

**ADDITIONAL SUBMISSION TO THE PRODUCTIVITY COMMISSION INTO THE DEPARTMENT OF VETERANS' AFFAIRS:**

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**TOPICS:** DEPARTMENT OF VETERANS AFFAIRS (DVA) FAILING TO FOLLOW COMPENSATION FOR DEFECTIVE ADMINISTRATION (CDDA) GUIDELINES TO THE DETRIMENT OF VETERANS, AND

COMMENTS AND SUGGESTIONS TO IMPROVE DVA ACCOUNTABILITY INCLUDING DVA COOKING THE BOOKS AS IT PERTAINS TO THEIR PUBLISHED ERROR RATES.

**INTRODUCTION:**

This is my second submission. The first one was about all but one of DVA's Key Performance Indicators (KPI's) deteriorating in the last five years and the failure of DVA's then Secretary, Simon Lewis to acknowledge this in his response to ESORT.

I have chosen to make two separate submissions as I didn't want it to be too long and distract from completely different issues.

**CDDA:**

**PROPOSAL:**

**DVA PAY THE VETERAN INTEREST AND ASSOCIATED COSTS ON ALL SUCCESSFUL APPEALS, AND ALL OTHER DELAYS IN FINALIZING VETERANS CLAIMS.**

It is recommend the Government legislate for interest and other associated costs to be paid by DVA to a Veteran in the following instances:

- : When the Veteran is successful in an appeal to the VRB, or any further appeal, providing there is no material difference in evidence from that first considered by DVA, and
- : When DVA accept a Veterans claim for an increase in pension that takes longer than DVA's target time to finalize.

What are the merits of this proposal? Briefly they are:

- : When the VRB, upholds a veterans appeal it takes on average **over one year** from DVA's advice they have rejected the original claim to the VRB publishing their decision.

This includes the time it takes from when the veteran is advised DVA have rejected their application, the time to digest reasons for rejection, make an appointment with an Advocate, and prepare and the lodge an appeal, plus the on average 51 weeks for the Veterans Review Board (VRB) to make its decision.

- : For successful appeals to the AAT it is not unusual for the process to take several years which magnifies the stress and financial loss for no other reason that an incorrect decision by DVA and subsequently, the VRB

Such a long delay in finalizing a veterans claim, that eventually is determined has merit, can have an adverse effect on the veteran and the family both financially, and in particular, the Veterans mental health with the potential to be a trigger for suicide. I note the case of two Vietnam Veterans who after being told they were under investigation for fraud then committed suicide. After their deaths it was determined they had no case to answer.

- : The **percentage** of successful veteran's appeals to the VRB has **increased significantly** over the last 16 years. In 2001 it was 29.6%, 34.3% in 2006-07, increasing to 47.5% in 12/13 and now at record level, at 53.3% in 16/17.

The previous Secretary of DVA, Simon Lewis has defended this massive increase in a response to ESORT on 10 April 2018 with statements like '*additional information provided at a hearing*'.....'*new contentions or a new hypothesis presented by the advocate or applicant*' and '*a consequence of passage of time from the date of primary decision to the hearing.*'

Simon Lewis then states, '*Therefore, a VRB decision to set aside or vary does not necessarily indicate an incorrect decision was made by the delegate at the primary level.*'

He is correct with this last statement but the prior ones are not relevant in explaining the massive increase over the last 16 years in the percentage of appeals being overturned at the VRB. This is because the '*additional information*' and '*new contentions*' have **always** been the same year on year. For DVA to then list, '*a consequence of passage of time from the date of primary decision to the hearing,*' defies the facts that since 2001/02 until now the time taken to finalize appeals to the VRB has been very constant, at close to 12 months.

For none other than the head of DVA, Simon Lewis, to rely on and using his words, '*additional information*'....'*new contentions*' .... and, '*the passage of time*' to try and justify the continual increase over the last 16 years, is very disappointing, dishonest and in no way, saluting the service of injured veterans.

- : It is unfair that veterans are currently paying the price for the mistakes of DVA staff and/or their highly paid contract Doctors plus their internal and external Lawyers.
- : Justice delayed is justice denied.
- : It gives DVA a financial incentive to improve their decision making.
- : It has the **potential to be revenue neutral or even revenue positive** to the Government assuming DVA improve their outcomes when making their original decision.

## WHAT COSTS SHOULD BE REIMBURSED?

- : An interest component be included when back pay is made.
- : Compensation should also be paid for loss of benefits due to the delay in finalizing the original claim, such costs to include the following as appropriate, namely:
  - : Value of concessions lost, i.e. transport, utilities, local government rates, car registration etc.
  - : Interest component on loans taken out to cover day to day living expenses in the period.
  - : Lost opportunity cost of funds withdrawn from Superannuation to cover day to day living costs and unexpected cash outlays.
  - : Loss of benefits when a new or used car is purchased, applicable for those later granted Special Rate, and
- : All costs associated with preparing successful appeals.

## DVA'S ERROR RATE EXPLODED IN 2016/17:

In recent years, under both SRCA and MRCA, there has been a massive blowout in DVA's critical error rate. This is not someone making this up, it comes from none other than DVA's Annual reports.

With reference to DVA's Annual report 2016/17, page 113, the table clearly shows the critical error rate under SRCA was 6.8% in 2015/16. There was a substantial increasing to 12.9% in 2016/17. For MRCA the critical error rate was 6.9% in 2015/16 increasing to 8.7% in 2016/17.

Looking specifically at MRCA the critical error rate has increased almost four fold from 2.4% in 2012/13 to 8.7% in 2016/17.

I note the recently released report by the Australian National Audit Office (ANAO) has highlighted the above error rate figures as reported by DVA as being **significantly understated**. This is because DVA changed the way they calculate their error rates in 16/17. An example of this is under VEA, DVA claimed their error rate was 4.0% in 16/17 compared to the ANAO who found the error rate was 11.0%. This is even more evidence that DVA are getting it wrong more often and to the detriment of veterans.

With DVA's critical error rate, as determined by them and the ANAO, blowing out by so much is it any wonder this has resulted in an increase, in percentage terms, of veterans winning their case at the VRB and AAT.

So who bears the brunt of DVA's increasing incompetence? Sadly it is the veterans and their families.

For many Veterans and their family this added delay in having to appeal to the VRB can have serious adverse consequences both in financial and emotional terms. It is also known that some Veterans, when their application to DVA is rejected, simply give up in frustration. It also has the propensity to be a trigger for suicide, e.g. Jesse Bird.

Currently Veterans who successfully appeal to the VRB have little chance of seeking any financial redress from DVA. The only mechanism available to seek costs is under the Federal Department of Finance and Administration's scheme titled, 'Compensation for Defective Administration' (CDDA).

Veterans who lodge a CDDA claim against DVA have almost no chance of success because:

- : The approval of such claims is at the discretion of DVA.
- : Where DVA reject a CDDA claim and the Veteran has the Commonwealth Ombudsman decide in the Veterans favor, DVA are not required by law to follow the Ombudsman's recommendation, and,
- : Even when there is clear evidence of defective administration DVA will deny it, but instead will often acknowledge the case could have been better handled.

This means the Veteran has virtually no chance of seeking justice for what the VRB and other appeal bodies determine are either clear errors or negligence on the part of DVA, or a combination of both. This makes a mockery of current and previous Prime Ministers, Howard, Gillard and Abbott, promising to look after Veterans when they return not to mention the motto on DVA letterhead, 'Saluting their Service.'

May I conclude this topic with my experience. I lodged a CDDA claim following a win at the VRB. This claim was for quantifiable losses of just over \$5,000 but my claim was for an even \$5,000, a claim DVA rejected.

This is despite, and obtained under FOI, where DVA's legal advisor in a DVA Minute advising in part, **'While it is arguable that there may have been negligence in the manner of dealing with Mr. Ashmore's situation....'**

Now I won't go into the full details of this CDDA claim but one must **ask if, in the words of DVA's Legal Advisor, 'while it is arguable that there may have been negligence....' how does this CDDA claim fail the lesser test of meeting CDDA guidelines? I rest my case.**

## **SOME SUGGESTIONS TO IMPROVE DVA ACCOUNTABILITY:**

**I urge the Productivity Commission to recommend:**

- 1. All CDDA claims previously rejected by DVA be reconsidered by an independent body.**
- 2. That legislation be introduced to ensure that upon a veteran being successful in their appeal all their quantifiable losses, after providing appropriate documentation, be reimbursed as a matter of right.**
- 3. That legislation be introduced to pay a veteran an interest component for the time of the initial rejection of a veterans claim until back pay is ultimately made following a successful appeal.**
- 4. Where a Veterans claim has not been finalized within 3 months the Veteran automatically be given a Gold Card until the claim and/or the appeal is finalized.**
- 5. All veterans with operational service be covered under the one legislation. (Veterans under MRCA complain their legislation is inferior to VEA. VEA veterans cannot understand why their funeral benefit is just one-sixth of those under MRCA).**
- 6. The Minister, in conjunction with the Secretary of DVA, nominate no less than 5 significant KPI's that can be measured on a monthly basis. These KPI's be audited by the ANAO and published no later than the end of the following month. Should all the nominated KPI's not have improved after six months then the Secretary and the next line of Managers be removed, without compensation.**
- 7. The Government desist from making comment that to give veterans additional benefits there must be compensating cuts elsewhere. I say this as I don't remember our service ever being conditional.**

## **CONCLUSION:**

**I strongly believe there can be no other alternative than a Royal Commission be called in DVA. I say this because:**

- :** There have been numerous inquiries over the last decade into DVA yet things continue to get worse. This is despite many of those previous inquiries, held years apart, and making the same recommendations, but nothing changes.
- :** All but one of DVA's KPI's have deteriorated, in the last 5 years, some significantly.
- :** When put under the microscope DVA cannot be trusted to provide honest and accurate responses, even to a Minister. The latest example of this was last week with Senator Payne's response to the Senate.

It was in relation to the almost 11 year battle Michael Rollins has had with DVA that included both unlawful and unethical actions by DVA. What does DVA do? They provided information to Minister Payne who repeated this in Parliament. She was then forced to make another statement to Parliament to acknowledge that some of information DVA provided to her was untrue.

I am advised her second response again contained several material errors of fact. I am sure Senator Payne won't be happy with being thrown under the bus a second time. So what does this tell you? Clearly that DVA cannot be trusted and have and continue to lie to the Minister in an effort to cover and backstory their actions.

: Now if you are not yet convinced of the need for a Royal Commission into DVA I draw your attention to how the recently released ANAO report has shone a light on how DVA report their error rate.

We would NOT have known about the details surrounding this change except for this ANAO audit report.

When I first read the ANAO report I found it difficult to comprehend what I was reading in Table 3.3 and 3.4. My first impression was the ANAO were effectively calling out DVA for their false reporting and significantly understating their true error rate. I then thought DVA wouldn't stoop so low with such unscrupulous actions after all they are chartered with serving our veterans and their families, so I put the ANAO report aside for a few days.

Having again reviewed the ANAO report I believe the only conclusion that can be drawn as it pertains to Table 3.3 and 3.4 is that DVA have cooked the books to hide their declining performance from veterans and their families. This is both outrageous and a national scandal.

The ANAO claim **THEIR ANALYSIS** of DVA's true error rate is **SIGNIFICANTLY HIGHER** than that published in their Annual report, see Table 3.3 and 3.4 of the ANAO report just released. I note the ANAO have quoted DVA as the source of their figures.

DVA's Annual report for 2016/17 (P113) notes changes to the way they assess errors. They state '*new measures for 2016-17. The new measures have been established to be more representative of activity undertaken.*' This means the reader cannot make comparisons to the previous year as it is shown as N/A for 2015/16.

What exactly have DVA done to hide their true error rate? The ANAO sums this up 3.30, '*Error rate percentages are also measured against 'work elements' rather than cases. Each case is subdivided into a number of 'work elements' and as a result the error rates do not indicate the percentage of cases with identified errors. In 2016-17, for the claims analysed above, there were, on average, 2.4 'work elements' examined for each case. The error rates for cases would be higher than the rates reported for 'work elements'. The estimate of HIE (high impact errors) against cases rather than 'work elements' is shown in Table 3.4 below.*'

**Looking specifically at just one category in 3.4, the error rate under VEA, DVA claim in their Annual report the error rate for 2016/17 was 4.0%. The ANAO found of the error rate was 11.0%.**

Have DVA been caught out cooking the books to the Minister and veterans by changing the way they report their errors? Absolutely, and to repeat the ANAO, '*the error rates for cases would be higher than the rates reported for 'work elements'.*'

For DVA to change the way they report errors to hide their declining 'performance' is inexcusable as I would have thought the amount of activity per case would be comparable year on year.

The above example of DVA changing the way they calculate errors is just another example that you cannot trust DVA on anything they say or do. We urgently need a Royal Commission **NOW** as DVA by their actions and inactions have proved time and time again their failure serve those they are legislated to serve.

**Finally, if the government can have a Royal Commission into the tragic death of 4 young men in the Pink Batts fiasco it is a no brainer that the Government immediately call a Royal Commission into DVA, remembering that in 2016 and 2017, 167 veterans took their life and for which DVA have been instrumental in some of those suicides, e.g. Jesse Bird. VETERANS LIVES MATTER.**

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