

DRAFT Response to Productivity Commission Compensation and Rehabilitation for Veterans. JANUARY 2019.

### **Personal background.**

I am a former National Serviceman with active service in 1969/70 with 105 Fd Bty RAA in SVN, No 2 on the M2A2 howitzer seeing action in numerous Fire Support Bases and section moves across Phuoc Tuy and adjacent provinces, as well as at the TF base of Nui Dat, later seconded to the 1 Fd Regt civil Aid team, living and working in the villages of Binh Gia and Xuyen Moc until RTA.

I have been a member of the Adelaide Legacy Club, Yorke Peninsula group since 1991, secretary/treasurer for 25years, local WWP application officer since 1992, and a VEA (TIP) pension(2004) and welfare officer(2003) and a VRB advocate (TIP) since 2010, authorised by VVAA SA Branch Inc.

### **Homogenising Veterans.**

The current definition of a veteran, one full day as a member of the ADF, is an absolute joke, and another symptom of the “politically correct” desire for homogeneity at all levels of the organisation.

If there was ever an occupation where level playing fields and “everyone gets a medal” might be appropriate, surely it is in kindergarten, not in the ADF. How can there possibly be any meaningful comparison between the danger, demands, rigours and privations of active service, and a “term of employment” at the most basic level in the ADF?

### **Claims under the Veterans’ Entitlement Act 1986.**

A frequent comment in the responses so far is the issue of delays and obstructionism at primary delegate/claims assessor level. Since the claims administration was centralised in Melbourne, I believe the issue has become exponentially worse, and I also believe that there are a couple of clearly identifiable causes.

The first problem, and I have this from DC level, is that the practice of hiring short term contract employees in primary delegate/claims assessor positions is causing severe imbalance as far as continuity in the consideration and the processing of claims is concerned.

The second, and by far the most disturbing issue in my opinion, is the apparent total ignorance by primary delegates/claims assessors of, and their blatant disregard for, the provisions of Section 120 VEA 1986.

A six page document "Correct application of Section 120(1).doc" is available on line, and should be MANDATORY reading for all primary delegates/claims assessors, AND THEIR MANAGERS.

A verbatim reproduction of part of page 1 is;

Correct Application of Section 120(1) VEA. The bold type is my "emphasis added" to the wording of this document.

"The correct application of section 120(1) is vital to the success of most pension claims. **It is poorly understood and incorrectly applied.**

Section 120 Standard of proof

Where a claim under Part II for a pension in respect of the incapacity from injury or disease of a veteran, or of the death of a veteran, relates to the operational service rendered by the veteran, the Commission **shall** determine that that the injury was a war-caused injury, that the disease was a war-caused disease or that the death of the veteran was war-caused, as the case may be, **unless it is satisfied, beyond reasonable doubt, that there is no sufficient ground for making that determination.**

- Legal precedents are declarations by the court to lower jurisdictions as to how a particular piece of legislation is to be interpreted.
- They are **orders, not options or suggestions.**
- They are **legally binding on lower jurisdictions."**

The document sets out the legal hierarchy, and a number of clear instructions on the general approach by delegates/claims assessors are described in pp 2 – 6 of the document, with much emphasis on Deledio.

The delegates/assessors personal views or prejudices about the claim are irrelevant. The process is LEGISLATED, and it is BINDING at all levels.

Since Deledio dates back to 1998, is it unreasonable to expect that the DVA would have ensured that its delegates/claims assessors and its line managers were/are fully aware of the Deledio decision, AND the reasons for it, and that the correct policies and procedures were established **and enforced** to ensure that the primary delegates/claims assessors understood, **and complied with the directions, or were redeployed elsewhere until such time as they did understand, and could demonstrate compliance with their legal duties?**

On pp 2, in the last box on the page, sub clause (b)(A) (ii) “the person’s response involved intense fear, helplessness, or horror, and...” was deleted in DSM-5 which replaced DSM- 4 (TR) in May 2013.

CM5542 (to be found in CLIK) is a document published in February 2003, entitled Consideration of Claims under S120 VEA “Repatriation Commission Guidelines”, and is relevant to this heading.

Another contentious issue is the use by delegates/claims assessors of third party “investigators” like Writeway. This particular firm, and others similar in nature, provide what are known as “Historical Research Reports” under Section 17 VEA 1986.

As for the “Correct Application of Section 120(1) VEA” previously quoted, a further document the “Correct Treatment of Writeway Reports 3.doc” is available on line.

In my experience, Writeway reports are requested by DVA delegates or legal representatives for the DVA, and are written without any consultation with either the claimant, or the claimant’s LMO or treating specialist/s, are long on innuendo and superficiality, and very short on fact, and are generally used in an attempt to “disprove” the veteran’s claim.

### **Medico-legal reports.**

Following on from “Writeway” in the paragraph above. the proposal to introduce “medico-legal” reports, where so called independent opinions are sought, but where there is no requirement for the independent medico-legal report provider to consider any evidence other than that supplied by the DVA in the veteran’s medical/hospital/service records, should be unilaterally rejected and the proposal forever condemned.

### **The Application of Different Acts.**

SRCA DRCA VEA MRCA are different Acts of Parliament covering different service with different criteria and different benefits apply. That is most likely to be because the conditions of service actually change, and many of the ADF members, past and present, have never been, and most likely never will be, exposed to enemy fire, mines, IEDs, 24/7 action and seriously deprived sleep patterns, and the general privations of warfare.

Surely the “veterans” who served under a specific Act, or various Acts, should be entitled to expect that any benefits or compensatory arrangements that were granted under that Act or Acts would be honoured for the life of the veteran. And furthermore, where there is an entitlement to a benefit to a spouse/partner arising from the death of that veteran, that the entitlement be honoured for the life of the spouse/partner.

I can understand that veterans and their families would have difficulty in comprehending the claims procedure where the veteran had service and entitlements under different Acts, but surely that could be overcome by consultation with ESO advocates. If memory serves me correctly, veterans making application to the DVA for a disability claim/s are advised in writing on the D2582 to consult an ESO for assistance in preparing the application/claim.

If the DVA can’t understand the process, we have a bit of a problem.

### **Separation from the ADF and a lack of opportunity in civilian life??**

Of the ADF personnel who sign off each year, how many have served solely as e.g. infantry riflemen, artillery gun numbers, armoured corps APC drivers, RAASC dixie bashers and so on. What useable skills do these people bring to employers in post service civilian life? Was a time when many ADF recruits learned a trade which would give them a walk up start in civilian life after they had completed their obligatory service, or 20 years.

How many of the signed off cohort have minimal, say less than six years service, and how can that possibly equip them for the civilian employment market?

More importantly, **is that situation the ADFs problem?**

### **DVA and ADF and never the twain shall meet,**

Two departments with totally different aims objectives and functions.

The ADF is in the business of the defence of Australia by whatever means are necessary.

The DVA is in the business of picking up the pieces left over from the actions of the ADF.

For the ADF to become involved with the current DVA responsibilities is like setting the dingoes to protect the sheep flock. In my view, a recipe for disaster.

## The Gold Card (and the so called) “competition”

The issues with the Gold Card are entirely of the Government/s making, and the benefits attached to that card are solely a decision of Government/s.

If a veteran is the holder of a Gold Card, and he/she dies of an accepted condition, or a condition determined to be caused as a result of his/her operational/active service, why should the surviving partner not be entitled to the benefit? And if the veteran is a TPI EDA POW double amputee etc as a result of his service, does it matter if he/she dies in a car crash? It is already legislated that the widow/er of a certain class of veteran has an automatic entitlement to the Gold Card and WWP, and means tested eligibility for the ISS.

In my opinion, the issues surrounding the Gold Card are beset with misinformation, envy, greed, a complete unwillingness by most, especially civilians, to understand the system, and a total indifference to the issues of those caught up in it.

There is no doubt that a percentage of veterans rip off the system, to the disgust and detriment of those who don't, however the DVA has the power to investigate, or have investigation undertaken on its behalf, where there is reason to believe that the system is being rorted. **But does it?**

## Department of Veterans' Affairs.

The reputation of the DVA has varied over the past 50 years, from unhelpful and dismissive, to a department that was a joy to deal with, to a centralised model in which no one takes willing responsibility for anything, and “privacy” legislation that destroys any useful function of the department.

In my opinion, the DVA does as good a job as it is allowed to.

If the politicians and the bureaucrats spent more time and energy.....and probably a lot less money.....in improving the efficiency and effectiveness of the DVA instead of buck passing, arse covering and point scoring, the veteran community would be much better off.

### **The Productivity Commission Compensation and Rehabilitation for Veterans**

It is, unfortunately, my opinion that “productivity commissions” in general, turn out to be anything but productive. The military, the ADF, does not bear comparison with any structure in civilian life, and if you need just one example, have a think about the situation in which Ben Roberts – Smith finds himself.

Maybe, instead of destroying two departments and creating new entities, which may, or may not, be any more effective than those which currently exist, an absolutely novel strategy could be considered.

Not all that long ago, more than a few government departments, NGOs and privately run firms, employed contracted professional “toecutters”.

These “toecutters” were brought in from outside the organisations, in some cases from overseas, and were specifically tasked with eliminating unnecessary processes, waste, underemployed or underachieving people, and basically ensuring the organisations achieved maximum production and efficiency.

Maybe, instead of reinventing the wheel, a proposal to overhaul and re-energise the existing structure might be recommended, and guidelines for actually achieving just that objective, be developed.

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GJ Newstead

24<sup>th</sup> January 2019.