

# Submission to the Productivity Commission in relation to Compensation and Rehabilitation for Veterans

## INTRODUCTION

I respectfully thank the Productivity Commission for inviting this submission. Whilst I welcome and support a review into Veteran compensation and rehabilitation, my concern is that the Terms of Reference (TOR) have been fashioned in such a manner that they are not in the best interest of Veterans themselves, particularly those who may be dealing with mental welfare issues. The TOR gives the impression that it is targeting responses from Ex Service Organisations (ESO) and/or other Veteran Support Groups rather than testimony from individual Veterans or their families.

My apprehension is that many Veterans will respond only to issues related to them rather than to the comprehensive points in the TOR. This potentially may result in their submission being ignored. If Veterans individual experiences are ignored it will make this inquiry yet another one that goes nowhere and brings no value add to Veteran compensation and rehabilitation issues.

The Department of Veterans Affairs (DVA) has the responsibility to provide caring for Veterans and their families. The Department exists for the entire Veteran community, which includes anyone who has served or is serving, and their families. DVA's prescribed goal is to provide support, when needed, to ensure Veterans can lead healthy and productive lives.

Sadly too many Veterans are suffering unnecessarily at the hands of DVA. Already over the last 20 years there have been numerous separate investigations, reviews or inquiries such as;

- ANAO AUDIT
- PRODUCTIVITY COMMISSION
- STUDY INTO VETERANS ADVOCACY
- POSSIBLE CORONERS INVESTIGATION REGARDING A SUICIDE
- A NUMBER OF INDIVIDUAL SENATE INVESTIGATIONS
- PRIVACY COMMISSIONER
- SENATE INQUIRY
- INVESTIGATION INTO THE CASE OF JESSE BIRD

These, and many other inquiries, have resulted in numerous recommendations to DVA and the Government with each and every report, review or submission having the common theme of the complexity of the system and the need for simplification.

Despite copious inquiries that have highlighted countless deficiencies within DVA, the current system still continues to fail a large number of Veterans and their families. The Department of Veterans' Affairs can only be described as monolithic, impersonal, bureaucratic, somewhat convoluted and overall mysterious in its decision-making.

The Australian government has a responsibility to ensure it supports the people, families and communities who have chosen to serve their country. The interests of Veterans are best served by a system that supports them and has at its core the wellbeing of Veterans and their families.

There is also the moral obligation for those who hold a position of power, and responsible government, to make urgent changes and to ensure no Veteran or their family is pushed into suicidal ideation. The principle of getting it right is of paramount importance, and for the sake of fairness to the whole Veteran community.

Intensifying the frustrations of Veterans and their families is the lack of action by past and present Veterans Affairs Ministers who happily make promises but fail to act upon them. Such promises as *“I will meet and get to know Veterans and their families. I will make sure your voice is heard. I want to know what your concerns are, and I’ll do my best to address them within the Parliamentary process. I want to know what’s going on, and what’s working. I want to know what’s not working and where we can make changes”*.

I have tendered this submission in my capacity as a family member of a Veteran who, after serving his country for 28 years, was medically discharged due to service related injuries. I have witnessed firsthand the atrocious service provided to Veterans by DVA who lacks any duty of care towards the people they are supposed to be looking after.

DVA fails in so many areas and **does not** act in the best interest of the Veteran or their family. There is serious known maladministration, lazy investigations and administrative decisions based on assumptions instead of facts.

My submission looks to address DVA maladministration, inefficient systems, incongruous decisions, inaction by Veterans Affairs Ministers and the affect these have on Veteran’s mental health wellbeing.

## SUBMISSION

### 1. Key Deficiencies

Previous reviews by the Australian Public Service Commission found DVA has problems with its culture, leadership and equipment, affecting the health and welfare of Veterans and their families. The decision-making process was found to be a confusing mess of committees with overlapping agendas that was doing more harm than good. Sadly, the same issues remain today.

The Department itself admitted that it cannot deal with the complicated needs of many physically and mentally injured Veterans. If you don’t fit into a neat little box then DVA deem it all too hard resulting in poor decisions and inaccurate advice.

It would seem that in the mind of many Veterans once they leave the military, DVA becomes the authority on their healthcare. This affords DVA more power over Veterans than they

deserve, and allows them to inflict great harm through their proven incompetence and negligence. This power then reverts to unconscionable conduct, this occurs when one party in this case DVA, knowingly exploits the special disadvantage of another i.e. the injured or ill Veteran. This is general unconscionable conduct according to historical judge-made law.

My interactions with DVA has confirmed, for me, that DVA is **not client focused** and regularly fail to deliver high quality connected services to all generations of Veterans by not upholding their own visions and values. They have shown a total lack of understanding of the effects of mental wellbeing issues and how to sensitively handle such cases.

DVA have shown they lack the ability, or desire, to provide support that is designed to meet the individual's needs and circumstances. In my case I found they simply filled in the blanks on their standard letter template with no regard for the harshness of wording or the decisions made and the affect they may ultimately have on the Veteran, particularly for those suffering mental welfare issues.

Although DVA have shown deficiencies in many areas my submission is predominantly about DVA deficiency with incapacity payments. The incapacity payment is the economic loss compensation payment made due to the inability (or reduced ability) to work, because of a service injury or illness.

DVA has for **more than 10 years**, identified system issues with regard to incapacity payments and maladministration resulting in a high risk of overpayment debts. DVA has **failed, at every opportunity**, to rectify this known deficiency in their system/processes except by way of passing the unexpected debt onto unsuspecting Veterans who have in no way contributed to the debt.

Delegates, responsible for incapacity payments, fail to fulfil the obligations of their role then "justify" their mistakes, or deliberate mendacious action, by saying " *I am administering the provisions of the Act*". What they fail to explain is why they did not administer the Act **at the time** it was meant to be administered (in some cases two or more years earlier).

DVA failed to take action to correct their erroneous calculation immediately, resulting in an alleged overpayment that they simply passed on to the Veteran. This alleged overpayment occurred even though the delegate, responsible for ensuring the accuracy of such a payment, reviewed the Veterans file on numerous occasions. DVA acknowledged the debt was due to their maladministration, and the Veteran in no way contributed to this, yet given they had ample opportunity to adjust and correct the payment **before** it became an enormous and unrealistic debt failed to do so.

It is mind boggling that a delegate who reviews the Veterans file only a few days prior to the incapacity adjustment due date, and again, on at least 4 occasions is unable to rectify the inaccuracy immediately. DVA provided written verification to the Veteran of their ongoing entitlements so I fail to understand how the delegate is not held responsible for their conduct and defective administration.

It is the sole responsibility of DVA delegates for knowing and following policy requirements when calculating entitlements, yet delegates consistently fail to provide accurate information to Veterans. Even though DVA management concede they are well aware of such risk, they failed to implement quality assurance systems/process to ensure such inaccuracies did not occur or if they did occur were identified and corrected without delay.

I have to ask the question, when did it become the Veterans responsibility, and not the delegate, to understand the provisions of the Act and how to correctly apply them? Perhaps it is DVA policy not to administer the Act correctly as they rely on simply transferring the financial burden (a gross overpayment) to the Veteran. (This may be some 5 or more years later, a problem that has proven to be historically repetitious, burdening many veterans.)

The Act's relating to Military Compensation are not drafted in such a way that the common man "the common veteran" can correctly interpret them i.e. the Statutory Interpretation "the meaning of the meaning". It is my understanding that drafting Statutes in plain language is a common law principle. Not using plain language diminishes the basic rights of Veterans. The task of construing statutory language is notorious for generating opposing answers, where often no one of which is indisputably correct.

In our experience, when seeking DVA assistance to understand the unverified debt DVA initially refused to review the matter. In correspondence received from DVA they provided instruction on "Your right of Appeal". When an attempt was made to use that right of appeal DVA dismissed our right by saying the information they provided about appealing was a mistake. (This is clearly in contravention of their policy and denial of due process).

DVA is totally lacking when it comes to providing accurate and timely information. They failed to provide documented evidence of reasons for decisions, how the total alleged debt amount was calculated and how they came to their decision. Providing reasons based on probative evidence is an administrative law principle and common law right.

In such cases, procedural fairness is not been afforded which results in an ongoing David VS Goliath battle between the ill or injured Veteran and the department causing the Veteran, in many cases, considerable stress and anxiety and even worsening their health and wellbeing to a point where they can become hopeless and suicidal.

In, *Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte Palme (2003) 216 CLR 212*, Kirby J offered the following rationale for a right to reasons: The rationale of the obligation to provide reasons for administrative decisions is that they amount to a "salutary discipline for those who have to decide anything that adversely affects others". They encourage "a careful examination of the relevant issues, the elimination of extraneous considerations, and consistency in decision making".

They provide guidance to future like decisions. In many cases they promote the acceptance of decisions once made. They facilitate the work of the courts in performing their supervisory functions where they have jurisdiction to do so. They encourage good administration generally, in ensuring that a decision is properly considered by a repository power. They

promote real consideration of the issues and discourage the decision maker from merely going through the motions. Where the decision effects the redefinition of the status of a person by the agencies of the State, they guard against the arbitrariness that would be involved in such a redefinition without proper reasons.

By giving reasons, the repository of public power increases “public confidence in, and the legitimacy of, the administrative process”. In the context of developments in Australian administrative law, facilitated by legislative provisions enacted by the Parliament requiring the giving of reasons, the foregoing explanations and justifications are reinforced both by Australian judicial authority and by expert administrative agencies. Similar points have been raised in academic writing both in Australia and overseas. Reference: Administrative Law Context and Critique/Michael Head, 3rd ed pages 97-98.

There is the further concern where DVA can determine a Veteran is simply an “*Unreasonable Complainant*” if that Veteran strongly believes, and has evidence, that DVA has not afforded them justice. A Veteran who chooses to pursue a matter and challenge DVA can find they have restricted access to DVA services and not treated fairly or honestly. This action does not allow Veterans natural justice and quasi-judicial fairness and allows DVA to hide behind this policy and not be held accountable for decisions that are defective or wrong in law.

DVA maintain that the mental health needs of their clients are a priority. However in our experience, the reality is that DVA do not take this into account when dealing with Veterans suffering mental health and personal welfare issues. The Veteran could ultimately be deemed an “*Unreasonable Complainant*” if DVA are contacted and informed of possible suicidal intention as their own policy deems this type of behaviour as “*Emotional blackmail and manipulation with the intention to guilt trip*”.

I allege that poor DVA leadership allowed them to fail in many areas including, but not limited to:

- Compliance with existing procedures that applied to the recipients circumstances;
- Institute appropriate procedures to rectify the issue in a timely manner;
- Give proper advice that was within the Delegates power and knowledge; and
- Give correct advice or advice that was not ambiguous.

## RECOMMENDATION

1. Continued maladministration to be addressed immediately and action taken against delegates and management who **intentionally** allow such maladministration to continue. (In June 2003, the Income Support Review Program was implemented that found many of these reviews were not being conducted in accordance with policy, and as a result significant groups of recipients were at risk of being paid the incorrect rate of pension)

2. DVA corporate plans and reports from 2003, 2012/2013 and others have shown there is a **known risk** of incorrect payments being made however in 2018 DVA has allowed this known risk to remain. DVA must implement appropriate measures to review incapacity/pension entitlements to ensure **accuracy of payments and avoidance of over/under payments**.
3. DVA to undertake an urgent overhaul of its people, management and culture. There needs to be a balance of personnel that work in the department that includes a percentage of ex-serving personnel able to fathom the extent of one's service, can show empathy and better understand the life-style and needs of Veterans.
4. Immediate focus needs to be given to ensuring complex cases, particularly those involving mental health issues, are given to senior case managers who have attained appropriate training (mental health training-psychologist, social workers and counselling backgrounds) and possess superior customer service skills able to deal with vulnerable Veterans.

## 2. How can the system better support Veterans?

For those leaving on medical grounds it is far tougher than a lot of life situations previously faced. If mental illness is also thrown into the equation, life becomes much more complicated and potential for a downhill spiral. Studies have shown that Veterans who have spent their entire adult life in Defence have become institutionalised to a military way of life which is an extra burden on transition where some will not be capable of transitioning lacking necessary social skills and the sudden change in culture.

For those undergoing a 'forced' transition through a medical or compulsory discharge, the move back into civilian life can be abrupt, complicated and potentially traumatic. A study of Veterans leaving the UK military via the Military Corrective Training Centre (MCTC or "military prison") revealed that a swift discharge following a short sentence was associated with poorer transition outcomes. *Reference: Van Staden, L., Fear, N., Iversen, A., French, C., Dandeker, C., & Wessely, S. (2007). Transition back into civilian life: A study of personnel leaving the U.K. armed forces via "military prison". Military Medicine, 172(9), 925-930*

Several authors have identified challenges that service personnel may face on transition into the civilian environment. These include the loss of military community and friendships, the forfeit of previous role or status, adjusting to new routines of family or home life, challenges of securing employment in the civilian workplace, and a transition in one's identity and emotional shift from being an integral part of the military to an individual in civilian society.

Such challenges may be usefully understood as the embodied legacy of a 'military habitus'<sup>18</sup> persisting beyond one's engagement with military life. Higate, P. (2001). Theorizing continuity: From military to civilian life. *Armed Forces & Society, 27*, 443- 460 and Lande, B. (2007). Breathing like a soldier: Culture incarnate. *The Sociological Review, 55*, 95-108.

Because some Veterans are eligible for benefits under multiple Acts, and may be eligible to receive different levels of support under each Act, it is often unclear to Veterans which package of support is most beneficial for them, and what they are entitled to.

Conflicting legislations impact mentally ill Veterans', alongside the bureaucracy that goes with a never ending stream of repetitive paperwork, medical appointments and rehabilitation appointments and widely accepted administrative deficiencies within DVA.

DVA delegates have a **duty** to advise Veterans of the correct and most beneficial legislation for a Veteran so that they are **not disadvantaged medically and or financially**. This is not always the case and Veterans have found DVA have not correctly placed the Veteran under the correct ACT leaving the Veteran financially disadvantaged.

It seems to me there is a serious lack of respect for and understanding of ADF requirements of service by DVA and their employees/delegates, some employed on short term contracts, to determine Veterans claims. Poor leadership has resulted in DVA losing sight of the beneficial intent of veterans' legislation, and the detrimental affect all this is having on the mental state, health and wellbeing of Veterans.

If an overpayment debt, as a result of DVA maladministration, occurs under VEA this overpayment is waived where it has not been discovered within six (6) weeks of it occurring. It is my understanding the same 6 week rule or right is applied under the Social Security Act regarding alleged over payments. However where a Veteran has eligibility across multiple Acts, the Veteran is not afforded the same right. This is totally unacceptable when the Veterans' Entitlements Act 1986 (VEA), SRCA, MRCA and the DRCA **is not meant to place any person other than the Commonwealth at a disadvantage**.

Detrimental actions of DVA also impact many family members of Veterans. Descending from quite an adequate income to barely being able to survive from week to week as finances are stretched to the limit, sometimes for years on end as DVA claims are dragged out in an unexpected and unrealistic manner or poor decisions are made and incorrect advice given.

In my situation I received zero support from ADF or DVA even though family are vital to a Veterans wellbeing and rehabilitation. My meeting with the departing unit and commanding officer (CO) can only be described as distressing, lacking any empathy or duty of care including failing to conduct any follow up welfare checks. When I eventually reached out and sought help via one of the resources available I received the response *"I don't know how I can help, don't you have any one you can ask for help"*.

As shown in DVA key strategies ([figure 1](#)) they imply they are client focused and responsive, the reality is that they fail to follow these strategies. At no time during the discharge, transition and ongoing rehabilitation period has DVA ever given me, as a family member, any courtesy or guidance. DVA are far from being flexible and **work against not for clients**.

(Figure 1)

Key Strategies			
	Client-Focused	Responsive	Connected
Client	<p>We will think of the whole person and their family when considering client needs.</p> <p>We will better deliver compensation and rehabilitation support with a strong focus on the accuracy and timeliness of claims processing.</p> <p>We will sensitively acknowledge service and sacrifice through the delivery and support of commemorative programs.</p>	<p>We will listen to feedback and act on it to implement the services clients need.</p> <p>We will tailor and customise service delivery to respond to emerging needs.</p>	<p>We will work with Defence, Ex-Service Organisations, providers and other stakeholders to achieve the best health and wellbeing outcomes for clients.</p> <p>We will work with clients and stakeholders to co-design cohesive client-centric services.</p>
Culture	<p>We will communicate clearly and simply.</p> <p>We will base our policies and programs on understanding client needs and experiences through research and evidence.</p>	<p>We will be flexible in the way we manage our approach to service delivery.</p> <p>We will be quick to adapt to change.</p>	<p>We will design effective policies and programs, and ensure they are linked across business areas.</p> <p>We will work across boundaries to ensure seamless, connected service delivery.</p>

## RECOMMENDATION

1. DVA must review its key strategies and culture and **move away from KPIs** as this is clearly not in the best interest of the Veteran or their families. The focus on KPI's rather than their clients' needs leads to poor decisions that are having a huge financial, emotional or more serious outcome on the Veteran.
2. DVA to place the wellbeing of a Veteran as the **highest priority** and give consideration to Veterans family/partner's needs. There is currently a lack of consideration by DVA for family members, especially in circumstances where mental welfare is involved.
3. DVA to take a holistic approach. This is desperately needed so that Veterans families/partners can begin to breathe easier knowing processes will be in place financially and emotionally. They need to consider the individual needs and what support, if any, the Veteran may have access to.
4. Family interaction from the start is vital. Access to information needs to be simplified and in one place. Veterans and their families should not be forced to hunt through pages of information on various blogs and websites. A simplified approach to access of information for all entitlements/benefits. A number of Veterans or families are currently forced to rely on information from social media sites and talking to ex ADF personnel who have found information on benefits /entitlements many did not know existed or they were entitled to.
5. A **Royal Commission into DVA** is required to ensure necessary and urgent changes are made and provide simplification to processes.



### 3. What changes could be made to make the system easier for Veterans?

The question needs to be asked why should ADF members' claims take far longer to determine than any other Commonwealth public servants. Why does a federal politician get better treatment? Veterans are being victimised by rules that are not applied to others in the community.

The lack of urgency and inaction to date, to vastly improve services to Veterans, means the department's personnel are struggling with a shambolic and outdated computer system and Veterans' mental health and physical welfare is being put at high risk under a disorganised bureaucracy.

The current process means that most injured ADF members who have made a claim or need to make a claim need an Advocate or lawyer to try and wade through the minefield of paperwork imposed upon them by DVA. Their only alternative is to trust DVA to tell them what their legal entitlements are.

This situation gives ADF members no impartial or expert way to judge whether the compensation offered is sufficient or correct. This false trust in DVA can result in overpayment debts, underpayments or no benefits forcing Veterans into severe financial hardship.

Advocates or family members, acting in the best interest of the Veteran, who contact DVA to inform them of a client that may be at risk of self-harm, should not receive the response of "that is emotional blackmail". Some Veterans who may not have access to an advocate or family member to assist them sadly fall through the cracks or worse take their own lives.

#### RECOMMENDATION

1. DVA attitude towards advocates/family members must be improved. DVA cannot be allowed to veto advocates or refuse to speak with family members, who are simply working in the best interest of the Veteran. DVA should be doing all they can to work **in collaboration** and harmony with them and help support the Veteran.
2. DVA must be **more flexible** in their approach and improve their culture which currently is focused on limiting or denying liability rather than providing a beneficial veteran centric approach to fixing what has been an identified problem for over ten years.
3. DVA must stop trying to fit all Veterans into a neat little box to make their job easier and must acknowledge and address individual needs. It is essential DVA employ highly qualified personnel provided with the tools and support required to deliver a high level of service and understanding of complex cases.

#### **4. Do the governance arrangements encourage good decision making and is the system sufficiently transparent?**

Maladministration is about poor governance and the actions of a government body which can be seen as causing an injustice. There are many documented cases of maladministration within DVA that supports they have poor governance.

*“DVA’s governance and management framework is based on the principles of performance assurance and accountability within a risk management framework. DVA’s tier one governance bodies integrate these principles into DVA operations through strategic planning, engagement with risk, innovation, performance monitoring, and evaluation and review activities.*

*DVA’s governance framework reflects the importance of collaborative partnerships in shaping the Department’s overall performance results. This results in a tailored governance framework that is fit for purpose and able to be adjusted to meet DVA’s changing needs”.*

While DVA paint a picture of good governance, as shown above, their conduct reveals otherwise. There is no accountability and their overall performance results are weak evident by yet another review/investigation into DVA and the reason for my submission.

##### **Previously Documented Cases:**

1. More than \$180,000 was demanded from a disabled Army Veteran in what turned out to be a "horrendous" administrative error by the Department of Veterans' Affairs.
2. It was reported in the 2016/2017 Commonwealth Ombudsman Annual Report that DVA raised a debt against a Veteran for \$7190 as DVA insisted they had overpaid them. The Veteran sought a number of reviews and after much fighting with DVA discovered that DVA had in fact been **underpaying** them. As a result instead of the Veteran having a \$7190 debt DVA had to pay the Veteran \$48,245.

These cases sadly are not isolated. Is DVA so cash-strapped that it simply demands Veterans to repay benefits in what it calls overpayments and offset mistakes?

Greg Isolani, of Melbourne firm KCI Lawyers, noted in 2015 (SMH article 20 October 2015) that he has seen an upsurge of cases where DVA is trying to claw back money from veterans.

*"It's unprecedented, in 23 years of my practice, that there's been a flurry of overpayments like this," Mr Isolani said. "It's just shambolic and there's a range of issues. "DVA keep having these so-called computer glitches, that keep people on payment after 45 weeks rather than dropping it down and then they demand it back,"" They're quite ruthless, they don't say that it took them two years to clock up thirty grand and just ask for a cheque payable."*

It appears that Veteran Affairs Ministers either have no idea about the actions and impacts of the legislation and policy administered by DVA, or choose not to take the portfolio seriously. The Veteran Affairs Minister has the opportunity, and obligation, to make a real difference to people's lives. It is their job, as Minister, to make sure they understand and act on Veterans needs so that positive changes can be made.

To date Ministers have failed to take action to remedy documented serious ongoing issues, and instead have simply called for more inquiries but sadly falling short of calling for a Royal Commission. For far too long DVA has been allowed to develop an entrenched culture of disrespect and denial for many Veterans.

For **more than 10 years**, DVA have continually failed to put quality assurance measures in place to reduce the risk of over or under payments to Veterans. DVA's continued defective processes results in Veterans incurring unexpected debts or being underpaid for significant periods which is a clear injustice and hence poor corporate governance.

A review by DVA of incapacity payments indicated that over 90 per cent of critical errors related to their own policy, procedures or legislation. DVA consistently acknowledge that the department's electronic systems are not adequate to meet the requirements of processing such claims and there is a heavy reliance on manual calculations.

DVA's allowed practices of ignoring **known** inadequacies and their **deliberate inaction** to take appropriate steps to reduce such inaccuracies, have the flow on effect of not only placing a huge financial burden on the Veteran and their family but in some cases results in suicide.

When dealing with DVA I have been absolutely shocked by their deficiencies and lack of transparency.

DVA inadequacies included their inability to:

- a) Provide any evidence of an alleged overpayment,
- b) Provide detailed reasons how a decision was made and on what material facts were considered to arrive at the decision
- c) Provide the Veteran with an opportunity to comment on the material that was to be considered by the decision maker (this is a procedural fairness and an administrative law legal principle, requirement and necessity)
- d) Advise who the decision maker was including the delegate level of authority
- e) Abide by own policies (**21.1.2** Delegate retains responsibility for correctness of the decision)
- f) Follow own measures/processes (**1.5.4.1** — to ensure that incorrect payments are minimised, DVA emphasises preventative measures for all dealings with clients by ensuring a framework of procedures, controls and systems. **1.5.4.2** — DVA also has controls in place to detect incorrect payments as soon as possible and correct them promptly.)

The repeated maladministration of Veterans payments, resulting in alleged overpayments, highlights DVA's **endless failure** to efficiently deliver services to Veterans and their dependents. Neglecting to properly investigate and rectify a known re-occurring deficiency for more than 10 years can only be viewed as **gross negligence** by DVA.

From the Minister down they have proven to be failures in the holistic care of Veterans. If I was to complete a report card it would be **FAIL** as they have not given the Veterans or their families any reason to have trust and confidence in them.

## RECOMMENDATION

1. DVA to review its governance framework and act in a transparent manner and **take accountability** for their maladministration. DVA to uphold their values of ; "Impartial, Committed to Service, Accountable, Respectful, Ethical"
2. Disciplinary action to be taken against DVA personnel that consistently provide incorrect information and fail to follow policy/procedure resulting in a detrimental outcome for the Veteran. This course of action needs to be from the top down given the department is fully aware of the risk of overpayment and fail to take all reasonable steps to ensure accuracy of payments.
3. All alleged debts that resulted from DVA not following their own known processes and not acting to rectify the inaccuracy **within a maximum of six (6) weeks** of the miscalculation occurring **must be waived** regardless of what ACT the Veterans is covered under. (Where there is evidence that the Veteran has not knowingly contributed towards the alleged debt and payments were received in good faith).
4. The Banking Royal Commission has shown the unethical culture that exists and the devastating impact it has on people's lives. Given there were more than 80 Veterans that took their own life in 2017 DVA must undertake a transparent and honest investigation into the current culture that exists within DVA before more Veterans lives are adversely affected.

## 5. Are transition and rehabilitation services meeting the needs of Veterans and their families?

There is uniqueness to military service exposing those in the ADF to a unique culture and system. This not only involves the risk of serious injury or death to the Veteran but also the need for regular family moves which are frequently stressful and financially adverse.

Their experiences mean they may have a number of issues different from other 'typical' rehabilitation clients. Their employment within ADF not only gave them an income and meaningful work, it also provided housing, healthcare, recreational facilities, social networks, training, and a structured career path.

Despite rehabilitation services being core business for Veterans' Affairs, there is no comprehensive performance data available to indicate whether rehabilitation services effectively meet the needs of Veterans and no tool exists in Australia to measure reintegration and psychological adjustment to civilian life.

For many Veterans complexity of the discharge and rehabilitation process is compounded as it often includes:

- multiple injuries and accepted military compensation claims due to the physical demands of their ADF employment;
- highly skilled but unable to readily transfer their skills directly into the civilian workforce;
- no guarantee of future employment;
- relocation that means needing to adapt to the new location and requirements
- experiencing the loss of close contact with social support networks and activities;
- trying to secure accommodation and other essential services such as health and other community services, which are normally provided for them while serving within the ADF; and
- experiencing a significant loss of identity as they move from 'military culture' into civilian life

ADF is no longer financially accountable for the cost of compensation, rehabilitation services or for the cost of medical treatment for service-related injuries and illnesses once an ADF member leaves the service. Veterans who are medically discharged and suffering mental health issues are generally in higher needs categories than people who access other rehabilitation and compensation schemes. The loss of identity after separation can heighten Veterans mental health problems and impact families.

There is a serious lack of focus on the extent of the client's rehabilitation based on their **individual circumstances** and many are put on unrealistic rehabilitation plans. Ignoring individual needs means that for some Veterans being in the rehabilitation process results in stress and additional psychological consequences for them.

Families are often fundamental to the Veteran's re-integration following separation from military service yet DVA chooses to ignore families. Veterans' families can be affected by the Veteran's service and play a critical role in the rehabilitation process.

The process of transition for me was an unknown and I had no idea where to turn to for information. I can only rate my experience with the transition/rehabilitation process 1 out of 10. I was constantly met with brick walls even though post ADF life and dealing with DVA were both going to impact my life as we were no longer going to be "sheltered" under the umbrella of ADF and the life we had known.

The culture, attitude and actions of the discharging unit and CO created a barrier for receiving the necessary and timely information to deal with this process. As a family member I was not afforded the right to fulfil this critical role and was forced to continually fight for my right to be allowed to be involved in any part of the transition and rehabilitation process. Something I am still fighting for.

DVA assert that care and respect for the Veteran should be paramount and that they take the approach of maximising quality of life after injury or illness as outlined below.

*“DVA rehabilitation approach is **different** from a traditional workers compensation approach which is largely focused on return to work. Our whole-of-person rehabilitation approach is focused on physical, social and mental recovery. We use medical, allied health, psychological, social, educational and vocational resources to assist and support the client as they move forward from their injury or illness.*

*“DVA aims to ensure that rehabilitation will be coordinated, integrated and adequately resourced to achieve positive outcomes for the client. The aim is to restore the person back to the same social, vocational and educational status, as he or she had before the injury or disease”*

I found DVA’s approach to be vastly dissimilar to this.

- DVA fails to acknowledge the role of significant others in the Veterans life and who must be actively involved in the development of an appropriate rehabilitation plan/program to ensure sufficient support for the Veteran.
- DVA ignores the pressures of the rehabilitation process that has unrealistic goals (goals that were set by the rehabilitation coordinator and not in conjunction with Veteran, family members or medical reports). These goals result in additional stress and psychological consequences for the Veteran.
- DVA has failed to use a whole-of-person approach. DVA instead consider they are the only authority on the Veterans mental or physical capacity and ignore reports from medical experts. Ignoring medical reports and forcing a Veteran to simply apply for jobs (what jobs- where are all these jobs?) can only lead one to the conclusion that DVA believe that all Veterans receiving benefits are “bludgers and rorting the system”.
- DVA disregarded the needs of the individual and has taken a one size fits all approach. They disregard the mental wellbeing of Veterans and impose a return to work policy regardless of individual circumstances.
- DVA fails to understand that not all Veterans on a rehabilitation plan live in a large city with easy access to resources. Many live in regional areas or move to areas of low employment opportunities and limited services as accommodation expenses are more affordable than the city. DVA also fail to take into account the capacity of a Veteran suffering mental health issues to be able to travel long distances to attend such services.

- As a general principle, DVA is not responsible for meeting any costs of travel associated with attending rehabilitation activities. DVA force Veterans into a rehabilitation program causing them to endure further financial stress due to costs in attending activities. This is in addition to financial stress they are already under from an already reduced income.
- DVA choose to change rehabilitation providers causing Veterans to repeat their stories over and over resulting in heightened stress which impacts families. The change in provider (without consultation with the Veteran prior to the change) seems to be based on DVA wanting a provider who **works only for DVA and not for the Veteran** to force the Veteran back to work even though they have a certificate of incapacity and are not fit for employment. Once again this shows that DVA ignores the medical status and needs of the Veteran, family members, medical advice and the reality of accessibility to employment opportunities.
- DVA moved to service level agreements when engaging service providers. This means that they manage both performance and costs in relation to providing rehabilitation services. This can only result in DVA focusing on cost cutting and **DOES NOT** have the best interest of the Veteran as the number one priority. Money before people!
- It appears to me that DVA "doctor shop" until they find the diagnose they want ignoring all previously accepted medical diagnosis. There is no reason for DVA not to accept the assessment of the GP or specialist, provided by the Veteran, with whom the Veteran has established some trust within a clinical relationship. Sending Veterans to numerous doctors has a destabilising effect by causing them to repeatedly talk through difficult circumstances, promoting distrust and adding delays to claim processing. DVA should accept Veterans face-value and 'not treat them as potential fraudsters.

Not only do Veterans have to deal with health issues, post ADF life, but also trying to assimilate back into civilian life and find work (for those physically and mentally able to do so). When a person joins the ADF there is the expectation, from advertising and what they are told during recruitment, that the skills they obtain in the ADF **will be transferrable** post ADF life.

Unfortunately the reality many Veterans are confronted with, once they leave the ADF, is that their Defence qualifications are not always transferrable. Their trade and skill qualifications are not kept up to the Australian Training Standard by the Defence Trade Qualifications Team i.e. Certificate and Diploma qualifications awarded by ADF have been superseded or no longer exist on transition. This is regardless of being told throughout their career, that they will receive relevant transferable Certificate or Diploma qualifications for their skills and trades that will be beneficial on transition. This is something you won't hear about in recruitment campaigns, is deceptive and misleading and vocationally detrimental to Veterans.

## RECOMMENDATION

1. DVA to provide evidence of keeping comprehensive performance data that show rehabilitation services are meeting the needs of its clients.
2. DVA to recognise the key participants in the rehabilitation/transition process should be firstly the Veteran and then the significant people in their life. Active involvement by these parties is paramount in the development of a suitable rehabilitation plan to ensure sufficient and relevant support for the Veteran. Need to take a family inclusive approach.
3. The rehabilitation plan must be designed to, maximise potential of restoring the person with an incapacity to work to the same physical or psychological state at **the same social, vocational, educational status as they has before the injury/illness.**
4. DVA cannot be allowed to force Veterans into unrealistic activities that will only heighten their injury/illness/mental wellbeing placing further burden on the family who are trying to deal with the fall out.
5. A focus on return to work too soon in the rehabilitation process results in a counterproductive outcome. DVA must not put KPI's ahead of Veterans needs as this approach is only working against the Veteran. The reality, which DVA fail to accept, is that Veterans suffering mental health issues receiving ongoing medial support may be unable to return to work and placing such pressure on them could potentially result in self harm or destructive to their mental health.
6. Assistance and guidance during this time needs **to start** with the individual unit and CO. Family needs to be **included** in the process from the beginning and given support as families play an essential role in Veteran health.
7. ADF must be more transparent about the reality of ADF qualifications being fully transferrable starting at recruitment. Once the person is ready to transition from the ADF it should be mandatory that all qualification paperwork is in order. The ADF must match all relevant skills/training to civilian qualifications and provide the appropriate certificates **before** the person has left the ADF. It is also vital that a resume is prepared to assist with trying to obtain employment for those Veterans who are physically/mentally capable of doing so.
8. Due to the ADF life, many partners had to give up their jobs resulting in loss of Superannuation and difficulty in obtaining future employment. There needs to be support and guidance not only to the Veteran but their family with regard to resume assistance and assistance in obtaining future employment.
9. It is vital that such assistance, detailed above, for those Veterans suffering mental health issues, is made available when the Veteran is capable of receiving this help and should **not have an expiry date** of when this service/benefit needs to be used by.
10. Currently there is a restriction on when the study benefit Career Transition Assistance Scheme (CTAS) must be utilised by with no consideration given to Veterans suffering mental health issues and unable to study in the time frame set. It is unfair to lose a benefit Veterans need simply because their service related injury/illness is not "repaired" within a certain time frame usually 12 months from separation or up to a



maximum of 2 years after separation, on written request from the medically discharged Veteran to the ADF/Army Transitions Cell for consideration.

11. Immediate action to be taken to remove the expiration date on all benefits that Veterans are entitled to post ADF life so that the benefit can be accessed when the Veteran needs it rather than when they are told to use it. This change needs to be made retrospectively so no Veteran is disadvantaged (i.e. the DHOS Loan and CTAS) and can be used when they are both financially and mentally healthy to secure a DOHAS Loan and or undertake suitable study or vocational training.

## 6. Is the package of compensation received by veterans adequate, fair and efficient?

Given a number of Veterans are falling below the poverty line and or struggling with homelessness and being burdened with huge financial stresses my response is **no**.

DVA Compensation process complicates, aggravates and perpetuates the pre-existing psychological distress suffered by Veterans and their families. Conflicting legislations means that is impossible to know exactly what compensation Veterans should be receiving.

When Veterans seek assistance from DVA the general response is “that is dealt with by another department you need to take this up with them”. As mentioned earlier in my submission, DVA are responsible for ensuring they advise the Veteran of the most beneficial legislation so that they are not disadvantaged medically and or financially.

The reality is that DVA are lacking in their transparency of information and **fail** to ensure Veterans are provided with **all relevant information** about entitlements/benefits to be able to make an informed decision on what is in their best interest post ADF life.

Many current compensation packages do not provide important outcomes of:

1: **Maintain and enhance the financial wellbeing** and self-sufficiency of eligible persons and their dependants through access to income support, compensation, and other support services, including advice and information about entitlements.

2: **Maintain and enhance** the physical wellbeing and **quality of life** of eligible persons and their dependants through health and other care services that promote early intervention, prevention and treatment, including advice and information about health service entitlements.

It is clear there are a number of areas in relation to compensation that need to be addressed as they are far from adequate or fair. In my situation, I have addressed the area of incapacity payments that are not fair or equitable. Unfortunately, as I am not skilled in this area, I am unable to provide the detail required to fully explain the inadequacies. I hope that those who have the knowledge will make submissions to highlight the inadequacies Veterans face.

I have offered the following information in an effort to stress the need for the Commissioner to consider the compensation issues seriously.

Previous Audit reports into Veteran services provided by the Department of Veterans Affairs has highlighted, **as far back as at least 2004**, the many inadequacies within DVA to ensure Veterans receive timely and accurate compensation payments.

Incapacity payments have not been well managed by DVA to date even though DVA has been aware of this ongoing issue for **more than 10 years**. In 2014, DVA reported a 22 per cent critical error rate in payments, against a target of five per cent.

DVA applies discriminatory incapacity payment reduction and inhumane financial treatment of Veterans. Veterans unable to work, due to their **service related** and accepted injury/illness, find that their incapacity payments are cut by 25% after 45 weeks. This means the same bills; mortgage/rent, credit card payments, utilities etc still need to be paid.

This deleterious action by DVA affects Veterans already experiencing poor psychological and/or physical health and who can least handle it. It burdens already vulnerable Veterans, low in self-esteem and coping power, and their family with unwarranted additional financial stress simply because the service to their country has left them injured and ill, unable to work or study.

This financial discrimination lessens the value of Veterans contributions, lessens sacrifices they have made for their country and lessens their self-worth and esteem. Discriminatory treatment of Veterans is "justified" by DVA who claim it will give "incentive" to get people back to work. This action treats incapacitated Veterans unable to work longer than 8 hours per week with contempt.

The reality is that some Veterans will **never** be able to achieve a return to work due to their injuries and/or illness and it simply has the effect of reducing the Veterans and their families' standard of living. This may be in the interim, before the Veteran can apply for an increased pension entitlement under the likes of TPI. Some Veterans are unaware of such an entitlement or are mentally unable to deal with the pressures and demands DVA place on them again to apply for such an entitlement.

DVA has a duty to provide caring for all Veterans and their families yet there is discrimination surrounding incapacity payments that goes against DVA approach towards rehabilitation. *"DVA rehabilitation approach is **different** from a traditional workers compensation approach which is largely focused on return to work".*

In May 2018 the Veterans' Affairs Minister announced *"We want to encourage and support those studying with a view to getting them back into the workforce. This is why we will remove the reduction in the amount of incapacity payment which normally occurs after 45 weeks for those undertaking approved full-time study as part of their rehabilitation plan. This will mean veterans can focus on their study without having to worry about changes to their financial situation."*

For Veterans suffering from service related and accepted illness, and which DVA have documented medical evidence of the Veterans inability to undertake study at this time, their incapacity payments are reduced after 45 weeks. This action means that for those vulnerable Veterans **harmed the most from their service** to their country, and in most need of support, are in fact the ones being helped the least. These Veterans find themselves being financially disadvantaged due to **discriminatory policy and legislation**.

This is a “slap in the face” for Veterans particularly those who have only ever known life in the ADF and, from no fault of their own, have sustained work related injuries/illness serving their country. Such discrimination and valuing one Veteran less than another is a disgrace.

DVA then fail to offer any other support or guidance on what course of action or other benefits may be available for those Veterans. The Veteran is simply left to survive on a further reduced income and maintained on a rehabilitation plan that ignores the medical evidence that return to work/study is not feasible.

While compensation schemes should provide incentives for workers to rehabilitate and return to work, where feasible, it **should not be used against a Veteran where all medical reports clearly show this is not possible**. DVA response to this reduction in benefits is to tell the Veterans partner to simply pick up the reduction in the income.

The capacity to return to work should be based on current medical reports and not decided by bureaucrats who force unwell people into employment before they are capable. The pressures of work on a Veteran who is not capable and who is undergoing mental welfare care will in fact affect their recovery and in many instances impact the family.

Discriminatory Military Compensation Legislation and Incapacity Payment Policy – Conflicts with The Universal Declaration of Human Rights. I allege that DVA’s unacceptable administrative and quasi-judicial treatment of injured and ill Veterans, and the discriminatory reduction of the incapacity payment to injured and ill Veterans after 45 weeks, is a breach of the following Articles of the Universal Declaration of Human Rights of which Australia is a signatory:

**Article 7**

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

**Article 8**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

### **Article 23 (3)**

Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

### **Article 25(1)**

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

While Incapacity Payments is just one example of the inadequate, discriminatory and unfair areas of military compensation there are a number of other areas of compensation and benefits that need to be addressed as part of this review.

As a family member, and not recipient of DVA compensation, my comprehension of all the injustices is limited however I found that the following topics continually present as major concerns needing urgent redress.

- Dual eligibility across several Acts
- Offsetting
- Compensation payments incorrectly deemed taxable income
- Overpayment debts incorrectly recovered at Gross instead of Nett payment
- Inadequate indexation

I anticipate that others far more knowledgeable than me will provide submissions to the inquiry that will outline these concerns.

## **IN CLOSING**

It is alarming that the same complexities and groundless decisions by DVA, that are harming Veterans and highlighted previously over numerous years, still remain as unresolved issues today. DVA processes are overly complex and a bureaucratic nightmare that results in unacceptable delays and unfortunately, can and have led to suicides, marital and family breakdowns. The position adopted by DVA is failing the very people they are supposed to be supporting.

There are endless cuts to Veterans compensation and entitlements while politicians continue to receive disproportionate pay increases. Veteran's self-worth is lowered when their hard earned benefits/entitlements are constantly eroded by immoral and inhumane decisions, policy changes and legislative amendments by the Federal Government and DVA. This generally leads to increases in Veteran depression, family break ups and sadly in some cases suicide.

Continuous inquiries, reviews, study papers into DVA highlights that priority of care to Veterans is severely lacking and that this attitude starts with the Veterans Affairs Minister. When politicians ignore Veterans pleas for changes to better compensation, pensions and superannuation, yet try to convince the Veteran community they are supporting them by posing for photo opportunities at Anzac Day commemorations or RSL's, this only leaves Veterans and families feeling cheated by an irresponsible government not governing in the best welfare and interests of we the people.

Federal Ministers' gifting hundreds of millions of Commonwealth funds, misappropriating the Commonwealths Consolidated Revenue to foreign nations before properly appropriating the revenue to the Commonwealth first i.e. where it is much needed to improve the likes of the health and welfare of Veterans, is incomprehensible.

I have made numerous submissions to both the previous and current Shadow and Veterans' Affairs Ministers. While initially the Shadow Minister was receptive, both have failed to contact me personally to discuss the urgent matters I have raised with them. This lack of action is demoralising as Ministers are accountable for the actions of their department, if something goes wrong they must take responsibility for it.

In 2014 DVA reported that of the determinations made annually those Veterans that are forced to go to external appeal **over half are successful** in their appeal. This clearly shows that delegates are poor decision makers and/or DVA intentionally make incorrect decisions in the hope that the majority of Veterans will simply accept the decision allowing the Department to save money.

In the early years of the new age of Veterans, DVA communicated its determination to become more 'veteran-centric', to put 'veterans first' and to place them firmly at the centre of all the department's activities. It is increasingly obvious to Veterans and their families that reality does not always match aspirations.

Secretary Liz Cosson AM CSC, said, *the Department of Veterans' Affairs is undertaking a very significant modernisation program under the banner Transforming DVA to put Veterans and their Families First. The transformation is about making DVA a 21st century organisation with a 21st century service that puts our veterans and their families at the centre of everything we do.*

The question needs to be asked why is DVA only now looking to put Veterans and their families first when this should already be the standard provided and what should already be the core of their business. Will this Veteran first approach only apply to younger/future Veterans and not to Veterans who are already suffering at the hands of defective practices and toxic culture within DVA?

DVA and its culture are essentially a claims processing organisation rather than a client-focused one designed to ensure the overall wellbeing of the Veteran during their lifetime. I have very little faith in DVA's capability to rectify over a decade of neglect.

DVA consistently show that they fail to live up to their own mission statement *“To support those who serve or have served in the defence of our nation and commemorate their service and sacrifice”*.

No Australian should accept that those who've served Australia should be put through the indignation of having to be in the situation that they are in, losing the job they love, having no money and having to go through prolonged processes to get finalisation toward their compensation entitlements all for simply serving their country and their government.

Constant excuses and inferior service from DVA is no longer acceptable. It is high time that as a nation we stop talking and start acting by appropriately, adequately and fairly compensating those who have suffered incapacity related to their service. The Parliament must step up, be responsible, do its duty and finally right the wrongs with this department and fix these systemic issues.

Continued inefficiency within DVA and constant calls for reviews that go nowhere requires immediate action. We have a golden opportunity to ensure all Veterans get a fair deal for their service and sacrifice to their country. I hope urgent and significant change for the benefit of all Veterans will finally prevail with responsible and level headed decision making by our Parliament and its relevant departments and agencies like the Productivity Commission.

The only thing worse than sending men and women to die in wars is leaving them broke, homeless, jobless and suffering from mental disorders when they come back. No one who served their county should have to fight for a job, roof over the head or the care they need.

American Congressman Dan Lipinski summed this up by saying *“On the battlefield the military pledges to leave no soldier behind. As a nation let it be our pledge that when they return home we leave no Veteran behind”*.

I believe there is only one decision to be made, that is to hold a **Royal Commission** into DVA, investigating all aspects of compensation, rehabilitation, transitions, DVA culture and poor governance.

Some may argue that a Royal Commission will be too expensive, but what price do you put on a Veterans life?

For your consideration

Ms G Fleming

3 June 2018