Feedback on the draft Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024

This submission deals with some of the 13 recommendations of the Royal Commission and then addresses some of the detail provided in the DVA Information Booklet on the draft bill.

Royal Commission Interim Report Recommendations

Recommendation 1: Simplify and harmonise veteran compensation and rehabilitation legislation.

Simplifying legislation is a laudable objective. Harmonising legislation is an obscure concept.

On Recommendation 1 the DVA fact sheet states:

"Australia's veteran compensation and rehabilitation legislative system is so complicated that it adversely affects the mental health of some veterans."

While this is true, the claim/application process for veterans is relatively straight forward and completed on departmental proformas. The anguish that veterans experience is with the DVA processing of the claim. The time taken, the negativity, the lack of understanding by delegates of defence service and the slavish adherence to medico/legal documents -SOPs.

In short, veterans can manoeuvre the claim process but it is obvious that DVA cannot do so effectively. A backlog of 42,000 claims clearly identifies where the primary problem exists.

To better understand the backlog problem it is necessary to categorise the 42,000 claims into:

a. Initial undetermined claims with DVA,
b. Claims/determinations subject to VRB review, and
c. Claims/determinations referred to the AAT.

Concerns about a complicated system and mental health exist. The time delays occur in each category and cause frustration. The review processes of the VRB are complex and generally require qualified advocates. The AAT system requires legal representation. As the timeframe grows so does the complexity and costs which increases frustration further. At any stage the veteran can withdraw. The system and the legislation seem to encourage this outcome.

Recommendation 2: Eliminate the claims backlog

The fact sheet states: *"DVA should eliminate the claims backlog by March 2024. The Australian Government should provide the necessary resources to DVA to allow them to reduce the backlog."*

Has the backlog been eliminated? – No. The suggestion that Government should provide extra resources - while it might reduce the backlog – only serves to perpetuate the inability of DVA to perform its role. It does nothing to change the culture within the department. The reduction of legislation to one Act will not solve this problem.

Government should examine closely the performance of DVA in carrying out the six tasks set with this recommendation. That performance would give a clear picture of the resolve and attitude of the department to the problems that led to the Royal Commission.

Recommendation 3: Improve the administration of the claims system

The Government should examine the administration of claims system to know what improvements have been or will be made by 1 July 2024. The veteran community knows.

Legislation, of itself, will not improve administration.

Recommendations 4-13 do nothing to enhance veterans entitlements but are internalising department funding and privacy matters.

The draft Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024

Single ongoing Act – amendments

The key objective of this Bill is to simplify and harmonise the legislation governing rehabilitation and compensation for veterans. This will be achieved by adapting the Military Rehabilitation and Compensation Act 2004 (MRCA) so that it is the 'single ongoing Act' for veterans' rehabilitation and compensation.

The objective of simplifying is laudable. What exactly 'harmonise' means as an objective is obscure.

The context of veteran service spans from World War 2 through to active service in Afghanistan. Current legislation and amendments were introduced to meet the extant needs service personnel. Service life, conditions, training, deployment and operational service have varied dramatically in 80 years.

The notion that a single Act will now cover all requirements of all veterans, currently serving and retrospectively for 80 years, is unrealistic. It has the potential to create circumstance where a veteran falls outside the prescriptions of the Act and its regulations. The department will apply the provisions strictly. The veteran will not an improved claim system.

Various provisions which had previously operated differently across the MRCA, the DRCA and the VEA will be standardised. This includes retaining war widow/er auto-grants, and posthumous grants of Permanent Impairment compensation [Schedule 1].

It is unclear what "standardised" means. If the most beneficial provision is not retained some veterans will suffer a detriment.

Presumptive liability

Proposed changes will see the MRCA enhanced for various entitlements. Enhancements include:

2. The introduction of 'presumptive liability' which means the Repatriation Commission would be able to specify injuries and diseases that can be determined on a presumptive (in other words – automatic unless proven otherwise) basis where they are known to have a common connection with military service.

This process is unclear. Schedule 2 is unclear how presumptive liability works in relation to statements of principle. As stated above, it is the Repatriation Commission that has this discretion of presumptive liability. It is not vested in DVA which will receive and examine the claim initially.

It is assumed that presumed liability will nullify the application of factors in Statements of Principle (SOP). SOPs are disallowable instruments which are tabled in both Houses of the Australian Parliament and they are binding on the various decision makers. Until specific diseases and injuries are designated as resumptive liabilities there is no clear enhancement to veterans in the claim process.

s352T(1) gives the VRB latitude in dealing with technicalities. S352(2) removes this latitude by allowing the Repatriation Commission to rely on SOPs. This would have the effect of SOPs overriding presumptive liabilities.

The potential to complicate the application of presumptive liabilities is that SOPs are developed by the Repatriation Commission which is to be subsumed into the Repatriation Commission. In s27A the Repatriation Commission **may** determine what diseases and injuries are attributable to defence service. It may not. As written the provision provides no certainty.

The claim assessment process would benefit from presumptive liabilities being promulgated as SOPs are. The recognition of presumptive liabilities by DVA delegates in the initial assessment of claims could only simplify claim processing.

The Review pathway

If the claim is refused and the veteran so choses, the determination can be appealed to the Veterans Review Board (VRB). At that stage the veteran becomes the applicant and the Repatriation Commission becomes the respondent.

At any subsequent dispute resolution/hearing the Repatriation commission is the respondent party but it need not (and currently does not) attend. When it does not attend, the VRB acts as its agent and defends the DVA determination as opposed to acting as an independent reviewer.

The draft bill retains this system. At s353D(4) a review can be dismissed by the VRB if the applicant does not attend the hearing. However, if the respondent does not attend the hearing a finding for the applicant is not made due to a lack of defence of the determination. As such, the VRB is not acting as an independent reviewer but acting as an agent for the respondent.

In the conduct of its dispute resolution/hearings, the VRB claims its independence from DVA and the Repatriation Commission. The reality is that its actions do not justify the claim of independence/impartiality. The funding/budget administration of the VRB and Repatriation Commission through the DVA create the perception of dependence and not one of impartiality.

Without clarity as to the stage in which a claim transfers from DVA responsibility to Repatriation Commission in the review process it is difficult to see any improvement in the administration of claims.

Merging commissions

It is proposed that the powers and functions of the Repatriation Commission and the Military Rehabilitation and Compensation Commission are consolidated, with the Repatriation Commission (originally established in 1920) continuing. This change would give administration of all veterans' rehabilitation and compensation legislation to the Repatriation Commission.

The merging of commissions creates within the Department of Veterans Affairs a large and powerful Repatriation Commission. Few veterans believe that the DVA is a voice, advocate or a governmental representative of veterans. The Repatriation Commission and the Repatriation Medical Authority have been and will continue to be adversaries to veterans.

One of the roles of the Repatriation Commission is to ensure that in compensating veterans for Defence related medical problems, the judicious spending of public monies is applied. With the merging of commissions into the Repatriation Commission and that commission coming under the auspices of the DVA, this role will become DVA's role. That perception exists today. It will be more widely held with the merging of commissions.

The Repatriation Commission and the DVA should be discrete entities, budgeted separately. Effective administration of veteran issues would be achieved by allocating this responsibility to the Department of Defence.

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