

LEGISLATION FOR THE MILITARY REHABILITATION AND COMPENSATION SCHEME

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Introduction

This paper provides an overview of the Military Rehabilitation and Compensation Act which came into effect on 1 July 2004 and analyses some of the key features of the legislation from an administrative law perspective. The new legislation applies to all future military service from that date.

Background

The legislation for the Military Rehabilitation and Compensation Scheme (MRCS) represents major legislation comparable in significance to the earlier major review of veterans legislation which led to the passage of the Veterans' Entitlements Act (VEA) in 1986.

Military service in recent years has been covered by both VEA and the Military Compensation and Rehabilitation Scheme (MCRS) which has in turn been based on the Safety, Rehabilitation and Compensation Act (SRCA) which was legislated in 1988. Peacetime service has been covered by the MCRS, while warlike and non-warlike (operational) service have been covered by both the MCRS and VEA. These dual arrangements have been complicated to administer, difficult for serving and veteran members to understand and have led to a degree of anomaly in the way they enable members to select benefits between the two schemes.

The possibility of establishing a single scheme for military compensation and rehabilitation has been discussed for many years with a recommendation to that effect in the major review by Justice Toose in 1975. The push for reform gained momentum in 1995 and 1996 as a result of two unfortunate accidents. A training accident in the Northern Territory resulted in a young soldier becoming a quadriplegic. He was married with three young children and did not own his own home. Notwithstanding that he had dual entitlement under the VEA and MCRS there was a view that available payments were not adequate to his needs.

These perspectives again came into sharp profile within the defence community following the collision of two blackhawk helicopters in an SAS training operation in June 1996. Eighteen servicemen were killed in the incident with ten suffering serious injury. Differences in service history meant there were significant differences in entitlement for some (with some having dual entitlement from previous service) and there was also concern about the adequacy of benefits in a peacetime service context. In response to these incidents the Government decided in 1998 to use a Defence Determination under the Defence Act 1903 to provide supplementary benefits to assist in cases of severe injury and to assist widows.

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While these initiatives responded to concerns at the time about the adequacy of benefits, they did not address the longstanding interest in establishing a single scheme. A decision was made by Government in June 1997 to move on this direction. This led to the appointment of Mr Noel Tanzer AC in May 1998, a past Secretary of the Department of Veterans' Affairs, to undertake a review for this purpose.

Mr Tanzer reported to the Government in March 1999 with recommendations to proceed with legislation for a single scheme for military service. Following extensive consultation within government, a draft framework for such legislation was distributed for comment, including by the ex-service community, in March 2000. With the in principle support of the defence and veteran communities the Government announced in 2001 that new legislation would be developed. A consultative Ex-Service Organisation (ESO) working party was established in March 2002 to assist in considering the detail of the legislation and this has met on more than ten occasions to consider and comment on the complex issues that have been involved.

A draft bill was circulated by the Government on 27 June 2003 and this was followed by a further consultative period with the defence and veteran communities. A revised bill was then tabled in the Parliament on 4 December 2003. Following passage in the House of Representatives, the bill was the subject of a further round of public consultation by the Senate Committee for Foreign Affairs, Defence and Trade Legislation. Final passage of the legislation occurred on 1 April 2004 following agreement on a number of amendments recommended by the Senate Committee.

The Objectives for the Legislation

The Tanzer Report identified a number of objectives in framing a single scheme for military rehabilitation and compensation :

- To provide legislation more appropriate to current and future conditions of military service
- To reflect current workers' compensation practice
- To facilitate ease of understanding
- To facilitate ease of administration
- To remove perceived current anomalies

In subsequent consultation, the Government emphasised that in melding two current pieces of legislation the objective was to adopt the best of both frameworks with the guarantee that there would be no loss of entitlement compared with the current legislation.

The Consultative Process

It will be evident from the above background material that the preparation and passage of the legislation has been protracted with extensive opportunity for involvement of the defence and veteran communities. In summary :

- Consultation by Tanzer
- Public consultation on broad framework
- Consideration of the detail of a new framework by ESO Working Party
- Public consultation on detailed draft bill

- Senate Committee public consultation on bill before the Parliament.

The time taken and the extent of the consultation has reflected both the complexity and sensitivity of the issues being addressed.

This has been the case in respect of both the nature of entitlements and the administrative processes. It is interesting that the two areas of late amendment following the final round of Senate Committee consultation were in respect of widows' entitlements and appeal processes.

MCRS/SRCA Provides the Foundation

The foundations for the new legislation is drawn from the MCRS and SRCA. Occupational health and safety requirements for defence service continue to be governed by the Occupational Health and Safety Act 1991, which is administered within the Employment and Workplace Relations portfolio, with the new legislation focussing on rehabilitation and compensation provisions for (future) serving and ex-serving members of the defence force.

It is fair to say that at the time of the Tanzer Report neither Defence nor DVA had undertaken a detailed comparison of MCRS and VEA benefits but what work was available, including some Actuarial comparisons, indicated that in many cases MCRS benefits were superior to VEA benefits. Given that the MCRS/SRCA reflected more current workers' compensation practice in the Commonwealth this added to the case for using it to provide the foundation for the new scheme.

Significant elements that are reflected in the new legislation and which represent significant change in veterans' legislation are :

- a distinction between economic and non-economic loss. The need for this distinction has long been discussed in the veteran jurisdiction. Changes to effect the distinction have been recommended by the Toose Report in 1975, the Baume Report in 1994, the Tanzer Report in 1999 and, most recently, by the Clarke Report in January 2003. While not accepting the substantial restructuring of VEA benefits recommended by Clarke, the Government's response in March 2004 has reflected this distinction in its approach to differential indexation arrangements depending on whether payments, in effect, reflect non-economic or economic loss compensation.
- Payment of lump sums for non-economic loss. Veteran organisations are concerned that lump sums may not be used wisely and have opposed them in the past. However, consultations have indicated strong support for lump sums in the defence community and this has been accepted. In a number of cases the legislation provides for a choice between lump sums and periodic payments.
- Income maintenance in proportion to earnings and concluding at age 65. This approach reflects workers' compensation practice and represents a significant change from the VEA which provides for welfare type payments which are paid at a common level regardless of rank or past earning capacity but can be adjusted to reflect family circumstance and can be subject to means and asset testing. However, as discussed below, provision is made in the new legislation for payment of a VEA 'safety net' in certain circumstances. The legislation also provides for continued access to the service pension but that is not expected to be relevant in many circumstances.
- Strong rehabilitation focus. Given that the new legislation applies equally to current serving personnel as well as veterans it is appropriate that it gives emphasis to

rehabilitation and return to work where possible. What is significant is that it provides for a needs assessment and rehabilitation, if appropriate, for any subsequent claims that can be related to military service.

- Possibility of review. In circumstances where income maintenance is being paid, the SRCA provides for review if there is reason to believe circumstances may have changed. The new legislation includes the same provision, including in respect of those in receipt of income maintenance post military service. This is a sensitive issue for veterans and has been addressed in a rehabilitation protocol (see below).
- Superannuation offsetting. The MCRS/SRCA provides for offsetting of Commonwealth superannuation benefits (accrued at the same time as the military service leading to the claim) against any income maintenance entitlement. The VEA has no comparable provision and this difference has been one of the major reasons for perceived anomaly between those with and without dual entitlement to the VEA and MCRS. A proposal to amend the VEA to remove this difference was withdrawn by the Government when introducing the new legislation to the Parliament. However, offsetting applies for any future incapacity payments paid under the new Act.

Defence Act/VEA Features of the Legislation

The proposals for new legislation have, from the outset, envisaged that significant administrative features of the VEA would carry over to the new arrangements. Most importantly these include :

- The beneficial (or reverse criminal) standard of proof for claims arising from warlike and non-warlike (operational) service, with no onus of proof on the member.

The civil or balance of probability standard of proof will continue to apply for peacetime service.

- Use of Statements of Principle (SoPs) to indicate the basis on which injury, disease or disability can be related to military service. The legislation provides for the Repatriation Medical Authority (RMA) to continue to determine SoPs and for these determinations to be subject to review by the Specialist Medical Review Council (SMRC).
- Use of the Guide to the Assessment of Rates of Veterans Pensions (GARP)

A detailed comparative analysis of GARP with the Permanent Impairment Guide (PIG) which applies for the MCRS indicates that the GARP is more comprehensive and hence more beneficial than the PIG in a number of areas, and most notably, in its assessment of psychiatric and respiratory conditions. Impairment and lifestyle rating are linked in GARP in a combined table to determine incapacity (as specified in Chapter 23 of GARP). In the new legislation a weighted average of the two assessments is taken to determine incapacity and compensation payable in the same way as occurs in combining these factors under the MCRS. The detailed analysis indicates that lifestyle ratings under GARP are more variable and possibly less reliable than the corresponding impairment ratings and they will be given less weight (15 per cent) than is in effect the case with use of GARP under the VEA (35 per cent).

These foregoing provisions have been unique to the veteran jurisdiction, can be complex in concept and have been the subject of extensive deliberation in the courts, so drafting of the new legislation has sought to carry over in full the relevant provisions under the VEA to facilitate continuity of administrative and legal practice.

Another set of important provisions carry over existing levels of benefits to the new legislation with two significant areas of enhancement – benefits in the instance of severe injury and widow(er)s’ benefits. In addition, work undertaken over the last couple of years including in consultation with the ESO Working Party has established that VEA benefits can be superior to MCRS benefits in two significant areas – in compensation paid for what equates to non-economic loss and, depending on the circumstances of the individual (age, rank, family circumstance), the level of income maintenance that is provided.

Reflecting these considerations, the following applies :

- The legislation provides MCRS levels of compensation for non-economic loss for peacetime service
- Compensation for non-economic loss for warlike and non-warlike (operational) service is provided, in effect, at the higher VEA levels
- In both cases, compensation for severe injury is increased compared with that provided under the Defence Act, with a tapered increase for lesser levels of incapacity. The Charts at Attachment A compare previous and future rates of benefits. The decision to maintain two rates of compensation for non-economic loss is a departure from the model envisaged in the Tanzer Report. It reflects the effect of current legislative provisions which arguably, in turn, reflects a longstanding view in the community that operational service and particularly warlike (or qualifying) service warrant additional generosity on rates of benefit.
- A safety net provides members with a once-only choice of Special Rate (or Totally and Permanently Incapacitated-TPI) benefits payable under the VEA if the member is unable to work because of their incapacity.

Basic TPI benefits are tax free and payable for life with a range of other concessional benefits depending on their family circumstances, and it is expected that this package will be financially preferable in a range of situations. Members will be required to take financial advice to inform their decision-making.

Again, the inclusion of a welfare type of ‘safety net’ in the legislation represents a departure from the approach envisaged in the Tanzer Report. However, a common approach to income maintenance applies across all types of military service and the inclusion of the optional safety net ensures that no-one is less well off financially than they would be under the VEA. Some ex-service organisations have also emphasised the importance of allowing the option of a lifetime payment which the safety net provides.

- Widows’ benefits have been set at a common level regardless of the nature of service of the member, with a significant enhancement compared with previous entitlements.

The draft legislation had proposed a higher level of benefit for death arising from warlike (or qualifying) service but this was subsequently extended to all service related death. All widow(er)s are eligible for the equivalent of the war widow(er)s’ pension provided under the VEA or an equivalent age related lump sum. SRCA-type death benefits also apply plus an age-related supplementary lump sum of up to \$105,472 for the widow(er) and a top up of \$63,283 for each dependent child.

A number of veteran associated benefits also carry over from the VEA:

- Use of the gold and white cards for access to health services once conditions have stabilised.

White cards provide health care for specific accepted conditions and the gold card provides comprehensive health care.

- Provision of the gold card for veterans over the age of 70 with warlike (or qualifying) service
- Unrestricted access to treatment for cancer and mental health conditions (PTSD, anxiety and depression) whether or not the condition is an accepted condition.
- Access to a number of other VEA benefits such as funeral benefit, and dependent access to the Veterans' Children Education Scheme.

New Features to the Legislation

There are a number of novel features to the new legislation that are noteworthy from an administrative point of view.

The Act requires in certain circumstances and, as a general rule, that a needs assessment will be undertaken once liability has been accepted for a condition. A needs assessment is intended to ensure that comprehensive and structured consideration is given to the case at hand with a written report and a copy provided to the member. A set of principles and protocols for conduct of a needs assessment has been developed in consultation with the ESO Working Party.

A set of principles and protocols for the conduct of rehabilitation (and review) has also been developed in consultation with the ESO Working Party. This is a particularly sensitive aspect of the administrative requirements under the new legislation and a copy of these is provided at Attachment B.

While these do not have the force of legislation or of legislative instruments (as in the case of SoPs), they are important and will need to be kept under close review in consultation with the defence and veteran communities.

Aspects that have been closely examined in consultative meetings are :

- The scope to provide education and training above a level equivalent to that attained during military service provided it is cost effective for the Commonwealth to do so (paragraphs 9 and 10 of protocol).
- The approach to social rehabilitation (paragraphs 11, 12 and 16 of the protocol).
- The circumstances under which a member may be deemed to be able to work (paragraphs 27 to 30 of the protocol).
- Procedures when a member lacks confidence in medical practitioners or case managers assigned to their case (paragraphs 7 and 15 of protocol).
- The need for sensitivity in case reviews, particularly for members suffering from mental health problems and particularly for those of mature age (paragraphs 34 and 35 of protocol).

As noted above, Senate Committee consideration of appeals provisions led to changes which gives all members the option to have 'original' (or reviewable) determinations on their matters reviewed by the VRB prior to consideration by the AAT.

- A qualification is that 'veterans' legal aid which is not subject to means and priorities testing is only available for cases relating to warlike and non-warlike (operational) service, as is currently the case. Awarding of costs is waived when legal aid applies.
- All members have the right, if they wish, to seek an internal reconsideration and then take such a determination direct to the AAT.

The Act uses the concept of 'original' determination to indicate which determinations are reviewable. The Act also specifies in sub-section 345(2) a range of matters that are not original determinations such as a decision to suspend the right of compensation because of failure to comply with administrative requirements and decisions to write off debt, recover interest, etc. Such determinations are, of course, subject to challenge in the courts on the basis of an error of law.

The appeals framework is outlined in more detail in relation to the Rehabilitation Protocol at Attachment B.

A final feature of note of the new legislation is the establishment of the Military Rehabilitation and Compensation Commission (MRCC) to supervise the administration of the legislation by the Department of Veterans' Affairs (DVA). The new Commission has five members comprising the three full-time members of the Repatriation Commission which supervises the administration of the VEA and two part-time members, one nominated by the Minister for Defence and one nominated by the Minister for Employment and Workplace Relations.

Points of note in relation to the MRCC are :

- It is also responsible for supervising DVA's administration of the MCRS.
- Its structure will facilitate a seamless relationship with the Repatriation Commission.
- The arrangements will facilitate coordinated administration and legislative synergy between the MRCS, MCRS and VEA in future years.

Conclusion

The development of the MRCS has been a significant enterprise for government. The melding of two existing pieces of legislation has been a complex undertaking that has entailed compromise as well as innovation. Importantly, it has sought to build on the lessons of the past, including past administrative practice. No doubt, however, the legislation will need to be kept under review in the light of future experience.

APPENDIX A

COMPENSATION FOR NON-ECONOMIC LOSS – COMPARISON OF MRCS WITH VEA AND MCRS LEVELS

The following chart (over page) shows a hypothetical comparison of MRCS non-economic loss (permanent impairment) compensation with VEA disability pensions and MCRS lump sums (SRCA s24 and s27 plus severe injury adjustment). The VEA disability pension levels have been converted to lump sums using the age-based number provided by the Australian Government Actuary to convert a MRCS periodic payment to a lump sum for a 30-year old male.

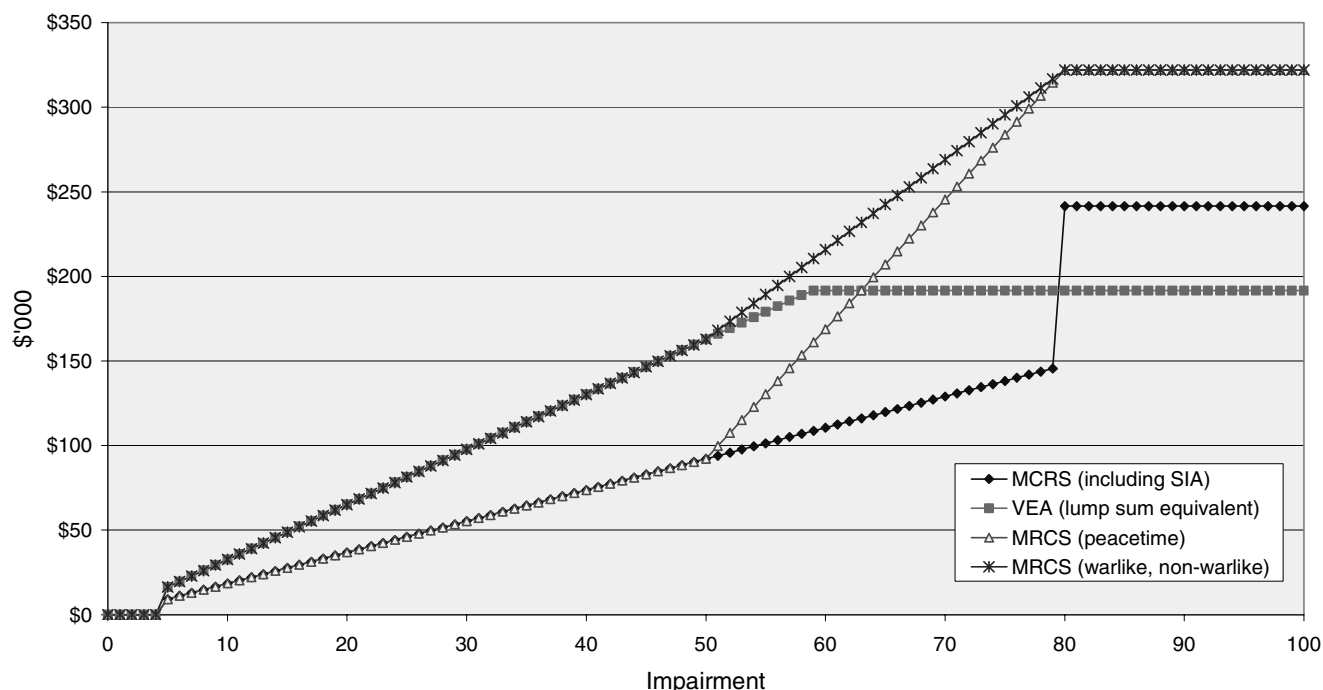
The chart shows:

- MRCS compensation for conditions arising from warlike and non-warlike service matches that available under the VEA up to 50 impairment points. It then increases to the maximum level that is available from 80 impairment points. This maximum is the same for all types of service
- MRCS compensation for conditions arising from peacetime service matches that available under the MCRS up to 50 impairment points. It then increases to the maximum level which is available from 80 impairment points
- VEA compensation reaches its maximum at 60 impairment points, equivalent to the general rate (100%) disability pension
- MCRS compensation jumps to a maximum at 80 impairment points because of the operation of the Severe Injury Adjustment

Points to note include:

- lifestyle cannot be exactly proportional to permanent impairment as it is measured on an integral scale of 0-7 (MRCS and VEA) and 0-15 (MCRS)
- under the VEA, impairment is rounded to the nearest 5 points and combined with lifestyle to give a disability pension which increases in ten-point steps, rather than continuously as shown in the chart. Similarly under the MCRS, impairment is rounded down to the previous ten point multiple, apart from certain conditions for which there is a five point threshold
- up to 50 impairment points compensation factors for both warlike/non-warlike and peacetime service under the MRCS are based on weights of 85% for impairment and 15% for lifestyle. From 50 to 80 impairment points the lifestyle weighting drops to zero while for 80 and above impairment points the maximum amount of compensation is payable.

Indication of permanent impairment compensation lump sums (for 30-year old male)
(Assumes lifestyle proportional to impairment)



APPENDIX B

PRINCIPLES GUIDING REHABILITATION UNDER THE MRCA

(Italics are quotes from the Act)

1. *The aim of rehabilitation is to maximise the potential to restore a person who has an impairment, or an incapacity for service or work, as a result of a service injury or disease to at least the same physical and psychological state, and at least the same social, vocational and educational status, as he or she had before the injury or disease.*
Section 38
2. A person can be considered for rehabilitation where the Military Rehabilitation and Compensation Commission (the Commission) has accepted liability for an injury or disease, which causes incapacity for work, or caused impairment that requires medical or social rehabilitation.
3. If the Commission has accepted liability for a person's injury or disease that person can request an assessment for suitability to undertake rehabilitation and that request must be complied with.
4. The Commission can determine that a person undertakes a rehabilitation program having regard to the following:
 - *any written report in respect of the person under subsection 46 (3);*

- *any reduction in the future liability of the Commonwealth to pay or provide compensation if the program is undertaken;*
- *cost of the program;*
- *any improvements in the person's opportunity to be engaged in work after completing the program;*
- *the person's attitude to the program;*
- *the relative merits of any alternative and appropriate rehabilitation program; and*
- *any other matter the rehabilitation authority considers relevant.*

Subsection 51 (2)

5. Any reference to written reports or relevant material in the Act, may include reports provided from the person's principal treating practitioner and any other report provided by the claimant in respect of both assessments of the person's capacity for rehabilitation and the development of the rehabilitation program.
6. The rehabilitation program can include vocational and social rehabilitation.
7. Persons with suitable qualifications or expertise in rehabilitation will assess a person's capacity for rehabilitation and where applicable provide guidance on the type of program the person should undertake.
8. If a person fails to undertake a rehabilitation assessment or program without reasonable excuse the Commission may suspend the person's right to compensation (but not treatment).
9. Rehabilitation will be coordinated, integrated and adequately resourced to achieve effective outcomes.
10. Relevant incapacity payments (income replacement) are payable whilst a person is undertaking a rehabilitation program and they are unfit for work.
11. All determinations relating to rehabilitation, with the exception of a determination relating to the suspension of compensation for refusing or failing to undergo a rehabilitation examination, or refusing or failing to undertake a rehabilitation program, are original decisions and subject to review and appeal.

Protocols of Rehabilitation under the MRCA

Rehabilitation Screening

1. Where a person seeks a payment for impairment or incapacity for work a delegate will consider whether that person should undertake an assessment of capacity to undertake rehabilitation.
2. Where it is considered that such an assessment should be undertaken a written determination must be made.
3. A person may request an assessment of their capacity for rehabilitation at any time.

Rehabilitation Assessment

4. Persons who have requested an assessment, or where it has been determined that such an assessment is required, will be referred for a professional and comprehensive assessment.
5. The assessment will be undertaken by suitably qualified or experienced professionals in the field of medical, psychological and vocational rehabilitation to measure the capacity and needs of the person to participate in the rehabilitation.
6. The suitably qualified or experienced professional who will perform the rehabilitation assessment is determined by the rehabilitation authority from a list of approved providers. Persons, Ex-Service and Defence organisations may nominate any person or provider to be considered for approval to the Military Rehabilitation and Compensation Commission.
7. In the event that a dispute arises between a client and the approved provider performing the rehabilitation assessment, the Department will endeavour to resolve the issues. If the issues cannot be resolved the Department undertakes to use its best endeavours to assign another approved provider to conduct the rehabilitation assessment.
8. The ***vocational assessment and rehabilitation*** consists of or includes any one or more of the following:
 - *assessment of transferable skills;*
 - *functional capacity assessment;*
 - *workplace assessment;*
 - *vocational counselling and training;*
 - *review of medical factors;*
 - *training in resume preparation, job-seeker skills and job placement; and*
 - *provision of workplace aids and equipment.*

Subsection 41 (1)

A vocational assessment will also include an assessment of employability taking into account age, capability and labour market conditions.

9. Vocational training and education is generally provided to return a person to the workforce at a level to which they are accustomed. If, in order to regain employment, the assessment determines that education or training to a higher level, including tertiary, is required to achieve reasonable likelihood of a return to the workforce, and such provision could reasonably be expected to be cost effective, training or education to that level will be considered.
10. Matters to be considered when determining cost effectiveness include:
 - Cost of the training or education, including where applicable HECS;
 - Additional reduction in future liability that would be attributable to the studies; and
 - Improvement in work opportunities and capacity to obtain paid employment.

11. Where a person will benefit from social rehabilitation a rehabilitation plan will list the services aimed at restoring or maximising a person's function in the community by providing appropriate behavioural and basic training skills for living and participating in a community setting.
12. The prime factor when considering what, if any, non-vocational measures will be implemented will be the recommendations from the rehabilitation assessment and the attitude of the person towards rehabilitation aimed at achieving quality of life outcomes.

Rehabilitation Plan

13. A rehabilitation program will only be developed if the person has undergone an assessment of their capacity for rehabilitation by a suitably qualified person.
14. The rehabilitation program will be described by a rehabilitation plan that will list the services that will be provided, the time period covered under the plan and the likely outcome at the completion of the plan.
15. All parties to the plan, which includes, at a minimum, the person's case manager, an approved provider and the person will be consulted during the preparation of the plan. This will enable each party to sign up to the plan. The consultation will include providing the person with information and options to allow them to make informed decisions.
16. The **rehabilitation program** means a program that consists of or includes any one or more of the following:
 - *medical dental, psychiatric and hospital services (whether on an in-patient or outpatient basis);*
 - *physical training and exercise;*
 - *physiotherapy;*
 - *occupational therapy;*
 - *vocational assessment and rehabilitation*
 - *counselling;*
 - *psycho-social training.*

Subsection 41 (1)

Social rehabilitation could include such measures as referral to community support services, attendant care services, psychosocial counselling, basic skills training, fitness and exercise regimes and drug and alcohol management programs.

17. The plan will include an outline for the coordination arrangements for each of the rehabilitation services.
18. Rehabilitation plans are subject to review, as requested, to ensure they remain relevant to the person's needs.
19. If it is decided that the rehabilitation program should cease or vary another assessment is required.

Rehabilitation Services

20. Services, including assessment, are to be provided by approved providers only. These will be:
- providers approved for the purposes of the *Safety, Rehabilitation and Compensation Act 1988*; and
 - providers with appropriate skills and expertise approved by the Commission.
21. Rehabilitation services will be provided to ensure that the most cost-effective outcome is achieved for both the person and the Commonwealth.
22. The delivery of the services will be coordinated to ensure they are delivered in an effective and timely manner.

Rehabilitation Delivery Costs

23. The Commonwealth will meet the cost of all rehabilitation activities approved by a delegate. This includes examinations, assessments, aids, appliances and other activities included in a plan.
24. Where a person is incapacitated for work due to a combination of compensable and non-compensable conditions, or being medically discharged due to a non-compensable condition, the Commission will consider paying for rehabilitation costs of the non-compensable injuries if it has the potential to be cost effective in facilitating a return to work.
25. If there is a requirement to travel to undertake a rehabilitation examination, then the Commonwealth will pay compensation for any costs reasonably incurred in that journey. If the person is also required to stay in accommodation in the area as a result of the journey then compensation for all reasonable costs will be paid.
26. *In determining the amount payable, the rehabilitation authority will have regard to:*
- (a) the means of transport available to the person for the journey; and*
 - (b) the route or routes by which the person could have travelled; and*
 - (c) the accommodation available to the person*

Section 48

Deeming a person able to earn income.

27. Where a person fails to accept an offer of suitable employment, fails to begin or continue such employment or fails to undertake rehabilitation or a retraining program as a condition of obtaining suitable work without reasonable excuse the person can be deemed to be earning the amount that they would have received but for their failure.
28. If a person fails to seek suitable work they can also be deemed to be earning an amount that they could reasonably be expected to earn, having regard to the labour market. If the person can show genuine yet unsuccessful attempts to obtain employment they will not be 'deemed' when suitable employment is not possible.
29. The processes and requirement to communicate with a person prior to a determination to suspend compensation will be the same as current processes in place under the *Safety, Rehabilitation and Compensation Act 1988*. These processes ensure that the person has

an opportunity to provide the rehabilitation authority with evidence of reasonable excuse for their inability to undertake a rehabilitation program.

30. *Suitable work for a person means work for which the person is suited having regard to the following:*
- (a) the person's age, experience, training, language and other skills;*
 - (b) the person's suitability for rehabilitation or vocational retraining;*
 - (c) if work is available in a place that would require the person to change his or her place of residence – whether it is reasonable to expect the person to change his or her residence;*
 - (d) any other relevant matter.*

Section 5

Assistance in Finding Work

31. Where a person's injury or disease results in an incapacity for work the rehabilitation authority must take all reasonable steps to assist the person to find suitable work in the civilian workforce. This requirement does not apply while the person is a full-time member of the ADF.
32. If liability for the injury or disease ceases the requirement to provide assistance in finding suitable work also ceases.

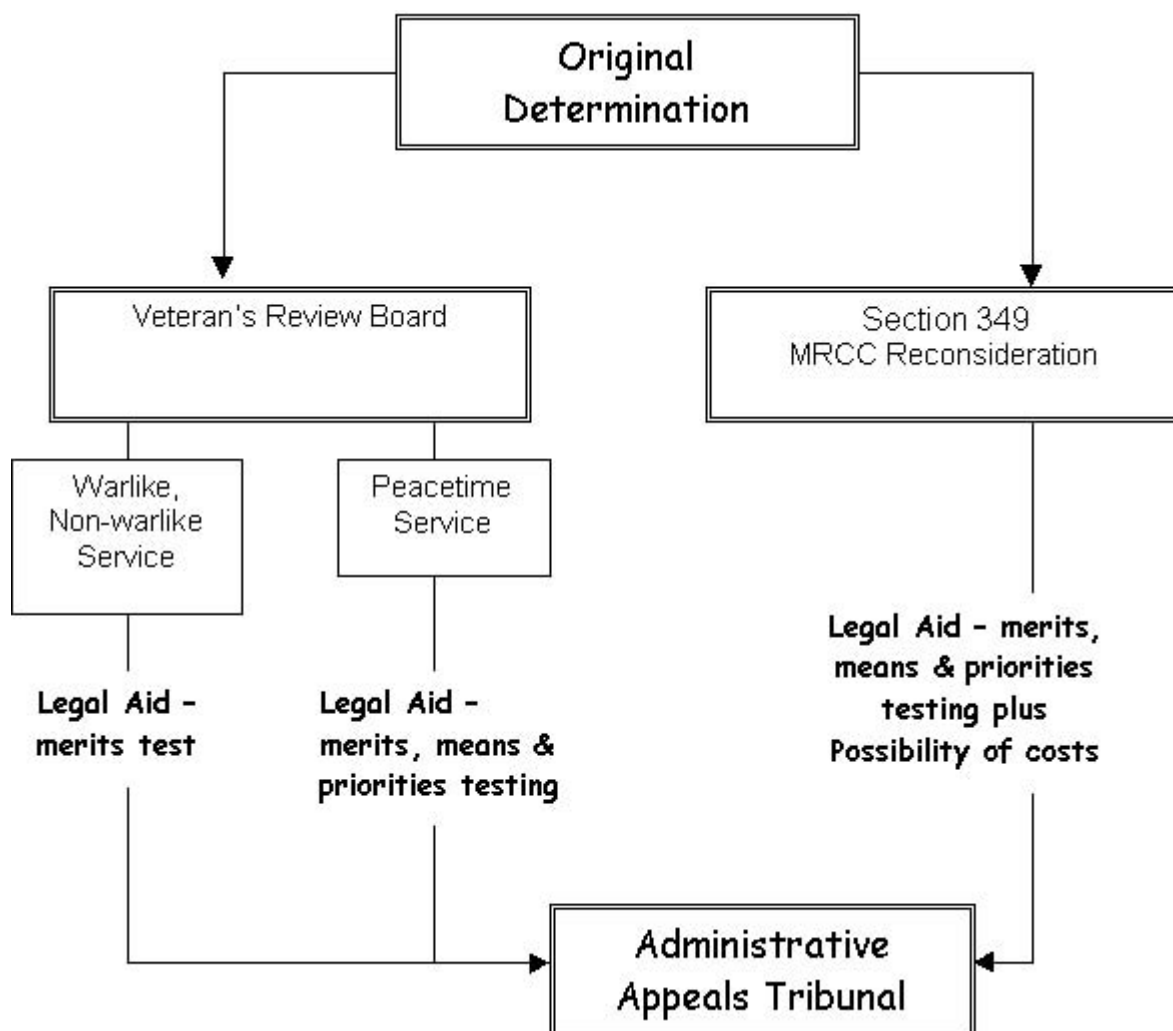
Review

33. A person's capacity for rehabilitation may vary from time to time depending on their medical status. This may mean that a person not previously able to undertake rehabilitation due to medical factors may subsequently be able to do so. Alternatively a person in a rehabilitation program may no longer be able to continue that program due to medical factors.
34. Reviews of treatment provision and rehabilitation will continue to be relevant in post working age years. A person may at any time request that the Commission undertake a review to ensure that they are receiving the most appropriate level of rehabilitative services. The review may cover appropriate levels of medical treatment, social rehabilitation services and vocational programs and services.
35. The frequency of reviews will be determined taking account of advice from treating physicians and specialists, and as appropriate as specified in a rehabilitation plan. Up to the age at which incapacity payments would normally cease, the Commission will at a minimum, undertake a review at least every 5 years, including consideration of whether appropriate treatment and services are being provided. Where a principal treating practitioner states that a review must be undertaken with particular care, in such circumstances, a review will not be undertaken without first contacting the treating practitioner. A review may be undertaken on the papers.
36. The Commission or a person can at any time seek a review of services being provided.
37. Where a person's capacity for work changes following a medical review, a review of their rehabilitation capacity should also be undertaken. This would involve the person undergoing an assessment for rehabilitation.

Appeal mechanisms

38. All aspects of a rehabilitation plan, including the selection of provider are subject to review.

39. A person's appeal rights are determined as set out in the diagram below.



40. A person has the right to be accompanied by a person of their choice, including a family member, an ex-service organisation or service representative, or a legal representative to interviews and in phone conversations relating to any aspect of their claim including at reconsideration and appeal. The only exceptions are VRB proceedings which are non-adversarial and legal representation is not permitted.

41. Legal Aid may be available in respect of AAT matters, subject to relevant Legal Aid guidelines and priorities including merit and/or means testing for eligibility.

42. Determinations relating to the suspension of compensation for refusing or failing to undergo a rehabilitation examination, or refusing or failing to undertake a rehabilitation program are not 'original determinations' and are not subject to either reconsideration or review by the Veterans' Review Board or the Administrative Appeals Tribunal. These decisions can only be appealed on a matter of law to the Federal Court. All other

determinations concerning rehabilitation are 'original determinations' and are subject to merit review.

Interaction with the Transition Management Service (TMS)

43. Interaction between the TMS Coordinator and the Rehabilitation Coordinator is necessary to ensure discharging members are aware of and thus able to utilise all benefits available to them through MRCS and their ADF discharge entitlements. Discharging members have a variety of entitlements through the ADF's Career Transition Assistance Scheme (CTAS) ie. Training, resume preparation, job seeking and on the job training.
44. There are discharging members who will require additional rehabilitation assistance through the MRCS to achieve their goal of returning to suitable employment and/or coping with activities of daily living. The TMS coordinator is required to liaise with the DVA rehabilitation team and to refer those clients who require additional MRCS rehabilitation intervention.

Review of the administration of the rehabilitation provisions

45. A forum comprising representatives of the ex-service and Defence force communities and the MRCS Commission will meet at least annually to review the experience of the administration of the Rehabilitation clauses in the Act.

Office of the Principal Adviser, Rehabilitation
23 April 2004