

PRODUCTIVITY COMMISSION SUBMISSION

This submission was prepared initially, as Chairman of its Pensions' Committee, and with members of that committee, for the Legacy Club of Adelaide in response to a request from Legacy Australia to comment on the "Issues paper" from the Productivity Commission (PC) concerning its Inquiry into "Compensation and Rehabilitation for Veterans".

I am a retired surgeon (TQEH, RGH, University Hospitals in UK, WA and SA) with 40 years Reserve and/or operational service with the RAAF. Currently I am President of the Mitcham branch of the RAAF Association, have been a Pensions Officer for over a decade, and spent 9 years as a Services Member of the VRB. I have been a member of: the SA Veterans' Advisory Council, the Veterans' Health Advisory Council, the Prime Ministerial Advisory Council on ex-service matters (PMAC), and Chairman of a Federal Specialist Recognition Appeals Committee.

In general, I endorse comments made by Legacy Australia to the Productivity Commission at its meeting, as in a dot pointed, single page summary, dated 20 April 2018.

I refer to a number of matters in the PC issues paper, and make the following comments.

- Definition of the term Veteran. With respect I would question the suggested definition of Veteran by the DVA, (p3). We prefer the VEA definition which refers, essentially, to operational service. Operational service, sometimes referred to as qualifying, war or warlike, British Nuclear Test Participation, Peacekeeping service etc. is treated differently, with respect to compensation, from Peace Time, eligible, non-operational service etc. The DVA has defined all its ex ADF clients as veterans. For the purpose of the Inquiry this is quite understandable. The title DVA, furthermore, might imply that it is concerned only with (war or operational service) veterans. The difference between the two, however, is of considerable importance in the Ex Service community. Two standards of proof are recognised, so that the two groups of former ADF members, are compensated differently in the legislation, with two sets of Statements of Principles for example. Nevertheless, the Commission inquiry "into veterans etc" is concerned with both veterans, as defined in the VEA, and former serving members of the ADF.
- The new DVA Veteran centric policy (pp 1, 4) may not consider carefully enough the financial problems that might be experienced by the family (p7) if a veteran is estranged, perhaps for reasons associated with a service related mental health disorder. This is of considerable importance to Legacy, the Partners of Veterans Association, and to a lesser extent, the War Widows Guild.
- Incentives/Disincentives to work; VEA v MRCA; Pensions v Lump Sum etc. (pp 4, 17) Under the provisions of the VEA, and its antecedent legislation, "returned men" from World Wars (they did not recognise then the term "veteran") were granted a Disability Pension. This is indexed, tax exempt, and available for life. It is/was a supplemental income which in no way prejudiced returned soldiers, sailors and airmen from working, even if awarded at 100%. Only the Special Rate of pension ("TPI") had a work test. But this latter was designed, when introduced a few years after World War One, to provide income for a returned serviceman who had no prospect of returning to work, nor of "putting aside money for his old age". Such a Pension was to support a family for life. It was based on the "Basic Wage" or equivalent. These provisions are consistent with prudent financial planning. Provisions of the MRCA, on the other hand, may be consistent with unwise or reckless financial planning. A lump sum may be squandered, used or invested unwisely, leaving nothing for retirement. Incapacity

payments, calculated on the salary or wage at the date of incapacity, will also cease at “retirement age” if not before, may be based on current disability, and thus potentially might be reduced. Special Rate Disability Pension under MRCA has been under subscribed, as it may provide less income per fortnight than Incapacity payments. There are inherent pressures against returning to work that is dull, uninteresting or dangerous. Human nature and failings may lead one to accept a disability, particularly if handsomely compensated, which prevents return to such a work place. If an obvious disability exempts an individual from unwelcome duties (war or National Service for example) it will be difficult to distinguish genuine sufferers from malingerers and “hysterics” (sufferers of a conversion reaction). Some of the unusual symptoms manifest by sufferers from WW1 “shell shock” were probably in this last category. In the civilian workplace similar disincentives will apply even if not so obviously.

- Rehabilitation for civilian occupation (p8). World War One and Two veterans, following medical discharge, particularly if they were wounded, would have regarded rehabilitation for a civilian occupation as welcome and beneficial. Indeed, a wound that took one away from the Western Front trenches in WW1, often called a “Blighty”, might have been considered life-saving. On the other hand, contemporary veterans regard medical discharge as a career or profession ending calamity. Transition to civilian employment was not their intention. Should it have been possible to retain them by rehabilitation within the ADF the idea of such rehabilitation might be more attractive. Many less “sharp end” occupations, that might have been suitable for such members, have now become civilianised e.g. security, transport, cooks etc. A veteran discharged on medical grounds will seek compensation not only for his injury or illness, but for loss of an intended career path (See also question p 17).
- Rehabilitation and Compensation have different and competing outcomes. “The greater the Rehabilitation the smaller the Compensation,” and vice versa. That trite assertion may not apply if a serviceman can be rehabilitated to retain his position and promotion prospects in the ADF. But it is true once he is out of uniform.
- The alleged “Inflexibility of Statements of Principles (SoPs)” (pp12, 13). In our opinion the Statements of Principles, introduced following the Baume Report of 1994, have provided a most helpful template for compensation. By removing from consideration competing medical opinions we believe that they have “helped to create a more equitable, efficient and consistent system...” The RMA determines the SoPs on the basis of evidence that links the probability of development of any condition with particular (risk) factors. It identifies all the epidemiological or causative factors that may lead to the development of a particular injury, disease or disorder. It does not, nor should it, attempt to link that factor with the conditions of service. SoPs deal with two standards of proof, the Reasonable Hypothesis standard, (probability of a causal association with service perhaps as low as five percent); and the Balance of Probability standard (probability of a relationship perhaps as low as forty percent). These provide a framework within which there is a considerable degree of flexibility, particularly with respect to the Reasonable Hypothesis standard. In such matters compensation may be paid for a condition in which there is only a one in twenty chance that a causal relationship really exists between a claimed condition and the conditions of service. This surely shows a great deal of flexibility. On the other hand, using the framework provided by SoPs will prevent compensation if there is a less than one in twenty chance of such a causation. The Reasonable Hypothesis term was discussed in the High Court determination of the O’ Brien case (RC v O’Brien [1985] HCA 10). Before that time the provision in the Repatriation Act 1920 was that the (war) veteran was to be awarded a claimed condition unless its relation to service was disproven “beyond reasonable doubt”.

How much doubt might be considered reasonable is given an important statistical approximation by the term "Reasonable Hypothesis". The VEA was enacted the following year, incorporating the term.

- An "adversarial approach" (p12). It is our experience that Decisions on claims made under MRCA 2004 appear to be more "earnestly" resisted by delegates, and Commission advisers including medical officers, than in cases decided under the VEA 1986. There are contentions over whether the condition is permanent and stable, or even over the diagnosis itself. Delays in decision making appear to be inherent in this more recent "Compo" Act. As in Workers Compensation Acts of various jurisdictions there are complexities (p11) that would encourage a claimant to seek a lawyer's advice
- DRCA reviews (p14) are shown in the table to proceed via the VRB. We understand that such claims are not reviewed by the VRB, but proceed instead, to the AAT. Incidentally the fact that a claim will be considered only within the provisions of one Act, and rejected, yet could be accepted under another Act, makes it difficult and frustrating. We have occasionally heard of Commission delegates recommending that a claim might be more appropriately made under a different Act. However, if delegates within the Commissions are unable to transfer such a claim to another Act, without a newly prepared claim, there is a case to have a "multiple Act" claim form, or imbedded lawyers for such guidance. See below re the "Canadian Model".
- Minimising risk in the ADF (p15). The concept seems reasonable, almost self-evident. General Slim sacked commanders whose troops developed unacceptable rates of Malaria. Monash protected his troops by all available mechanical means, rather than impale them on enemy bayonets. The lack of suitable "non-combatant" roles in the current ADF, in which injured members might continue a military career, is referred to above.
- Unequal compensation between operational and non-operational service (pp 16, 17). It is unacceptable that different degrees of impairment should be compensated by different levels of compensation. However, the extra "benefit" given to the "real" veteran (operational, war-like etc.) is in the lower standard of proof required. Indeed, the benefit provided is that such a person will be compensated when there is only a slight chance that the condition was in fact related to the conditions of service.
- History of the Gold Card (p19). The issues paper has repeated a belief held by many, but we believe to be incorrect that, "the gold card predates free or subsidised health care through Medicare". What preceded Medicare, that is free public hospital treatment for all Australian citizens, was a decision in 1973, by the Whitlam Government, to provide Boer War and World War One veterans free treatment for all conditions, but only at Repatriation Hospitals. Previously free Repatriation Hospital treatment was only provided to veterans for their "entitlements", or accepted disabilities. The Gold Card was not introduced until 20 years later, and it was only in 1995 that it was provided to all veterans (operational, qualifying service or equivalent) on reaching the age of 70 years.
- The "Gold" in that card is entirely dependent upon Doctors (and Hospitals) accepting it as payment in full. It thus may behove the DVA to consider incremental (eg "CPI") indexation that is unrelated to Medicare Rebate indexation. This latter has been frozen recently, a great risk to the Gold Card's universal acceptability.

- “Eligible Service”. We suspect that the second dot point on p 18 should read “veterans with qualifying service” (operational etc.) rather than “eligible service”.
- The future of Veteran Advocacy: the Canadian model. Although not strictly within the Terms of Reference for this PC Inquiry, the DVA is currently reviewing the way in which former ADF members will be assisted with respect to claims for compensation. It is our view that the complexities of current legislation, involving procrastinatory, step wise, decision making and assessments, will encourage contemporary veterans to seek a lawyer’s opinion. We have recommended that the Canadian model, or an Australian version of it, be considered. In this model career DVA lawyers, trained in Military Compensation law, will advise claimants at every step in the review or appeal process, apart from the primary claim.

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