Compensation and Rehabilitation for Veterans

Productivity Commission May 2018 reply

Priority objectives for Veteran Support

1. Health and wellbeing of the veteran.
2. Rehabilitation.
3. Occupational Re-training / job placement.
4. Compensation.
5. Support/compensation to veteran families.

Principles to Support Legislation and administration

1. Start point should always be giving the veteran the benefit of the doubt.
2. Need to streamline administrative and legislative obstacles between DVA and the Department of Defence.
3. Timeliness of the process.
4. Standardise the differing acts into a single piece of legislation.
5. Minimise the bureaucracy of the administration, at a minimum a veteran's interface with DVA should be a single point of contact (case manager).
6. Standardised process or processes.
7. Simplified review process.

Current deficiencies in the system

1. Lack of knowledge or simple confusion on how the current three acts are applied from within the veteran community.
2. Discrepancies in how the current three acts are interpreted by all parties.
3. Contradictory terms, language and standards across all three acts.
4. Lack of sufficient training for DVA delegates.
5. High turnover of DVA delegates or the inability to retain experienced delegates in this role.
6. Stove pipe structure for dealing with claims within DVA, one delegate for each of the acts, another decision maker for Permeant Impairment, another for incapacity payments, another for SRDP. This often leads to pertinent information from the claim being either not passed through these stove pipes or the same information being missed.
7. Request by DVA for duplicated information.
8. Lack of flexibility for delegates to overturn their own determination when it is pointed out that a simple administrative error has been made.
9. The entire process from claim submission to determination needs to be streamlined, takes on average three months for a non-complex claim then another three months (generally longer) to go through the appeal process.

Chairman: Wayne Taylor
Vice Chairman: David Rye
Secretary/ASO: Anita George

138 Melbourne Road, WODONGA VIC 3690
ABN: 60 752 962 622

Phone: 02 6056 5285
Fax: 02 6056 5286
Email: humevets@tpg.com.au

Are advocates effective?

1. Yes, they provide a human interaction for the veteran. DVA provide an e-mail or voice message. Advocates get to see the emotional state of the veteran and their families and can access support mechanisms if required.
2. Advocates are trained (and experienced) across all three acts, unlike most delegates with DVA.
3. Advocates (should be) providing non-emotional and rational interaction with DVA delegates.

DRCA

The DRCA does not refer to a serving person as a veteran, under the Act they are an (employee) employee means a member of the Defence Force.

DRCA Currently uses a significant degree to injuries and diseases, whereas the VEA and MRCA only require a Material degree.

On or after 13 of April 2007 the SRCA; now DRCA, applies a significant degree.

Prior to the 13 of April 2007 the DRCA applied a material degree.

The SRCA 1988 Act was implemented on the 7th of April 1994 with a material degree.

The 1971 Act applies any contribution.

In order to apply consistency across the three Acts the DRCA should apply a material degree.

A case currently being appealing to the AAT and prepared by the Centre, the following issues are unresolved:

Onset date and the level of contribution required as determined by the ACT.

Opposing specialist medical opinions on the cause of Osteoarthritis to the knee. The use of Statement of Principles would have prevented this from occurring.

Whether the veteran meets the notification requirement under the DRCA. The DRCA places notification requirements on the employee.

As noted in the attached Issues, Facts and Contentions lodged by the applicant, the contention of an altered gait causing osteoarthritis in the right knee as a result of the accepted left knee and subsequently rejected was the same contention used when a claim was lodged for the left hip. The left hip was accepted as service related. The second specialist opinion that what used for the reconsideration of the right knee and subsequently rejected, was the second opinion used in support of the left hip claim and subsequently accepted. SoP would remove the specialist's opinions and leave the decision, in part to science. The Issues, Facts and Contentions as provided on behalf of the Commission has also been attached.

In order to process a DRCA claim it requires the liability team, needs assessment team, PI team and potentially the incap team.

VEA

The VEA does refer to a Veteran.

The VEA only requires a Material degree to injuries and diseases.

Special Rate of Pension S23 (1) (c) and s24(1)(c) (alone test)

Considering the beneficial nature of the Act as re-cited in Repatriation Commission v Richmond [2014] FCAFC 124 at [92], this aspect of the legislation (alone test) is unduly restrictive as interpreted by the courts, in that if a veteran has a condition that has been accepted under either the DRCA or the MRCA and even only secondary in importance and of its own does not prevent the veteran from working, the veteran's eligibility for Special Rate will be displaced; see Repatriation Commission v Richmond [2014] FCAFC 124 at [57] [58] and [59]:

[57]The first limb of s 24(1)(c) requires the decision-maker to decide whether the veteran's war-caused injury or disease (or both) *alone* prevented him or her from continuing to undertake the remunerative work the veteran was engaged in. The alone element of the test is concerned with whether or not there is more than one cause of the preventative effect that the veteran claims has resulted from his or her war-caused incapacity.

[58] The first limb provides that to qualify for the special rate, the preventative effect must arise from the veteran's war-caused incapacity alone, and not from other non war-caused preventative factors as well. If other non war-caused factors contribute to the preventative effect, even if they are only of secondary importance and not of themselves sufficient to prevent the veteran from engaging in remunerative work, their presence will deny the veteran eligibility for the special rate.

[59] In our view the authorities on the alone element of the test in the first limb are clear. In *Cavell* (at 539-540) Burchett J expressly approved the Tribunal's statement that the use of "alone" in s 24(1)(c) means that any non war-caused factor which plays a part in the applicant's inability to work or to obtain and hold remunerative employment is sufficient to displace the applicant's case for a pension at the special rate.

When read in conjunction with recent court decisions dealing with s24, the complexities of the alone test can be seen in Veterans' Entitlement Law 2nd Edition Creyke. R. *et al* The Federation Press and Softlaw Community Projects 2008 pp290-292. As a consequence of the interpretation of s24 (1) (c) and the flow-on to s23 (1) (c) (alone test), veterans are being disadvantaged when seeking the Special Rate of Pension (TPI).

Both VEA and the MRCA are assessed using the same SoPs and criteria, yet it only requires one MRCA accepted condition AND IT MIGHT BE THE ONLY CONDITION THEY HAVE ACCEPTED UNDER THE MRCA, to displace a veteran from the Special Rate OF Pension under the VEA.

There is no (alone test) under the MRCA when assessing SRDP.

Under the VEA a single delegate will determine liability, impairment and Special rate.

MRCA

MRCA refers to a member of the Defence Force.

The MRCA only requires a Material degree to injuries and diseases.

When a severely incapacitated veteran is assessed by DVA, the first part of the process is to determine the level of incapacity. During that process a specialist/s suitably qualified in the field/s being assessed (for example a psychiatrist) will comment of the veteran ability to work. At the Centre we see numerous cases where for instance a Psychiatrist remarks that the veteran will never be able to work again due to their accepted service caused condition/s. Once the assessment is complete and the veteran meets the impairment rating requirements, the claim is then sent off for SRDP assessment and even though a specialist with many years of medical training indicates that the veteran will never work again, the veteran is then sent to a Rehabilitation consultant for assessment of the veteran's ability to work. This causes undue frustration and grief to the veteran and I believe added cost to the Commission.

A recent example of this that the Centre was involved in, was when a veteran was assessed by multiple medical Specialist in different fields of expertise for PI. All Specialists indicated that within their field of expertise that the veteran was not able to work again. Once the PI assessment was complete, the documentation was forwarded to the SRDP section for assessment. The veteran was required to then attend an appointment with a Rehab consultant. The Rehab consultant flew from Sydney to Albury to conduct the assessment. The assessment was conducted at the Albury Officeworks conference room. The conference room is enclosed by glass windows, with no privacy and the staff at Officeworks would

not allow the doors to the conference room to be closed during the assessment, for their own reasons which are unclear. The veteran was eventually granted SRDP with a significant amount of involvement from the veteran's compensation advocate here at the Centre, questioning why this had occurred.

Gold Card

A veteran under the VEA and MRCA can receive a Gold Card covering all conditions. A veteran under the (DRCA only) will only receive a White card specific to their accepted conditions.

A veteran that has conditions accepted under all three Acts or even just the DRCA and MRCA and has a combine impairment rating of 60 can obtain a Gold card.

If a veteran under the VEA has conditions accepted under the DRCA and the conditions that are accepted under the VEA are sufficient to either equal 100% of the General Rate or qualify for intermediate Rate, Special Rate or EDA, the veteran will receive a Gold card; the conditions accepted under the DRCA will generally displace the veteran's entitlement to the Special Rate of Pension.

In order for a claim to be completed under the MRCA it requires the liability delegate, Needs assessment team, PI team and potentially the Incap team and SRDP team, all of which add time to the final decision during the transfer process.

Internal review Section 31 (VEA)

Numerous internal reviews that fail are accepted at the VRB and particularly at the ADR process before hearing. I believe that if these appeals can be sorted at the ADR process, they capable of being sorted at the Internal review Section 31 process.

Training

Military Compensation is integral to a veteran's medical discharge and intertwined to various degrees within all three Acts and particularly within the MRCA and DRCA compensation and incapacity section of the Acts. Units of competency added to the current ATDP training regime would provide a more holistic approach to veteran advocacy and transition.

Composed by Wayne Taylor and Dave Rye

Wayne Taylor
Hume Veterans' Information Centre

Chairman and Advocate
Level 3 APTP
Level 4 TIP

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