ADF service. The Commissions have approved a suite of medical conditions that can generally be accepted as being service-related, reflecting the view that on the balance of probabilities, the requirements of at least one of the factors detailed in the SoPs for each of the identified conditions, would be met due to the very nature of military service. The expectation therefore is that claims for the prescribed conditions would succeed unless there are exceptional circumstances.

Section 27A provides for the outcomes achieved by the operation of the DRCA provisions and the Commissions' 'decision-ready' policy. Subsections (1) and (2) set out respectively the threshold tests for the presumption of injuries and diseases as attributable to defence service. For acceptance of liability on this basis, the person must have the specified injury or disease, and meet the relevant service requirements regarding when the injury was sustained, or the disease was contracted. There is no need to establish that the defence service directly caused the condition.

The operation of this section aims to reduce the evidentiary burden on individual claimants and simplify access to compensation entitlements including treatment for persons who qualify.

Subsection (3) enables the Commission to prescribe injuries and diseases and the kinds of defence service for the purpose of this section, by written determination. In making the determination, subsection (4) provides that the requirement for temporal connection with service may be set out, for example, in terms of the arm of service, and length of that service. Subsection (5) makes clear that a prescribed injury or disease is not required to be the subject of a SoP, reflecting the consolidation of liability provisions from the DRCA into the MRCA, which do not rely on SoPs.

Subsections (6) provides scope for conditions to be removed from, or added to, the list. The written determination by the Commission is a legislative instrument which has effect upon approval by the Minister in accordance with subsections (7) and (8).

Items 126 and 127 amend section 324 and insert subsection (2) and a guidance note, to make clear that investigation or additional evidence would not be required to determine connection with service for conditions accepted under subsection 27A(1) or (2). This reflects the operation and intent of the presumptive liability provisions, which streamline the decision-making process where the claim and/or service records contain information that confirms the medical diagnosis and relevant defence service.

Items 128 and 129 amend the simplified outline in section 332 which assists readers to understand the substantive provisions of Part 2 of Chapter 7 regarding the determination of claims. Besides the two standards of proof, a reference is added about presumptive liability for establishing a service relationship to injuries and diseases, detailed in subsections 27A (1) and (2). The changes are similar to the amendment made by items 121 and 122 for section 22.

Items 130 and 131 amend section 333 which sets out that the Commission must determine the claim once it is satisfied the investigation of the claim is complete. New subsection (2) and a guidance note are inserted to make clear that for conditions accepted under subsection 27A(1) or (2), the Commission is not required to consider or investigate a connection with

service. These items reinforce the operation and intent of the presumptive liability provisions to streamline the decision-making process.

Item 132, 133, 134, 135 and 136 amend section 335 which sets out the two standards of proof that are used under this Act. A new Note 1 is inserted after each of subsection (1) and subsection (3) to bring to the attention of readers that the operation of the section is subject to subsection (4).

New subsection 335(4) provides for the exception to the two standards of proof and that section 335 does not apply for determinations on the basis of presumptive liability under subsections 27A(1) or (2).

Item 137 amends section 336 to reflect that Commission is empowered to make certain determinations on the basis of presumptive liability under subsections 27A(1) or (2). The item makes clear that there is no other expectation or provision in this Act that assumes an injury, disease or death is service-related, or that liability exists for compensation entitlements to an individual.

Items 138 and 139 amend sections 338 and 339 respectively which describe the operation of reasonable hypothesis and the operation of reasonable satisfaction. These items complement the changes to section 335. New subsections 338(2A) and 339(2A) and the guidance notes are inserted to make clear that determinations on the basis of presumptive liability under subsections 27A(1) or (2) by the Commission, the VRB or the Tribunal on reconsideration or review, are not affected by, or subject to, the RMA's intention or otherwise to investigate or issue a SoP.

Item 140 inserts new section 340A to provide that in a reconsideration or review of a decision where liability had been accepted on the basis of presumptive liability under subsections 27A(1) or (2), the Commission, the VRB or the Tribunal must apply such a *current presumption determination*, but that there is no accrued right or obligation from a determination that is no longer in force.

Item 141 amends subsection 341(2) to set out that the requirement to use a SoP that exists at the time of the reconsideration or review decision is not relevant where the Commission is making a determination on the basis of presumptive liability under subsections 27A(1) or (2).

Item 142 inserts new paragraph 345(2)(aa) to provides that a determination by the Commission under subsection 27A(3) which prescribes the conditions and kinds of defence service for the purposes of a presumptive liability determination, is not an *original determination* and is therefore not reviewable. Any determination must be approved by the Minister and is subject to disallowance by the Parliament.

Part 4 - Additional Disablement Amount

Military Rehabilitation and Compensation Act 2004

Items 143, 144 and 145 insert references to ADA in a number of definitions in subsection 5(1):

- *clean energy underlying payment*;
- *compensation*, and
- *energy supplement*, for a payment on the basis of ADA provided by new section 220D

Item 146 inserts *Deceased members eligible for Additional Disablement Amount* and new subsection 12(2A) to set out that dependants of such members are deemed to be entitled to benefits under this Act. It allows the provision of periodic payments to eligible dependants regardless of the cause of death, but access to the additional lump sum would require the death to be determined as being service related.

Subsection (2A) refers to a deceased member meeting the criteria for ADA in section 220A during some period of their life. That is, the member:

- was receiving ADA prior to their death;
- would have been receiving ADA had a claim been lodged and determined prior to their death; or
- satisfied the criteria in section 220A but did not receive compensation due to the operation of another provision of this Act.

Item 147 amends the simplified outline in section 65 which assists readers to understand the substantive provisions of Chapter 4 and that Part 7 provides for the payment of ADA.

Item 148 inserts new paragraph 199(1)(ba) to make clear that a person is eligible to make a choice under Part 6 to receive SRDP, if they are under pension age, or they are receiving compensation under section 121, as they were incapacitated for work as a result of an injury or illness sustained within two years of pension age. The amendment does not change the operation of the section but reinforces the age criteria applicable to SRDP, and the distinction upon the introduction of ADA.

Item 149 amends the simplified outline in section 211 which assists readers to understand the substantive provisions of Part 7 and outlines the purpose of the ADA provided under Division 3A.

Item 150 inserts new Division 3A in Part 7 of Chapter 4 for the provisions relating to payment of the ADA.

Section 220A sets out the criteria that a person must meet to be eligible for the ADA:

- paragraph (1)(a) — have liability accepted for an injury or disease, including an accepted service injury or disease under the VEA or DRCA;
- paragraph (1)(b) — not in receipt of certain compensation under this Act or the VEA that are considered to be similar in nature to the ADA and are therefore mutually exclusive.
- paragraph (1)(c) — be pension age or older; and
- paragraph (1)(d) — have a serious impairment as a result of a service injury or disease

The criteria reflect that ADA is similar to the Extreme Disablement Adjustment (EDA) under the VEA and the payment is aimed at assisting extremely disabled veterans who are over age-pension age and their dependants.

Section 220B sets out the maximum weekly rate of the ADA. The maximum rate could be reduced by the offsets detailed in section 220C. These offsets mirror the arrangements that exists in Part 6 for SRDP.

Offsets

Subsection 220C(2) provides the first offset to be made against the ADA is for permanent impairment compensation under Part 2, excluding payments in respect of eligible young persons, for legal advice, or energy supplement. As the ADA incorporates an element for permanent impairment, any previous payment of compensation for permanent impairment must be offset.

Subsection 202C(3) sets out that the ADA is offset dollar for dollar by any periodic permanent impairment payment the person is receiving. If all or part of the payment has been taken as a lump sum, the ADA is offset dollar for dollar by the amount of the periodic payment that the person would be receiving had the lump sum not been chosen.

Subsection 202C(4) sets out that the ADA is offset by the amount of the periodic payment that the person would be receiving had payment of permanent impairment compensation under this Act not been precluded because the person brought action against the Commonwealth (section 389) or recovers third party damages (section 402). A guidance note is inserted to inform readers that those provisions preclude compensation in certain circumstances.

Subsection 202C(5) provides that the second offset is in respect of Commonwealth-funded superannuation pensions or lump sums the person has received or is receiving for invalidity or retirement. Benefits attributable to the person's own contributions are not taken into account. Superannuation offset reflects the long-held principle that a person should not be able to receive income maintenance payments twice, from Government superannuation and compensation for the same incapacity.

The provision relies on the definition of *superannuation* (including the conversion of lump sum amounts to weekly amounts) in section 14, which is used to offset the SRDP and incapacity compensation payments under sections 134, 135 and 136.

Subsection 202C(6) provides that the superannuation offset for ADA is 60 cents for each dollar of superannuation, in recognition of the ADA being non-taxable, whereas superannuation payments are taxable.

Subsection 202C(7) and a note at the end of that subsection are inserted to clarify that in addition to the section 202C offsets, ADA may be reduced or further reduced for the purposes of recovering an overpayment, as set out in subsection 415(4).

Energy Supplement

Subsection 202D provides for an energy supplement – a supplementary payment to assist with energy costs – to recipients of the ADA. To be entitled to the energy supplement for a day under this section:

- the ADA must be payable to the person but for offsets under section 202C or a preclusion for damages awarded under paragraph 398(3)(b);
- the person is residing in Australia; and
- the person is in Australia or temporarily absent for a no more than 6 weeks.

Subsection 202D(2) sets out the daily rate of energy supplement associated with the ADA.

Items 151 and 152 insert subparagraph 242(1)(a)(iv) to enable a wholly dependent partner to receive continuing payments of the deceased person's ADA payments for a period following the member's death. The payments are intended to assist with adjustment to their new

financial situation following the death of their partner. The amendment replicates the bereavement payment made under the VEA upon the death of an EDA recipient.

Items 153 and 154 insert subparagraph 255(1)(c)(iv) to enable an eligible young person to receive continuing payments of the deceased person's ADA payments for a period following the member's death. The payments are intended to assist with adjustment to their new financial situation following the death of family member. The amendment is consistent with the compensation available upon the death of an SRDP-eligible person.

Item 155 inserts new subparagraph 258(1)(ia) to provide that an eligible young person who is a dependant of a member or former member who is receiving ADA or satisfies the criteria to receive that payment during some period of their life, may have access to the MRCAETS. The amendment replicates education assistance under the VEA that is available to the child of an EDA recipient.

Item 156 inserts paragraph 404(1)(ga) to enable indexation of the ADA in accordance with the CPI.

Veterans' Entitlements Act 1986

Items 157 and 158 amend subsection 5H(8):

- adding paragraph (zsa) to provide that the ADA is not income for service pension purposes, and
- adding paragraph (zsb) to provide that the amount of Commonwealth superannuation worked out under the new section 5IA which has been used to offset the ADA, is not income for service pension purposes;
- adding a note at the end of new paragraph (zsb) to inform readers that subsection 220C(5) provides for the ADA to be offset by the person's Commonwealth superannuation; and
- adding to the note after paragraph (zzg) a reference to (zsb) to signpost that the excluded superannuation amount is counted for the purposes of the hardship rules.

Item 159 inserts new section 5IA to provide a formula for converting the actual amount of reduction in the ADA for superannuation offset into an amount that is not to be considered under the VEA income test, but it is taken into account when considering whether the hardship rules apply. This ensures that the amount of superannuation that has been used to offset the ADA is not also counted in the VEA income test except for hardship consideration. The approach mirrors the arrangement for the corresponding offset that applies to SRDP.

Items 160 and 161 amend subsection 52Z(3A) which clarifies that certain payments are to be taken into account for the purposes of the adjusted annual rate of ordinary income test applicable to the financial hardship rules. New paragraphs are added to the list of payments under the MRCA that are to be taken into account when applying the financial hardship rules – (ia) payment of ADA, and (ib) the amount in relation to superannuation offset as converted in accordance with section 5IA. This is consistent with the approach that applies to SRDP.

Note 1 at the end of subsection 52Z(3A) refers to the superannuation offset for SRDP. The Note is amended to assist readers to understand that subsection 220C(5) provides for an offset of the ADA due to receipt of superannuation.

Schedule 3 - Single Review Pathway

Outline

This Schedule amends the MRCA, the DRCA and the VEA to standardise the review pathway for all compensation claims where the applicant has appealed the primary decision. The ‘single review pathway’ removes the internal reconsideration process for DRCA claimants and gives DRCA appellants access to the Veterans’ Review Board (VRB) which is a less adversarial, veteran-friendly environment, where matters can be resolved without the involvement of lawyers. A second tier of merits review by the Administrative Appeals Tribunal would remain in place.

Appeals on an original decision of the MRCC are to be made directly to the VRB. The Bill also amends the timeframe for the Secretary of DVA (or their delegates) to provide reports to the VRB from 42 days of being notified of an application to the Board, to within 28 days. The Commission may initiate a re-examination of the original decision to address errors without needing to resort to a proceeding by the Board. These procedural changes are intended to support quality decision-making and allow resolution of matters in a timelier manner.

Part 1 - Amendments commencing 60 days after Royal Assent

Division 1 - Main amendments

Military Rehabilitation and Compensation Act 2004

Item 1 amends section 3 in Chapter 1, which contains the simplified outline of the MRCA. The item adds a reference that the Veterans’ Review Board is dealt with in new Chapter 8A, which is inserted by item 12.

Item 2 replicates in subsection 5(1), the definition of *alternative dispute resolution processes* from subsection 133(3) of the VEA and is intended to have the same meaning.

Item 3 amends the definition of *Board* in subsection 5(1) to reflect that the legislative provisions for the Veterans’ Review Board have been transferred from the VEA to section 359B of the MRCA.

Item 4 replicates in subsection 5(1) a number of definitions from subsection 133(3) of the VEA:

- **Board member** is based on the VEA definition of ‘member’ as a collective term to refer to the Principal Member, a Senior Member, or another member of the Board. The addition of ‘Board’ recognises that ‘member’ already exists as a defined term in the MRCA.
- the definitions of Conference Registrar, Deputy Registrar, National Registrar Principal Member, Registrar, and Senior Member are unchanged from the VEA.
- **paid work** is introduced for the purposes of new section 359CD, inserted by item 12, regarding employment outside of Board duties.
- **Services member** is an update of the VEA definition, referring to a Board member and reflects the appointment process contained in subsection 359CA(3).

Item 5 inserts new subsection 5(1A) to replicate the intent and operation of subsection 133(2) of the VEA. It enables the Minister to prescribe procedures or services (by legislative instrument) for the resolution of disputes through alternative dispute resolution processes.

Item 6 inserts a definition of *acute support package instrument* in subsection 345(1) to reference instruments made under section 268B of this Act and the corresponding provisions of the DRCA and the VEA. The term is used to provide a transitional outcome where Chapter 8 of the MRCA would apply to a person, if before commencement of the single ongoing Act model, the person had been granted assistance or benefits under the VEA or DRCA instruments. (See related changes in Schedule 2 of this Bill which preclude new instruments being made under the DRCA or VEA.)

Item 7 amends the definition of *reviewable determination* in subsection 345(1) to include decisions of the Principal Member to dismiss an application for review by the VRB, where the applicant fails to appear, the original determination was not reviewable, or the applicant fails to comply with Board’s direction with regards to the review proceedings. The item replicates existing section 155A of the VEA to confer jurisdiction for Tribunal review of such decisions for dismissal. (See also item 10 for new section 353D.)

Items 8 and 9 amend section 345B to provide merits review under Chapter 8 of the MRCA, in relation to a decision made under an acute support package instrument by the relevant Commission. The new defined term inserted by item 6 recognises acute support package decisions made under the relevant instruments of the MRCA, VEA and DRCA. New paragraph 345B(aa) acknowledges the nomenclature varies across the instruments and clarifies that an original determination is a decision for the purposes of Chapter 8.

Item 10 repeals and replaces Part 4 of Chapter 8 of the MRCA, based on Division 1 of Part IX of the VEA. The title of *Part 4—Review by the Board* reflects that the MRCA sets out the extended jurisdiction of the VRB to include certain decisions under the VEA and the DRCA. ‘Original determinations’ as defined in section 345 is inserted for specific provisions where the term is applicable.

New section 352 in Division 1 sets out definitions for Part 4:

- *applicant* – is unchanged from the VEA.
- *application for review* – is an application under new section 352A of the MRCA.
- *relevant documentary medical evidence* – is modelled on the VEA, updated to clarify that the term applies to an application for review of an original determination, and references to veteran or deceased veteran are replaced by general references to person.
- *review* – is a review by the VRB under Part 4 of the MRCA.

Division 2—Applications for review

Existing subsections 352(1) and (3) are replicated at new sections 352A and 352B respectively to provide the general rules for applications for review, with the addition of a note to clarify that applications may be made with respect to a review of certain decisions under the VEA and the DRCA.

Existing section 353 relies on Part IX of the VEA and sets out which provisions, and how they apply to the specific context of the MRCA for Board reviews. The section is replaced by new sections 352C to 352U to detail the arrangements of the VRB to conduct reviews under Part 4.

Section 352C requires the Board to notify the Commission in writing when an application for review of a decision is made. This is a new provision to ensure the Commission is aware of an application to meet its obligations in a timely manner.

Section 352D is based on section 137 of the VEA and requires the Commission to provide to the review applicant a report containing a copy of all the relevant documents. Confidential or other sensitive material may be excluded from the report. The timeframe is reduced from the existing 6 weeks to 28 days after the Board notifies the Commission that an application for review is lodged. This change aims to facilitate the timely and efficient resolution of matters.

The applicant has 28 days, or longer if requested, to provide written comments on the report. The Commission must then send all documents relating to the decision, including any comments received from the applicant to the Principal Member. The provision contains some minor language updates to reflect modern drafting practices. These do not affect the operation or effect of the provision.

Section 352E replicates section 137A of the VEA with updated reference to the corresponding legislative provision of the MRCA, to set out the requirement on parties to a review to provide further evidence to the Board after a review application is made.

Division 3—Proceedings before the Board

This broadly mirrors Divisions 3 and 5 of Part IX of the VEA with some minor updates to terminology and legislative references, and to reflect modern drafting practices. These do not affect the operation or effect of the provision.

Section 352F replicates section 146 of the VEA, that the Principal Member or Senior Member is to preside at a Board hearing. A note is added after subsection 352F(2) to signpost new section 359DA which deals with how the Board is constituted for a hearing.

Section 352G replicates section 147 of the VEA, that the applicant and the Commission are parties to a review before Board. The Chief of Defence Force also may seek to join as a party. This item provides that parties may appear in person or through a representative. The longstanding exclusion of legal practitioners from appearing as a representative at a VRB hearing is retained but they may help an applicant prepare their case.

Subsection 352G(3) has been included to place a restriction on charging fees or any payments for review representations. The aim is to avoid the benefit of a compensation decision on review being eliminated by the costs of the review proceedings. The approach is consistent with section 46PQ of the *Australian Human Rights Commission Act 1986* and section 282 of the *Migration Act 1958*.

Section 352H replicates subsections 148(1) to (4) of the VEA to set out that the Principal Member is required to give notice to all parties of an upcoming Board review, to inform them of the opportunity to attend to present their case to the Board, and to include the date, time and place of the hearing as required.

Section 352J replicates subsections 148(4A) to (9) of the VEA to provide for the holding of a directions hearing in relation to a review. A Board member or registrar may, prior to the commencement of the hearing, issue directions relating to the procedure to be followed in the review proceedings, while the Principal Member may give directions in relation to classes of reviews or for a particular review before or after the hearing commences. The directions may outline for all parties what actions they must take to progress the matter, prepare for a hearing, provide documents, including the timeframes they must meet. The Principal Member may also request the Commission to obtain further information, or to arrange an investigation or medical examination in relation to a review.

Section 352K replicates subsection 148(8) of the VEA to provide for participation in a directions or review hearing by various communication channels, which is consistent with the objective of ensuring that Board proceedings are accessible.

Section 352L replicates and extends subsection 148(9) of the VEA to place obligations on all parties (not only the Commission) to use their best endeavours to assist the Board to achieve the objective in new section 359BB (see item 12). For example, assisting the Board to ensure that the review is fair and just, and that it is conducted with as little formality as possible.

Section 352M replicates section 149 of the VEA, that the view of the majority of the Board on a question arising in the review should prevail if the majority agrees, and where the Board is constituted by two members who do not agree, the matter is to be adjourned and referred to the Principal Member for necessary directions.

Section 352N is identical to section 150 of the VEA and provides for hearings to be held in private unless the applicant requests, and the presiding member agrees, to have the hearing (or part of it) conducted in public. The presiding member also determines who may be present at a hearing.

Section 352P replicates section 151 of the VEA except for paragraph 151(2)(a), to set out the Board's powers in relation to taking evidence on oath or affirmation, and to adjourn as hearing as required. An oath or affirmation may be administered by the presiding member or an authorised person. Conferring power on the Board to compel a person to take an oath or affirmation supports the reliability of evidence given in a proceeding.

Section 352Q replicates paragraph 151(2)(a) of the VEA and sets out the Board's powers to summon persons to appear before the Board to give evidence or to produce documents that are relevant to a review proceeding. The provision stipulates that the day specified in the summons for the action to be taken must be at least 14 days after the day the summons is given to the person. This allows proceedings to be conducted in a timely manner and ensures a person is given a reasonable opportunity to respond to a notice, as a failure to comply with a summons is an offence (See new section 353J, inserted by item 12).

Section 352R is based on section 152 of the VEA, that the Board has the discretionary power to seek further documents from the Commission, and to request investigations or medical examinations that are necessary for a review to be conducted and reports to be provided. A hearing must be adjourned upon the Board making such requests. (See also item 84 which amends and relocates subsection 152(2) of the VEA.)

Section 352S replicates section 153 of the VEA, that in addition to section 352D, the Board must make available to the other party, further information that is provided to the Board before commencement of the review, including information from the applicant not previously considered by the Commission and the Board considers it likely to be review evidence. The Board may supply information that is confidential or sensitive under this section to the applicant's representative instead of the applicant.

Section 352T is based on section 138 of the VEA and existing section 334 of the MRCA, to reflect the objective (as set out in section 359BB) that the Board is to operate with as little formality and technicality to provide appropriate merits review of each individual matter. The Board is not bound by the rules of evidence, recognising there may be evidence defects in claims or applications due to the length of time since service, or the lack of/incomplete records in some instances. Consistent with section 352L, the Commission is to supply the Board with relevant SoPs and any other material to assist the Board to resolve matters, noting subsection (3) makes clear that the Commission is not to give directions to the Board on the conduct of a review.

Section 352U replicates section 138A of the VEA, that at any stage of the review, the Board may remit a matter to the Commission to reconsider the decision. The review continues if the Commission affirms the decision, and if the Commission varies or sets aside the decision, the

person may proceed with a review of the new decision or withdraw their application. This provision promotes efficiency and supports the case management capacity of the Board.

Division 4 - Alternative dispute resolution processes

This broadly mirrors Division 4A of Part IX of the VEA with some minor updates to terminology and legislative references, and to reflect modern drafting practices. These do not affect the operation or effect of the provision.

Section 352V replicates section 145A of the VEA to promote a non-adversarial method of merits review. The provision allows the Principal Member to direct that parties or their representatives undertake conferencing or a particular dispute resolution process in relation to a proceeding, part of a proceeding, or any matter arising out of a proceeding.

Section 352W replicates section 145B of the VEA and provides the Principal Member with the power to make practice directions for alternative dispute resolution processes. For example, a practice direction could set out which dispute resolution process should be conducted and who should conduct it. Setting this out in practice directions gives the Board flexibility to adapt its procedures over time. A dispute resolution process may be conducted by a member, a registrar, or a person engaged by the Board to conduct dispute resolution under new section 353A.

Section 352X is identical to section 145C of the VEA and provides the criteria and safeguards for the Board to adopt a decision agreed to by the parties through an alternative dispute resolution process. The terms are to be in writing and signed by both parties to ensure the agreement is the true and accurate intention of the parties. After a cooling-off period of seven days of no parties withdrawing, the Board can adopt the agreement (where the agreed terms are within the Board's jurisdiction) without holding or completing a hearing of the proceeding. Subject to the same requirements, the Board may also vary or revoke a decision so adopted, if agreed to by the parties.

Section 352Y is identical to section 145D of the VEA and provides that evidence at an alternative dispute resolution process cannot be used in any court or tribunal, including the review proceeding to which the dispute resolution relates. The intent is to support open communication in those processes, with two exceptions to this broad principle:

- when both parties agree to allow particular evidence to be admitted in proceedings; and
- where no party has raised their objection to the Board before the start of the hearing, the admission of a case appraisal report or a neutral evaluation report.

Section 352Z replicates section 145E of the VEA to prevent a Board member from sitting in a proceeding if they have conducted an alternative dispute resolution process in relation to that proceeding and a party to the proceeding notifies the Board that they object to the Board member's participation. This ensures the protection in section 352Y is not undermined, as the Board member could already be privy to information and actions taken at or for the alternative dispute resolution process.

Section 353 replicates section 145F of the VEA to provide for participation in alternative dispute resolution processes by various communication channels, which is consistent with the objective of ensuring that Board proceedings are accessible.

Section 353A replicates section 145G of the VEA to provide the National Registrar the authority to engage a person to conduct alternative dispute resolution processes under this

Division. This is conditional on the National Registrar being satisfied that the person has the relevant qualifications and experience to conduct the relevant kinds of dispute resolution processes.

Division 5 - Decisions of the Board

This broadly mirrors elements of Divisions 3, 5 and 6 of Part IX of the VEA with some minor updates to terminology and legislative references, and to reflect modern drafting practices. These do not affect the operation or effect of the provision.

Section 353B replicates section 139 of the VEA to set out the powers and functions of the Board on review. Merits review means the Board makes a fresh decision that it considers to be the correct or preferable decision in the circumstances. The provision enables the Board to exercise the same statutory powers and discretions held by the original decision-maker, and to consider all relevant evidence and circumstances, and any further evidence, when conducting a review. In making its decision, the Board may affirm or vary the Commission's decision, make a substitute decision, or remit matters to the Commission to reconsider in accordance with any orders or recommendations of the Board.

Section 353C replicates section 140 of the VEA to set out the notice requirements for a Board review decision. The Board may give reasons orally, thus allowing the parties to be informed of the outcome and the reasons immediately, without waiting to finalise written reasons. Should a party request written reasons within 28 days of the oral decision, the Board must provide them within a further 28 days. Where reasons are given in writing, the Board must include its findings and refer to the evidence basis for the decision (excluding confidential or sensitive material) and advise the parties of appeal rights to the Tribunal. The filing obligation ensures that records are properly maintained for any further appeals or litigation.

Section 353D replicates section 155 and subsections 155A(2) and (3) of the VEA to sets out the circumstances in which the Board can, or must, dismiss an application, and the notice requirements. The Principal Member's powers to resolve matters by dismissal may be exercised:

- if the parties to the proceeding consent – the application may be dismissed at any time.
- if the application is withdrawn or discontinued by the applicant – the application is deemed to have been dismissed.
- if the applicant (or the representative) fails to appear at a directions hearing, an alternative dispute resolution process, or the review hearing – the application may be dismissed without proceeding to the review. There is an obligation on the Board to be satisfied that appropriate notice was given to the applicant about the alternative dispute resolution process.
- if the decision is not reviewable, for example, the legislation under which the decision is made does not provide for Board review – the application may be dismissed after the period for an applicant to make their case has lapsed. The period is prescribed by the Minister in a legislative instrument.
- if the applicant does not proceed with the application or does not comply with an order of the Board, in a reasonable period of time – the application may be dismissed without proceeding to the review.

The policy behind the provisions for dismissal is to ensure that applicants diligently pursue their claims and provides a mechanism to dismiss applications if the applicant is not engaging with the process. The Board must notify each party to the review where an application is dismissed due to the applicant's failure to appear, an application is not reviewable, or the applicant does not participate properly in the proceeding, and to advise the parties of appeal rights to the Tribunal and their rights to request a statement of reasons. A failure by the Board to comply with the notice obligation regarding the statement of reasons does not affect the validity of the Board's dismissal decision.

Sections 353E replicates subsection 155(9) of the VEA to clarify that upon dismissal, an application for review is concluded unless it is reinstated under section 353F.

Section 353F replicates subsections 155(10) and (11) of the VEA to enable the Board to reinstate an application that it has dismissed or taken to have been dismissed. The Principal Member may, upon request by the applicant with 28 days of being notified of the application being dismissed on the grounds of their failure to appear, reinstate an application, if it is considered appropriate to do so. The Principal Member may also make an own motion reinstatement of any applications dismissed in error.

Section 353G provides that the Board must specify when the decision on review comes into operation, except for an affirmed decision. The operative dates for VEA payments are not replicated in the MRCA and remain in section 157 of the VEA (with minor updates) to be applied by the Board accordingly. (See items 92 and 93)

Section 353H replicates section 140A of the VEA to enable the Board to correct an obvious error in the text of its decision or statement of reasons without lengthy, complicated processes. Examples include a typographical error, or a clear inconsistency between the decision and the statement of reasons for the decision. The power is to be exercised by the Principal Member or the presiding member of the particular review.

Division 6 - Offences

This brings together elements of Division 8 of Part IX of the VEA that deal with offences. The policy intent of these provisions is to promote the effective operation of the Board. It contains some minor updates to terminology and legislative references, and to reflect modern drafting practices. These do not affect the operation or effect of the provisions.

Section 353J replicates section 168 of the VEA to provide that a person commits an offence if they do not comply with the summons to appear at a hearing, without being excused by the Board. The maximum penalty for non-compliance is six months imprisonment, 30 penalty units, or both. This has been updated to ensure it is consistent with 3.1.3 (Fine/imprisonment ratio) and the penalties set out in 9.4 (Notices) of *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*. A penalty unit is defined in section 4AA of the *Crimes Act 1914*.

Section 353K replicates subsections 169(1), (1A) and (1B) of the VEA with a minor restructure to provide that a person commits an offence if they:

- fail to take an oath or make an affirmation when required to do so,
- fail to answer a question posed by the Board member to the person as a witness at a proceeding;
- fail to comply with a summons to produce a document.

The maximum penalty for committing an offence under this section is six months imprisonment, 10 penalty units, or both.

Both sections 353J and 353K establish offences for non-compliance to protect the integrity of the Board's merits review processes. As these offences involve acts of omission, evidence is often unlikely in the absence of admission, and therefore it would be appropriate to retain the approach for the legislation to impose a strict liability. A declaration of strict liability means there is no requirement to prove fault but allows a defence of honest and reasonable mistake of fact (in addition to the general defences) if relevant evidence is given in support.

The conduct/failure to act specified in these sections is not an offence if the person has a reasonable excuse, as per subsections 353J(3) and 353K(5). The defence of reasonable excuse is open-ended and what constitutes a reasonable excuse would depend on the individual circumstances. Each provision is followed by a note referring to subsection 13.3(3) of the *Criminal Code* that a defendant bears the evidential burden because:

- the reasons why it was not reasonable for a person to comply are likely to be entirely within the knowledge of the person on whom the summons or requirement was served, and
- it would be onerous for the prosecution to disprove the existence of all possible circumstances that would make it reasonable for a defendant to comply with the summons/requirement.

Offences apart from sections 353J and 353K are not of strict liability and the prosecution would bear the evidentiary onus of establishing both physical and fault elements of the offence.

Section 353L replicates subsection 169(2) of the VEA to set out that a person commits an offence if they knowingly provide false or misleading evidence. The maximum penalty for the offence is imprisonment for 12 months, 60 penalty units, or both. This penalty reflects the seriousness of deliberately misleading the Board, thereby hindering its ability to conduct a review based on all necessary information.

Section 353M is identical to section 170 of the VEA and makes it an offence for a person to engage in conduct which insults a person performing the functions of the Board, interrupts proceedings, creates a disturbance, takes part in creating or continuing a disturbance in or near where the Board is sitting, or would amount to contempt of court if the Board were a court of record. This allows the Board to deal with conduct that interferes with its operations. The maximum penalty for committing any of the offences in this section is six months imprisonment.

Division 7 - Other matters

This broadly mirrors the remaining operational elements of Division 8 of Part IX of the VEA. It contains some minor updates to terminology and legislative references, and to reflect modern drafting practices. These do not affect the operation or effect of the provisions.

Section 353N replicates section 167 of the VEA to provide immunities to Board members, certain staff and other persons, representatives, and witnesses in Board proceedings. These immunities are critical in ensuring that while the Board is not a court, it can operate with independence and authority. Subsection 353N(6) contains the definition of ***alternative dispute resolution practitioner*** to maintain immunity for persons engaged to conduct dispute resolution processes.

Section 353P replicates section 170A of the VEA to provide reimbursement for medical expenses incurred by an applicant to obtain relevant documentary medical evidence (as defined in section 352) for the purpose of a Board review, subject to certain conditions which ensure the evidence is for the review and not obtained prior to the claim determination notice. The cost of medical evidence obtained by successful applicants may be reimbursed at the primary determining level, and sections 353P, 353Q and 353T are intended to encourage applicants not to hold back supporting evidence for a Board review.

The payment applies to evidence obtained after the date on which the applicant received notice of the decision that is the subject of review. The person who incurred the expense, or another person approved by the Commission may apply in writing on an approved form, within 3 months of submitting the evidence to the Board, in accordance with the lodgement requirements. Maximum amounts are set out in the regulations for evidence in respect of one medical condition, or for two or more conditions.

Section 353Q replicates section 170B of the VEA to provide for reimbursement of reasonable travelling expenses incurred within Australia by an applicant to obtain relevant documentary medical evidence for the purpose of a Board review. Provision is made for the travelling expenses of an attendant where the Commission considers it is necessary for them to accompany the applicant. The person who incurred the expense, or another person approved by the Commission may apply in writing on an approved form, within 12 months of completing the travel (or such period as extended by the Commission due to exceptional circumstances), in accordance with the lodgement requirements.

Section 353R replicates subsections 132(5), (6), (9) and (10) of the VEA, to provide, subject to prescribed conditions, entitlement to expenses in connection with travel within Australia to attend a Board review hearing, undertaken by:

- the applicant,
- an attendant accompanying the applicant, and
- an authorised person who made the claim on behalf of the applicant.

Section 353S replicates subsections 132(11) to (11)(C) of the VEA to provide that applications for travelling expenses under section 353R may be made by the person who travelled or on their behalf, or by another person approved by the Commission, in writing on an approved form, within 12 months of completing the travel (or such period as extended by the Commission due to exceptional circumstances). If the lodgement requirements or communication directions of the Principal Member are met, then the application is taken to have been received in accordance with the requirements/directions.

Section 353T replicates sections 132A and 170C of the VEA, to provide a person who is entitled under sections 353Q or 353R, with an advance of travelling expenses where the Commission considers it is appropriate in the particular circumstances. There is provision for repayment to the Commonwealth where an advance is made, but the travel is not subsequently undertaken, the expenses are not incurred, or the expenses are less than the amount of the advance.

Section 353U replicates section 171 of the VEA to provide that a person (other than the applicant) who is required to appear before the Board as a witness, is to be paid, any fees and allowances for expenses, as prescribed in the regulations. The Commonwealth pays the fees and allowances, except for any witnesses the applicant asked to be summoned. The provision empowers the Board to order, on a case-by-case basis, the Commonwealth to pay in full, or in part, the fees and allowances for which the applicant would otherwise be responsible. It is

appropriate that the arrangements for fees and allowances are included in the regulations to allow sufficient flexibility to reconsider fees as appropriate, adjust amounts according to inflation and to prescribe other operational matters as required.

Section 353V is included to assist readers and clarify that a direction of the Board under subsections 352J(2), (4), and (7), 352N(2), and section 352V, is not a legislative instrument within the meaning of subsection 8(1) of the *Legislation Act 2003* (which means that it does not have to be registered or published as a legislative instrument).

Item 11 updates the VEA reference in paragraph 357(6B)(c) and points to equivalent subsection 352J(2), as inserted by item 10. The item retains the requirement that the Tribunal in varying or setting aside a reviewable determination by the Board, is not to make an order in favour of the claimant in relation to awarding costs, where the claimant has failed to comply with a direction of the Board for a review hearing. This update does not change the effect of the provision.

Item 12 replicates elements of Part IX of the VEA in new Chapter 8A of the MRCA, to set out the objective and organisation of the Board. The item has some minor updates to terminology and legislative references, and to reflect modern drafting practices, which do not affect the operation or effect of the provision.

Section 359A provides a simplified outline to assist readers to understand the substantive provisions of this Chapter.

Part 2 - Establishment of Board

Section 359B replicates section 134 of the VEA to provide for the continuance of the Veterans' Review Board, which consists of a Principal Member, and a number of Senior Members and other members, appointed under this Act.

Section 359BA makes clear that for the purposes of the *Public Governance, Performance and Accountability Act 2013* (PGPA) and the rules and instruments made under that Act, a Board member is not an official. While the Board is an independent statutory tribunal, it is not a separate Commonwealth entity under the PGPA. The Board is regarded as a Secondary Australian Government Body, with funding and corporate services from the Department of Veterans' Affairs.

Section 359BB replicates section 133A of the VEA to set out the Board's objective to provide a mechanism of review that is:

- accessible – allowing the parties to meaningfully engage in review proceedings,
- fair, just, economical, informal, and quick – resolving matters with these operating principles on the outcome and the process of merits review,
- proportional – appropriate consideration of the issues in each individual matter, and
- promotes public trust and confidence – being effective, accountable, and independent.

Part 3 - Administration

Section 359C replicates section 158 of the VEA to set out that member appointments must be made by the Governor-General. The Board must include Services members put forward by the Minister, which have been drawn from candidates recommended from time to time by veterans' organisations. Member appointments are not to exceed five years (see also re-appointment below), with the further requirement that the Principal Member be appointed on a full-time basis, while all other members may be appointed on a full-time or part-time basis.

A note is added to the end of subsection (1) to refer to the *Acts Interpretation Act 1901* that a power to appoint includes power to re-appoint.

Section 359CA replicates section 161 of the VEA to enable the Minister to appoint persons to act when there is a vacancy on the Board, during a Board member's absence from Australia, or any period where a Board member is unable to perform their duties. The provision is simplified and relies on the *Acts Interpretation Act 1901* (as referenced by the note at the end of section 359CB) on the powers of an acting office holder.

Section 359CB replicates section 160 of the VEA to provide that Board members are to be paid the amount determined by the Remuneration Tribunal, or as prescribed in the regulations in the absence of a determination. Board members are also to be paid allowances prescribed in the regulations, which allows flexibility to ensure members can be appropriately remunerated.

Section 359CC replicates section 162 of the VEA to provide full-time Board members with leave entitlements as determined by the Remuneration Tribunal. The provision also has the flexibility for the Minister to grant a full-time Board member leave of absence other than recreation leave, on any terms and conditions that the Minister determines.

Section 359CD sets out the requirement that full-time Board members may only engage in paid employment outside the duties of their appointed office with the Minister's approval. Failure to comply is a ground from termination. (See also section 359CG).

Section 359CE replicates section 159 of the VEA to provide that the Governor-General may determine additional terms and conditions of a Board member's appointment.

Section 359CF replicates section 163 of the VEA to permit Board members to resign in writing to the Governor-General. Such a resignation would take effect on the day it is received by the Governor-General, or on a later date specified in the resignation.

Section 359CG replicates section 164 of the VEA to provide discretionary grounds for terminating the appointment of a Board member. The Governor-General may terminate a Board member's appointment for misbehaviour, or physical or mental incapacity, which mirror the threshold for federal judicial office holders. Further grounds for termination aim to guard against the potential for a Board member to be financially vulnerable, to have actual or apparent conflict of interests, or for being engaged in breaches of conduct and performance standards. These reflect the objective of the Board to promote public trust and confidence and aligns with community expectations regarding the accountability of Board members in relation to their conduct and performance.

Section 359CH replicates section 164 of the VEA to set out the process for suspension and termination of a Board member's appointment. It empowers the Minister to suspend an appointment for proved misbehaviour, or physical or mental incapacity, and the Board member's remuneration and allowances would remain unaffected. The provision enables the Governor-General to act on the recommendation of the Minister to terminate the appointment of a suspended Board member, to continue the suspension for a specified period, or to end the suspension.

Section 359CI replicates section 165 of the VEA to require Board members to disclose an existing or potential conflict of interest, if a member is constituted to a proceeding, or is performing or exercising a function or power of the Board in relation to a proceeding. As soon as the interest is apparent, it must be disclosed to the parties to the proceeding, that is, the applicant and the Commission. To maintain the integrity and transparency of the Board, the member must not be involved in the proceeding without the consent of the parties.

Failure to comply is a ground from termination. (See also section 359CG). The Principal Member is responsible for directing the Board member not to take part in the proceedings, or to ensure disclosure of the interest to the review parties.

Section 359J replicates section 141 of the VEA to provide that the Board will usually sit in a panel of 3 – Principal or Senior Member, a Services member, and one other Board member, but a single Board member can conduct a particular review or reviews in a particular class.

Section 359CK replicates section 141A of the VEA to provide that the Principal Member has responsibility for managing the administrative affairs of the Board, with the assistance of the National Registrar.

Section 359CL replicates section 142 of the VEA to provide the Principal Member with the power to make written directions in relation to the arrangement of the business of the Board.

Section 359CM replicates section 143 of the VEA to provide that the Principal Member may direct which member or members are to be assigned to ‘constitute’ the Board for the purposes of a certain review, or reviews during specified period or periods. It enables the Principal Member to assign members to matters according to the nature of the proceeding, and workloads of Board members. The Board as constituted continues until a decision on the review is made unless the Principal Member directs otherwise.

Section 359CN replicates section 144 of the VEA to provide the re-allocation arrangements (and deemed re-allocation) upon a Board constituted for a review being disrupted, because a Board member is no longer a member, or is for any reason, unavailable.

Part 4—Other matters

Section 359D replicates section 172 of the VEA to provide for the Board to be assisted in performing their functions by staff in various registrar roles.

Section 359DA replicates section 166 of the VEA to provide for the Principal Member to delegate functions or powers to certain Board members and registrars, to allow the Board to operate efficiently. The requirement that the delegate complies with any written direction of the Principal Member is a safeguard to the exercise of powers so delegated.

Section 359DB is based on subsection 215(4) of the VEA and stipulates that as soon as practicable at the end of each financial year, the Principal Member must prepare an annual report of the management and administrative matters of the Board during the financial year. The requirement on the Minister to present the report to the Parliament ensures there is a transparent and publicly accessible record of the Board’s decision making capabilities. A guidance note refers readers to extra requirements in section 34C of the *Acts Interpretation Act 1901*.

Section 359DC is based on section 173 and Schedule 4 of the VEA to require a person to take an oath or affirmation as set out in this section before commencing their duties as an appointed member of the Board, including a re-appointment or acting position.

Section 359DD is included to assist readers and clarify that a direction of the Board under subsections 359CK(5), 359CL(2) and section 359CM, is not a legislative instrument within the meaning of subsection 8(1) of the *Legislation Act 2003* (which means that it does not have to be registered or published as a legislative instrument). Each of those provisions also contain guidance notes providing readers with the same information.

Item 13 updates references to the application of VEA provisions in paragraph 423(ca) and points to the equivalent sections 353Q, 353R, 353T and 353U, as inserted by item 10. The

item retains the appropriation for travelling expenses associated with a Board review from Consolidated Revenue Fund. This update does not change the effect of the provision.

Items 14, 15 and 16 amend section 437A to enable the Minister to delegate to the Principal Member of the Board in writing, the specific powers relating to acting appointments (section 359CB) and granting a leave of absence to full-time Board members (section 359CD). The amendment is based on paragraph 212(1)(b) of the VEA. As the functions relate to the operation of the Board, it is appropriate for these powers to be delegated and exercised by the Principal Member rather than by the Secretary.

Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988

These items align the DRCA appeal pathway with that of the MRCA and confer the VRB with jurisdiction to review decisions under the DRCA. The internal DVA reconsideration process is replaced by initial screening, akin to the MRCA and the VEA, as a first step to test whether the Commission should exercise its discretion to intervene and review an original decision prior to consideration by the VRB. As Part VI is substantively replicated in the MRCA, most of the provisions are repealed or replaced, and references to Part VI are updated to reflect the reconfigured appeal pathway.

Item 17 amends the signpost note at the end of subsection 3A(3) to replace the reference to Part VI with a reference to section 62, which provides the authority for Board review. This update does not affect the operation or effect of the provision.

Item 18 amends subsection 3A(4) to replace the reference to Part VI to provide that a substituted decision or determination under subsection 3A(3) is open to review under section 62.

Item 19 inserts in subsection 4(1) the term ***Board*** and provides for the same meaning as in the MRCA.

Items 20 and 21 repeal subsection 4(1) (definition of ***proceeding under Part VI***) and the related subsection 4(12), as they are no longer necessary with the MRCA containing the overarching review provisions.

Item 22 repeals and substitutes subsection 26(4) to omit the reference to reconsideration, and to provide that payment of compensation with interest is not applicable where an application for Board review has been made under Part 4 of Chapter 8 of the MRCA in relation to a permanent impairment determination or an interim payment determination. This update does not affect the operation or effect of the provision.

Item 23 replaces the reference to section 60A in the at the end of subsection 41B(1) and inserts a reference to Part 4 of Chapter 8 of the MRCA and section 345B of that Act, which contains the review provisions relating to acute support package.

Item 24 makes a technical amendment to subsection 60(1) consequential to the change by item 25.

Items 25 and 26 repeal the definitions of ***decision*** and ***reviewable decision*** in subsection 60(1) as they are no longer necessary, with the MRCA containing the overarching review provisions.

Item 27 repeals subsection 60(2) which is no longer necessary, as the parties to a review proceeding are set out in the MRCA.

Item 28 repeals section 60A which is no longer necessary consequential to the amendment by items 8 and 9 to consolidate the review provisions relating to acute support package under section 345B of the MRCA.

Item 29 replaces the reference to subsection 62(2) in paragraph 61(1)(c) and inserts a reference to Part 4 of Chapter 8 of the MRCA, to update the decision notification requirement to include the right of review. This update does not affect the operation or effect of the provision.

Item 30 repeals sections 62 to 67 which deal with the internal DVA reconsideration process, notification of reviewable decisions, and processes relating to applications to the Tribunal for merits review. Those sections are no longer necessary consequential to the harmonisation of review pathway across the DRCA, MRCA and VEA, and a replacement section 62 provides for the interactions between reconsiderations under this Act and Board review under the MRCA.

New subsection 62 empowers the Commission to initiate a reconsideration of a DRCA determination under section 347 of the MRCA, as an original determination made by the Commission. Subsection (2) provides for section 346 of the MRCA to apply, requiring the Commission to give the claimant (the subject of the determination) written reasons for the reconsideration decision and advise that the person can make an application to the Board if they are dissatisfied with the outcome.

Subsection (3) confers jurisdiction upon the Board to review under Part 4 of Chapter 8 of the MRCA, a determination, a reconsideration determination, and a reviewable decision made under this Act. Paragraph 62(3)(b) provides for the subject of a determination to be regarded as the claimant. Paragraph 62(3)(c) further provides for paragraph 353R(3)(a) of the MRCA to apply to a person who makes a claim for compensation under Part V of this Act on behalf of another person, thus allowing the Board to review a decision on their travel expenses entitlement. Subsection (4) provides for Part 5 of Chapter 8 of the MRCA to apply and confers jurisdiction upon the Tribunal for review of a Board determination. The guidance notes inserted at the end of each subsection make clear the intent that the appeals pathway is for a Board review followed by a Tribunal review.

Item 31 repeals subsection 111(5) consequential to the repeal and replacement of section 62 by item 30. The reference to previous section 62 is non-operative and this amendment does not alter section 111, which provides that the Commonwealth retains unclaimed funds in the circumstances where a beneficiary dies intestate.

Item 32 repeals sections 129 and 129A, which relate to review applications and proceedings under previous Acts, as former Defence members would no longer be covered by some of those Acts. New section 129A provides authority under the revised review pathway for reconsideration and review of certain determinations under 1971 Act.

Item 33 replaces the reference to reconsideration under Part VI in subsection 151A(1B) and inserts a reference to Part 4 of Chapter 8 of the MRCA, to provide that the Commission or a staff member assisting the Commission may give information to the CDF for a Board review.

Veterans' Entitlements Act 1986

These items reflect the transition to the MRCA as the single ongoing Act and the harmonisation of appeals pathway across the VEA, DRCA and MRCA. With the relocation of review provisions to the MRCA, including the continuation of the Board under that Act, the VEA provisions that are no longer necessary are repealed or replaced. References in Part

II to reviews and to Part IX are updated to align with the terminology and the relevant provisions of the MRCA.

Item 34 amends subsection 5Q(1) (definition of *Board*) to provide for the same meaning as in the MRCA.

Items 35 and 36 updates the note at the end of subsection 5T(1) to remove references to the Veterans' Review Board and Part IX, which are no longer necessary, as the MRCA sets out the lodgement of documents requirements for reviews.

Item 37 updates the legislative reference in paragraph 22(5)(c), consequential to the repeal and replacement of section 31 by item 38. This update does not affect the operation or effect of the provision.

Item 38 repeals and replaces section 31 to set out that the Commission's power under the MRCA to initiate reconsideration of certain decisions. In practice, veterans and their representatives regularly request 'section 31 reviews', despite this process not being part of the statutory review system. This amendment does not remove an existing avenue of appeal but adopts language that is consistent with the MRCA, to clarify that a claimant cannot directly seek the reconsideration of a determination by the Commission. It reflects the policy intent that a claimant can seek a review of the original decision by the Board and the Commission may apply an internal review mechanism to consider applications for review before the Board.

New subsections 31(1) and (2) provide for reconsideration under section 347 of the MRCA, a Commission decision relating to a claim for a pension by a veteran or a dependant, an application for an increase to the rate of an existing pension, and an application for attendant allowance. The provision excludes a decision under subsection 19A(1) to delay consideration of a claim or application because of the claimant's refusal to undergo a medical examination or allow the use of other information requested by the Department. This is consistent with subsection 135(1) that such a decision is not reviewable by the Board. Subsection 31(3) provides for section 346 of the MRCA to apply, requiring the Commission to give the claimant (the subject of the determination) written reasons for the reconsideration decision and advise that the person can make an application to the Board if they are dissatisfied with the outcome.

Items 39, 40, 41, 42, 43, 44, 45, 46 and 47 make technical amendments to section 32, consequential to section 31 being replaced. They reflect that new section 31 refers to reconsideration rather than reviews, and do not otherwise affect the operation of those provisions that the Commission may take evidence for consideration of initial applications or in exercising its reconsideration power.

Items 48 and 49 repeal paragraphs 34(1)(c) to (e) and their references in paragraph 34(2)(b), consequential to section 31 being replaced. Paragraphs 34(1)(c) to (e) are no longer required, as new subsection 31(3) provides for the notification requirements in section 346 of the MRCA to apply in relation to a reconsideration decision.

Item 50 replaces the reference to section 135A in the note at the end of subsection 115S(1) with a reference to section 345B of the MRCA, which contains the review provisions relating to acute support package.

Items 51 and 52 replace the reference to *review* in paragraph 119(1)(c) to refer to *reconsideration*, and repeals paragraph 119(1)(d), consequential to section 31 being replaced. Paragraph 119(1)(d) which refers to review decisions of the Commission under subsections

31(6) and 31(8) is no longer applicable. Instead, section 334 of the MRCA, which has the same effect as section 119 of the VEA, can be relied upon.

Item 53 replaces the reference to section 135 in subsection 126(4) with a reference to Parts 4 or 5 of Chapter 8 of the MRCA, which contains the review provisions. This update allows a legal representative of a deceased veteran to pursue an application for a Board review under the MRCA that was already lodged by the veteran.

Item 54 repeals subparagraphs 129A(1)(a)(ii) and (d)(ii) which are no longer necessary, as requirements on the Board to give a notice or other document to a person, and the related directions issued by the Principal Member, are set out in Parts 4 or 5 of Chapter 8 of the MRCA.

Items 55 and 56 replace references to *review* in paragraphs 132(1)(b), (1)(c), (1)(d) and subsection 132(2) to refer to *reconsideration*, consequential to section 31 being replaced.

Item 57 repeals subsections 132(5) and (6) which are no longer necessary, as new section 353R of the MRCA provides for travel expenses in connection with attendance at a Board hearing.

Item 58 repeals and replaces subsection 132(9) to reflect modern drafting practices and to continue the provision of travel expenses to a dependant, a legal representative, or other authorised person who makes a pension claim on behalf of the claimant, for approved travel in connection with the investigation of that claim. Travel to attend a Board hearing is omitted, as coverage is provided under subsection 353R(3) of the MRCA.

Items 59 and 60 repeal subsections 132(11A) and (11B) which refer to an application for travel expenses in connection with attendance at a Board hearing, consequential to the repeal by item 57. New subsection 132(11A) sets out the lodgement requirements for travel expenses applications in other circumstances.

Item 61 omits the reference to section 135 in subsection 132(12) which is no longer necessary, as new section 353R of the MRCA provides for travel expenses in connection with attendance at a Board hearing.

Item 62 repeals section 132A which is no longer necessary, as new section 353T of the MRCA provides for advance travel expenses.

Item 63 replaces the heading to Part IX, to state *Review of decisions by Board*, consequential to the relocation of the overarching Board provisions to new Chapter 8A of the MRCA.

Items 64, 72, 86 and 89 repeals the headings to Divisions 1, 3, 5 and 6 of Part IX, while **71, 85 and 94** repeals Divisions 2, 4, 4A, 7 and 8. Part IX is substantially transferred to the MRCA and as such, the divisional structure is no longer required, with the remaining sections sitting directly under Part IX.

Item 65 is a technical amendment consequential to item 66.

Items 66, 67 and 68 amend subsection 133(1):

- repeal the definitions of *alternative dispute resolution processes*, *applicant*, *application*, and *Conference Registrar*, which have been replicated in subsection 5(1) of the MRCA;
- insert a definition of *decision* to mean a Commission decision relating to a claim for a pension by a veteran or a dependant (under section 14), an application for an increase to the rate of an existing pension (under section 15), an application for attendant

allowance (under section 98) or a reconsideration decision of the Commission. A decision under subsection 19A(1) to delay consideration of a claim or application because of the claimant's refusal to undergo a medical examination or allow the use of other information requested by the Department is excluded. (See also item 38.)

- repeal the definitions of Deputy Registrar, member, National Registrar, Principal Member, Registrar, relevant documentary medical evidence, review, Senior Member and Senior Member, which have been replicated in subsection 5(1) and section 352 of the MRCA.

Item 69 repeals subsection 133(2), with subsection 5(1A) of the MRCA enabling the Minister to prescribe alternative dispute resolution processes procedures or services.

Item 70 repeals section 133A, with section 359BB of the MRCA setting out the Board objective.

Item 71 repeals Division 2 of Part IX, with section 359BA of the MRCA providing for the Board's continuance.

Item 72 – See item 64.

Item 73 inserts new section 134 to facilitate application of Parts 4 and 5 of Chapter 8 of the MRCA for Board review of a VEA decision. Subsection (1) sets out corresponding terminology under the VEA and the MRCA for the purposes of review by the Board. Subsection (2) provides that a determination by the Board is reviewable by the Tribunal, subject to Part X of this Act.

Item 74 replaces the heading to section 135 to reflect that review of decisions are provided for under the MRCA and the section is amended to set out the timing requirements for application for review instead.

Item 75 repeals subsections 135(1) to (4) which set out the review jurisdiction of the Board on VEA entitlement and assessment matters. The provisions are relocated to Part 4 of Chapter 8 of the MRCA and has effect through the operation of section 134 (as amended). Subsection 135(4) which provides a 12-month timeframe to seek a Board review on certain decisions is covered by paragraph 352(3)(c) of the MRCA.

Item 76 replaces the references to subsections (1), (2) and (3) in subsections 135(5) and 135(5A), with an update to Part 4 of Chapter 8 of the MRCA, consequential to the amendments by item 75. The effect is that the three-month time limit for applications to the Board for review of decisions that relate to the rate of pension; a refusal of pension on the grounds of negligible incapacity; the cancellation, suspension, or re-commencement date of a pension; or a claim for attendant allowance, as prescribed by subsections 135(5) and (5A) remain in place.

Item 76 repeals subsections 135(6) and (7), which sets out the interactions between a reconsideration by the Commission and an application for a Board review. Chapter 8 of the MRCA provides for a Commission's decision upon reconsideration to be regarded as an original determination, which means it is reviewable by the Board. If an application had already been made to the Board but the hearing is yet to commence when the reconsideration occurs, then the appellant would retain the option of accepting the varied determination or continuing with the appeal to the Board.

Item 78 repeals section 135A which is no longer necessary consequential to the amendments by items 8 and 9 to consolidate the review provisions relating to acute support package under section 345B of the MRCA.

Item 79 replaces the heading to section 136 to reflect the amendments made by items 80-83, that the section will set out who may make a review application.

Items 80, 81, 82 and 83 amend section 136 to repeal subsections (1) and (4) which relate to the review application requirements, and review of acute support package decisions respectively. These are no longer necessary, as the relevant provisions are contained in the MRCA. Consequential updates are made to subsections 136(2) and (3) to refer to the review provisions contained in Part 4 of Chapter 8 of the MRCA.

Item 84 repeals sections 137 to 140A, which have been replicated in the MRCA as follows:

Provision in the VEA	Replicated in the MRCA at...
Section 137	Section 352D Commission to prepare report
Section 137A	Section 352E Ongoing requirement for lodging material documents with Board
Section 138	Section 352T Board not bound by technicalities etc.
Section 138A	Section 352U Board may remit matters to Commission for further consideration
Section 139	Section 353B Decision of Board
Section 140	Section 353C Board to give notice of decision and reasons to parties
Section 140A	Section 353H Correction of errors in decisions or statements of reasons

The item also inserts new section 137 based on existing paragraph 152(2), which enables the Board to make an interim decision to vary a pension assessment, pending completion of the review. This is limited to circumstances where the Board adjourns review proceeding after making a request to the Commission under section 352R of the MRCA to request further information or an investigation.

Item 85 repeals Division 4 and 4A of Part IX, which is replicated respectively in Part 4– Management and administration, of Chapter 8A, and Division 4– Alternative dispute resolution processes, of Part 4 of Chapter 8, of the MRCA.

Item 86 – See item 64.

Items 87 and 88 repeal sections 146 to 153, 155 and 155A, which have been replicated in the MRCA as follows:

Provision in the VEA	Replicated in the MRCA at...
Section 146	Section 352F Principal Member or Senior Member to preside at hearing
Section 147	Section 352G Parties to review before Board
Section 148	Section 352H Notice of hearing etc. Section 352J Procedure of Board

Section 352K Participation by telephone etc.

Section 352L Obligations of parties etc.

Section 149	Section 352M Questions to be decided by majority of Board
Section 150	Section 352N Hearing to be in private except in special circumstances
Section 151	Section 352P Powers of Board Section 352Q Board may summon persons to give evidence or produce documents
Section 152	Section 352R Board may request documents etc. from Commission
Section 153	Section 352S Information may be made available to parties
Section 155	Section 353D Dismissal of applications Section 353E Consequence of dismissal of application Section 353F Circumstances in which application may be reinstated
Section 155A	Section 353D Dismissal of applications

The item allows section 154 to remain operational to provide that a decision of the Board in relation to a grant or rate of pension is not to be varied for six months from the date of the decision unless there is an appeal to the Tribunal. The purpose is to prevent multiple actions to recontest the issues already covered by the Board decision, noting subsection 154(2) allows for an application and a decision to increase a pension within that period, where the applicant's incapacity has increased.

Item 89 – See item 64.

Item 90 amends subsection 156(1) to remove the reference to 'this Part', as a review of decision will be conducted under the MRCA instead. This change does not affect the operation or effect of the provision.

Section 157 provides for the Board to specify the date from which a review decision is to take effect, subject to the prescribed conditions on how or when an action related to the review occurred. Items 91, 92 and 93 update those references which are modified in, or relocated to, the MRCA. These changes do not affect the operation or effect of the provision.

Item 91 amends subparagraph 157(2)(a)(ii) to align with section 352A of the MRCA, such that the timing refers to when the application for review was given to the Board rather than received at an office of the Department.

Item 92 amends subparagraph 157(2)(b)(ii) consequential to the repeal of section 140 by item 84 and updates the reference to section 353C of the MRCA, which provides the notice requirements for when the Commission is to be given a copy of the Board's review decision.

Item 93 amends subsection 157(4A) consequential to the repeal of section 139 by item 84 and updates the reference to subparagraph 353B(4)(c)(iii) of the MRCA, which sets out the Board's power to remit matters to the Commission to reconsider in accordance with any orders or recommendations of the Board.

Item 94 repeals Division 7 of Part IX, which is replicated in Part 3–Membership, of Chapter 8A. The item also repeals Division 8, with the sections re-organised and replicated in Part 5 -

Other matters, of Chapter 8A, and Division 6 - Offences, and Division 7 - Other matters, of Part 4 of Chapter 8, of the MRCA.

Item 95 inserts a note at the end of subsection 174(1) to signpost that subsection 134(2) facilitates other Tribunal reviews, namely review of a Board decision.

Item 96 repeals subsections 175(1), (1AA) and (3), as review of Board decisions by the Tribunal is provided for in Part 5 of Chapter 8 of the MRCA. The remainder of section 175 confers jurisdiction to the Tribunal for reviews of certain Commission decisions that do not have a right of appeal to the Board.

Item 97 repeals subsection 176(2), which is no longer necessary as section 355 of the MRCA provides for the Commission instead of the Board to be a party to a Tribunal proceeding in relation to a review of a Board decision.

Item 98 repeals and replaces subsection 176(3) to omit references to section 175(1AA) for Board reviews consequential to its repeal by item 87, and to reflect modern draft practices. The effect is that subsection 176(3) continues to modify the AAT Act to disallow persons from requesting reasons from the decision-maker, where the relevant notification provisions of the VEA are met and a copy of the decision and relevant statements have been given to the person.

Item 99 repeals subsection 176(7), consequential to the amendments made by item 38 to section 31.

Items 100 and 101 amend subsection 177(2) to omit a non-operative reference to section 175(1), consequential to its repeal by item 87. Subparagraphs 177(2)(b)(i) and (ii) are updated to refer to review by the Tribunal. These changes do not affect the operation or effect of the provisions which set out the effective dates of certain Tribunal review decisions.

Item 102 amends subsection 177(3) consequential to the repeal of 176(7) by item 99.

Item 103 amends subsection 178(1) to omit 'reviewable' to enhance readability and does not affect the operation of the provision.

Item 104 repeals and replaces subsections 212(1) to (3) to set out an express statutory provision that allows the Minister to delegate their powers to a commissioner or an APS employee. A guidance note refer readers to sections 34AA to 34A of the *Acts Interpretation Act 1901*, which contain many aspects of subsections 212(1) to (3). While the wording of the provision has changed in new subsection 212(1), the breadth of the delegation power remains the same. The scope, nature, and purpose of the exercise of power involve many routine administrative powers, which do not require personal attention of the Minister. For administrative necessity, including the volume of decision-making, the provision means they could be exercised by a departmental official for and on the Minister's behalf.

Item 105 repeals subsections 215(4) to (6) which are no longer necessary as the requirements regarding an annual report for the Board is set out in section 35 of the MRCA.

Item 106 repeals Schedule 4, as the updated form of the oath or affirmation has been replicated in section 359EC of the MRCA.

Division 2 - Application and transitional provisions

Military Rehabilitation and Compensation Act 2004

Item 107 inserts the term *Simplification Act*, an abbreviation which refers to the amendment Act.

Item 108 inserts new *Part 5—Transitional provisions relating to reviews by the Veterans' Review Board* which contains provisions relating to the transition of the legislative provisions from the VEA to the MRCA. The provisions ensure that the VRB is equipped to continue its operations. The provisions provide clarity about what will happen after the commencement of Part 1 of this Schedule to rights and requirements that existed under the old law, and proceedings in progress immediately before that day. The provisions also provide transitional arrangements for Board members and staff.

Section 25 defines a number of terms for the purpose of this Part. This Schedule refers to 'things done' (that is actions/occurrences) before, at or after review pathway commencement day. The ***review pathway commencement day*** means the day on which Part 1 of this Schedule commences. The harmonisation of the DRCA review pathway with the VEA and the MRCA will come into operation at this day.

This Schedule refers to actions/occurrences under the old law or the new law. The ***old law*** means the MRCA, the DRCA and the VEA as in force before ***review pathway commencement day***, with ***old VEA*** referring to that Act in particular. The ***new law*** means those three Acts as in force after review pathway commencement day.

Sections 26, 27 and 28 recognise the nomenclature varies across the three Acts and set out that subject to this Part, the amendments in Part 1 of this Schedule have effect on original determinations under the MRCA, determinations under the DRCA, and decisions under the VEA respectively, whether the claim or application to which the original determination, determination or decision relates was made before, on or after that day.

Sections 29 provides that a person who is a member of the Board immediately before review pathway commencement day, is taken to be appointed under 359C of the MRCA and will continue to hold their position on the same terms and conditions for the remainder of the term for which the person was appointed.

The terms and conditions for the appointment of Board members may be varied on or after the review pathway commencement day.

Sections 30 provides corresponding arrangements with respect acting members under the old VEA immediately before review pathway commencement day.

Section 31 provides for appropriate continuity of leave under the old VEA, as leave of absence granted under section 359CC of the MRCA.

Section 32 provides for staff engaged under the old VEA immediately before review pathway commencement day to be continued under section 359D of the MRCA.

Sections 33 and 34 provides for delegations by the Principal Member and by the Minister to the Principal member respectively made under the old VEA and in force at review pathway commencement day, to be regarded as in force under the corresponding provisions of the MRCA.

Section 35 is a transitional provision arrangement which deals with annual reports for the Board, with respect to the commencement of the review pathway. It would enable the VEA provisions to still apply for the report on activities in the financial year prior to the

commencement of the review pathway if the report had not yet been completed, while section 359DB would provide for the first report of the management and administrative matters of the Board during the financial year in which the pathway commences.

Sections 36 and 37 provide that anything done in, or in relation to, the Board before the review pathway commencement day continues to have effect for the purposes of, or in relation to, the Board after that day. This is intended to ensure that actions/occurrences by, or in relation to the Board that were valid continue to be effective, and do not need to be done again. For the purpose of continuing a review that was not finalised before the review pathway commencement day, this would allow the Board to finalise the review efficiently and minimises potential disruption or disadvantage to the parties.

Section 38 sets out a table of legislative instruments made under the old VEA which would continue to have effect under the corresponding provisions of the MRCA as amended, on and after the review pathway commencement day:

Continued effect of certain instruments		
Provision of the old VEA	Provision of the MRCA	Purpose
subsection 132(5)	subsection 353R(1)	To prescribe conditions for travel expenses in connection with a review applicant's attendance at a Board hearing
subsection 132(6)	subsection 353R(2)	To prescribe conditions for travel expenses in connection with an attendant who accompanies a review applicant to a Board hearing
subsection 132(9)	subsection 353R(3)	To prescribe conditions for travel expenses in connection with the attendance at a Board hearing by an authorised person who made the claim on behalf of the review applicant.
paragraph 155(7)(b)	subsection 353D(8)	To prescribe the period for an applicant to make a case that a decision is reviewable before the Principal Member may dismiss the review application without progressing to a proceeding.
paragraph 170A(3)(b)	paragraph 353P(3)(b)	To prescribe the amount payable in connection with obtaining relevant medical documentary evidence.
subsection 170B(2)	subsection 353Q(2)	To prescribe the amount payable in connection with travel to obtain relevant medical documentary evidence.
subsection 171(1)	subsection 353U(1)	To prescribe amounts payable to a person summoned to attend a Board hearing as a witness.

Section 39 provides the Governor-General with the power to make regulations of a savings or transitional nature which is necessary to facilitate or to modify the operation of the MRCA, the DRCA or the VEA upon the commencement of this Schedule.

Part 2 - Amendments commencing later

Military Rehabilitation and Compensation Act 2004

Items 109 and 110 are technical amendments to the definition of *acute support package instrument* in subsection 345(1) to adopt the abbreviations of DRCA in paragraph (b) and

VEA in paragraph (c), in place of the full titles of the two Acts. They do not affect the operation of the definition.

Item 111 amends section 345B to remove the reference to a decision by the Repatriation Commission under an acute support package instrument, as the enabling provision for the instrument is repealed. The change allows the instrument made under section 268B of the MRCA to provide for reviewable acute support package decisions.

Items 112, 113 and 114 are minor amendments to adopt the abbreviations of DRCA and VEA, in place of the full titles of the two Acts. They do not affect the operation of the notes in section 352A, or the effect of subsection 359B(1).

Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988

Items 115, 116, 117 and 118 make amendments to subsection 62(3), paragraphs 62(3)(a) and (b), the guidance note in subsection 62(3), and subsection 62(4) to omit references to reviewable decision, consequential to the repeal of the definition of that term from commencement day of the Simplification Act.

Veterans' Entitlements Act 1986

Item 119 repeals and replaces subsection 31(2) to provide for reconsideration under section 347 of the MRCA and omits the provision regarding Repatriation Commission, to reflect the merging of the Commissions with effect from 1 July 2026.

Item 120 is a technical amendment to paragraph 31(3)(b) consequential to the change by item 121.

Item 121 repeals paragraph 31(1)(c) to reflect the merging of the Commissions with effect from 1 July 2026, and specific reference to the Repatriation Commission is no longer required.

Item 122 repeals paragraph 134(1)(c) to reflect the merging of the Commissions with effect from 1 July 2026, and specific reference to the Repatriation Commission is no longer required.

Item 123 is a technical amendment to paragraph 134(2)(b) consequential to the change by item 124.

Item 124 repeals paragraph 134(2)(c) to reflect the merging of the Commissions with effect from 1 July 2026, and specific reference to the Repatriation Commission is no longer required.

Schedule 4 - Merging Commissions

This schedule will create a single body to administer veterans' compensation legislation, simplifying governance arrangements within the Veterans' Affairs portfolio, by consolidating the powers of the existing two commissions, the Repatriation Commission and the MRCC, into the Repatriation Commission.

The Repatriation Commission and the MRCC share equivalent functions, and the consolidation of powers and functions of the two entities into the Repatriation Commission will realise administrative and decision-making efficiencies for both the Commission and the Department of Veterans' Affairs.

This schedule will operate to:

- transfer the powers and functions of the MRCC into the Repatriation Commission; and
- continue the roles of the Repatriation Commission under the MRCA.

Military Rehabilitation and Compensation Act 2004

Item 1 amends section 3 which describes the general purpose and practices of the Act, to replace the reference to the MRCC with Repatriation Commission, being the name of the single governing body upon commencement of the Simplification Act.

Items 2 to 9 update a number of definitions in subsection 5(1) relating the MRCC and the Repatriation Commission, and consolidates the terms which refer to the membership under the restructure:

- ***appointed Commissioner*** is inserted distinguish a person who is a Commissioner other than the President, in place of ***appointed Commission member*** and ***Commission member***;
- ***Commission*** is updated to reference the Repatriation Commission, as continued in existence by new section 360B, instead of the MRCC;
- ***Commissioner*** is inserted to mean a Commissioner or the President;
- ***Commission Chair*** is repealed as it is no longer required with the merging of the Commissions;
- ***President*** is inserted to mean President of the Commission); and
- ***Repatriation Commission*** is no longer required as a defined term, with the merging of the Commissions.

Items 10 and 11 amends the definition of ***trust funds***” in subsection 5(1) to make clear that the amounts received and managed by the trustee includes compensation and other benefits.

Items 12 to 22 update references to a trustee arrangement in subsections 49(1), 59(1), 83(1), 207(1), the note after subsection 220(1), subsections 224(1) and (5), the notes after subsections 224(6), 230(1), and section 238, subsection 241(1) including the note, subsections 248(1) and (5) and the note after subsection (6), the notes after subsection 257(1) and section 264, subsections 268(1), 288G(1), and the notes after subsection 296(1) and section 299, and subsections 303(1), (5) and the note after subsection (6). These updates reflect that the Commission may appoint a trustee, or the Commission may assume the office of trustee.

Item 23 repeals and replaces Chapter 9 to deal with the continuation of the Repatriation Commission under this Act. A simplified outline of the Chapter is set out at new subsection 360A. The item inserts details of the proposed membership of the Repatriation Commission at subsection 360C; other paid work for Commissioners at section 360CF, suspensions of appointment of Commissioners at section 360CJ, the Commission’s Annual report at section 360DC, and section 360CR updating current Section 377 for Commission decisions without meetings.

This table summarises the VEA provisions being replicated in the MRCA:

Provision in the VEA	Replicated in the MRCA
	Part 2 - Establishment of Commission
Section 179	Section 360B Establishment
Section 179A	Section 360BA Application of the Public Governance, Performance and Accountability Act 2013 to the Commission
Section 180	Section 360BB Functions of the Commission
Section 181	Section 360BC Powers of the Commission
	Division 1 - Membership etc.
Section 182	Section 360C Membership
Section 182	Section 360CA Appointment of Commissioners
Section 182	Section 360CB Period and basis of appointment
Section 191	Section 360CC Acting appointments
Section 185	Section 360CD Remuneration
Section 186	Section 360CE Leave of absence
Section 182(8)	Section 360CG Other terms and conditions
Section 187	Section 360CH Resignation
Section 188	Section 360CI Termination of appointment
Section 189	Section 360CK Commissioner to disclose any interest in claims etc.
	Division 2 - Procedures of the Commission
Section 195	Section 360CL Convening meetings
Section 195	Section 360CM Presiding at meetings
Section 195	Section 360CN Quorum
Section 195	Section 360CO Voting at meetings
Section 195	Section 360CP Conduct of meetings
Section 195	Section 360CQ Minutes
Section 196	360D Staff
Section 181(3)(d)	Section 360DA Contractors
Section 213	Section 360DB Delegation by the Commission
Section 195	Section 360CQ Minutes

Item 24 repeals paragraph (d) of the definition of a *receiving Commonwealth body* in subsection 409(5), as a distinction from the Minister responsible for the VEA is unnecessary.

Items 25 and 28 update paragraphs 410(1)(a) and (2)(a) and 411(1)(a) and subsection 430A(1), consequential to the updated definitions in subsection 5(1). These changes do not affect the operation of these legal provisions regarding official documents or statements signed by former Commissioners.

Item 26 inserts new subsections 427A and 427B dealing with the capacity for the Commission to accept contributions and to administer trusts, based on sections 200 and 201 of the VEA.

Items 27, 29 and 30 update the heading of subsection 430A, repeal subsection (3) and amend subsection (4) to reflect the merging of the Commissions for the purposes of managing account details and administering a person's payments.

Item 28— see item 25.

Items 31 to 40 update provisions dealing with trusts and trustees in sections 432 to 435 to reflect the consolidation of the arrangements across the VEA, the DRCA and the MRCA. The Commission has the discretion to appoint the Commonwealth or any other person to be trustee, or assume the office of the trustee itself.

Item 41 updates the reference to a *Commissioner* in paragraph 437A(1)(a)), consequential to the updated definitions in subsection 5(1).

Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988

Items 42 and 43 insert a definition of *Commission* referring to the meaning in the MRCA and repeals the term *MRCC*.

Item 44 repeals section 110 dealing with money paid to relevant authority, which is no longer necessary as trustee provisions are consolidated under the MRCA.

Items 45, 46 and 47 update references to the *MRCC*, in subsections 4(1) and 115(2) and section 140, and through the whole of the Act.

Veterans' Entitlements Act 1986

Items 48 and 49 update section 5 *Definitions – simplified outline*, and repeal section 5A which deals with definitions relating to the Repatriation Commission.

Items 50 to 57 reflect the update or deletion of provisions in the VEA, to give effect to the move of the authority for the Commission to the MRCA.

Item 58 omits “and sections 202 to 202B”, substitute “of this Act and sections 432 to 435 of the MRCA” in Section 58C.

Item 59 updates subsection 91(8) to reflect the revised Commission arrangements.

Item 60 updates references to the Commission and Commissioner in section 106 (note).

Items 61, 64, 66-70 update references to the Commission and Commissioner and the shift of legislative authority to the MRCA.

Item 62 updates references to the use and disclosure of account details and interaction with the *Privacy Act 1988*.

Item 63 repeals paragraph (c) of the definition of *receiving Commonwealth body* in section 131

Item 64 — see item 62.

Item 65 repeals sections 200 to 202B dealing with the Commission accepting contributions and with trusts and trustees.

Items 66 to 70 — see item 62.

Schedule 5 - Repatriation Medical Authority and Specialist Medical Review Council

This schedule transfers the legislative basis for the administration of the Statements of Principles (SoPs) from the VEA to the MRCA, to reflect the application of only the MRCA to new compensation claims from the commencement date.

The Repatriation Medical Authority's (RMA) role is to determine SoPs for any disease, injury or death that could be related to military service, based on sound medical-scientific evidence.

This explanatory document deals with the proposed amendments in three ways:

- provisions will be amended in the VEA or will be repealed, to give effect to the move to the MRCA;
- MRCA provisions will be amended; and
- some provisions will essentially be transferred to the MRCA, and these will be listed in the table under item 26.

Military Rehabilitation and Compensation Act 2004

Item 1 adds the Repatriation Medical Authority and the Specialist Medical Review Council to the Repatriation Commission in Section 3 as part of the administration of the Act.

Item 2 inserts definitions of *Authority*, *Authority member*, *Councillor*, *presiding Councillor* and *related to service* into Subsection 5(1).

Item 3 repeals the definition of *Repatriation Medical Authority* in subsection 5(1).

Item 4 inserts definitions of the *Review Council* and *sound medical-scientific evidence* into Subsection 5(1).

Item 5 repeals the definition of *Statement of Principles* (as referenced from the VEA) in Subsection 5(1) and substitutes complete definitions.

Items 6 and 7 update references in sections 22 and 332 to “the Veterans’ Entitlements Act 1986”.

Item 8 replaces the reference in section 332 to “Part XIA of the VEA” with “Part 3 of Chapter 9A”.

Item 9 omits “under the VEA to the Repatriation Medical Authority (RMA)” in section 332 and substitutes “to the Authority”.

Item 10 omits “Part XIB of the VEA, the Specialist Medical” and substitutes “Chapter 9B, the” in section 332.

Item 11 substitutes “Authority” for “RMA” in s.332.

Items 12 to 23 update references to Repatriation Medical Authority actions to reflect Statements of Principles provisions being contained in this Act.

Item 24 repeals Subsection 340(7).

Item 25 omits “determined under section 196B of the Veterans’ Entitlements Act 1986” in Paragraph 341(1)(b).

Item 26 inserts a simplified outline of the chapter dealing with the Repatriation Medical Authority at Subsection 370A.

Item 26 inserts meanings of *related to service* and *sound medical-scientific evidence* at subsections 370C and 370CA:

Item 26 inserts subsection 370CG, dealing with RMA actions following investigations., subsection 370DE and 380DF dealing with other terms and conditions for the RMA and SMRC, respectively; a simplified outline of the chapter dealing with the SMRC at Subsection 380A.

Item 26 reflects the following VEA provisions being replicated in the MRCA

Provision in the VEA	Replicated in the MRCA
Section 196A	Section 370B Establishment
Section 196AA	Section 370BA Application of the Public Governance, Performance and Accountability Act 2013 to the Authority
Section 196B(1)	Section 370BB Functions and powers of the Authority
<i>Determining Statements of Principles</i>	
Section 196B(2)	Section 370CB Determining Statement of Principles—reasonable hypothesis.
Section 196B(3)	Section 370CC Determining Statement of Principles—balance of probabilities
<i>Investigations by the Authority</i>	
Section 196B(4)-(6)	Section 370CD Initial investigation
Section 196B(7)-(7A)	Section 370CE Subsequent investigation
Section 196C(4)&196CA	Section 370CF Circumstances when investigation not required.
Section 196E	Section 370CH Request for investigation or review

Section 196CB	Section 370CI Authority may consolidate requests.
Section 196G	Section 370CJ Notice of investigation.
Section 196C	Section 370CK Powers of Authority with respect to investigations.
Section 196F	Section 370CL Submissions to the Authority.
<i>Division 4 – Matters relating to reviews by the Review Council</i>	
Section 196K	Section 370CM Authority to send information to Review Council
Section 196B(11)-(13AA)	Section 370CN Action following review by Review Council.
<i>Division 1 – Membership of the Authority</i>	
Section 196L(1)	Section 370D Membership.
Section 196L(3) & 196M	Section 370DA Appointment of Authority members
Section 196L(2) & 196N	Section 370DB Basis and period of appointment.
Section 196Q	Section 370DC Acting appointments.
Section 196S	Section 370DD Remuneration.
Section 196O	Section 370DF Resignation.
Section 196P	Section 370DG Termination of appointment.
<i>Division 2 – Procedures of the Authority</i>	
Section 196R(1)	Section 370DH Convening meetings.
Section 196R(2)	Section 370DI Presiding at meetings.
Section 196R(3)	Section 370DJ Quorum.
Section 196R(4)	Section 370DK Voting at meetings.
Section 196R(6)	Section 370DL Conduct of meetings.
Section 196R(5)	Section 370DM Minutes.
Section 196T	Section 370E Staff.
Section 196U	Section 370EA Consultants.
Section 196R(1)	Section 370EB Delegation by Chair of the Authority
Section 196UA	Section 370EC Annual report
<i>Establishment of the Review Council</i>	

Section 196V	Section 380B Establishment
Section 196VA	Section 380BA Application of the Public Governance, Performance and Accountability Act 2013 to the Review Council
Section 196W(1)	Section 380BB Functions and powers of the Review Council
<i>Division 1 – Review of decisions of the Authority</i>	
Section 196W(2)-(5)	Section 380C Review of decision relating to Statement of Principles
Section 196W(6)-(8)	Section 380CA Review of decision not to carry out investigation
<i>Division 2 – Requests for review</i>	
Section 196Y	Section 380CB Request for review of contents of Statement of Principles
Section 196Z	Section 380CC Request for review of decision of Authority not to carry out an investigation
<i>Division 3—Conduct of Investigations</i>	
Section 196ZB	Section 380CD Notice of investigation
Section 196ZA	Section 380CE Submissions to Review Council
<i>Division 4—Payment of medical and travelling expenses</i>	
Section 196ZN	Section 380CF Medical expenses
Section 196ZO	Section 380CG Travelling expenses for obtaining medical evidence
Section 196ZP	Section 380CH Advance of travelling expenses for obtaining medical evidence
Section 196ZQ	Section 380CI Travelling expenses for making oral submissions
<i>Division 1—Membership of the Review council</i>	
Section 196ZE(1)	Section 380D Membership
Section 196ZE(2)	Section 380DA Appointment of Councillors
Section 196ZE(3)&(4) and 196ZF	Section 380DB Qualification for appointment
Section 196ZE(2) &196ZG	Section 380DC Basis and period of appointment
Section 196ZJ	Section 380DD Acting appointments
Section 196ZL	Section 380DE Remuneration
Section 196ZH	Section 380DG Resignation
Section 196ZI	Section 380DH Termination of appointment

Division 2—Procedures of the Review Council	
Section 196ZK	Section 380DI Constitution of Review Council for reviews
Section 196ZK	Section 380DJ Convening meetings
Section 196ZK	Section 380DK Presiding at meetings
Section 196ZK	Section 380DL Voting at meetings
Section 196ZK	Section 380DM Conduct of meetings
Section 196ZK	Section 380DN Minutes
Section 196ZM	Section 380E Staff
Section 196ZK(4)	Section 380EA Delegation by Convener of the Review Council

Item 27 reflects the following VEA provisions being replicated in the MRCA:

Provision in the VEA	Replicated in the MRCA
Section 196H & 196ZC	Section 411A Copyright in submissions
Section 196I & 196ZD	Section 411B Access to information

Veterans’ Entitlements Act 1986

Item 28 repeals Section 5AB, which contains definitions related to the *Authority* and *Review Council*.

Item 29 inserts “Authority has the same meaning as in the MRCA.” into Subsection 5Q(1).

Item 30 repeals Review Council-related definitions in Subsection 5Q(1):

Item 31 repeals the note in Subsection 5T(1).

Items 32, 33 and 34 update references to Repatriation Medical Authority actions to reflect Statements of Principles provisions being contained in the MRCA.

Item 35 omits “180A(2)” in Paragraph 120A(3)(b), and substitutes “120C(2)”.

Items 36-39 update references to Repatriation Medical Authority actions to reflect Statements of Principles provisions being contained in the MRCA.

Item 40 omits “180A(3)” in Subparagraph 120B(3)(b)(ii), and substitutes “120C(3)”.

Item 41 updates references to Repatriation Medical Authority actions to reflect Statements of Principles provisions being contained in the MRCA.

Item 42 inserts subsection 120C, dealing with determination by Commission overriding Repatriation Medical Authority’s decisions in relation to Statements of Principles.

Item 43 repeals paragraph 129A(1)(a), and substitutes:

- (a) a provision of this Act requires or permits a notice or other document to be given to a person by the Secretary, the Department, an officer of the Department, or the Commission; and

Item 44 repeals paragraph 129A(1)(d), and substitutes:

- (d) in a manner approved in writing by the Commission.

Item 45 repeals Parts XIA and XIB, which are the parts that deal with the Repatriation Medical Authority and Specialist Medical Review Council, respectively, reflecting that legislative authority for these two bodies is being transferred to the MRCA.

Schedule 6 - Disability Compensation Cessation Date

Veterans' Entitlements Act 1986

Items 1 and 2 amend section 121 and insert *Exception—pension under Part II or IV at rate determined under Division 4 of Part II* and new subsection 121(4AA) to set out that an amount of DCP (Disability Compensation Payment, formerly known as Disability Pension) is payable to the estate upon the death of the veteran pensioner.

DCP is paid fortnightly in arrears in respect of intervals known as *pension periods*. An instalment is payable in respect of the number of days in each fourteen-day pension period for which the person is eligible to receive payment.

Subsection 121(4) sets out that no amount is payable as an instalment of pension in relation to the pension period in which the person receiving a pension died, subject to the specified exceptions.

New subsection 121(4A) provides for an exception to subsection (4), that an instalment of a veteran's Part II or Part IV pension is payable to the estate upon the death of the DCP recipient. This amendment effectively extends the cessation date of the DCP to the date of the veteran's death, which aligns with other veterans' entitlements.

Schedule 7 - Application and transitional provisions

This Schedule sets out the application of the MRCA as the single ongoing Act model to circumstances which exist at the time when the legislation is enacted.

The transitional provisions of this Bill:

- apply the MRCA to claims for injuries, diseases and deaths from the date of commencement;
- make provision for claims which span a period before and after the date of commencement (for example, where a claim is lodged before the date of commencement but is not determined until after the date of commencement);
- set out the circumstances in which compensation under the MRCA can be paid for injuries or diseases which have been compensated previously under the DRCA or VEA (for example, where there has been a worsening of the injury or disease).
- continue the existence of the Repatriation Commission and make provision for the ongoing appointment of members of that body (except for the Deputy President);
- cease the appointments of members of the Military Rehabilitation and Compensation Commission;

- continue the existence of the VRB, the RMA and the SMRC and to preserve the validity of all things done in accordance with the provisions that existed at the time;
- create a time-limited regulation making power to allow more prescriptive transitional arrangements to be made where necessary.

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

Item 1 repeals subsection 52B(4) of the MRCA.

Item 2 repeals section 3, consequential to the repeal of Schedules 1 to 4 by item 16. The Schedules would no longer have effect as amendments to the VEA and the DRCA are incorporated into other parts of the Bill, while consequential amendments are set out in Schedule 8.

Item 3 inserts subsection 4(1) which provides abbreviations for various predecessor Acts to the DRCA.

Items 4 and 5 amend subsection 4(1) by repealing and inserting a new definition of *date of commencement* which means 1 July 2026.

A definition of *injury* is added to clarify that the scope of the term extends beyond the commencement of the Part X of the DRCA.

Item 6 inserts a new paragraph 5(1)(ba) to provide that injuries and diseases accepted by the Commission on a presumptive basis under subsections 27A(1) and (2) are regarded as being *related to defence service* under the MRCA.

Item 7 repeals the current section 6 and substitutes it with a new provision which sets out the relationship between the DRCA and the predecessor Acts with regards to when an injury was sustained, for the operation of the MRCA, which would no longer be limited to certain periods of service.

Item 8 repeals and replaces Part 2. The new section 7 provides that the MRCA applies to all types and periods of a person’s defence service.

Subsection (1) enables the MRCA to apply from date of commencement regardless of when an injury, disease or death, occurred, or if there was a period of continuous or contiguous service which spanned date of commencement.

Subsections (2) to (5) provide for the same broader coverage to an aggravation or a material contribution to a person’s pre-existing condition, or symptom; the unintended effects of treatment; and any loss or damage to medical aids.

Item 9 inserts new section 12 to prevent the payment of compensation or the provision of a benefit in respect of the same injury, disease or death where compensation or a benefit has already been paid. A benefit provided under the MRCA (column 1) cannot be paid where that person has been paid a corresponding benefit under the DRCA, its predecessors or the VEA (columns 2, 3 or 4).

MRCA compensation is precluded for...	<p>If person has received or is entitled to receive compensation or pension for the same injury, disease, or death, under...</p> <p>DRCA previous Acts VEA</p>
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Permanent impairment	Section 24 or 25	1912 Act, 1930 Act or 1971 Act	Part II or IV for that impairment
Incapacity	Section 19, 20, 21, 21A, 22 or 31	1912 Act, 1930 Act or 1971 Act	Part II or IV for that incapacity
Death	Section 17	1912 Act, 1930 Act or 1971 Act	Section 13A
Funeral expenses	Section 18	1912 Act, 1930 Act or 1971 Act	-
Medical expenses	Section 16	1912 Act, 1930 Act or 1971 Act	-
Treatment	-	-	ss 85(1) or (2) for the same period

This section does not prevent a person from being paid compensation or receiving a benefit under the MRCA for any worsening of an existing condition, or a new condition.

Item 10 repeals and replaces subsection 13(1) to provide that the section 13 applies where a person has a VEA or DRCA injury or disease (called the *old injury or disease*). Reference to an aggravation of, or contribution to, the old injury or disease, or a sign or symptom of such an injury or disease, has been removed because it is provided in the MRCA.

Item 11 makes a technical change to the heading for Part 4 as *Other matters*, given the entire Act deals with consequential and transitional provisions.

Item 12 repeals sections 15 to 21 which provide for the cessation and transfer of rules and benefits between Acts. They are replaced by new provisions set out in Part 6 of this Schedule.

Item 13 amends section 22 to maintain the effect of the provision, enabling persons covered by subsection 5(6A) of the SRCA to be regarded as Commonwealth employees from the date of commencement of section 3 of the MRCA.

Item 14 amends section 23 regarding reviewable decisions to omit references to the Schedules as they no longer have effect because amendments to the VEA and the SRCA are incorporated into other parts of the Bill, while consequential amendments are set out in Schedule 8.

Item 15 inserts a new *Part 6—Other application and transitional provisions relating to the Simplification Act*.

Section 40 provides definitions for the purposes of the new Part 6.

Division 2—Transitional provisions relating to the Commission

Subdivision A—Continuation of Commission

Sections 41 and 42 preserve the appointment of current commissioners and any acting commissioners, other than the Deputy President, for the remainder of their appointment on the existing terms and conditions.

Section 43 terminates the appointment of the Deputy President because that office, previously existing in the VEA will not be continued in the MRCA.

Sections 44 and 45 preserves the engagement of staff and contractors who perform services for the Commission.

Section 46 preserves any delegation made under section 213 of the old VEA for the purposes of the MRCA.

Section 47 preserves the effect of subsection 215(1) of the old VEA for the purpose of the Commission providing an annual report only for the financial year ending on 30 June 2026.

Subdivision B—Other matters

Section 48 provides that assets and liabilities of the Commission before commencement continue as assets and liabilities of the Commission, avoiding the need for any conveyance, transfer or assignment.

Section 49 preserves any contributions made to the Commission under the old VEA and provides that those contributions must be dealt with under section 427A of the MRCA.

Sections 50 and 51 continues the effect of trust arrangements under the DRCA and VEA. This means that where the Commission (or the discontinued Military Rehabilitation and Compensation Commission) held money for the benefit of a person under those Acts, the Commission is taken to hold the money under subsection 432(2) of the MRCA. These sections also preserve the effect of any trust arrangement, instrument or direction made for the purposes of the old DRCA or VEA.

Section 52 preserves the effect of determinations of the Commission made under the section 180A, that is determinations in respect of a kind of injury or disease because the Repatriation Medical Authority has declared that it does not propose to make or amend a Statement of Principles.

Section 53 preserves the effect of anything done by the Commission under a law of the Commonwealth. This section is intended to be a catch-all provision to preserve the validity of any acts done by the Commission before date of commencement.

Division 3—Transitional provisions relating to the MRCC

Subdivision A—Things done by or in relation to the MRCC

Sections 54 and 55 preserve the appointment of current members of the MRCC nominated by the SRC Minister and the Defence Minister, and any acting commissioners, for the remainder of their appointment on the existing terms and conditions.

Section 56 terminates the appointment of the two MRCC members appointed because they were members of the Repatriation Commission.

Section 57 provides that staff engaged before commencement to assist the MRCC in the performance of its functions are taken to be staff engaged to assist the Commission.

Section 58 provides that consultants engaged by the MRCC are taken to be engaged by the Commission.

Section 59 preserves any delegations made by the MRCC prior to the date of commencement.

Section 60 means that the MRCC must provide an annual report to the Minister only for the financial year ending on 30 June 2026 despite the repeal of section 385 of the MRCA.

Subdivision B—Other matters

Section 61 transfers the assets and liabilities of the MRCC to the Commission.

Section 62 transfers of records or documents of the MRCC to the Commission.

Section 63 provides that where the MRCC is a party to legal proceedings before the date of commencement, the Commission becomes a party to those proceedings in place of the MRCC.

Section 64 provides that things done by, or in relation to, the MRCC are taken to be things done by the Commission.

Section 65 provides that a reference to the MRCC in any instrument is taken to be a reference to the Commission. This section does not prevent an instrument from being amended or repealed.

Section 66 confirms the Commonwealth's liability to pay compensation of a reasonable amount to a person if this part results in the acquisition of property.

Subdivision A—Continuance of the Authority

Section 67 continues the appointment of members of the Repatriation Medical Authority under the MRCA for the balance of their term on the same terms and conditions as their appointment under the old VEA.

Section 68 continues the appointment of the Chair of the Authority under the MRCA for the balance of their term on the same terms and conditions as their appointment under the old VEA.

Section 69 continues the engagement of staff made available to the Authority who were engaged under the old VEA as if the engagement occurred under the MRCA.

Section 70 continues the engagement of consultants made available to the Authority who were engaged under the old VEA under the MRCA.

Section 71 preserves any delegations made by the Chair of the Authority prior to the date of commencement.

Section 72 means that the Authority must provide an annual report only for the financial year ending on 30 June 2016 despite the repeal of section 196UA of the old VEA.

Subdivision B—Other matters

Section 73 preserves any assets and liabilities of the Authority prior to commencement, avoiding the need for any transfer or assignment.

Section 74 preserves any Statements of Principles made under the VEA as if it had been made under the MRCA.

Section 75 preserves any requests for investigation received by the Authority before the commencement date as if the request had been made under the MRCA.

Section 76 preserves any directions by the Review Council issued to the Authority prior to commencement date as if the directions were issued under the MRCA.

Section 77 preserves the application of section 196K of the VEA in relation to the Authority sending information to the Review Council where it has received notification that the Council is carrying out a review of a decision to which that section applies.

Subdivision A—Continuance of the Review Council

Section 78 preserves the appointment of members of the Review Council for the balance of their term on the same terms and conditions as if the appointment was made under the MRCA.

Section 79 preserves the appointment of the Convener of the Review Council for the balance of their term on the same terms and conditions as if the appointment was made under the MRCA.

Section 80 continues the engagement of staff made available to the Review Council who were engaged under the old VEA as if the engagement occurred under the MRCA.

Section 81 preserves any delegations made by the Convenor of the Review Council prior to the date of commencement.

Subdivision B—Other matters

Section 82 preserves any assets and liabilities of the Review Council prior to commencement, avoiding the need for any transfer or assignment.

Section 83 preserves any requests for review of Statement of Principles by the Review Council that were made prior to the commencement date as if the request was made under the MRCA.

Section 84 preserves any requests for review of decision by the Authority that were made prior to the commencement date as if the request was made under the MRCA.

Section 85 applies Division 4 of Part 3 of Chapter 9B of the MRCA to the payment of travel expenses for the purposes of a review by the Review Council irrespective of when the review took place.

Section 86 continues the effect of regulations relating to medical and travel expenses as if those regulations had been made under the MRCA.

Section 87 preserves any directions made by the Convener before the commencement date about the way requests and applications are lodged as if the directions had been made under the MRCA.

Division 6—Other application and transitional provisions

Subdivision A—Amendments made by Schedule 1

Section 88 deems certain instruments made under the VEA to have been made under the MRCA to ensure that operational service rendered prior to 2004 is recognised as service for the purposes of the MRCA.

Section 89 provides that the amendments in the Simplification Act relating to permanent impairment apply to a claim made on or after commencement. This means that permanent impairment claims lodged prior to the commencement date will be determined according to the law as it was at the time the claim was lodged.

Section 90 provides that liability restrictions on the use of tobacco as amended by the Simplification Act apply to claims made on or after commencement. This means that claims relating to the use of tobacco products that are lodged prior to the commencement date will be determined according to the old law.

Section 91 provides that the new paragraphs 27(da) and 28(ea) of the MRCA apply on or after the date of commencement regardless of when the injury or death occurred. These paragraphs allow a liability or death claim to be accepted on the basis that the injury or death took place while the person was on Defence duty.

Section 92 provides that amendments to subsection 78(7) of the MRCA relating to the ability of a person's legal personal representative to convert the weekly rate of permanent impairment to a lump sum after the person's death applies to claim made before, on or after the date of commencement but the person must have died on or after the commencement date.

Section 93 applies amendments in the Simplification Act concerning overpayments and debts. Subsection 93(1) provides that amendments relating to the recovery of DRCA and MRCA overpayments apply to amounts liable to be paid before and after the date of commencement. Subsection 93(2) provides that amendments relating to notice to the Commission of the retirement of a person under the DRCA applies to a person who retires on or after the date of commencement. Subsection 93(3) provides that amendments relating to the write off or waiver of debts apply to debts before, on or after the date of commencement.

Section 94 applies amendments in the Simplification Act concerning the increase of the cap of common law damages to an action or proceeding instituted on or after the date of commencement. This means that the increased limit to available damages is only available after the date of commencement.

Section 95 applies amendments in the Simplification Act concerning changes to information sharing provisions in the MRCA apply to information or documents obtained before, on or after that date.

Section 96 applies amendments in the Simplification Act concerning offsetting arrangements, including an action brought, a claim for damages and recovery of damages, on or after the date of commencement.

Subsection 96(5) makes clear that on or after commencement date, the provisions of Chapter 10 would take precedent over the corresponding provisions in the DRCA or the VEA, in relation to compensation offsetting. It also follows that the offsetting outcomes of section 25A in Part IV of the DRCA, Division 5A of Part II and Division 4 of Part IV of the VEA would otherwise be preserved.

Section 97 provides that where a person is undertaking a rehabilitation program under the DRCA or VEA immediately before the commencement date, the person is taken to be undertaking a rehabilitation program for the purposes of the MRCA after the date of commencement.

Subdivision B—Amendments made by Schedule 2

Section 98 applies amendments in the Simplification Act concerning funeral compensation to a claim for compensation made on or after the date of commencement, whether the funeral of the person occurred before, on or after the that date, except where section 268AA of the MRCA applies.

Section 99 provides that if a claim for funeral compensation was made under sections 99 or 100 of the old VEA and before the date of commencement the claim was undetermined, the claim is taken to have been made under the MRCA.

Section 100 provides that if a claim for funeral compensation was made under section 18 of the old DRCA and before the date of commencement the claim was undetermined, the claim is taken to have been made under the MRCA.

Section 101 preserves the grant of an acute support package under the DRCA if the period of support has not ended.

Section 102 ensures that once Victoria Cross allowance is payable under section 230A of the MRCA, the amount has been indexed at the same rate as the old amount under the VEA.

Section 103 continues section 102 of the old VEA concerning the decoration allowance on and after the commencement date despite its repeal where a pension period starts before commencement and ends after it.

Section 104 implements the transfer of VEA prisoner of war recognition supplement recipients by continuing the application of Part VIB of the old VEA for a fortnight that ends before the transfer fortnight.

Section 105 applies amendments in the Simplification Act concerning indexation of the prisoner of war recognition supplement.

Section 106 provides that if a claim was made under the Acts listed in subsection 106(1) before the date of commencement and the claim was undetermined after commencement, the claim is taken to have been made under the MRCA.

Section 107 transfers the recipients of a payment under the VEA Veterans' Children Education Scheme into the MRCA education scheme established by section 258 of that Act.

Section 108 provides that where an application has been made but not yet determined under sections 116B, 116CB of the old VEA, or the VEA Veterans' Children Education Scheme, the application is taken to have been made under the MRCA.

Section 109 provides that if a review of the Commission's decision relating to a child under section 116C of the VEA or a grandchild of a Vietnam veteran under section 116CC of the VEA is pending, the Commission must continue the review under section 347 of the MRCA. Subsections 109(3) and (4) preserve the effect and validity of anything done in relation to the review prior to date of commencement.

Section 110 preserves certain determinations in force under Part VII of the old VEA listed in column 1 of the table as if they had been made for the purpose of the MRCA sections listed in column 2.

Section 111 applies the amendments in the Simplification Act concerning additional compensation for children of severely impaired veterans to claims that are made on or after the date of commencement.

Section 112 applies amendments in the Simplification Act concerning travel for treatment arrangements to journeys that start on or after the date of commencement. The requirements under the old DRCA and VEA continue to apply for journeys that start before the date of commencement.

Section 113 provides that, on or after commencement, where a person becomes entitled to treatment for a service injury or disease under the MRCA, and the person is being provided

with treatment for a war or defence-caused injury, the person's treatment is to be provided exclusively under the MRCA.

Section 114 continues the application of repealed section 85B of the old VEA in relation to treatment provided during a period that starts before the date of commencement and ends on or after the date of commencement.

Section 115 provides for the presumptive liability provisions to apply with respect to a liability claim lodged on or after the date of commencement.

Section 116 provides that the amendments in the Simplification Act concerning when persons are eligible to make a choice to receive special rate disability pension in section 199 apply to an offer that is on or after the date of commencement.

Subdivision C—Amendments made by Schedule 6

Section 117 provides that the amendments in the Simplification Act have effect on a pension period that starts on or after commencement of this Schedule. Where a veteran dies in a pension period prior to commencement, it remains the case that there is no DCP payable in respect of that pension period.

Subdivision D—Other matters

Section 118 establishes a power to regulations in respect of matters of a transitional nature following the commencement of the Simplification Act. The intention of this amendment is to ensure that the transition to a single Act is effective.

Item 16 repeals Schedules 1 to 4 as they are superseded by the changes in Simplification Act.

Schedule 8 - Consequential Amendments

Outline

A range of items in this Schedule make simple terminology changes across Commonwealth statute, such as repealing references to the VEA, and the Military Rehabilitation and Compensation Commission and replacing them with references to the MRCA and the Repatriation Commission (as amended by Schedule 4 of this Bill). Updates are also made to reference the corresponding provisions of the MRCA as required.

These amendments to legislation in portfolios such as Social Services, Treasury, Health, and to other Acts in the Veterans' Affairs Portfolio reflect the MRCA as the primary, and single ongoing Act for veteran's compensation entitlements, and the merging of the Commissions. They ensure that other legal frameworks reflect the concepts, structure and other policy settings of the Simplification Act, and that existing laws continue to apply as intended.

Aged Care Act 1997

Items 1, 2 and 4 make terminology updates to paragraph 86-3(1)(i), paragraph (b) of the definition of ***receiving Commonwealth body*** in subsection 86-3(4), paragraph (g) of the definition of ***receiving Commonwealth body*** in subsection 86-3(4) and section 86-7 for the purposes of disclosure of information to the Department of Veterans' Affairs.

Item 5 updates the legislative reference in subsection 96-2(11) to section 360DB of the MRCA, in relation to sub-delegation of powers and functions delegated under this Act to the Commission.

Item 6 amend paragraph 96 10(2)(b) to reflect the merging of the Commissions.

Items 7 and 8 repeal the definition of *Military Rehabilitation and Compensation Commission* in Clause 1 of Schedule 1 and update the legislative reference in the definition of *Rehabilitation Commission* to section 360B of the MRCA for the establishment of the Commission.

Aged Care Quality and Safety Commission Act 2018

Items 9 and 10 make terminology updates to paragraphs (a) and (f) of the definition of *receiving Commonwealth body* in subsection 61(3) for the purposes of disclosure of information to the Department of Veterans' Affairs.

Item 11 updates the legislative reference in the definition of *Repatriation Commission* in subsection 61(3) to section 360B of the MRCA for the establishment of the Commission.

Aged Care (Transitional Provisions) Act 1997

Item 12 updates the legislative reference in subsection 96-2(9) to section 360DB of the MRCA, in relation to sub-delegation of powers and functions delegated under this Act to the Commission.

Item 13 updates the legislative reference in the definition of *Rehabilitation Commission* in Clause 1 of Schedule 1, to section 360B of the MRCA for the establishment of the Commission.

Age Discrimination Act 2004

Item 14 repeals subsection 41(6) which refers to the VCES, consequential to the Scheme being closed by a provision in this Bill.

A New Tax System (Family Assistance) Act 1999

Item 15 inserts into Schedule 3 new paragraph 7(haa) such that the new ADA, introduced by Schedule 2 of this Bill, is a tax free benefit.

Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006

Item 16 update the legislative reference in the definition of *Rehabilitation Commission* in subsection 4(1), to section 360B of the MRCA for the establishment of the Commission.

Item 17 updates the legislative reference in the note at the end of subsection 30(1) to section 360BB of the MRCA, in reference to the functions of the Commission.

Australian Veterans' Recognition (Putting Veterans and Their Families First) Act 2019

Item 18 makes a terminology update to subsection 7(3) in relation to the beneficial interpretation of legislation by the Commission.

Child Support (Assessment) Act 1989

Item 19 makes a terminology update to the definition of *Veterans' Affairs Department* in subsection 150(1), in relation to the operation of the secrecy provision on information disclosed to the Department.

Child Support (Registration and Collection) Act 1988

Item 20 makes a terminology update to the definition of *Veterans' Affairs Department* in subsection 4(1) for the purposes of this Act.

Items 21 and 22 make terminology updates to subsection 72AC(1) in relation to the Registrar giving notice to the Commission for deductions from veteran's payments, to omit the reference to the VEA and insert a definition that refers to section 360B of the MRCA for the establishment of the Commission.

Data matching Program (Assistance and Tax) Act 1990

Item 23 makes a terminology update to the definition of *Veterans' Affairs Department* in subsection 3(1) for the purpose of referring to the Department as an assistance agency under this Act.

Defence Force Discipline Act 1982

Item 24 updates the legislative reference in paragraph 3(7)(c) to the MRCA, in relation to the meaning of a Peacekeeping Force.

Dental Benefits Act 2008

Item 25 makes a terminology update to subparagraph 41(1)(c)(vi) to reference the MRCA instead of the VEA, for the purposes of authorised disclosure of information to the Minister administering the MRCA and to the Department of Veterans' Affairs.

Disability Discrimination Act 1992

Item 26 updates the legislative reference in the definition of *peacekeeping service* in subsection 53(2) to the MRCA, for the purposes of this Act in relation to a person's employment or appointment in the Defence Force.

Health Insurance Act 1973

Item 27 makes a terminology update to the definition of *Veterans' Affairs Minister* in subsection 3(1) to reference the MRCA instead of the VEA.

Higher Education Support Act 2003

Item 28 repeals subparagraphs 46-20(2)(n)(ii) and (iii) which refer to the VEA and the MRCC in relation to Commonwealth Scholarship Guidelines. There are existing references to the MRCA and the Repatriation Commission in subparagraphs 46-20(2)(n)(i) and (iv) respectively.

Items 29 and 30 amend subclause 1(1) of Schedule 1 to repeal the definition of *Military Rehabilitation and Compensation Commission* and update definition of *Rehabilitation Commission* to reference section 360B of the MRCA for the establishment of the Commission.

Housing Australia Future Fund Act 2023

Item 31 amends the definition of *Veterans' Affairs Minister* in section 4 to reference the MRCA instead of the VEA, in relation to grants of financial assistance for acute housing needs by a designated Minister.

Income Tax Assessment Act 1936

Item 32 amends the definition of *Veterans' Affairs Secretary* in subsection 6(1) to reference the MRCA instead of the VEA.

Item 33 amends subparagraph 160AAAA(2)(a)(i) to omit the reference to Part VII (VCES) in relation to tax rebate for certain persons, consequential to the repeal of that Part by Schedule 2 of this Bill.

Item 34 makes terminology updates in subsections 202CB(8) and 202CE(9) to reference the Rehabilitation Commission instead of the MRCC, in relation to the provision of tax file number declarations.

Item 35 amends subsection 265A(4) to reference the MRCA as the primary Act for decision authority, in relation to the tax liability of a deceased Defence Force member.

Item 36 sets out a saving provision that despite item 33, section 160AAAA as in force immediately prior to the commencement of this Schedule, continues to have effect to exclude Part VII, in relation to the condition for a tax rebate under that section.

Income Tax Assessment Act 1997 (ITAA 1997)

Item 37 omits the item which refers to clean energy payment under the VCES, listed under the heading *social security or like payments* in Section 11-15 for non-assessable non-exempt income, consequential to the closure of the Scheme.

Items 38 repeals paragraphs 52-65(1)(ba) and (e) which refer to clean energy payment under the VCES and prisoner of war recognition supplement under the VEA respectively (as not being dealt with by the table in this section), consequential to the closure of the Scheme and the cessation of the VEA payment.

Item 39 repeals subsections 52-65(1F) and (1G) which refer to clean energy payment under the VCES and prisoner of war recognition supplement under the VEA respectively as being exempt from income tax, consequential to the closure of the Scheme and the cessation of the VEA payment.

Item 40 amends the table in section 52-65 which sets out the income tax treatment of certain DVA payments, to repeal items 5.1 (decoration allowance), 15.1 (section 99 funeral benefit), 16.1 (section 100 funeral benefit), 20.1 (travelling expenses) and 22.1 (Victoria Cross Allowance), consequential to the cessation of those payments under the VEA.

Item 41 amends the table in section 52-75 which further explains the income tax treatment of VEA payments based on whether or not a payment is made due to the person's death. Items 3B (clean energy payment under the VCES), 5 (decoration allowance), 12A (prisoner of war recognition supplement), 15 (section 99 funeral benefit), 16 (section 100 funeral benefit), 20 (travelling expenses) and 22 (Victoria Cross Allowance) are repealed consequential to the closure of the VCES and the cessation of those VEA payments.

Items 42, 43, 44, 45, 46, and 47 amend section 52-114 which explains the income tax treatment of MRCA payments based on whether or not a payment is made due to the person's death:

- insert a reference to section 291A in item 2, in relation to compensation for journey and accommodation costs, for the same status to apply to an advance payment of travelling expenses;
- insert new item 9A, to provide that an ordinary payment of ADA is exempt from income tax and that a payment due to the person's death is not applicable;
- insert new item 11A, to provide that an ordinary payment of Victoria Cross Allowance is exempt from income tax and that a payment due to the person's death is not applicable;
- insert new item 11B, to provide that an ordinary payment of decoration allowance is exempt from income tax and that a payment due to the person's death is not applicable;

- insert references to sections 266, 268AA, 268AB and 268AC in item 18 in relation to compensation for funeral costs, for the same status to apply to payments made under the additional sections;
- insert new item 18A, to provide that an ordinary payment of compensation with respect to prisoners of war under sections 268J and 268AM of the MRCA is exempt from income tax and that a payment due to the person's death is not applicable; and
- insert a reference to section 220D in item 22, in relation to energy supplement, for the same status to apply to a payment associated with ADA.

Item 48 repeals subparagraph 52-145(1)(b)(iii) which refers to the VCES within the meaning of a *Commonwealth education or training payment*, consequential to the closure of the Scheme.

Item 49 provides that the amendments by items 42 to 47 have effect on income years 2026-27 and thereafter, in line with the date of commencement of the Simplification Act.

Item 50 sets out that despite this Schedule, provisions of the ITAA 1977 as in force immediately prior to the commencement of this Schedule, continue to have effect as follow:

- that paragraph 52-65(1)(ba) and subsections 52-65(1F) apply to provide that a clean energy payment under the VCES made before, on or after that day is exempt from income tax;
- that paragraph 52-65(1)(e) and subsections 52-65(1G) apply to provide that a payment of prisoner of war recognition supplement under the VEA made before, on or after that day is exempt from income tax;
- the income tax treatment set out in section 52-65 applies to items 5.1 (decoration allowance), 15.1 (section 99 funeral benefit), 16.1 (section 100 funeral benefit), 20.1 (travelling expenses) and 22.1 (Victoria Cross Allowance) for payments made on or before that day, and
- an allowance or reimbursement under VCES is regarded as a *Commonwealth education or training payment* under subparagraph 52-145(1)(b)(iii).

My Health Records Act 2012

Item 51 repeals and replaces the definition of *Veterans' Affairs Department* in subsection 5(1) to reference the Minister and the Department that administers the MRCA.

National Cancer Screening Register Act 2016

Item 52 makes a terminology update to the definition of *Veterans' Affairs Department* in section 4, in relation to the number allocated by the Department to an individual being key information that may be included on the register.

National Health Act 1953

Item 53 makes a terminology update to the definition of *Veterans' Affairs Minister* in subsection 4(1) to reference the MRCA instead of the VEA.

Safety, Rehabilitation and Compensation Act 1988

Item 54 updates the legislative reference in paragraph 43(1)(a) to reference the MRCA, in relation to a person who may request cessation of compensation payments under this Act.

Social Security Act 1991

Items 55, 56 and 57 repeals subparagraphs 8(8)(y)(v), (vi), (via), (vii) (viiia) (viiiaa) and (ix), which respectively provide for decoration allowance, Victoria Cross Allowance and similar payments, clothing allowance, prisoner of war recognition support under the VEA, and payments of student start-up scholarship and relocation scholarship under the VCES, to be treated as excluded or exempt income for the purposes of the income test applicable under the SSA.

These provisions are no longer necessary as those payment will cease under the VEA and corresponding updates to exempt the items under the MRCA are made by item 60. A technical amendment is made to subparagraph 8(8)(y)(viii) consequential to the repeal of the items that follow it in the listing.

Item 58 amends paragraph 8(8)(zo) to insert references to sections of the MRCA which provide for payment of funeral compensation in various circumstances, so that those payments are also exempt income for the SSA income test.

Item 59 inserts new paragraphs 8(8)(zqa) and (zqb) to provide respectively that the ADA, and the amount of Commonwealth superannuation worked out under the new section 5IA of the VEA that has been used to offset the ADA, are not income for the purposes of the SSA. A guidance note is inserted at the end of new paragraph (zqb) to inform readers that subsection 220C(5) of the MRCA provides for the ADA to be offset by the person's Commonwealth superannuation. The approach is consistent with the arrangements for SRDP.

Item 60 inserts new items in subsection 8(8) with respect to payments under the MRCA, in:

- paragraphs (zsb), (zsc), and (zsd) for Victoria Cross Allowance, decoration allowance, and similar payments by a foreign country;
- paragraph (zse) for prisoner of war recognition supplement; and
- paragraph (zsf) for ex-gratia payments to former prisoners of war

to be excluded as income under the SSA.

Item 61 repeals paragraph 8(8AA)(d) which refers payment student start-up scholarship or relocation scholarship under the VCES, consequential to the closure of the Scheme.

Item 62 insert new subsection 8(13) to provide a formula for converting the actual amount of reduction in the ADA for superannuation offset into an amount that is not to be considered under the SSA income test, but it is taken into account when considering whether the hardship rules apply. This ensures that the amount of superannuation that has been used to offset the ADA is not also counted in the SSA income test except for hardship consideration. The approach mirrors the arrangement for the corresponding offset that applies to SRDP.

Items 63, 64 and 65 repeal paragraph 592K(2)(c), subparagraph 592K(5)(b)(iii) and paragraph (c) of the definition of *student relocation payment* in subsection 592L(7) which refer to a payment of relocation scholarship under the VCES, consequential to the closure of the Scheme.

Item 66 repeals subparagraph 1061ZVBC(b)(i) which refer to a payment of student start-up scholarship under the VCES, consequential to the closure of the Scheme.

Item 67 provides that despite the items in this Schedule which repeal provisions with respect to the income status of payments under the VEA, section 8(8) as in force immediately prior to the commencement of this Schedule, continues to have effect to exclude as income, a payment of decoration allowance, Victoria Cross Allowance and similar payments, prisoner

of war recognition supplement and funeral benefit under the VEA, and payments of student start up scholarship and relocation scholarship under the VCES.

Student Assistance Act 1973

Item 68 repeals subparagraph 7D(b)(i) in relation to payment of a scholarship under the VCES, consequential to the closure of the Scheme.

Item 69 provides that despite item 68, section 7D as in force immediately prior to the commencement of this Schedule, continues to have effect to preclude an ABSTUDY student start-up loan, where a payment of student start-up scholarship or relocation scholarship under the VCES was made in the period 6 months immediately before the qualification test day as set out in this Act.

Superannuation Act 1976

Item 70 makes terminology updates to:

- subsection 54G(2), in relation to the Commonwealth Superannuation Corporation (CSC) seeking the views of the Commission on a person's incapacity;
- subsection 54H(1), that the CSC may approve a person's retirement without seeking the views of the Commission on a person's incapacity; and
- subsection 54JA(6A), that the CSC may seeking the views of the Commission on a matter relating to a compensable condition under the MRCA or DRCA.

Treatment Benefits (Special Access) Act 2019

Items 71 and 72 amend subsection 5(1) (definition of *Commission*) and the note at the end of subsection 40(1).