

VIETNAM VETERANS ASSOCIATION OF AUSTRALIA Inc
SUBMISSION IN RESPONSE TO THE
PRODUCTIVITY COMMISSION DRAFT REPORT
COMPENSATION AND REHABILITATION FOR VETERANS
“A BETTER WAY TO SUPPORT VETERANS”
DECEMBER 2018

This response by the Vietnam Veterans Association of Australia to the Productivity Commission draft report will focus on the responses to recommendations that have a direct effect on members of this association, their comrades and their families.

The Vietnam Veterans are in a situation where the vast majority are covered by one act, the Veterans Entitlement Act 1986 (VEA), In most cases earlier entitlements were rolled over into this act and there were very few, if any, situations where dual entitlements and offsetting of entitlements became a problem.

In addition, there were no problems with defining warlike service from non-warlike service, all Vietnam Veterans Had warlike service.

This compared with the situation in place following the introduction of the Military Rehabilitation and Compensation Act 2004 (MRCA) where dual entitlements, offsetting and definitions of service indicate to us the benefits of a simplified system under the VEA.

As a general statement we support the Department of Veterans Affairs (DVA) which has supported a vast majority of our members to a stage where their compensation claims are mostly finalised, their treatment entitlements are in place and they are getting on with their lives, to have them come back under administration of the Department of Defence, in any way, would not be acceptable and would have a detrimental effect on the mental health of many.

However, we also recognise that many externalities have changed (hence the Senate Inquiry into Suicides of Veterans and the Reference to the Commission which has resulted in this draft report. We acknowledge that DVA has been slow to adapt to the circumstances in which younger veterans see themselves

in their relationship to the department. We also recognise that a departmental structure is always likely to be slow in responding to changes in externalities and we are sympathetic to the proposal in Recommendation 11.2.

We do not support Recommendation 11.1, the folding of a smaller DVA into the Department of Defence.

Compared to the difficulties reported by the younger generation in dealing with Defence and DVA under current legislation we would suggest that in hindsight adjustment to the VEA may have had a better outcome for post-Vietnam veterans

Based on the above as many of the recommendations would have no effect on our members and we would prefer to leave comments on many of the recommendations to those they have the potential to affect.

Ken Foster OAM JP
National President
V.V.A.A.
26 February 2019

Defence and the Department of Veterans' Affairs need to engage more with rehabilitation providers, including requiring them to provide evidence-based approaches to rehabilitation, and to monitor and report on treatment costs and client outcomes.

Changes are also required to the arrangements for providing and coordinating rehabilitation immediately prior to, and immediately post, discharge from the Australian Defence Force (ADF). Rehabilitation services for transitioning personnel across this interval should be coordinated by Joint Transition Command (draft recommendation 7.1). Consideration should also be given to providing rehabilitation on a non-liability basis across the interval from ADF service to determination of claims post service

V.V.A.A. RESPONSE TO DRAFT RECOMMENDATION 6.3

Rehabilitation providers do not always consider the needs or abilities of the veteran, We support more stringent monitoring of providers to ensure that needs assessments are not delayed due to over-servicing by providers, to the detriment of veterans.

DRAFT RECOMMENDATION 10.2

The Australian Government should introduce a single review pathway for all veteran's compensation and rehabilitation decisions. The pathway should include:

- internal reconsideration by the Department of Veterans' Affairs. In this process, a different and more senior officer would clarify the reasons why a claim was not accepted (partially or fully); request any further information the applicant could provide to fix deficiencies in the claim, then make a new decision with all of the available information
- review and resolution by the Veterans' Review Board, in a modified role providing alternative dispute resolution services only (draft recommendation 10.3)
- merits review by the Administrative Appeals Tribunal
- judicial review in the Federal Court of Australia and High Court of Australia.

V.V.A.A. RESPONSE TO DRAFT RECOMMENDATION.10.2.

Agreed, except for the second dot point above. While alternative dispute resolution (ADR) is a preferred and first option response the VRB should retain the ability to take the process to a formal hearing rather than add additional expense and time by referral to the Administrative Appeals Tribunal. The VRB at hearing can obtain verbal evidence from the applicant that results in a satisfactory outcome for the applicant.

DRAFT FINDING 10.3

While many veterans are managing to negotiate the current pathways for reviews of decisions made under the various veteran support Acts, there are unjustified differences and complexities in the rights of review available to claimants under each Act.

DRAFT RECOMMENDATION 10.3

The Australian Government should amend the role and procedures of the Veterans' Review Board (VRB).

Rather than making decisions under the legislation, it would serve as a review and resolution body to resolve claims for veterans. All current VRB alternative dispute resolution processes would be available (including party conferencing, case appraisal, neutral evaluation and information-gathering processes) together with other mediation and conciliation processes. A single board member could recommend the correct and preferable decision to be made under the legislation, and the Department of Veterans' Affairs and the claimant could consent to that decision being applied in law.

Cases that would require a full board hearing under the current process, or where parties fail to agree on an appropriate alternative dispute resolution process or its outcomes, could be referred to the Administrative Appeals Tribunal.

Parties to the VRB resolution processes should be required to act in good faith.

V.V.A.A. RESPONSE TO DRAFT RECOMMENDATION.10.3.

We reject this recommendation. The Veterans Review Board operates well as an independent review of Departmental decisions and should continue as at present, subject of course to continuous improvement. The proposed referral of veterans to the AAT will increase costs to veterans and encourage paid advocates and legal firms to delay cases. A hearing by a single Board member is an unacceptable proposal as the majority of VRB members have legal qualifications and a veteran appearing before a legally qualified member is NOT allowed to be supported or represented by a legally qualified person. (See recommendation 24 of the Senate Report: The Constant Battle; Suicide by Veterans.)

The VRB should retain the authority to make decisions and the veteran retain the right to seek further review from the AAT.

DRAFT FINDING 10.4

The Veterans' Review Board, while highly regarded by veterans, has functions that overlap with those of the Administrative Appeals Tribunal. Rather than being used occasionally to resolve difficult or exceptionally difficult cases, the Department of Veterans' Affairs is relying on the Board's external merits review as a standard part of the process for addressing many claims.

DRAFT RECOMMENDATION 10.4.

The Australian Government should conduct a further review in 2025 on the value of the continuing role of the Veterans' Review Board, once significant reforms to the initial claim process for veterans are established. In particular, the review should consider whether reforms have reduced the rate at which initial decisions in the veteran support system are varied on review. If the review finds that the Board is no longer playing a substantial role in the claims process, the Australian Government should bring the alternative dispute resolution functions of the Board into the Department of Veterans' Affairs or its successor agency

V.V.A.A. RESPONSE TO DRAFT RECOMMENDATION. 10.4,

We agree that consideration should be given to a further review of the claims process in 2025. We do NOT agree that an outcome of the review, that is, the abolition of the VRB, should be pre-ordained. We are of the view that, historically, internal reviews (which is what this recommendation

proposes) have not worked to the benefit of veterans, eg, the current review process within DVA such as Section 31 of the VEA, does not produce the results the Veterans Review Board has to date.

DRAFT RECOMMENDATION 11.1

A new 'Veteran Policy Group', headed by a Deputy Secretary, should be created in Defence with responsibility for veteran support policies and strategic planning.

Ministerial responsibility for veterans' affairs should be vested in a single Minister for Defence Personnel and Veterans within the Defence portfolio.

V.V.A.A. RESPONSE TO DRAFT RECOMMENDATION 11.1.

We reject this recommendation. We reject the view that veterans' policies should be a subordinate role of the Department of Defence, nor do we accept the folding of the ministries of Defence Personnel and Veterans Affairs into one portfolio. We suggest that the proposal will lead, in Defence, to a lack of focus on veterans policies to the detriment of veterans and, in the longer term, to members of the ADF. The recommendation presents a conflict of interests that is not acceptable to the veteran community

DRAFT RECOMMENDATION 11.2

The Australian Government should establish a new independent Commonwealth statutory authority, the Veteran Services Commission (VSC), to administer the veteran support system. It should report to the Minister for Defence Personnel and Veterans and sit within the Defence portfolio (but not within the Department of Defence).

An independent board should oversee the VSC. The board should be made up of part time Commissioners appointed by the Minister who have a mixture of skills in relevant civilian fields, such as insurance, civilian workers' compensation and project management, as well as some with an understanding of military life and veteran issues. The board should have the power to appoint the Chief Executive Officer (responsible for the day to-day administration).

The functions of the VSC should be to:

- achieve the objectives of the veteran support system (draft recommendation 4.1) through the efficient and effective administration of all aspects of that system
- manage, advise and report on outcomes and the financial sustainability of the system, in particular, the compensation and rehabilitation schemes
- make claims determinations under all veteran support legislation
- enable opportunities for social integration
- fund, commission or provide services to veterans and their families.

The Australian Government should amend the Veterans' Entitlements Act 1986 and the Military Rehabilitation and Compensation Act 2004 to abolish the Repatriation Commission and Military Rehabilitation and Compensation Commission upon the commencement of the VSC.

V.V.A.A. RESPONSE TO DRAFT RECOMMENDATION 11.2

We accept this recommendation subject to the new Commission, (the VSC), reporting to the Minister for Veterans Affairs' and sitting within an ongoing Department of Veterans' Affairs and NOT within the Department of Defence (see 11.1 above).

We support;

- an independent Board to oversee the Commission with members (not full time) drawn from relevant fields and disciplines, including some with extensive experience in the ADF;
- the appointment of a CEO by the Board – this will give the appointee a more secure position in respect to political directives; and
- the proposed functions of the VSC.

DRAFT RECOMMENDATION 11.3

The Australian Government should establish a Veterans' Advisory Council to advise the Minister for Defence Personnel and Veterans on veteran issues, including the veteran support system.

The Council should consist of part-time members from a diverse range of experiences, including civilians and veterans with experience in insurance, workers' compensation, public policy and legal fields.

V.V.A.A. RESPONSE TO DRAFT RECOMMENDATION.11.3.

We support the establishment of a Veterans Advisory Council and the continuation of a smaller Department of Veterans Affairs.

DRAFT RECOMMENDATION 11.4

The Australian War Memorial (AWM) already plays a significant and successful role in commemoration activities. As a consequence of the proposed governance and administrative reforms, the Australian Government should transfer primary responsibility for all commemoration functions to the AWM, including responsibility for the Office of Australian War Graves.

V.V.A.A. RESPONSE TO DRAFT RECOMMENDATION 11.4

We do not accept this recommendation. The current arrangements should continue.

DRAFT RECOMMENDATION 11.5

Once the new governance arrangements in draft recommendations 11.1 and 11.2 have commenced, the Australian Government should make the veteran support system a fully funded compensation system going forward. This would involve levying an annual premium on Defence to enable the Veteran Services Commission to fund the expected future costs of the veteran support system due to service-related injuries and illnesses incurred during the year.

V.V.A.A. RESPONSE TO DRAFT RECOMMENDATION 11.5

The veteran support structure under DVA is fully funded, to redirect funds from Defence, even with an increased budget to cover the need, can be seen as double handling, and a conflict of interests, with additional administrative costs at no benefit to the veterans.

DRAFT RECOMMENDATION 12.1

The Australian Government should harmonise the compensation available through the Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 (DRCA) with that available through the Military Rehabilitation and Compensation Act 2004. This would include harmonising the processes for assessing permanent impairment, incapacity and dependant benefits, as well as the range of allowances and supplements.

Existing recipients of DRCA permanent impairment compensation and dependant benefits should not have their permanent impairment entitlements recalculated. Access to the Gold Card should not be extended to those eligible for benefits under the DRCA.

V.V.A.A. RESPONSE TO DRAFT RECOMMENDATION 12.1

We think that this recommendation is unnecessary. As the DRCA and MRCA cover different periods of service and conditions of service, the cost and confusion caused by “harmonising” the two would, in our opinion, add to costs with little benefit to DRCA clients. Considering the small number of potential new DRCA claims the cost of change is, in our opinion, not warranted.

DRAFT RECOMMENDATION 13.1

The Australian Government should amend the Military Rehabilitation and Compensation Act 2004 to remove the requirement that veterans with impairments relating to warlike and non-warlike service receive different rates of permanent impairment compensation from those with peacetime service.

The Department of Veterans’ Affairs should amend tables 23.1 and 23.2 of the Guide to Determining Impairment and Compensation to specify one rate of compensation to apply to veterans with warlike, non-warlike and peacetime service.

V.V.A.A. RESPONSE TO DRAFT RECOMMENDATION 13.1

We reject this recommendation. While the level of treatment for similar injuries should be the same compensation for injuries incurred under war-like conditions should continue to be paid at a higher rate as compared to non-warlike and peacetime service. We note that;

- No matter how realistic peace-time training may be, operational conditions and dangers will always be more demanding and exceed those in peace;
- If the severity of risk in operations is considered to be no more than in peace, and one level of compensation is deemed applicable and just for both situations, then for what reasons are members of the ADF deployed on operations given income tax concessions and receive deployment allowances?;
- There is evidence from the Vietnam era of members of the Regular Army declining to go on active service in Vietnam; we expect that there are current members of the ADF who have similarly declined operational service; and
- The concept of the unique nature of military service is weakened if peace-time service is simply equated as being the same as war-like service.

DRAFT RECOMMENDATION 13.6

The Australian Government should amend the Military Rehabilitation and Compensation Act 2004 to remove the option of taking the special rate disability pension. Veterans that have already elected to receive the special rate disability pension should continue to receive the payment.

V.V.A.A. RESPONSE TO DRAFT RECOMMENDATIONS 13.6

We do not agree with this recommendation. We are of the view that this would create two levels of entitlement within the one act based on when a claim was lodged by a veteran. We suggest that this would be an unwelcome and perhaps dangerous precedent.

DRAFT RECOMMENDATION 13.7

The Australian Government should amend the Military Rehabilitation and Compensation Act 2004 (MRCA) to remove automatic eligibility for benefits for those dependants whose partner died while they had permanent impairments of more than 80 points or who were eligible for the MRCA Special Rate Disability Pension.

V.V.A.A. RESPONSE TO RECOMMENDATION 13.7.

We do not agree with this recommendation as worded. We understand that the view of the Commission is that as a veteran can receive, under MRCA, a lump permanent impairment compensation payment sum there are no grounds for a further lump sum payment to dependents if the death of the veteran is due to causes not related to military service, (page 5300. It is suggested that the Commission re-examine this recommendation

DRAFT RECOMMENDATION 15.3

The current (2013–2023) Veteran Mental Health Strategy has not been very effective and should be updated in light of recent policy changes (such as non-liability access) and research findings on emerging needs.

The Department of Veterans' Affairs (DVA) (in consultation with the Departments of Health and Defence) should urgently update the Veteran Mental Health Strategy, so that it guides policy development and implementation over the medium term. It should:

- be evidence based, including outcomes from policy trials and other research on veterans' mental health needs
- set out clear priorities, actions and ways to measure progress
- commit DVA to publicly report on its progress.

The Strategy should include ways to promote access to high quality mental health care, and to facilitate coordinated care for veterans with complex needs. It should also have suicide prevention as a focus area and explicitly take into account the mental health impacts of military life on veterans' families.

V.V.A.A. RESPONSE TO DRAFT RECOMMENDATION.15.3,

We believe this is being addressed, an example is the recent update to the veterans counselling service and rebadging as “Open Arms”

This, and other, initiatives should be allowed to develop and refined.

DRAFT RECOMMENDATION 15.4

The Department of Veterans’ Affairs (DVA) should monitor and routinely report on Open Arms’ outcomes and develop outcome measures that can be compared with other mental health services.

Once outcome measures are established, DVA should review Open Arms’ performance, including whether it is providing adequate, accessible and high-quality services to families of veterans.

V.V.A.A. Response to Draft Recommendation.15.4,

We understand that “Open Arms” is under constant monitoring by such groups as the Ministerial National Advisory Committee. We are concerned that staff levels for Open Arms are now not adequate to support the potential client base, given the current definition of a “veteran”.

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DRAFT RECOMMENDATION 17.1

By 2025, the Australian Government should create two schemes for veteran support — the current Veterans’ Entitlements Act 1986 (VEA) with some modifications (‘scheme 1’) and a modified Military Rehabilitation and Compensation Act 2004 (MRCA) that incorporates the Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 (DRCA) (‘scheme 2’).

Eligibility for the schemes should be modified so that:

- veterans who only have a current or accepted VEA claim for liability at the implementation date will have all their future claims processed under scheme 1. Veterans on the VEA Special Rate of Disability Pension would also have their future claims covered by scheme 1. Veterans under 55 years of age as at the implementation date should be given the option to switch their current benefits and future claims to scheme 2
- veterans who only have a current or accepted MRCA and/or DRCA claim, (or who do not have a current or accepted liability claim under VEA) as at the implementation date will have their future claims covered under scheme 2. Other veterans on MRCA or DRCA incapacity payments would have their future claims covered by scheme 2
- remaining veterans with benefits under the VEA and one (or two) of the other Acts would have their coverage determined by the scheme which is the predominant source of their current benefits, or their age, at the implementation date.

Dependants of deceased veterans would receive benefits under the scheme in which the relevant veteran was covered by. If the veteran did not have an existing or successful claim under VEA as at the implementation date, the dependants would be covered by scheme 2.

Veterans who would currently have their claims covered by the pre-1988 Commonwealth workers' compensation schemes should remain covered by those arrangements through the modified MRCA legislation.

V.V.A.A. RESPONSE TO DRAFT RECOMMENDATION 17.1

In our opinion the current system under the various acts has progressed to a stage where most entitlements have been identified and compensation, rehabilitation and treatment processes applied.

Claims under DRCA and VEA will continue to decrease as the veteran community ages and to make changes at this stage would create separate classes of veteran with acts as identified in our earlier comments.

In our opinion future veterans needs, and responses to those needs would, in most cases relate to service covered by MRCA entitlements and any adjustment could be applied as identified at the time.