

Submission to Productivity Commission
Veterans' Compensation #2
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In making this submission to the Productivity Commission on its inquiry into veterans' compensation I wish to confine myself to matters of policy principle, simply because I no longer have sufficient familiarity with current legislative and administrative detail. Indeed, I may be a little out of touch, but that should not detract from the generality of my views. By way of background I worked at division head level in DVA almost nine years, including the Compensation Division, prior to retirement in late 1999. During that time I quickly came to appreciate the complexity of compensation legislation, and especially the anachronistic nature of the VEA in a political climate where it was (and still is) treated as a sacred cow, stymying any serious reform. Sadly I fear that is still the case, though it is refreshing and hopeful that the Treasurer's reference to the PC might indicate some interest in change.

There has never been a holistic review of veterans' compensation policy, and my views on those which have been conducted are set out in my submission to the Senate Foreign Affairs, Defence and Trade Committee, which took up my recommendation for a referral to the PC. That is gratifying. The only review of relevance among the number identified by the Committee however, was that by Mr Noel Tanzer, for which I claim some credit in organising. Mr Tanzer recommended that the serious problem of dual eligibility under the VEA and the SRCA be addressed by developing a new single military compensation scheme – and that's where the problem became worse (after my departure).

The key reason for this policy disaster was that some elements of the VEA scheme remained intact viz., the reverse criminal standard of proof and the differential between what are now termed 'warlike' and 'non warlike service'. Together those elements have retained the very worst characteristics of the military compensation regime.

Central Issues

1. Culture

I don't wish to reiterate my views put to the Senate FADT Committee in full, but it's quite clear that the bulk of the evidence to the Senate Committee, and I suspect the PC, is from veterans and ex- military personnel dissatisfied with

claims process, especially the time taken. Sadly the Government's response in part has been to blame the IT systems, and then to allocate \$27 million to their rewriting. This is an absolute waste of money when the policies being incorporated are so poor and unnecessarily complex. The simple difficulty is that compensation can only be properly made when injuries and illness incurred during employment have been treated and rehabilitated to a point of stability before any accurate assessment can be made. That simply takes time, and is exacerbated by the reverse criminal standard of proof whereby DVA has to disprove claims beyond reasonable doubt. Yet for veterans and the ex-service community, compensation is seen largely as a source of income, either as a capital sum, or an ongoing pension to assist them to establish themselves after discharge after a career of high dependence and in their retirement. This is the source of the pressure and it cannot be ignored as it is a real human need driven by a range of circumstances, but for which there is no easily ready alternative currently available (but could be). See later discussion on income support.

The same complaint however, is also made by those whose injuries have already stabilised, but without prior treatment and full rehabilitation at the time of the injury. Concealment of injury is driven by the 'fitness for service' regime whereby allowances in particular are threatened. In some cases such claims are left until retirement, including by the most senior of officers. As the book said: 'Be in it Mate'. The entitlement mentality is alive and well, but not confined of course to the military. The text book need to treat injury and provide rehabilitation immediately is effectively bypassed and such claims should not be accepted.

This has long been a cultural issue within the ADF, with its origins in the 1920's when veterans' benefits were perhaps the only welfare system in the Commonwealth, flowing from the extraordinary loss and suffering during WWI. It was justifiably generous at the time, especially given that those enlisted were largely volunteers, as they were in WWII, and of course conscripts in Vietnam. The nuances though were pretty rough and ready in policy terms – not the mention the one in all in rule which produced significant differences in risk and reward. The culture is one of being rewarded for increasing disability, with little incentive to get better.

The real question here is whether the current paradigm covering all veterans and ex-military is at all relevant to modern life and employment, let alone compensation. My view is that the whole shooting match is negative, and ill

fitted for the purpose – but retained through the culture which has prevailed so long.

That unfairness however was also perpetuated by the differential contained in the VEA and continued through to the current day in the MCRA whereby risk is specifically rewarded for what was once ‘qualifying service’, now titled ‘warlike service’. The fact remains that peacetime service can be equally as dangerous as warlike, perhaps rewarded by allowances, but not reflected in compensation and other additional benefits. The concept of the ‘returned man’ which became a significant badge of social standing remains strong, especially amongst those successful in obtaining T&PI claims, which includes the Gold Card – a benefit of free health care for life and as such treasured and keenly sought. Not to mention automatic widows’ pensions. The simple fact is that under the VEA the greater the disability sought through constant claiming for new conditions or worsening of existing, the greater the reward. The incentive to keep claiming is endemic to the VEA – but only for the ‘returned’ men who can reach the hallowed T&PI level before they reach 65 if they persevere.

In the 1920’s as well as compensation for pain and suffering, allowance was also made as a reward for service, and for lost income earning capacity. The daily pay of 5 shillings a day may have been generous in 1915, but effectively the reward for risk is assumed to have been built into the overall generosity. It is suggested that this approach is no longer considered rational, but it continues in the VEA nevertheless. Additional income support was made available in the service pension for disability (for those unable to work under 65), the service pension for age at 60 years of age (still current despite the effect in modern times of the fit soldier syndrome whereby ex service personnel actually live longer than their civilian peers), and the intermediate and special rate (T&PI) pensions. The working limits are in themselves a disincentive to rehabilitate, retrain, and join the workforce. All this alongside other benefits of the modern age including superannuation and community based programs which run in parallel, but are to some extent offset – very unsatisfactorily and with much added complexity.

To be blunt, the entire paradigm represented by the VEA and indeed by the continued existence of the Repatriation Commission and DVA, is totally anachronistic, and is the cause of most of the complexity. It should all be terminated immediately with no grandfathering, and its legacy in the MRCA removed.

Commentators rightly say , correctly, that welfare schemes quickly become entitlements, and around the world at present governments are struggling with their cost within tightening economic parameters. Add to this the political strength of veterans, bolstered by government programs of commemoration which are totally self -serving, the difficulty is simply enormous. A key symptom of this is that veterans resent being treated as welfare recipients and automatically resort to slogans of service and risk of life – i.e ‘we served our country, put our lives on the line ‘ etc which are just emotive smokescreens.

I don't begrudge veterans any of their benefits, nor their generosity, but the system is jammed with unfairness and inefficiency, and while ever this culture remains so ill informed and untreated, the problem will continue. Hence the utter stupidity of rebuilding the DVA I/T systems until the matter is streamlined and simplified

Complexity

Many references have been made to the complexity of veterans' compensation, not just within any of the three acts (VEA, SRCA and MRCA), but in combination. Complexity is magnified many times by the preservation of past entitlements, resulting in not just three schemes, but five or six, due to overlaps between them.

To be blunt, preserving VEA benefits and carrying much of its culture and many of its provisions into MRCA was a gross mistake. Both the SRCA and MRCA are to a large degree modern compensation schemes which toughen up on evidence, proper reporting of injury, and compulsory rehabilitation. The continuation of the VEA confounds this though because it's a creature of the 1920's, reflecting the needs and the politics of the 1920's. It was enacted at a time of crisis, when the administrative backup was negligible, medical science and facilities primitive, and records very basic. Hence decisions made which made it easier for large numbers of returned veterans to be rewarded, treated and compensated generously, in line with public sentiment, but separate from any other non- existent government or community programs. This is no longer the case and we shouldn't be pandering any longer to the infectious culture described above.

The Campbell review sought to address this complexity, but for all the political reasons identified above, it failed to address any of the real underlying issues –

simply because the review's antecedents were to respond to the avalanche of complaints about the operation of the MRCA – i.e. there is nothing like a review to stall until after the next election. The culture was just too resistant, and the review completely compromised by the vested interests viz., Defence, DVA, ex service organisations, and the interdepartmental members who simply had no background.

Hence the referral by the Treasurer to the Commission.

Key Options for Remedial Treatment and Reform

- Option 1 (preferred): repeal the MRCA and VEA with effect immediately, allowing only current claims, with all new claims to fall under the SRCA, thus covering all Commonwealth employees with standard provisions of reporting, treatment, rehabilitation and compensation in the same way, with income support to be treated separately and in conjunction with current superannuation and social security benefits. Additional coverage beyond allowances to be separately insured on a subsidised commercial basis according to individual choice. The effect of this would be to:
 - remove military service as a condition of service (if it ever was)
 - remove all differentials between military and civilian service within Commonwealth employment, including civilians and others such as the AFP which has a good case for parity at present, based on relative risk
 - remove all internal differentiation based on service
 - properly separate reward for risk, and service from compensation policy
 - bring standardisation to Commonwealth employment
 - oblige the ADF to properly manage a full OH&S regime, transparently and accountably – i.e. the proper duty of care for employees
 - temper the tendency to continually seek claims for increase, given whole of body assessment each time
 - simplify the review and appeal mechanism whereby the VRB could be abolished and all review brought under one roof in the AAT
 - remove ridiculous current coverage for sporting injuries, given that a large proportion of these are orthopaedic from internal ADF contact sport which should be considered voluntary (another port)

- remove completely the confusion whereby compensation is upgraded by the circumstances in which the injury/illness was incurred i.e. the risk factor should be eliminated , treating all injuries alike
- standardise the onus of proof to the balance of probabilities, thus removing the reverse criminal standard which has been the bugbear of legal issues for DVA for decades, including for the Statements of Principle.
- allow claims management to be centralised in COMCARE which would improve consistency, greater efficiency, hopefully better service, simpler administration and better treatment given that the ADF and Defence would have to bear full responsibility as employers, rather than passing the parcel to DVA as is the case at present. The current gap should be eliminated, especially where medical discharge is used as an easy means of forced redundancy. For those unfortunate enough to suffer mental illness, continuity of care on a proper case management basis would be ensured within a modern OH&S framework.
- Costs to the Commonwealth budget would be significantly reduced, noting that the current downstream cost of military service, as borne by DVA, is \$12.5 billion p.a.
- Make it easier for the Repatriation Commission to be abolished in favour of a modern government governance model, free from military compromise (ditto VRB), noting that with two ex -military in charge out of three , including oversight of DVA, the cat now has the key to the canary cage.

There would of course be a severe political backlash, such is the totally unintelligent adherence to old entitlements, as described above in culture. Defence too would not like the task as they don't see any of this as core business, and continue to believe that military service is 'unique'... the same arguments they run for inflated superannuation benefits, home loan interest rate subsidies, subsidised housing, and free family health care.

- Option 2 (compromise). If the Commission isn't attracted to option 1 above, that is, they believe as a policy option that compensation is a condition of service, retain MRCA, also on an insurance model a la SRCA, but without any carryovers from the VEA, as above.

This would dramatically simplify the system, but would be more generous than option 1 above, and perhaps more politically saleable. However, it should still be set up on the SRCA insurance model, with claims administration to be done internally. Special attention would need to be given to rehabilitation within Defence, with medical assessment from independent practitioners specialising in compensation claims and rehabilitation. The current use of the family doctor should be prohibited. There should be no differentials for service or between civilian scales of maims, and reviews for disabilities of known variable nature such as mental conditions should be compulsory and made regularly.

- Option 3 – no change. This is what the client group would obviously prefer, but such an outcome would be totally irresponsible.

Other issues

- Income support. Apart from all the unfairness driven by the service differential as identified above, the single greatest driving force behind the complaints about DVA and the system is the need , or quest for money.

In general terms the ADF is well remunerated, especially for those with longer service, with an accumulation of valuable benefits during service, capped off with very generous superannuation which is about double the public standard. There are some though who suffer on discharge, especially those with short service, and those with disabilities which make employment difficult. The following are points to be followed up for assessment as to their fairness, adequacy and access.

- The linkage with disability benefits under superannuation, the administration of those schemes, and the offsets with compensation payments, particularly where pensions are paid
- The adequacy and sense of the current rules with respect to lump sums and pensions, and the best way of getting balance between pensions and lump sums. Lump sums as a finality to any claim is attractive administratively, but squandering lump sums is common place – throughout society.
- The continued relevance of the intermediate rate and the special rate of pension, noting that the work limit (20 and 8 hours p/w) is effectively a ceiling working against rehabilitation on the one hand

and a financial trap on the other. Neither pension is adequate for those with young families, but generous for those over 60

- The usefulness of the service pension for those under 65 unable to work because of their service related injuries, and its comparison with the Social Security disability pension, including its reviewability. (Note that it is this pension which was the subject of fraud investigation into its use by Vietnamese refugees who claimed to be ex-service allies in the Republican Army. Also that Australia was the only nation then which extended benefits to former allied service people.)
 - The system of remuneration within the military whereby salary inevitably includes allowances which can be suspended due to temporary or permanent disability, pending discharge or redeployment.
 - Given that most of the complaints are from discharged personnel, examination of the discharge process is very important, especially relating to retraining and redeployment within the ADF and Defence. Defence is very good at iterating all the programs of support available, but given the evidence to the Senate Committee, they don't seem to be very effective – and their design, legal basis and budget is probably inadequate. This includes financial counselling, recognising that life in the military can be socially very narrow, with high dependency on generous conditions not available outside.
- Governance . As suggested above, the current administrative arrangements are entirely unsatisfactory, and again, the SRCA model is far superior. If the insurance model is adopted, as strongly recommended, it is important that the claims assessment function be completely separate from the employer who pays a premium based on claims experience. Defence clearly should not have a role in any way, but nor should DVA because as a service delivery agent with strong client service responsibilities, and as it is completely beholden politically to veterans and ex service personnel through the political context, it cannot be objective. The Repatriation Commission, as referred to above is completely compromised. While the reasons for the establishment of the Commission were relevant in the 1920's and again after WW II , given the size of the repatriation task and the absence of another welfare agency capable of undertaking the task, that is not the case now. The claims assessment task requires scale of operation and

experienced staff who are better located in a dedicated specialised, and non - political environment, such as Comcare. Hence the importance of streamlining legislation and getting consistency and efficiency at the Commonwealth level.

Independence for the assessing agency is also important budgetarily in that the insurance model ensures that administrative overheads can be recovered from the premium income stream. At present DVA has a tightening salary vote which puts enormous pressure on decision making, and the productivity gains are always made up of staff costs against program parameters and policies which simply aren't adjusted to fit, remembering that despite the efforts made with decision making systems to introduce more logic, ultimately the law requires substantial use of discretion. Hence it is easy to tick and flick on the basis of the odds of success on appeal, which again is totally discretionary and unaccountable.

Moreover, it is easier to sacrifice admin costs and transfer the tasks to program outlays which are open ended, through the use of contracted staff and consultants. The classic example is the removal of in-house medical staff to make disability assessments, and their replacement by family GP's. While this made sense from a management and client service perspectives, as did the sale of the Repat hospitals, there has been a tendency to apply this modus operandi more broadly. The increase in claims assessment percentages over the years is some evidence of reduced scrutiny of claims, driven by formulaic systems and the need to reduce salary expenditure.

The VRB should be abolished as an unnecessary clearing house for matters which should be more thoroughly reviewed internally. Appeals should be to a specialised compensation panel at the AAT. The current process of review and appeal is simply a war of attrition, with new evidence, doctor shopping and lawyers extending cases to ridiculous ends – though in some cases completely justified by inadequate assessment and investigation.

Finally on this subject, the high degree of specialisation and the information technology with strong communication links makes it imperative that the organisational model for claims assessment be centralised. At present it is simply not possible for DVA to be able to

handle anything other than simple claims at the state level. Some attention has been given to sharing shopfronts at a wider spread of services to veterans, but this effort has focussed largely on client service across the spectrum of all DVA services. Just as claims for the NT have long been handled in Adelaide, it is suggested that the need to better concentration of expertise requires that model to be more widely used, especially if a new governance arrangement is adopted.

- Process. As with any claims system it is vital that the law be simple and clear. This is certainly not the case with the VEA, and the overlap of SRCA and MRCA makes it worse. There are many weaknesses in the VEA system, largely due to the anachronistic nature of the VEA, many of which were addressed in the UK reforms as recommended by a House of Commons committee report a decade ago. Some of the elements which must be secured in toto, regardless of the mix of legislation are as follows:
 - no claim should be accepted without a report of the incident causing the disability, and a record of the rehabilitation undertaken immediately after that report. Such reports should not be accepted where they are made outside a 5 day period, thus preventing concealment.
 - All medical assessments of disability must be made by independent assessors with necessary skills and experience in calculating whole of body effects – not by family GP's or those known to be a soft touch.
 - All claims must be made within five years of the injury event, except for those condition with accepted long term gestation e.g. cancers and some mental conditions
 - No claim should be assessed without evidence that any illness or injury has been subject to treatment and rehabilitation immediately.
 - On review or appeal, no new medical evidence post claim should be accepted, and in any event should be returned to the decision maker for review - otherwise the chain of appeals will continue

until the system simply folds and concessions are made for the wrong reason.

Finally may I wish the Commission good fortune in undertaking this inquiry, and I urge it be watchful for all the romantic notions of service, the shibboleths and the nationalistic sentiments generally held in the face of cold logic. The military claim their uniqueness in every battle for conditions which are never considered in toto, but in episodes like this. For those serving people and ex -service people please don't regard any of the above as an attack – but an opportunity to bring some rational sense to a generous system which is currently not fit for purpose, is grossly unfair, opaque and impossible to comprehend.

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