

Comments on Productivity Commission Draft Report

“A Better Way to Support Veterans”

10 **REPORT OVERVIEW.** This section gives a short succinct description of military service being a **unique occupation** and identifies that almost every aspect of uniformed life comes with **risk**. It also identifies that the Australian Government has been committed to **supporting** and reintegrating into society, those who have been affected by their service.

The above extract from the Draft Report provides a very re-assuring introduction for those readers who are members or ex-members of the Australian Defence Force.

20 However, further reading bodes ill for those with an intimate understanding of the workings of the system as it is (“The Devil We Know”), for it indicates a desire to press a “Re-Start Button” and in so doing tear down all the good that has been established (despite many lengthy and varied frustrations) through a hundred years of experience. Most of the positive aspects have been very hard and expensively won. This is well documented in records from initial claims through to and including the High Court of Australia, Federal Parliamentary Hansards and Official Records held by the Australian War Memorial. The Report indicates a very much desired need for change in line with contemporary, almost obsessive, change for its own sake.

This Response is based on the strongly held belief:

30 *“The very last Australian War Veteran deserves nothing less than the very best of treatment and compensation provided to any and all of his/her predecessors. To fail or neglect to do so is a betrayal of the principles and standards of care for War Veterans in Australian History”*

INTRODUCTION

The draft report does not address some important Veteran issues. Key issues include:-

1. Referring to all Service Personnel as “Veterans” (especially after only one day in the military) is disrespectful to those who have earned the right to be called “Veteran” through their active operational service.
 2. The long established principle of “the benefit of doubt should favor the veteran and the beneficial interpretation of the law including SOP’s”. Only having one standard of “Proof” fails the long established benefit of the doubt formalised through legally binding Statements of Principles. The proposal **is not agreed to!**
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3. Disposal of the long established Department of Veterans' Affairs in favour of a Veterans Services Commission **is not agreed to!**
4. The abolition of DVA and placing the responsibility for the rehabilitation and compensation of Military Personnel under Defence **is not agreed with.** Such an arrangement will doubtless create unacceptable conflicts of interest and purpose within the one Department
5. Proposed abolition of the Gold Card **is not agreed with.**
6. Transition from Military to Civilian occupation should be similar to that which applies in the USA under their legislation. (Bill of Rights).
7. Application of contemporary "workplace health and safety legislation" is not appropriate to peace time military activities, because it inhibits realistic preparation for combat the ADF's ultimate role without the grace or blessing of time for retraining to the new (but very old) reality, caused by the lethargy of peacetime. Is that really training for "productivity"? **It is definitely not appropriate** for operational war like activities.

This outline response addresses the **Productivity Commission Draft Report** "A Better Way to Support Veterans" in the order of the above numbered points. They are in the order of perceived priorities of War Veterans who gained the Title during the period of the Vietnam War, with all its upheavals, but before the Veterans' Entitlements Act 1986 was introduced. For the most part, the joint authors are long term unpaid, voluntary, experienced and Accredited Advocates for fellow veterans before various levels within the claims and appeal processes. This covers from DVA Internal Review through the Veterans' Review Board to and including the Administrative Appeals Tribunal. The Advocates have experience up to twenty five years in length and their total joint service is far more extensive. Their experience favours the status quo.

Issue No.1.

Who is a Veteran?

1. Referring to all Service Personnel as "Veterans" (especially after only one day in the military) is disrespectful to those who have earned the right to be called "Veteran" through their service active operational service. **This is not meant in any way as derogatory to new enlistments but a simple observation of historical reality.**

Before proceeding with further comments on the report, there is one aspect that cannot be agreed with. On page 6 of the report overview, under heading "**Who is a veteran**" the report states that "in 2017, a Roundtable of Australian Veterans' Ministers agreed that a veteran would be defined as anyone who has served at least one day in the ADF".

We are not aware of any Minister in the Queensland Government ever having been appointed nor have we ever been advised of the appointment of a Queensland Government Veterans' Minister, hence the approach through a Senator for Queensland

To arbitrarily make this decision is disrespectful to those who through their war service had earned them the right to be referred to as a **VETERAN**. The term Veteran is (or was) defined in the Veterans Entitlement Act. This is the only definition that should be applied when referring to a veteran. To make a decision that bestows the title of 'veteran' on a raw recruit after one day in the military is just plain wrong and this should be rescinded immediately.

All future reference using the word "Veteran" should only be used when referring to someone who is a War Veteran. All other Military Personnel should only be referred to as Service Personnel.

This point is important, as this report has been prepared by proposing that all ADF members (current as well as ex) are the same. In other words, by doing so, it unfairly treats operational (war) service the same as non-operational service. Irrespective of the type of service (operational or non-operational), any claim made will be treated exactly the same, and will not be any different to that which is applied to civilian employment.

This disregards the historically proven, well documented very necessary exigencies of relevant operational war service which are also recorded in abundance in the records of Repatriation claim Records through to and including the High Court of Australia. It also disrespects the cost to Australia in lives and suffering over the last century and the experience gained in dealing with the problem.

Issue No.2.

Standards of Proof.

2. The long established principle of "the benefit of doubt should favor the veteran and the beneficial interpretation of the law including SOP's". Only having one standard of "Proof" is not agreed to.

Under current legislation, two standards of proof apply to claims by serving or ex military personnel. These differentiate between operational (War) and non-operational service. The standards respectively are set in the "**Reasonable Hypothesis**" and "**Balance of Probabilities**" Statements of Principles. and the Medical Scientific Knowledge and Research into same conducted under the auspices of the Repatriation Medical Authority (RMA). Research into the pros and cons of the establishment of the RMA and its Records needs to be done *vis-à-vis* the effectiveness of the RMA and the SoP regime before abolition of these could be seriously considered.

The Standards of Proof were developed from years of experience dealing exclusively with Repatriation issues. The "**Reasonable Hypothesis**" is applied to cases arising out of Operational War Service where in many cases it was shown that under the circumstances that are long known to prevail in such conditions, it is often impossible for a claimant to prove through direct evidence (witnesses etc) that particular events happened. Coupled with the benefit of the doubt this allows a veterans claim to be accepted provided a reasonable hypothesis (not fanciful etc.) has been raised in the case.

The “**Balance of Probabilities**” requires a more definite level of proof to be established, such as witnesses, documents, historical fact etc. before a claim can be established.

Both of the above are not known to the authors to be a requirement of Civilian Workers Compensation standards in Australia and Workers Compensation does not cover operating under Service Conditions. This is in part due to the Standards required by Occupational Health and Safety Acts/Regulations and other Provisions.

130 Within the 48 hours before the time of writing (21/2/2019) there had been a fatal accident in one of the Central Queensland Coal Mines run by Anglo American Coal Co. Commenting on the accident a Union Official said on the ABC Radio News bulletin at 12 noon on the above date, “**when you go to work - you go to work, not to die**”. There is no challenge or opposition to this standard/view by these authors. At the time the Mine had ceased operations until after the accident investigation has been completed. Once again the authors do not challenge or raise any opposition to the standards being applied in a civilian work environment, they are totally justifiable in the circumstances

140 However, it speaks volumes for the intent shown in the Productivity Commission’s Draft Report to draw a comparison between conditions of work in a peacetime environment as opposed to war like operations or the need for realistic training for same. Any suggestion the two can be likened is preposterous.

In the event such Work Place Health and Safety Provisions are introduced, how then is it proposed to deal with the above facts?

Issue No.3.

Abolition of DVA - Relacement with “VSC”.

The retention of DVA is fully supported and its abolition totally rejected.

150 Undoubtedly, there are very serious reforms needed in DVA that are long overdue, but disposing of the very mature baby with the bath water will not make the new baby any cleaner, especially if encrusted with the same culture, and it will be! A name change will not bring or force reform. Advocacy experience has long since recognized the difficulties in presenting cases to persons who have little (if any) knowledge of military service in peace time. In war time or operational service it is almost non-existent, if it exists at all. This has understandably occurred over many years due to the ever dwindling number of persons with military experience available for employment in the Repatriation field. It has been exacerbated by current anti- discrimination and other similar legislation. It has been further worsened by the lack of available personal contact with whoever is handling a case, especially for those living in country areas. There is little readily available personal contact available to claimants. A new name
160 for the same purpose will not bring about an improvement to services to serving and former military personnel.

Issue No.4.

Abolition of DVA.

The abolition of DVA and placing the responsibility for the rehabilitation and compensation of Military Personnel under Defence **is not agreed with.**

Such an arrangement will doubtless create unacceptable conflicts of interest and purpose at the very least, within the one Department!

Issue No.5.

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Abolition of the Gold Card.

The proposed abolition of the Gold Card **is not agreed with.**

When the Repatriation General Hospitals were transferred to each of the States in which they were located it was an integral part of the deal that veterans would not be disadvantaged by the transfer.

The DVA Gold Card is now recognised for what it is and it is the only means that is quickly available to ex-service personnel with the coverage it certifies to establish their bona fides. This is extended from the State Health Systems through to and including Medical Practitioners, Specialists and most if not all Health Service Providers.

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For certain the intent of the original issue of the Gold Card has been eroded by administrative lobbying and decisions including for political expediency, but that is not sufficient reason for it to be eroded out of existence. A very strong reliance is placed on it by those qualified to hold it and they would be considerably disadvantaged if it were withdrawn.

Issue No.6.

Transition from Military to Civilian Occupation.

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It is believed that an Authority should be introduced and quickly in place that has as its sole responsibility for assistance to discharged military personnel for their re-establishment in civilian life and occupations. Its emphasis should especially be on those personnel who have discharged directly or indirectly due to service related wounds, injury or illness.

It should include retraining and or education to and including the completion of Tertiary Studies where this is possible and appropriate. It must also have a guaranteed assurance of complete co-operation by and from the Defence Department and all armed services and also from the Department of Veterans Affairs.

It has been likened by some to the United States G.I. Bill of Rights though it is not believed such a title is appropriate.

Issue No. 7'

200 **Application of Work Place Health and Safety**

Is not agreed that contemporary workplace health and safety legislation should be applied to the peace time military forces especially whilst in training for war or operational service, which often applies to many, the majority of the time.

See the comments regarding the Coal Mine Accident in Central Queensland on/or about 19-20/2/2019 in regard to Issue No.2 above of this Response.

The Responses shown from here down are those which were rased in discussions regarding the Productivity Commissions DRAFT Report

What are the aims and objects of the Australian Defence Force?

210 The answer (below) comes from the Defence website provided in search of the above question.

Department of Defence:

Mission

The Australian Defence Force (ADF) is constituted under the *Defence Act 1903*, its mission is to defend Australia and its national interests. In fulfilling its mission, Defence serves the Government of the day and is accountable to the Commonwealth Parliament which represents the Australian people to efficiently and effectively carry out the Government’s defence policy.

Role

The primary role of Defence is to defend Australia against armed attack.

220 **Has Defence failed at any time in Australian History to meet the above, and what if anything has been done to rectify the matters of failure?**

Matters of Repatriation/Compensation & Rehabilitation resulting from service in the ADF are a direct result of the ADF pursuing its mission and role. The ADF’s productivity can surely only be measured on the basis of outcomes. In this regard details are needed as to where, when and how the ADF has failed in its mission and role.

AUSTRALIA’S RESPONSE.

230 The paragraphs below show the results of discussions had by the authors amongst themselves and with fellow war veterans in the course of drawing up this response. They can all be placed under at least one of the Key Issues numbered 1-8 inclusive, shown under the **INTRODUCTION** of this response

This section makes the statement that **“Australia’s veterans compensation and rehabilitation system is separate from and more generous overall than, the**

system of workers' compensation and support generally available to civilian workers. It is described as 'beneficial' in nature." It makes the statement that **"it needs to be brought more in line with contemporary workers compensation schemes."**\

See Key Issues; Nos.1,2,3,4 & 7.

240 In the Overview, this report states that service in the military is **unique**, and that almost every aspect comes with **risk**. With respect, operational service in a war zone (particularly if serving in a combat unit) has long been recognized as unique and extremely risky, so why shouldn't the veteran's compensation and rehabilitation be more generous than that provided to the general civilian workers? After all, military personnel have to accept that if they are posted to an operational war zone that they may be mortally wounded or severely injured in the process of carrying out their duties defending Australia's interests.

250 Australia is often described as a rich and generous Nation. We make the observation that our politicians' remuneration, entitlements and pensions are generous when compared to average civilian standards; our foreign aid is generous, etc. so why shouldn't Australia provide for compensating and rehabilitation to ADF members, particularly those with active service, in the same generous manner? Military personnel in a war zone have put their lives on the line every minute of every hour that they live in that environment. Surely, if an ADF person is injured when operating in that environment, he can expect to be properly and generously compensated and rehabilitated. It has been expected in Australia over the last one hundred years that Governments should be generous to Australia's Military people who have literally put their lives at risk in the service of this country. It seems this is now open to dispute and very serious challenge before the Productivity Commission?

See Key Issues; Nos.1,2,3,4 & 7

260 The reason for this observation, is that the whole thrust of this report seems to be that Military compensation and rehabilitation should be aligned to mainstream civilian workers compensation and rehabilitation. The early statements about military service being unique and inherently risky seem to have been totally ignored and that there is no justification for military compensation being more generous. Alignment with mainstream workers compensation is repeated throughout the document.

See Key Issues; Nos.1,2,3,4 & 7.

270 There does not appear to be any consideration given that compensation and rehabilitation services provided to military/ex-military personnel should be more generous given the risks that military personnel must undertake in performing their duties.

See Key Issues; Nos.1,2,3,4 & 7.

It is believed that it ignores the fact that generations of War Veterans that have gone before us have fought hard to gain the entitlements that were enshrined in the Veterans Entitlement Act. Why should war service today be treated differently to that of the past?

See Key Issues; Nos.1,2,3,4 & 7.

280 **Page 4 of the Overview of Commission Draft Report.** The report states that "veterans" today have different needs and expectations and that the current system is not working. How are they different? We expect that if someone makes a claim they

would want to have it processed as quickly as possible and if accepted that they will receive rehabilitation treatment and if appropriate, compensation. The claimant wants an outcome within a reasonable time. That has always been the case.

Delays can occur for any number of reasons, some being :-

- Complexity of the claim
- Lack of resources within DVA to treat the claim quickly and efficiently
- Not enough DVA staff
- Lack of experienced staff within DVA, etc.
- Conflicts of Interest

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Experienced advocates have found, that because staff within DVA lack any military background, this leads to a lack of understanding of claims, which can lead to delays in having claims finalized, or can lead to poor decisions being made that result in appeals being lodged.

COMMENTS ON THE OVERALL THRUST AND COMPILATION OF THE DRAFT REPORT.

The overall thrust of this report seems to be that it is intended to be primarily a cost cutting exercise. It appears that the issuing authority want to make a case that the Veteran, Ex-Service Personnel and serving Military Personnel are over compensated, both in monetary terms as well as entitlements, e.g. Health Care Cards, etc.

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So, to reduce costs, they propose to eliminate the Department of Veterans' Affairs, and ultimately the Veterans Review Board and bring the compensation and rehabilitation entitlements into line with "the system of workers compensation and support generally available to civilian workers".

Further, the report proposes that in future the Dept. of Defence should take responsibility for the veteran support system based on contemporary workers compensation principles. We do not accept that this is a good idea. We have heard that Military Personnel are reluctant to make claims while they are still serving, as this may result in their being treated adversely in their military workplace. Ultimately though, they have to make a claim, as they need a paper trail to support their claim.

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The Military do not have a good track record in accepting liability for poor management of their work programs. An example of this would be the F111 de seal/reseal project. It took a long time for the workers whose health was affected by that work to ultimately have the Air Force and the Government accept responsibility and for the workers to receive compensation.

At least, by having The Dept. of Veterans' Affairs managing the claims, claimants' have an organization that is at arm's length from the Military and would give them some comfort that their claims will be treated with a degree of confidentiality.

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This report makes much of the fact that people making claims under the existing system have great difficulty understanding and navigating the system. Experienced advocates can attest to the fact that making a claim under the VEA was reasonably

straight forward. It was only with the introduction of SRCA and MRCA, that it became more difficult, particularly if a claimant had entitlement under more than one Act.

GOLD CARD ENTITLEMENT The contentious Gold Card is EARNED . The issue of the Gold Card is in recognition (particularly to TPI's) to recompense for the impact that their service has had on their overall health and wellbeing that has so restricted their ability to work and so prepare for retirement.

330 **SOP's** The Sop's set criteria for acceptance of war/service related disability. The current system establishes the standards of proof to be applied in war or non-operational service. This system should be retained.

Conclusions The very last Australian War Veteran deserves nothing less than the very best of treatment and compensation provided to any and all of his/her predecessors. To fail or neglect to do so is a betrayal of the principles and standards of care for War Veterans in Australian history.

340 It is believed that the Government should give serious consideration to going back to the VEA to provide the entitlements that came under that Act to all ADF personnel with war service. We believe that war service is the same now as it ever was and should be recognized as such.

We encourage the Government not to proceed with the Productive Commission review "A Better Way to Support Veterans". If the Government seriously wishes to conduct a review of the current system, then they should consider other options.

Placing the Defence Dept. in charge of looking after ADF compensation and rehabilitation we don't believe is in the best interest of ADF and ex ADF personnel's interest, especially the privacy and confidentiality of serving members It is seen as a Conflict of Interest Breeding ground and able to create further lengthy delays in claims and other administrative matters.

350 Signed on behalf of the authors this 24th day of February 2019

G.K. Joyce