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The Secretary
Department of Veterans' Affairs
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28 April 2024

Dear Secretary,

Legislative Reform Programme – Single Ongoing MRCA

We appreciate the initiative of the Government in moving towards a single suite of veterans' compensation legislation and commend the Department for the considerable effort it has taken to explain the programme and consult with veterans and families.

At the same time our expectations are that, post 2026, the single ongoing MRCA may not necessarily be the cause of a significant reduction in the current extensive and unacceptable delays in the processing and determining of claims for worker's compensation made by veterans.

Is MRCA "Fit for Purpose" in the Event of a Defence Emergency?

Whilst we applaud the move to a single Act we note that it continues to be a complicated piece of legislation. We draw attention to Recommendation 4.1 of the Productivity Commission Report No 93 and the seven principles that the Commission recommended should underpin a future workers' compensation system for members of the ADF.

We are of the view that the simplified MRCA will continue to not always meet all those principles, especially administrative efficiency, and financial sustainability and affordability, and we doubt if the single Act, the MRCA, is fit for purpose in a defence emergency that involves a significant expansion and size activity level of the ADF.



On two occasions in the last century Australia found itself having to raise substantial forces due to its military threats and commitments. In view of the numbers involved on each occasion the veterans' compensation legislation at the time was found to be either non-existent or severely wanting and new legislation was required.

The post-World War II situation also found existing veterans' legislation wanting and further changes were made. Eventually the Veterans' Entitlement Act 1985 provided a short period of legislative stability and then along came DRCA, SRCA and MRCA.

It is suggested that in the event of a future defence emergency and the prospect of a significant increase in the numbers of servicepersons in the ADF, the single on-going MRCA will also be found wanting. Apart from the complexity of the Act a simple example is the potential unaffordability of lump sum payments as compared to pensions.

There is a need, when this consolidating legislation has been passed, for the Government to address new legislation that is less complex, can result in the faster processing of claims for deaths and injuries and is affordable in a time of a defence emergency.

Presumptive Liability

We support the introduction of the concept of presumptive liability and encourage the department to consider ways and means of expanding this. The Government has endorsed the concept of the Unique Nature of Military Service and presumptive liability is an appropriate response.

Medical Records

We are familiar with difficulties experienced by veterans whose claims were delayed or refused because there was little or supporting evidence in their medical records of the wound, injury, ailment or incident on which their claim was based.

The importance of the provision of medical documentation in support of a claim for compensation might have been a reasonable policy in those days when worker's compensation legislation for members of the ADF was focused

separately on either their war or warlike service, (that is, when peacetime activities were covered by the Commonwealth Employees' Compensation Act.

However, the importance of medical records is inappropriate when the one piece of legislation, MRCA, aspires to cover all the circumstances of employment in the ADF.

This is because, and perhaps far more likely in Army, incidents and accidents can occur in combat where there are no medical records although there may be medical staff, but that medical staff may be limited to, in fact, the platoon stretcher bearer or just the soldier who was carrying the first aid supplies.

In the case of Navy, medical documents travel to the same ship as a person is posted to, and in the case of very small vessels, (eg., patrol boats) to the home port. Most frigates do not carry a doctor so the sick berth attendant (SBA, or current title), holds the medical record. In the case of patrol boats, if a sailor was injured when the ship was not at its home port, an injury could well go unrecorded, while in the case of a frigate, an SBA may not have the technical skills to describe fully an injury. We doubt if electronic recording is a practical solution to this problem, especially in the case of combat activities.

The best that might happen after an "incident" in the field, which could be a wounding, with or without evacuation, or, as in Vietnam, being sprayed with a chemically dangerous herbicide or pesticide, is for a soldier to later attend a Regimental Aid Post and report the event. Such reporting may not result in an accurate record of the soldier's situation and thus lead to later difficulties in establishing a claim

In any event, medical records are generally well-controlled and the persons authorised to have access to them are limited, by direction. At the time of the Vietnam War Military Board Instruction 142-3 dealt with medical documentation. Access to Army medical records (para 12) is normally only for the use of medical officers or other authorised members of the medical services.

Further, para 13 of MBI 142-3 states that "A member is not to be given access to his own medical records.", so how could a veteran be expected to know if the disability for which he is making a claim was recorded in his medical records or not? Australians working with Allies can make this situation worse, as the author can attest.

We recommend strongly that this matter be addressed specifically in the current legislative package **by the insertion of a clause** in the amended MRCA that for a claim for compensation made due to an illness, wounding or incident that occurred under war-like conditions, an absence of medical documentation recording that event is NOT by itself a determining factor in not approving that claim.

Yours faithfully,

Max Ball

National President

cc.

The Hon Matt Kehoe MP, Minister for Defence Personnel and Minister for Veterans' Affairs.

The Hon Matt Thistlethwaite MP, Assistant Minister for Defence and Assistant Minister for Veterans' Affairs.