Rod Thompson
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Submission to the Productivity Commission

Compensation and

Rehabilitation for Veterans

Sir / Madam,

It is my privilege to put forward this submission to the Productivity Commission

The Department of Veterans' Affair (DVA) is by its own admission failing veterans and creating a toxic environment for the veterans it is supposed to serve (*attached News article from the Canberra Times*).

Many veterans are now too terrified to contact the DVA without the assistance of an Advocate/ Lawyer as in one instance a veteran contacted DVA on 133254 to make a simple enquiry about his incapacity payments he had three conversations with three different delegates over the period of a week and got three conflicting and different answers on the same issue. This instance is just one of many that contribute to a decline in both the physical and mental health of veterans and can be a significant contributor to incidents of self-harm and suicide.

"This is highlighted tragically in the recent cases of Jesse Bird and Jason Grant".

The DVA have become adversarial and dependant on contracted legal and medical advisors for almost every aspect of their day to day operations. This is fiscally irresponsible and morally repugnant in one case DVA used five different law firms to fight a veteran's case, this matter has now been ongoing and unresolved for three thousand, eight hundred and twenty-three (3,823) days so far even though all the expense conservatively estimated in contracted legal fees alone to be more than half a million dollars and DVA was proven wrong. Below are a few examples of what DVA call Veteran Centric Reform and acceptable service delivery

- **Case Study One** - In a recent matter before the Administrative Appeals Tribunal (AAT) a veteran applied for incapacity payments because his accepted condition (incapacity) was preventing him from working (SRCA / DRCA) under section 19 SRCA. The application was

lodged in 2016 after 3 months (90 days) the advocate made representation to the delegate requesting an update on the progress of the claim. The delegate concerned, stated that he could not find the paperwork. Fortunately, the veteran and his advocate were able to forward the original documents sent via email to the delegate while on the phone with the delegate, receipt of those documents was then confirmed. Inadvertently the veteran had included an email sent to his last employer asking for the employer to clarify the veterans' reduction in hours due to his accepted lumbar spine condition. This email was taken by the delegate to be an indication of fraud and the claim was subsequently rejected even after representation to the team Leader. To compound this error DVA also used the services of MLCOA Dr whose report was at best non-reflective, ambiguous and factually flawed and in direct contradiction to his treating specialist's reports, a problem recently addressed by the Federal Court in Repatriation Commission v Sharp FCA 350 2017;

"the diagnosis was not consistent with the evidence of Mr Sharp's long-standing GP; Dr Smith only had one appointment to assess Mr Sharp; some of Dr Smith's views were based on assumptions which were not correct; his views were not supported by Mr Sharp's long history of job difficulties and job loss."

DVA also referred to this matter when justifying a ban on the advocates access, when the matter was referred to the office of the Defence Force Ombudsman complaint number. Note the DVA themselves conceded this matter at the AAT on the January 2018.

This matter was originally submitted at primary level on the February 2016 to [a delegate] and the veteran is still without his ligament entitlement to incapacity payments some seven hundred and thirty-one (731) days from application, appallingly this matter transitioned through the hands of at least twenty-six (26) different DVA staff in the space of two (2) years, an average of one different delegate per month dealing with this claim.

- **Case Study two** -Another matter currently before the AAT highlights the problematic area of veterans who have entitlements under the four (4) different Act(s) being Veterans' Entitlement Act (VEA)1986, Safety Rehabilitation & Compensation Act (SRCA) 1988 known now as the Defence Related Claims Act (DRCA), Military Rehabilitation & Compensation Act (MRCA) 2004 and ComSuper.

  This veteran was medically discharged from the ADF in 2013 for PTSD and was granted an A class ComSuper pension, this veteran was a Warrant Officer and had almost thirty (30) years of service and six (6) different deployments over four (4) legislations. His first deployment was as a private soldier to the Western Sahara. After his return he exhibited symptoms of mental health problems and was hospitalised as per his medical records, this occurrence exhibits a "clinical Onset" as defined in Lees v Repatriation [2002] FCAFC 398; 125 FCR 331; and further defined in DVA's own CLIK guide 3.4.4 Establishing the clinical onset and/or worsening as In Re Robertson v Repatriation Commission [1998] AATA 127, the time of **clinical onset is said to be when**: ***A person becomes aware of some feature or symptom which enables a doctor to say the disease was present at***

that time; or ***A finding is made on investigation which is indicative to a doctor of the disease being present at that time.*** Posttraumatic Stress Disorder (PTSD) was also diagnosed by two separate treating specialists supported by a review of the case by a third independent forensic psychiatrist.

DVA sort the opinion of a Medico Legal Consultant Occupational Assessor (MLCOA) "Independent Expert" Dr who against the two treating specialists diagnosed Adjustment Disorder not PTSD even though DVA had accepted the diagnosis of PTSD then delivered two (2) conflicting and ambiguous supplementary reports. At the primary and VRB level the only dispute was the clinical onset of his PTSD for which, he was medically discharged from the Australian Defence Force and granted a class A ComSuper pension.

The case has causal links that are chronologically supported by his medical documents and the opinion of 3 separate psychiatrists supports the diagnosis yet DVA in spite of the case law reflected in Repatriation Commission versus Sharp mentioned previously, continue to delay and complicate this matter that has now been unresolved for two thousand, one-hundred and ninety (2,190) days and has cost the veteran his ADF career, his marriage, confusion due to conflicting diagnosis's and delays in process and significant decline in the veterans' health/Financial wellbeing.

Case Study three - A female veteran who was the subject of sexual assault and bullying in the ADF proven under the balance of plausibility by Defence Abuse Review Taskforce (DART) also granted a class A ComSuper pension when medically discharged, supported by Defence Investigations and witness statements. She was denied liability by DVA MRCA liability Section (sexual and serious assault team Melbourne DVA office) for psychological conditions based on a very ambiguous Medico-Legal report and opinions of Contracted Medical Advisers (CMA) in direct contradiction to her treating psychiatrist's diagnosis and opinion.

This matter progressed to the Administrative Appeal Tribunal (AAT) where it was directed that DVA re-assess the diagnosed conditions of Depression and Anxiety/ Social Anxiety as a matter of urgency. This was again referred to the DVA serious and sexual assault team in the Melbourne office.

This was done in consultation with senior delegate it was agreed that this would be dealt with as a matter of urgency as the veteran was at risk of self-harm (hospitalised on many occasions) and the matter was adjourned by the AAT for this process to be undertaken.

This matter took eight (8) months (240 days), two reports and the delegate went on leave during the process. The excuses provided for the delay were as follows; lost the file, file in Brisbane, File in transit, waiting on doctors report, still waiting on doctors report, doctors report not good enough, waiting on second doctors report, delegate on leave, don't know where the claim is not the delegate handling the case, just got back

from leave at the eight (8) month mark the advocate escalated the matter to the Deputy Commissioner Melbourne after a heated discussion with the delegate informing her that the AAT was considering dismissing the matter due to non-compliance which related directly to the TTP these claims, which were supposedly being treated as a matter of priority.

It should be noted that the delate made threats to the advocate about the matter. “Well if you want a decision today I can give it to you, but you won’t like it”. Subsequently the advocate had restrictions place on his access and two (2) conditions were finally accepted and the third was conceded by the DVA contracted law firm Sparke Helmore. This matter is still ongoing with the veteran still struggling with permanent impairment and entitlement to SRDP.

Many of the problems arise because we now have four (4) conflicting legislations VEA 1986, SRCA 1988 (known now as Defence Related Claims Act (DRCA), MRCA 2004 with implications of offsetting against MRCA, SRCA (DRCA) form any ComSuper entitlement.

DVA policy is directing staff to push claims where ever possible under the MRCA 2004 legislation where the compensation entitlement can be reduced by referring to the injury as an aggravation of a pre-existing condition reducing its compensable value under the Guide to Determining Impairment and Compensation – Modified (GARP M).

The veteran mentioned at case study two could be at least $35,718.80 worse off per year under MRCA 2004 if his conditions cause him to cease working and then he would be unable to be assessed under section 24 of the VEA 1986 and not be entitled to Above General Rate (AGR) pension. But only be assessed under section 199 of MRCA if he is awarded 50 + impairment points and all his other entitlements including ComSuper are offset against any compensation he receives (excepting lumpsum compensation for the injury) as his ComSuper has already excluded his entitlement to Service Pension offset to a zero amount.

These three case studies above have cost the tax payer approximately half a million dollars in legal cost and this is supported by recently released figures that show DVA spend 33 million dollars per year on outsourcing. Two of the three cases have been decided in favour of the veteran with one matter still pending. This is also supported by the attached document regarding publicly available figures and statistics drawn from DVA reports and statistics which indicate at the AAT level 73% of matters before the tribunal are overturned in favour of the veteran.

One the may Veterans’ Affairs’ Ministers Dana Vale stated after the passage of MRCA 2004 through both houses of Parliament that” No veteran would be worse off under MRCA” they turned out to be very hollow words. A sizeable number of veterans who have given over 20 years or more of service

to our nations military are now yoked with service under four (4) conflicting legislations limiting and offsetting many of their entitlements creating what DVA call automatic offsetting provisions that they have no manual control over.

Minister, I ask you when has a government department that has ***"no control over the legislation that it administers"***. "what has gone wrong"? Answer, its senior management have lost control of the department. Veteran Centric Reform is nothing more than smoke and mirrors, very expensive smoke and mirrors but a charade all the same.

I was going to complement the DVA with appearing to have started to reduce the time taken to process (TTP) primary MRCA 2004 claims, until you scratch the surface and realise that this decrease in TTP is not due to a concerted effort to change culture, policy and efficiency but more, engaging agency staff and contracted law firms to process claims, which are cheery picked for simplicity for example, conditions such as sprains and strains, aggravations of pre-existing conditions, Compartment Syndrome and a number of other simple and common injuries.

This is a fiscally unstainable policy that will only provide a small window of improvement while the ANAO audit reviews the DVA service delivery. The DVA leadership is crowing about TTP for non-liability health care (NLHC) being down to a week or so, and so it should be, with very little criteria to be met. Sadly, having NLHC is one thing finding a psychiatrist who will accept the DVA card is a whole other adventure, especially for veterans in remote and rural communities.

Where many doctors not just specialists are refusing to write reports for DVA due to large volume of repetitive and time-consuming paperwork required by unqualified departmental staff who have no real understanding of the legislative requirements, who are guided only by ambiguous policy rarely understood even by team leaders and senior staff.

DVA do not adequately reimburse the treating doctors for their time but will pay MLCOA two-thousand, three-hundred and seventy-six dollars ($2,376) for a non-reflective report rendered useless under cross examination at the AAT. $2,376 is almost the capped amount for Dental treatment which is $2,488. DVA will pay almost the same amount for a non-reflective report from MLCOA to fight a claim, that they will to provide dental treatment for a Gold Card holder. Some how that seems to be a priority in the wrong place.

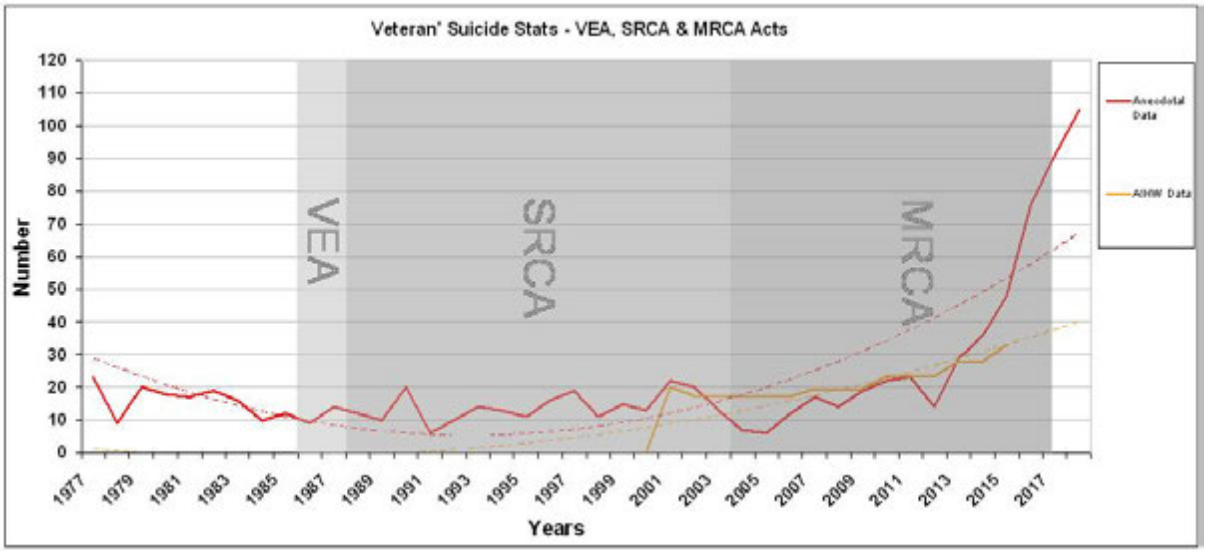
Millions of tax payer dollars are being wasted on contracted Medico-Legal Doctors, Law Firms and Rehabilitation Providores who are not providing quality services to DVA, they operate with little or no departmental oversight or quality control, their decisions and actions have significant impact on the wellbeing of DVA's clients over many aspects of services and compensation provided by the department.

Complaints about these contracted entities fall on deaf ears at the DVA as the same dodgy providers are seen time and time again providing sub-standard reports and services at significant cost to the tax payer and significant detriment to veterans.

In some cases, the actions DVA staff and contracted providers slips into a grey area concerning breaches of the model litigant rules, Australian Public Service (APS) Code of Conduct and Section

142.2 of the Commonwealth Criminal Code (Abuse of Public Office). It is imperative that more oversight is put in place for contracted providers with case reviews and client satisfaction surveys conducted regularly.

The case of Jesse Bird highlighted the tragic consequences of DVA failure in policy and procedure which has been identified for over 10 years in reviews and reports apparently ignored by senior staff. The same senior staff who are briefing you about the success of their Veteran Centric Reforms. While the veteran suicide rate sky rockets under the MRCA 2004 legislation dramatically displayed on this graph post 2005.



Tragically, 86 veterans took their own lives in 2017 not every one of those was directly related to DVA failures but a sizeable number were. This situation is made more urgent, since 86 could have been far higher if the well over 100 attempted suicides or self-harm incidents that occurred last year, did not have intervention from family, friends, police, the ESO community or just sheer luck.

Ask DVA to release the figures of how many veterans were hospitalised for self-harm in 2017. Karen and John Bird warned the DVA as did his advocate that Jessie was at risk the Birds wrote to the Senate Inquiry and his advocate rang DVA only to be accused of “Emotional Blackmail” by a DVA delegate.

This is Veteran Centric Reform under the current senior management, who only two years ago were telling the then Minister that there were no problems and the calls of decent were just disgruntled veterans. Since then we have had the Senate Enquiry and now an ANAO audit which would not have occurred if there were not compelling grounds. Certainly, the findings vindicate those disgruntled veterans and ask significant questions of DVA’s senior management.

There are 5 urgent areas that need to be addressed and those are as follows;

1. Legislative Reform – one simple, Beneficial Legislation (attached some simplified suggested legislative review discussion points)

2. Review of all departmental Culture, Policy and Procedures
3. Review of Scheduled Fees for treating doctors and reduction in the use of Medico-Legal services.
4. Quality control and full APS compliance audit of all contracted providers
5. Review of litigation practice and policy with a view to Alternative Dispute Resolutions (ADR) being the preferred method of review.

Sincerely,

Rod Thompson
Advocate (Level 4)

Attachments.

1. DVA's performance under Simon Lewis – Drawn from DVA's own statistics
2. Canberra Times Article http://www.canberratimes.com.au/national/public-service/veterans-affairs-failures-exposed-in-australian-public-service-commission-capability-review-20141207-122el5
3. Draft Report into the Matter of Jesse Bird (DVA)
4. Draft Paper on Medico-Legals
5. DVA response to 4
6. 2013 DVA Capability Audit. https://www.apsc.gov.au/__data/assets/pdf_file/0020/64622/DVA-Capability-Review.pdf

DVA'S PERFORMANCE IN LAST 4 YEARS UNDER SIMON LEWIS:

An article in the Canberra Times on 8 December 2014 reported that, ***'A Capability Review by The Australian Public Service Commission has found Veterans' Affairs has big problems with its culture, leadership and equipment, affecting the health and welfare of its clients, veterans and their families.'***

DVA's Secretary, Simon Lewis, who had already been in this position for over 18 months, acknowledged the need for improvement. He is quoted as saying, ***'In particular, the findings from the report identify that DVA must take a fresh look at the foundation of its business, its operating model and by extension, its delivery model.'***

Since the above statement by Simon Lewis except for a reduction on the time to assess veterans claims, (VEA decreased from 79 days to 72, SRCA from 171 to 110 and MRCA from 155 to 107), **ALL** other performance measurements as contained in DVA and the VRB's Annual Report have deteriorated, with some examples being:

- **A 51% increase in complaints** after adjusting for 8% less clients.
- **An increase in appeals being overturned at the VRB** (47.5% in 12/13 to 53.3% in 16/17). In 2001/02 it was 29.6%.
- A large increase in appeals overturned at the AAT, up significantly from **41% in 12/13 to 73% in 15/16.** Figures for 16/17 are incomplete.
- Decrease in client satisfaction level in the last two years, down from **89% to 83%** and a vote of no confidence by younger veterans of which only **49%** were happy with DVA's service.
- **A 29% increase in external legal costs**, $5.6M to $7.2M.
- **A significant decrease in the acceptance rate of new compensation claims**, MRCA now 59.7%, previously 80% and SRCA now 55%, previously 59%.
- While the improvement in the mean time to complete a compensation claim under SRCA and MRCA is welcomed **it has come at the expense of correctness in assessing initial liability claims.**

  Under SRCA the **critical error rate** has more than **doubled from 5.4% in 12/13 to 12.9% in 16/17**. For MRCA it is even worse having more than **trebled from 2.4% to 8.7%.**

  Even more worrying is in 16/17 the mean time to complete compensation claims is virtually unchanged while the critical error rate under SRCA and MRCA increased significantly, from 6.8% in 12.9% for SRCA and 6.9% to 8.7% for MRCA, and remember this is just in the last **year.**
- The most damming and tragic statistic is that veteran suicides have increased from 14 in 2012 to 77 in 2016. This is a more than **fivefold increase.** In some cases DVA, due to their negligence and maladministration, may as well have provided the means for the likes of Jesse Bird and Jason Grant to end their life.

To repeat, Simon Lewis is on the record saying three years ago, ***'In particular, the findings from the report identify that DVA must take a fresh look at the foundation of its business, its operating model and by extension, its delivery model.'*** With his failures as outlined above, he should now fall on his sword, (along with his entire management team), for failing our veterans. Alternatively when will the Minister grow a pair and sack Lewis and his management team?

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DVA'S PERFORMANCE UNDER SIMON LEWIS:

		2012/13	2016/17	COMMENTS
1	Number of clients	313880	291285	Reduction of 8%
2	Number of complaints	2031	2845	A 51% increase after adj. for less clients.
3	Number of compliments	1116	959	An 8% decrease after adj. for less clients.
4	Mean time to complete a compensation claim - VEA	75 days	72 days	Against a target of 75 days
5	Mean time to complete a compensation claim - SRCA	171 days	110 days	Target 120 days
6	Mean time to complete a compensation claim - MRCA	155 days	107 days	Target 120 days
7	Acceptance rate for new compensation claims - VEA	59%	59%	No change
8	Acceptance rate for new compensation claims - SRCA	99%	65%	Decrease of 8%
9	Acceptance rate for new compensation claims - MRCA	89%	59.1%	Decrease of 35%
10	External legal costs	5.6M	7.3M	Increase of 29%
11	Number of appeals decided by the AAT	367	319	
12	Appeals overturned at AAT	41%	73%	16/17 figures incomplete, 72% is for 15/16.
13	Number of appeals lodged with the VRB	3508	2863	
14	Appeals overturned at the VRB	47.5%	52.3%	Steadily increasing from 28.6% in 2001/02
15	Client survey results		82%	Down from 89% two years earlier. Note only 49% of younger veterans are satisfied with DVA.
16	Number of complaints to the Ombudsman	147	?	Current number unknown. DVA don't report it anymore.
17	Number of DVA staff	2058	1938	A 6% Reduction. Figures as at 30/6/13 and 17.
18	Number of veteran suicides	14	77	A MASSIVE increase with some directly attributed to failings of DVA and/or Defence Figures are for 2012 and 2016. 2017 likely to exceed 2016.
19	Correctness rate - all VEA claims	1.6%	4.0%	More than doubled but still under target of 5%
20	Correctness rate - all SRCA claims	5.4%	12.9%	More than doubled in 4 years. It was 6.8% in 15/16.
21	Correctness rate - all MRCA claims	2.4%	8.7%	More than trebled in 4 years. It was 6.3% in 15/16.