

The Productivity Commission  
4 National Circuit  
Barton ACT 2600

07 Feb 2019

Re: A Better Way to Support Veterans Draft Report

Dear Commissioners Robert Fitzgerald and Richard Spencer

Thank you for the opportunity of lodging a submission on your draft report *A Better Way to Support Veterans*. This is an impressive body of work and I offer my congratulations on your efforts to date. I have reached many of the same conclusions over decades either working for, or dealing with, DVA<sup>1</sup>. I was particularly impressed by your willingness to address the existing flawed governance arrangements that theoretically provide oversight of DVA and are supposed to ensure it acts in the best interests of veterans.

However, as always whenever the Productivity Commission issues a draft report, there are many people with the opinion that the recommendations require further review. I strongly believe that there is a flaw in one of your most important recommendations that needs addressing. I have attached a series of opinions on this flaw and a few other topics that, at the very least, I hope you find interesting.

I believe I bring a somewhat unique perspective to your draft report. I worked for DVA for a few years in its head office. Since leaving there in 2009 I have helped a few veterans, certainly not many, in their struggles with DVA. During my time with DVA and since then the veterans I dealt with were the ones who, colloquially, fell through the cracks. The reasons were varied, ranging from mental health issues to an inability, or unwillingness, to deal with ESOs, along with those who found the application process too adversarial or, significantly, found an unwillingness on the part of DVA to truly review a decision once that decision was escalated and found corporate acceptance. The later is especially difficult for veterans. It was my pleasure to co-author a book with one veteran about his life and his long struggle with DVA and the RAN<sup>2</sup>. Sadly, my friend passed away shortly after his treatment was acknowledged by the RAN and DVA issued an apology for its behaviour. However, the struggle consumed him for decades and significantly reduced the quality of his life.

Once again, thank you for this opportunity. I am looking forward to your final report,

Yours sincerely

Paul Evans

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<sup>1</sup> The terminology and definitions used in this submission are those found in your draft report.

<sup>2</sup> *A Child in the Navy, A Man Betrayed*, Lcdr John Atkins and Paul Evans

## **Introduction**

1. Note that this attachment will use existing departmental names and processes simply for ease of understanding and consistency. This attachment will consider the following issues:
  1. A flawed model for the levy;
  2. Advocacy - support for the veteran in dealing with DVA;
  3. Advocacy for groups of veterans – DVA’s greatest policy failure and avoiding another;
  4. Education;
  5. The Office of the Australian War Graves;
  6. Miscellaneous.

### **A flawed model for the levy**

2. The Productivity Commission has recommended moving towards a fully-funded workers’ compensation system in which annual premiums are levied upon the ADF. Funding compensation via a levy is a reasonable and logical move to a sustainable compensation system for veterans. However, insufficient detail is included in the draft report that will potentially lead to budgetary problems for defence and probable shortfalls in raising sufficient funds to ensure the system is fully-funded.
3. The first issue is that the ADF consists of three branches. Which is more effective, a single levy calculated on total ADF personnel or a levy by branch? Lacking access to any proper statistical analysis the anecdotal evidence suggests that the number of annual compensation claims by RAAF and RAN personnel are relatively stable, even allowing for operational deployments overseas. In these circumstances, assessing an appropriate levy for each individual branch is valid. However, an annual levy does not take into consideration catastrophic events. Even amongst these relatively stable branches, in terms of the risk of compensation claims following a catastrophic event, there is a marked difference. The loss of a plane and its crew by the RAAF has, purely in calculating compensation costs, only a marginal effect. Conversely, although the RAN has not lost a ship in combat since the Second World War, a catastrophic loss for the RAN could include the immediate deaths of upwards of two hundred personnel and a lifetime commitment to their families.
4. Conversely, the overwhelming bulk of claimants under the current and previous schemes were members of the Australian Army. This is logical given the nature of historical deployments by the ADF. However, such deployments are irregular and lead to periodic spikes in the numbers exposed to the risk of wounding and death as the result of combat. As a percentage, relatively few army personnel deployed overseas for the two decades after the end of the Vietnam War. In 1995 came the major deployment to East Timor. Fortunately, it did not become the significant conflict that was feared. Subsequent deployments were to the Middle Eastern combat zones. A steady stream of combat casualties were suffered which, by definition, increased the likelihood of other personnel developing long-term mental health problems such as PTSD. What is notable about the Middle East deployments is the policy failure of the ‘super soldier’ which led to the personnel of a few select units (especially the SAS and the Commandos)

experiencing multiple tours of the combat zone. Multiple tours increase the risk of psychological injuries. The great risk for calculating any levy by ADF branch is, for the army, the impossibility of predicting the next spike.

5. The next issue is how far down the command structure is the levy applied. Again, for the RAN and the RAAF, it is a reasonable step to apply the levy to lower level units. It would provide data on injuries and encourage best practice OH&S. Such a step for the Australian Army is highly problematic. Based on UK experience, units that experience regular deployments are often placed under significant budget pressure as their additional expenses are rarely fully covered by additional allocations. The shortfall is made up in subsequent years by reducing costs in the areas of estate management, training and morale building exercises. An improperly managed levy at the unit level would negatively impact upon the capabilities of those units most likely to deploy operationally such as the SAS, the commandos and the RAN's patrol craft.
6. In summary, in order to avoid penalising the ADF's operational capacity, the following issues need addressing in how to best raise a levy.
  - i. Almost all casualty (i.e. combat) claims are by army personnel.
  - ii. The Australian Army is the one branch likely to experience periodic spikes in potential claimants while the RAN and RAAF are likely to have a relatively stable number of annual claims.
  - iii. The RAN is the branch most likely to experience catastrophic losses in a very short period.
  - iv. Select units are prone to experiencing multiple deployments, a major risk factor in developing PTSD and, obviously, a significant risk factor for combat related deaths and injuries.
  - v. As the Australian Army will continue to provide the bulk of personnel in any overseas deployment an average levy on the entire ADF penalises the RAN and the RAAF. It would also fail to encourage best practice OH&S in these two branches as their ability to reduce a general levy is largely dependent upon actions by the Australian Army.
  - vi. A levy below the branch level down to the unit level is most beneficial in terms of data collection and the encouragement of best practice OH&S, but has the real potential to impact upon unit capabilities.
7. Recommendations:
  - i. The levy is a separate budget item for Defence;
  - ii. An immediate allocation upon establishment of the scheme to cover catastrophic losses and to enable the development of long-term growth assets for same.
  - iii. Allocations for each operational deployment includes a budgeted allocation to the compensation scheme not taken from the ADF's budget. The annual levy is, therefore, only for non-combat deaths and injuries.
  - iv. A specific budgeted allocation to the scheme for any deployment would enable the investment in long-term growth assets to cover claims for injuries that take a considerable length of time to manifest.

- v. The levy is applied to each unit to encourage best practice as the annual levy is now only for non-combat related deaths and injuries.

#### **Advocacy – support for the veteran in dealing with DVA**

8. The complexity of the claims process, needing to relate an injury that may have occurred years earlier to a SoP, then presenting it in an acceptable way to a claim's assessor using the correct jargon, effectively requires the use of an advocate. Anecdotally, claims not submitted via an advocate are far less successful than if submitted by an advocate on behalf of a veteran. The result is that the veterans who need help the most, the socially isolated who are often at most risk, face the most difficult hurdles getting their claims approved. However, if they seek the aid of an advocate, they are dealing with someone trained in correctly lodging a claim but often not trained in dealing with persons at risk due to issues such as mental health. As a result, the advocate system is not a viable system for those veterans most at need.
9. As noted in your report, DVA trains these advocates who volunteer with ESO's to assist veteran's lodge an application for assistance. Ignoring the absurdity of having a claims process so complex that DVA spends millions each year to train advocates to help veterans succeed, there are several problems with this approach which were also documented in your report. In making the following recommendations a few points need emphasis. They include:
  - i. Younger veterans, especially those who leave the service quickly and at a very young age, often do not want to associate with former members of the ADF. Their break, for whatever reason, is total. When they apply for assistance, they do so alone and without the help of an advocate. Usually with poor results. They often react badly to the rejection of their claim.
  - ii. Younger veterans are often geographically isolated from their friendship groups once they leave the ADF. The days of units raised on a state basis are long gone. Therefore, so is the likelihood of service friends living nearby. In these circumstances communication by the veteran is often restricted to dealing directly with DVA.
  - iii. Fraud. Although theoretically unable, some advocates reportedly charge fees for service. One form of such a fee is a percentage of the backdated payment and therefore, for more complex and prolonged cases, can be quite high. I have documented one case in which considerable amounts of grants money was questionably used, while the advocate earned a generous, undeclared income while receiving benefits from DVA.
10. If the advocacy system is retained it must do so on a professional basis. Essentially, advocates already assess the viability of a claim prior to its lodgement. The current system encourages lodgement of all claims rather than, or even if, the advocate advises the claimant the claim will not succeed. I would recommend that DVA move to a compliance model whereby the advocate approves claims, with DVA taking on only a QA and review role, but also with a stronger fraud control framework. The basis of this model is:

- i. The advocate is licenced.
- ii. DVA maintains a public register of advocates, including location, service (if any), geographical location and ESO association (if any).
- iii. If a younger veteran contacts DVA and wishes to make a claim, the date of contact is recorded, and the veteran referred to an advocate.
- iv. The advocate is paid per processed claim, with a higher rate of pay for under-represented areas of interest such as MRCA.
- v. If approved, financial support becomes available immediately to the veteran.
- vi. The advocate's role ends at this point. Rehabilitation services remains solely the responsibility of DVA.
- vii. If refused, the claimant can ask for a review by DVA and, if desired, follows the recommended appeals process.
- viii. DVA monitors licenced advocates for irregularities.
- ix. DVA conducts QA on the advocates as per the draft report recommendations.
- x. DVA imposes financial penalties, including loss of licence, upon advocates for errors.

11. The above model is competitive based and open to individuals and non-ESO organisations. It retains ESO involvement if so desired by the claimant. It also encourages the retention of corporate knowledge amongst interested external parties. This model, with a relatively modest financial investment, could also encourage a geographical based support network for participating veterans, rather than by corps or service as is often the case currently. As an example, the advocate could receive financial assistance for veterans in their local community for participatory activities similar to the very successful Men's Shed program, although future programs must achieve greater diversity. Outreach programs could also target veterans who do not wish to participate in general veterans' groups.

#### **Advocacy for groups of veterans – DVA's greatest policy failure**

12. There is now a considerable amount of data on child abuse in the ADF, especially in the RAN, with the most recent examples being presented to the Institutional Responses to Child Sexual Abuse. Personally, it was a surprise to find out that children as young as thirteen were enlisted into the navy well after the Second World War. A significant number of these children in the RAN, as well as attendees of the Army Apprenticeship School and older officer cadets, experienced sexual, physical and emotional abuse. Due to the nature of the institutions such abuse was significantly under-reported. It is also the nature of the ADF that, should it experience another break-down in good governance, these issues will reappear.

13. The long-term psychological damage to these children was real. When they left the ADF this psychological damage was enhanced by several factors, including:

- i. Isolation from their former peers who did not want to discuss the issue;
- ii. General difficulty in adjusting to civilian life as noted in your draft report;

- iii. Shame and embarrassment, both from their own abuse, but also as subsequent participants in an ongoing cycle of abuse.
14. Many of these veterans found it impossible to participate properly in civilian life and they turned to DVA for assistance. DVA treated each application on a case-by-case basis. It was one of the greatest Australian public policy failures and it had a devastating impact upon hundreds of veterans. Applications were invariably refused as:
  - i. Defence denied any abuse occurred.
  - ii. Many of the abusers became senior officers in the ADF and were still in positions of authority when the claims were lodged.
  - iii. The nature of the institutions meant that abuse was under-reported. Medical records supporting abuse was usually non-existent.
  - iv. The 'code' associated with the various institutions meant accusations to the relevant provost were rarely made and so no records existed to support the claims of abuse.
15. However, DVA began to regularly receive applications from veterans alleging abuse. Refusing one claim based on a lack of evidence is, unfortunately, acceptable. Continuing to refuse claims that allege the same abuse from the same institutions over multiple years is completely unacceptable. Even when multiple veterans stated that the abuse was systemic DVA still treated them as individual cases lacking evidence and were refused. There was a lost opportunity, not just for the individuals making claims, but for DVA to force an investigation that would have led to an institutional change in the ADF that may well have saved hundreds of victims. Instead, thanks to a lack of action by DVA, abusive behaviour in ADF institutions continued. The number of victims continued to increase while the victims themselves suffered the further trauma of having their claims rejected and their stories of abuse disbelieved.
16. While fully supporting the draft report's recommendations on research on health issues, there is a need for qualitative research on veteran claims, both rejected and accepted. This research should identify:
  - i. Patterns of claims for specific injuries that indicate a breakdown in ADF governance;
  - ii. Independent claims by different persons showing an alleged pattern of behaviour in any ADF unit or institution that requires further investigation and re-assessment of rejected claims;
  - iii. Geographical, branch, unit and demographic anomalies that indicate some causal factor leading to additional injuries;
  - iv. Short, medium and long term trend analysis indicating any variation in the above.
17. DVA was once a very successful advocate for veterans. In the face of repeated denial by the ADF of the impact of service in Vietnam, especially in areas such as agent orange which even effected veterans' children, DVA found itself acting in the interests of the veterans. Isolated, abandoned by a society that simply wanted to forget the war,

distrustful of the ADF and with even some major ESO's dishonouring their service, the one agency that was always there for the Vietnam Veterans was DVA. As noted in the book 'The Last Shilling'<sup>3</sup> DVA played a significant role in the long term rehabilitation of this group of veterans.

18. It is not known why DVA did not advocate on behalf of the veterans who had suffered abuse as children in the ADF. It is not known why DVA refused to use its own resources to challenge the ADF's consistent refusal to acknowledge its own failure in its duty of care. It is not known why DVA took a corporate position to treat each claim individually and ignore all evidence provided with any other claim. Going forward, the challenge is to ensure a governance structure is in place that not only advocates for veterans, but one that is also trusted by veterans. The draft report's governance recommendations for going forward are sound, the emphasis on being part of defence is a potential weakness. The reality is that, in recent history, large numbers of discharged veterans have either not trusted the ADF or else the ADF has not acted appropriately towards them.
19. Equally, DVA recently has shown a propensity to favour the ADF command over the veterans. At present all three members of the Repatriation Commission are former senior officers in the ADF. This includes its current President and Secretary of the department. This ridiculous weighting provides a basis to the view that DVA's leadership has more loyalty to the senior ranks of the ADF than it does to its claimants.
20. Recommendation: Acceptance of the governance structure as outlined in the draft report, but restricting the number of former or current ADF senior officers on the Commission and denying the position of CEO to same.

### **Education**

21. There is an opportunity for extending the scope and developing a funding model for the discussion and recommendations made on post-service education for veterans in the Productivity Commission's draft report. Ideally, the aim of any well-structured scheme is to:
  - i. Encourage veteran participation in both formal and informal education;
  - ii. Enable veterans, especially isolated veterans, to develop a rapport with other veterans with similar interests;
  - iii. Provide an avenue for confidence and esteem building by veterans in which they can discuss their experience;
  - iv. Create a self-funding model.
22. Any education scheme should include a means of veterans obtaining recognition of their service qualifications. An on-line vocational education scheme specialising in veterans could facilitate obtaining civilian qualifications through an assessment scheme that applies the recognition of prior learning (RPL) to a veteran's vocational achievements obtained from the ADF. Such a scheme would run on a fee basis and, once approved by the regulators, the students could apply for fee assistance.

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<sup>3</sup> The Last Shilling. A History of Repatriation in Australia, CJ Lloyd and Jacqui Rees, Carlton, Melbourne University Press, 1994.

23. Some consideration of providing higher education is also warranted. At least two ADF branches run exceptional historical units. A limited expansion in their role, in liaison with a university, could see the development of history degree courses for specific branches, once again on a fee-paying basis.
24. The scheme could also facilitate informal on-line discussion groups similar to the highly successful and voluntary U3A model. Essentially, veterans would develop and lead a discussion on a specific topic and invite other veterans to attend. The only difference is that the scheme would provide and maintain the internet video forum. The purpose is to encourage veterans to become part of, and develop friendships within, a group with similar backgrounds and interests. Isolated veterans would gain significant emotional and mental health benefits from such participation.

### **The Office of the Australian War Graves**

25. I completely agree the transitioning of all commemorative services to the AWM. However, I do not agree with the inclusion of the OAWG into the AWM orbit. The OAWG has a fundamentally different role to that of commemorations. Its first duty is to protect the sites which it manages in Australia and overseas<sup>4</sup>. Unfortunately, while a junior business area within DVA, it has often taken the lead in overseas commemorative activities. What we have seen in the past, especially during and lead-up to the 2005 Gallipoli Service, is the OAWG giving the commemorative service greater consideration than the protection of the site. The 2005 fiasco was to cost the Director his position and DVA finally created a separate unit for the Gallipoli commemoration, a development that was subsequently reversed by DVA for unknown reasons.
26. The risks associated with the OAWG remaining a secondary business unit within a larger commemorative area are not addressed by the Productivity Commission's recommendations. Instead of transferring the OAWG to the AWM along with DVA's other commemorative functions, this risk is mitigated by leaving the OAWG in DVA. The OAWG would no longer plan or run any commemorative event. Effectively, the AWM would have to negotiate with the OAWG over any commemorative service and the AWM would have to mitigate any risks identified by the OAWG to any of the special sites for which it is responsible.

### **Miscellaneous**

27. Internal reviews require time limits. Anecdotally, extensive delays in internal reviews are normal. In a review of DVA's treatment of a veteran's family an internal review that required the examination of seven documents took eight months. If the existing model for claims assessment by the department is retained, then the legislation must mandate

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<sup>4</sup> 1. to act as an agent of the Commonwealth War Graves Commission (CWGC) to maintain war cemeteries and memorials and individual war graves (in Australia and the region) for members of the Commonwealth forces, who died during the First and Second World Wars  
2. to commemorate eligible veterans who died post-war and whose deaths were caused by their war service  
3. to build and maintain official Australian memorials overseas.



processing times for all actions in a claim and review process over which the department has sole control. Failure to meet mandated time frames should result in financial payments to the claimants. This will mitigate the financial stress experienced by claimants suffering excessive delays.

28. Medical Treatments: DVA has conducted no analysis, nor has any other body, on whether the transfer of hospitals from the repatriation commission has led to a reduction in aspects of care for veterans wounded in combat. Nor has DVA conducted any risk assessment of the security, psychological impacts, or the impact upon families of combat casualties, who are forced into the public health system. A more beneficial arrangement to both current and former members is an expansion of existing ADF medical facilities to include treatment for veterans. Payment to the ADF could be made at the current medicare rate for services as is done for public hospitals. The advantage of veterans accessing ADF medical facilities is that it both provides increased medical funding for these facilities and an incentive for injury avoidance to reduce the load.