

## HONOURABLE MEMBERS OF THE PRODUCTIVITY COMMISSION

Reference: Inquiry "Compensation and Rehabilitation for Veterans"

I wish to make a submission to your inquiry in relationship to the

### ***Safety, Rehabilitation and Compensation Act 1988.***

This Act, I believe, is unsound, inequitable and unjust legislation. The legislation is being, and has been, badly interpreted and administrated. The drafting of this Act has left a lot to be desired by some former military members.

This Act is unsound, inequitable and unjust law because it legislates for;

1. age discrimination
2. disability\* discrimination

These matters found interest at the Australian Human Rights Commission.

### **Comparison with Previous Compensation Acts (1930 & 1971)**

Consider a former member who was involved in a serious accident in the 1960s while on a training exercise.

*The 1930 Compensation Act lists specific conditions for which lump sums were paid. Other serious conditions (not in the specific annex) received a weekly payment on meeting conditions without an age limit.*

*The 1971 Act continued these payments on similar conditions.*

#### *The 1988 Act*

1. *Stopped weekly payment on reaching 65 for **some** former members. (No grandfather clause in all situations) (**age discrimination**)*
2. *Defines disabilities for people under the 1930 Act as only those that appear in the specific Annex of the 1930 Act (**disability discrimination**).*

*There is no allowance for advances in medical science when considering types of disabilities in the 1988 Act.*

*In this situation some former members have been discriminated against, 'got at', in 2 ways under the 1988 Act by age and disability.*

### **Compensation defined**

The Concise Oxford Dictionary defines **compensate** as "counterbalance; make amends" and **compensation** as "recompense".

Such recompense would be for;

- Loss of life
- Loss of physical parts
- Loss of physical abilities
- Loss of mental abilities
- Loss of mental state

## Age Discrimination

*The 1988 Act Section 23 stops payment at age 65 (for some).*

There are exceptions to this section and one is quoted below in correspondence from Department of Veterans' Affairs;

"somebody who has reached age 63 then suffers a compensable injury that results in incapacity."

*The 1988 Act Section 134 uses a formula to reduce payments in the relationship to age.*

A Department of Veterans' Affairs quotation;

'It is the case that the "certain employees who were no longer employed by the Commonwealth and were receiving incapacity payments on 30 November 1988" who remained eligible for incapacity compensation were those who turned 65 before 1 December 2008. It is noted that only those who turned 65 before 1 December 1988 remained eligible for the full amount of incapacity compensation. Those who turned 65 between 1 December 1988 and 1 December 2008 remained eligible for reduced amount of incapacity compensation, calculated in accordance with the formula provided in the legislation'

*The 1930 Act and the 1971 Act had no age limitations on weekly payments.*

Does the 1988 Act provide/contain a miracle cure for disabilities upon turning 65 after the 1 December 2008? Is that why the recompense stopped for some at age 65? The disabilities are cured?

## Disability Discrimination

The 1988 Act Section 124

This Act does not allow for advances in medical science (i.e. CT scans, MRI machines). The disability may have been pre-existing but not diagnosed. This type of disability received recompense via a weekly payment under previous Acts without an upper age limit.

The department **accepts** certain disability **conditions** and **accepts liability** but **rejects** making compensation **payments** because the accident was prior to start of the 1988 Act.

This logic defies belief, because a disability does not appear in the Annex of the 1930 Act. Therefore, the disability, does not exist? So no recompense is made.

## Due Consideration

It should be asked? "Did the legislative changes enabled by the 1988 Act provide **Sound**, **Equitable** and **Just** recompense to some former members who were forced by their age and by their circumstance to live an unfulfilling life. Then at age 65 have '**no consideration**' ". The former members were likely disabled while carrying out an **order** from a superior. An action for which they may have '**no specific training**'.

## TERMS OF REFERENCE

### Scope Framework

#### Sound Medical Evidence

Doctors overstepping field.

In 1979, after a medical examination an ex member's compensation payments were terminated. The lone examining doctor wrote a brutal report which contradicted diagnoses by more eminently qualified doctors. The report belittled and humiliated the former member. Upon appeal in 1990 with new medical evidence the 1979 termination was '**revoked**'.

The Department of Defence (compensation section) wrote (in reference to the above):  
The doctor "was not qualified to report on these other conditions" that were outside his field of expertise and "that the report provided by Dr ..... was insufficient to deny liability for all conditions suffered by .....".

#### Efficiency of Administration

Incorrect record keeping.

In a copy of a 'Claims/Cases overview' from the Department of Veterans' Affairs there were 15 errors in dates of accepted liabilities and the liabilities accepted. Previous correspondence to the 'Claims/Cases overview' had stipulated different dates and accepted liabilities.

## IN SUMMARY

### Contract of Employment

To serve in the military members sign a 'contract of employment'.

- Such a contract has conditions that bind both parties. One condition in this case, would have been, employment disabilities covered by the 1930 Compensation Act.
- Overtime a member would expect the conditions to be equal to or better than the employment contract conditions: **Not worse**.
- When the conditions of an employment contract are broken consideration is due to the wronged party. For the recompense to be withdrawn there would be a broken contract and consideration is due to the **wronged party**.
- By ceasing compensation at 65 years under the 1988 Act the contract of employment and the conditions of that contract have been broken. As the **wronged parties**, the former members are due consideration.
- It is **unjust** not to recognising disabilities diagnosed by advances in medical science that occurred while covered by the contract of employment.

## Recommendation

### 1988 Act

1. That the offending sections of the 1988 Act be removed or amended so as to;
  - Not cause age discrimination and
  - Not cause disability discrimination
2. That the wronged members be fully recompensed back dated to their cessation date as if those sections referring age 65 were not present in the 1988 Act. They would then continue to receive recompense at the same rate adjusted to current day rates on the conditions as in the 1930 Act and the 1971 Act. Backdated payments to attract interest.
3. Disabilities that have been diagnosed by improved medical science and liability accepted by the department after the commencement of the 1988 Act be recompensed at the post 1988 Act rate.
4. Provide priority access to monetary consideration via the Department of Finance where applicable, allowing the former members effected by this unjust 1988 Act to be compensated for their discriminatory treatment. Payment to be tax exempt.

### Future Compensation Acts

1. Retain the conditions of the Act under which the member enlisted.
2. Retain those conditions and improve the conditions under subsequent Acts not stop or devalue the enlistment conditions.
3. Do not disadvantage former members by age and disabilities.
4. Make allowances for future medical and scientific advances.
5. *To compensate is to "counterbalance; make amends".*

I thank you, Honourable Members of the Productivity Commission, for allowing me to present this submission.

D Green

### Glossary of Terms

#### Acts

1930 Act refers to the Commonwealth Employees' Compensation Act 1930

1971 Act refers to the Compensation (Commonwealth Employees) Act 1971

1988 Act refers to;

1. Commonwealth Employees' Rehabilitation and Compensation Act 1988, and/or
2. Safety, Rehabilitation and Compensation Act 1988

#### General

Disability\* is used as an all-encompassing term to cover, impairment 1988 Act, incapacity 1971 Act, injury and disease 1930 Act and any abnormality physical and mental caused while a military employee.