



Military Rehabilitation and Compensation Act 2004 (MRCA)

Compensation for Dependants – Wholly Dependent Partners of Deceased Serving Members and Former Members of the Australian Defence Force

Overview

This Factsheet explains the circumstances under which wholly dependent partners of deceased serving members and former members of the Australian Defence Force (ADF) can be granted compensation under the *Military Rehabilitation and Compensation Act 2004* (MRCA). It also details the types of compensation that can be awarded where it is determined that there is liability to pay compensation for the member's death. Please also see Factsheet *Overview of the Military Rehabilitation and Compensation Act 2004: MRC 01* for information about who is covered under the MRCA.

Additional note: All compensation payments under the MRCA are in addition to any superannuation death benefits that are payable by ComSuper under the Defence Force Retirement and Death Benefits (DFRDB) Scheme or the Military Superannuation Benefits Scheme (MSBS). They are also additional to any life insurance payments made in relation to the death.

Who is a wholly dependent partner?

Essentially, a wholly dependent partner is a person who was the partner of the member; that is who was:

- of the opposite sex to the member (as of 1 July 2009, partners of same sex relationships also qualify as determined under the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) Act 2008*; and
- married to, or in a *de facto* relationship with, the member immediately before the member's death; and
- wholly dependent on the member for economic support at the time of his or her death.

A partner who was living with the member immediately before the member's death is deemed to have been wholly dependent on the member for economic support. It is not necessary for such a partner to provide any evidence to establish the degree of financial dependency.

A partner is also deemed to have been wholly dependent on a deceased member where the couple were temporarily living apart, or were living apart due to illness suffered by either, or both of them immediately before the member's death.

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Example 1:

Mark Davidson, a member of the ADF has died. At the time of his death, he was married to Marie. Immediately before Mark's death, Marie was living in their home in Sydney but Mark was living in Darwin on a one-year ADF posting. Marie is a wholly dependent partner under the MRCA because she was married to Mark and would have been living with him immediately prior to his death were it not for his temporary posting to Darwin.

Example 2:

John Smith, a former member of the ADF, had been living in a nursing home for one year at the time of his death. His wife Anna still lives in the family home. Anna is a wholly dependent partner under the MRCA because she was married to John and would have been living with him immediately prior to his death were it not for John's illness.

Example 3:

Stephanie Hutchison, a member of the ADF, has died. Immediately prior to her death, Stephanie had been living in a home in Sydney that she and her partner David had purchased two years earlier. Stephanie and David were not married, but had entered into joint financial arrangements and they were recognised by the ADF as being in a de facto relationship. At the time of Stephanie's death, David was living in Newcastle during the week because the company he worked for had recently relocated to Newcastle. He commuted back to Sydney each weekend to be with Stephanie.

Although Stephanie and David were not, immediately before Stephanie's death, living together during the working week, the reason for David's temporary absences and other factors such as their shared financial arrangements, indicate that they would have been living together were it not for David's employment circumstances. David would therefore be considered to be Stephanie's wholly dependent partner.

If a partner was not living with the ADF member immediately before the member's death and if it cannot be established that the partner would have been living with the member but for a temporary absence or illness, it must be established that the partner was wholly dependent on the member for economic support in order for the person to be entitled to compensation as a wholly dependent partner. Establishing the degree if any of financial dependency involves an investigation of the full financial circumstances that existed between the person claiming dependency and the member at the time of his or her death.

In establishing dependency for economic support, the following benefits are not taken into account;

- Family Tax Benefit Part A
- Social Security carer's allowance; and
- Social Security double orphan's pension.

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What if I am a partner but not regarded as a wholly dependent partner?

You may still qualify for compensation as a partly dependent partner. For further information, see Factsheet *Compensation for Dependents – Other Dependents of Deceased Members and Former Members: MRC 16*.

Example 4:

Mark Parrish, a member of the ADF, has died. At the time of his death, Mark had been separated from his wife Marie for one year and divorce proceedings were in progress. Marie had some part-time work and Mark was paying her an amount of \$100 per week until she could find full-time work. Marie is not a wholly dependent partner for the purposes of the MRCA because she was not living with Mark immediately prior to his death and the provisions regarding temporary absence and illness separation did not apply. However, Marie was partly dependent on Mark and may be entitled to compensation as a partly dependent partner.

What about dependent children?

For information regarding dependent children, see Factsheet *Compensation for Dependents – Eligible Young Persons: MRC 15*.

When will death benefits be available to a wholly dependent partner?

Compensation may be provided if:

- liability for the deceased member's death has been accepted under the MRCA; or
- the deceased member met the eligibility criteria for the Special Rate Disability Pension safety net payment during some period of his or her life; see Factsheet *Special Rate Disability Pension Safety Net Payment (SRDP): MRC 09* or
- the deceased member had been assessed before his or her death as suffering an impairment of 80 or more impairment points as a result of one or more service injuries or diseases. see *Factsheet Permanent Impairment Compensation Payments: MRC 07*.

What compensation is available to a wholly dependent partner?

Wholly dependent partners can receive either tax-free periodic payments equivalent to the rate of the war widow's/widower's pension under the *Veterans' Entitlement Act 1986 (VEA)* or its age-based lump sum equivalent.

Where the widowed partner was aged 17 or less at the time of the member's death and chooses the lump sum, he or she receives the maximum amount that was applicable at the

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time of death. Currently this amount is \$507,967.95. The payment reduces for those aged over 17.

Where the member's death has been accepted as having been related to ADF service, an additional tax-free, age-based death benefit may be payable. The maximum amount of additional death benefit is \$122,742.21.

Where the widowed partner was aged 40 or less at the time of the member's death, he or she receives the maximum amount of the additional death benefit that was applicable at that time. The payment reduces for those aged over 40.

Can wholly dependent partners get assistance for financial advice concerning their compensation options?

Yes. They can receive up to \$1,472.90 for the cost of financial advice that they may obtain when choosing between the pension and a lump sum. This is the maximum that can be paid for such financial advice and it should be noted that it is paid by reimbursement. If no such advice is obtained, or if advice is obtained at no cost to the claimant, no "compensation" is payable for financial advice. See Factsheet *Payment Choices for Wholly Dependant Partners of Deceased Members and Former Members: MRC 19* for further information.

What other assistance is available to wholly dependent partners who are eligible for death benefits?

Other benefits include:

- a Gold Repatriation Health Card. This card entitles the holder to a range of health care for all conditions. See *Factsheet MRC 22: – Treatment* for more information; *and*
- A MRCA Supplement Payment of \$6.00 per fortnight in place of the previous telephone/internet allowance.

Wholly dependent partners may also be entitled to the VEA income support supplement and associated allowances, subject to an income and assets test. See Factsheet *Income Support Supplement: IS 46*.

How do I make a claim?

A claim form D2051 can be obtained and lodged through your local Department of Veterans' Affairs (DVA) office.

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Oral advice

While we make every effort to ensure that you are given accurate information, it is important that you seek written confirmation of oral information or advice before making any major decisions based on that information.

We continually strive to improve the level of service you receive and make this request as an added safeguard for you.

Other Factsheets

Other Factsheets related to this topic include:

- *MRC 02: Compensation Coverage for Members and Former Members of the Australian Defence Force*
- *MRC 04: MRCA Compensation Payment Rates*
- *MRC 15: Compensation for Dependants – Eligible Young Persons*
- *MRC 16: Compensation for Dependants – Other Dependants of Deceased Members and Former Members*
- *MRC 17: Funeral Assistance*
- *MRC 18: Bereavement Payments*
- *MRC 19: Payment Choices for Wholly Dependant Partners of Deceased Members and Former Members*
- *MRC 22: Treatment*
- *MRC 25: How to Make a Claim under the Military Rehabilitation and Compensation Act*
- *MRC 29: Australian Government Actuary Tables for Age Adjusting Lump Sums*

More information

All DVA Factsheets are available from DVA offices, and on the DVA website at www.dva.gov.au.

You can phone DVA for the cost* of a local call on 133 254 or free call 1800 555 254 if you are outside a major city

Note: *Use a normal landline phone if you can. Mobile phone calls may cost you more. Local call rates vary depending on your phone service provider.

You can send an email to DVA at: GeneralEnquiries@dva.gov.au

You can get more help from any DVA office.

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Special Note

All rates of compensation mentioned in this Factsheet were current from 1 Sept 2009. Rates should be checked with DVA for any changes since that date.