

**The Productivity Commission**

**Inquiry into Veterans' Affairs' Legislative  
Framework and Supporting Architecture for  
Compensation and Rehabilitation for  
Veterans (Serving and Ex-serving  
Australian Defence Force Members)**

**Submission by the Veterans' Advisory Council and  
the Veterans' Health Advisory Council**

**South Australia**

**2 July 2018**

## Introduction

The Veterans' Advisory Council (VAC) and the Veterans' Health Advisory Council (VHAC) of South Australia welcome the opportunity to present this submission to the Productivity Commission Inquiry into *Veterans' Affairs' Legislative Framework and Supporting Architecture for Compensation and Rehabilitation for Veterans (Serving and Ex-serving Australian Defence Force Members)*.

It is a fundamental obligation of government and citizens to look after the wellbeing of those who wear, or have worn the nation's uniform and those who support them. This is considered 'world's best practice'. Commemorating lives lost in war or the anniversary of a significant event in our century of conflict, while important, are considered an insufficient discharge of this solemn obligation.

Accordingly, every effort must be made to ensure that those who have entered the profession of arms can access appropriate health, mental health, welfare, compensation and rehabilitation services both during and after their service obligation. Access to services should be streamlined, intuitive, and non-confrontational.

The default position for a claim for compensation or a request for assistance to the Commonwealth through the Department of Veterans' Affairs (DVA) should be 'yes', until proven otherwise, to address immediate concerns and mitigate the further manifestation of a condition.

Since 1999 more than 90,000 deployments have been undertaken by Australian Defence Force (ADF) members to global theatres of conflict. Some individuals have deployed on multiple occasions. Younger veterans are surviving injuries that have previously proved fatal because of improved equipment and operational techniques. The consequence is a need to position our rehabilitation, compensation, advocacy, health and mental health services to address the requirements of a veteran demographic that now spans more than 80 years.

Suicide ranks as one of the highest, if not the highest, cause of death amongst persons aged between 15 and 44 years of age. Evidence demonstrates that suicide in the veteran community, particularly in the younger age demographic when an individual's career may end due to an illness or injury, is of serious concern. A recent Australian Institute of Health and Welfare report concluded the suicide rate among former ADF service men between the ages of 18 to 24 was almost double that of the national rate. This statistical variation is alarming, reflective of a loss of connection and communication with young ex-ADF male members. The loss of one member to suicide is cause for serious reflection and review of the potential cause or causes. Zero suicides must be our aspiration.

It is acknowledged that non-liability mental health care is available to all veterans through the provision of the white card, however a burden of proof remains where compensation is sought for physical and psychological issues pertaining to military service. The demand placed on the individual to provide proof, together with the complexity of the legislative system as it currently exists, can cause unwarranted stress for the individual and their family. In the extreme this has resulted in suicide. This is clearly unacceptable.

This submission seeks to highlight areas of concern to the veteran community in South Australia, not limited to addressing the Productivity Commission's Terms of Reference.

## **Background**

In 2008 the South Australian Government established a Veterans' Affairs portfolio at Cabinet level. The State Minister for Veterans' Affairs is supported by a government agency, Veterans SA, and a Veterans' Advisory Council that provide a voice for veterans at the highest level of government. Its objectives are:

- to promote the wellbeing of all members of the veteran community in South Australia,
- to encourage co-operation across all veteran organisations in South Australia,
- to provide a forum for the veteran community to communicate directly to the highest levels of State Government through the Minister for Veterans' Affairs, and
- to monitor and provide advice about matters relating to the recognition and commemoration of the service of veterans.

The VAC's membership is representative of the Royal Australian Navy, the Australian Army and the Royal Australian Air Force and has a balance of rank, gender, and operational service across its 17 members. The VAC involves itself in policy matters such as employment assistance for veterans, transition from service, veterans' health care and commemorations.

In 2009 the South Australian Government established the Veterans' Health Advisory Council (VHAC) to provide advice to the state Minister for Health and Wellbeing regarding health and mental health issues affecting the veteran community. The VHAC works closely with the office of the Minister for Health and Wellbeing and the veteran community. In 2016, the VHAC completed development of the '*Framework for Veterans' Healthcare 2016 – 2020*'. The document can be found at:

<http://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/health+services/veterans+health+services/framework+for+veterans+health+care>

## **Veteran Definition**

The Australian Defence Force trains for war. Whether service is related to peacekeeping, WW2, Korea, Vietnam, Iraq, or Afghanistan there is no discrimination of service. The commitment of those who serve remains as it has always been – service is service.

In November 2017 the Veterans Ministers' Round Table (VMRT) reached consensus on a common definition of veteran that is to be recognised by all jurisdictions. It was agreed that a veteran would be defined as 'a person who is serving or has served in the ADF'. Ministers agreed use of the term veteran should not be limited by the definitions contained in existing legislation. The adoption of this definition is recognition that, regardless of the type of service

rendered by an individual, they are considered a veteran and their service should be appropriately recognised and compensated where necessary.

### **Veterans'/Military Charter/Covenant**

As we exit the centenary of Anzac commemorative period, consideration of a Veterans'/Military Charter or Covenant is appropriate as an agreement of responsibility and trust between all service personnel, the government and the people of Australia. This would be a no cost to budget action, and will provide the moral and legal grounds to provide the government guarantee to all veterans' services.

Any Charter or Covenant should include:

- The Australian Community (including its government):
  - acknowledging the service and sacrifice of all who have served
  - undertaking that every effort will be made to ensure those who have served are appropriately acknowledged, treated fairly cared for when required
  - acknowledging the key role of families and carers and similarly undertakes to treat them with the respect they deserve
- The Veteran Community
  - undertaking to speak with one voice
  - placing the veteran at its core as its sole priority

### **Transition**

It is well understood that change and transition represent potential for both growth and decline, however studies demonstrate that the transition from military service is often experienced as a decline for many veterans and can lead to a downward spiral of social exclusion, homelessness, alcohol misuse, unemployment and poor mental health. To harness opportunities for growth during challenging periods our transition services must be better equipped to facilitate growth and positive adaptation. The point of 'handover' from the Department of Defence to the Department of Veterans' Affairs (DVA) is a particularly sensitive period for veterans and their families and a clear overarching framework should be defined and articulated.

Of particular note, veterans (for the most part) should not be discharged from the ADF until their entitlements, if any, are determined by the DVA and DVA has all the necessary information it requires to assume the management of the individual. This is not to say that the individual abrogates responsibility for their own welfare. It is simply to ensure that the service person, separating from their service family, is embraced in a similar way by their post service family.

There may also be a benefit in directing some research on the causal aspects/drivers behind why the majority of serving and former serving personnel are healthy and view their military service with fondness and positivity, including those exposed to significant stress and trauma during service. Such research may improve recruitment procedures and/or assist to identify individuals at risk earlier.

## Claim Processing

The recently released ANAO Report 'Efficiency of Veterans Service Delivery by the Department of Veterans' Affairs' states that the majority of DVA Rehabilitation & Compensation (R&C) services are being delivered to veterans and their dependents within DVA's time based performance targets, however a minority of claims take an excessively long period to process due to inefficient handling. These delays can have significant impacts for these veterans. The report further states that the audit identified weaknesses in DVA's business systems and processes, which do not adequately support the efficient delivery of services.

Additionally, a Foreign Affairs, Defence and Trade References Committee was established in 2016/17 primarily to examine suicide rates amongst ADF members and veterans. This committee received numerous submissions with a recurring issue being the increased stress and anxiety experienced by ADF members as a consequence of the complex, lengthy DVA claims process.

There is significant evidence that, despite some improvements in claims processing by DVA, many in the veteran community are underwhelmed by the department's performance in areas such as the time taken to process a claim, the apparent culture of declining a claim in the first instance, and the difficulty in navigating the bureaucratic claims system.

First pass determination of a claim should be the department's target.

It is acknowledged that DVA delegates have a legal responsibility to ensure the bona fides of a claim. Delegates should examine claims from the perspective of having sufficient information to determine an outcome rather than waiting for the claim package to be complete before examination. If sufficient information is presented to determine a claim, regardless of completeness, the claimant can be requested to follow up with the remaining documentation in the case of a successful determination if required, or not to proceed with the claim as the outcome is most likely to be unfavourable.

## Data Availability

The absence of a national database for veterans that captures and accounts for their health and wellbeing is an important gap that should be addressed. Government departments, agencies and service providers should be able to establish an individual's military service at the point of entry.

South Australia is attempting to address this issue through its *Valuing Our Veteran Community* data collection project. The project aims to identify those areas of social policy where knowledge of the veteran community would best inform the government's decision making. State Government departments in the areas of health, mental health, homelessness, education and correctional services have agreed to seek information regarding an individual's service background at the point of first contact or admission to a facility. The information will be collected by Veterans SA to improve decision making processes.

Additionally, the VHAC in South Australia has advocated for some time for an individual's military service to be identified through an embossed 'V' on their Medicare card. This system could be an 'opt out' model should the individual not wish to be identified as a veteran or former serving member.

Consideration for the inclusion of a question related to military service should be included on every national census. The Department of Defence and DVA have agreed to automatically share data for new enlistees into the Australian Defence Force from 1 January 2016. Service for individuals prior to 1 January 2016 is only available to DVA when an individual registers with the department either through an application for qualifying service or submits a claim for an entitlement or benefit. As a result, governments at all levels do not have robust data related to the veteran communities within their jurisdiction and for whom they have responsibility.

The Premier of South Australia has written to the Australian Statistician requesting consideration of the inclusion of a question in the next national census (2021) seeking information regarding any member of the household who may have served in the military.

## **Legislation**

The recently released ANAO Report 'Efficiency of Veterans Service Delivery by the Department of Veterans' Affairs' states, inter alia, that DVA should improve the structure and consistency of workflow management for Rehabilitation and Compensation claims, and review its highly segmented approach to processing claims under the various elements of applicable legislation.

Claims for compensation relating to service in the ADF are assessed under one of a number of different Acts, depending on the time and/or the type of the service, with different liability tests applying. This legislative framework is difficult to navigate for advocates, DVA staff and members of the serving and ex-serving community. In some circumstances a veteran may have a claim under more than one Act requiring the claimant (or their advocate) to make a number of applications to more than one compensatory scheme. The complexity of the legislative framework can lead to significant delays to the processing of claims adding unwarranted stress to those involved. The assessment process within DVA requires delegates to have a thorough understanding of all legislation in order to assess the validity of a claim.

Advocates report that these difficulties can be compounded by having to submit claims via outdated DVA Information Technology systems and at times dealing with staff who have not been adequately trained to assist the claimant satisfactorily. The complexity of the legislative framework can lead to significant delays to the processing of claims adding unwarranted stress to those involved.

It is worth noting that both the US and Canada operate a single scheme and the UK operates one past and one current scheme. This approach removes any overlap between legislative elements simplifying the process. Consideration should be given to a complete review of Commonwealth veteran related legislation that preserves veterans' entitlements while simplifying the process under a single Act.

## **Statements of Principles**

One of the Foreign Affairs, Defence and Trade References Committee into veterans' suicide key recommendations was for legislative reform so that the current military compensation framework could be significantly simplified. Included in that recommendation was a review of the use of a

cornerstone of the MRCA scheme, namely the use of Statements of Principles (SOPs) in determining a compensation claim.

The SOPs is one of the further group of documents that must be considered with any ADF member's injury claim. In short, for a member's compensation claim to be accepted as having been service-related, it must fulfil the strict criteria set out by the specific SOP relating to their injury.

There are hundreds of SOPs covering a large range of injuries that are viewed by many as unreasonable and narrow in their criteria of whether an injury or disease has been service-caused. Whatever the condition, a member's claim will likely be rejected unless it can satisfy completely the factors listed in the SOP.

In many circumstances, a particular condition – for example, a degenerative condition – may be as a result of years of military service and not be due to any one particular incident. Unless the member can fulfil a specific factor in the relevant SOP, the claim will be rejected, despite the member's service clearly causing or contributing to the degenerative changes. On this basis, it can be said that the bar to getting a claim accepted is set far too high.

Often the strict application of the SOP results in injuries being rejected by the DVA despite there being a clear service cause. Such an approach is not utilised in any of the state-based injury schemes that cover work injuries or motor vehicle claims. Indeed, the SOPs are unique to Australia's military compensation scheme.

The continued use of the SOPs will ensure the claims process remains a complex, confusing and often unjust scheme to those ADF members injured during their service.

### **Advocacy**

Veterans of more recent conflicts have a growing expectation that professional support will be provided through DVA. Advocacy services for veterans should be professionalised and advocates provided with the training required to ensure they are best able to represent an individual's circumstances. Wherever possible, veterans should interface with DVA and allied agencies via professional case managers to have their needs appropriately assessed and referral/support that matches requirements.

Advocates are traditionally drawn from Ex-Service Organisations (ESO) to advise and assist veterans or their families through the claims process. Advocates require training to navigate the legislative framework and DVA's claims examination process. As ESOs are no longer attracting veterans in sufficient numbers from more recent conflicts including East Timor, Solomon Islands, Iraq and Afghanistan there is potential for a shortage of advocates in coming years that may add to the time taken to process claims.

Any new advocacy system should incorporate training that results in an accredited qualification such as a Certificate of Training or Diploma. Advocates should be appropriately remunerated while retaining objectivity and neutrality. Links to an advocacy network could be established either through ESOs or by referral by DVA or state based agencies. Advocates should be provided with

access to legal advice to minimise claims being submitted that have little or no legislative basis.

Attracting the next cohort of advocates offers an opportunity for military personnel separating from the ADF. The offer of a certificate or diploma could attract separating ADF members to a new career in advocacy. Training could be undertaken prior to separation from the ADF that could be formalised through an employment assistance scheme that commences when an individual commits to transition from the military. Employing recently serving members as advocates has a number of benefits including credibility with the 'contemporary veteran' community, increased ESO membership through the referral approach, and screening of applicants could be completed as part of an ADF member's pre-discharge procedures.

It should be noted that the welfare aspect of advocacy is lifelong. The pensions or compensation element is only the start-point of a veteran's contact with DVA. As Welfare Officers operate having regard to DVA policies, training must be provided by DVA.

### **Holistic Through Life Health Strategy for Veterans**

Unlocking early treatment is critical for ADF members and veterans living with mental illness. Recently, there have been considerable steps taken to address issues at DVA, including the provision of no-fault medical treatment for psychological conditions and additional federal funding.

In 2017 the commonwealth government announced a number of other significant financial commitments relevant to the ADF community, including an additional \$31 million to assist veterans living with mental illness. This included a \$16 million package, over four years, to veterans who are financially vulnerable and who have already claimed for mental health conditions. As a result, it is now possible for veterans making a mental health claim to receive interim income payments while their claim is being investigated and assessed. Currently these payments are available only to individuals whose financial hardship is due to the fact their inability to work is caused by their mental health condition.

These funding initiatives are critical steps in the right direction, but there remains much to be done before things are simplified for injured ADF members.

The VAC and VHAC believe that a long-term strategy across the complete spectrum of health and mental health of veterans, to include the impact of service on families, is required. The strategy should focus on a wellness model, not an illness model, and should be seamless through the life of the individual whether they are serving or have transitioned from the military.

### **Conclusion**

The profession of arms is unique. Those who serve do so willingly in the full realisation of the potential dangers involved. Service personnel have access to the necessary health and welfare systems while in uniform. The same cannot be said once an individual transitions. Every effort should be made to ensure that those who serve have their entitlements preserved regardless of whether they remain in uniform or not.



Service in the military is challenging and, by its very nature, can present unique health challenges for serving and former members that can extend to their families. However, the positive health and well-being aspects of military service far outweigh the negative and should not be overlooked.

The commitment to serve is a whole-of-family commitment. Families of veterans should be afforded the same level of service and respect as those in their family who have worn the nation's uniform.

Any meaningful change to simplify the compensation and rehabilitation process for veterans and their families hinges on action being taken in Canberra first – namely, to simplify military compensation legislation, ease the documentation required for a successful claim, and accelerate the entire process to avoid placing any more stress and anxiety on these injured people.

Our injured Defence men and women have made enormous sacrifices in the name of serving and protecting our country. They deserve more. It's now time that we give back to them.

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