



## SUBMISSION BY THE SPECIAL AIR SERVICE ASSOCIATION (WA BRANCH) TO VETERANS' LEGISLATION REFORM CONSULTATION PATHWAY

### CREATING A SIMPLER EASIER WAY TO SUPPORT VETERANS AND THEIR FAMILIES

The current veteran support system with three separate legislative associated policies and processes is cumbersome, confusing, in many cases unproductive and very sadly impacts negatively on many of the veteran community and their families. In some cases, it has resulted in veterans resorting to the most unfortunate type of protest being suicide.

This paper focusses on the importance of the thorough application of appropriate processes and need for the proper consideration of significant matters related to creating a simpler, easier way to support veterans and their families.

#### Introduction

By way of introduction, my name is John Burrows and I'm an Army Veteran with 30 odd years' service. After I retired from the Regular Army in 1988, I then combined several years in the Army Reserve in Western Australia with a public service and senior administrator career with the Commonwealth Department of Education and Training, University of Western Australia, and Shire of Esperance. In 2005, I retired from my working life as a Chief Executive of the Shire of Esperance mainly because of illnesses and injuries which I had sustained throughout my military service. Since then, I have been very graciously supported in many ways by the Department of Veterans Affairs.

My initial relationship with the Department of Veterans' Affairs (DVA) was not one of joy and from memory was very frustrating. In about 1995, after I'd been unsuccessful in my original attempt to have some service-related medical conditions recognised by DVA, I enlisted the assistance of an Advocate from the Returned Service League (RSL) in Perth. Unfortunately, this second attempt was again thwarted, and my claims rejected because my supposedly erstwhile Advocate hadn't completed the claim forms correctly. As a result, I decided to learn all about DVA, the relevant legislation and become an Advocate myself.

I've been a practising Advocate since 1995 and am currently a Level 2 Compensation Advocate with the Western Australian Branch of the Australian Special Air Service Association (ASAS Assn) located at the "House" in Swanbourne, WA. I'm currently committed to client contact on a Thursday at the Association House for approximately 4 to 6 hours and at least 3 to 4 hours on every other day from home. I'm also currently training and mentoring three fellow veterans who want to become advocates. My current workload is dictated mainly by urgent cases and the welfare of families.

### General

The intention of the Department of Veterans' Affairs (DVA) to create a simpler, easier system for the veteran community is timely and most welcome by the Australian Special Air Service Association (ASASA). The opportunity to contribute to this endeavour is really appreciated and every opportunity must be taken by the Department of Veterans' Affairs (DVA) to seek and utilise the knowledge and skills of the Ex-Service Organisations (ESOs) and the various experiences of the Veteran Community to complete this very worthy undertaking.

The stepped consultative processes involved with the compilation and subsequent legislation of the Military, Compensation and Rehabilitation Act 2004 (MRCA 2004) prior to its introduction in Jul 2004, is evidence of how successful those processes were and the practical result that was achieved. The use of MRCA as the base for this new Act is wise and shows that DVA is serious about improving the current situation.

### Purpose of this Submission

In this submission, I discuss and reinforce the major aspects and processes that should be included and considered in the proposed pathway, compilation and introduction of the new legislation which will make a simpler easier system to support veterans and their families.

### Productivity Commission's Recommendations

It's noted in the Update to Government Response to the Productivity Commission (PRCs) Report "*A Better Way to Support Veterans*" the third column in the document is just about the "Next Step". In many of the "*Recommendations remaining following the Interim Response*" it's intended for the "*legislative reform will be carefully considered and require broad consultation with the veteran community*".

From a practising advocate's perspective and the chance for a fair outcome, this is not only extremely encouraging but critical and essential. Sadly, some of the PRCs Recommendations already contradict the proposed Veterans' Reform Pathway of ensuring that there is going to be no reduction in the entitlements currently being received by Veterans! Referring "**ONLY TO VETERANS**" throughout the Pamphlet raises the serious question is it only going to be Veterans where there is going to be no reduction in entitlements, or does it include the families of veterans? Are the families going to be excluded?

Although the updated attached list of Productivity Commission Recommendations (PCRRs) recently issued by the Department of Veterans' Affairs (DVA) and referred to in the Veterans' Legislation Reform Consultation Pathway Pamphlet (RP) have in some part been addressed, they need to be continually tested against and where applicable referred to the overall philosophy of the Government's plan to make the system simpler, easier to support



veterans and their families. The impression one gets is that once PRCR has been considered then it has been addressed and finalised. That should not be a part of the process and each step needs to reconsider PRCRs against the overall intended outcome.

Examples of this is the payment of the Additional Lump Sum for Wholly Dependent Partners under Military Rehabilitation and Compensation Act 2004 (MRCA) and the household services being provided to our older veterans/ their widows under the Veterans' Entitlement Act 1986 as against what is available under the Defence Related Compensation Act (DRCA) and MRCA.

The intended removal of the Additional Lump Sum payment available to Wholly Dependent Partners and incorporation of it into one payment with the other entitlements received by a Wholly Dependent Partners is short sighted, impractical and shows no understanding of what happens to those entitled to that payment. The \$161,242.43 currently being paid almost immediately to eligible partners is reassuring and a financial relief at a very traumatic and stressful time. It allows for peace of mind in the resolution of their ongoing compensation package which can take up to two years!

The household services currently being provided to particularly older veterans and widows/ widowers under the VEA is moribund, ineffective, and impractical to say the least, furthermore it is totally inadequate and undignified. The VEA service imposes ridiculous restriction on such things as only rooms and areas being used by the veteran will be cleaned and when compared with the entitlement under DRCA and MRCA is inequitable and needs a total reconsideration! There are many other examples of inadequate entitlements and services contained within the PCR which have been ill-considered or not veteran/ family friendly that need to be reviewed and reconsidered if the new Legislation is to reflect equity and what is intended.

#### Ex-Service Organisation and Advocate Involvement

The opportunity that is being offered to the Government to fix the current veteran eligibility and entitlement morass is golden and shouldn't be missed. The inclusion of the Ex-service Organisations (ESOs) in the consultative process is commendable but at times is not complete and/ or is not truly representative.

As a long serving practicing advocate and ex-member of the National DVA Operational Working party and attendee at numerous DVA and ESO expert panels and forums there is a tendency for many ESOs to send senior Committee member Representatives along for consultations who don't understand the relevant Legislation, nuances, or practical aspects of the DVA processes and policies providing direction and support to veterans and their families. Their advice and comments, although well intended and admirable, often miss the real purpose of their involvement and don't achieve what is best for veterans and their families!

The consultation process must include experienced and knowledgeable advocates as the focus and main point of consultation in this Reform and the consultation pathway. Even if it means forming special expert advocate panels and giving the time to ensure proper and relevant consideration. An example of this is the complexities of eligibility and entitlements and support provided to wholly dependent partners, eligible children, and other dependents particularly when other sources of compensation and financial support is involved from Military Superannuation and insurances. Time taken due to the expected personal implications of a young veteran's death



and the associated processes involved can be daunting and are not understood by many ESO representatives.

Another example is the current **Offsetting and Tax Implications** (See attached diagram) which can affect veteran's entitlements; they can disadvantage veterans and their families. The application and impact are again not well known and could be an area for inappropriate consideration in the consultation pathway causing veterans and their families to again be disadvantaged.

Therefore, it is strongly recommended that every aspect of the consultation for this new Act and its corollary be given every opportunity to properly explore, review, compare, define, and achieve what is intended by this very valuable and timely process. The consultation process utilised in the compilation and subsequent legislation of MRCA included serious and considerable consultation with advocates through their respective ESOs.

The consultation process included a stepped process with each part of the new MRCA Act being posted out for comment and returned to DVA for compilation. If there was a large disparity or unworkable differences in combining responses, then further consideration and comment was requested and if necessary, advocates were invited to Canberra and other locations from all over Australia and took part in meetings inside Parliament House to resolve the issues. There was a final meeting in Canberra to confirm the final draft before it proceeded to legislation.

#### The Consideration and Inclusion of Entitlements

The Government's intention not to cut or reduce any entitlements is truly appreciated and is very reassuring by the Veteran community. Attached is a **Summary of Veteran and Family Entitlements** which confirms and gives a very clear picture of the reasons for the current confusion, misunderstanding and difficulties dogging the existing system. The duplication and then the inequitable availability of benefits and processes between the various Acts associated with different eligibility criteria, totally separate assessment systems and reconsideration/ appeal processes leave no doubt as to why this Reform needs to take place.

The attached Summary of Entitlements could be a very useful tool in the consideration, review, comparison, and identification of the benefits that need to be included in the single ongoing Act. Even though it may not be intended, it should not exclude any benefit from the VEA that is not included in the current DRCA and MRCA, particularly if its inclusion will not disadvantage but benefit veterans and their families.

#### Further Improvements to the Veteran Support System

The list of "*Further improvements of the Veteran Support System*" raises considerable concerns and again questions the validity of what is known and what is intended! One of the major problems and very significant issues with DVA amongst the Veteran Community is the lack of reaction and commitment to the many reviews that have been conducted, it's been involved in and the promises which has resulted in very little being achieved, a lack of trust and sincerity. In addressing the intention to make "*Further Improvements*" the following comments should be noted:

- *Providing the capacity to prescribe presumptively accepted conditions:* This is a very welcome initiative however it should be noted that this process and the associated



policy has been in place for some time. Sadly, it is often not adhered to for various reasons and a lack of knowledge on the part of delegates and associated Departmental Medical Consultants of what specific Defence personnel (Navy/ Air Force and Army) do. Common and current examples include when Special Forces and Infantry soldiers with considerable service (10yrs +), including war-like service on several occasions have their claims for spinal problems, special pain, hearing and tinnitus denied despite a reasonable amount of creditable evidence being submitted?

This is a significant problem which needs to be addressed in this process because of the naivety and lack of military knowledge by medical consultants and a significant number of new staff that have and are being employed by DVA. One Delegate recently, in conjunction with the associated medical consultant questioned why a fellow would have serious head injuries because a rocket propelled grenade (RPG) exploded on the side of a vehicle next to his upper torso? Simply neither of them knew nor had the willingness to read the attached description of the incident that caused the injuries nor had any inclination to GOOGLE it? All, that is requested is if a new policy/ system is introduced please make it happen!

- *Merging the existing Repatriation Commission and the Military Rehabilitation and Compensation Commission:* It seems imminent sense in consideration of the establishment of the proposed new system and is fully endorsed.
- *Making the existing Veterans' Review Board (VRB) the first point of administrative Appeal for all claims:* Even though this intention is supported and should be introduced for the proposed new system it should continue to be preceded by the current system of an in-house DVA reconsideration beforehand. Often there is an opportunity to review an unsuccessful decision, it can become obvious why the claim/ application failed, sometimes it's as simple of documents misplaced or lots by DVA.

Once it becomes clear and is obvious that a simple clarification or the addition of readily available evidence has every chance of reversing the result, then an advocate should be able to quickly compile that required evidence from the client's records or other available criteria/ sources and/ or evidence and submit a simple request for reconsideration; that can often achieve success. The reconsideration process can be very efficient and save a tremendous amount of time, formal effort and relieve the veteran and her/ his family of unnecessary stress and anxiety. Often trying to obtain additional medical and historical evidence through the medical system, particularly from specialists can be harrowing and even cause some veterans to give up. The retention of the reconsideration system before proceeding and appealing to a VRB is strongly recommended.

- *Establish a Ministerial Advisory Council providing advice direct to the Minister for Veterans' Affairs:* This improvement is again very welcome but again it beggars belief as to why it is seen as an improvement when for a number of years versions of similar committees/ forums have existed yet don't seem to have fulfilled their charter and/ or proper purpose. For example, what ever happened to the Prime Ministers Advisory Committee (PMAC), the Alliance of Defence Service Organisations (ADSO), the Ex-Service Round Table (ESORT) and so on? There is very little, if anything comes from these committees about what is discussed and has been

decided. If perhaps there had been some realistic and robust discussion, consideration and decisions made in these meetings/ committees and forums then perhaps the veteran support system wouldn't be where it is today! If it's intended to resurrect a Council for the purpose of advising the Minister, it would be most welcome but please make it happen and provide an opportunity for direct positive interchange with practical outcomes on behalf of veterans and their families.

- *Eradicating the confusion, chaos, misunderstanding and lack of client focus by DVA:* This is a highly recommended addition to improvements in Veteran Support System which should be a part of this Pathway! Not only should it be a priority but an early and ongoing part of the Reform Pathway process. Its effectiveness should be measured and monitored to ensure that veterans, their families, associated organisations, and relevant agencies are not experiencing the same feeling that they are currently having with the veteran support system!

### Conclusion

The Reform, as described appears to be practical, sensible, all-inclusive and must not leave any veteran and/ or his family disadvantaged. Moreover, it should eradicate the confusion, chaos and challenges that currently exist in just about all facets of the current system. Re-consideration of all PCR Recommendations whether already included or not must not be excluded in the development of the proposed new system. Attaining equity and fairness and ensuring that no-one veteran and or their family is disadvantaged by the development of the new system should be paramount and not only guarded and guaranteed by the Government, but also by DVA, the ESOs and their advocates, veterans, and their families. The consultation process needs to be robust, honest, and considerate of all views and not be exclusive in any way! The new system described in the "*Veterans' Legislation Reform Consultation Pathway*" is most welcome.

### Recommendations

It is requested that the following recommendations be considered:

1. That all Productivity Commission Recommendations, whether accepted or not be reconsidered in the consultation and development of the proposed new system.
2. That experienced compensation and wellbeing advocates be included in the consultative process,
3. That expert panels be formed to consider all and specific parts of the proposed new system,
4. The equity and fair consideration of all veteran and family entitlements ensure that there are no disadvantages or the cutting of any benefits, and
5. Finally, that further improvements in the newly proposed system include:
  - Ability to prescribe presumptively accepted conditions,

- Merging of existing Repatriation Commission and the Military Rehabilitation and Compensation Commission,
- Including a reconsideration process prior to preceding to the Veterans' Review Board.
- Establish a Ministerial Advisory Council, and
- Finally, eradicate the confusion, chaos, misunderstanding and lack of client focus by DVA.

John Burrows,  
ASAS Assn (WA Br)  
12<sup>th</sup> May 23.



# POTENTIAL OFFSETTING and TAXATION IMPLICATIONS

## SAFETY REHABILITATION AND COMPENSATION ACT (DEFENCE RELATED CLAIMS) 1988 (DRCA)

### VETERANS' ENTITLEMENT ACT (VEA)

- Disability Pension including Special Rate Pension
- Loss of Salary Payments
- Service Pension
- Income Support Supplement

- Incapacity payments (T)
- Lump Sum Compensation Payments
- Service pension

### OFFSETTING and TAXATION EXAMPLES

## MILITARY SUPERANNUATION (Milsuper)

### MILITARY REHABILITATION AND COMPENSATION ACT 2004 (MRCA)

- Incapacity Payments (T)
- Lump Sum Compensation Payments
- Special Rate of Disability Pension
- Service Pension

- Invalidity Pension (T)
- Superannuation Pension (T)
- Service Pension

**Please Note:** 1. Not included in this simple summary are payments from CentreLink, Medicare, Insurance, Salary Protection payments, payments from Workcover and other compensation authorities such as various State car accident compensation.  
2. (T) infers taxed.



## OVERVIEW OF VETERANS, WIDOWS, WIDOWERS and DEPENDANTS' DVA ENTITLEMENTS

<u>VEA</u>	<u>SRCA/ DRCA</u>	<u>MRCA</u>
Disability and compensation pension (0 to 100%) (Life)	Medical treatment (White Card)	Medical treatment (White/ Gold Card**)
Special/ Temporary Special Rate of Pension (TPI)(Life)	Incapacity Payments (Up to 65 yrs.)	Incapacity Payments (Up to 65 yrs.)
Intermediate pension (TPI) (Life)	Permanent Impairment compensation	Permanent Impairment Compensation
Extreme rate of Pension (EDA) (Life)	Dependant compensation for death	Lump sum compensation/ Disability pension (Option)
Household and attendant assistance	Medical and vocational rehabilitation.	Special Rate of Disability Pension (Option)
Medical and vocational rehabilitation	Household services and modifications	Household Services and modifications
War widow's/ Widower's pension (Life)	Vehicle modifications and purchase.	Motor Vehicle Compensation Scheme
Medical treatment (White/ Gold Card)	Travelling and accommodation allowance	Partial funeral expenses.
Education allowance for children (VCES)	Financial Advice (Defence Act)	Wholly dependent partner compensation/pension
Vehicle Assistance Scheme	Severe Injury Adjustment (Defence Act)	Other dependents
Funeral expenses	Attendant care services	Eligible Young Person's compensation/pension
Recreational transport allowance	Dependant Child Death Compensation/ pension	Dependents Medical Support (Gold Card*)
Travelling and accommodation allowance	Funeral Expenses	Education Allowance for eligible young persons
Bereavement payment	Veteran's payment	Schoolkids Bonus
Children's/ orphans pension	Work Bonus	Income Support Bonus
Additional Pension for specific disabilities	Families Acute Support Package	Attendant Care Services
Loss of earnings allowance		Student Start-up and Relocation Scholarship
Recreation Transport Allowance		Financial and legal assistance.
Attendant Allowance		Work Bonus
Clothing allowance		MRCA and Energy Supplement
Decoration allowance		Veteran's payment
Veterans and energy supplement		Families Acute Support Package
Work Bonus		
Families Acute Support Package		
Service Pension (Asset/ income tested)	Service Pension (Asset/ income tested)	Service pension (Asset/ income tested)
Income Support Supplement (Widows/Partners)	Income Support Supplement (Widows/Partners)	Income Support Supplement (Widows/Partners)
Carers allowance/ payment	Carers allowance/ payment	Carers allowance/ payment
<b>Military Super Lump Sum/ Pension</b> (Veteran, spouse/partner and children)	<b>Military Super Lump Sum/ Pension</b> (Veteran, spouse/partner and children)	<b>Military Super Lump Sum/ Pension</b> (Veteran, spouse/partner and children)