



Military Rehabilitation and Compensation Amendment (MRCA Supplement) Bill 2011

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Military Rehabilitation and Compensation Amendment (MRCA Supplement) Bill 2011

Date introduced: 10 February 2011

House: House of Representatives

Portfolio: Veterans' Affairs

Commencement: On the day of the Royal Assent

Links: The links to [the Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bills home page, or through <http://www.aph.gov.au/bills/>. When bills have been passed they can be found at the ComLaw website, which is at <http://www.comlaw.gov.au/>.

Purpose

The primary purpose of the Military Rehabilitation and Compensation Amendment (MRCA Supplement) Bill 2011 (the Bill) is to amend the *Military Rehabilitation and Compensation Act 2004* (MRCA) to remedy an unintended outcome of amending legislation in 2009. The Bill ensures that:

- wholly dependent partners of a deceased Defence Force member,¹ or former member, will be eligible to receive the MRCA Supplement, and
- duplicate payments of MRCA Supplement to persons who are entitled to equivalent payments under a different Act are prevented.

Background

In the 2009 Budget, the Government announced changes to bring about 'Secure and Sustainable Pension Reform'.²

Relevant to this Bill, the *Veterans' Affairs and Other Legislation Amendment (Pension Reform) Act 2009* introduced amendments to simplify payments by consolidating a number of smaller payments

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1. The term '**Defence Force**' is defined in section 5 of the MRCA as meaning the '**Permanent Forces**' and the '**Reserves**'. The term '**Permanent Forces**' is also defined in section 5 of the MRCA to mean the Permanent Navy established by the *Naval Defence Act 1910*; and the Regular Army established by the *Defence Act 1903*; and the Permanent Air force established by the *Air Force Act 1923*. The term '**Reserves**' means the Navy Reserve, Army Reserve and Air Force Reserve established under those Acts.
 2. W Swan (Deputy Prime Minister and Treasurer) and J Macklin (Minister for Families, Housing, Community Services and Indigenous Affairs), *Secure and sustainable pension reform: three million Australian pensioners benefit from reforms*, joint media release, no. 58, 12 May 2009, viewed 15 February 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FXRJ6%22>

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and allowances into one supplement.³ From 20 September 2009, pharmaceutical allowance and telephone allowance were replaced by 'MRCA supplement' under the MRCA.

Payments prior to 20 September 2009

Prior to 20 September 2009, the payments to the wholly dependent partner of certain deceased members, or former members, of the Defence Force were worked out as follows:

- First, the Commonwealth was liable to pay compensation.⁴ That compensation comprised two parts—a lump sum calculated under a formula set out in the MRCA⁵ and a second amount paid as either weekly payments, or on election, by another lump sum, also worked out in accordance with a statutory formula.⁶
- Secondly, a wholly dependent partner was also eligible for a telephone allowance, subject to certain conditions,⁷ and
- Thirdly, those wholly dependent partners who were entitled to treatment under Chapter 6 of the MRCA, were also eligible for pharmaceutical allowance.

What the amendments did

Whilst the *Veterans' Affairs and Other Legislation Amendment (Pension Reform) Act 2009* aimed to simplify payments by consolidating a number of smaller payments it had the following effects on payments to wholly dependent partners of deceased members or former members of the Defence Force under the MRCA:

- First, it introduced the term 'MRCA Supplement' and omitted references to telephone allowance⁸ and pharmaceutical allowance.⁹
- Secondly, it linked the rate of MRCA Supplement to the rate of Veterans' Supplement payable under section 118D of the *Veterans' Entitlements Act 1986* (VEA). At the time of writing this Bills

3. Information about Secure and Sustainable Pension Reform is contained in D Daniels, L Buckmaster and P Yeend, *Social Security and Other Legislation Amendment (Pension Reform and Other 2009 Budget Measures) Bill 2009*, Bills Digest, no. 179, 2008–09, 23 June 2009, viewed 15 February 2011, <http://www.aph.gov.au/Library/pubs/bd/2008-09/09bd179.pdf>

4. Section 233, MRCA.

5. Paragraph 234(1)(a), MRCA.

6. Paragraph 234(1)(b), MRCA.

7. Section 245, MRCA.

8. Telephone allowance was introduced in July 1992 as a quarterly cash payment for pensioners with a telephone account. At the time of the amendments in 2009, it was worth \$92.00 per annum or \$138.40 per annum for those with an internet connection. See D Daniels, L Buckmaster and P Yeend, *Social Security and Other Legislation Amendment (Pension Reform and Other 2009 Budget Measures) Bill 2009*, op. cit.

9. Pharmaceutical allowance was introduced in October 1990. At the time of the amendments in 2009, it was worth \$156 per annum for a single pensioner. See D Daniels, L Buckmaster and P Yeend, *ibid.*

Digest, the rate was fixed at \$6.00 per week. Provisions were inserted into the MRCA to ensure that a person was not entitled to multiple payments of MRCA Supplement.

- Thirdly, the former pharmaceutical allowance was incorporated into the wholly dependent partner lump sum compensation payment.¹⁰

An unintended outcome

There was an unintended outcome arising from the amendments. That is, where the member, or former member, of the Defence Force died prior to 20 September 2009, but the decision of a wholly dependent partner to receive a lump sum is made after that date, the calculation of the lump sum payable is based on the law as it was at the date of death—with the expectation that pharmaceutical allowance may also be payable. As a result, a wholly dependent person in those circumstances suffers a financial disadvantage.

Item 4 of the Bill remedies that situation.

Committee consideration

On 10 February 2011, the Senate Selection of Bills Committee decided to defer consideration of the Bill to its next meeting.¹¹

Financial implications

According to the Explanatory Memorandum, the amendments have no financial impact.¹²

Key provisions

A person may be entitled to payment of MRCA Supplement in one of three ways:

- under Chapter 4 of the MRCA if the person is also eligible for special rate disability pension¹³
- under Chapter 5 of the MRCA if the person is a wholly dependent partner of a deceased member,¹⁴ or

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10. Explanatory Memorandum, Veterans' Affairs and Other Legislation Amendment (Pension Reform) Bill 2009, p. 3, viewed 17 February 2011, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr4186_ems_ddb2c5ce-7d38-44e9-975d-d1807f048fff%22
 11. Selection of Bills Committee, *Report No. 1 of 2011*, 10 February 2011, viewed 17 February 2011, http://www.aph.gov.au/Senate/committee/selectionbills_ctte/reports/2011/rep0111.pdf
 12. Explanatory Memorandum, Military Rehabilitation and Compensation Amendment (MRCA Supplement) Bill 2011, p. ii.
 13. Section 221, MRCA.

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- under Chapter 6 of the MRCA if the person is entitled to treatment.¹⁵

Item 1 of the Bill inserts **proposed paragraphs 222(5)(d)–(f)** to put beyond doubt that a person who is receiving special rate disability pension is not eligible to MRCA Supplement under section 221 of the MRCA if the person is already receiving an equivalent payment under another Act or under another Chapter of the MRCA.

Item 2 of the Bill inserts **proposed paragraphs 246(4)(d)–(f)** to put beyond doubt that a person who is a wholly dependent partner of a deceased Defence Force member is not eligible to MRCA Supplement under section 245 of the MRCA if the person is already receiving an equivalent payment under another Act or under another Chapter of the MRCA.

Item 3 of the Bill inserts **proposed paragraphs 301(4)(d)–(e)**. Normally, a person who is entitled to treatment under Part 3 of Chapter 6 of the MRCA, is also eligible for a pharmaceutical allowance. However, section 301 of the MRCA places limits on this, listing circumstances in which pharmaceutical allowance will not be payable. The proposed amendment clarifies those excluding circumstances, putting beyond doubt that a person who is entitled to treatment is not eligible to receive MRCA Supplement under section 301 of the MRCA if the person is already receiving an equivalent payment under another Act or under another Chapter of the MRCA.

Concluding comments

The purpose of the Bill is to amend the MRCA to correct an unintended consequence of an earlier amendment in 2009. As this is beneficial legislation it is an uncontroversial amendment.

14. Section 245, MRCA.

15. Section 300, MRCA.

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