

Submission by Mr H. P. M. Hoebee
in Response to
Productivity Commission Draft Report
A Better Way to Support Veterans
December 2018 ¹

“A service person’s calling is unique.”
(Defence Force Welfare Association, 4 October 2010)

Introduction

In view of the short time available to comment upon such a complex and important review, its 704-page length and the intervening Christmas / New Year holiday period, I can only offer brief initial thoughts on this Draft Report.

The nature of its Terms of Reference and Issues Paper, the public utterances of one of its Commissioners and now this Draft Report, make it hard to escape the conclusion that the inquiry was established and conducted to justify a pre-determined outcome. The timing and brevity of the response period does nothing to dispel that impression. All this appears to be inconsistent with Commission’s independence, and the tone and thrust of many of the submissions the inquiry received. Given the significance of the draft Findings and Recommendations in the Draft Report to their future compensation and support, current and future veterans deserve and expect better than this. None of them would want an outcome from this inquiry like that in which:

The operation was a success but the patient died. ²

Discussion

The focus of the inquiry is on how well the system of support for military veterans is meeting its aims and whether the system is likely to effectively and efficiently support veterans in the future. Those of the inquiry’s recommendations that would lead to improving the wellbeing of veterans over their lifetime and achieve better outcomes for them and their families, are to be commended. However, the entire inquiry hinges largely on the question of resources, and the degree to which government is prepared to improve the Nation’s investment in good outcomes for veterans and their families. The Australian community expects nothing less.

The Draft Report makes quite assertive Findings and Recommendations, which could be interpreted as being ideologically based and aimed merely at making savings, especially those Recommendations concerned with ‘removal’ of current provisions. I sincerely hope that the Commission’s final Report offers none of these. Fully costed and evidence-based recommendations would be preferable, and provide greater confidence that their acceptance would result in real improvement in support and compensation for veterans.

The terminology used in the Overview is ill-defined. What is actually being inferred by statements that “the environment in which the system is operating has changed”, that “[t]he nature and tenure of military service has changed” and that “[t]he

¹ Productivity Commission 2018, *A Better Way to Support Veterans*, Draft Report, Canberra.

² Attr. M.D. McCorcle, 3 Jul 2002

community of Australian veterans and their families is also changing”? In particular what “different needs and expectations” does the new generation of veterans really have that differ so much from those of their predecessors?

Of course the military and society are changing ³, but is it proven, or merely asserted, that such change necessitates a wholesale change of the veteran support system?

Do changes in approaches to social insurance and the availability of mainstream health and community services really need to impact on the special needs and expectations of veterans and their families, by altering significantly the arrangements currently in place to meet their needs?

This Draft Report does not inspire confidence that the implementation of a number of its recommendations will result in any better ‘Support to Veterans’, or more precisely, a better ‘system of compensation and rehabilitation for veterans (Serving and Ex-serving Australian Defence Force [ADF] members)’ (Commission Terms of Reference) ⁴. It is imbued with an ideological approach that appears to focus on administrative process, efficiency and a clear attempt to achieve greater economy (‘financial sustainability and affordability’). Effectiveness for veterans, presumably inferred by the word ‘better’ in the comforting title of the Report, seems to rate a lowly last. [R 4.1] Perhaps it was actually intended to mean ‘cheaper’.

While the Commission acknowledges the ‘*The Unique Nature of Military Service*’ ⁵, this does not come through strongly in the Report. I wonder whether it is also really recognised, understood and provided for by those administering the system. I doubt that the drafters of the Report even understand, let alone respect the sacred trust inherent in the *Covenant* ⁶. In that regard I cannot but emphasise with the Totally and Permanently Incapacitated (TPI) Federation’s Facebook post of 21 December 2018. ⁷

In my experience, and judging from the submissions, the system of veteran compensation and rehabilitation by and large works reasonably satisfactorily. The three factors which appear to have most effect on the less than ideal quality of its performance are due in large part to the continual reductions in the Department of Veterans’ Affairs (DVA) staffing, its lack of some key essential resources, especially IT, and the differences between its various pieces of legislation, and their complexity.

The fact that the system may not be operating at peak performance at present is no reason to dismantle it entirely and replace it with an entirely new and unproven system. Logic and intuition suggest that it would be far more efficient (and probably economical) to make incremental improvements to the system as it broadly exists now, admitting that some processes might need to be overhauled at the same time. I believe that is what most veterans would want, including those who may have been poorly served in the past. This is reflected in many submissions.

3 As Heraclitus said: “The Only Thing That Is Constant Is Change”

4 Productivity Commission 2018, *A Better Way to Support Veterans*, Issues Paper, Attachment A

5 Best described by the Defence Force Welfare Association’s [DFWA]: *The Unique Nature of Military Service*, 4 October 2010, copy **attached**.

6 A good draft DFWA version with accompanying explanation: *A Proposed Australian Military Covenant* (May 2018) is **attached**.

7 <https://www.facebook.com/tpifed/> copy **attached**.

It is difficult to understand how the recommended creation of an entirely new set of bureaucratic entities associated with the Department of Defence would necessarily bring about improvement in well-being for veterans. Surely it would be far more efficient and less costly to make strong improvements in those areas where the existing entities may be performing below par? Given that deficiencies are being addressed already, is it really correct to assert that the DVA and its existing systems are no longer fit for purpose? Indeed, in its efficiency review of the DVA, the Australian National Audit Office (ANAO) notes that “[t]he majority of DVA Rehabilitation & Compensation (R&C) services are being delivered to veterans and their dependants within DVA’s time based performance targets.” DVA agreed all recommendations made by the ANAO.⁸

There are deep links to the *Covenant* in the ‘unique’ conceptualisation of military service, and I don’t think that ADF personnel and veterans would take kindly to outsourced ‘services’ being used to deliver their entitlements. These should not be subject to the vagaries of annual (limited) budgeting [viz. NDIS⁹]. Instead, they should be funded to an un-capped budget. Our most severely wounded or maimed veterans can never again be ‘well’ and can never be rehabilitated to work. They and their families must continue to be very well compensated and provided for, for the rest of their lives. There can be no skimping on this! It is not ‘generosity’. How offensive is that word ‘generous’, when used in the context of legislated entitlements, specifically provided for by the Parliament itself!

I am aware that this Draft Report has caused disappointment in the veteran community (for example Post-Draft submissions #DR177 by D Watts. #DR158 by S McLeod; and many others). I consider that the Report is far too heavily based on a false assertive premise that: “The veterans’ compensation and rehabilitation system is *not fit-for-purpose*” adding that it requires fundamental reform. Is it really so far out-of-date that it is *not working in the interests of veterans* and their families or the Australian community”, and that it “needs *substantial* reform”? My emphasis. (Overview, and Draft Report page 2)

Based on their observations of severe reductions in DVA staffing levels over a number of years, the veteran community as a whole are suspicious of reviews of matters impinging on their conditions of service: for good reason, as the watchword for inquiries such at this seems to be erosion, rather than enhancement [or ‘better’]. They therefore feel justified in suspecting that this one also is predicated on reducing, rather than improving their conditions of service and ‘repatriation’ compensation and support.

Behind the comforting statement on page 5 of the Draft Report that “... no veteran or dependant of a deceased veteran who currently receives a benefit or entitlement will be worse off under our proposals”, is hidden the likelihood that current ADF personnel, our future veterans and their dependants, are not likely to be so well treated. Malcolm Whitney (Post-Draft submission #173) says as much: “... the objective of the recommendations appears to be more about government cost cutting rather than veteran’s welfare.” Veterans particularly fear outsourcing of their support

⁸ Efficiency of Veterans Service Delivery by the Department of Veterans’ Affairs, 27 June 2018

⁹ See for example: *Autism support scaled back as NDIS tries to rein in blowout*, The Australian, 24 January 2019 p. 1

services to **myagedcare**, NDIS, Centrelink or profit-driven commercial contractors and private insurance companies which have no appreciation of the nature of their service and would not be committed to a veteran centric approach.

The ADF not being an industrial employer, there is no ‘workplace agreement’, or ‘contract of employment’ to cover its personnel, let alone a union to protect their interests. All of their protections are instead contained in the *Defence Act 1903* and various pieces of Commonwealth legislation dealing with their engagement, service, superannuation, compensation, rehabilitation and repatriation benefits.

ADF personnel expect and trust that the provisions of the legislation will be properly observed and delivered to them by those responsible for that function - currently the Department of Veterans’ Affairs [DVA] and the Commonwealth Superannuation Corporation (CSC), in the main; and of course the ADF and Department of Defence.

Although not limited only to these legislated provisions, they have a most significant impact on those who are killed, severely wounded or maimed (physically or psychologically, whether during war service, in peacetime operations, or in training) and their families. Many of the effects may last a whole lifetime, potentially from an early age.

Key points that I wish to highlight are:

- The particular effects of military service in war (or peace) highlight the need for a veteran centric approach, quite different from that displayed in much of this Draft Report. [See also Post Draft submission #DR179. paras 26, 42 and 43.]
- The Draft is founded on the premise that “ [t]he veterans’ compensation and rehabilitation system is ***not fit-for-purpose***.”¹⁰ (Emphasis added). DVA’s own reviews tend not to support this, notwithstanding that there are known shortcomings in its performance, which are being addressed in a cycle of continuous improvement [Submission #125].
- Instead of ***not fit-for-purpose***, it might be better to approach this review from a premise that the veterans’ rehabilitation and compensation system is ***inadequately funded***. [R11.1]
- The system should not be underpinned mainly by ‘financial sustainability’ and ‘affordability’! The balance must be in favour of achieving improvement in the wellbeing of veterans and their families, taking a whole-of-life approach.
- Fundamentally, the ‘bargain’ (employment contract/agreement) into which an ADF enlistee enters should not be altered except and unless their entitlements are improved.
- Doing away with DVA as it now broadly exists would not be acceptable. The Commission could give greater credit to the active process of continuous improvement under way in DVA. [R11]

¹⁰ Draft Report first key dot point page 2

- Additional uncapped resources may be needed to better support the compensation and rehabilitation of veterans. It may well be better to allocate them to DVA, which already has in place the experienced staff oriented to a veteran centric approach, to apply them effectively. [R 11]
- Doing away with the Gold Card would not be acceptable. [R 12.1, R 15.1]
- Civilianising or outsourcing is not likely to improve the well-being of veterans or their families. [R 15]
- Removal of benefits / entitlements is anathema and contrary to fairness and equity in employment. The *no detriment* principle should apply not only to veterans but also to currently-serving future veterans, who are already ‘under contract’. [R13, R 14]
- There is a fundamental need to respect and take fully into account the *Nature of Military Service*, and the notion of a *Military Covenant* between ADF members and the Nation.
- Families play a key part in ADF service and in the lives of veterans and their rehabilitation – a dimension that must not be overlooked.
- Page 3 of the Draft Report describes the veteran support system as being ‘beneficial’ in nature and ‘more generous’ than civilian systems. The inference is pejorative, suggesting that the veterans’ systems could be adjusted to be less beneficial (implying ‘less expensive’). Clear examples that generosity is not the case are given by E Palmer in Post Draft submission #DR179.
- The Draft Report seems to be predicated on peacetime conditions, although it also rightly recognises warlike and other service. It is important for the effectiveness of the ‘system’ to recognise that *all* military service is potentially war-like – and necessarily so, if the ADF is to be rigorously trained to peak performance level to face actual war. It would be discriminatory not to do so. (S McLeod, Post Draft submission #DR158)
- Transition is a key area of continuing work between DVA and Defence, but more work needs to be done to bed down an effective system, guided by the Recommendations from this Report. Defence should not be burdened with post-service rehabilitation and well-being costs or management. Without substantial additional resources, Defence could not handle the entire transition process as envisaged. [R 7]
- The routine use of DVA case officers, or case managers, especially for complex cases, should be actively pursued. (C Palmer, Post Draft submission #DR179 para 18.)

Properly resourced, largely in an uncapped budget so far as compensation and rehabilitation entitlements of veterans are concerned, DVA and Defence have the potential to improve outcomes for veterans and to reduce the suicide rate amongst

them attributable to poor or ineffective support processes. Both are already a long way towards achieving this outcome.

Although the genesis for the inquiry (Terms of Reference: Background) was in the Report: *The Constant Battle: Suicide by veterans*, 15 August 2017, of the Senate Foreign Affairs, Defence and Trade Committee, it offers no direct evidence that its Draft Recommendations, if adopted, would do anything to ameliorate the suicide rate among veterans.

Military Service and the veteran community

The obvious savings / economy imperative in this Draft Report reveals a lack of respect for the ADF and veteran community and their ‘bargain’ with the Nation. It is incompatible with a proper appreciation of *The Unique Nature of Military Service*, as well as being inconsistent with statements such as these from Prime Ministers Billy Hughes (1917) and Scott Morrison (2018):

“We say to them go out and fight and when you come back, we will look after your welfare. We have entered into a bargain with the soldier and we must keep it.” (1917)

“ The Productivity Commission will make recommendations from time to time but what is most important to me is that veterans get the support, the benefits, and the respect that they deserve.” The Australian – 20 Dec 18

Implementing many of the Recommendations would not honour the non-discretionary obligations placed on the Government when enlisting ADF personnel to serve [not to be ‘employees’]. That obligation, the reciprocal portion of the undertaking of an individual to serve in the ADF, is best articulated in the DFWA’s draft of an *Australian Military Covenant*.

The notion of ‘unfit for purpose’ seems to originate from the dated opinions of an ex-DVA public servant, with no known military experience, and who left DVA in 1999. (preliminary Submission #49). Twenty years later, Defence and DVA have considerably changed and in particular adopted the veteran centric approach. This submission even proposed to require that no injury be accepted where no incident report is made within five days nor a record made of rehabilitation. This reflects a fundamental lack of knowledge about military service, which is not always amenable to workers’ compensation or insurance processes – especially during operations, or training for operations - the core functions of the ADF. Furthermore the cumulative effect of some physical and psychological demands placed on military people, can manifest themselves over a long period (heavy load bearing over a prolonged period of service, for example). This view from an ex-senior DVA public servant about ‘injuries’ during military service demonstrates clearly the need for at least some experienced military veterans to be employed in DVA. Para 12 of Post Draft Submission #DR179 comments on this.

Comments on recommendations

My comments on the Draft Report and its recommendations are offered below:

Objectives and design principles

DRAFT RECOMMENDATION 4.1

The primary focus of this Draft Report is on rehabilitation into a working life and continuing well-being. While this focus is appropriate, the system also needs to cater fully for the lifetime support for those not ‘able’ (i.e., *disabled*) through service. In this regard, particular consideration must be given to those veterans who are TPI-SR who may be totally unable to work, quite possibly from early in their lifetime. It must provide economic loss compensation for their loss of earning capacity and loss of amenity in life, and disadvantage due to service-caused illness or wounds! A number of Initial submissions noted this (eg J Reeves #26). The terms ‘adequate’ and ‘appropriate’ are suggestive of some equivocation here – there can be none – the compensation must be sufficient to meet veterans’ needs in full. As explained in the TPI Federation’s Initial submissions #134 and 145, that is not the case today for TPI-SR veterans. It needs fixing forthwith. [R12.1]

While administrative efficiency is a laudable principle, the system should not be underpinned by ‘financial sustainability’ and ‘affordability! These principles could constrain achievement of all that the other principles set out to achieve. The balance must be in favour of achieving improvement in the wellbeing of veterans and their families (including by minimising the physical, psychological and social harm from military service), taking a whole-of-life approach.

Priority should be given to the principles of veteran centric and needs-based support to veterans, recognising the Covenant and its implicit ‘employment ‘bargain’. Costs are inherent in the maintenance and ‘employment’ of a defence force – in peace and war – including liabilities incurred as a result. Meeting them is a non-discretionary obligation that must be borne by the Nation, whether government chooses to budget for them or not. I am not certain that the Report recognises the importance of such balance, which must be in favour of the needs of veterans.

Prevention is a largely peacetime constraint although even then service people are training hard for war. This is a civilian employment focus that again reveals a lack of true appreciation of the nature of military service. Of course, the ADF recognises the need for the highest appropriate standards of safety in its training activities. (C Palmer, Post Draft submission #179, para 13.) By the same token, it needs also to apply the “Train hard, fight easy” maxim. Australians demand no less. (C Mollison remarks on this aspect in Post-Draft submission #DR175.)

Preventing injury and illness

DRAFT RECOMMENDATION 5.1

The objectives that this Recommendation sets out are acknowledged. The augmented database systems proposed for the future will need to be effective in both peace and in war.

DRAFT RECOMMENDATION 5.2

This Recommendation is acknowledged, however, any cost-benefit program needs to recognise the benefits of hard and realistic warlike military training, which are mostly intangible until they manifest themselves in operations. Only military commanders can make the necessary judgements and take responsibility for any ‘costs’.

DRAFT RECOMMENDATION 5.3

This Recommendation is acknowledged with caution surrounding the government funding the premiums estimated. Irrespective, however, the Nation must be prepared to fully cover such costs, budgeted or not, and particularly when the ADF is committed to operations.

Rehabilitation and wellness services

DRAFT RECOMMENDATION 6.2

What are the factors in this evaluation of ‘efficacy’? To what purpose should outcomes be compared – why not internally determined against absolute measures (KPIs)? There are significant differences between civilian workers’ employment conditions to those of military service people, as described in *The Unique Nature of Military Service*. Comparisons may be interesting, but will administering the evaluation justify the cost involved?

It has to be noted that the ADF is not an ‘employer’ in the civilian sense but the Crown’s “caretaker / custodian / protector and ‘user’ of its servants. This is an important distinction. This and other aspects were addressed in Submission #83 and also in Submission #33 to the “transition’ Inquiry.”¹¹

DRAFT RECOMMENDATION 6.3

This recommendation intersects with all aspects of the transition process and their effective coordination between Defence, DVA and service providers. Transition can be much better handled, through DVA and Defence working on it in a well-coordinated and streamlined manner. Sound policy frameworks and ‘committed execution’ are the key – a veteran centric approach is needed, especially from Defence.

It should go without question that any necessary rehabilitation and discharge ‘resettlement’ services must be provided to ADF personnel leaving the service. Interdepartmental review of the transition process should ensure that there is continuity of services post-discharge from the ADF. It is essential that mainstream rehabilitation providers services are accessible and affordable (e.g. dentists or psychiatrists who will not take DVA covered patients now, or may not be able to take them in a timely way). Veterans must not be ‘thrown to the wolves’ to make their own arrangements. They will probably need empathetic and responsive assistance from authoritative officials, capable of making rapid and effective determinations.

¹¹ Joint Standing Committee on Foreign Affairs, Defence and Trade, Inquiry into transition from the Australian Defence Force (ADF), 2017, Joint Submission by Defence and DVA, para 6-7.

Veterans located in rural areas are most likely to find difficulties (See K Enno, Initial submission #150.) Future systems need to be designed to provide for this. Perhaps there is scope for one-on-one case managers. (See Initial submissions #2 from K Park, #83 from M Crossley and Post-Draft submission #DR165 from O Bartrop.)

DRAFT RECOMMENDATION 7.1

More effective transition may be a beneficial outcome that could come from this Report. It is clearly necessary to improve that process of which the deficiencies and unsatisfactory outcomes, especially for personnel who are medically separated from the service, are well known. Also well known is that medical issues that may arise from a person's service may not become chronic until well after service, and/or be mis- or under-reported during service, for a variety of reasons.

Transition is a complex process that cannot be considered simplistically or formulaically. A person in service, possibly on operations, and well separated from his or her family, is not likely to be able to undergo the necessary processes, prior to separating from the service. Perhaps at least a year – totally off-line from military duties, might be required to get a person properly 'transitioned'. A degree would take at least three years; a trade qualification, similar. Fully supporting this may be beyond current resources.

Preparing members for civilian life (including 'resettlement training') necessarily needs to take place whilst they are still 'employed'. The Commission might consider where that is best done within Defence, possibly at suitably located personnel centres, staffed also by a mix of Defence personnel and DVA 'secondee's'; or entirely after service. Either way, maintaining a suitable level of income support during training after discharge needs to be considered. (Post Draft submission #DR179, para 14.)

More work is required in this area by DVA and Defence, guided by the Draft Report's recommendations. A separate Defence Joint Transition Command would not be the answer, given the ADF's national role to defend Australia against armed attack ¹². It is not funded nor organised to take the recommended responsibilities, beyond discharge. (C Mollison Post-Draft submission #DR175.)

Rather than a 'Joint Transition Command', a frontline 'Transition Group' within DVA, and with 'shopfronts' throughout the country (as far as possible, located near military bases) might be better places from which to coordinate and carry out this transition function – linked in tightly with policy and the other functions of DVA. (See, for example the job placement suggestion from P Hayes in Initial submission #8). Seconded ADF and Defence personnel might also form part of this group.

DVA is already tied to the Defence portfolio through its Minister's Defence Personnel responsibilities. Perhaps a Transition Group in the DVA could carry out the envisaged role? This matter deserves a separate and deeper study of the process followed by the development of effective working procedures.

That is not to say that the transition procedure is unimportant [see R 6.3]. The ADF already carries absolute responsibility for the well-being of its members. It can best fulfil its responsibility by continuing to discharge its people in the best possible

¹² <http://www.defence.gov.au/AboutUs.asp> , accessed 26 January 2019

physical and mental state possible. It must also provide a comprehensive record to the transition authority to enable any continuing rehabilitation services with seamless transition.

The most critical aspect is to provide effectively for the future, especially of the severely wounded or maimed, and their families.

DRAFT RECOMMENDATION 7.2

Career planning in the ADF is a command responsibility, carried out in conjunction with individual members, but always aimed to meet the needs of the service while taking account of individual wants and needs, including family aspects. Requiring individuals to themselves prepare that plan may be unrealistic, as could having them prepare post-service career plans, updated every two years.

More work may need to be done to determine whether this Recommendation can be implemented, especially those aspects proposed to be completed during a service career that may include operational service, and in remote areas, and without access to the required tools – privacy, time, space, documentation and communication facilities, to name but a few.

DRAFT RECOMMENDATION 7.3

I acknowledge this Recommendation with caution as to resourcing. A full-time professional or vocational qualification might be the objective – at least for long serving members, with the allowance being sufficient to cover tuition and living costs.

Initial liability assessment

DRAFT RECOMMENDATION 8.1

Acknowledged with caution as to whether it is fair. In particular is there flexibility when conditions fall outside of SOP but are clearly service caused? There must be a higher authority that can make determinations for out of the ordinary cases. See the final recommendation about ‘Guidelines’ made by K Park (Initial submission #2) as well as para 19 of H Baldwin’s Initial submission #10.

DRAFT RECOMMENDATION 8.2

Acknowledged as an apparently worthy Recommendation. Resources need to be considered.

Claims administration and processing

DRAFT RECOMMENDATION 9.1

DVA is aware of the need to do this. It claims to be highly rated for its performance by the Department of Finance.

DRAFT RECOMMENDATION 9.2

DVA is improving here, and aware of shortcomings: let its continuous improvement

cycle continue. The second and third-last paras of H Lenard and K Russell's Initial submission (#13), suggest also that DVA should be allowed to continue its improvement processes. Perhaps there is a case for giving preference to suitably qualified and trained ex-military people for employment in DVA, with particular emphasis on empathy with veterans and their families.

DRAFT RECOMMENDATION 9.3

This action is a natural part of a cycle of continuous improvement, which DVA is implementing. It may be that the Commission was unduly influenced by submissions from individuals about cases in which they may have been poorly served, advised or who sought benefits beyond their proper entitlements, perhaps well in the past. (For example, see Initial submission #7 by L Moore,)

It is in the nature of things that those who are aggrieved, rightly or wrongly, will make more fuss about the perceived shortcomings of the system than those who have been reasonably treated and professionally served by it. This is evident from submissions made to the inquiry. Any concerns need to be balanced by the outcomes of DVA's own performance analyses, its own improvement processes and its acceptance of ANAO recommendations mentioned earlier.

Finally, the Commission might also have regard to DVA's Client Satisfaction Survey. In 2018 this survey revealed that 81% of DVA clients were satisfied overall with DVA's service provision, while 6% were dissatisfied. These ratings were slightly lower than in previous years.¹³

The Committee remarks positively on DVA's Veteran Centric Reform. That process should be encouraged and permitted to play out. It would be very difficult to shift these initiatives and experienced personnel into any other organisational structure without loss and serious disruption, as well as cost.

Reviews

DRAFT RECOMMENDATION 10.1

This Recommendation is acknowledged. The VRB is an independent Tribunal. Perhaps the Commission could consider recommending that a senior representative of the relevant decision maker could attend the formal Hearing (if any is needed – see R 10.3-4) to respond to a veteran's request for review of reviewable decisions. That would ensure that Board decisions are relayed quickly to the relevant staff to speed the cycle towards improved decision-making.

DRAFT RECOMMENDATION 10.2

See also comments above. Reasons for a claim not being accepted must be transmitted to the veteran as soon as an internal review has taken place, and it should be clear from the start why a claim is not accepted.

¹³ <https://www.dva.gov.au/sites/default/files/files/consultation%20and%20grants/DVA-CSS-Public-Summary-Report.pdf>

DRAFT RECOMMENDATION 10.3

See comments above.

It may be preferable, should the recommended alternative dispute resolution process fail, to retain a full VRB Hearing at which the veteran may formally make their case, and DVA its case; following which the VRB makes a decision / ruling, that is applied in law. That would give both DVA and the veteran every reasonable opportunity to avoid the costs that may be involved with an Administrative Appeals Tribunal (AAT) hearing, especially if represented.

It would be preferable to apply this process until the recommended further review in 2025 takes place. See below.

DRAFT RECOMMENDATION 10.4

The motives for this Recommendation are understood. Alternative dispute resolution processes conducted by a single Board member might be acceptable if the claimant consents in advance to the subsequent decision being applied in law.

However, if the claimant disputes the outcome of this procedure, then in the interests of due process and natural justice, a claimant should still be afforded a full VRB hearing, before they potentially face an AAT merit review process.

A review after 2025 should still take place. Meanwhile all Board members must be recognised in the Defence and veteran community as committed to the *Military Covenant*, and display a deep understanding of *The Unique Nature of Military Service*. (C Palmer, Post Draft submission #DR179, para 52.)

Governance and funding

The proposition that the Repatriation Commission, with its history back to General Sir John Monash, be dissolved into another body with similar but expanded responsibilities is not justified. What is needed, stated so clearly as ‘care for the veteran community’ in Post Draft Submission #DR179 (para 3), is for the Commission to revert to its role to “grant pensions and other benefits and provide treatment for veterans, their dependants and other eligible persons”.¹⁴

DRAFT RECOMMENDATION 11.1

The Nation, and government of the day have a solemn duty to see to it that veterans are appropriately supported and cared for in accordance with the law.

With DVA and Defence now working better together, and the benefit of helpful Recommendations that flow from this review, making the proposed major organisational re-arrangement should not be required. In fact a ‘Policy [and Programs] Group’ already exists in DVA.

¹⁴ *Veterans’ Entitlements Act 1986* (VEA), section 180

It is telling that a number of the Initial and Post-Draft submissions from disaffected clients of DVA (often from long ago), may have had too great an influence in the Commission's view of DVA (see R9.3). It is strongly suggested that the Commission not put too much store by such input, and rely instead on the DVA's own submission, the ANAO Report mentioned earlier, and submissions that suggest otherwise than doom and gloom over DVA.

The implied criticism of DVA is somewhat 'below the belt'. As demonstrated most powerfully in Figure 6 of Part 4 of P Thornton's Submission #335¹⁵ to the 'Suicide Inquiry' mentioned earlier, its resourcing has been severely reduced over time in comparison to other departments. (A copy of Figure 6 from this Submission is **attached**.) Its defined IT support deficiencies are only now being addressed. This goes a long way towards explaining how DVA performance might have deteriorated over time, which may have forced it to focus principally on maintaining its possibly less than desirable level of front line services. This also suggests that additional resources would be needed to correct the situation. [The entire inquiry actually hinges largely on the question of resources.] Such resources would also be needed for the structural adjustments proposed by the Commission. Might it not be better to allocate them to DVA, which has the experienced and veteran centric oriented management and systems in place, upon which improved performance could be built; rather than creating, staffing and training entirely new entities and hierarchies?

DVA has finally been funded to address outstanding IT shortcomings, which contributed to poor performance – was this taken into account by the Commission? The Commission might review its Draft recommendations (R11.1-3) in relation to restructure and the creation of a new entity, intended to effectively take DVA's place. Would the disruption in continuity of policy and process really justify such a major restructure in the continuing delivery of support to veterans?

DRAFT RECOMMENDATION 11.2

While effective coordinating links with the Defence Portfolio are clearly important, might it not be better to locate this new Veterans Services Commission in the Minister for Veterans' Affairs and Defence Personnel's Portfolio, within the Department of Veterans' Affairs, where appropriate policy and claim determination expertise currently resides? Reorganisations such as that proposed run the risk of loss of continuity, confusion, a hiatus in service, loss of confidence and would probably be more costly than the improvement of current arrangements.

Is the proposed mix of skills from civilian fields really appropriate to a veteran centric system? Is it just that only *some* VSC Board members should have *only an understanding* of military life and veteran issues? Surely *empathy* and *military experience* might also be desirable prerequisites?

DRAFT RECOMMENDATION 11.3

Establishing a Veterans' Advisory Council advising the Minister for Veterans' Affairs and Defence Personnel may appear to be sensible. However, is this just the current

¹⁵ Senate Foreign Affairs, Defence and Trade References Committee. *The Constant Battle: Suicide by Veterans* August 2017, P Thornton Submission #335

Ex-Service Organisation Round Table (ESORT)¹⁶ by a new name? To ensure that a veteran centric approach is continuous throughout the system, the majority of members need to be recent veterans with experience in dealing with veteran and defence family issues. Members (ideally themselves also veterans), or advisors as necessary, with experience in the fields of insurance, workers' compensation, public policy and legal fields, may also be needed. All members must be recognised in the Defence and veteran community as committed to the *Military Covenant*, and display a deep understanding of *The Unique Nature of Military Service*.

DRAFT RECOMMENDATION 11.5

Defence would need to be funded to meet the proposed annual premium levy. Why not provide it directly as a separate budget line? Such future costs might be estimated – and provided for – when the Government enlists personnel, and especially before sending them into harm's way.

It appears that the Commission looks upon military service just as 'work' or 'employment' like any other. That is fundamentally wrong. This approach finds its way into the recommendations including notions of welfare, insurance and workers' compensation in dealing with the casualties of military service. The Nation owes its service people better support than that. As but one example, civilian workers may have to employ lawyers, barristers or advisors to deal with claims relating to their work. Maimed or wounded military personnel or veterans should not have to do so; nor should they, themselves, have to negotiate 'DVA rates' with whatever service providers they manage to find. This is implicit in their 'contract of employment'.

The compensation package

The use of the term 'package' has prejudicial connotations. Finding 12.1 demonstrates the confusion it has brought; by proposing to 'integrate' (further!) veterans' superannuation benefits (paid for by veterans as part of their employment conditions) with the entirely separate veteran compensation scheme, as well as with community social welfare measures. Each element in the so-called 'package' is a separate employment or social welfare condition, especially provided under law, each for their own purposes. The financial motive this has is offensive, and is clearly designed to minimise / reduce cost. DVA has since withdrawn, unequivocally, this prejudicial terminology¹⁷. It should not be repeated, nor should there be any 'offsets' based on this unjust proposition.

DRAFT RECOMMENDATION 12.1

The Gold Card should be retained for anyone with the necessary level of disability to qualify under current arrangements – irrespective of war service or non-war service causes, or the Act under which they are assessed. How else can their life-long well-being be fully supported (especially if not able to work)? See for example Initial submission #5 for the case of R Edwards.

¹⁶ <https://www.dva.gov.au/consultation-and-grants/consultation-ex-service-community/eso-round-table-esort> accessed 31 January 2019

¹⁷ Ms L Cosson, Secretary, DVA, Senate Proof Committee Hansard, Foreign Affairs, Defence and Trade Legislation Committee, Estimates, 24 October 2018, page 115

Which veteran, especially TPI-SR, and generally at over 50 % disability (or worse, at 100%,) or high levels of impairment, would ever regard themselves as having won a 'prize'!¹⁸ They all would far rather be as hale and hearty as when they were recruited. The Commission needs to simply ask any one of them during its further research. This is commented upon by J Reeves (Initial submission #26, and others, in particular the TPI Federation of Australia, Initial submissions #134 and 145.) The second page of the TPI Federation's post, at **attachment 2** shows graphically how 'generous' TPI economic loss compensation for TPI-SR veterans really is! An urgent review and upward readjustment of this compensation is required now. (C Palmer, Post Draft submission #DR179, paras 8-10 and 20.)

Doing away with the Gold Card would not be acceptable. Devolution to Centrelink or civilian contractors would not improve the well being of veterans or their families at all. Neither of them has any idea of *The Nature of Military Service* or the *Covenant* and are driven purely by a profit motive (just look at aged care to see what I mean.). I believe that the Commission may have given undue weight to the negative views about DVA.

Compensation for an impairment

Care needs to be taken that a 'welfare' approach is not introduced – 'compensation' is not a social welfare measure but rather a deliberately established part of a veteran's conditions of service, provided for those veterans unfortunate enough to be eligible for it. It should never be denied or reduced.

DRAFT RECOMMENDATION 13.1

Acknowledged with caution. Levels of compensation for impairments under VEA and MCRA should both be set at the higher available level (Post-Draft submission #179, para 15).

DRAFT RECOMMENDATION 13.2 and 13.3

There may be dangers lurking in these 'removals' for veterans. The amendment must be so written as to simplify process, but also to allow the veterans to make (and simply change) a fully informed decision. Any detriment to their well-being or that of their families discovered in the future must be able to be overcome quickly and simply. A veteran could be forced to accept all (unknown) future risks. A poor decision, forced on an uninformed veteran without access to expensive legal / financial advice, and by lack of full knowledge, or insistent staff, could see them in the poor house; even though immediate access to funds might appear attractive to them.

DRAFT RECOMMENDATION 13.4

Why remove!! Would this be a breach of employment conditions, and fail to recognise likely needs?

¹⁸ Preliminary Submission 151 page 7. RSL NSW is badly mistaken about Gold Card being some sort of prize.

DRAFT RECOMMENDATION 13.5

The recommended DVA review of lifestyle ratings should be aimed solely at improving their administration, guided by its own experience and a veteran centric approach. No further action should be required, in particular to remove the use of these ratings. No two cases will ever be the same, and therefore a reliance on what is 'currently usually assigned' is potentially fraught with continuing difficulties. Each individual case will be just that – unique. Is this in effect re-engineering current employment conditions, especially for TPI veterans?

DRAFT RECOMMENDATION 13.6

Why should this be, especially for those whose lifetime circumstance include an absolute inability to work etc?

DRAFT RECOMMENDATION 13.7

This looks like an unjust double whammy which would put a widow(er) and child(ren) even further in the mire. Is this in effect the removal of existing employment conditions – also for people still serving in the ADF? That would breach the *Covenant* and be unjust.

DRAFT RECOMMENDATION 13.8

Yet another removal! Is this fair? Would the partner compensation be automatically indexed into the future by a fair rate?

Streamlining and simplifying additional payments

This series of Recommendations reflects poorly in the independence of the Commission which is seemingly more concerned with 'financial sustainability and affordability' than effectiveness or respect for veterans and their families.

DRAFT RECOMMENDATION 14.1

Again, removal of existing entitlements seems unjust. Would it be discriminatory?

DRAFT RECOMMENDATION 14.2

This too does not seem fair, and again removes existing employment conditions. Youth allowance has an entirely different social purpose to education payments to allow for education of children whose veteran parent or spouse may not be able to work (possibly due to caring responsibilities).

DRAFT RECOMMENDATION 14.3

Existing 'smaller' payments, all have an existing rationale – they should not be arbitrarily 'removed'. Removal of the existing Energy Supplement (modest thought it is), in the current climate of ever increasing energy costs would be unconscionable and could have detrimental effects on veterans and their families.

Is this a hidden cost saving measure?

DRAFT RECOMMENDATION 14.5

I acknowledge this Recommendation with caution. Rates of allowances for veterans under VEA must not be reduced. If they are higher, then those for individuals under MCRA should be increased instead. This would honour the ‘no detriment’ approach.

DRAFT RECOMMENDATION 14.6

As above. The *no detriment* principle should apply. This principle is remarked upon in several Post-Draft submissions. The Commission needs to be careful to honour this in actual fact, not only for current veterans but also for the veterans of the future, who are currently serving in the ADF.

Healthcare

It seems that these recommendations are influenced by the assertion on Page 3 of the Draft Report that the veteran support system is ‘beneficial’ in nature and ‘more generous’ than civilian systems. Leaving aside for now that aspects of the veterans system could do with improvement, it could equally be argued that civilian schemes are inadequate and thus unfit for purpose. Improvements of the existing veterans’ system are ongoing under a well-overdue process of continuing improvement being implemented in DVA, and should continue.

DRAFT RECOMMENDATION 15.1

Can there be any reason at all for the removal of this card, except as a way to reduce costs, and transfer them to veterans who are in no position to bear the costs which the card is intended to cover to enable their life-long well-being – especially health related expenses? Veterans will look upon it as just sheer ‘bastardry’.

It is not veteran centric to change existing provisions, nor is it consistent with the employment ‘bargain’ – *Covenant*. The current arrangements are those which current members of the ADF take into account when planning their transition. To alter them would be a breach of faith and trust, contrary to the spirit of the *Covenant*. If changes of rules must be made, they should apply only to new enlistees, whose ‘employment contract’ in future needs to be comprehensive, in the nature of a ‘product disclosure statement’; perhaps as an addition to the *Defence Act* itself?

DRAFT RECOMMENDATION 15.2

The level of payment is subject to Government policy and allocated budgets. This is likely to need an uncapped budget.

How would this work? Doctors will charge what the economics of their practice demands. Not enough of them now are prepared to take on DVA patients, at ‘DVA rates’. Will this result in more being turned away – and made to pay for themselves, for recognised conditions? It will add an administrative burden to DVA and professional practices, and possibly cause a delay in the provision of medical or other support services.

DRAFT RECOMMENDATION 15.3

The Strategy would be no good if clinicians were not available or not properly compensated and therefore unwilling. Consider especially those remote from major centres. (See K Enno, Initial submission #150.)

DRAFT RECOMMENDATION 15.4

To which other mental health services should Open Arms be compared, why and by what measures?

Data and evidence

DRAFT RECOMMENDATIONS 16.1 - 3

These recommendations are unremarkable and consistent with ANAO views.

Bringing It all together

DRAFT RECOMMENDATION 17.1

What complexity! Would this not replace one set of absurdly confusing processes with another? Both would be difficult to administer even for bureaucrats familiar with the systems - for veterans or transitioning ADF members, they would present a continuing maze of complexity to unravel.

Can we find a better compromise? Note especially the comments regarding existing ADF members, whose current conditions of service – including post-service support under existing legislation, may have entitlements ‘removed’ by this rearrangement and thus suffer ‘detriment’.

Even if the system was not ‘fit for purpose’, it does not follow that better outcomes for veterans etc will be produced by a redesigned system based on best practice workers’ compensation and contemporary social insurance schemes. (Draft Report Key points 4 and 5, page 2.) The assertions are so put as to lead and to lend credibility to claims that the veteran support system is more ‘generous’ than civilian schemes. Are these assertions supported by evidence, or are they merely doctrinaire statements from the workers’ compensation/welfare, economic rationalist and the industrial environment?

A comparison may not be valid taking into account the difference in the nature of the ‘employment contract’ and conditions under which employment is undertaken. That can lead to findings based on incorrect premises.

It remains to be seen whether the Commission’s Final Report is solidly based on sound data-supported evidence and arguments, and a true understanding of the nature of military service and respect for veterans under the military covenant. On the evidence so far, and that in prospect, there is no justification to warrant embarking on a wholesale re-design of the system. It would be an expensive and disruptive process. It would be much better to apply effort and resources to make the existing system

work, by continuing to make incremental improvements and minor adjustments to governance and systems. Our veterans, and those to come after them, deserve no less than that – and for the required resources being made available to do so. Under the *Covenant*, this should not be negotiable.

Bert Hoebee
Australian Military Veteran

4 February 2019

Annex: A. Information requests from the Commission

Attachments:

1. Defence Force Welfare Association's (DFWA): *The Unique Nature of Military Service*, 4 October 2010,
2. DFWA: A Proposed *Australian Military Covenant* (May 2018)
3. Totally and Permanently Incapacitated (TPI) Federation of Australia's Facebook post, 21 December 2018 and TPI-SR Economic Loss Compensation chart
4. Senate Foreign Affairs, Defence and Trade References Committee. *The Constant Battle: Suicide by Veterans*, August 2017, Submission #335, Figure 6

INFORMATION REQUESTS FROM THE COMMISSION

The Draft Report includes a number of information requests. Brief responses are listed below:

6.1 The Commission is seeking information (both quantitative and qualitative) on return-to-work outcomes from Australian Defence Force and Department of Veterans' Affairs rehabilitation programs. Areas of particular interest include the appropriateness of comparing return-to-work outcome measures in military and civilian contexts, and what approaches to return to work are effective both in-service and post-service.

RESPONSE: If false deductions are not to be drawn from data such as these, it may be wise to classify the information in detail, according to the condition being rehabilitated. It may well prove not to be appropriate to compare military and civilian contexts. War related wounds or maiming, especially those of the most severe 100% disability nature, and those currently attracting TPI Special Rate compensation, would be unique to the military context, as may be similar conditions sustained in military training.

6.2 The Commission is seeking further views on the potential use of consumer-directed care for the rehabilitation services provided to veterans, or on alternatives for providing more tailored, person-centred rehabilitation services.

RESPONSE:

This could be a particularly fraught area. If tailored, person-centred services are to be proposed, then the veteran would need to be guaranteed full funding for all services clinically deemed necessary, not one in which the veteran pays and claims a refund. The Commonwealth must continue to bear the full cost of death, wounds, or illness resulting from a veteran's service. The potential system must not be like the NDIS, which is not sufficiently funded to cope with all those who qualify, and where limitations apply, and commercial interests are at play. The services must be available and located close to the veteran's location.

See also response under R 6.3

11.1 The Commission is seeking feedback on the extent and design of the veteran support system funding model, particularly whether the fully-funded system should cover future liabilities only, or whether existing liabilities (including the Veterans' Entitlements Act 1986) should be capitalised into the insurance pool.

RESPONSE:

If a fund such as the *Future Fund* is proposed, then very carefully designed and guaranteed safeguards need to be incorporated in its design to ensure that it cannot be 'raided' for other purposes, and that it is not 'locked up' at any time such as to deny

those who are entitled to have access to their benefits. This observation is based on the experience in military superannuation, where the *Future Fund* is still not meeting its object of "... [making] provision for unfunded superannuation liabilities that will become payable during a period when an ageing population is likely to place significant pressure on the Commonwealth's finances. (*Future Fund Act 2006* s.3(2)). This is the military superannuants' experience with respect to the proper indexation of their superannuation income, where the Commonwealth arguably has a large unmet outstanding liability.

13.1 The Commission is seeking information on the new level of permanent impairment compensation that would be reasonable, taking into account the costs, benefits and equity implications to veterans, governments and the broader community.

RESPONSE:

Any 'new level' should not be less than exists presently. Cost should not be a consideration, especially for those whose work opportunities are very small or zero. In the context of the *Covenant*, and aspects of *The Nature of Military Service*, the value of comparisons to the general (civilian) community is moot, except in the broadest of sense.

15.1 Given the Gold Card runs counter to a number of key design principles, the Commission is seeking feedback on whether a future system should have a coloured health card system. If not, what are the other options? In particular, the Commission is seeking feedback on the benefits and costs of providing the Gold Card to dependants, service pensioners and veterans with qualifying service at age 70.

RESPONSE:

To which key design principles (R 4.1) is it **given** that the Gold Card actually **runs counter**? The highlighted inference here is pejorative, as is its use as a premise for this inquiry. It may well stem from an erroneous view that DVA espoused at Senate Estimates of a 'package of 'benefits'. DVA has unequivocally withdrawn that view. (Footnote 17)

15.3 The Commission is seeking participants' views on the desirability of subsidising private health insurance for veterans and dependants in place of other forms of healthcare assistance.

RESPONSE:

This could be difficult, as not all veterans would have private health insurance. Those on long term and high levels of disability pensions would certainly not even be able to afford private health insurance. The savings / economy inference behind this question is offensive. The full cost of health care assistance for qualified veterans needs to be

met by the Commonwealth as a matter of course, not by the veterans (nor through a claim based process).

17.1 The Commission is seeking feedback from participants on how the two scheme approach would work for veterans who currently have claims under multiple Acts. What factors should determine which scheme these veterans are covered by for their future claims? Should these veterans be given a choice of which scheme would cover them going forward?

RESPONSE:

The key factors might be “no detriment” and in all ways beneficial to the veteran and their family. Making a choice could be difficult and complex for some veterans. If they are to do so, it must be in a fully informed way, with all costs and benefits explicitly laid out for them in writing and in simple plain language. (See remarks about absurd complexity under R17.1)

The Unique Nature of Military Service

Defence Force Welfare Association's (DFWA);, 4 October 2010,



DEFENCE FORCE WELFARE ASSOCIATION

Patron-in-Chief: His Excellency Mr Michael Bryce AM AE

The Unique Nature of Military Service.

Introduction

1. This paper is intended to help clarify and strengthen an understanding of the elements of military service which render it unique as an activity (or vocation) within a democratic society such as Australia. It should be seen as an exploratory discussion rather than a definitive and complete examination of the question.

Background

2. In recent years there has been a tendency among those responsible for administration of public finances to question some long – held assumptions about the way those who render military service should be compensated. This questioning not only relates to the just reward due for the serviceman's labours, but also to the restitution owed to him and his dependents if he becomes disabled due to disease, injury or death suffered in the course of his service. There is being heard more frequently a notion that the serviceman's salary and conditions contain an element of "danger money" which represents substantial compensation "in advance" for any disability incurred while serving and that this reduces the obligation to provide compensation after the event. It should be the Association's position, in my view, that the questions of pay and conditions and compensation for disability should be kept strictly separate, as matters of policy. Pay and conditions are directed not only towards just recompense for services rendered, but also to attraction to service of high quality volunteers. They may vary from time to time to suit changing circumstances. Compensation for disability is a matter of justice alone, and reflects recognition of the essential nature of military service. Allied to the notion of "compensation in advance" is a growing perception that military service can fairly be compared to a number of other callings in our society that involve those engaged in them an element of exposure to danger. Police and Emergency services are most often cited in this context.
3. In examining military service as a unique calling we should understand that exposure to danger and the courage to face it are of themselves not unique features of military service. In arguing our case, we do not maintain that the serviceman has a higher requirement to show courage, nor a greater willingness to make sacrifices – even of his life – than others who serve the society and protect it from danger.



We claim only for the serviceman a distinction from all other callings, in that he, and he alone, is under a compulsion to face danger and make sacrifices – even of his life – once either he has committed himself to serve, or has been compelled to serve by the State.

Rights and Obligations.

4. The spirit of the times places great emphasis on the concept of Human Rights and their close ally, Civil Rights. The concept is usually taken to apply to the rights of an individual citizen in relation to other citizens or to the State. The Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10th December 1948, in Article 3, declares baldly that “Everyone has the right to life, liberty and security of the person.” The first paragraph of the Preamble describes the rights that should be recognized as being “equal and inalienable.” Australia has acceded to the declaration. These Human Rights are equivalent to those “inalienable” and God-given rights set out in the American Declaration of Independence – Life Liberty and the Pursuit of Happiness. Australia, and indeed all modern liberal democracies pay at least lip service to these rights, and none would argue with their spirit. Our discussion will take these three undisputed rights as its starting point. It will be based firmly on the proposition that these are rights possessed by each and every citizen as an individual.
5. The origin of these rights lies in the recognition of the individual citizen as the unit of autonomy in a liberal democratic society. Social structures are composed of individuals freely associating, or freely assenting to imposed association, for the common good. The most basic and most strongly coherent of social structures is the family; others are both more complex and less coherent as they progress through communities, municipalities, states or provinces, up to the nation state itself. In the community of nations, each state possesses a sovereign right to manage its own affairs in relation to other states. This sovereignty is exercised on behalf of, and in the name of, “the people”. Within the state sovereignty rests with the individual, who possesses his basic rights, and his vote, as an individual. He is governed, and takes his place in the social structure by his own consent. This is true even in cases where he disagrees with the actions of state to which he belongs, or with the outcome of a particular election in which he cast his vote. Recognition of the right of the majority of individual citizens to determine the colour of the government of the state is an inescapable consequence of acceptance of the democratic state itself.



6. It is obvious that the position of the individual in a democratic system is not sustainable unless there is general assent to the system by the population as a whole. There must be in all matters essential to the peace and good order of the state, a body of shared values. It is these shared values that underpin acceptance of rights and obligations by both individuals and the State.
7. Though not usually identified as a “human right” in social discourse, the right of an individual to defend himself from attack – physical or moral – is almost universally acknowledged and is enshrined in law in all democratic societies. Though primarily related to the individual himself, this right extends to his right to assist in the defence of others; family, community, fellow citizens and the state itself.
8. The right to assist in the defence of family, community and nation does not of itself create an obligation to do so, though shared values may well act to induce in an individual a sense of obligation. His act in offering himself to assist in the defence of others is, nonetheless, a free act of the will. For its part the state may impose on the individual an obligation to assist in the defence of the nation as a whole, but it is able to do so only with the assent of the governed, through the mechanism of shared values. In this way even compulsory military service, in which the basic human rights of those called to service appear to be appropriated, are, and in fact voluntarily surrendered.
9. Practically all modern states maintain standing forces to discharge the responsibility entrusted to them by their citizens, of protecting their people from threats of coercion by use of military force. Usually these standing forces’ role is to support the policy objectives of the state, principally in the area of foreign relations. To maintain force levels they usually rely on citizens’ voluntary service. But the highest purpose of military forces is to maintain the capability of meeting an enemy on the battlefield and winning.
10. The State has been entrusted by its citizens with the obligation to protect them. If it is to discharge this obligation, it therefore has a right to expect, even to demand, that the people will provide the means do so, in the form both of treasure and manpower. The right to self-defence thus inevitably imposes a general obligation to render military service.



The Individual and the State

11. The relationship between the individual and the State in a democratic society is a very complex one. It rests on the somewhat imprecise concept of shared values, and manifests itself in a not very clearly defined network of mutual rights and obligations, and the expectations they create. The mechanism by which the relationship is moderated has been termed the “social contract”. Under the social contract the individual citizen accepts that he or she must contribute to maintaining the means of defence. He expects that the state will organize, administer and regulate the defence forces, and that it will set limits by way of laws and regulations on the manner in which the forces may be employed.
12. Those who offer themselves for military service accept that they place themselves under the authority of the State to the degree necessary to achieve the State’s military objectives. Though the authority of the state may be bound and moderated by policies, customs and usages, even by laws, all understand and accept that at bottom the relationship is one of obedience. For all practical purposes the authority of the state over the individual as exercised by military superiors on its behalf, is limitless. The obedience required by the exigencies of military service is total.
13. The State for its part accepts as an obligation that the individuals under its authority who render service are sustained in bodily health and are entitled to be treated at all times with fairness and justice. This is not to say that in extreme circumstance extreme demands will not be made; but in all circumstances the social contract requires that the highest possible value will be placed by the State on the safety, welfare and life of each individual. It also requires that in recognition of the service rendered, the State will assume, as an obligation, responsibility for the dependents of those who have lost their lives in its service, and responsibility for the care of, and compensation for, those who have suffered disability as a result of their service.

Unique Service

14. It is precisely here that the unique nature of military service lies. In ordinary times military service is freely rendered by volunteers. In extreme circumstances the social contract may be invoked by the State by compulsion. In either case, however, once the individual has entered military service, the relationship of obedience is established. This relationship **necessarily** requires the surrender of the individual’s “inalienable” right to liberty, and alienates his right to life and security of the person, by placing responsibility for their preservation in the hands of others.



Not every person who renders military service encounters the enemy on the battlefield, but every person who enters military service must accept that he is expected to do so, if ordered, and is trained to do so.

15. A consequence of military service is that individual autonomy, the fundamental repository of sovereignty in a democracy, is surrendered to the common good. Freedom of choice as to the individual's own destiny, which lies at the heart of all civil liberties, is negated. In their place is the truth that the service person may be, by the decision of others against which there is no appeal, placed in extreme peril of life, and lose that life, if that were the outcome of the decision.
16. In no other activity or vocation within a democratic state does the relationship of obedience to the authority of the State in the face of danger to life or bodily damage exist. Emergency services have an obligation **not** to accept extreme risks to their safety, lest they become consumers of the very service they are attempting to provide. Members of the Police Service are entitled to defend themselves from violent offenders, but are under no compulsion to endanger their lives or safety by the orders of a superior. The fact that many of them do, and display courage to the point of heroism in doing so, should not obscure the fact that they may not be compelled, nor be punished for failure, to incur serious danger.
17. Very different is the lot of the sailor, soldier, airman or airwoman. No matter what the danger, the clear duty is to the military mission, and to play his or her part in its achievement, obedience is required. The most abject coward, most terror-stricken faintheart, has no alternative but to expose him or herself to life-threatening danger, if so ordered. He or she may no longer invoke Civil or Human Rights to review his or her position as an autonomous unit of Society. Should the attempt be made, and a decision arrived at that is in opposition to that of his or her superiors, the individual service person commits an offence punishable by law. The offence is Dereliction of Duty, at the least. When engaged on the battlefield there is nowhere to go, morally or physically. The danger must be faced, and the consequences accepted, whatever they may be.

A service person's calling is unique.

A Proposed Australian Military Covenant

Defence Force Welfare Association's (DFWA);, May 2018,



(May 2018)

Recognition of a special bond of mutual obligations between the State and its Armed Forces has been a feature of the Australian Nation from Federation and before that in Britain dating back more than 400 years.¹

The Commonwealth of Australia, as a sovereign national entity, has the right, under its constitution, to raise, equip and train military forces for its defence. This right includes the right, under the law, to compel all or some of its citizens to render military service when it considers such compulsion necessary. The body of military forces so raised is known, at present, as the Australian Defence Force (ADF).

An essential factor in accepting or compelling military service from its citizens is the understanding that the nature of that service is unique, and in the ultimate involves the surrender in trust to the nation of the individual's fundamental rights to life, liberty and security of the person. Accepting or compelling military service imposes on the Nation an obligation to:

- Act at all times in employing, deploying and issuing orders to the ADF within the law;
- According to its due process, ensure as far as is compatible with the military mission, that the physical safety, and the mental and spiritual welfare of each individual rendering service is preserved;
- Provide for the care of those who suffer physical or mental injury or illness, including the families of those members physically or mentally injured, and care and just compensation for those members and their families, permanently disabled, as a result of their service;
- Provide for the welfare of families and dependants of those losing their lives in service;
- Safeguard the material quality of life of those who have rendered service and because of age or honourable termination of their service can no longer do so; and
- Promote and protect the honour of the ADF as a whole and of the individuals who serve, or have served; preserving in the national life the memory of its, and their deeds and sacrifices for the safety of the Nation.

Citizens of Australia have the right to offer themselves for military service, and the obligation to accept it if compelled by law to do so. In offering, or accepting military service the individual understands and agrees to:

- Surrender in trust to the Nation the fundamental human rights of life, liberty and security of their person;
- Obey all lawful orders, instructions and directions given by those in authority, even to the extent of danger to life or safety;
- Accept the duty owed to the Nation and ADF to conduct him/herself in such a manner as it may reflect favourably the honour and good name of both; and
- When called upon, engage in military operations to the limit of his/her ability in defence of the Nation and its interests.

¹ A 1593 statute of [Elizabeth I](#) provided for a weekly tax on parishes not to exceed 6d on the pound, so that disabled army veterans "should at their return be relieved and rewarded to the end that they may reap the fruit of their good deservings, and others may be encouraged to perform the like endeavours".

Why a Covenant?

The proposed **Australian Military Covenant**² is an instrument designed to articulate thus far the largely unwritten mutual obligations between the Nation and the members of the Australian Defence Force. Its concept is a development of an understanding of the 'unique nature of service in the ADF' and the mutual obligations owed between the Nation and its service personnel that flow from this service.

There are three precedents for such a 'Covenant';

1. In 2011 the United Kingdom encapsulated a 'Covenant' in the Armed Forces Act 2011 which received Royal Assent on 3 November 2011. The UK Ministry of Defence stated: *"In putting the needs of the Nation, The Army and others before their own, they forgo some of the rights enjoyed by those outside the Armed Forces. So, at the very least, British soldiers should always expect the Nation and their commanders to treat them fairly, to value and respect them as individuals, and to sustain and reward them and their families."*
2. In February 2009 an Australian Employment Covenant (AEC) was implemented. This Covenant is a national industry-led initiative that brought all Australians together to help close the gap between Indigenous and non-Indigenous Australians in employment and employment opportunities. It is the first of its kind and represents a major commitment to providing the majority of Indigenous Australians who are able to work, with a real opportunity to achieve their full potential. The Australian Government committed to contribute funding and expertise to the AEC for direct administration assistance which included one-off funding for the establishment of an interim call centre, and for the development of promotional and website materials.
3. In May 2009, the then Chief of the Defence Force, Air Chief Marshal Angus Houston, officially launched the Australian Defence Force Family Covenant. In consultation with each of the three Service Chiefs, he set up the Defence Community Organisation and Defence Families of Australia. The Covenant articulates to Defence families how highly their contribution to Defence is valued. It represents a commitment from Defence to work with defence families, to consult with them, to listen to the concerns they raise, and to help them balance the demands of Service life with the needs of the family.

The Alliance of Defence Service Organisations (ADSO) are primarily concerned with the ongoing wellbeing of Australian Defence Force members and their families during and after their service in the ADF. It is promoting the concept of an 'Australian Military Covenant' or Accord as a means to gain a better understanding by the community of the mutual obligations between Parliament as their elected representative body and the members of the ADF. To further this concept, DFWA has developed a draft that is put forward as a first step in designing an 'Australian Military Covenant'. Achieving such a Covenant has now been accepted by most national ex-service organisations as an important objective. It is our hope that this initiative can be further progressed in cooperation with the ADF, other service and ex-service organisations and the Government.

² A **Covenant**, in its most general sense, is a solemn promise to engage in or refrain from a specified action. It is a type of contract in which the covenantor makes a promise to a covenantee to do or not do some action.



The Australian Defence Force (ADF) defends Australia and protects its people and its interests. The service men and women who make up the ADF are Australian citizens who, while serving, forego important basic Human Rights enjoyed by other citizens.

They must comply with the additional legal and disciplinary requirements of Military service. When necessary, this includes taking up arms against Australia's enemies and defeating them in battle using lethal force. They will be called upon to make personal sacrifices - including the possibility of the ultimate sacrifice - and in every sense to act according to the highest standards in the service of the Australian people.

In return, Members of the Australian Defence Force expect, from the Commonwealth Government on behalf of their fellow Australians acknowledgement of their service, fair treatment, to be valued and respected as individuals, so that they (and their families) will be sustained and afforded commensurate terms and conditions of service. Above all, they expect that they, and their families will not be disadvantaged in relation to other Australians by any act or omission of the Government of Australia or its agents. They further expect that those who are injured in service to the Nation and the families of those who die as a result of their service will be cared for and sustained.

This mutual obligation forms the Covenant between the Nation, the ADF and each individual member of the ADF. It forms an unbreakable common bond of identity, loyalty and commitment from which the "ANZAC Spirit" has emerged that has sustained the ADF in conflicts throughout its history, and has played a vital role in preserving the security of all Australians.

***Totally and Permanently Incapacitated
Federation of Australia***

Facebook post, 21 December 2018
and

TPI –SR Economic Loss Compensation Chart



TPI Federation of Australia

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The TPI Federation is most concerned with the comments made in the DVA Productivity Commission's Draft Report which was released on 14th December. Attached is a statement that has been sent to the Prime Minister, the DVA Minister and the DVA Secretary. It is hoped the Prime Minister is able to arrest this issue before it goes too far.



The Australian Federation of Totally and Permanently Incapacitated Ex-Servicemen & Women Ltd
(Incorporated in the ACT)

TPI FEDERATION AUSTRALIA

"Disabled in our Service, United in our Cause"

21st December 2018

The TPI Federation is extremely disappointed and concerned with the Productivity Commission's (PC) Draft Report analysing Veterans' compensation and rehabilitation, which was released on the 14th December, and unbelievably, with final responses due by 11 February 2019. The 704-page draft report can be found [HERE](#).

The TPI Federation rejects outright the PC's unfounded recommendation for the closure of our DVA – in favour of some quasi Agency or Statutory Authority being created within the Department of Defence. As history will attest, Defence failed in the administration and provision of care for Veterans through the much-maligned old Military Compensation & Rehabilitation Service (MCRS) – a scheme underpinned by the SCRA. In part, this is why the function and responsibility was transferred from Defence to the DVA in late 1999.

The TPI Federation is also aghast at the recommendation to abolish the 100-year definition and provision of TPI/SR compensation for all future VEA and MRCA claimants, together with the abolition of the Gold (health care) Card. Doing so, completely and wrongly dismisses the TPI/SR classification and duty of care that underpins 28,000 of Australia's current Totally & Permanently Incapacitated/Special Rate Veterans.

Whilst the Productivity Commission has now approved an extension of time for submissions to 28 February that will serve as little comfort as the concern and anger is palpable within the Veteran Community. So palpable in fact that the DVA Secretary has now called for an extraordinary ESORT meeting to discuss the report and the concerns of the Veteran Community. Indeed, on the sunset of the Centenary of ANZAC and at Christmas time, there is immense anger, fear and trepidation about these ill-considered recommendations. Maybe the Productivity Commission should try manning TPI Federation phones for a day-or-so to feel the pain.

The TPI Federation feels that that the ESO community, working collaboratively with the DVA, would be able to produce far better policy outcomes than this PC Review has delivered.

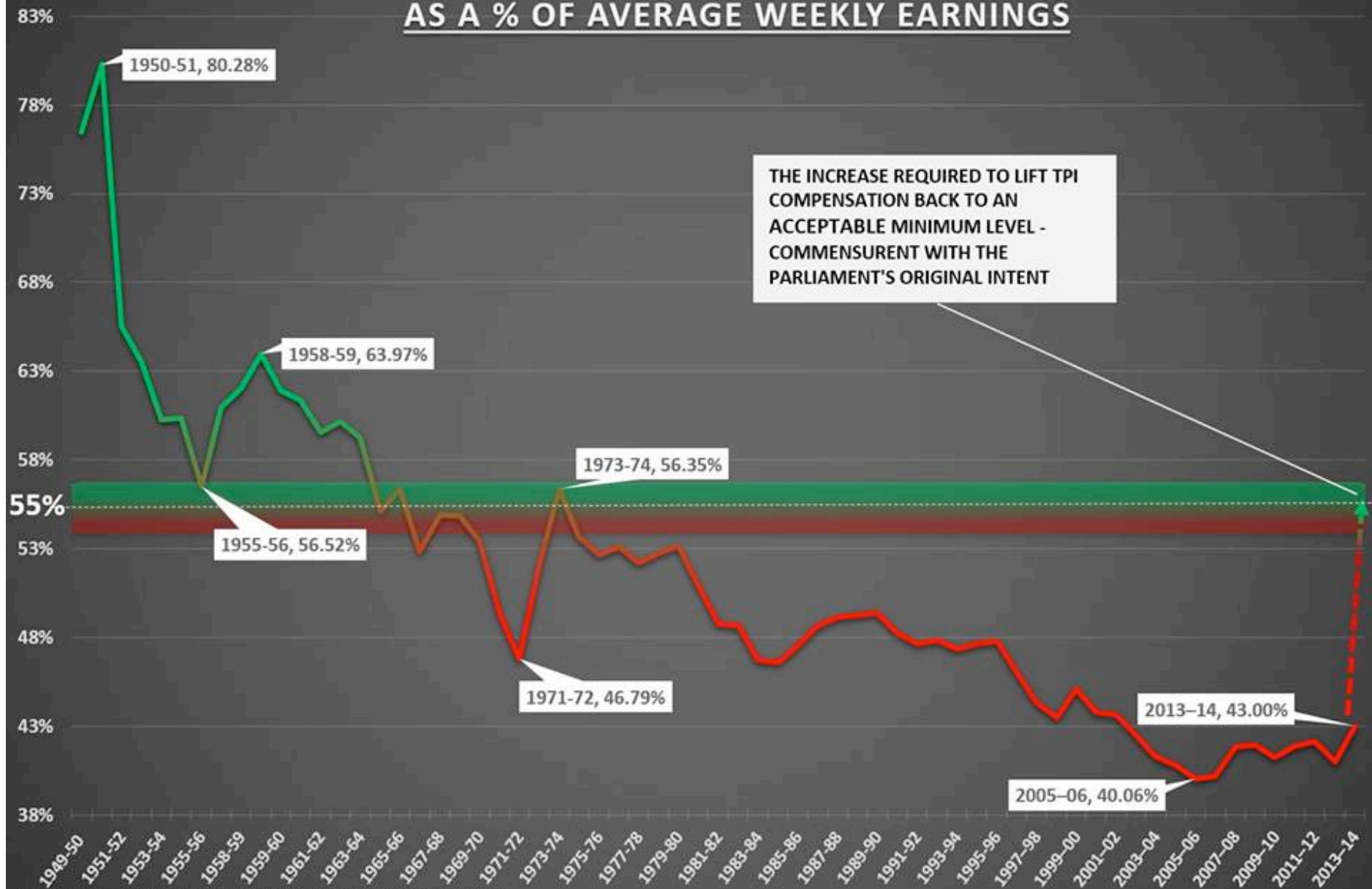
On balance, the Productivity Commission has failed, and as such, the Prime Minister should immediately follow his initial instincts to not only repudiate and reject the Commission's draft report, but also cancel its Commission outright, before any further damage is done. Not to do so, would be an appalling lack of political judgement and will undoubtedly end in political tears.

Pat McCabe OAM

President

Federation of Totally and Permanently Incapacitated Ex-Servicemen & Women Ltd

VETERAN SPECIAL RATE TPI COMPENSATION AS A % OF AVERAGE WEEKLY EARNINGS

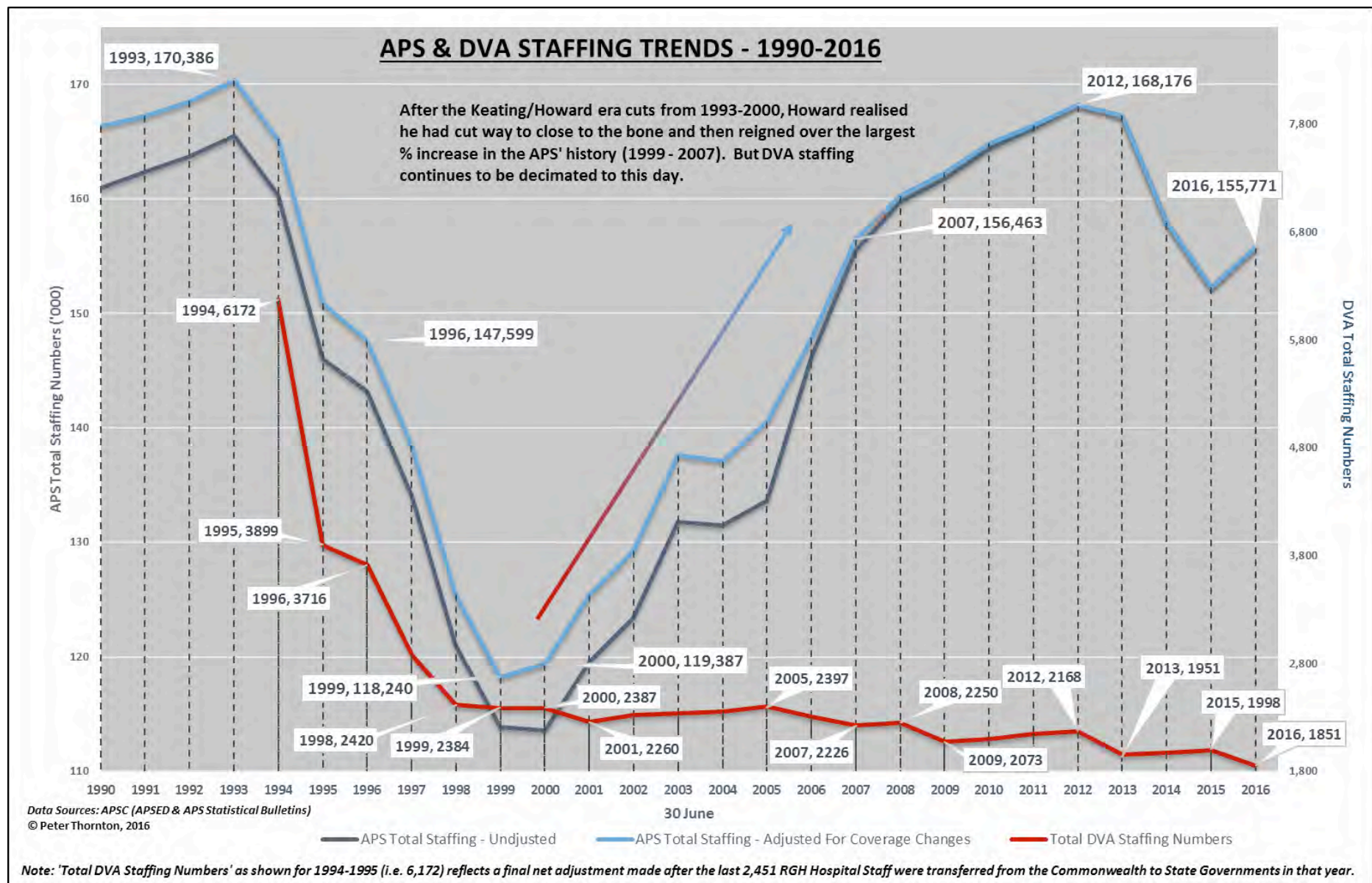


Data Sources: Toose Report 1975, RBA, QLD Treasury, ABS, DVA

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APS & DVA Staffing Trends = 1990-2016

Senate Foreign Affairs, Defence and Trade References Committee. The Constant
Battle: Suicide by Veterans, August 2017, Submission #335, Figure 6



Source: P Thornton Submission #335, Figure 6.