

The Productivity Commission

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

Draft Report

Submission by the Veterans' Advisory Council of South Australia

18 February 2019

SOUTH AUSTRALIA'S VETERANS' ADVISORY COUNCIL
SUBMISSION ON PRODUCTIVITY COMMISSION DRAFT REPORT
"A BETTER WAY TO SUPPORT VETERANS"

The truth of the matter is that you always know the right thing to do. The hard part is doing it.

INTRODUCTION

The Australian military ethos is founded on the concept of mateship. It requires those who have served to look after each other and, importantly, those who follow. Accordingly, South Australia's Veterans' Advisory Council (VAC) is united in its view that any changes adopted following the Productivity Commission's work must not be detrimental to veterans or the veteran community either now or in the future.

The VAC welcomes the opportunity to provide this submission on the draft report of the Productivity Commission's Review into Rehabilitation and Compensation of Veterans - 'A Better Way to Support Veterans'. The VAC considered the report at an extraordinary meeting on 24 January 2019.

This submission does not address every recommendation or finding. Rather it seeks to provide the VAC's view of the draft report in its totality and to address some issues considered fundamental to supporting veterans.

South Australia's Veterans' Charter defines the veteran community as *"...inclusive of veterans and their families with a direct link to a Service or a veteran. This includes spouses, widows, widowers, partners, former partners, carers, children, parents, siblings and relatives of serving or ex-serving members, and should include anyone with an evident link to, or interest in, matters associated with veterans' welfare or wellbeing."*¹ As a result, the veteran community in South Australia includes an extraordinarily broad demographic aged between 18 and 109 and spanning conflicts from WWII to Iraq and Afghanistan.

Devising a system to support the diverse needs of such a broad community is challenging and must be conscious of the competing demands that this community presents. This is the direct result of the unique nature of military service that does not simply impact the individual in uniform, but rather all those around them and with whom they come in contact.

The VAC agrees that the existing veteran support system requires, in some areas, fundamental reform. However, the VAC disputes that the **entire** system is 'not fit for purpose' and counsels against radical reform. This advice stems from the VAC's deep understanding of the culture and norms of military service and the veteran community that Commissioners may not have been able to fully grasp, despite their best endeavours, through the consultation process.

By its very nature the veteran community is traditional and conservative. Those who have served and those who have supported them have rightly become accustomed to having a department of state to address issues raised, provide appropriate compensation and advocate on their behalf.

¹ South Australia's Charter for Veterans, 2018

While flexible and able to react and deal with change following years of service, radical reform proposals are unlikely to attract broad support.

VAC members have varying interpretations of levels of support afforded veterans depending on their military service, (warlike versus non-warlike, peacekeeping, peacetime service remains an ongoing debate), however the Council is firmly of the view that reference to the existing veterans' compensation and rehabilitation system as more generous than others is disingenuous to the undertaking of those who serve or have served. Council members understand that the Commissioners did not intend this interpretation, however there was broad criticism of this commentary.

The Council unanimously endorses the Commission's view at **Draft Recommendation 4.1** that a well-being focus should underpin the veteran support system. Returning individuals to a healthy lifestyle should be the priority.

Unique Nature of Military Service

The VAC considers the uniqueness of the profession of arms cannot be overstated and should underpin any recommendations. No other calling requires the surrendering of liberties to the extent that military service requires in both peacetime and in war.

In addition to the surrendering of liberties, service personnel are subject to the Defence Force Discipline Act 1982. No other form of employment subjects its employees to separate jurisdictional processes to the same extent as the military.

The warfighting culture of the Australian Defence Force requires the mindset to legitimately apply lethal force in pursuit of state-based ends often against other equally trained and supported forces. No other part of the state can plausibly lay claim to a role that exists to purposefully kill/wound and/or destroy life and property. The scale and scope of service of Australian Defence Force members' work is not replicated in any other state-based service.

Veteran Centric Reform

The VAC is encouraged by the Department of Veterans' Affairs veteran centric reform program focussed on knowing, supporting, connecting and respecting all in the veteran community, and the improvements that have already resulted: making claim submission simpler and reducing processing times. This reform program should be supported and expanded.

Enough time should be allowed to enable data to be collected and analysed to facilitate meaningful assessment of the initiatives undertaken. Further reform should focus on a wellness centred approach that is innovative and is not process driven and is supported by research and data to measure which treatments work best.

EXTENT OF REFORMS

To address some specific issues the VAC offers the following observations:

REHABILITATION AND WELLNESS

Rehabilitation and wellness are critical components of quality of life. They are particularly critical at the point of transition when an individual is separating from their service family and its attendant support structure, particularly in the areas of medical, dental, and administrative assistance.

The draft report highlights the differing priorities placed on rehabilitation and wellness by the Departments of Defence and Veterans' Affairs. The report asserts that the Department of Defence focuses its rehabilitation efforts on those it assesses have an opportunity to return to employment with Navy, Army or Air Force but will focus less on those who it assesses no longer have a future in the military. The report further asserts that there is limited uptake from ex-serving members of rehabilitation programs offered by the Department of Veterans' Affairs as the current veteran support model is more focussed towards compensation.

Accordingly, the draft report highlights the need for significant reform in the procurement, organisation and monitoring of rehabilitation services by both the Departments of Defence and Veterans' Affairs (**Draft Recommendations 6.1, 6.2 and 6.3 refer**).

The VAC supports the Commission's view that the focus of the veteran support system must be on rehabilitation and wellness and not compensation. The Council supports the need for data capture to assess the relative success of rehabilitation programs conducted by both the Departments of Defence and Veterans' Affairs to determine which programs deliver the best outcomes for the individual.

The VAC contends that the best funded programs will have little impact if they are not able to be delivered on the ground. Accordingly, the VAC advocates for greater involvement at state and territory level as this is the point where services funded by the commonwealth are delivered. Engagement with state and territory government departments and agencies (health and well-being, veterans' affairs, employment etc) will provide the commonwealth with a clearer indication of both the needs of the local community and the success of programs offered. This engagement could be achieved through the Veterans Ministers' Round Table informed by the existing Commonwealth, State and Territories Committee following advice from a national Veterans' Advisory Council and Veterans' Health Advisory Council discussed later in this submission.

ESTABLISHMENT OF A JOINT TRANSITION COMMAND

The VAC agrees that transition is a key issue that must be addressed. Many veterans' through-life challenges are the direct result of a poorly managed transition process. This often stems from transitioning personnel attempting to avoid the perception that they are looking after themselves and being branded as selfish when it is time for them to do so.

The VAC's original submission addressed the issue of transition as follows:

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

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

person, separating from their service family, is embraced in a similar way by their post service family.

There may also be a benefit in directing some research on the causal aspects/drivers behind why the majority of serving and former serving personnel are healthy and view their military service with fondness and positivity, including those exposed to significant stress and trauma during service. Such research may improve recruitment procedures and/or assist to identify individuals at risk earlier.²

Accordingly, transition-awareness and planning should be incorporated into the annual reporting and/or induction regime of military commands.

The VAC considers **Draft Recommendation 7.1** regarding the establishment of a Joint Transition Command within the Department of Defence is one potential model that should be examined further. While the overwhelming majority of Council members supported the model, there was consensus that further detail is required.

The Council is of the view that the Commissioners' highlighting a hub or veterans' centre model is also worthy of further examination as an aid to successful transition. The Partnership Hub at the Jamie Larcombe Centre in Adelaide is an excellent example of a single location offering a variety of services including advocacy, employment assistance, welfare, health and well-being, financial counselling etc. A Hub model may also address some of the ex-service organisation membership challenges currently being experienced and under review in the Cornall Review.

A single coordinating function for all transition services in one Branch under Vice Chief of the Defence Force – a step down from the establishment of a Joint Transition Command – could also be considered.

INITIAL LIABILITY ASSESSMENT

Statements of Principles (SOP)

Draft Recommendation 8.1 proposes *adopting a single standard of proof for determining causality between a veterans' condition and their service under the VEA, DRCA and MRCA.*

As the Commission's draft report proposes legislative change to a two-scheme approach (Recommendation 17.1) to be implemented by 2025 to replace the current three Acts, it stands to reason that the SOPs should be similarly reviewed to ensure synchronisation with the proposed schemes.

The VAC's initial submission stated: '*... the SOPs are unique to Australia's military compensation scheme*'.³ There may be a case for retaining both the reasonable hypothesis standard of proof and the balance of probabilities standard of proof. However, if one of the aims of this review is to simplify the complex compensation and rehabilitation system for veterans, a harmonising of the SOP and associated standards of proof may be appropriate.

In the introduction to this submission we stated, 'that any changes adopted following the Commission's work must not be detrimental to veterans or the veteran community either now or in

² Submission by the Veterans' Advisory Council and the Veterans' Health Advisory Council South Australia, Inquiry into Veterans' Affairs' Legislative Framework and Supporting Architecture for Compensation and Rehabilitation for Veterans (Serving and Ex-serving Australian Defence Force Members), 2 July 2018

³ Ibid p. 7

the future'. Accordingly, any harmonisation of the standards of proof should be assessed against this benchmark. Additionally, any changes to the SOP and standards of proof should be done with complete transparency and in consultation with the veteran community.

CLAIMS ADMINISTRATION AND PROCESSING

It is the Council's view that veterans are well placed to support other veterans. Shared experiences, particularly related to operational deployments, provide a strong link amongst those involved. The Commission's **Draft Recommendation 9.2** that the Department of Veterans' Affairs *should ensure staff who are required to interact with veterans and their families, undertake specific training to deal with* (we would prefer the word 'support' instead of the phrase 'deal with') *vulnerable people and in particular those experiencing the impacts of trauma*, is supported but the VAC believes there is an opportunity for the Department of Veterans' Affairs to develop an employment framework targeted at transitioning veterans who could work in this area as part of its veteran centric reform program. Such a program could commence during the transition phase of an individual's military career and offer pre-transition training, with associated certification, and potentially an employment opportunity within the department post-transition or a potential career in veteran advocacy.

REVIEWS

The VAC supports **Draft Recommendation 10.1** and believes the interface between the Veterans' Review Board (VRB) and the Department of Veterans' Affairs should be improved to ensure VRB decisions are communicated to departmental senior management and delegates in a timelier manner, and that the department institutes a 'lessons learned' philosophy to identify when patterns emerge from VRB decisions. The VAC also supports the pursuit of alternative dispute resolution processes and that reporting of the outcome of decision variations should occur on a regular basis.

Veterans' Review Board (VRB)

The VAC opposes **Draft Recommendation 10.3** to amend the role and procedures of the VRB without further detailed consultation. The Council considers the VRB performs a valuable function that seeks to clarify elements of disputes in a non-confrontational manner at a point in the dispute resolution process where negotiation is much preferred to formal legal proceedings. The VAC considers that the VRB focusses on the veteran and their issue, providing an opportunity for detailed investigation of elements of their claim.

GOVERNANCE AND FUNDING

Transfer of Veteran Policy to the Department of Defence and Single Minister for Defence Personnel and Veterans

The VAC unanimously opposes the first element of **Draft Recommendation 11.1** relating to the transfer of DVA's policy responsibility to the Department of Defence. The Council believes that the role of Defence is, in its most strategic sense, to fight and win the nation's wars. Accordingly, its focus is, and must remain, on its national security responsibility that is arguably the highest priority of any government.

The men and women who execute this fundamentally vital role should be afforded a dedicated, focussed policy development organisation within a department of state.

The VAC considers veteran policy embedded within the Department of Defence will receive significantly reduced focus and will be subordinate to the many other tasks that department must manage to achieve its role.

Additionally, many who leave military service want no further involvement with the Australian Defence Force and are deeply uncomfortable with the notion of the transfer of veteran policy to the Department of Defence.

However, the VAC endorses the second element of **Draft Recommendation 11.1** to establish a single Minister for Defence Personnel and Veterans. The VAC considers the single Minister concept nests the responsibility for the health and well-being of those who serve with that Minister both during and after their service. It will ensure a single Minister seeks to engage with the Department of Defence on best practice management of serving men and women and remain responsible for them when they transition from the military.

Veteran Services Commission and the Dis-establishment of the Department of Veterans' Affairs

The VAC believes **Draft Recommendation 11.2** to establish a Veteran Services Commission is worthy of consideration but only in the context of a departmental structure, not at its expense. The VAC notes the Commission's observation that '*A department structure is not suited to operating a contemporary workers' compensation scheme*⁴', but contends that the compensation and rehabilitation of veterans is unique in its character and requires a specifically designed veterans' support model that includes the best elements of existing schemes together with the necessary elements required to address the consequences of service in the profession of arms.

Accordingly, the dis-establishment of the Department of Veterans' Affairs is unanimously opposed by the Council. The Council considers the loss of a department of state would seriously diminish the standing of veterans and the recognition of their service. The commensurate loss of a department secretary is considered disadvantageous to the veteran community removing an advocate at department secretary level with a seat at the Secretary's table.

The VAC also considers abolition of the Repatriation Commission unacceptable as it will consign the century year old body, that was the department's foundation, to history. History matters. The Repatriation Commission could be repurposed to perform the functions identified for the Veteran Services Commission within the Department of Veterans' Affairs.

Establishment of a Veterans' Advisory Council (VAC)

While the VAC supports **Draft Recommendation 11.3** regarding the establishment of a federal Veterans' Advisory Council *to advise the Minister for Defence Personnel and Veterans on veteran issues, including the veteran support system*, it questions the proposed structure outlined in the Draft Report. Accordingly, the Commission may find the observations below informative in its deliberations.

South Australia's VAC was established in 2008 and its model has proven successful in delivering outcomes for the state's veteran community. It is a non-statutory body appointed by the state's Minister for Veterans' Affairs, currently the Premier of South Australia. It is, first and foremost, advisory, although its membership ensures appropriate representation of serving and ex-serving members, ex-service organisations, unit associations, and veterans' support organisations. Its objectives are:

- Promote the wellbeing of all members of the veteran community in South Australia
- Promote cooperation across all veterans' organisations in South Australia

⁴ Productivity Commission Draft Report A Better Way to Support Veterans, p. 27

- Provide veterans an avenue to communicate directly to the highest levels of State Government through the Premier and, as appropriate, through the Premier to Commonwealth Ministers concerned with veterans' affairs
- Monitor and provide advice about matters relating to the recognition and commemoration of the service of veterans
- Act as an advocate for serving ADF members posted to South Australia

The Council's functions include providing advice to the government on matters affecting members of the veteran community including aging, health and well-being, welfare, advocacy, veteran related legislation, commemorations and grant funding.

Importantly, in appointing members to the Council the Premier considers selecting members who can provide as broad a range of knowledge, skills, qualifications and experience relevant to the veteran community. Accordingly, the Council's membership is comprised of a balance of service, gender, rank and conflict, and includes current and former serving full time and part time members, war widows, partners of veterans, Aboriginal and Torres Strait Islanders, public and private sector representatives.

The proposed membership of any federal Veterans' Advisory Council should consider the inclusion of state and territory representatives and serving and ex-serving members as well as subject matter experts.

Consideration should also be given to the establishment of a federal Veterans' Health Advisory Council to provide advice to the Commonwealth Minister for Health on veterans' health and well-being concerns. This model was established in South Australia in 2009 and has worked effectively providing a voice for the veteran community directly to the Minister for Health and Wellbeing.

Transfer of Commemorations and War Graves to the Australian War Memorial

The VAC unanimously opposes **Draft Recommendation 11.4** to transfer primary responsibility for all commemoration functions to the Australian War Memorial. The Council considers that, internationally, the soft diplomacy opportunities offered by commemorating our war dead in overseas locations is not something that the Australian War Memorial could support.

Levying a Premium on Defence for the Cost of Future Claims

The VAC is divided regarding **Draft Recommendation 11.5** to levy on Defence an annual premium to fund the anticipated future costs of the veteran support system. Some Council members consider there is an argument that a levy will further pressure military commanders to ensure their personnel are well supported from a health and well-being perspective. However, other Council members are of the view that additional health and well-being considerations placed on commanders will promote a conflict of interest between wellness and mission focus and success.

This issue goes to the heart of the uniqueness of the profession of arms that demands the surrendering of individual liberties, including life, to the defence of the nation and completion of assigned missions.

The Council is united in its observation that military commanders fully comprehend the value of their people and always consider the safety, health and well-being of their personnel.

HEALTH CARE

Gold Card

The VAC opposes **Draft Recommendations 12.1 and 15.1** concerning changes to the DVA Health Card - All Conditions Australia (Gold Card) and unreservedly rejects the notion offered in one submission that 'DVA's health card system encourages a view of the system as a contest to be won, with the gold card as the prize'.

In these days of technological advancement consideration could be given to a single chipped health card that, as conditions are accepted, can be updated. Serving personnel should be issued a card at enlistment that supports DVA's relatively recent approval of non-liability mental health care and that can be amended through an individual's career to acknowledge any further accepted injuries or illnesses. This would avoid the need for a coloured, multi-card system.

LEGISLATIVE REFORM

Veterans' Compensation and Rehabilitation System

The VAC offers in principle support for **Draft Recommendation 17.1** for the establishment of a two-scheme approach for veteran support (VEA and a merged MRCA/DRCA) by 2025.

The VAC agrees that the existing system of veterans' compensation and rehabilitation is cumbersome and complex. The Council views this situation as the direct result of the development of the system, effectively over the last century, which has resulted in multiple Acts and adjudications that have over-complicated the veteran support system.

In its submission to the Senate Foreign Affairs, Defence and Trade References Committee, *Inquiry into veteran and ex-service personnel suicide* in 2016, the South Australian Government stated:

Claims for compensation relating to service in the ADF are assessed under one of a number of different Acts, depending on the time and/or the type of the service, with different liability tests applying. This legislative framework is cumbersome, complex, confusing and difficult to navigate for advocates, DVA staff and members of the serving and ex-serving community.

Consideration should be given to a complete review of Commonwealth veteran related legislation that preserves veterans' entitlements while simplifying the process under a single Act.⁵

The VAC therefore agrees that legislative change is required that ultimately will result in a single piece of legislation.

CONCLUSION

The profession of arms is unique. Throughout our history, Australian men and women have selflessly served in Australia's military, at home and abroad. Even now, more than 2,000 Australian servicemen and women are deployed in various theatres of war or peacekeeping operations globally.

⁵ Submission by the Government of South Australia, The Senate Foreign Affairs, Defence and Trade References Committee, *Inquiry into suicide by veterans and ex-service personnel*, October 2016

Those who have served, those who are serving, and those who will serve in the future deserve our very best endeavours to ensure they can live long and prosperous lives when their days of service end.

The nation which forgets its defenders will be itself forgotten

Summary of Recommendations

Recommendation 4.1 – **Agreed:** The veteran support system must be well-being focussed

Recommendation 5.1 – **Agreed:** Data capture and analysis will better inform policy development and government decision making

Recommendation 5.2 – Unable to comment

Recommendation 5.3 – **Agreed:** Greater transparency will assist policy development and government decision making

Recommendation 6.1 – **Agreed:** Greater transparency will assist policy development and government decision making

Recommendation 6.2: **Agreed:** Data capture and analysis will better inform policy development and government decision making

Recommendation 6.3: **Agreed:** Consideration should also be given to including the involvement of state and territory government authorities who have responsibility for delivering services to veterans that are paid for by the commonwealth

Recommendation 7.1 – **Agreed:** A Joint Transition Command model should be explored along with other models as suggested

Recommendation 7.2 – Unable to comment: This is an internal command matter for the Department of Defence

Recommendation 7.3 – Unable to comment: Further detail would be welcomed

Recommendation 8.1 – **Agreed:** However other options as detailed should be investigated and no changes made without full and detailed consultation with the veteran community and relevant experts

Recommendation 8.2 – No comment

Recommendation 9.1 – No comment

Recommendation 9.2 – **Agreed** and the department should investigate an employment framework opportunity for transitioning and ex-serving members seeking employment

Recommendation 9.3 – Unable to comment: this is a department internal matter

Recommendation 10.1 – **Agreed:** The department should instigate processes to allow rapid passage of review finding outcomes to senior management and delegates

Recommendation 10.2 – No comment

Recommendation 10.3 – **Opposed:** The VRB in its current form performs a valuable non-confrontational approach that should be permitted to continue

Recommendation 10.4 – **Opposed:** See above

Recommendation 11.1 – **Opposed:** Veteran policy should remain distinct from the Department of Defence

Recommendation 11.2 – **Qualified support:** The proposed Veteran Services Commission should be examined further but only in a departmental context not at the expense of the department structure

Recommendation 11.3 – **Agreed:** Consideration should also be given to establishing a Veterans Health Advisory Council at commonwealth level to provide advice to the Minister for Health on veteran health and well-being matters

Recommendation 11.4 – **Opposed:** The AWM is not best placed to manage commemorative functions in a similar manner to a department of state

Recommendation 11.5 – Unable to comment: Further detail is required

Recommendation 12.1 – **Opposed:** Gold card eligibility criteria should not be constrained

Recommendation 12.2 – No comment

Recommendations 13.1 to 13.8 – No comment

Recommendations 14.1 to 14.6 – No comment

Recommendation 15.1 - **Opposed:** Gold card eligibility criteria should not be constrained

Recommendation 15.2 to 15.4 – No Comment

Recommendation 16.1 to 16.3 – No comment

Recommendation 17.1 – **Agreed:** Simplifying veteran related legislation should be pursued