



02 July 2018

Commissioner Robert Fitzgerald AM
Commissioner Richard Spencer
Productivity Commission
Level 12, 530 Collins Street
Melbourne VIC 3000

Dear Commissioners

Herewith is Legacy Australia's initial submission to the Productivity Commission's inquiry, into Compensation and Rehabilitation for Veterans.

The submission incorporates input from a number of Legacy's Member Clubs across the nation.

The Productivity Commission has the full support of Legacy Australia as it undertakes this important and most necessary inquiry.

Yours sincerely

Rick Cranna OAM
Chairman

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Caring for the families of those who served their country

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LEGACY AUSTRALIA INCORPORATED
SUBMISSION TO THE PRODUCTIVITY COMMISSION INQUIRY
COMPENSATION AND REHABILITATION FOR VETERANS

'The Spirit of Legacy is Service'

INTRODUCTION

1. Born in the turmoil of post WWI, since 1923 Legacy has been caring for the dependants of those who served their country; namely, veterans who gave their lives or health on operational service or subsequently, and Australian Defence Force members who die in service or as a result of their service. Today, Legacy comprises 49 clubs, 48 situated throughout Australia and one in London, and continues to support the families of the fallen in every conflict since the Great War.
2. The support of Legacy extends to, not only obtaining compensation through the Safety Rehabilitation and Compensation (Defence-related Claims) Act 1988 (DRCA) the Veterans Entitlements Act 1986 (VEA) and the Military Rehabilitation and Compensation Act 2004 (MRCA), but also ongoing financial and wellbeing support for the spouse and dependent children until adulthood. The epigraph (The Spirit of Legacy is Service) is at the heart of the existence of Legacy and is at the beginning of the Charter of each Legacy Club.
3. Legacy does not directly assist veterans per se, but assists where appropriate. Its members, called Legatees, comprise of veterans, service members and ex-service personnel, with the balance being ex-Junior Legatees/Legacy Wards and members of the public whom are willing to accept the obligation of Legacy's duty of service. While rehabilitation, as much as it is possible, must be the paramount consideration regarding the veteran, and this aspect is strongly supported by Legacy, it must be stressed that Legacy's priority is the wellbeing of the veteran's dependants. Legacy's attention is focused on the compensation aspect through processing death claims on behalf of these dependants and the ongoing welfare for our beneficiaries. It should be noted at the outset that the dependents of veterans, both deceased and living, make up 44 percent of the DVA client base; approximately 50 percent of these are Legacy beneficiaries. It is feasible to say that those who are not Legacy beneficiaries would have the same, or similar issues. Legacy's comments on the issues paper will be restricted to those aspects that have a direct bearing on our beneficiaries and veterans' dependents, or those aspects that may, subsequently, affect them.

DISCUSSION

Levels of Compensation

4. One question draws attention to the compensation paid to veterans compared to other high-risk occupations. There are two aspects to this comparison. Firstly, service personnel are not employees in the same context as those in civilian employment. Members of the

Defence Force cannot withdraw their labour, strike or resign at the time that they are at the greatest risk; in combat. Nor are they able to take out life insurance for combat death whereas those in civilian occupations can take out insurance even for high risk employment albeit at a higher premium. Secondly, the level of risk in combat, or in live fire training for combat, where the application of force is at its most violent, greatly exceeds that of their civilian counter parts in police forces or emergency services. One could describe it as extreme risk as opposed to high risk. The level of compensation at the highest level of permanent impairment also is required to support the family of the veteran. In many instances, a veteran being compensated at this level also requires the spouse/partner and/or eligible dependent young persons to be the veteran's carer and find additional income to support the family.

Systemic Complexity

5. The complexity of the system is the existence of three sets of veterans' legislations and the dual (and possibly triple) claims eligibility depending on circumstances. This is not as complex for Legacy with regard to death claims as the appropriate Act is defined by the period in which the death, or the incident which ultimately resulted in death, occurred. The complexity is also reduced for death claims as both the VEA and MRCA use Statements of Principles (SOPs) which provides a level of certainty. Circumstances outside the SOPs can still be processed under both these Acts, but it is a considerably more difficult process for non-SOP conditions. SOPs should be applied across all three Acts to provide a greater level of certainty and consistency to the DRCA as well. Ideally there would be one Act to cover all DVA aspects for processing veterans and veterans' family claims. This is, however, not considered feasible but aspects of possible harmonisation among the three Acts will be discussed later.

6. Many Legacy Clubs also assist clients (beneficiaries) with other claims for reversionary pensions of deceased veterans who were eligible for pensions under DFRDB, MSBS and, in the near future ADF Super, CSS and PSS. This is in addition to the DRCA, VEA and MRCA which complicates the situation further. The reason for assisting with all pension claims is that many of our clients are aging and become confused with the terminology and the nuances of the forms used to process the various claims and do not have immediate family in the vicinity who may be able to assist. Legacy also provides appeals representation either by the Club or in concert with other ESOs at the appeals level. Unfortunately, authorities are now insisting on information being supplied on appropriate forms even though the information may already be available in a letter or statement. DRCA appeals to the AAT, and VEA/ MRCA balance of probabilities appeals to the AAT, are not able to be funded by Legal Aid due to their legislation. By assisting with pension claims at this level, Legacy eliminates the requirement for families to engage a lawyer at great cost, relieving the stress of a potentially significant financial burden. The ability to be totally familiar with every aspect of every Act is a daunting task, whether you are an employed advocate or a volunteer, and claims regularly require considerable research reviewing the appropriate sections of the relevant Act for each case processed.

Inequitable Outcomes

7. Inequitable outcomes have arisen in the past where a delegate allows personal beliefs and attitudes to come to the fore and disallows a condition under the SOPs which relates the death for qualifying or eligible service. This usually is associated with alcohol consumption and smoking. These incidents are reasonably rare today but were more frequent several years ago. Other inequities occurred in the past where several deaths resulted from the same incident where some of the personnel were covered under the VEA (Defence Service dual eligibility) but the others were covered under the SRCA (DRCA) only. Such situations are rare today for current accidents as all fall under the MRCA since 2004.
8. Other inconsistencies and inequitable outcomes occur when not all SoP factors are consistently addressed when a decision is made, or explanation provided, as to why the case does not meet them. There are times when claim assessors are inconsistent in their decision making. This highlights a lack of understanding of beneficial legislation and basic knowledge of the Act's. At times clients can feel pressured into making a decision to accept compensation under one Act, even when there is also a claim under a different Act which may be financially advantageous to the veteran or provide an alternative to the Widow(er). Even with compensation, the veteran may be rendered partly financially dependent on the family. Consequently, veterans' level of compensation has a ripple effect on their dependants. Such inconsistencies have an adverse effect on the client as it creates undue anxiety and stress and extends the process into the appeal stage; outcomes which can be devastating on the wellbeing of the veterans and their families.
9. The structure of BEST funding needs to be reconsidered. The funding model being based on how many claims are lodged has created a barrier to ESO's working together and a reluctance to share workloads especially for smaller ESO's. It also benefits those Legacy clubs which have the greatest assets and employed staff. The primary aim should always be to support the veteran and the veteran's family. Legacy protects our beneficiaries from unnecessary bureaucratic processes, organises paperwork, liaises with other agencies and ensures that the wellbeing of the beneficiaries is achieved to the most advantageous level within statutory, bureaucratic regulations and limits.

Veteran Centric Reform (VCR)

10. Eventually the Veteran Centric Reform should have a beneficial effect on family claims (death claims) for those where the veteran dies because of service. However, it is currently focussing on Defence personnel who are covered by MRCA and it will be a considerable time before that is complete. For those with eligibility under the VEA or DRCA there will be little effect on death claims for the foreseeable future and most Legacy claims are currently under these two Acts. The aspect of veterans going on line to process their own claims is agreeable in principle however past experience of veterans processing their own claims has demonstrated that very few are completed accurately. The prospect of a spouse/partner processing their own claim is not considered feasible in almost all situations.

11. Most family claimants will require an advocate for many years for various reasons. Firstly, if the spouse/partner does not have a DVA file number they will not be able to access the system. Secondly, for maximum benefit, the claim must be submitted within six months, at a time where the spouse/partner is grieving having endured the loss of their spouse/partner and will not have the knowledge to complete the process. VEA and DRCA claimant families will continue for at least another 40 years at a conservative estimate. With time, the VCR will have an increasing effect on death claims but it will be a very gradual process as more family claims fall within the jurisdiction of MRCA. Nevertheless the process is a very good initiative and is supported.

Advocacy Effectiveness

12. The effectiveness of advocates varies across ESO's. The variation has been greatly exaggerated by those who have a political agenda or have a vested interest in a particular viewpoint. It has also been suggested that individual ESOs are isolationist, do not communicate nor liaise with each other, are not interested in selecting appropriate people to undergo training and have not conducted ongoing training or mentoring. Legacy's experience does not support either of these two positions within the ESOs with whom Legacy has collaborated. As intimated previously, the provision of advocates within Legacy and for processing death claims is considered essential. Whether the advocates are employees or volunteers is irrelevant as long as they have demonstrated appropriate competence to process the necessary claims correctly.

13. The arguments above have been used to implement a training regime within the auspices of DVA, the Advocacy Training and Development Program (ATDP). Bill Rolfe, a retired senior Army officer and the Services Commissioner in DVA and member of Canberra Legacy, was tasked to look at developing a training program that would facilitate and accredit the development of competencies for the future of developing advocates. Unfortunately, he died before he could complete this task. The development of the ATDP has progressed from the work that he started but, since that time, the environment has become more litigious. Advocates are at a higher risk of being sued by those they represent and insurers have to limit their potential losses. The current program is a far cry to what was envisaged originally. Unfortunately, in the eyes of many, the ATDP has become bureaucratized and process driven and many of the current, long term advocates have expressed the opinion that it will be very difficult for volunteer advocates to achieve accreditation under the current arrangement. Equally unfortunate is that these advocates have been labelled and maligned in variously ways in an aggressive manner by the pundits of the strict ATDP approach. The argument raised is that everyone must be knowledgeable and competent in all aspects of all three veterans' Acts for the compensation aspect and submission of claims; advocates are not legally qualified, but are legally accountable should an error be made to the clients' financial detriment.

14. The same logic has been applied to the welfare (wellness) aspects that are undertaken by the ESOs as part of the ATDP. The difficulty with this approach is that most of the welfare requirements of an aging population are provided at the state and local level once you get

past the National Disability Insurance Scheme 2013 and the Aged Care Act 2013 federal legislation and the assistance provided by DVA. Both the compensation and the welfare aspects of the ATDP appear to adopt the 'one size fits all' approach and each has similar onerous approaches to competency testing and ongoing training. Unfortunately, this approach and lack of consultation has resulted in a large number of very experienced advocates across the ESO sector deciding not to take on the new training, and as such will cease to be advocates. The effect of this will be a reduction of the number of advocates with a significant increase of work on those advocates remaining in both the compensation and welfare areas. This in turn will have a detrimental effect on the service that the veterans' families will receive; this aspect will decrease due to the declining client base with time. A suggestion to develop a 'death claims module' to suit Legacy's position was refused but should be reinvestigated.

15. One suggested solution is to provide legal representation at the initial interview and claim level and at the Veterans' Review Board (VRB), as per the Canadian model. This action is strongly opposed by Legacy. Firstly, who pays? Most veterans and the families of deceased veterans could not afford the cost and would have to go into debt to acquire such support. If lawyers are hired by the DVA as per the Canadian model, there is a conflict of interest and since the legal representative is paid by the Department, there is an implied perception that decisions would favour the Department, to the detriment of the claimant. The second aspect is that an adversarial element will be introduced within a few months of the death of the veteran when the remaining spouse/partner is in a fragile state, and is having to contend with finalising the estate and tending to family matters. In some circumstances, this can be quite daunting, particularly in the situation of a composite family.

Transition

16. There are cultural issues that creates a barrier for Defence personnel to report any injury or disease. They fear discharge, being thought less of, or being vilified if they report anything. There is a huge barrier in reporting mental health issues where there is a fear that Defence will no longer think they are capable of fulfilling their duties. The mental health stigma is still very much alive and well. Transition from the Defence Force to the civilian environment can be an unsettling, daunting experience, particularly for those who are being separated involuntarily for medical, either physical or mental, reasons or because of a disabling injury. It is these involuntarily separations that are of interest to Legacy particularly for those being separated with a mental condition (depressive disorder, PTSD, substance abuse etc.) as this cohort has a much higher suicide rate than other ex-service personnel, placing an enormous burden on the family. Suicide will invariably involve a Coronial Inquiry which can take up to two years or longer to resolve (a recent Western Australian case). Very little can be done to finalise estates without a death certificate and DVA claims will not generally be accepted or processed without one. The surviving spouse/partner has to either be in employment or have sufficient savings to bide them over. Working, where there are, at times, very young children can be very difficult unless there is family in the vicinity to assist due to the cost of child care.

17. Members who are being involuntarily separated have known and well documented case histories which could be transmitted to DVA before transition. At transition their condition could be accepted and compensation provided immediately, to ensure that the family is disadvantaged to a lesser degree. Such action in not having to submit claims after transition and enduring delays in payment would be far less stressful on the family. Additionally, the family should be involved in the transition process in all involuntary separations. Often in such circumstances the service member can be confused and in a stressful state, missing important information or required actions. The family will often become the carer in the most difficult circumstances and the advantage of the family being aware of services available and the circumstances around the separation will be better prepared for possible outcomes and take appropriate steps to avoid some situations.

Medico-Legal Consultants

18. If a medical opinion supports a link between service and a condition, then the medical opinion should be accepted, even if it is not reflected in the factors of the SOP for that condition. Despite evidence provided by a veteran's GP and that of a referred Specialist, certifying a veteran's condition and its relationship to service, DVA delegates will often refer the veteran to a contracted medico-legal practitioner for further evidence and assessment. In most instances the medico-legal input is at odds with the detailed documentation provided by the GP and Specialist and is to the veteran's detriment. Medico-Legal generated reports are expensive and have been noted to be completed without interviewing the client in some instances, being based solely on the papers provided to them. Of late it has been noted that the Department uses specialists from organisations that specialise in medico reporting. The Department seems to be far more adversarial in MRCA actions than VEA actions. In the former, it is usually represented by private law firms who brief barristers, while in the latter, it is usually the AGS or a Departmental advocate, who have very different attitudes. It appears that this assessment is given precedence in the determination, the level of compensation and the level of treatment subsequently provided. An opinion from an individual with apparent vested interest takes precedence over medical professionals who have a much greater depth of knowledge of the veteran, their ailments and their conditions. This can be substantiated in separate documentation if required given privacy requirements and with agreement of the deceased veteran's spouse. The employment of medico-legal contractors is an anathema to veterans, undermines the veterans' confidence in DVA processes and should be discontinued immediately.

Harmonisation

19. As previously stated, the ideal situation would be to have one Act to cover the administration of all three Veterans' Affairs Acts but such is not considered feasible. This is a result of the basis of the previous Acts which apply since the Repatriation Act 1920, the amendment to include peacetime service from 7 December 1972, the Military

Compensation Act 7 April 1994, the Veterans Entitlement Act 22 May 1976 and finally the MRCA 2004. These Acts covered wartime service for veterans.

20. The alternative covers the peacetime service. This commenced with the Commonwealth Employees Compensation Act 1930, the Commonwealth Government Employees Act of 1971 and finally the SRCA 1988. More recent amendments to the SRCA resulted in the DRCA for internal management and financial requirements and finally MRCA. Consequently, each of the Acts fits to a specific period and set of circumstances and should not be amended to meet circumstances for which MRCA was introduced, to combine the administration of both warlike and peacetime operations. Progressive amendment if and when appropriate should be left to the Legislation Forum at which all the ESOs are represented. However, Legacy believes that there is scope for harmonisation short of overall amendment.
21. **Education allowance** is made available to dependents of deceased and incapacitated veterans who are full time students until age 25 under the VEA and MRCA at the same quantum but not under DRCA. The allowance for primary students is at about \$270 per year, the secondary and tertiary allowances are substantial and indexed. Legacy recommends that these be maintained but that the primary school Education Allowance be increased to \$1,000 per year and indexed from that rate. An education allowance should also be included under the DRCA. The current combination of Education Allowance and ongoing payments (see para 22) means that students under the age 16 of deceased peacetime service personnel whose death is service related receive greater annual payments than students under 16 of deceased veterans who have died as a result of qualifying or eligible service.
22. **On Going Payments.** Prior to the MRCA, ongoing payments under SRCA were a weekly payment which was indexed. Under VEA there was an Orphans Allowance per fortnight at less than half the quantum of payments under SRCA. The ongoing allowance was included in the MRCA. However, under DRCA and MRCA, the indexing rate of these allowances are based on different criteria due to poor administration within the Department. Legacy recommends that the indexation on ongoing payments to eligible young dependents be again set at the most advantageous, level and indexed at the same rate for all future changes. Legacy also recommends that the VEA orphans payment be harmonised with MRCA and DRCA. Additionally, the orphans allowance under VEA ceases at age 16 if the student is receiving educational allowance whereas under MRCA and DRCA the allowance for eligible young dependent continues to age 25 if a fulltime student receiving education allowance. These should be aligned to the DRCA and MRCA criteria to stop discrimination for VEA student dependents.
23. **Lump Sum, Part Lump Sum, WWP, Benefits.** Currently under the VEA a fortnightly pension only is available for the surviving spouse/partner. Consideration of allowing the same lump sum provisions being given to those who are accepted for a War Widow(er)s Pension under the VEA as is available under MRCA. It is appreciated that harmonisation under DRCA may be more difficult. There is also disparity between the Act's in respect to

payment of the Funeral Benefit paid under DRCA/MRCA and VEA. Funeral Benefits should be aligned with the DRCA/MRCA quanta for all VEA recipients.

Non-Liability Health Care (NLHC)

24. NLHC has both advantages and disadvantages. It is pleasing that veterans can receive ongoing care for designated conditions quickly without the need to submit a disability claim in the first instance. Conversely, veterans suffering from a designated condition can do their own claim quickly and receive the treatment under NLHC when in fact their condition may have developed or been caused during qualifying or eligible service. The first aspect of the latter is that they are denying themselves of an entitlement and, should they die because of the condition, their surviving spouse/partner has no entitlement. In such cases the advocate must ensure that the condition is recognised as a genuine disability before any benefit can be claimed for the widow(er). Additionally, the inclusion of DRCA and NLHC on the white card appears to be creating confusion, as demonstrated when making enquiries on behalf of a widow(er) delegates have commented 'but he only had a white card'. This also demonstrates a lack of understanding by DVA employees that initially the white card covered only those conditions which DVA accepted were caused on operational/eligible service. This may be due to a high turnover rate among DVA staff in some sectors. Examples of this aspect can also be provided.

CONCLUSION

25. This submission to the Productivity Commission identifies what Legacy considers the primary discrepancies with DVA policy that affects the process of death claims for deceased veterans' dependents. The points raised are either differences in the legislation under which the department must operate or are perceived deficiencies with the system. Recommendations in the submission are restricted to the areas that have a prime bearing on Legacy's client base and that affect the welfare of our beneficiaries.