

AIR FORCE ASSOCIATION SUBMISSION PRODUCTIVITY COMMISSION INQUIRY INTO COMPENSATION AND REHABILITATION FOR VETERANS

Introduction

1. The Air Force Association is a national, not-for-profit veteran-based organisation comprising about 8,500 members. Its membership is largely former serving Air Force personnel. The Association welcomes members who have served or are serving in any Service within the Australian Defence Force (ADF). Its principal Object is to support, wherever possible, the well-being of veterans and their families.
2. The Association is a member of the Alliance of Defence Service Organisations (ADSO) that has also provided a submission to the Inquiry. ADSO's submission is endorsed by the Air Force Association. The Air Force Association welcomes the opportunity to individually respond to the Productivity Commission Inquiry and provides the following comments to complement those provided in the ADSO submission.

Nature of military service

3. The Commission's aim is to assist Government to develop a veterans' compensation and rehabilitation system that will better serve the veteran community for the foreseeable future. Consequently, the Commission's precise understanding of the nature of military service and its impact on the nation's defence capability is essential.
4. Military service is often equated to police, fire, ambulance and other emergency services, and although personnel in these professions are also prone to traumatic experiences and face similar and unique challenges, they face very different obligations to ADF members. There is no other employment category in this country that requires an employee to lay down their life, be classified as a 'harm person', or to surrender many of the freedoms the Australian community enjoy. This is a confronting commitment for ADF personnel and their families. The pivotal role of ADF personnel in safeguarding our security and the emotional, social and economic toll of their employment should beseech Government to provide them with the best possible support during and post-Service. The level of care provided by government is a direct reflection of veterans and their families' perceived value to this country, which may have an impact on the future recruitment of our all-volunteer force.
5. A veterans' support system, among other things, needs to recognise the key characteristics of military service, which would likely become less visible in a system that deals with rehabilitation and compensation of workers in the general community. There is concern the Issues Paper appears to have a strong focus towards achieving economic efficiency. The Association does not argue against the pursuit of economic efficiencies so long as it is not at the cost of the support deserved and needed by veterans and their families. Delegates and their staff within a veterans' support system should be appraised of the military's unique work and lifestyle features during their initial training.
6. The Association notes there is often contention about the different types of service, (eg: warlike, non-warlike, peacetime, peacekeeping, and humanitarian) attracting different standards of proof for acceptance of an illness/injury that occurred in service. Historically, ADF personnel have been employed in warlike and hazardous circumstances and will likely continue to do so. Illness, injury and death have occurred in an array of service situations with little difference to the veteran and their families regardless of the category of service involved. The Association strongly supports the notion contained in the ADSO Submission

that a truly beneficial veterans' legislation would *'extend the application of warlike to include peacetime training activities in which the inherent level of risk is warlike, and embed an explicit provision that extends the Reasonable Hypothesis standard of proof to cover 'clustering' of signs or symptoms within cohorts with similar service experience for which epidemiological evidence is not yet conclusive'*.

7. The Association deems any person who has served in uniform (full or part-time) as a veteran, regardless of the nature of their service.

Complexity of veterans' support

8. General opinion is veterans' support legislation is unnecessarily complex and disadvantageous to veterans, especially for those who suffered ill effects from service covering several of the legislative periods (that is, their eligibility to claim is under more than one Act). Despite the implementation of online service and other sources of information, veterans appear to have little understanding of the process to gain entitlements. Some veterans view the complexity as deliberate to avoid entitlement payments. The system's complexity increases pressure on the review and appeals system and exacerbates veterans' frustration, often worsening and/or creating further health related issues.

9. Legal opinion is a single veterans' support Act would be difficult to draft but not impossible. A possible more immediate achievable pathway is to harmonise the three Acts. DRCA would appear to be the easiest to modify. The ADSO submission proposes measures on how this could be achieved. New Zealand and Canada have a single veterans' entitlement system. However, the Association stresses that each country's veteran support system has evolved from the utilisation of its defence/armed forces and the community's expectation of veteran support. Australia's past, present and future use of the ADF, and a principle of recognising the national value of our servicemen and women by ensuring effective and efficient support to them and their families when there is injury/illness and/or death from service should be fundamental to any new veterans' support system.

10. Rehabilitation, treatment and financial assistance are considered priority objectives for veterans' support. The principal objective of rehabilitation is to restore the veteran who has an impairment or incapacity for service or work caused through military service to at least the same physical and psychological state, and at least the same social, vocational and education status he/she had prior to the injury or illness. When restoration to this state is not possible, the veteran and/or the family should be provided with monetary compensation and other entitlements to provide financial relief and treatment.

11. Currently, experience indicates that despite improvements in claims administration, processing timeframes are considered excessive of which the contemporary cohort of veterans are far less tolerant compared to previous generations. Delegates' swift rejection of claims requiring further evidence without consulting the claimant further aggravates the situation. The My Service and the Online Claim facilities significantly facilitate accessibility. However, there appears to remain widespread ignorance and confusion regarding the requirements of the Statement of Principles, which emphasise the need for ongoing advocacy support.

12. The current veterans' support Acts, despite having a different focus, are legislatively consistent. A major concern would be if government made changes to veterans' support legislation that would undermine our society's recognition of the distinctive nature of military service.

Advocacy support

13. Claims submission remains a challenging process despite contemporary veterans being more conversant with online transactions than most older veterans. Anecdotal evidence indicates many older generation TIP-trained advocates mainly focus on the Veterans' Entitlement Act and tend to avoid matters involving the Safety, Rehabilitation and Compensation Act and Military Rehabilitation and Compensation Act. Given contemporary veterans are more likely to claim under recent Acts and the dwindling number of TIP-trained advocates available to assist them, there is a pressing need to regenerate the military advocacy capability within the Advocacy Training Development Program framework.

Key deficiencies in the system

14. Over the last two decades, the ADF has increased its use of reserves especially in recent deployments to the Middle East Region. The Reserve Force is now integral to the ADF's mainstream capability. Generally, reservists deployed overseas are placed on continuous full-time service but they have been known to deploy on Reserve Training Days. Also, Reserve Force tasking often involves activities that expose reservists to the same physiological and psychological stressors as permanent/regular service members. Many reservists employed on disaster relief associated with the Black Saturday bushfire in Victoria's Kinglake/Marysville areas where 160 people perished faced traumatic experiences. Such peacetime operational tasks are almost always undertaken without being transferred to continuous full-time service and yet these reservists are not eligible for Non-Liability Health Care. This policy decision is viewed as an abrogation of government's responsibility to provide 'duty of care' to these veterans and their families.

15. The Association is concerned significant compensation lump sum payments to younger veterans and their families is not always in their best interest. Not all veterans and their families utilise these payments wisely and, consequently, those who have been severely impaired are likely to be financially challenged and be without much needed welfare and health support. Also, a concern is where veterans who voluntarily separate from the service without undergoing the Medical Employment Classification Review Board process or are discharged when DVA has rejected their primary claim. Clearly, such actions are likely to create financial uncertainty for the veteran and the family.

16. Claims administration and processing has improved with the advent of VCR and changes to advocacy training and development. However, there's evidence that processing and review timeframes have lengthened. This may be a resourcing issue.

System to meet veterans' needs

17. Every generation of veterans has its unique characteristics but the common features of commitment to task, support of comrades, and 'service before self' are consistent. The younger generation has a higher expectation of government to resolve their issues arising from service, and they insist their families are part of the support process. They expect the use of contemporary technology in claims administration, and specially want the advocacy support system to deal with suicide awareness, transition following separation from the Service, and veteran and family crisis matters.

18. The 'best interests' of veterans and their families described initially in 1920 legislation prevails today. This time-honoured commitment needs to be maintained. The demands on our servicemen and women and their families have not diminished. Societal

expectations are that veterans and their families are a national asset and any diminution of support would be viewed seriously.

19. Veterans are spending less time in service, often leaving at an early age with young families to support. Although veterans and their partners can access transition and employment assistance packages provided by the ADF, these favour those who have served for least 12 years. Current extremely high veteran unemployment (almost six times the national average) highlights the need for transition and crisis training, and assistance reintegrating into the community. There is empirical evidence civil employers are cautious about employing former serving members due to the publicity about the prevalence of PTSD among veterans. Moreover, there is widespread unawareness of the extensive, transportable skills held by veterans, which are potentially a significant asset to the general community.

20. Unemployment is a crucial factor in the wellbeing of veterans and their families. Veteran employment services should extend to the full range of needs including physical, emotional and behavioural, relationships, financial, and life changes. The Advocacy Model needs to include a closer relationship between the advocate and the veteran and family.

21. Several other nations have legislated their commitment to their servicemen and women and their families to ensure they will be treated fairly in the event they suffer from service. A Military Covenant, based on the unique nature of military service, would provide recognition of the veterans and their families' contribution to the security of the nation and a way of determining whether the government has kept to its obligations to support them. Veterans and their families have become more sceptical about the government and the ADF's responsibility for their welfare. Continued resistance from the government to legislate its 'duty of care' in the form of a Military Covenant questions its commitment to our servicemen and women, especially when there is support for a covenant within government circles.

Role of the Ex-Service Organisations (ESO)

22. The advocacy capability within ESOs has dwindled, mainly due to an aging cohort of TIP trained volunteer pension and welfare officers who have committed themselves over many years to the support of veterans, war widows and families. There has been much conversation about resourcing advocacy capability based on remunerated advocates. A concern would be if such advocates were not former service personnel who have a profound understanding of military service, which will likely aid process/review preparation. Paid advocates, however, may have to be the way of the future.

23. ESOs, in any form, operate on a 'mates helping mates' principle. The larger traditional ESOs are more likely to have the capacity to build an advocacy capability. They have a pivotal role and responsibility to work in partnership with DVA and Defence in supporting veterans and their families. ESOs need to embark on a campaign to develop their advocacy capability.

Statement of Principles

24. There is general support for the Statement of Principles (SOP) as a very useful tool in the claims processes under Veterans' Entitlement Act and Military Rehabilitation and Compensation Act. However, their usefulness would be improved if their existence is better promulgated and readily available. Moreover, the consensus is that they have helped create a more equitable, efficient and consistent system of support for veterans.

25. There is contention some advocates and veterans do not understand the Repatriation Medical Authority is bound by the standards proof when determining Statement of Principles and the relevant factors. There are many Statement of Principles that contain a factor in the Reasonable Hypothesis Statement of Principles that is not in the Balance of Probability Statement of Principles, because the medical evidence shows that there is a reasonable possibility that the factor Reasonable Hypothesis applies and there is no medical/scientific evidence that disapproves the factor beyond a reasonable doubt. However, it does not appear in the Balance of Probability Statement of Principles because the medical evidence needs to show that it is more than just a possibility. It must be more probable than not.

26. Statement of Principles preceded the Military Rehabilitation and Compensation Act when the concept was introduced in the mid-1990s. They provided a different standard of proof between operational and peacetime service. Once a condition is accepted there was no further discrimination between the types of service. The GARP 5 (now GARP 2016) did not allow for any discrimination between types of service, that is the assessment tables and the conversion to degree of incapacity is the same whether the condition resulted from operational or peacetime service. There is only one Table 23.1 conversion to degree of incapacity. This means that veterans under the Veterans' Entitlement Act are compensated the same for the same level of impairment under both types of service.

27. Under the Military Rehabilitation and Compensation Act, peacetime service is discriminated against twice. Firstly, the Balance of Probability Statement of Principles requires a much higher standard of proof and, secondly, it is further dimensioned in the assessment process under GARP (Modified). The impairment assessment criteria for accepted conditions are the same for both types of service. However, in GARP (M), Chapter 23, 'Calculating Permanent Impairment Compensation', there are two compensation factors for calculating permanent impairment compensation tables, one for warlike and non-warlike (Table 23.1) and one for peacetime (Table 23.2). The factor for a given level of impairment in the peacetime table is much less than for warlike/non-warlike (eg, 50 impairment points gives you a factor of 0.532 in Table 23.1 but only 0.297 in Table 23.2). A veteran with peacetime injuries only receives approximately half the compensation of a veteran with warlike/non-warlike injuries with the same level of impairment. The Association contends the removal of this two-tiered system in GARP (M) would be far more beneficial to veterans than changing the Statement of Principles system. The compensation should be the same for the same level of impairment.

28. The Issues Paper mentions some DVA Contracted Medical Officers (CMA) ignore specialist medical opinion, and some Delegates absolutely rely on CMA's analysis. Anecdotal evidence suggests most CMAs ignore specialist medical opinion and most Delegates rely on a CMA's advice regarding diagnosis, onset, and impairment assessment. Most appeals work concerns either the rejection of a claimed based on CMA opinion or the incorrect assessment of impairment by CMAs.

Role of the ADF – minimising risk

29. Military duty often involves high risk activities. However, commanders have a 'duty of care' towards their subordinates to mitigate risks. They have the same obligations that exist in civil law. The responsibility for 'duty of care' is reinforced during all supervisory and management level training, including Commander's Course Risk Assessments are undertaken when necessary.

30. General opinion is that ‘can do’ attitudes ignoring unnecessary risk are waning. Risk prevention is a commander’s responsibility and must be balanced against the military priority for task achievement, especially in combat situations. There should be no cultural barriers to injury prevention or record-keeping in the ADF.

31. Regardless of whether the ADF or DVA are responsible for the cost of treating service-related injuries and illness after a veteran leaves the ADF, the cost must be borne by government. The division of responsibility is more appropriate within DVA given the ADF’s business is national defence.

System Governance

32. Governance of the veterans’ support system is overlooked by the Public Service Commission and consequently any shortfalls would be identified in efficiency and capability reviews such as the 2013 Capability Review of DVA. ESOs on the other hand are essentially self-regulated apart from reporting to the ACNC, which includes their delivery of veterans’ support. The Association strongly supports the notion for the creation of a professional organisation to regulate the training and delivery of advocacy services, and to relieve ESOs of advocacy support tasks beyond their capabilities.

Summary

33. Veterans and their families are a vital national asset. The nature of military service places veterans in a unique employment category that demands distinct social and economic support. Their importance to the nation has been enshrined in veterans’ support legislation for over a century and has not diminished over time. The level of support to veterans and their families reflects their value to government and society. Government would be unwise to make any changes, economic or otherwise, that would reduce the beneficial impact of the current veterans’ support system. More so, it should build on the existing system’s improvements to provide further support measures to meet the needs of contemporary veterans and their families.

34. Any compensation and rehabilitation system for veterans and their families must be ‘fit for purpose’, recognising the unique nature of military service. Its principal aim is to return the veteran who has suffered injury or illness due to service duty to his/her former physical and/or mental health state and when this is not possible provide life-long treatment and financial support. The claim process must be made as simple as possible and be supported by trained advocates.

35. There is a national obligation to support veterans and their families, which should be acknowledged in the form of a Military Covenant, which not only outlines the government’s pledge to care for veterans and their families but sends a message to the veteran community that government and society respect and value their contribution to our national security.

36. The development of a single veterans’ support legislation should be pursued. Australia has a plethora of very talented legal professionals who could be called upon to draft suitable legislation. As an interim step, harmonisation of the three Acts should be undertaken at the earliest opportunity. The existing complexity of the system is detrimental to the wellbeing of many veterans.

37. ESOs have a vital role to play in providing advocacy services and should be encouraged to actively campaign to regenerate their advocacy capability. ESO advocacy services should be provided in partnership with DVA and Defence to ensure there is no duplication or gaps in support.

38. The recommendations contained in the ADSO submission to the Inquiry are upheld by the Air Force Association.

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