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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

(Circulated by authority of the Minister for Veterans' Affairs and Minister for Defence
Personnel, the Honourable Matthew James Keogh MP)

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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 the 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
MCTPA	<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, SOPs	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 complexity of veterans’ legislation has been considered in a number of reviews and reports over the last decade. Most recently, the Royal Commission into Defence and Veteran Suicide found the legislation governing compensation and rehabilitation for veterans to be *“so complicated that it adversely affects the mental health of some veterans and can be a contributing factor to suicidality”*. The Government agreed on 26 September 2022, in its response to the Interim Report of the Royal Commission, to develop a pathway for simplification and harmonisation of veteran compensation and rehabilitation legislation.

The Department of Veterans’ Affairs (DVA) commenced engagement with veterans and other stakeholders in November 2022 to seek feedback on the proposal to move to a single Act as the future operating state. Public consultation followed in February to May 2023 on a Veterans’ Legislation Reform Pathway. An advisory group of independent legal experts was also convened to provide advice to Government on legislative reform issues.

Most feedback acknowledged the complexities inherent within the existing system and expressed broad support for the MRCA remaining as the single future Act. Concerns with the proposal centred mainly on transitional issues and the transfer of entitlements for seriously injured and ill veterans to the new arrangements. The single ongoing Act model was refined and the development of the legislation package was informed by the views expressed.

The Department released an exposure draft on 28 February 2024, with submissions closing on 28 April 2024. A total of 323 submissions were received, with 278 of these from individuals and 45 from organisations. Senior DVA officials conducted a total of 26 consultations both in person and online across Australia. The Minister for Veterans’ Affairs also convened 2 face-to-face meetings in Brisbane and Canberra. Over 230 individuals attended these sessions, including veterans, families, advocates and ex-service organisations.

DVA also met with other stakeholders, such as the Ex-Service Organisation Round Table (ESORT), Veterans’ Families Policy Forum, Younger Veterans – Contemporary Needs

Forum, the Veterans' Review Board and other Australian Government agencies. In addition, social media platforms (Facebook, Instagram, X and LinkedIn) were used to communicate to all Australians and to encourage participation in the consultation process. Building on the earlier series of six reform pathway webinars, three further online sessions provided veterans and ADF members a platform to discuss and comment on the draft legislation, use cases and transition to the new arrangements.

The pathway as reflected in this Bill will simplify access to, and improve the understanding of, entitlements for veterans and families. This reform will produce an overall harmonised single scheme, making it easier for advocates to assist veterans and families. The changes will also deliver positive administration outcomes for DVA, which means quicker, more-transparent, and more-consistent decisions for veterans and families to receive the benefits and support they need and deserve in a timely way.

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 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 preserved. 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 from 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 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 continue 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.

Financial impact statement

The measures in the Bill have a financial impact of \$222 million over four years to 2027-28.

Regulation Impact Statement

An impact analysis has been undertaken for Veterans' Compensation and Rehabilitation Legislative Reform and will be available in full on the Office of Impact Analysis website at <https://oia.pmc.gov.au/published-impact-analyses-and-reports> (Office of Impact Analysis ID: OBPR22-03734). A copy of the Executive Summary is included at Attachment A for reference.

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.

The closure of Parts II and IV of the VEA do not affect automatic grants of pensions to war widow(er)s and orphans, in circumstances where no claim is required. Eligibility to these automatic grants of periodic compensation would be available 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 service classifications for pre-2004 operations that were recognised under the VEA. These operations are 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.

In addition, the MRCA is amended to avoid any need to recontest injuries or diseases already accepted under the VEA 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
- harmonising the administration of incapacity payments for consistent and equitable outcomes
- 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 person was on duty as a Defence member by providing for a temporal connection between service and a medical condition
- 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
- updating debt recovery powers under the MRCA so that they apply to overpayments under all three Acts

- increasing the cap on common law damages from \$110,000 to \$177,000. This amount will remain unindexed
- streamlining the information sharing processes between the Commission, the Department of Defence and the ADF
- standardising provisions to allow compensation payments to be made to an authorised third party
- 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
- inserts an instrument-making power that will allow the Commission to specify circumstances and the classes of persons who are required to obtain financial and/or legal advice before compensation or other benefits are paid under the MRCA.

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
 - 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 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
- provision of assistance and services provided under the acute support package to vulnerable veterans and their families to adjust to challenging life circumstances will be consolidated under the MRCA
- compensation for household services and attendant care services will be accessed through the MRCA
- payment of Victoria Cross allowance is transferred to the MRCA (with no change to eligibility requirements) and a new instrument-making power in the MRCA will provide for decoration allowance
- provisions relating to ex-gratia payments to former prisoners of war in other Acts and the prisoner of war recognition supplement in the VEA will be transferred to new Chapter 5AA of the MRCA, with no change to eligibility requirements
- arrangements for children's education assistance will be consolidated into the MRCA, with access extended to the eligible children of DRCA veterans who transition to the MRCA
- changes will be made to allow the primary carer of the eligible dependent young person/s to be the payment recipient
- the Commission's ability to make an instrument to provide special assistance will be broadened.

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 will facilitate consistent and streamlined claims processing by allowing the Commission to make an instrument specifying the injuries or diseases that may be accepted on a presumptive basis. The intention of this change is to provide a legislative basis in the MRCA for administrative arrangements and DRCA provisions that already allow liability to be accepted using a presumption.

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. Dependents 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 the amendments that will standardise the merits review pathway for veterans' entitlements decisions by vesting the Veterans' Review Board with jurisdiction to review DRCA determinations. The AAT will hear applications for review from the Board. The amendments in this part will commence before the broader changes in the Bill.

Part 2 - Amendments commencing 1 July 2026

This Part contains amendments 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

This Schedule will consolidate the governance arrangements for veterans' entitlements by:

- moving the provisions dealing with the Repatriation Commission into the MRCA and
- transferring the powers and functions of the Military Rehabilitation and Compensation Commission to the Repatriation Commission.

Schedule 5 - Repatriation Medical Authority and Specialist Medical Review Council

This Schedule transfers the provisions that deal with Statements of Principles (SOPs) from the VEA to the MRCA, including provisions that give the Repatriation Medical Authority power to make SOPs and the Specialist Medical Review Council power to review decisions of the Authority.

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

This 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. These 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 rehabilitation, compensation and other benefits for current and former members of the Defence Force who suffer a service injury or disease. The Act also provides benefits for dependants of deceased members.

The current legislative framework underpinning the provision veterans entitlements is widely acknowledged as complex, difficult to navigate and challenging to administer. This complexity has developed over decades and impacts veterans, their families, advocates and DVA staff, directly contributing to delays and inconsistent claims processing.

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 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).

These amendments will simplify access to and understanding of entitlements for veterans and families, producing an overall harmonised scheme of entitlements for veterans.

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 a 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 a 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 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

- Short Title** Clause 1 provides that the Act is the *Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024*.
- Commencement** Clause 2 sets out the commencement date of the provisions of the Act. For convenience, the commencement information is replicated below.
- Schedules** Clause 3 provides that legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedules 1 and 2	1 July 2026.	1 July 2026
3. Schedule 3, Part 1	The day after the end of the period of 60 days beginning on the day this Act receives the Royal Assent.	
4. Schedule 3, Part 2	1 July 2026.	1 July 2026
5. Schedules 4 to 7	1 July 2026.	1 July 2026
6. Schedule 8, Part 1	1 July 2026.	1 July 2026
7. Schedule 8, Part 2	The later of: <ul style="list-style-type: none"> (a) at the same time as the provisions covered by table item 6; and (b) immediately after the commencement of Part 1 of Schedule 1 to the <i>Defence Amendment (Parliamentary Joint Committee on Defence) Act 2024</i>. However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	1 July 2026

Schedule 1 - Single ongoing Act main amendments

Part 1 - Closing eligibility to DRCA and VEA

Military Rehabilitation and Compensation Act 2004

Items 1 to 3 amend section 3 which describes the general purpose and practices of the Act, to reflect the MRCA as the single ongoing Act going forward, providing compensation coverage for veterans and their dependants. The changes 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&TPA, Part IA of the DRCA, and Part IA of the VEA.

Item 4 reflects modern drafting practices and inserts the abbreviation VEA in section 3 to replace all references to the *Veterans' Entitlements Act 1986*.

Items 5 and 8 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 6 amends subparagraph 5(1)(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 7 amends the definition of *pharmaceutical benefits* in subsection 5(1) to replicate the definition from subsection 91(9) of the VEA.

Item 8 – see item 5.

Item 9 repeals the definition of *Veterans' Affairs Minister* in subsection 5(1) which refers to the Minister administering the VEA. The term is no longer required with the transition to the MRCA as the single ongoing Act.

Item 10 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 11 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 6.)

Items 12 to 29 are minor technical updates to adopt the abbreviations of VEA and DRCA.

Item 30 amends subparagraph 438(a)(i) as a consequence of the repeal of the term *Veterans' Affairs Minister* by item 7.

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

Item 32 amends subsection 4(1) to set out that *date of commencement* means 1 July 2026.

Item 33 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) may not be made on or after the commencement of the Simplification Act. Similarly, there would be no new acute support package instruments made under section 41B from that date, thus closing the provision of such assistance under the DRCA.

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 and that section 88 of the MCTPA deals with pending claims at commencement date.

Items 34 and 35 amend the note at the end of subsection 41B(1) with a technical change and the addition of a note 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 36 amends subsection 54(1) to insert a 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 37 amends subsection 124(1A) to insert a 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 38 amends subsection 5Q(1) to set out that *date of commencement* means 1 July 2026.

Item 39 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 provides that there will no new VEA compensation claims or applications, except for the small cohort of reinstated pensioners and in certain bereavement circumstances. There would also be no acute support package instruments under section 115S from that date, thus closing the provision of such assistance under that Act.

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

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.

Item 40 amends subsection 14(1) to repeal existing notes 1 and 2 referring to claims and dependants, which 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 41 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 42 amends subsection 111(2) which sets out the procedural requirements for claiming certain benefits, inserting a 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 inserts a new note 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 46 amend sections 21 and 22 which outline the provisions of Chapter 2 and the approach for the Commission to accept liability for an injury or disease respectively. The changes 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 the 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) provides 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.

Item 48 inserts a note at the end of section 27 that 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

Items 50 to 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 Peacekeeping force and their dependants, and related updates are made to some existing definitions.

- *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 peacekeeping 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 refer readers to section 19B and section 6C respectively.
- *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 56 to 59 make a number of changes to section 6, which

- provide that *defence service* is warlike service and non-warlike service, British nuclear test defence service, hazardous service and peacetime service
- extend the meaning of *non-warlike service* in paragraph 6(1)(b) to include peacekeeping 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, British nuclear test defence service, or hazardous service.

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

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

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 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 of normal peacetime service.

Item 61 inserts new section 19B to set out the concept of domicile, replicating section 11B of the VEA. The provision was intended to primarily cover those Australians who were

travelling or studying overseas at the time the Second World War 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) 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 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 include British nuclear test defence service and hazardous service in the requirements for the Commission making a reasonable hypothesis determination overriding a decision of the Authority not propose to make or amend a SOP.

Item 67 insets new Chapter 12 to deal with the application of this Act to operational service.

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 or non-warlike service. Section 442 replicates definitions from sections 5B and 5C of the VEA that are related to operational service.

In order for a person to have operational service by serving in a defined operational area (listed in new section 451), the person (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 made by the ADF, signed by the Vice Chief of the Defence Force, or the Minister for Defence, depending on the operational area described in the specific item of the table in new section 451.

Subsection 442(3) is inserted to assist readers to note that an instrument of allotment which is administrative in character, is not a legislative instrument and therefore not subject to the operation of the *Legislation Act 2003*. Items 31(a), (b) and (c) of section 7 of the Legislation (Exemptions and Other Matters) Regulation 2015 cover the corresponding VEA instruments and the same exemption status would be sought for the MRCA.

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) is based on subsection 5R(1) of the VEA and provides the Minister with a 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.

Subsection 442(6) provides that determinations in subsection (5) are not legislative instruments but are administrative in character, and, therefore, not subject to the operation of the *Legislation Act 2003*. Item 31(d) of section 7 of the Legislation (Exemptions and Other Matters) Regulation 2015 covers the corresponding VEA instruments and the same exemption status would be sought for the MRCA.

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

Section 443 is based on section 6F of the VEA and provides that persons who have rendered operational service are regarded as persons who have warlike service or 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 6E, and Schedule 2 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	Schedule 2

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 which are administrative in character, are not legislative

instruments and therefore not subject to the operation of the *Legislation Act 2003*. Item 31(e) of section 7 of the Legislation (Exemptions and Other Matters) Regulation 2015 covers the corresponding VEA instruments and the same exemption status would be sought for the MRCA.

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.

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.

Division 5 – Service injury, service disease and service death arising from treatment

Military Rehabilitation and Compensation Act 2004

Items 72 to 77 amend section 29, which deals with the unintended consequences of medical treatment. To provide clarity and remove inequities that currently exist between the DRCA

and this Act, the limitation that the medical treatment is for a previously accepted service injury or disease is removed. The effect is that where a person receives medical treatment paid for by the Commonwealth, and as an unintended consequence of that treatment, the person incurs an injury, the resultant injury or disease is a service injury or service disease, irrespective of whether the original condition being treated was compensable. This connection also follows for a treatment injury that result in death. This change applies to accepting liability for an unintended injury or disease caused by treatment, aggravated by treatment, and an unintended death caused by treatment.

Part 3 - Other amendments

Division 1 - Permanent impairment

Military Rehabilitation and Compensation Act 2004

Items 78 and 79 amend section 68 to set out the date of effect rules regarding entitlement to compensation for permanent impairment. Subsection 68(3) clarifies how to determine when a person's entitlement commences. That is, 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 80 amends section 71 to repeal and replace existing subsection (3) and to insert 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 81 to 86 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. This applies for commencement of entitlement to weekly permanent impairment compensation and additional weekly compensation.

Division 2 – Incapacity Payments

Military Rehabilitation and Compensation Act 2004

Items 87 to 91 amend subsections 85(1), 86(1), 87(1) and 118(1) to insert a 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.

The notes make clear that compensation is payable if a person's incapacity to undertake service as a Defence member or to undertake work, is as a result of an injury or disease for which liability has been accepted by the Commission, including an accepted service injury or disease under the VEA or DRCA.

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

These amendments relate to the closure of provisions relating to incapacity payments under the DRCA. A number of amendments are made to *Part X – Transitional provisions*, which provides for persons who were entitled to compensation under repealed Commonwealth workers' compensation legislation to preserve those arrangements and allow the small number of recipients to remain entitled under the DRCA. (Schedule 7 provides for the

transition of incapacity payments recipients to the arrangements under the MRCA from the date of commencement.)

Items 92 and 93 repeal the definitions of *compensation leave* and *pre determination period* in subsection 4(1), which are terms used in section 116 for the calculation of incapacity payments and that section is repealed by item 101.

Items 94 and 95 amend the definition of *relevant amount* in subsection 13(1) which provides for the annual indexation of the relevant rate of certain payments made under various sections of the DRCA. References to subsections 19(7), (8) or (9) are omitted, as they are no longer necessary, with incapacity payments to be indexed according to the provisions of the MRCA.

Item 96 repeal Divisions 3 and 6 of Part II, as they are no longer necessary, with incapacity payments to be administered according to the provisions of the MRCA.

Items 97 and 98 amend section 41B to omit subsections (3) and (4) to preclude new grants of acute support package under the DRCA. A technical consequential change is made to subsection (2). Ongoing access to the acute support package is provided under subsections 268B(2) to (6) of the MRCA. (See also Schedule 7 in relation to the continuity of an acute package granted under section 41B prior to commencement date.)

Items 99 and 100 amends the definition of *determination* in section 60, to omit references to sections 19, 20, 21, 21A, 22, 30 and 31 which deal with incapacity payments. These are no longer necessary, with incapacity payments determinations to be made under the MRCA and subject to the review arrangements under that Act. (See also Schedule 3.)

Item 101 repeals sections 112A and 112B which deal with funding appropriation for the payment of incapacity compensation. Sections 116 and 120, which deal with compassionate leave and notice of departure from Australia are also repealed. These provisions are no longer necessary, with incapacity payments to be administered according to the provisions of the MRCA.

Item 102 amends subsections 124(6) and (7) to omit references to sections 19, 20, 21, 22 or 31, as incapacity payments will be administered according to the provisions of the MRCA. The effect is that the transitional arrangement in section 124 remains operational for compensation with respect to the death of an employee.

Items 103, 104 and 105 amend section 132A, which deals with compensation for former employees under age 65 who are capable of earning in suitable employment. Paragraph 132A (2)(b) is amended such that section 20 as in force prior to the commencement of the Simplification Act would operate for the purposes of calculating the comparison amount of compensation, for those former employees in receipt of a superannuation pension.

Paragraph 132A (3)(b) is amended such that section 19 as in force prior to the commencement of the Simplification Act would operate for the purposes of calculating the comparison amount of compensation, for those former employees not in receipt of a superannuation pension.

Subsection 132A(4) is amended such that the specified paragraphs of subsection 19(4) as in force prior to the commencement of the Simplification Act would operate in relation to the tests the Commission is to consider, in determining a person's incapacity for work and the amount the person is able to earn per week.

Item 106 amends the definition of *minimum earnings* in subsection 133(2) such that section 19 as in force prior to the commencement of the Simplification Act would operate to set a minimum benefit that would be payable.

Item 107 amends the definition of *specified number* in subsection 137(5) such that the number specified by the Minister in subsection 30(2) as in force prior to the commencement of the Simplification Act would be applicable for the calculation in a redemption request from a former employee.

Veterans' Entitlements Act 1986

Item 108 inserts new subsection 30D(2A) to clarify the operation of the offsetting provisions with respect to the effect of MRCA incapacity payments on DCP. The VEA benefit structure does not draw a distinction between payments for function loss and the loss of earning capacity and the reference to the 'same incapacity' in the offsetting provisions creates uncertainty and potentially inequitable outcomes. The changes reflect the preferred approach that MRCA incapacity payments be excluded from offsetting general rate DCP.

The revised provisions will provide where a person receives both MRCA incapacity payments and a pension under Part II or IV, that the offsetting provisions:

- do *not* apply where DCP is payable at the general rate pension
- do apply where *above general rate* is payable but the reduction is limited and the resulting DCP cannot not be less than the percentage of general rate pension that corresponds to the person's degree of incapacity, as determined by the Commission under section 21A.

Above general rate pensions include the EDA and DCP at the Intermediate rate, special rate, and temporary special rate.

Division 3 - Liability restrictions on tobacco use

Military Rehabilitation and Compensation Act 2004

Item 109 amends section 36 to replicate the restrictions set out in subsections 8(6), 9(7) and 70(9A) of the VEA to ensure that 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 found to be service related.

Division 4 - Medical event on duty

Military Rehabilitation and Compensation Act 2004

Item 110 inserts 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 person was on duty as a member, 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 111 inserts a guidance note at the end of section 27 to inform readers that certain service injury and service disease circumstances are not to be assessed by reference to SOPs under sections 338 and 339. They include:

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

The note aligns with the amendment to subsections 338(1) and 339(1) by items 114 and 115.

Item 112 inserts new paragraph 28(1)(ea) in relation to the definition of *service death*, that similar to item 110 for a service injury, a death can be accepted on the basis that it occurred while the person was on duty as a member, 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 113 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 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 duty
- where the death occurred while the person was on duty, whether or not as a result of performing that duty
- where the death resulted from an accident that occurred while the person was travelling to or from a place where they perform duty.

The note aligns with the amendment to subsections 338(1) and 339(1) by items 114 and 115.

Item 114 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 person was on duty as a member (or but for the member being on duty).

The nature of these occurrences would be determined independent of SOPs. 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 duty as a member.

Item 115 makes changes to subsection 339(1), on the same basis as item 114.

Division 5 - Posthumous permanent impairment (PI) payments

Military Rehabilitation and Compensation Act 2004

Item 116 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 the deceased member to a lump sum, excluding any compensation for lifestyle effects. A posthumous conversion is only available where the member had 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 amount.

The outcome is that where a weekly amount of compensation would have been payable, instead of the sum of those amounts from the date of effect to the date the person died, the weekly payment (excluding 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 117 and 118 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 119 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 6 - Overpayments and debts

Military Rehabilitation and Compensation Act 2004

Item 120 amends paragraphs 415(1)(a), (b) and (c) to insert references to the DRCA, enabling the recovery under the MRCA of 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 121 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 122 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 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 123 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 124 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 125 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 7 - Payment to solicitor's trust account

Item 126 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 a person 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 8 - Common law damages

Military Rehabilitation and Compensation Act 2004

Item 127 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).

Division 9 - Information Sharing

Military Rehabilitation and Compensation Act 2004

Item 128 amends subsection 5(1) to add the definition of the *Australian Defence Force* as is defined in the *Defence Act 1903*.

Item 131 inserts new section 407A to allow the Department of Defence and the ADF to disclose information to the Commission for the purpose of assisting the Commission to perform its functions, duties or exercise its powers and includes protection against claims of breach of confidence. 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, standardise and simplify the authority for information exchange between Defence, the ADF and the Commissions, and are considered reasonable and necessary to support the Commission to perform its function of determining entitlements for veterans. It will allow efficient investigation and determination of compensation claims, and the provision of appropriate services in a timely manner.

While the provisions authorise disclosure for the extensive purposes and functions of the Commission and the use of information so disclosed, there is appropriate safeguard as there is scope for Defence and the ADF to determine that disclosure is appropriate and relevant, depending on the nature or quality of the particular information under consideration.

Items 132, 133, and 134 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.

Item 135 amends paragraph (b) of the definition of *receiving Commonwealth body* in relation to the National Disability Insurance Scheme to omit an outdated reference.

Item 136 inserts new section 409A to operate alongside section 331 which applies with respect to a MRCA claim, setting out the requirement for the Commission to provide certain documents relating to a claim or application made under the VEA to the CDF or the applicant. Section 143 of the DRCA obviates the need to extend this provision to claims and applications under that Act.

The proposed provision complies with Australian Privacy Principle 12.1 in relation to providing an individual access to their personal information. Claim information provided to the CDF assists with maintaining visibility of the physical and health status of all ADF personnel.

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

Item 137 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 10 - Offsetting

Military Rehabilitation and Compensation Act 2004

Items 138 and 139 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 Parts II and IV of the VEA. This Chapter deals with liabilities arising apart from this Act, the DRCA and the VEA.

Items 140, 141 and 142 amend subsections 388(5) 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 who 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 the total compensation amount includes the listed payments under the DRCA and the VEA, as well as the MRCA, for the purpose of

determining the amount the dependant is liable to repay the Commonwealth. Subsection (6) is updated in a similar manner to preclude compensation in respect of the service death following the payment of damages.

Items 143 and 144 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 to sue is made.

Items 145 repeals and replaces paragraph 390(1)(a) to set out 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 a dependant.

Item 146 repeals and replaces 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 147 to 151 are technical amendments complementary to item 147, making clear that section 397 applies to a VEA pension and compensation under the DRCA, 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 152 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 their 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 153 and 154 are technical amendments 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 155 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 156 repeals and replaces paragraphs 399(a) to expand the scope of compensation - *cause of action*. The amendment is similar in operation to item 146, 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 157 and 158 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 159 repeals and replaces paragraph 401(2)(a) in a similar manner to item 152, 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 160 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 161 amends the heading to section 402 to reflect the expanded coverage to entitlements beyond this Act.

Items 162 and 163 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 164 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 added at paragraph (2)(b), and a Part II or IV pension under the VEA at paragraph (2)(c).

Item 165 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
- an injury, disease or death of a person, for which a pension has been paid under Part II or IV of the VEA.

Item 166 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 11 - Rehabilitation

Military Rehabilitation and Compensation Act 2004

Item 167 amends subsections 43(1), 55(1) and 62(1) to insert a 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.

The notes make clear that the provision of rehabilitation programs, related alterations, aids and appliances, and assistance in finding suitable work, applies to a person who has liability

accepted for an injury or disease, including an accepted service injury or disease under the VEA or DRCA.

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

Item 168 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 169 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 170 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 171 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 172 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 173 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 174 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 175 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 176 and 177 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 178, 179, and 180 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 181 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 182, 184, 185, 186, and 187 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 DCP 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 183 repeals section 115B which enables the establishment of the VVRS, as the Scheme would be closed to new entrants.

Items 184 to 187 – see item 182.

Items 188 to 193 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 194 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 195 and 196 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 197 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 12 - Motor vehicle compensation scheme

Military Rehabilitation and Compensation Act 2004

Item 198 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. The intent is to make clear that the scope of vehicle compensation available under the MRCA does not duplicate assistance that a person is accessing through the VEA scheme.

Item 199 amends subsection 212(1) to insert a 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.

The note makes clear that compensation relating to motor vehicles is payable if a person has an impairment and need for such compensation, as a result of an injury or disease for which liability has been accepted by the Commission, including an accepted service injury or disease under the VEA or DRCA.

Division 13 – Financial and legal advice

Military Rehabilitation and Compensation Act 2004

Item 200 inserts new paragraph 423(d) to provide that the Consolidated Revenue Fund is appropriated for compensation in relation to financial and legal advice that is obtained as required under the instrument determined by the Commission in section 424M.

Item 201 inserts new Part 5B to contain section 424M, which provides the Commission with a power to determine an instrument regarding mandatory financial and/or legal advice. The provision will supplement existing provisions where advice must be obtained prior to the person making the choice to receive SRDP instead of incapacity payments. Circumstances where advice is optional include permanent impairment compensation at 50 or more impairment points and compensation for a wholly dependent partner.

The instrument-making power allows the Commission to determine the circumstances that mandatory advice should apply. The Commonwealth would cover the cost of legal and financial advice obtained in the prescribed circumstances.

The intent is not to preclude access to a person's access to compensation but to ensure the person is adequately informed about the financial or legal consequences of decisions that potentially involve significant amounts of compensation and complex interaction with superannuation and other compensation arrangements.

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

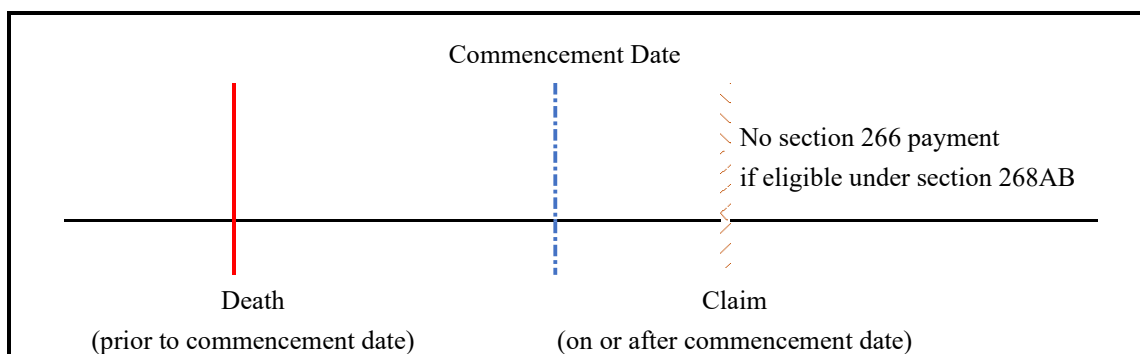
Item 1 amends section 231 which outlines the types of compensation payable to dependants of deceased members under Chapter 5, to revise the description for payments made in relation to funerals, to reflect the extension of benefits to persons previously covered by the DRCA and the incorporation of the 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 2 provides payment for the funeral of a deceased member where section 12 applies. 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. A note is inserted to inform readers that a claim is not required.

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
- 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 the 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 SRDP 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 at 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 Chapters, 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 for 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 2026.

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 the 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 interned 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 404B.

Section 268AO 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 inserts new section 404B to provide for the annual indexation of the prisoner of war recognition supplement, ensuring the supplement is indexed every year on 20 September in line with increases in the Consumer Price Index.

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 paragraph (f) in the definition of *claim* in subsection 119(2), consequential to the arrangements for the prisoner of war recognition supplement being consolidated under the MRCA.

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 121(4A) is no longer required 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 2 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 title 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.

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
- 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 is that persons who meet these definitions may also access the MRCAETS.

Item 69 inserts new subsection 258(1A) to clarify access to education assistance for a young dependant where section 24A applies. That is, where Commission is deemed to have accepted liability for the member/former member’s DRCA or VEA injury or disease under section 24A.

Paragraph 258(1)(a) provides MRCAETS eligibility where the member/former member is SRDP-eligible, ADA-eligible, or have 80 impairment points. However, if the member/former member is transitioning from the DRCA/VEA to the MRCA, they must also:

- have liability accepted under the MRCA for an injury or disease other than a DRCA or VEA compensable condition or
- have 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

A child/young person may be eligible for MRCAETS under paragraph 258(1)(b) if they are a dependant of a deceased member immediately before that member’s death and section 12 applies. The terms *VEA eligible child* and *VEA eligible grandchild* (inserted by item 66) and paragraphs 258(1)(c) and (d) also provide pathways to ensure that persons who would have been eligible for education assistance under the VEA scheme have access to MRCAETS.

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 section 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.

New paragraph 345(2)(dc) will provide for a determination by the Commission under subsection 257C(4) that an individual is a member of a prescribed class of VEA eligible child or VEA eligible grandchild is not an original determination. (See items 74 and 75 for right of review.)

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.

Items 74 and 75 amends paragraphs 345(2)(a) and (b) to confer jurisdiction on the Tribunal for review of a determination regarding an individual being a member of a prescribed class of VEA eligible child or VEA eligible grandchild. The approach is consistent with the review provisions of MRCAETS that a right of review exists at the Tribunal.

Veterans' Entitlements Act 1986

Items 76 and 77 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 made to paragraph (zx) for the 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 78 repeals the definition of *Veterans' Children Education Scheme* in subsection 5Q(1), consequential to the closure of the Scheme.

Items 79 and 81 repeal and replace paragraphs 13(7)(h) and 70(10A)(e) to update the references from VCES to MRCAETS. Subsection 13(7) sets out a number of government education or youth allowance that would preclude payment of an orphan's pension under subsection 13(4) to a non-maintained child of a deceased veteran with operational service, who is over 16 years of age. Corresponding preclusions relating to a child of a deceased veteran covered by Part IV are set out in subsection 70(10A). These amendments continue the principle of preventing more than one education or child-related payment being paid to a person at the same time.

Item 80 repeals sections 67W and 67ZV which refer to the VCES for qualification to certain one-off payments provided during the coronavirus pandemic, and these provisions are no longer applicable.

Item 81 – see item 79.

Item 82 repeals Part VII which contains the VCES, consequential to the closure of the Scheme.

Items 83 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 84 repeals subsection 175(5) regarding review applications to the Tribunal for certain VCES decisions, consequential to the closure of the Scheme. This Bill provides for VCES recipients to be transferred to MRCAETS and they will attain review rights to the Tribunal that exists under the MRCA scheme. (See also Schedule 7 Items 107 to 109.)

Items 85 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

Section 80 deals with additional compensation for children who are eligible young persons 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

Item 86 amends subsection 80(1) to remove the requirement that the person must be entitled to, or have received permanent impairment compensation. Despite the section 80 amount being described as ‘additional compensation’, this change recognises there are circumstances where permanent impairment compensation was not payable, for example, due the operation of offsetting provisions.

An additional amount is payable with respect to eligible dependants where the person’s impairment from service injuries or diseases constitutes at least 80 impairment points. New section 80(1A) sets out the additional criteria where section 24A applies to the impaired person. That is, where Commission is deemed to have accepted liability for the person’s DRCA or VEA injury or disease under section 24A.

If the impaired person is transitioning from the DRCA/VEA to the MRCA, they must also:

- have liability accepted under the MRCA for an injury or disease other than a DRCA or VEA compensable condition or
- have 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 to a section 80 amount for VEA and DRCA veterans who transition into MRCA by meeting the liability or impairment threshold.

Item 87 amends subsection 80(2) consequential to the change by item 86 and omits the reference to the payment being made to the impaired person.

Items 88 to 91 amend paragraph 80(2)(b) to provide the relevant date that the additional amount is payable, including where the impaired person has transitioned from the VEA or DRCA. The payment applies to a person who is an eligible dependant of the impaired person, that is, a person who is both a dependant and an eligible young person at that date.

The latest of the following dates apply:

- the date the Commission determined the impairment was at least 80 points
- the date of the impaired person’s most recent liability claim
- if the person is subject to subsection (1A), the date the Commission determined they have an increase in their overall impairment rating of at least five points due to the worsening of their DRCA/VEA conditions or a new condition.

Item 92 inserts new subsection 80(4) to make clear that the additional compensation amount in respect of the same young dependant is only payable once, upon the impaired person meeting the threshold of 80 points. This is the threshold for severe impairment, as maximum compensation applies where there is an assessment at or above 80 permanent impairment points.

Item 93 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

Item 94 repeals and replaces paragraph 423(d) to align with the changes to section 424 and facilitates the grant of discretionary assistance or benefits.

Items 95 and 96 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).

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. 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. 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 97 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 98 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 99, 100, 101 and 102 amend paragraphs 290(1)(b) and (2)(c) to give effect to 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 103 inserts new section 291A to empower the Commission to establish 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 104 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 person's 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 for compensation to be payable.

Item 105 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 paid in advance. This mirrors the power under subparagraph 205(1)(c) of the VEA.

Item 106 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 107 and 108 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 109 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 110 to 115 repeal various provisions in subsections 111 and 112 dealing with the procedures for travel entitlements and make related technical changes. These amendments are 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 116 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 117 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 118, 119 and 120 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 subsections 281(3) and (4) set out the additional criteria for treatment eligibility where liability was accepted for the person's injury or disease under the DRCA prior to commencement date. Treatment under this section would only be available with the provision of a Veteran Gold Card, where such persons:

- have liability accepted under the MRCA for an injury or disease other than a DRCA or VEA compensable condition or
- have 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

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 121 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
- persons not covered by the other three categories.

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 122 and 123 update subsections 287(1) and (2) to reflect the addition of a determination under section 284A for the provision of treatment.

Item 124 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 125 and 126 amend the notes in subsections 85(1) and (2) to remove references to section 85B, consequential to its repeal.

Item 127 repeals section 85B which is no longer necessary, with transitional provisions for treatment arrangements to take effect instead, on and after commencement date.

Part 3 - Presumptive Liability

Military Rehabilitation and Compensation Act 2004

Items 128 and 129 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 130 inserts a new note 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 143.)

Item 131 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 132 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.

For a liability claim regarding another condition on the basis that it arises out of an injury or disease that has been accepted via presumption, the connection to service for may be established through the new condition:

- being a prescribed presumptive condition itself or
- meeting the relevant SOP factor, such as having a causal service-related condition before or at the time of the onset of the new condition being claimed. That causal condition which must be present, can be a previous injury or disease that has been accepted through presumptive liability.

Equally, if a prescribed condition resulted in the death of the person, then the death could be accepted on a presumptive basis. If the condition causing the death was previously accepted presumptively, it is not intended that this condition would need to be reinvestigated, and the death could be accepted based on it being caused by an accepted condition.

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.

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).

The operation of this section makes it easier to establish the causal link between a veteran's ADF service and their claimed condition(s), and therefore simplify access to compensation entitlements, including treatment, for persons who qualify. These changes will apply to all claims for the acceptance of liability made on or after the date of commencement, regardless of the time of the relevant service.

Items 133 and 134 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 135 and 136 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 137 and 138 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.

Items 139 to 143 amend section 335 which sets out the two standards of proof that are used under this Act. A new note 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 144 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 145 and 146 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 147 repeals section 340 and 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), a decision-maker – the Commission, the VRB or the Tribunal – must apply the more favourable of the current and earlier presumptive liability instruments. This can be an instrument that is no longer in force. An equivalent provision regarding the application of the more favourable SOP on review of a decision is inserted at new section 341.

This approach is consistent with the position adopted for reviews under the VEA. It has been applied to the MRCA to continue this practice and to provide equity in decision-making.

Item 148 inserts new paragraph 345(2)(aa) to provide 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 149, 150 and 151 insert references to ADA in the following definitions in subsection 5(1):

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

Item 152 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

- satisfied the criteria in section 220A but did not receive compensation due to the operation of another provision of this Act.

Item 153 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 154 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 155 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 156 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:

- have liability accepted for an injury or disease (including an accepted service injury or disease under the VEA or DRCA, as highlighted by the guidance note which refers readers to section 24A)
- 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
- be pension age or older and
- 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 as half of the fortnightly rate of the EDA payable under subsection 22(4) of the VEA. 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 157 and 158 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 159 and 160 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 161 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.

Veterans' Entitlements Act 1986

Items 162 and 163 amend subsection 5H(8) by adding:

- paragraph (zsa) to provide that the ADA is not income for service pension purposes
- 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
- 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
- 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 164 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 165 and 166 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. Note 1A is inserted 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. Provisions which govern the structure, management, and review arrangements of the VRB are transposed from the VEA to the MRCA, in advance of broader changes for the single ongoing Act model.

The ‘single review pathway’ gives DRCA appellants access to the 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 AAT would remain in place.

The new arrangements will provide for review applications 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 to within 28 days of being notified of an application to the Board. The Commission will continue to have the discretion to initiate a reconsideration, which provides the opportunity to re-examine an original determination 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 timely 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 VRB 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 retains the same meaning.

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

Item 4 replicates in subsection 5(1) of the following 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.
- *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. This is a collective term for the legislative provisions under which acute support packages decisions are made. (See related changes at Item 8.)

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. (See also item 10 for new section 353C.)

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, pending commencement of the single ongoing Act model. The new defined term inserted by item 6 recognises decisions made under the relevant acute support package instruments of the MRCA, VEA and DRCA.

New paragraph 345B(aa) acknowledges the nomenclature varies across the instruments and clarifies that a decision is an original determination for the purposes of Chapter 8. This arrangement applies to acute support package decisions that are made on or after the commencement of this Part, while VEA and DRCA review provisions would continue to apply to decisions made prior to this date. Upon commencement of the single ongoing Act model, acute support packages will only be provided under the MRCA.

Item 10 repeals and replaces Part 4 of Chapter 8 to set out the extended jurisdiction of the VRB to include certain decisions under the VEA and the DRCA for review by the Board.

New section 352 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.

The item draws largely on Part IX of the VEA (see table below), integrated with elements of the repealed MRCA Chapter. *Original determinations* as defined in section 345 is inserted for specific provisions where the term is applicable. Of note are some of the procedural changes to the application for review stage, which are intended to streamline review administration and facilitate timely resolution of matters.

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 inform readers 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. That 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 new provision follows the change where review applications will no longer be lodged with the Department and places an obligation on the Board to ensure the Commission is informed of an application, in order 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 and subsequently, provide the report to the Board. 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 then 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.

The remainder of this item (together with item 12, which provides for new *Chapter 8A – Veteran’s Review Board*) broadly replicate the VRB provisions from the VEA. The provisions are re-organised, with Part 4 of Chapter 8 setting out the review function and processes, while Chapter 8A deals with the VRB membership and other administration elements. Some of the provisions transposed to the MRCA include minor technical updates to terminology or legislative references, or to reflect conventional drafting and notification practices. Any substantive differences are noted in this summary table and further clarification which follows.

MRCA Part 4 of Chapter 8	Based on VEA...	Extent of change
Section 352A Applications for review	-	Detailed above.
Section 352B Application requirements	Section 136	Updates terminology and sets out the general rule of 12-months for making a review application.
Section 352C Notifying Commission of application	-	New – Detailed above.
Section 352D Commission to prepare report	Section 137	Detailed above
Section 352E Ongoing requirement for lodging material documents with Board	Section 137A	Limited – updates to cross-referenced provisions
Section 352F Principal Member or Senior Member to preside at hearing	Section 146	Limited – updates terminology and reflects drafting conventions. A note informs readers of the related provision at section 359CJ, which deals with how the Board is constituted for a hearing.
Section 352G Parties to review before Board	Section 147	CDF may join as a party to the review. While parties may appear in person or through a representative, the longstanding exclusion of legal practitioners from appearing as a representative at a

MRCA Part 4 of Chapter 8	Based on VEA...	Extent of change
		<p>VRB hearing is retained, though they may help an applicant prepare their case.</p> <p>A restriction on charging fees or any payments for review representations is added. 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 <i>Australian Human Rights Commission Act 1986</i> and section 282 of the <i>Migration Act 1958</i>.</p>
Section 352H Notice of hearing etc.	Subsections 148(1) to (4)	Limited – reflects drafting conventions and updates terminology and cross-referenced provisions.
Section 352J Procedure of Board	Subsections 148(4A) to (7); section 152	<p>Consolidates the provisions to request further information, or an investigation or medical examination, in relation to a review, and that the review hearing may be adjourned. The request is made to the Commission, as the decision-maker of the subject matter that is under review, rather than to the Secretary. Updates are also made to reflect drafting conventions.</p> <p>(See also section 353U on the guidance note.)</p>
Section 352K Participation by telephone etc.	Subsection 148(8)	Limited – updates to terminology.
Section 352L Obligations of parties etc.	Subsection 148(9)	Limited – updates to cross-referenced provisions.
Section 352M Questions to be decided by majority of Board	Section 149	Limited – update to cross-referenced provisions and reflects drafting conventions.
Section 352N Hearing to be in private except in special circumstances	Section 150	<p>No change.</p> <p>(See section 353U on the guidance note.)</p>
Section 352P Powers of Board	Section 151, except for paragraph (2)(a)	Limited - see 353Q for summons.
Section 352Q Board may summon persons to give evidence or produce documents	Paragraph 151(2)(a)	Sets out the Presiding Member’s power to issue summons, noting there must be reasonable grounds to do so. The provision also specifies a minimum 14-day notice period for the required action to be taken.
Section 352R Information may be made available to parties	Section 153	Limited – updates to cross-referenced provisions and reflects drafting conventions
Section 352S Board not bound by technicalities etc	Section 138	Updates to modernise the language and to align with MRCA section 334 - <i>Commission not bound by technicalities</i> , that the Board may inform itself on matters.
Section 352T Board may remit matters to Commission for further consideration	Section 138A	Limited - updates to terminology.
Section 352U Referral of review for alternative dispute resolution process	Section 145A	<p>Limited – updates to terminology.</p> <p>(See section 353U on the guidance note.)</p>

MRCIA Part 4 of Chapter 8	Based on VEA...	Extent of change
Section 352V Directions by Principal Member	Section 145B	Limited – updates to terminology and cross-referenced provisions. (See section 353U on the guidance note.)
Section 352W Agreement about the terms of a decision etc.	Section 145C	No change.
Section 352X Evidence not admissible	Section 145D	No change.
Section 352Y Eligibility of person conducting alternative dispute resolution process to sit as a member of the Board	Section 145E	Limited – updates to terminology.
Section 352Z Participation by telephone etc.	Section 145F	No change.
Section 353 Engagement of persons to conduct alternative dispute resolution processes	Section 145G	No change.
Section 353A Decision of Board	Section 139	Limited – updates to terminology and reflects drafting conventions.
Section 353B Board to give notice of decision and reasons to parties	Section 140	Limited – reflects drafting conventions and updates to cross-referenced provisions.
Section 353C Dismissal of applications	Subsections 155(1) to (8), 155A(2) and (3)	Limited – updates to terminology and reflects drafting conventions. The provision also makes clear the notice obligations of the Board to inform review parties of their right of appeal to the Tribunal. (See below for notice obligations.)
Section 353D Consequence of dismissal of application	Subsection 155(9)	Limited – updated cross-referenced provisions.
Section 353E Circumstances in which application may be reinstated)	Subsections 155(10) and (11)	Limited – updated cross-referenced provisions.
Section 353F Date of operation of decision by Board	Subsection 156(1)	Simplifies the requirement that the Board must specify when the review decision comes into operation, except for a decision that is affirmed.
Section 353G Correction of errors in decisions or statements of reasons	Section 140A	No change.
<i>Division 6 - Offences</i>		(See below for additional information.)
Section 353H Offence—failure of witness to attend	Section 168	Limited – updates cross-referenced provisions and reflects drafting conventions.
Section 353J Offence—failure to take an oath, make an affirmation or answer a question etc.	Subsections 169(1) to (1B)	Limited – updates cross-referenced provisions and reflects drafting conventions.
Section 353K Offence—giving false or misleading evidence	Subsection 169(2)	Limited – reflects drafting conventions.

MRCA Part 4 of Chapter 8	Based on VEA...	Extent of change
Section 353L Offence—contempt of Board	Section 170	Limited – updates cross-referenced provisions.
Section 353M Immunity	Section 167	Adds the definition of <i>alternative dispute resolution practitioner</i> to maintain immunity for persons engaged to conduct dispute resolution processes. There are also updates to terminology and to reflect drafting conventions.
Section 353N Medical expenses	Section 170A	Limited – updates cross-referenced provisions and omits a time-limited reference.
Section 353P Travelling expenses for obtaining medical evidence	Section 170B	Limited – updates cross-referenced provisions.
Section 353Q Other travelling expenses	Subsections 132(5), (6, (9) and (10)	Provides for travel expenses associated with a Board review hearing and includes updates to cross-referenced provisions.
Section 353R Applications for other travelling expenses	Subsections 132(11) to (11C)	Provides for applications to be made under the MRCA for travel expenses associated with a Board review.
Section 353S Advance of travelling expenses for obtaining medical evidence	Section 170C	Limited – updates cross-referenced provisions.
Section 353T Fees for witnesses	Section 171	Limited – reflects drafting conventions.
Section 353U Instruments that are not legislative instruments	-	New – clarifies that the specified directions given by the Principal Member are not legislative instruments within the meaning of subsection 8(1) of the <i>Legislation Act 2003</i> . This means such a direction 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.

Notice obligations

Consistent with the existing provision in the VEA, subsection 353C(11) provides that a failure by the Principal Member to comply with the notice obligation regarding the statement of reasons does not affect the validity of the Board’s dismissal decision. The ‘no-invalidity clause’ supports the Board to dismiss review applications for original determinations that are not reviewable, and to manage a claimant’s non-compliance with directions or failure to appear, even if the decision notice requirements are not strictly met. It would not be appropriate for such a decision to be invalidated if the Board, through administrative error, failed to inform the applicant of their right to appeal to the Tribunal, or their right to request a statement of reasons for the original decision.

Offences

Division 6 brings together elements of Division 8 of Part IX of the VEA that deal with offences and reflects modern drafting practices. The policy intent of these provisions is to promote the effective operation of the Board. In addition to updating terminology and legislative references, the maximum penalty for non-compliance have been amended in line with clause 3.1.3 (Fine/imprisonment ratio) and the penalties set out in clause 9.4 (Notices) of *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*.

Both sections 353H and 353J 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 353H(3) and 353J(5). 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 353H and 353J are not of strict liability and the prosecution would bear the evidentiary onus of establishing both physical and fault elements of the offence.

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 inserts elements of Part IX of the VEA in new Chapter 8A of the MRCA, to set out the objective and organisation of the Board. Some of the VEA sections are replicated with only technical updates to terminology or referenced legislative provisions, or to reflect conventional drafting and notification practices. Any substantive differences are described in the summary table below.

MRCA Chapter 8A	Based on VEA...	Extent of change
Section 359A Simplified outline of this Chapter	-	New – navigation guide
Section 359B Establishment	Section 134	Provides for the continuance of the VRB and members are to be appointed under this Act.
Section 359BA Board’s objective	Section 133A	No change
<i>Division 1 – Membership</i>		
Section 359C Appointment of members	Section 158, subsection 159(1)	Limited – reflects standard appointment practices and includes the period of appointment, and a note to inform readers that the <i>Acts Interpretation Act 1991</i> provides guidance on reappointment.

MRC Chapter 8A	Based on VEA...	Extent of change
Section 359CA Acting appointments	Subsection 161(1)	Limited – revises the order of the provisions for clarity and relies on the <i>Acts Interpretation Act 1991</i> for the rules and power of on acting appointment.
Section 359CB Remuneration	Section 160	Limited – reflects drafting conventions.
Section 359CC Leave of absence	Section 161	Limited – updates to terminology.
Section 359CF Other paid work	-	New - consistent with the protection on similar appointments, where permission is required to undertake any other paid work. The intent is to ensure the discharge of duties by a full-time Board member is not adversely affected and no conflict of interest arises.
Section 359CE Other terms and conditions	Subsection 159(3)	Limited – updates to terminology and reflects drafting conventions.
Section 359CF Resignation	Section 163	Updates to terminology and sets out the effective date
Section 359CG Termination of appointment	Subsections 164(2), and (5)	Updates to terminology and reflects drafting conventions, including for the section title. Non-compliance with the PGPA is an additional ground for termination.
Section 359CH Suspension of Board members	Subsections 164(2), (3) and (4)	Updates to terminology and reflects drafting conventions.
Section 359CI Disclosure of interests	Section 165	Updates to terminology and reflects drafting conventions. Reinforces the obligation on the Board member to make the disclosure as soon as possible.
Section 359CJ Constitution of Board for exercise of powers	Section 141	Limited – updates to terminology.
Section 359CK Management of administrative affairs of Board	Section 141A	No change, (See section 359DD on the guidance note.)
Section 359CL Arrangement of business of Board	Section 142	Limited – updates to cross-references and reflects drafting conventions. (See section 359DD on the guidance note.)
Section 359CM Board members to constitute Board for purposes of a review	Section 143	Limited – reflects drafting conventions. (See section 359DD on the guidance note.)
Section 359CN Board member ceasing to be Board member etc	Section 144	Limited – updates to cross-references and terminology and reflects drafting conventions.
Section 359D Staff	Section 172	Limited – reflects drafting conventions
Section 359DA Delegation by Principal Member	Subsections 166(1), (1A) and (1B)	Limited – updates to cross-references and includes a note to inform readers that the <i>Acts Interpretation Act 1991</i> provides further guidance
Section 359DB Annual report	Subsection 215(4)	Limited – updates to terminology and reflects drafting conventions, including a note to inform

MRCA Chapter 8A	Based on VEA...	Extent of change
		readers that the <i>Acts Interpretation Act 1991</i> sets out extra requirements.
Section 359DC Oath or affirmation of office	Section 173 and Schedule 4	Updates to terminology and reflects drafting conventions, incorporating an updated form of the oath or affirmation.

Item 13 updates the references to the application of VEA provisions in paragraph 423(ca) and points to the equivalent sections 353P, 353Q and 353S, 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.

Item 14 inserts new paragraph 423(cb) to provide the appropriation for witness fees and allowances associated with a Board review from Consolidated Revenue Fund.

Items 15, 16 and 17 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 359CA) and granting a leave of absence to full-time Board members (section 359CC). 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. Instead of requesting a reconsideration of an original determination by the MRCC, a claimant may seek a review 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.

Items 18 and 19 replace the non-operative references to Part VI in the note at the end of subsection 3A(3) and in subsection (4) with a reference to section 62. Section 62 (as amended) sets out the revised review pathway.

Item 20 inserts in subsection 4(1) the term *Board* and provides for the same meaning as in the MRCA.

Items 21 and 22 repeal subsection 4(1) which contains the 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 23 repeals and replaces subsection 26(4) to maintain the effect that payment of compensation with interest is not applicable to a decision that is under review. The updated reference to an application for Board review made under Part 4 of Chapter 8 of the MRCA in relation to a permanent impairment determination or an interim payment determination does not alter the operation or effect of the provision.

Item 24 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 25 makes a technical amendment to subsection 60(1) consequential to the change by item 26.

Items 26 and 27 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 28 repeals subsection 60(2) which is no longer necessary, as the parties to a review proceeding are set out in the MRCA.

Item 29 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 30 replaces the reference to subsection 62(2) in paragraph 61(1)(c) and updates the decision notification requirement to include the right of review provided under Part 4 of Chapter 8 of the MRCA.

Item 31 repeals sections 62 to 67 which deal with the processes for own-motion and claimant-requested reconsideration of determinations made under this Act, notification of reviewable decisions, and processes relating to applications to the Tribunal for merits review. Those provisions are no longer necessary consequential to the harmonisation of review pathway across the DRCA, MRCA and VEA, and a replacement section 62 provides for reconsideration 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 on 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 353Q(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 entitlement to travel expenses. 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 32 omits subsection 111(5) consequential to the repeal and replacement of section 62 by item 30, as new section 62 does not contain any decision-making powers. This amendment does not alter section 111, which will continue to provide for amounts that form the estate upon the death of a compensation recipient, and that the Commonwealth retains unclaimed funds in the circumstances where a beneficiary dies intestate.

Item 33 repeals sections 129 and 129A, with new section 129A providing authority under the revised review pathway for reconsideration and review of certain determinations under 1971 Act.

Item 34 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 that the MRCA will set out the standard review processes, supplemented by provisions in this Act that are unique to VEA benefits, such as the backdating of pension review decisions. With the continuation of the Board provided for under the MRCA, many of the VEA Part IX provisions are no longer necessary and are therefore repealed or replaced. Cross references are updated to align with the terminology and the relevant provisions of the MRCA.

Item 35 amends subsection 5Q(1) (definition of *Board*) to provide for the same meaning as in the MRCA.

Items 36 and 37 updates the note at the end of subsection 5T(1) to remove references to the VRB and Part IX, which are no longer necessary, as the MRCA sets out the lodgement of documents requirements for reviews.

Item 38 updates the legislative reference in paragraph 22(5)(c), consequential to the repeal and replacement of section 31 by item 39.

Item 39 repeals and replaces section 31 to set out that the Commission's power under the MRCA to initiate reconsideration of certain decisions. The change of terminology from *review* aligns with the MRCA pathway and supports a clearer distinction between a Commission reconsideration, a VRB review and an appeal to the Tribunal. While the legislative framework will draw on the MRCA provisions, the decision-making stages are unchanged.

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 original policy intent that a claimant can seek a review of the original decision by the Board and the Commission has the discretion to initiate a reconsideration, including for decisions before the Board where the review has not been determined.

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. Subsection 31(3) provides for the notification requirements in section 346 of the MRCA to apply. Consistent with existing arrangements, there are no review rights for 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. (See also item 68.)

A reconsideration determination made under this section is to be regarded as an original determination made by the Commission, which is subject to Part 4 of Chapter 8 of the MRCA for review by the Board. As per the guidance note inserted at the end of the section, a Board review determination of these VEA decisions may be appealed to the Tribunal under Part 5 of Chapter 8 of the MRCA.

Items 40 to 48 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 49 and 50 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 determination.

Item 51 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 52 and 53 replace the reference to *review* in paragraph 119(1)(c) with *reconsideration*, and repeal paragraph 119(1)(d) consequential to section 31 being replaced.

Item 54 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 contain the review provisions. This update maintains the right under the MRCA, for the legal representative of a deceased veteran to pursue an application for a Board or Tribunal review that was lodged by the veteran.

Item 55 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 Part 4 of Chapter 8 of the MRCA.

Items 56, 57 and 58 amend section 132, which sets out travel expenses for evidentiary purposes. References to *review* in paragraphs 132(1)(b), (1)(c), (1)(d) and subsection 132(2) are replaced with *reconsideration*, consequential to section 31 being replaced, to maintain the travel entitlements under this Act in the specified circumstances. Subsections 132(5) and (6) are repealed, as they are no longer necessary, with section 353R of the MRCA providing for travel expenses in connection with attendance at a Board hearing.

Item 59 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 60 and 61 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 the circumstances covered by this Act.

Item 62 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 63 repeals section 132A which is no longer necessary, as new section 353T of the MRCA provides for advance of travel expenses.

Item 64 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 65, 73, 87 and 90 repeal the headings to Divisions 1, 3, 5 and 6 of Part IX, while **items 72, 86 and 95** repeals Divisions 2, 4, 4A, 7 and 8. As this Part is substantially transferred to the MRCA, the divisional structure is no longer required, with the remaining sections sitting directly under Part IX.

Items 67, 68 and 69 amend subsection 133(1) in relation to the following definitions:

- repeal *alternative dispute resolution processes*, *applicant*, *application*, and *Conference Registrar*, which are replicated in subsection 5(1) of the MRCA

- insert *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 item 39.)
- repeal *Deputy Registrar, member, National Registrar, Principal Member, Registrar, relevant documentary medical evidence, review, Senior Member and Services Member*, which have been replicated in subsection 5(1) and section 352 of the MRCA.

Item 70 repeals subsection 133(2), with subsection 5(1A) of the MRCA enabling the Minister to prescribe alternative dispute resolution processes procedures or services.

Item 71 repeals section 133A, with section 359BB of the MRCA setting out the Board objective.

Item 72 repeals Division 2 of Part IX, with section 359BA of the MRCA providing for the Board's continuance.

Item 73 – see item 65.

Item 74 inserts new section 134 to facilitate the application of Parts 4 and 5 of Chapter 8 of the MRCA for Board review of a VEA decision. Subsection (1) sets out the 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 (which contain specific effective dates for Tribunal review of certain VEA decisions).

Item 75 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 76 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 77 replaces the references to subsections (1), (2) and (3) in subsections 135(5) and 135(5A), with 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 78 repeals subsections 135(6) and (7), which set out the interactions between a reconsideration by the Commission and an application for a Board review. Section 347 of the MRCA allows for a reconsideration of an original determination, providing the Board (or the Tribunal) has not already made a review determination.

Item 79 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 80 replaces the heading to section 136 to reflect the amendments made by items 80 to 83, that the section will set out who may make a review application. This section complements the general requirements for a review application set out in sections 352A and 352B of the MRCA.

Items 81, 82, 83 and 84 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 85 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 proceedings after making a request to the Commission under section 352R of the MRCA for further documents or to arrange and report on an investigation. In *Cooney and Repatriation Commission* (1991), Thompson DP found that there is no right to seek Tribunal review for a decision made under subsection 152(2).

Item 86 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 87 – see item 65.

Items 88 and 89 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 352J Procedure of Board
Section 153	Section 352R Information may be made available to parties
Section 155	Section 353C Dismissal of applications Section 353D Consequence of dismissal of application Section 353E Circumstances in which application may be reinstated
Section 155A	Section 353C 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 90 – see item 65.

Item 91 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 92, 93 and 94 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 92 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 93 amends subparagraph 157(2)(b)(ii) consequential to the repeal of section 140 by item 84 and updates the reference to section 353B 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 94 amends subsection 157(4A) consequential to the repeal of section 139 by item 84 and updates the reference to subparagraph 353A(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 95 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.

Items 96 to 104 reflect that the arrangements for Tribunal review of Board determinations are set out in the MRCA. The corresponding provisions in Part X of the VEA are therefore repealed or modified to only retain the rules that are unique to VEA benefits, such as the backdating of pension review decisions. Part X will continue to provide for certain decisions that may be appealed directly to the Tribunal, such as income support determinations.

Item 96 inserts a note at the end of subsection 174(1) to inform readers that aside from this Part, subsection 134(2) (as amended) authorises Tribunal review of a Board decision.

Item 97 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 which confers jurisdiction to the Tribunal for reviews of certain Commission decisions that do not have a right of appeal to the Board will continue to operate unaffected.

Item 98 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 99 repeals and replaces subsection 176(3) to omit references to subsection 175(1AA) for Board reviews consequential to its repeal by item 87, and to reflect modern draft practices. The effect is that the updated subsection 176(3) will continue to modify the AAT Act to disallow persons from requesting reasons from the decision-maker for the specified reviewable decisions, 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 100 repeals subsection 176(7), consequential to the amendments made by item 38 to replace section 31.

Items 101 and 102 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 a 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 103 amends subsection 177(3) consequential to the repeal of 176(7) by item 99.

Item 104 amends subsection 178(1) to omit 'reviewable' for simplicity and does not affect the operation of the provision.

Item 105 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. (See Schedule 4 items 53 and 68 for terminology updates upon commencement of the single ongoing Act.)

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 106 repeals subsections 215(4) to (6) which are no longer necessary as the requirements regarding an annual report for the Board are set out in section 359DB of the MRCA.

Item 107 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

This Division sets out how the single review pathway operates for circumstances that exist at the time when Part 1 of this Schedule commences. The new arrangements will apply to original determinations made on or after the commencement of this Part. The transitional provisions will continue the existence of the VRB, and preserve the validity of all things done by the Board in accordance with the provisions that existed at the time, and clarify the operation of reviews that are on foot.

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

Item 108 inserts the term *Simplification Act*, an abbreviation which refers to the amendment Act.

Item 109 inserts new *Part 5 – Transitional provisions relating to reviews by the Veterans' Review Board*, which ensures that the VRB is equipped to continue its operations. This Part provides 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 set out 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 *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. The harmonisation of the DRCA review pathway with the VEA and the MRCA will come into operation from this day.

Sections 26, 27 and 28 recognise the nomenclature varies across the three Acts and set out that 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, that are made on or after this Part commences, regardless of when the claim or application was lodged.

Section 29 provides that a person who is a member of the Board under the VEA immediately before review pathway commencement day, is taken to be appointed under section 359C of the MRCA and will continue to hold their position for the remainder of their term of appointment. The clarification about terms and conditions means a Board member will not have their remuneration lowered as a result of the transfer of the legislative provisions to the MRCA. It is appropriate for the remuneration of members to be determined

by the Remuneration Tribunal and the note inserted after paragraph (2)(b) informs readers when a higher level of remuneration may apply.

Sections 30 provides corresponding arrangements with respect to 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 provide for delegations by the Principal Member and by the Minister to the Principal member respectively, that are 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 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 of the MRCA 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 purposes of continuing a review that was not finalised before the review pathway commencement day, this approach 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 353Q(1)	To prescribe conditions for travel expenses in connection with a review applicant's attendance at a Board hearing
subsection 132(6)	subsection 353Q(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 353Q(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 353C(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.

Continued effect of certain instruments

Provision of the old VEA	Provision of the MRCA	Purpose
paragraph 170A(3)(a)	paragraph 353N(3)(a)	To prescribe the amount payable in connection with obtaining relevant medical documentary evidence – single medical condition.
paragraph 170A(3)(b)	paragraph 353N(3)(b)	To prescribe the amount payable in connection with obtaining relevant medical documentary evidence – more than one medical condition.
subsection 170B(2)	subsection 353P(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 that are 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 110 and 111 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 for simplification. These changes do not affect the operation of the definition.

Item 112 amends section 345B to remove the reference to a decision by the Repatriation Commission under an acute support package instrument, as the distinction is no longer necessary upon the merging of the Commissions provided by Schedule 4 of this Bill.

Items 113, 114 and 115 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 116, 117, 118 and 119 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 under the DRCA, consequential to the repeal of the definition of that term from commencement day of the Simplification Act.

Veterans' Entitlements Act 1986

Item 120 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.

Item 121 is a technical amendment to paragraph 31(3)(b) consequential to the change by item 122.

Items 122, 123 and 125 repeal paragraph 31(1)(c), 134(1)(c) and 134(2)(c) respectively, to reflect the merging of the Commissions and that 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 DVA. Transferring all powers to the Repatriation Commission, rather than selecting which powers should be transferred, allows for the Commission to exercise its powers with greater flexibility and certainty. It also means that all powers formerly held by the MRCC will have a repository in the Repatriation Commission.

This schedule will:

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

Divisions 2 and 3 of Schedule 7 set out the transitional provisions relating to the Repatriation Commission and the MRCC.

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 definitions in subsection 5(1) relating to the MRCC and the Repatriation Commission, and consolidate 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
- *Repatriation Commission* is no longer required as a defined term, with the merging of the Commissions.

Items 10 and 11 amend 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 throughout the Act that the Commission may appoint a trustee, or the Commission may assume the office of trustee.

Item 23 repeals and replaces Chapter 9 to abolish the MRCC and sets out the continuation of the Repatriation Commission under this Act, conferring functions and powers that operate across the VEA, DRCA and MRCA. Of note is that the membership of the Repatriation Commission will undergo some changes, as detailed at subsection 360C.

- The Secretary of DVA is to continue to hold the position of President. If the office of President is vacant (for instance, if the Secretary is on a leave of absence), the Acting Secretary will, by default, hold the office of President.
- The provisions will set out for the appointment of two full-time commissioners:
 - one person from a list of names submitted by organisations representing veterans, known as the Repatriation Commissioner
 - one person whom the Minister is satisfied will represent families, known as the Veteran Family Advocate Commissioner.
- The provisions will set out for other appointments on a part-time basis:
 - a person nominated by the Chief of the Defence Force (a variation from the existing two members of the MRCC nominated by the Defence Minister)
 - a person representing Comcare
 - a person representing the Commonwealth Superannuation Corporation and
 - up to three additional commissioners as determined by the Minister.
- There will no longer be a Deputy President position, or a commissioner known as the Defence Engagement Commissioner.

The new Chapter draws largely on Part XI of the VEA, integrated with the provisions and language that were specific to the MRCC. Some of the VEA and previous MRCA sections are replicated with only technical updates to terminology or referenced legislative provisions, or to reflect conventional drafting and notification practices. This table provides a ready reference between the new and old provisions.

MRCA Chapter 9 – Repatriation Commission	Based on ...	Extent of change
Section 360A Simplified outline of this Chapter	-	New – navigation guide
Section 360B Establishment	VEA section 179	Provides for the continuance of the Commission and reflects drafting conventions.
Section 360BA Application of the <i>Public Governance, Performance and Accountability Act 2013</i> to the Commission	VEA section 179A	No change.

MRCA Chapter 9 – Repatriation Commission	Based on ...	Extent of change
Section 360BB Functions of the Commission	VEA section 180 and MRCA section 362	Reflects the merger with the MRCC for activities under this Act, the DRCA and the VEA, and omits the function to establish, operate, or maintain hospitals and similar treatment facilities.
Section 360BC Powers of the Commission	VEA section 181	Reflects drafting conventions and omits the power to acquire, hold and dispose of property.
Section 360C Membership	VEA subsections 182(1), (3) and (4) and MRCA paragraphs 364(1)(b)(ii) and (ii)	Detailed above.
Section 360CA Appointment of Commissioners	VEA subsection 181(2)	Reflects updated terminology and standard appointment practices. A note is added to inform readers that the President of the Commission is not an appointed position.
Section 360CB Period and basis of appointment	VEA subsections 182(5) and (7) and MRCA subsection 364(4)	Reflects the merger with the MRCC and includes a note to inform readers that the <i>Acts Interpretation Act 1991</i> provides guidance on reappointment.
Section 360CC Acting appointments	VEA sections 191, and 193; MRCA sections 367 and 367	Clarifies that a person acting as DVA Secretary will also assume the role of acting President of the Commission. Informs readers that the Secretary's appointment is set out in the <i>Public Service Act 1991</i> . Updates reflect drafting conventions and relies on the <i>Acts Interpretation Act 1991</i> for the rules and power of on acting appointment.
Section 360CD Remuneration	VEA paragraph 184(c), section 185 and MRCA section 369	Limited – updated terminology and reflects drafting conventions. A note is added to inform readers that the President of the Commission is not an appointed position.
Section 360CE Leave of absence	VEA section 186	Includes provision for part-time appointments.
Section 360CF Other paid work	-	New - consistent with the protection on similar appointments, where permission is required to undertake any other paid work. The intent is to ensure the discharge of duties by a full-time Board member is not adversely affected and no conflict of interest arises.
Section 360CG Other terms and conditions	VEA subsection 182(8) and MRCA subsection 365(4)	Limited – updated terminology and reflects drafting conventions.
Section 360CH Resignation	VEA section 187 and MRCA section 371	Updates to terminology and reflects drafting conventions. Also sets out the effective date.
Section 360CI Termination of appointment	VEA subsections 188(1) and (6) and MRCA section 372	Updates to terminology and reflects drafting conventions and termination of appointment practices.

MRCA Chapter 9 – Repatriation Commission	Based on ...	Extent of change
Section 360CJ Suspension of appointment	VEA subsections 188(2) and (5)	Adds that on the recommendation of the Minister, the Governor-General may terminate the appointment of a suspended Commissioner, to continue the suspension for a specified period, or to end the suspension.
Section 360CK Commissioner to disclose any interest in claims etc.	VEA section 189 and MRCA sections 379 and 380	Reflects the merger with the functions of the MRCC and includes a guidance note to inform readers that delegates of the Commission, are subject to disclosure requirements of the <i>Public Service Act 1999</i> or contract conditions, instead of this section.
Section 360CL Convening meetings	VEA subsections 195(1) and (2) and MRCA section 373	Reflects drafting conventions and sets out that a meeting is to be convened within 30 days of the conditions being met.
Section 360CM Presiding at meetings	VEA subsections 195(3) and (5) and MRCA section 374	Limited - reflects drafting conventions.
Section 360CN Quorums	VEA paragraph 195(6)(a) and MRCA section 375	Reflects the updated membership and quorum is to consist of a simple majority. If necessary as a result of a Commissioner not partaking in deliberations due to a conflict of interest, a direction by the Minister, or a requirement under the PGPA rules, the remaining Commissioners at the meeting would constitute a quorum.
Section 360CO Voting at meetings	VEA paragraphs 195(6)(b), (c) and (d) and MRCA subsection 376(2)	The commissioner presiding at a meeting has both a deliberative and, if necessary, a casting vote.
Section 360CP Conduct of meetings	VEA subsection 195(7) and MRCA subsection 378(1)	Updates reflect drafting conventions and relies on the <i>Acts Interpretation Act 1991</i> on meeting participation.
Section 360CQ Minutes	VEA subsection 195(7) and MRCA subsection 378(3)	Limited – reflects drafting conventions.
Section 360CR Decisions without meetings	MRCA section 377	Adds that a Commissioner is not entitled to vote in a decision without a meeting, if they would not have been entitled to vote on that proposal in a meeting. Consistent with decisions made at Commission meetings, there is a requirement that records be kept of all decisions made without meetings.
360D Staff	VEA section 196 and MRCA section 382	Adds that staff are subject to the directions of the Commission.
Section 360DA Contractors	VEA paragraph 181(3)(d) and MRCA section 383	Limited – reflects drafting conventions.
Section 360DB Delegation by the Commission	VEA section 213 and MRCA section 384	Reflects drafting conventions and includes a guidance note refers readers to sections 34AA to 34A of the <i>Acts Interpretation Act 1901</i> , which

MRCA Chapter 9 – Repatriation Commission	Based on ...	Extent of change
		contain the principles relating to the effect of delegation and the exercise of delegated powers.
Section 360DC Annual Report	VEA subsection 215(4) and MRCA section 385	Limited – updates to terminology and reflects drafting conventions, including a note to inform readers that the <i>Acts Interpretation Act 1991</i> sets out extra requirements.

Item 24 repeals paragraph (d) of the definition of a *receiving Commonwealth body* in subsection 409(5) which refers to the Repatriation Commission, as the distinction is no longer necessary, upon the merging of the Commissions as a single administrative body.

Items 25 updates paragraphs 410(1)(a) and (2)(a) and 411(1)(a), 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. The item replicates the existing provisions to provide that the Commission may apply the contribution for a purpose specified by the donor, or for application by the Commission, as it deems fit, for carrying out its functions or duties.

The Commission may be appointed as a trustee, may act as a trustee (for example, under the will of a veteran who bequeaths property on trust), and it may decline to do so, or accept an appointment conditionally. The provision also sets out the powers regarding the investment of trust funds, allowing the management of the investment portfolio be delegated, while the Commission retain the duties and liabilities as trustee.

Items 27, 28 and 29 amend subsection 430A, which deals with the administrative arrangements for managing account details and a person’s payments under the VEA and this Act. The items update the heading of subsection 430A and make changes to subsection (1) to insert the new defined term of *Commissioner*. Subsections (2) to (4) are replaced to reflect the merging of the Commissions, thus the disclosure obligations are no longer applicable as there will be a single administrative body across the two Acts. Corresponding changes to the VEA are made by items 60 and 61.

Items 30 to 39 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. In some circumstances, it may be necessary to appoint trustees to manage a person’s payments. This is not a common occurrence but may be needed where the person does not have the capacity to look after their compensation due to a legal disability, or for children of deceased veterans without a primary carer. 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 40 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 41 and 42 insert a definition of *Commission* referring to the meaning in the MRCA and repeals the term *MRCC*.

Item 43 repeals section 110, which is no longer necessary as trustee provisions are consolidated under the MRCA.

Items 44, 45 and 46 replace references to the MRCC with Commission, in subsections 4(1) and 115(2) and section 140, and throughout this Act.

Veterans' Entitlements Act 1986

Item 47 makes a technical change to section 5 *Definitions – simplified outline*, consequential to item 49.

Item 48 repeals section 5A which deals with definitions relating to the Repatriation Commission.

Items 49 to 56 reflect the update or deletion of provisions and definitions in the VEA, to give effect to the move of the legislative authority for the Commission to the MRCA.

Item 57 updates section 58C which deals with the general administration of payments to refer to the trustee provisions in the MRCA.

Item 58 updates subsection 91(8) which deals with the preparation of the Repatriation Pharmaceutical Benefits Scheme to reflect the merging of the Commissions.

Item 59 updates the reference to the MRCC in the note at the end of section 106 to reflect the Commission may also grant special assistance under the MRCA.

Items 60 and 61 update references to the use and disclosure of account details in section 122 and interaction with the *Privacy Act 1988*, which corresponds to section 430A of the MRCA. Changes to subsection 122AA(1) reflects the new defined term of *Commissioner* in subsection 5Q(1). The items align with the changes made by items 27 to 30 to the MRCA.

Item 62 repeals paragraph (c) of the definition of *receiving Commonwealth body* in section 131 referring to the MRCC, as the term is redundant.

Item 63 repeals Part XI, which is no longer necessary, as the continuation of the Repatriation Commission, its functions and powers, are set out in Chapter 9 of the MRCA.

Item 64 repeals sections 200 to 202B dealing with the Commission accepting contributions and with trusts and trustees, which are no longer necessary, as the provisions which set out trustee arrangements are contained in the MRCA.

Items 65 updates the reference to the MRCC in subsection 203(4) to reflect the merging of the Commissions for the purposes of administering international arrangements.

Items 66, 67 and 68 amend section 212 which deals with delegation by the Minister and reflect the new defined term of *Commissioner* being inserted in subsection 5Q(1).

Item 69 repeals sections 213 and 215 which is no longer necessary, as delegation by the Commission and the preparation of an annual report are set out in sections 360DB and 360DC of the MRCA respectively.

Schedule 5 - Repatriation Medical Authority and Specialist Medical Review Council

This schedule transfers the legislative basis for the administration of the SOPs from the VEA to the MRCA, to reflect the application of only the MRCA to new compensation claims from the commencement date.

Divisions 4 and 5 of Schedule 7 set out the transitional provisions relating to the Authority and the Review Council, including the application of SOPs that are in force as at the commencement date.

Military Rehabilitation and Compensation Act 2004

Item 1 amend section 3 which describes the general purpose and practices of the Act to add that the Repatriation Medical Authority (RMA) and the Specialist Medical Review Council, which are dealt with in Chapters 9A and 9B respectively.

The RMA's role is to determine SOPs for any disease, injury or death that could be related to military service, based on sound medical-scientific evidence, while the Council reviews SOPs and decisions of the RMA.

Items 2 to 6 amend subsection 5(1) to update various definitions relating to the RMA and the Review Council, incorporating terms from section 5AB of the VEA:

- *Authority* is added to mean the RMA as continued under section 370B, while the term *Repatriation Medical Authority* is repealed;
- *Authority member* and *Councillor* are added and refer respectively to a member of the RMA, including the Chair, and to a member of the Review Council, including the Convenor;
- *presiding Councillor* and *related to service* are added as signpost definitions, pointing readers to subsections 380DK(3) and 370C respectively;
- *Review Council* is added to mean the RMA as continued under section 380B,
- *sound medical-scientific evidence* is a signpost definition, pointing readers to subsection 380B.
- *Statement of Principles* is repealed and replaced with references to provisions of this Act, reflecting the transfer of authority for these determination.

Items 6 updates the reference in sections 22 (simplified outline of Part 2 of Chapter 2) to reflect that SOPs are made under Chapter 9A.

Items 7 to 11 are technical amendments to section 332 (simplified outline of Part 2 of Chapter 7), to replace legislative references to the VEA with the corresponding provisions in this Act about the RMA and the Review Council. Changes are also made to adopt the abbreviation *Authority* in place of RMA.

Items 12 to 19 update references to actions of the RMA in sections 338 and 339, to reflect that SOPs provisions are contained in this Act.

Items 20 to 23 are technical amendments to section 340, which sets out that Commission may make determinations overriding an RMA decision in relation to SOPs. The items replace legislative references to the VEA with the corresponding provisions in this Act, and adopt the abbreviation *Authority* in place of RMA.

Item 24 repeals subsection 340(7), with the definition of *related to service* being set out in new section 370C.

Item 25 omits the reference to the VEA in paragraph 341(1)(b) which deals with the application of SOPs on review of a decision, in recognition of SOPs being made under this Act.

Item 26 inserts new Chapter 9A dealing with the RMA and Chapter 9B for the Review Council, drawing largely on Part XIA of the VEA. Some of the VEA sections are replicated with only technical updates to terminology or referenced legislative provisions, or to reflect conventional drafting and notification practices. Any substantive differences are described in the two summary tables below.

Chapter 9A dealing with the RMA is set out in the first table and Chapter 9B for the Review Council is set out in the second table.

MRCA Chapter 9A - RMA	Based on VEA...	Extent of change
Section 370A Simplified outline of this Chapter	-	New – navigation guide
Section 370B Establishment	Section 196A	Includes standard reference that the Authority is a body corporate that can acquire and disposal of assets
Section 370BA Application of the <i>Public Governance, Performance and Accountability Act 2013</i> to the Authority	Section 196AA	Limited – updates to terminology
Section 370BB Functions and powers of the Authority	Section 196B	Summarises the functions set out in the VEA section
Section 370C Meaning of <i>related to service</i>	Subsection 196B(14)	No change
Section 370CA Meaning of <i>sound medical-scientific evidence</i>	Subsection 5AB(2)	No change
Section 370CB Determining Statement of Principles - reasonable hypothesis	Subsection 196B(2)	Reflects service classifications as described under this Act
Section 370CC Determining Statement of Principles - balance of probabilities	Subsection 196B(3)	Reflects service classifications as described under this Act
Section 370CD Initial investigation	Subsections 196B(4) and (5)	Limited– updates to terminology and includes a note which refers to section 370CG
Section 370CE Subsequent investigation	Subsections 196B(7), (7A)	Limited – updates to terminology
Section 370CF Circumstances when investigation not required	Subsection 196C(4) and Section 196CA	Limited – updates to terminology
Section 370CG Action following investigation	Subsections 196B(5), (6), (8) and (9); section 196J	Provisions are grouped under the relevant heading: <i>Decision to determine etc a SOP</i> , <i>Decision not to determine etc a SOP</i> ; and <i>Notice of decision not to determine etc a SOP</i> New subsection (7) provides that a declaration not to determine a SOP is not a legislative instrument. These decisions and the RMA's statements of

MRCA Chapter 9A - RMA	Based on VEA...	Extent of change
		reasons represent policy guidance for the exercise of decision-making functions and powers set out in legislation, on the particular circumstances in which the SOPS do not apply.
Section 370CH Request for investigation or review	Section 196E	Limited – updates to terminology and reflects drafting conventions
Section 370CI Authority may consolidate requests	Section 196CB	Limited – updates to terminology
Section 370CJ Notice of investigation	Section 196G	Limited– updates to terminology and notification practices [No invalidity clause at subsection (3) is the case in the existing law. It is intended to give the practical effect of the outcome of an investigation or review by the RMA, where an administrative error may have resulted in non-compliance with the duty of notification. Whilst it is not a reviewable action, there is remedy through the courts on error of law.]
Section 370CK Powers of Authority with respect to investigations	Subsections 196C(1) to (3)	Limited – updates to terminology
Section 370CL Submissions to the Authority	Section 196F	Limited – updates to terminology
Section 370CM Authority to send information to Review Council	Section 196K	Limited – updates to terminology
Section 370CN Action following review by Review Council	Subsections 196B(10) to (13AA)	Updates to terminology and the order of the provisions. Subsection 370CN(7) overrides subsection 12(2) of the <i>Legislation Act 2003</i> to provide the same outcome as was produced by subsection 13AA of the VEA. The SOP commences from the day the Review Council directed the RMA to determine or amend the particular SOP, and this date is specified in the SOP. It is therefore appropriate to allow SOPS determined or amended under this section to operate retrospectively, rather than from the date of registration of the SOP. This approach reflects the distinct roles of the Review Council and the RMA and the sequential actions for managing SOPS. The transfer to the MRCA does not change the legal effect of the provisions. Subsection 370CN(8) also clarifies that the Authority may amend a SOP that is made under this section as a result of a direction from the Review Council, in the same manner as a SOP that it has determined or amended under sections 370CB or 370CC.
Section 370D Membership	Subsection 196L(1)	Limited – updates to terminology
Section 370DA Appointment of Authority members	Subsection 196L(3) & section 196M	Limited – reflects drafting conventions, including a note to inform readers that the <i>Acts Interpretation Act 1991</i> provides guidance on reappointment.

MRC Chapter 9A - RMA	Based on VEA...	Extent of change
Section 370DB Basis and period of appointment	Subsection 196L(2) & Section 196N	Limited – updates to terminology and reflects drafting conventions
Section 370DC Acting appointments	Section 196Q	Limited – updates to terminology and reflects notification conventions
Section 370DD Remuneration	Section 196S	Limited – updates to terminology and reflects drafting and notification conventions
Section 370DE Other terms and conditions	-	New – sets out that other terms and conditions of an appointment may be set by the Minister, consistent with standard appointment practices
Section 370DF Resignation	Section 196O	Updates to terminology and sets out the effective date
Section 370DG Termination of appointment	Section 196P	Updates to terminology and reflects drafting conventions. Includes non-compliance with the PGPA as an additional ground for termination.
Section 370DH Convening meetings	Subsection 196R(1)	Limited – updates to terminology and reflects drafting conventions (see also Section 370EB)
Section 370DI Presiding at meetings	Subsection 196R(2)	No change.
Section 370DJ Quorum	Subsection 196R(3)	Additional clause to provide that, if necessary, as a result of an Authority member not partaking in deliberations due to a requirement under the PGPA rules, the remaining Authority members at the meeting would constitute a quorum.
Section 370DK Voting at meetings	Subsection 196R(4)	Updates to terminology and makes clear that the Chair does not have a casting vote.
Section 370DL Conduct of meetings	Subsection 196R(6)	Updates to terminology and includes a note to inform readers that the <i>Acts Interpretation Act 1991</i> provides for members to participate in meetings by telephone and other electronic means of communication.
Section 370DM Minutes	Subsection 196R(5)	Limited – updates to terminology and reflects drafting conventions
Section 370E Staff	Section 196T	Limited – updates to terminology and reflects drafting conventions
Section 370EA Consultants	Section 196U	Limited – updates to terminology and reflects drafting conventions
Section 370EB Delegation by Chair of the Section Authority	Subsection 196R(1)	Sets out the authority to delegate and reflects drafting conventions, including a note to inform readers that the <i>Acts Interpretation Act 1991</i> provides further guidance
Section 370EC Annual report	Section 196UA	Limited – updates to terminology and reflects drafting conventions, including note to inform readers that the <i>Acts Interpretation Act 1991</i> provides further guidance

MRC Chapter 9B Review Council	Based on VEA...	Extent of change
Section 380A Simplified outline of this Chapter	-	New – navigation guide
Section 380B Establishment	Section 196A	Includes standard reference that the Review Council is a body corporate that can acquire and disposal of assets
Section 380BA Application of the <i>Public Governance, Performance and Accountability Act 2013</i> to the Review Council	Section 196AA	No change
Section 380BB Functions and powers of the Review Council	Section 196W	Summarises the functions set out in the VEA section
Section 380C Review of decision relating to Statement of Principles	Subsections 196W(2) to (5)	Limited – updates to terminology and reflects notification conventions
Section 380CA Review of decision not to carry out investigation	Subsections 196W(6) to(8); Subsection 196X (2)	Limited – updates to terminology and reflects notification conventions
Section 380CB Request for review of contents of Statement of Principles	Section 196Y	Limited – updates to terminology
Section 380CC Request for review of decision of Authority not to carry out an investigation	Section 196Z	Limited – updates to terminology
Section 380CD Notice of investigation	Section 196ZB	Limited– updates to terminology and notification practices [No invalidity clause at subsection (3) is the case in the existing law. It is intended to give the practical effect of the outcome of an investigation or review, where an administrative error may have resulted in non-compliance with the duty of notification. Whilst it is not a reviewable action, there is remedy through the courts on error of law.]
Section 380CE Submissions to Review Council	Section 196ZA	Limited – updates to terminology
Section 380CF Medical expenses	Section 196ZN	Limited – reflects drafting conventions
Section 380CG Travelling expenses for obtaining medical evidence	Section 196ZO	Limited – updates to referenced legislative provisions
Section 380CH Advance of travelling expenses for obtaining medical evidence	Section 196ZP	Limited – updates to referenced legislative provisions
Section 380CI Travelling expenses for making oral submissions	Section 196ZQ	Limited – updates to referenced legislative provisions
Section 380D Membership	Subsection 196ZE(1)	Limited – reflects drafting conventions

MRCA Chapter 9B Review Council	Based on VEA...	Extent of change
Section 380DA Appointment of Councillors	Subsections 196ZE(2) and (5)	Limited – reflects drafting conventions, including a note to inform readers that the <i>Acts Interpretation Act 1991</i> provides guidance on reappointment.
Section 380DB Qualification for appointment	Subsections 196ZE(3) and (4) and 196ZF	Limited – reflects drafting conventions
Section 380DC Basis and period of appointment	Subsection 196ZE(2) and section 196ZG	Limited – reflects drafting conventions
Section 380DD Acting appointments	Section 196ZJ	Reflects drafting and notification conventions, and clarifies the circumstance may include where the Convenor is unable to perform their duties for any reason
Section 380DE Remuneration	Section 196ZL	Limited – reflects drafting and notification conventions
Section 380DF Other terms and conditions		New – sets out that other terms and conditions of an appointment may be set by the Minister, consistent with standard appointment practices
Section 380DG Resignation	Section 196ZH	Reflects drafting conventions and sets out the effective date
Section 380DH Termination of appointment	Section 196ZI	Reflects drafting convention and includes non-compliance with the PGPA as an additional ground for termination.
Section 380DI Constitution of Review Council for reviews	Subsection 196ZK(1)	Limited – reflects drafting conventions
Section 380DJ Convening meetings	Subsection 196ZK(4)	Limited – reflects drafting conventions (see also Section 380EA).
Section 380DK Presiding at meetings	Subsections 196ZK(2) and (3)	Limited – reflects drafting conventions
Section 380DL Voting at meetings	Subsections 196ZK(5)	Reflects drafting conventions and makes clear that the person presiding at the meeting does not have a casting vote
Section 380DM Conduct of meetings	Subsection 196ZK(7)	Includes a note to inform readers that the <i>Acts Interpretation Act 1991</i> provides for members to participate in meetings by telephone and other electronic means of communication.
Section 380DN Minutes	Subsection 196ZK(6)	Limited – reflects drafting conventions
Section 380E Staff	Section 196ZM	Limited – reflects drafting conventions
Section 380EA Delegation by Convenor of the Review Council	Subsection 196ZK(4)	Sets out the authority to delegate and reflects drafting conventions, including a note to inform readers that the <i>Acts Interpretation Act 1991</i> provides further guidance

Item 27 inserts new sections 411A and 411B to set out copyright details and the arrangements to provide reasonable access to information considered by the RMA or the Review Council. As the details for the two entities are identical, the respective VEA provisions - sections 196H and 196ZC for copyright in submissions, and section 196I and 196ZD for access to information - are combined. The updates to reflect drafting conventions do not otherwise change the intent or operation of these provisions.

Veterans' Entitlements Act 1986

Item 28 repeals section 5AB, consequential to the definitions relating to the RMA and Review Council being inserted in the MRCA.

Item 29 inserts *Authority* in subsection 5Q(1) which has the same meaning as in the MRCA.

Item 30 repeals Review Council-related definitions in subsection 5Q(1), as the necessary terms are contained in the MRCA.

Item 31 repeals the note in subsection 5T(1) which refer readers to Parts IX, XIA and XIB for the lodgement of documents with the VRB, RMA and the Review Council, consequential of those parts being repealed.

Items 32, 33, 34 and 36 update references to RMA actions in section 120A(2) to reflect SOPs - reasonable hypothesis provisions being contained in the MRCA.

Item 35 replaces the reference to subsection 180A(2) in paragraph 120A(3)(b) in relation to relevant determinations to establish a reasonable hypothesis, with subsection 120C(2), consequential to section 180A contained in Part XI being repealed. This update does not change the intent or operation of the provision.

Items 37, 38, 39 and 41 update references to RMA actions in subsection 120B(2) to reflect SOPs - reasonable satisfaction provisions being contained in the MRCA.

Item 40 updates the reference to subsection 180A(3) in subparagraph 120B(3)(b)(ii) in relation to relevant determinations to establish a connection on the balance of probabilities, to subsection 120C(3), consequential to section 180A contained in Part XI being repealed. This update does not change the intent or operation of the provision.

Item 41 – see item 37.

Item 42 inserts new subsection 120C to deal with determinations by Commission overriding RMA's decisions in relation to SOPs. The item is consequential to section 180A contained in Part XI being repealed and does not change the intent or operation of the provision.

Items 43 and 44 replace paragraphs 129A(1)(a) and (d) in relation to the manner of issuing notices or other documents to remove references to the VRB, the RMA and the Review Council.

Item 45 repeals Parts XIA and XIB, which are the parts that deal with the RMA and the 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 to circumstances which exist at the time when the legislation is enacted.

The transitional provisions of this Bill will:

- apply the MRCA to claims for injuries, diseases and deaths from the date of commencement
- allow 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) and cease the appointments of members of the MRCC
- continue the existence of the RMA and the SMRC
- preserve the validity of all things done by the Commissions, the RMA and the SMRC in accordance with the provisions that existed at the time, as well as transfer proceedings or requests for investigations that are on foot
- create a time-limited regulation making power to allow more prescriptive transitional arrangements to be made where necessary.

Military Rehabilitation and Compensation Act 2004

Item 1 repeals subsection 53B(4) which refers to sections in Part 2 of the MCTPA, consequential to the repeal and replacement of Part 2 of that Act by item 8.

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

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 through other parts of this Bill, while consequential amendments are set out in Schedule 8.

Item 3 amends subsection 4(1) to insert 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 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) [inserted by Part 3 of Schedule 2] are regarded as being *related to defence service*.

Item 7 repeals the current section 6 and substitutes it with a new provision to set 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 (in columns 2, 3 or 4 respectively), subject to the particular circumstances that are specified.

MRCA compensation or provision of treatment is precluded for...	If person has received or is entitled to receive compensation, a pension or provision of treatment for the same injury, disease, incapacity, or death, under...		
	DRCA	previous Acts	VEA
Permanent impairment MCTPA 12(1)	Section 24 or 25	1912 Act, 1930 Act or 1971 Act	Part II or IV for that impairment
Incapacity for work/service MCTPA 12(2), (3) (see additional information below)	Section 19, 20, 21, 21A, 22 or 31, for the same period of incapacity	1912 Act, 1930 Act or 1971 Act, for the same period of incapacity	Part II or IV for that incapacity and period
Death MCTPA 12(4) to (6)	Section 17	1912 Act, 1930 Act or 1971 Act	Section 13A (see additional information below)
Funeral expenses MCTPA 12(7)	Section 18	1912 Act, 1930 Act or 1971 Act	Section 98B payment to the estate
Medical expenses, including associated journey and accommodation costs MCTPA 12(8)	Section 16	1912 Act, 1930 Act or 1971 Act	-
Treatment MCTPA 12(9)	-	-	Subsection 85(1) or (2) for the same period A guidance note refers readers to section 117 which sets out the circumstances when treatment may be provided under the MRCA.

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.

Compensation relating to incapacity for service or work

Subsection 12(3) is inserted to make clear that a person may receive MRCA incapacity payments for another period in respect of the same injury or disease, despite the person having previously received DRCA incapacity payments. A guidance note informs readers that section 92 sets out the arrangements for the transition of DRCA incapacity payees as at the date of commencement to the MRCA.

Compensation relating to a person's death

Subsection 12(4) precludes MRCA death compensation where a person has entitlements under the DRCA or predecessor Acts for that death, as a service related death has already been established.

Subsection 12(5) and (6) provides for the interactions with the VEA, recognising that section 13A of that Act provides compensation to dependants with no claim required, where the deceased veteran had a high level of impairment or was a former prisoner-of-war and the death does not need to be service related.

For deaths *prior* to the date of commencement and the dependants are entitled to VEA pensions (through section 13A or as a result of a claim under the VEA), MRCA death compensation is not payable, other than the provision of education assistance for a VEA eligible child or VEA eligible grandchild under the transition from VCES to MRCAETS.

For deaths *prior* to the date of commencement other than the circumstances covered above, a claim may be made under the MRCA *on or after* commencement date. Where liability for the death is accepted under section 12 of the MRCA, the dependants are eligible to receive compensation under Chapter 5 of that Act, excluding the amount provided under subsection 234(2) of the MRCA. The rationale is that the death occurred before the single ongoing Act commences and the 'additional lump sum' for death is not a feature of the VEA benefit structure. The wholly dependent partner will have access to convert their weekly entitlement to an age-based lump sum.

The preclusion does not apply in respect of a death that occurs on or after commencement date. If a claim is made for the death and liability is accepted under section 12 of the MRCA, the dependants are eligible to receive compensation under Chapter 5 of that Act. Any entitlements the dependants have through section 13A of the VEA will be taken into account in the calculation of the MRCA compensation to prevent dual compensation.

Item 10 repeals and replaces subsection 13(1) to provide that 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 for in the MRCA.

Item 11 inserts new section 14A to provide for a person's entitlements under the VEA and the DRCA to be taken into account for calculating the ADA payable, in the same manner as how section 14 operates for SRDP.

In addition to the offsets provided under section 220C of the MRCA, the maximum weekly amount of ADA is also subject to reduction by:

- any disability pension payments for a war or defence-caused injury or disease made under the VEA and

- the weekly equivalent of a lump sum permanent impairment payment, interim compensation or additional compensation for permanent impairment made under the DRCA.

This allows a consistent approach where the ADA and the SRDP are both adjusted by any impairment compensation the person has received or is receiving. The section also ensures that ADA does not result in a rate higher than what a VEA EDA recipient would receive.

Item 12 amends the heading to Part 4 to reflect drafting conventions.

Item 13 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, inserted by item 16.

Item 14 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 15 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 DRCA are incorporated into other parts of the Bill, while consequential amendments are set out in Schedule 8.

Item 16 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 and transition the appointment of commissioners and any acting commissioners, other than the Deputy President for the remainder of their term of appointment. The clarification about terms and conditions means a commissioner/acting commissioner will not have their remuneration lowered as a result of the merging of the Commissions. It is appropriate for the remuneration to be determined by the Remuneration Tribunal and the note inserted after paragraph 41(2)(b) informs readers when a higher level of remuneration may apply.

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 preserve the engagement of staff and contractors who perform services for the Commission, as existed immediately before date of commencement.

Section 46 preserves any delegation made under section 213 of the old VEA, as existed immediately before date of commencement, 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 date of 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 MRCC 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 section 180A, that is determinations in respect of a kind of injury or disease because the RMA 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 and transition the appointment of members of the MRCC nominated by the SRC Minister and the Defence Minister, and any acting members, at date of commencement, for the remainder of their term of appointment. The clarification about terms and conditions means an MRCC member/acting member will not have their remuneration lowered as a result of the merging of the Commissions. It is appropriate for the remuneration to be determined by the Remuneration Tribunal and the note inserted after paragraph 54(2)(b) informs readers when a higher level of remuneration may apply.

Section 56 terminates the appointment of the two MRCC members appointed because they were members of the Repatriation Commission, as this arrangement is no longer necessary with the merging of the Commissions.

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, and 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. This would also allow for example, for notices issued after date of commencement that may refer to the discontinued MRCC, to remain valid and sufficient to

meet any statutory notification requirements. Subsection (2) provides for the regulations to specify any exceptions.

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 and confers jurisdiction on the Federal Court and state/territory Supreme Court if the terms cannot be agreed.

Division 4 - Transitional provisions relating to the Repatriation Medical Authority

Subdivision A - Continuance of the Authority

Sections 67 and 68 continue the appointment of members of the RMA and the Chair under the MRCA for the balance of their term. The clarification about terms and conditions means a RMA member or the Chair will not have their remuneration lowered as a result of the transfer of the legislative provisions to the MRCA. It is appropriate for the remuneration of RMA members or the Chair to be determined by the Remuneration Tribunal and the note inserted after paragraphs 67(2)(b) and 68(2)(b) inform readers when a higher level of remuneration may apply.

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 as if they were engaged 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 2026, 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 date of commencement, avoiding the need for any transfer or assignment.

Section 74 preserves any SOPs made under the VEA and in force immediately prior to date of commencement, as if it had been made under the MRCA.

Section 75 preserves any requests for investigation or review received by the Authority before the commencement date and not yet completed, 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.

Division 5 - Transitional provisions relating to the Specialist Medical Review Council

Subdivision A - Continuance of the Review Council

Sections 78 and 79 preserves and transfers the appointment of members of the Review Council and the Convenor for the balance of their term, as if the appointment was made under the MRCA. The clarification about terms and conditions means a Review Council member and the Convenor will not have their remuneration lowered as a result of the transfer of the legislative provisions to the MRCA. It is appropriate for the remuneration of Review Council members and the Convenor to be determined by the Remuneration Tribunal and the note inserted after paragraphs 78(2)(b) and 79(2)(b) inform readers when a higher level of remuneration may apply.

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 date of commencement, avoiding the need for any transfer or assignment.

Section 83 preserves any requests for review of SOPs by the Review Council that were made prior to the commencement date not yet completed, 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 and not yet completed, 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 that are in force immediately prior to date of commencement, as if those regulations had been made under the MRCA.

Section 87 preserves any directions made by the Convenor 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

Sections 88 and 89 set out that the provisions which switch off the operation of various rules under the DRCA and the VEA to preclude certain claims and applications do not affect claims and applications that are lodged and not yet determined prior to the date of commencement. There are guidance notes in each section to inform readers that certain pending claims are taken to be claims made under the MRCA. These arrangements are set out in section 93 (pending claims for DRCA incapacity payments), section 106 (pending claims for VEA funeral compensation), section 107 (pending claims for DRCA funeral compensation), section 110 (pending claims for compensation relating to a prisoner of war) and section 112 (pending claims relating to education assistance).

Claims made on or after commencement date are taken to be claims under section 319 of the MRCA.

Section 90 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 non-warlike service for the purposes of the MRCA.

Section 91 provides that the amendments in the Simplification Act relating to permanent impairment apply to a claim made on or after date of 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 92 implements the transfer of recipients of DRCA incapacity payments to the MRCA, for persons being paid compensation under the relevant provisions of the old DRCA immediately before the commencement date, without requiring a claim to be lodged under the MRCA. Section 24A applies and the Commission is deemed to have accepted liability for the person's DRCA injury or disease.

For the administration of these payments, the provisions of the old DRCA would continue to apply for a week that ends before the 'transfer week', that is, the incapacity payments of persons subject to this section would be calculated in accordance with the old DRCA until the first week that starts on or after the commencement day.

Thereafter, sections 85, 86, or 87 of the MRCA would provide the rules that are applicable based on the member type, for working out normal earnings, actual earnings and the impact of Commonwealth superannuation benefit the person is receiving or has received on their incapacity payments. The corresponding rules for incapacitated former members are set out in section 118 of the MRCA.

The normal earnings for persons who were previously Permanent Forces members or continuous full-time Reservists will include the remuneration loading allowance. The loading reflects the non-financial components of the ADF remuneration package, such as free medical and dental and subsidised housing, and compensates for the loss upon separation from the ADF. In addition, an allowance covered by subsection 8(1) of the old DRCA will be recognised for the purposes of determining 'compensable pay-related allowance'.

In addition, the deduction of 5% of the person's normal weekly earnings from the amount of compensation will cease, as this provision does not exist in the MRCA. The deduction is part of the calculation rules carried forward into the DRCA from the SRCA, intended to represent the contribution that the person would have been making to their superannuation scheme if still employed. DRCA compensation recipients have raised this 'notional superannuation contribution' as an inequity, as the deduction is not in fact applied for their benefit. There will be a beneficial outcome for DRCA incapacity payment recipients upon their transition to the MRCA.

Subsection 92(4) provides a saving provision for the arrangements under section 22 of the old DRCA to continue without interruption or transfer to the MRCA, with respect to an incapacity payment recipient who is maintained in a hospital, nursing home or similar facility immediately before the commencement date.

Section 93 provides that if a claim was made for compensation under the incapacity payment provisions of the DRCA before the date of commencement, and the claim was undetermined after commencement, the claim is taken to have been made under the MRCA.

Section 94 provides for instruments that refer to the DRCA incapacity provisions to have continued effect for recipients who have transferred to the MRCA or are maintained under the DRCA, as set out in section 92.

Section 95 preserves the grant of an acute support package under the DRCA before the date of commencement, if the period of support has not ended and the decision has not otherwise been revoked.

Section 96 applies the amendment of section 30D of the VEA for the offsetting of DCP to any days on or after the date of commencement for the period of MRCA incapacity payments, regardless of when the periodic payments commences.

Section 97 provides that liability restrictions on the use of tobacco as amended by the Simplification Act apply to claims made on or after date of 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 98 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 duty as a member.

Section 99 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 a claim made before, on or after the date of commencement but the person must have died on or after the commencement date.

Section 100 applies amendments in the Simplification Act concerning overpayments and debts. Subsection 100(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 100(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 100(3) provides that amendments relating to the write off or waiver of debts apply to debts before, on or after the date of commencement.

Subsection 100(4) clarifies that despite the repeal by this Schedule, section 114A of the DRCA which requires notice to the Commission of the person's retirement continues to have effect on a person who retires prior to the commencement of the Simplification Act. Equally, section 114B will continue to allow for the recovery of an overpayment directly from the person's superannuation fund in this circumstance.

Section 101 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 from the date of commencement.

Section 102 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 103 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 103(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 104 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 from the date of commencement.

Subdivision B - Amendments made by Schedule 2

Section 105 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 that date, except where section 268AA of the MRCA applies. Section 268AA which replicates section 98B of the VEA to provide automatic payment of funeral compensation to estate of certain deceased members only applies in relation the funeral of a person who dies on or after the date of commencement.

Section 106 provides that if an application 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 107 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 108 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 on or after it.

Section 109 implements the transfer of VEA prisoner of war recognition supplement recipients to the MRCA by continuing the application of Part VIB of the old VEA for the transfer fortnight, that is, the fortnight that ends before the date of commencement, without requiring a claim to be made.

Section 110 provides that if a claim was made under the Acts listed in subsection 110(1) for compensation relating to a prisoner of war before the date of commencement and the claim was undetermined after commencement, the claim is taken to have been made under the MRCA.

Section 111 transfers the recipients of a payment under the VCES to the MRCA education scheme established by section 258 of that Act.

Section 112 provides that where an application relating to education assistance has been made but not yet determined under sections 116B, 116CB of the old VEA, or the VCES, the application is taken to have been made under the MRCA.

Section 113 provides that if a review of the Commission's decision relating to a person's status as an *eligible child* under section 116C of the VEA or an *eligible grandchild* of a Vietnam veteran under section 116CC of the VEA is not yet finalised at the date of commencement, the review is to continue under the VEA as though the provisions have not been repealed. Subsection (2) makes clear that a review application that is made to the Tribunal before the date of commencement is also unaffected.

Section 114 preserves certain education assistance 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 115 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 116 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 117 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 under the VEA for a war or defence-caused injury, the person's treatment is to be provided exclusively under the MRCA.

Section 118 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 119 provides for the presumptive liability provisions to apply with respect to a liability claim lodged on or after the date of commencement.

Section 120 provides that the amendments in the Simplification Act concerning when persons are eligible to make a choice to receive SRDP in section 199 apply to an offer that is made on or after the date of commencement.

Subdivision C - Amendments made by Schedule 6

Section 121 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 122 establishes a power to make regulations in respect of matters of a transitional nature following the commencement of the Simplification Act to allow for more prescriptive transitional arrangements to be made where necessary. The intention of this amendment is to ensure that the transition to a single Act is effective.

Subsection (2) recognises that the transitional regulations may need to provide for the conversion of lump sums to weekly amounts to ensure the offsetting of ADA operates as intended.

Item 17 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 MRCC, and replacing them where necessary with references to the MRCA and the Repatriation Commission. Updates are also made to reference the corresponding provisions of the MRCA as required. A drafting convention is adopted for references to the Veterans' Affairs Department or the Minister for Veterans' Affairs, which points to section 1 of the MRCA

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.

The Bill makes consequential amendments to these other Commonwealth legislation:

- *Aged Care Act 1997*
- *Aged Care Quality and Safety Commission Act 2018*
- *Aged Care (Transitional Provisions) Act 1997*
- *Age Discrimination Act 2004*
- *A New Tax System (Family Assistance) Act 1999*
- *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*
- *Australian Veterans' Recognition (Putting Veterans and Their Families First) Act 2019*
- *Child Support (Assessment) Act 1989*
- *Child Support (Registration and Collection) Act 1988*
- *Data matching Program (Assistance and Tax) Act 1990*
- *Defence Force Discipline Act 1982*
- *Dental Benefits Act 2008*
- *Disability Discrimination Act 1992*
- *Health Insurance Act 1973*
- *Higher Education Support Act 2003*
- *Housing Australia Future Fund Act 2023*
- *Income Tax Assessment Act 1936*
- *Income Tax Assessment Act 1997 (ITAA 1997)*
- *My Health Records Act 2012*
- *National Cancer Screening Register Act 2016*
- *National Health Act 1953*
- *Safety, Rehabilitation and Compensation Act 1988*
- *Social Security Act 1991*
- *Student Assistance Act 1973*
- *Superannuation Act 1976*
- *Treatment Benefits (Special Access) Act 2019*

Part 1 – Main amendments

Aged Care Act 1997

Items 1, to 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 in relation to the disclosure of information to DVA and the use of information so disclosed. .

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 DVA.

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 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 DVA.

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.

Item 29 amends subparagraph 46-20(2)(n)(iv) to reflect drafting convention for the purpose of referring to the Secretary of DVA in the Commonwealth Scholarships Guidelines.

Items 30 and 31 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 32 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 33 amends the definition of *Veterans' Affairs Secretary* in subsection 6(1) to reference the MRCA instead of the VEA.

Item 34 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 35 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 36 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 37 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 38 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 39 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 40 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 41 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 42 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 43 to 49 amend section 52-114 which explains the income tax treatment of ‘ordinary’ MRCA payments and payments made due to the person’s death, and 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
- 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
- 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
- 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
- a reference to subparagraph 242(1)(a)(iv) in item 13 and a reference to subparagraph 255(1)(c)(iv) in item 15, to provide that continuing permanent impairment compensation and incapacity payments for a wholly dependent partner and for eligible young persons, due to the death of an ADA veteran, are exempt from income tax, and that ordinary payment of these amounts are not applicable
- 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
- 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
- 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 50 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 51 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 52 sets out that provisions of the ITAA 1977 as in force immediately prior to the commencement of this Schedule, continue to have effect such 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
- 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 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
- 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 53 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 54 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 55 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 56 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 57, 58 and 59 repeals subparagraphs 8(8)(y)(v), (vi), (via), (viiiaa) (viiia) 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 60 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 61 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 62 inserts new items in subsection 8(8) to be excluded as income under the SSA 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
- paragraph (zsf) for ex-gratia payments to former prisoners of war.

Item 63 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 64 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 65, 66 and 67 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 68 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 69 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 70 repeals subparagraph 7D(b)(i) in relation to payment of a scholarship under the VCES, consequential to the closure of the Scheme.

Item 71 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 72 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
- 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 73 and 74 amend subsection 5(1) (definition of *Commission*) and the note at the end of subsection 40(1).

Part 2 – Contingency amendments

Defence Act 1903

Item 75 makes a terminology update to the definition of *Veterans' Affairs Department* in subsection 4(1) for the purposes of this Act, subject to the commencement of Part 1 of the *Defence Amendment (Parliamentary Joint Committee on Defence) Act 2024*.

Impact Analysis – Executive Summary

Currently, there are three pieces of primary legislation governing veterans' compensation and rehabilitation, the VEA, the DRCA and the MRCA.

Various Government and independent reviews over recent years have identified that the legislative framework governing veterans' compensation and rehabilitation is too complex and that it requires simplification. The Royal Commission into Defence and Veteran Suicide (RCDVS) has heard that the complexity contributes to claims processing delays and uncertainty for veterans and families as to what they may be entitled to as current or former serving members of the ADF. It is also accepted that the current legislative complexity contributes to poor physical and mental health outcomes for veterans and families in need of support. The current three schemes have fundamental structural differences which often result in very different and seemingly inequitable compensation outcomes for veterans with similar conditions or injuries.

In its Interim Report of August 2022, the Royal Commission into Defence and Veteran Suicide (Royal Commission) described the current legislative framework as: “so complicated that it adversely affects the mental health of some veterans and can be a contributing factor to suicidality.” The Interim Report made 13 recommendations, the first of which urged the Australian Government to develop and implement legislation to simplify and harmonise the framework for veterans' compensation, rehabilitation, and other entitlements. On 26 September 2022, the Australian Government responded to the Royal Commission's 13 recommendations. As part of its response the Government agreed to simplify the legislative framework.

Reforming the veterans' legislative framework must make the system easier to navigate for veterans and families with an increased focus on rehabilitation and lifetime wellbeing while continuing to deliver compensation outcomes.

Key reform objectives can be summarised as:

- creating a simpler compensation system that is easier for veterans and families to navigate
- enhancement of veteran wellbeing by reducing stresses associated with engagement with the compensation system and providing more timely access to benefits
- alignment of benefit types and eligibility for those benefits
- reduction in administrative burden.

Four options were considered during the policy development process:

Option 1 (non-regulatory) - to maintain the status quo and retain the current tri-Act system with no structural legislative change or minor amendment.

Option 2 - to maintain the status quo while making small-scale improvements that do not require large scale Government investment in legislative change or system redesign and can be implemented at a policy level or by minor legislative amendment. This option would allow for alignment of certain benefits and services across the primary Acts with no major structural legislative change.

Option 3 - to move to a two-scheme approach, as put forward by the Productivity Commission in its 2019 report “*A Better Way to Support Veterans*” (Productivity Commission 2019 report). This option would deliver compensation and rehabilitation under two schemes — the current VEA with some modifications (‘Scheme 1’) and a modified MRCA that incorporates aspects of the DRCA (‘Scheme 2’). This option would require legislative change.

Option 4 articulates that from a future date the VEA and DRCA would be closed to claims and all claims received would be determined under the MRCA as the single ongoing Act. The MRCA would provide coverage for all future claims for compensation irrespective of when and where the veteran served, or when their injury or illness occurred. This option also seeks to implement further improvements to the veterans’ support system such as aligning benefits across compensation and rehabilitation legislation. Implementation of **Option 4** would require action by government in implementing major legislative change.

Maintaining the status quo (**Option 1**) has no additional benefit for veterans or families. It would not contribute to simplifying the current complex legislative landscape of the veterans’ compensation system and will not address the problem of legislative complexity. **Option 1** provides no net benefit.

There is limited benefit in continuing to make only small-scale improvements (**Option 2**). These improvements may allow for alignment of certain benefits and services across the primary Acts, but do not address the underlying complexities of the current legislative framework.

Reducing the number of Acts from three to two (**Option 3**) would result in some simplification of the veterans’ legislation framework, compared with the current tri-Act system. However, it would only partially address the underlying inequity issues of the current system and may well create a new range of complexities in the veterans’ entitlements system because some veterans would likely be faced with a complex choice as to which system they should be covered under. Any benefit brought about by reducing the number of Acts from three to two would be offset by added complexities.

All claims from a future date being assessed under an improved version of the MRCA (**Option 4**) would result in a significantly simpler legislative landscape. The MRCA is the most contemporary military compensation scheme that covers all current members. It was designed to recognise the unique nature of employment and service within the ADF and incorporates desirable elements of both the DRCA and VEA schemes. It also focuses on wellbeing and building the capacity of veterans to return to employment and participate in activities of daily living. **Option 4** also provides the ability to align many veteran and dependant benefits, ameliorating the notion of inequitable treatment of veterans across the different Acts.

Option 4 is recommended as the best option. This option provides the greatest alignment with the policy objectives and principles and positions the Government to consider further streamlining of administrative systems as more veterans transition to the new scheme. The move to the MRCA as the single ongoing Act is broadly supported by key stakeholder groups due to the alignment of benefits, simplification of the legislative framework, reduction of barriers to veterans accessing entitlements and more contemporary nature of benefits. Multi criteria analysis also points to this approach as the most beneficial in terms of reduction in regulatory burden and it is the most likely option to achieve the key objectives of reform.

The Australian Government commenced the first of three rounds of public consultation regarding the reform of veterans' legislation in October 2022. While the three rounds were conducted as discrete intervals, engagement with organisations and individuals continued between and outside of these periods to ensure all relevant feedback was captured and to ensure that stakeholder groups were well informed regarding progress of the reform agenda. The consultation processes ultimately informed the drafting and modification of the Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024 for introduction to Parliament.

An initial round of consultation on the Royal Commission recommendation and related Productivity Commission recommendations was undertaken from 17 October 2022 to 14 November 2022. On 17 October 2022, the Minister for Veterans' Affairs, the Hon Matt Keogh MP, announced the consultation process and invited submissions. Much of the feedback related to individual concerns with current claims, supports or personal circumstances. However, there was strong overall support for legislative simplification and harmonisation.

The outcomes of the initial round of consultation informed a proposed pathway developed by Government to simplify veterans' compensation and rehabilitation legislation. The proposed Pathway entailed:

- establishing an improved MRCA as the sole ongoing scheme
- closing out the VEA and DRCA to new compensation related claims
- grandparenting all existing arrangements to ensure there is no reduction in entitlements currently being or previously received by veterans.

On 16 February 2023, the Minister for Veterans' Affairs, the Hon Matt Keogh MP, announced the commencement of public consultation on this proposed Pathway. The consultation period ran from 16 February 2023 to 12 May 2023. Formal written submissions were invited on the proposed Pathway.

The feedback provided by stakeholders in both rounds of consultation informed a submission to Government in the second half of 2023 on the way forward. This resulted in the drafting of the Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024. Some of the key elements arising from the consultation processes that were incorporated into the draft legislation include:

- the safeguarding of current veteran and dependant entitlements by grandparenting existing payments
- recognition under the new Act of previously determined compensable conditions, with no need to re-establish liability
- continuation of the automatic eligibility for benefits for those dependants whose partner died while they had permanent impairments of more than 80 points or were eligible for the MRCA Special Rate Disability Pension
- retention of two standards of proof when applying the SOPs
- inclusion of the ADA in the MRCA to replicate the EDA payment under the VEA to veterans who are of pension age and have high levels of incapacity due to service conditions,
- legislating the ability to prescribe conditions subject to presumptive liability
- an exception to the prohibition of acceptance of liability under the MRCA for conditions related to service caused by tobacco use

- inclusion of the ability to accept liability under the MRCA by establishing a temporal connection between defence service and a medical condition.

The exposure draft legislation encompassing feedback from the previous consultation periods was released for public comment on 28 February 2024.

This consultation round revealed broad general support for legislation to be consolidated into a single ongoing Act, with many organisations and individuals agreeing that this approach would achieve the desired outcome of simplifying the legislative system. Submissions expressed support for the expanded and equitable access to benefits, such as DRCA veterans gaining access to children's education schemes and potential eligibility for Gold Cards. Support was also expressed for the MRCA as the single ongoing Act because of its greater focus on rehabilitation.

Feedback was also received on matters that were considered out of scope. These included: further expansion to benefits and services beyond those considered directly connected to simplification and harmonisation; changes to coverage of cohorts beyond those already covered in the existing legislation; and changes to the underlying principles of the assessment methodology.

Changes were made to the draft legislation based on the feedback received, including; transitioning existing DRCA incapacity recipients into the MRCA from commencement; clarifying the meaning of the term veteran; amending the offsetting arrangements between incapacity payments and Disability Compensation Payments; and providing new legislative protections for vulnerable veterans accessing lump sums.

If the Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024 is passed by Parliament, DVA will design and execute a comprehensive implementation plan to ensure a smooth transition to the new system. This will include further consultation with internal and external stakeholders. Implementation including ICT delivery is fully funded through the 2023-24 MYEFO. DVA will monitor and evaluate the implementation and outcomes to gauge effectiveness and to ensure they align with the objectives and success metrics outlined in Chapter 2.

The new legislation is not scheduled to be operational until 1 July 2026 providing sufficient lead time to develop robust implementation and evaluation plans. Similarly, this timeline will allow veterans, advocates, and other stakeholders time to familiarise themselves with the new system and make informed decisions regarding the submission of claims under the current scheme or new arrangements. It is important to note that DVA is resourced to respond to any spikes in claims either prior to or post commencement.

Legislating to cover veterans' compensation and rehabilitation matters under a single ongoing Act will consolidate over 100 years of piecemeal legislation reform. This improvement will be critical in improving access to equitable benefit and services for veterans and families into the future.

The full published version of the Impact Analysis can be found on the Office of Impact Analysis website at <https://oia.pmc.gov.au/published-impact-analyses-and-reports> (Office of Impact Analysis ID: OBPR22-03734).