

**Additional Submission**  
**Of**  
**Victims Of Abuse**  
**In The**  
**Australian Defence Force Association Inc. A0059257W**  
**To**  
**The Productivity Commission Inquiry Into**  
**Veteran's Compensation**

Jennifer Jacomb  
Author

**ABSTRACT**

[On 31st July 2018, the Association received a disturbing letter , dated 27<sup>th</sup> July 2018, from Minister Chester saying that it was Government Policy to throw Veterans onto the Charity of country doctors for their treatment under the White Card or Gold Card.

As this affects the medical compensation of Veterans, it requires an additional submission to the Commission.

**Recommendation:**

Unlike Medicare, the medical treatment of Veterans as part of the “contract” between the service person and the Crown for their service as “servants Of The Crown”.

Having performed their end, that of serving, having been injured, the crown accepting that injury occurred s part of their service, it is not open to the Crown to take action which adversely affects that treatment.

In what ever compensation system is recommended, it must be enshrined in the Act so it is not open to Governments to modify the compensation, in this case, medical treatment without reference to the Parliament.

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## **1.0 The Key Issues**

### **1.1 Background**

1. Veterans are Servants of the Crown and not employees – **See Annexure A.**
2. In return for giving up most of their rights, through the Department Of Veterans Affairs Acts, the Crown undertakes the following:-
  - a. White Card treatment – full medical treatment and care for injuries accepted as suffered during their rendering of service
  - b. Gold Card – full medical treatment and care.
3. The Medicare System is a general grant by the Parliament to the Australian People.
4. The medical treatment provided by the Crown to Veterans is not a grant but best characterised as a condition forming part of the service of the Servants Of The Crown.
5. It:-
  - a. Cannot be compared with the Medicare System
  - b. Is based upon completely different legislation to the Medicare System
  - c. Is part of the conditions of service of the Veteran
  - d. The Veteran has fulfilled their part, it is not legal or ethical for the Government to change those conditions AFTER the Veteran has meet their part through their service.
6. The medical bills paid through the Department Of Veterans Affairs system make up only 2% of the Medical costs paid for through both the Department Of Veterans Affairs and Medicare Medical Systems.

## 2.0 The Problem

In 2015, the Government decided to treat the Department Of Veterans Affairs Medical system as if it was just like the Medicare system and froze rebates to Doctors and Specialists.

The problems with this approach are:-

1. More and more Doctors are refusing to treat patients on the White or Gold Card - quite often using the excuse that there lists are full.
2. Yes, the Department Of Veterans Affairs will pay for transport to an urban centre for treatment but:-
  - a. You are better off being treated locally
  - b. Ignores the adverse impact of long journeys on the Veteran
  - c. Transfers money from treatment to transport – it would be better of being spent on treatment.
3. Yes it is possible to have the Department Of Veterans Affairs pay more than the rebate but:-
  - a. Having got the no with regards treatment, it is much harder to change it back to a yes and
  - b. In the writer's case, by the time Department Of Veterans Affairs had made its decision to pay the full fee, the writers condition had so deteriorated that the surgery could no longer proceed.

These facts can be confirmed by a series of questions about the:-

1. Number of Doctors and Specialists
2. Number of transactions by Doctors and Specialist for White And Gold Cards
3. Department Of Veterans Affairs Transport Charges

### **3.0 Problems With Letter From Minister Chester Dated 27<sup>th</sup> July 2018**

#### **3.1 Veterans To Be Thrown On The Charity Of Country Doctors**

As can be seen, the Minister acknowledges the charity of Doctors treating Veterans.

When becoming Servants of the Crown, there was no mention upon charity for receiving treatment for accepted injuries.

By relying on the charity of Doctors, it means some get treated and some don't based upon how charitable your Doctor is.

This is unacceptable.

#### **3.2 Not Practical Placing Reliance On DVA Paying Above Rate**

As you can see from the letter, the Minister makes much about the Department Of Veterans Affairs' ability to pay above the normal rates.

This ignores the facts:-

1. That once the Doctor or Specialist has said "No" it is much harder to get them to change their mind and
2. The delays can take so long that the decision to pay more becomes moot as it did in the writer's case.

#### **3.3 Creates An Occupational Health And Safety Issue For DVA**

Failing to get the medical treatment promised creates great frustration upon the part of the Veteran which leads them to taking out their frustration on Department Of Veterans Affairs staff.

That is why we have units such as the Client Liaison Unit.

Thus this same policy creates an Occupational Health And Safety issue for staff and the Department Of Veterans Affairs.

## **4.0 Recommendation**

That in what ever scheme is recommended for Veteran's Compensation, with regards that section for Medical Treatment:-

1. That the payment to Doctors and Specialist be set at a significantly higher rate of the Scheduled Fee to encourage them to treat Veterans and
2. Be enshrined in legislation to prevent Governments of the day from interfering with it.

## **Annexure A – Servants Of The Crown**

### **A1 Legal References**

1. **Marks v Commonwealth** [1964] HCA 45; (1964) 111 CLR 549 (12 August 1964)
2. **White v Director of Military Prosecutions** [2007] HCA 29 19 June 2007 S312/2006
3. **336/96 Print N0433** [1996] AIRC 313; (1 April 1996) - Industrial Relations Act 1988 - s.188 application for registration as an association Armed Forces Federation of Australia (D No. 30076 of 1992)

### **A2 Servants Of The Crown**

Members of the Australian Defence Force are not employees of the Commonwealth.

Their exact legal status is that of servants of the Crown – not employees

As was noted by Deputy President Williams in **336/96 Print N0433** :-

*“The statutory provision, referred to above, that appointment or promotion of an officer in the armed services is not to "create a civil contract between the Crown or the Commonwealth and the person appointed or promoted" strongly points to a conclusion that, prior to such appointment or promotion, there is no such civil contract in existence. If that is the case, and since the statutory provision makes it abundantly clear that neither appointment or promotion of an officer itself creates such a contract, then, at no time whilst a person is serving as a member of the armed forces would there be a contractual relationship between that person and the Crown or the Commonwealth.*

.....

*The Commission recognises that members of the armed forces may now have afforded to them benefits that are afforded to persons usually considered to be employees and that the government and/or the armed forces themselves may from time to time use language in respect to members of the armed forces that is appropriate to an employment relationship. Neither of these factors, however, can alter the relationship between the members of the armed forces and the Crown. Neither turns that relationship into one either of contract or of employer and employee. Nor can the fact that for certain purposes such persons are "deemed" to be employees. Indeed, the very fact that the Parliament has perceived the need to specify or deem in certain legislation that such persons are employees of itself suggests that, but for such specification or deeming, such persons would not be employees.”*

### A3 Ramifications Of Being Servant Of The Crown

The ramifications of this are:-

- ✘ Cannot have a union to protect what little rights they have.
- ✘ Are locked out of the Fair Work Act
- ✘ Locked out of most of the Discrimination Acts
- ✘ Don't have the right to resign – they can only leave when either their enlistment is up or Defence allows them to leave – see **MARKS v. THE COMMONWEALTH** [1964] HCA 45; (1964) 111 CLR 549.
- ✘ If they leave without permission they are:-
  - a. Hunted down
  - b. Caught
  - c. Court Martialed and
  - d. Sent to Prison for leaving without permission whereas in the Civilian World, all you would forfeit is pay in lieu of notice.
- ✘ Are subject to the Defence Force Discipline Act 24 hours, 7 days a week – see **WHITE V DIRECTOR OF MILITARY PROSECUTIONS** [2007] HCA 29 19 June 2007 S312/2006
- ✘ Yet they are no longer covered for injury 24 hours, 7 days a week.
- ✘ In the case of injury on the join they are thrown out. The Australian Army is the worst offender in this context. If you are no fully deployable out you go. Yet I the Civilian World, if you were suffering Post Traumatic Stress Disorder from your work e.g a teller in an armed robbery, your employer would have to find you alternative employment in the company.
- ✘ Also it shows the lie of what they say when you join, that if you are injured the Australian Defence Force will look after you.
- ✘ At the lower ranks, their income is barely over the poverty line, the only way it gets above is through the various service allowances.
- ✘ The impact upon family life is appalling with the constant postings.
- ✘ Your career is in the absolute hands of those above you, and if they don't like you, you are in danger. Sure you can do a redress of Grievance but they have a track record of not succeeding.
- ✘ They can order you to undertake any medical treatment they like without your consent e.g. Breast Reduction – real case, castration, theoretical or Mefloquine despite the side effects, (real case)

When you think about it service in the Australian Defence Force is very much a kin to slavery.

Who in their right mind would serve in the Australian Defence Force but we need them.



They should be compensated accordingly.

#### **A4 Service In The Australian Defence Force Is Extremely Hazardous**

Whether it is garrison duty in Australia or actual combat, service in the Australian Defence Force is extremely hazardous.

Unlike other work environments:-

- ✘ You are always surrounded by hazardous material.
- ✘ It is an extremely hazardous environment
- ✘ The accommodation, especially at sea is such that if we treated convicted criminals in the same way, there would be a public uproar.
- ✘ In a civilian environment you don't have people trying to physically kill you.
- ✘ The concerns over occupational health and safety are much lower than in the Civilian World.
- ✘ The physically demanding nature of the work, ages you prematurely – they say of the infantry that a year in the infantry ages you 4 years.

Service in the Australian Defence Force is the hardest form of “employment” in Australia yet it is the most important.

It should be compensated accordingly.

#### **A5 If You Want Someone to Take A Bullet For You – Provide A Parachute**

In World War I, they initially refused to issue parachutes to pilots because they were afraid that the pilots would become less aggressive.

What they found when they did issue parachutes was that the pilots became more aggressive because they now had an out.

The same applies to medical compensation.

By providing proper and generous medical treatment and compensation to members of the Australian Defence Force it encourages them to be more aggressive in combat because they know that they have a parachute.

**A6 Veterans Are Not An Expense They Are An Investment!**

For the most part when they leave the Australian Defence Force Veterans are normally law abiding citizens who continue to serve Australia in the community through community work.

If we fail to properly and fairly compensate them the consequences will be:-

- ✦ More Veteran suicides
- ✦ Declining enlistments in the Australian Defence Force
- ✦ Reduce the quality of those who enlist in the Australian Defence Force.
- ✦ Cause more to veterans to be come involved with criminal elements such as motorcycle gangs – See **Annexure H**

Australian needs a well trained and professional Australian Defence Force made up of long term serving members. If we fail to properly compensated veterans, this is the very thing we won't have.

**A7 You Don't Know What You Have Got Until Its Gone**

As Joni Mitchell said in "Big Yellow Taxi" – "**You don't know what you have got until its gone!**"

If we don't look after our Veterans, we will see even more declining numbers of people serving in the Australian Defence Force.

## Annexure B – Letter From Minister Chester Dated 27<sup>th</sup> July 2018



**Office of the Hon Darren Chester MP**  
Minister for Veterans' Affairs  
Minister for Defence Personnel  
Minister Assisting the Prime Minister for the Centenary of ANZAC

27 JUL 2018

MC18-001425

Ms Jennifer Jacomb  
Secretary and Public Officer  
Victims of Abuse in the Australian Defence Force  
Association Inc

Dear Ms Jacomb

Thank you for your correspondence of 24 April 2018 originally directed to the Minister for Defence, the Hon Senator Marise Payne, concerning the pause on Medicare indexation for Department of Veterans' Affairs (DVA) fees for health providers. Your correspondence has been referred to the Minister for Veterans' Affairs, the Hon Darren Chester MP, who has responsibility for this matter. The Minister has asked me to respond on his behalf.

Minister Chester acknowledges your concerns about health providers not accepting DVA funding rates. This is not a system wide problem, and clients continue to get to the health care they require. However, we do acknowledge that when these instances occur, it can cause inconvenience for clients and embarrassment for providers.

In Australia, health care providers in private practice are free to choose how to run their business. This means they can choose who they see as patients, the operating hours of the practice and how much they will charge. This includes whether or not to provide treatment under DVA arrangements.

DVA medical and allied health fees continue to represent the full payment to the provider with no charges to the client and are significantly higher than the rebates available under Medicare. In the 2017–2018 Budget, it was announced that indexation of Medicare rebates would recommence from 1 July 2017 in a phased approach over time.

For General Practitioners (GPs), indexation recommenced from 1 July 2017 for GP bulk billing incentives and from 1 July 2018 for standard GP consultations. For medical specialists, indexation of fees for consultations also recommenced on 1 July 2018, and indexation of fees for specialist procedures will recommence on 1 July 2019.

Parliament House  
CANBERRA ACT 2600

Telephone: 02 6277 7820  
Email: [minister@dva.gov.au](mailto:minister@dva.gov.au)

The Government is grateful to the many providers who recognise the service and contribution of veterans and their families to the defence of this nation.

In the event a health care provider does not accept DVA fees or there are no providers locally available, DVA can make alternative arrangements to ensure that care is maintained. This can include identifying another provider who has accepted DVA rates, in providing assistance with transport, accommodation and medical attendant care to attend the next nearest practical provider.

In some instances, DVA may also pay above the schedule fee. Agreement to such requests is determined on the basis of clinical need, and gives consideration to the veteran's ability to reasonably access another provider. If a DVA client is experiencing difficulty in locating a health care provider who will accept DVA health cards, they should contact DVA on Freecall 1800 555 254.

Thank you for taking the time to bring this matter to my attention.

Yours sincerely



**Robert Curtin**  
Chief of Staff