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"This is a self-funding, non-profit association that uses only unpaid volunteers"

Patrons: Mr Ted Sorensen MP
Mr Tom Jehn OAM

Submission to Inquiry into Veterans' Affairs' Legislative Framework and Supporting Architecture for Compensation and Rehabilitation for Veterans (Serving and Ex-serving Australian Defence Force Members)

Preface

Veterans of Australia Association Inc (VOA) welcomes the opportunity to respond to the Issues Paper released by the Productivity Commission Inquiry into Veterans' Affairs' Legislative Framework and Supporting Architecture for Compensation and Rehabilitation for Veterans (Serving and Ex-serving Australian Defence Force Members).

In making this submission we have sought input from our members, advocates, veterans, clients and have taken the opportunity to address issues of particular concern.

The Draft Report released by the Productivity Commission (PC) is claimed to be bold in intent. It is our view that the draft report is beyond bold, it is ambiguous in intent and the vast majority of the recommendations made would be at a significant detriment to the veteran community and in particular the younger veteran community.

Introduction

1. In 2013 a group of younger veterans and their families formed an informal support group on the Fraser Coast. This was in response to an ever-increasing number of younger veterans and their families returning to the region and the limited availability of appropriate support services and groups. In early 2014 the support group decided to formalise by inaugurating the Veterans of Australia Association Inc (VOA).
2. A need to be an autonomous organisation was identified. This was due to several identified barriers between and within veteran organisations which are perceived by the public to be representing younger veterans on state and national levels within forums and advisory type arrangements.
3. Our association believes the younger veteran community still lacks appropriate advocacy and representation at these levels.
4. VOA was formed under the guidance of members of the Vietnam Veterans Association of Australia (VVAA) Hervey Bay City Sub-branch and our Patron Mr Ted Sorensen MP.

5. Presently the VOA assist in maintaining the Hervey Bay Veterans Advice and Social Centre (Veterans Drop-in Centre), which is an alcohol and gambling free environment for all current and former ADF, veterans and their dependants.
6. VOA is a bonafide ESO and provides a high-quality and qualified pension, welfare, advocacy and advice service for the younger veteran community, we assist and represent at all levels, that being the primary level, Veterans' Review Board (VRB) and the Administrative Appeals Tribunal (AAT). VOA encourage the VASS Committee to contact DVA and review the quality of our services.
7. As an organisation it is our belief that we are the only younger veteran organisation (post 1999 ADF service) providing what is considered, from an ESO perspective, traditional pensions, welfare and advocacy services. We hope this belief is not the case and if it is not, we encourage and welcome any other organisation to contact us.

Concerns

8. A recurrent and common concern of ours is that in recent times the majority of Government lead inquiries often fail to consider the input of the younger veteran cohort within findings and recommendations.
9. Some of the submissions and input by other veteran organisations is of concern and would be of detriment to the younger veteran community.
10. It seems common practice for the older generation of veterans to recommend and endorse change to the legislation and policy that is applicable to younger veterans (MRCA) yet any changes to legislation that covers the vast majority of older veterans (VEA) is opposed.
11. The intention of this view is not to be misunderstood, our organisation also opposes any changes to the VEA. However, it seems common practice for VEA eligible older veterans to recommend changes to legislation that does not affect them. Although good intentions are at the foremost, recent history has shown that often the experience of younger veteran advocates is overlooked, and consultation does not occur.

A Workers' Compensation Model

12. The Safety, Rehabilitation and Compensation Act 1988 (SRCA) is a workers' compensation act based on the needs of those within the public service. The SRCA is a workers' compensation model.
13. The SRCA should have never been made to fully replace the Veterans Entitlement Act 1986 (VEA) for defence force members with eligible defence service who joined after 1994.
14. The Military Rehabilitation and Compensation Act 2004 (MRCA) was made effective from 1 July 2004. Any service rendered post 1 July 2004 is only covered under the MRCA, again this is a workers' compensation act. Based on a workers' compensation model.
15. The SRCA was superseded by the Safety, Rehabilitation and Compensation (Defence related Claims) Act 1988 (DRCA). The DRCA mirrors the SRCA and again this is a workers' compensation act.

16. The SRCA, MRCA and now DRCA are all workers' compensation acts. They are not entitlement-based acts, which the VEA is.
17. The consequential effects of the recommendations made by the productivity commission are of grave concern.
18. The vast majority of the current issues raised within the draft report are a result of the DVA's transition to operate within the framework of a workers' compensation model.
19. The recommendation that the DVA be abolished and a stand-alone department based on a workers' compensation model would set way for a slippery slope for all current and future veterans, and their dependents.
20. The SRCA, MRCA and DRCA are all workers' compensation acts.
21. Many of the current concerns faced by veterans and dependants making compensation claims to DVA are due to these acts which take on all aspects of a workers' compensation act, with an array of policy that is enforced which is again in line with the adverse nature of a workers' compensation model.
22. The workers' compensation approach to veteran's entitlements have erred a government department that once was based on the entitlements of veterans and eligible dependents.

The Gold Card

23. The Gold Card must be retained and should be expanded to cover all ex-service persons and issued upon discharge.
24. The Gold Card was introduced as the most suitable way to cover the health care of eligible veterans when the Federal Government shut down the Repatriation General Hospitals.
25. Currently there is no entitlement to the Gold Card under the DRCA.
26. It is recommended at an absolute minimum that the Gold Card be extended to cover those who would otherwise be eligible under the VEA or MRCA.

The Veterans' Review Board (VRB)

27. It is argued that there should be no changes made to the VRB.
28. At present the VRB proceedings are not governed by the rules of law. This is pertinent to the veteran's wellbeing as it promotes a less confrontational and intimidating atmosphere while being less adverse to the veteran.
29. The PC makes recommendation that the 'role of the VRB should be modified to provide enhanced dispute resolution processes.

30. It must be noted that the VRB now have in place the Alternate Dispute Resolution (ADR). Our ESO's experience representing clients within this process has been effective. Positive outcomes for veterans have been reached based on the merits of their case and claims have been resolved within a timely manner.
31. Our ESO has found the ADR process to be very accommodating to the needs of veterans, as it is less confrontational to the veteran rather than that of a formal hearing. It also allows the veteran and advocate to resolve cases without the need for a formal VRB hearing.
32. The current arrangements with legal representation not be allowed to appear before the formal VRB hearing should remain in place.
33. Legal representation can advise, provide submissions and guide through the ADR and VRB process however cannot appear before the formal hearings.
34. At present the VRB proceedings are not governed by the rules of law. This is pertinent to the veterans' wellbeing as it promotes a less confrontational and intimidating atmosphere while being less averse to the veteran.
35. If legal representation could appear before the VRB it must be asked; how long would it be before the rules of law are applied to formal hearings?
36. Another point must be raised regarding veterans' legal aid. If legal representation was to be unsuccessful on behalf of a veteran at the VRB, this would be considered if the veteran was to apply for legal aid for the case to progress to the AAT.
37. Advocate's are presently doing a good job representing veterans within formal hearings at the VRB and it is recommended that advocates be afforded the opportunity to continue this good job.

Veterans' Legal Aid Arrangements

38. The current veterans' legal aid arrangements are inadequate to the needs of the veteran.
39. The monetary value of the legal aid (in Queensland) does not pay enough, lawyers simply do not want to take on cases for such little money. Veterans are being forced into 'no-win no-fee' arrangements as finding representation under veterans' legal aid is becoming very difficult, predominantly due to the limited amount it pays.
40. There are several distinct disadvantages to veterans with cases before the AAT. What must be highlighted is that DVA have unlimited funding when it comes to legal representation, yet the veteran is significantly limited.
41. DVA regularly hire contracted law firms to fight against the veteran and often advocates represent at the AAT and argue points of law against these firms.
42. What is even more concerning is that these firms often string a case along through case mediation right up until the day prior to formal hearing, then concede. This combined with the veterans' disabilities and what the veteran has already gone through to get his/her case to the

AAT, as you can imagine takes a significant toll on the veteran's mental health as well as the mental health of their family.

Standard of Proof

43. There is distinction between veterans who have rendered active or peacekeeping service and those who have not.
44. However, in terms of veteran entitlement, compensation and rehabilitation purposes an injury, disease or illness should be treated the same.
45. There should only be one standard of proof 'Reasonable Hypothesis'.
46. Entitlements, compensation, rehabilitation and legislation should not divide veterans into two classes: those who had rendered "active service" or "peacekeeping service" and those who had not.
47. There should not be the 2-tiered compensation system which is currently in-place under the MRCA, where those who had rendered "active service" or "peacekeeping service" and those who had not are compensated differently.
48. A veteran should be compensated on their level of impairment and this should not include whether the veteran served on operations or not.

No Liaison with the Work Force

49. At present there is no liaison with the current work-force of advocates and those representing the ex-service and veteran community at state and federal levels within forums and advisory committees. This is a concern amongst many practising advocates.
50. Those representing on forums such as the ESORT and Younger Veterans Forum do not seem to be equipped or experienced enough to be endorsing legislative and policy change. Recent history shows that such endorsements have sometimes been a significant detriment to the veteran community.
51. For the most part the individual representatives are not current practicing advocates and those that are, are not carrying out the same level of work as most advocates. Some individuals who are positioned in such forums have no experience with such roles whatsoever.
52. These representatives do not liaise with the current workforce of practicing advocates or the veteran community before endorsing legislative and policy changes. Furthermore, they are often endorsing changes that do not apply to themselves rather the younger generation of veterans and their families.
53. The veteran community are circulated "summaries" of ESO meetings, forums and committees', which are available on the DVA website. Agendas, minutes and documentation of such forums, committees and meetings are not available and upon request we are told that they are controlled items.

54. The veteran community and current workforce of advocates are virtually being blocked from contributing to these forums. In the past, when submissions have been made to ESORT, minutes have still been withheld, leaving those who make submissions in doubt and unsure of their information.
55. From our perspective it seems that for the most part the ESO Forums are catered for those with ego driven agendas and there is no liaison with the current workforce. It seems that to be included within any of these forums you must be part of the 'click'.
56. As no agendas, minutes or appropriate input is afforded to the current workforce of practicing advocates, we are often advised at the last minute about inquires, studies and surveys being carried out. For effective advocacy to take place there must be a direct line between these forums which would involve the sharing of agendas, minutes and documentation to all welfare and advocacy focused ESO's.
57. These statements are justified by an organisation who has attempted to represent the younger veteran community within these forums on several occasions, unfortunately we have been hit by road blocks from representatives within the ESO community, state government officials and DVA. Further documentation around this can be supplied to the PC upon request.

Veterans Under Multiple Compensation/Entitlement Acts

58. There is talk within the veteran community and from DVA officials that there is an additional compensation Act in the pipeline.
59. Introducing additional compensation acts is not recommended. However, this does not mean that we are against beneficial amendments to current legislation.
60. Presently a veteran suffering from service related diseases and/or disabilities with eligible service under multiple veterans' entitlement/compensation acts is essentially caught within a web of bureaucracy and chaos.
61. A veteran is discriminated against by way of entitlements, benefits and compensation simply because of the years he/she served.
62. Although promulgated otherwise, experience, history and having current cases before the AAT we can state and prove that each act is effectively used against each other to reduce the veterans' overall entitlements.
63. If changes are to be made it is recommended that veterans with service under multiple acts be granted the benefit to elect which act to claim under, then this act shall apply to their entire period of service. This is a simple and straightforward solution that will be a benefit to the veteran and the veteran family, who combined have sacrificed so much for our nation, often to the detriment of their own health and wellbeing.
64. Pending a veterans' eligible service, it must be known that it is the veteran's choice as to which act, he/she claims under. This is something that must not be hidden.

65. Veterans being caught under multiple acts is not a new thing. All Australian Vietnam Veterans have dual eligibility to claim under either SRCA (now DRCA) and/or VEA. As Vietnam veterans had war service and the VEA is the most beneficial legislation their claims have always been lodged under this act.
66. This is no different from a veteran who joined in the mid 1990's, had war service in East Timor in 99-2000, then discharged in 2003. This veteran would have dual eligibility under DRCA and VEA, DRCA for his peace time service and VEA for his service in East Timor. Under recent policy change, DVA are altering the primary claims of veterans who had war service in later conflicts that also have this same dual eligibility (i.e. in this case East Timor). The primary claims are altered by shifting them to be under the far less beneficial Act 'DRCA'.
67. It must be noted that this is being done without any consultation with the veteran or veterans' advocate.
68. As mentioned, this means that DVA delegates are rejecting the condition under the Act the veteran originally claimed, then accepting the condition under a far less beneficial act. This often has a significant emotional toll on the health and wellbeing of the veteran and their family, as the veteran is then forced to go through the reconsiderations and appeals process causing additional distress.

Response to Recommendations

69. DRAFT RECOMMENDATION 4.1 – This recommendation seems ambiguous in intent. The PC has recommended veterans to be covered under a workers' compensation model. History shows that a workers' compensation model is extremely adverse. The principals recommended are not congruent to the adverse approach that are inherent in a workers' compensation model.
70. DRAFT RECOMMENDATION 5.1 – Our ESO has no experience with such databases. Care must be taken when linking DVA directly to defence as when an injury, illness or disease is accepted by DVA, compensation usually follows. Such arrangement could make the claimant vulnerable and have impact on employment.
71. DRAFT RECOMMENDATION 5.3 – No comment.
72. DRAFT RECOMMENDATION 6.1 – This recommendation is supported.
73. DRAFT RECOMMENDATION 6.2 – DVA organised rehabilitation programs seem to be improving. However, the quality of the rehabilitation program and the experiences of the veteran participating in the program seem to have great differences. From our experience it seems that this typically comes down to the quality of the DVA contracted rehabilitation provider. It seems common practice that if the rehabilitation provider sees any sign of improvement, the veteran is deemed as able to return to some form of employment, although this recommendation often goes against specialist medical advice. If more data is collected, perhaps surveying rehabilitation participants is an option as this gives the view from the veteran and veterans' family perspective.

74. DRAFT RECOMMENDATION 6.3 – From our experience it seems common practice when a veteran is participating in rehabilitation while still serving, the ADF will hand over the rehabilitation case to a DVA rehabilitation provider. This is a practical and beneficial arrangement for the veteran.
75. DRAFT RECOMMENDATION 7.1 – It is unfeasible and unpractical to create a ‘Joint Transition Command’. As stated in point 54, there is no reason that the transition can’t be coordinated through the rehabilitation provider. With that being said, typically the only veterans that would be participating in a rehabilitation program are veterans who are being medically discharged. This means there would be a gap for those discharging administratively, these veterans should be managed by defence transitions cell. All veterans upon discharge whether medical or not should be advised and encouraged to speak with an experienced veterans’ Advocate, perhaps this could be part of the requirements upon transition.
76. DRAFT RECOMMENDATION 7.2 – This should be the responsibility of transitions cell.
77. DRAFT RECOMMENDATION 7.3 – This recommendation is supported. Often it has been the case that veterans have been rejected support when considering University study. This would be a good investment for DVA whilst assisting veterans to reskill, regain self-esteem, confidence and get back into the workforce.
78. DRAFT RECOMMENDATION 8.1– Acute caution must be taken in any such recommendation with appropriate consultation with the ex-service community. As per the comments made in this submission, there should be one beneficial standard of proof applied to all veterans. The DRCA and MRCA are adverse when considering compensation, unlike the VEA which is a much simpler legislation and much more beneficial to those with claims accepted under the act. Gold Card eligibility must be introduced for veterans under the DRCA.
79. DRAFT RECOMMENDATION 8.2 – Recommendation to carry out appropriate research is recommended, perhaps the RMA could partner with Universities and other medical research organisations for this. Any research must be bi-partisan to Government influence.
80. DRAFT RECOMMENDATION 9.1 - DVA appear to be doing this.
81. DRAFT RECOMMENDATION 9.2 - DVA appear to be doing this.
82. DRAFT RECOMMENDATION 9.3 – We support this recommendation as long as there is no negative impact to the veteran, such as rejecting a condition that liability was already accepted for.
83. DRAFT RECOMMENDATION 10.1 – This recommendation makes way for improvement at the primary level within DVA, however any changes to legislation must be made with caution, as often when legislation is changed it’s at a detriment to the veteran. There is no reason that legislation needs to be changed for this recommendation to be put into effect, perhaps this could be implemented through a Memorandum of Understanding between DVA and the VRB.
84. DRAFT RECOMMENDATION 10.2 – This recommendation is supported in part, streamlining the reconsideration and appeals process inline with the VEA would be of best suitability to all veterans.

85. DRAFT RECOMMENDATION 10.3 – The current role and procedures of the VRB are suitable. No changes to the VRB are recommended.
86. DRAFT RECOMMENDATION 10.4 - The current role and procedures of the VRB are suitable. No changes to the VRB are recommended.
87. DRAFT RECOMMENDATION 11.1 - We strongly oppose this recommendation. Such recommendation would inflict consequential effects upon veterans as detailed earlier in this submission.
88. DRAFT RECOMMENDATION 11.2 – This recommendation was addressed under ‘concerns’.
89. DRAFT RECOMMENDATION 11.3 – This council could be established under DVA. Workers’ compensation and insurance representatives should not be represented on this council. Workers’ compensation and insurance are adverbial, veterans’ entitlements and compensation are not and should not be intended to be adverse.
90. DRAFT RECOMMENDATION 11.4 – This recommendation is supported.
91. DRAFT RECOMMENDATION 11.5 – This recommendation is not supported. The recommendation appears to have underlying motive to reduce government expense.
92. DRAFT RECOMMENDATION 12.1 – This recommendation has ambiguous intent. Those eligible under the DRCA should be awarded the Gold Card. Changes to legislation are only possible if successful through parliament. If recommendations are made, they must include Gold Card Eligibility to veterans covered under DRCA.
93. DRAFT RECOMMENDATION 12.2 – This recommendation is not supported.
94. DRAFT RECOMMENDATION 13.1 – This recommendation is supported in part. All veterans under the MRCA should be covered under the ‘warlike and non-warlike’ rate of compensation.
95. DRAFT RECOMMENDATION 13.2 – This recommendation is not supported. Such a recommendation is detrimental.
96. DRAFT RECOMMENDATION 13.3 – The PC has just recommended that interim permanent impairment payments under MRCA be removed. This recommendation is what the interim permanent impairment payment is legislated for.
97. DRAFT RECOMMENDATION 13.4 – It is difficult to comprehend why the PC would make a recommendation that is detrimental to our most injured and vulnerable veterans. We oppose the PC recommendation to remove permanent impairment lump-sum payments to the veteran for dependent children and other eligible young persons under the MRCA. Such recommendation is detrimental to the wellbeing of veterans’ and their families. This payment is only made to a veteran if the veteran is of extreme disablement and more than likely unable to ever return to the workforce again. The payment is designed to assist the veteran provide a better quality of life for their child/ren enabling such assistance that would otherwise be unachievable.

98. DRAFT RECOMMENDATION 13.5 – This recommendation is opposed. The current lifestyle rating arrangements are suitable.
99. DRAFT RECOMMENDATION 13.6 – This recommendation is not recommended. Although the majority of veterans who are deemed eligible for the SRDP are awarded an offer of \$0.00 for the SRDP payment, it allows for a safety net for the most vulnerable veterans. The SRDP should not be offset against a veterans Commonwealth Superannuation payment.
100. DRAFT RECOMMENDATION 13.7 – It is difficult to comprehend why the PC would make a recommendation that is detrimental to our most injured and vulnerable veterans. We oppose the PC recommendation to remove permanent impairment lump-sum payments to dependants under the MRCA. Such recommendation is detrimental to the wellbeing of veterans and their families. This payment is only made to veteran if the veteran is of extreme disablement and more than likely unable to ever return to the workforce again. The payment is designed to assist the veteran provide a better quality of life for his/her child enabling such assistance that would otherwise be unachievable.
101. DRAFT RECOMMENDATION 13.8 This recommendation is opposed, the arrangements that are currently in place are suitable.
102. DRAFT RECOMMENDATION 14.1 – DFISA was introduced for this purpose. DFISA should be extended to cover veterans who receive compensation under the MRCA and DRCA, currently if a veteran has young children, their compensation is used against them under *Social Security Act 1991 if the veteran is in receipt of the Family Tax Benefit or child care rebate*.
103. DRAFT RECOMMENDATION 14.2 – The current arrangements under VEA and MRCA are suitable. However, the MRCA education allowance should be replicated and introduced under the DRCA.
104. DRAFT RECOMMENDATION 14.3 – The current smaller payment arrangements should not be changed.
105. DRAFT RECOMMENDATION 14.4 – This recommendation is opposed, many of these payments are to support our most vulnerable and disabled veterans, such a recommendation would be detrimental.
106. DRAFT RECOMMENDATION 14.5 – Attendant allowance should not be removed for those under the VEA. The household services arrangements that are under the MRCA should be extended to those under the VEA as often this covers things such as regular lawn mowing which is not available under the VEA.
107. DRAFT RECOMMENDATION 14.6 – The current arrangements under the VEA and MRCA are suitable however amendment should be made to bring DRCA in-line with MRCA.
108. DRAFT RECOMMENDATION 15.1 – This recommendation is opposed. The Gold Card must be extended to cover those under the DRCA.
109. DRAFT RECOMMENDATION 15.2 – This recommendation is not supported. The current arrangements are suitable.

110. DRAFT RECOMMENDATION 17.1 - This recommendation paves the way for a slippery slope for all current and future veterans, and their dependents. Whether we like it or not all veterans are covered under the MRCA from 1 July 2004. VEA should remain how it is, and the Gold Card should be extended to those under the DRCA. This would simplify the ridiculous recommendations made to create a 2-tired compensation scheme that would be a detriment to the entire veteran community.

Conclusion

- 111.** This submission covers some current concerns faced by the veteran community.
- 112.** In recent years wider policy and the contexts of what ‘we appear to be doing’ rather than ‘what we are actually doing’ appears to have taken priority. This refers to what the public perception is taking priority.
- 113.** Government Departments must not look at current concerns within the veteran community and react by responding with answers based on executive interpretation with little or no liaison with the grassroots of their workforce. Instead they must be proactive and work developmentally by consulting with the grassroots within the veteran and ex-service community to facilitate the collective voice by advocating on behalf of the people. Advocates who assist veterans’ and their dependents on a regular basis, if not daily, must be consulted as part of this process.
- 114.** The current ‘executive knows best’ attitude within government, ESO’s and veteran community must be brought to an end. The Veterans of Australia Association Inc hope the information contained within this submission is useful for the PC and duly considered for any future recommendations.

Kind regards,

Daniel Spain JP(Qual)
President & Advocate