Mr. Peter Harris AO
Chairman
Productivity Commission
Level 12, 530 Collins Street
Melbourne VIC 3000, Australia

Date 20 May 2018

Submission No 8 of 2018

Re: **Compensation and Rehabilitation for Veterans**

Subject: **DVA-SES Misrepresentations & Lies to Ministers'**

Current age of claim: **3,931 Days (**i.e. 10 years', 8 months' and 15 days**)**

Introduction

1. This paper is a companion supplementary submission dealing with **(A)** DVA fabrications, lies, omissions and misrepresentations provided to **(B)** DVA Minister Snowden Feb 2011, who in-turn **(C)** re-stated DVA 'lies, omissions and 'Misrepresentations' to Senator Michael Ronaldson 03 March 2011, who **(D)** in good-faith passed DVA lies and an assurance to me 22 March 2011 that **(1)** my Incapacity Claim was **(2)** ***'Separate'*** and ***'not related'*** with each other or **(3)** being coordinated between DVA staff.

February & March 2011 **Note: Claim age March 2011 had already exceeded 1,300 days**

2. 04 Feb 2011, I wrote to Senator Ronaldson (Shadow Minister Veterans' Affairs) outlining my concerns in respect of DVA-SES coordinating decisions between **(1)** my Incapacity-to-Work/Economic Loss claim and **(2)** a subsequent claim in respect of DVA Defective Administration in the same matter ------ this 'Defective-Administration' (CDDA Scheme) investigation was additionally being performed by DVA-SES, and as I had already observed during 2010, DVA staff were committed to reverse engineering and coordinating investigations and as a result I was alarmed to say the least and wrote of my concern to Senator Ronaldson.

DVA Minister Advice: 1. "*Incapacity*" claim and 2. "*CDDA*" claim "*are not related*"

3. In an attempt to allay my concerns Senator Ronaldson 09 Feb 2011 wrote to Minister Snowden who in-turn 03 March 2011 wrote back stating:-

> ***"I should advise that the offer of the CDDA payment and his most recent claim for incapacity payments are not related".***
>
> Minister Snowden. **03 March 2011**

4. In response to this DVA Ministerial response from Minister Snowden, the Shadow minister for Veterans Affairs Senator Ronaldson wrote to me and stated:-

> ***"I further note the Minister's advice relating to your application for a payment under the Scheme for Compensation of Detriment caused by Defective Administration (CDDA). I am comfortable with the Minister's advice that your CDDA application and your request for permanent incapacity payments are not linked and consideration of these matters is quite separate."***
>
> Senator Ronaldson. **22 March 2011**

April 2016, DVA's 5th law firm reveals secret deletion of Incapacity Policy

Note: Claim age April 2016 exceeded 3,100 days

5. In April 2016 DVA's 5th law firm revealed a fragment of a secret DVA-SES *internal email* dated 16 Aug 2010, during what was alleged by DVA at the time, to be an 'Independent Investigation into DVA Defective Administration'.

6. Beyond demonstrating DVA malicious and targeted maladministration, the secret DVA *internal email* also revealed DVA staff had deliberately coordinated tortious-interference and deliberate maladministration to ensure both **(A)** my Incapacity Claim and **(B)** CDDA Scheme Defective Administration claim were both denied, by virtue of a secret deletion of Incapacity Policy wherein DVA staff clearly expressed their motives, malice, intentions and what was in their minds:-

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6.113 On **16 August 2010**, an internal email indicated that Mr Rollins requested, **through KCI Lawyers**, that SRCA Claim 9 be resolved **on the basis of current policy**, which would require the application **of the SRCA Incapacity Handbook paragraph 32.3.5**.

The email noted that:

"following discussions with the business area [12 July 2010], the Incapacity Handbook paragraph 32.3.5 has been amended to remove any reliance that Rollins or his representative could place on it for the purpose of his outstanding claim as well as the CDDA Scheme claim."290

6.114 **We note that this policy was the subject of review** as **part of the Department's review** of SRCA Claim 7 **under the CDDA Scheme**.

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7. The 2010 *internal email* (revealed 2016) exposed DVA senior staff had **(A)** coordinated the deletion of *incapacity policy 32.3.5* so as to deny both **(1)** my Incapacity-to-Work claim and **(2)** CDDA Defective-Administration claim, which **(3)** now clearly exposes Minister Snowden's 03 March 2011 comments as a complete misrepresentation of facts.

8. DVA staff coordinating this malicious and 'targeted' deletion of incapacity policy occupied the following positions:-

The Sender

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[redacted]
A/g Director, Advising & Public Law
Business **Integrity** & Legal Services Group
Department of Veterans' Affairs @ 16 Aug 2010

....

The cc List

....

239 Email from [redacted] to:

[redacted]	DVA Chief Operating Officer
[redacted]	**Exec P.A.**to [redacted] **DVA Secretary**
[redacted]	National Director-Legal:
[redacted]	MCRS Manager
[redacted]	National Director DVA Policy
[redacted]	Senior lawyer **16 August 2010**

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Conclusions

9. Evidence confirms DVA staff and in-house lawyers:-

   i. Mislead both Veterans' Affairs Minister's and Shadow Minister's.
   ii. Coordinate **(a)** deletions of policy with **(b)** review outcomes to ensure connected claims' are denied.
   iii. Operate beyond power and authority in breach of *s15AA Acts interpretation Act* and case law i.e. *Comcare v Thompson (2000).*
   iv. Design, engage in, coordinate and consciously manage targeted malice.
   v. Misuse public resources and monies in breach of *The PGPA Act*
   vi. Any DVA staff member can delete and 'amend' policy to suit any '*assumed desire*' and reinterpret legislation to cause and cement damage and economic loss.
   vii. DVA Executive Level, Senior Executive Service, Legal, Sub-Contractors, Commissioners' and the Secretary's office support tortious acts and engage in Misfeasance-in-public-office.
   viii. Mislead DVA Ministers' and Shadow Ministers'.

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s15AA The Acts Interpretation Act 1901 and *Comcare v Thompson*

"At the outset I emphasise that as part of the executive arm of government, **the MRCC must administer the law as drafted by the legislature and as interpreted by the courts**.

The courts must interpret the law as it stands and cannot remedy perceived deficiencies by departing from the ordinary meaning of the words of the legislation: see the discussion of Finn J in ***Comcare v Thompson (2000)*** 175 ALR 163 at 170.

In ***Thompson, Finn J*** (citing with approval *R v L* (1994) 49 FCR 534 at 538) noted that section **15AA of the *Acts Interpretation Act 1901***, which guides the interpretation of legislation, **'provides no *"warrant for redrafting legislation nearer to an assumed desire of the legislature"'***.

Therefore, **it is not open to the MRCC to operate outside the boundaries of the *Safety Rehabilitation and Compensation Act 1988* (the SRC Act), irrespective of any perceived of actual inadequacies.**"

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Conclusions continued – DVA Royal Commission Evidence

10. In terms of repeat attempts and efforts to remedy DVA misrepresentations of Repatriation Statutes, Case Law and Policy, including obvious misrepresentations of Primary Legislation i.e. *The Income Tax Acts*, I approached a number of senior DVA staff between 2010 thru 2016 ------ During these years' I did not know of the secret targeted deletions of Incapacity Policy August 2010, during the CDDA Scheme review.

11. During these years' I repeatedly wrote and emailed senior DVA staff in excess of 5,000 times (Confirmed by DVA's 5th law firm NRFA, Nov 2014) as did my legal representative ███ ██████of KCI Lawyers, constantly making reference to *Incapacity Policy 32.3.5*.

12. All of these attempts to remedy an obvious error were repeatedly and consciously ignored by DVA senior staff, for reasons' I had no knowledge of, until April 2016.

13. In April 2016 DVA staff finally authorised the release to me, of DVA's 5th law firm's 300 page so-called Final Report (after waiting for Senator Ronaldson to retire). One senior DVA staffer involved was [redacted] a chap who had been involved in my matters and aware of his colleagues secret and coordinated deletions of *SRCA Act* Incapacity Policy 32.3.5 during the 2010 'Defective-Administration' investigation ---- in June 2016 [redacted] provided evidence in a Royal Commission (RC) in direct respect of DVA, SRCA Act Policy guides:-

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36 Q. **The position is that there's a SRCA liability handbook which guides the assessors to make these decisions; is that right?**

39 A. **Correct**

40 Q That handbook is published, I take it, by DVA?

42 A Yes. Our manuals, policy manuals, are available publicly on our website through a system we call CLIK as a tool for claimants and for their representatives **so that they can see what policy we will be applying as we process a claim**.

Page: 19675

1 Q **Who decides - at what level is it decided what's in the handbook? At what level is it authorised?**

3 A. In really matters of significant substance, **a policy will be determined by the Commission - one of the two Commissions**, the Military Rehabilitation Compensation Commission or, in relation to the VEA, it would be the Repatriation Commission. So if a matter is a matter of significant policy, it is determined at that level. If it is procedural or a very minor policy question, it will be possibly determined at my level in the organisation and reflected in the manual.

13 Q **Is there, to your knowledge, a statutory basis to the manual or is it a departmental policy that really stands outside the statute?**

A **It is to support the statute. It is to assist claims assessors apply the law because that's what their job is.**

20 Q Yes

21 A It cannot override the law.

23 Q **We can take it as accepted that it can't override the statute**. **My question is whether it has a statutory foundation** - in other words, to your knowledge, **is there a provision in the statute which empowers someone specifically** to **make policy in the form of a handbook like this?**

29 A. The Commission has the power to make guidance to decision-makers, so yes.

32 **Q. So it comes under that power?**

33 A **That's correct**. Page 19676

[redacted] - Assistant Secretary Rehabilitation Case Escalation & Military Rehabilitation Compensation Act Review Branch, Department of Veterans' Affairs - 24 June 2016 – 2.43 pm - Royal Commission

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14. In affect the June 2016 Royal Commission evidence demonstrated to me:-

ix DVA staff are additionally free to knowingly mislead a Royal Commission.

Conclusions Summary

15. While not exhaustive, all of the above demonstrates DVA staff and in-house lawyers:-

i. Mislead both Veterans' Affairs Ministers and Shadow Ministers'
ii. Coordinate (a) deletions of policy with (b) review outcomes to ensure connected claims' are denied.
iii. Operate beyond power and authority in breach of *s15AA Acts interpretation Act* and case law i.e. *Comcare v Thompson (2000).*
iv. Design, engage in, coordinate and consciously manage targeted malice.
v. Misuse public resources and monies in breach of *The PGPA Act*
vi. Any DVA staff member can <u>delete</u> and <u>amend</u> policy to suit any '*assumed desire*' and reinterpret legislation to cause and cement damage and economic loss.
vii. DVA Executive Level, Senior Executive Service, Legal, Sub-Contractors, Commissioners' and the Secretary's office, <u>support</u> tortious acts and engage in Misfeasance-in-public-office.
viii. Mislead DVA Ministers' and are free to knowingly mislead a Royal Commission.

DVA Maladministration during incapacity guarantees losses

16. I was destroyed by DVA repeat maladministration 2007 thru 2009 at a time when I could barely stand due wholly to Australian Defence Force (ADF) sustained spinal injuries 1987, accepted by DVA 1991. During a period of total incapacity 2007/2008 financial year, I again lost employment, as well as my home and life's work as DVA staff coordinated decisions – 'decisions' entirely focused on preventing Economic Loss (i.e. Incapacity-to-Work) compensation across multiple decisions which involved fraud coupled with concealment of incapacity evidence and income and employment loss.

-$2.2M Losses Repeatedly Detailed and Ignored by DVA and its sub-contractors

17. It did not matter to DVA staff that their maladministration caused and continued to cause significant economic losses during 2007 thru 2009. Even when, as evidenced below, the same information was repeatedly conveyed to DVA by their law firm contractors' (2007 thru 2015) no support, during either the loss period of 2007 thru 2009 or, subsequent reporting 2010 thru 2015 detailing the losses I endured as a direct result of incapacity, could bring DVA to recognise it was their linked tortious schemes' that guaranteed my losses e.g. my home 2008/09.

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> ***5. Total Costs to myself: a final and complete health breakdown (physical & mental), including the loss of employment, income, business, my home, assets, invested capital, superannuation, retirement, and 17 years of hard work and sacrifice, that was already built on the loss of my Australian Defence Force (ADF) career, vocation, and health, where I left the ADF as I was ruined and ignored when injured - between Oct 2007 to June 2009, a total loss of approximately -$2.2m ensued, again*** **7**

DVA 5th law firm contractor citing my reporting re losses, March 2016

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18. What I learned about DVA: **(1)** DVA staff and senior management will break any rule, breach any law and engage in all manner of tortious-behavior if that 'tortious-behaviour' can **(2)** defeat any claim where **(3)** losses are occurring as a direct result of incapacity.

MINREPS and Briefings

19. The slow release of evidence e.g.:-

> ***"I should advise that the offer of the CDDA payment and his most recent claim for incapacity payments are not related".***
>
> Minister Snowden. **03 March 2011**
>
> ***"I further note the Minister's advice relating to your application for a payment under the Scheme for Compensation of Detriment caused by Defective Administration (CDDA). I am comfortable with the Minister's advice that your CDDA application and your request for permanent incapacity payments are not linked and consideration of these matters is quite separate."***
>
> Senator Ronaldson. **22 March 2011**
>
> **"following discussions with the business area [12 July 2010], the Incapacity Handbook paragraph 32.3.5 has been amended to remove any reliance that Rollins or his representative could place on it for the purpose of his outstanding claim as well as the CDDA Scheme claim."[290]**
>
> DVA Internal Email **16 Aug 2010 – exposed April 2016**

20. Has repeatedly demonstrated, DVA senior staff, middle managers and in-house lawyers:-

    1. Work in teams across decisions and reviews, identifying, designing and coordinating additional conscious-maladministration in order to reinforce earlier assessor maladministration – which as shown in my matters has been demonstrated to be 'conscious-maladministration' reinforced subsequently by a secret law firm Reconsideration-Decision Maker, DVA chose to conceal for eight plus years'!

    2. That **(i)** Defective-Administration investigations (CDDA Reviews) and **(ii)** Incapacity-to-Work claims are '*linked*' and not '*separate*' processes and **(iii)** are directly '*related*' with each other where we now learn DVA tort feasors' are deeply involved in coordinating additional targeted-maladministration so as to cover up and support earlier maladministration and tortious acts through tortious-interference e.g.. secret illegal deletions of Incapacity Policy performed to **(a)** deny an Incapacity-to-Work/Economic Loss claim, **(b)** thwart a CDDA review so as to **(c)** deny restorative actions, where it is now additionally clear,

    3. DVA senior staff will mislead both **(i)** a sitting DVA Minister who in-turn **(ii)** misleads a shadow Veterans' Affairs Minister, Senator and Parliamentarian.

21. Further in respect of MINREPS and Briefings, it is abundantly clear to me DVA staff are well accustomed in both the art and the practice of misleading Ministers and Politicians.

22. However, as the Productivity Commissioners are themselves colleagues of DVA Commissioners it is doubtful any of the evidence I or others submit will be acknowledged let alone distract the PC away from its "Transition" narrative ------ a 'narrative' that clearly flows from DVA Commissioners who wish to narrow, suffocate and restrict the PC focus to ensure longer term DVA practice, methods and culture are avoided.

23. Moreover, based on the most recent PC posts it is obvious a lot of back-room *shaping* work has occurred between PC and DVA Commissioners in the context of the 'Transition' narrative ---- a narrative that will ultimately serve in restricting submission' focus and ensure all evidence in respect of DVA toxic practice, culture and criminality e.g. fraud and conscious-maladministration, are left concealed along with DVA's claim mismanagement system (i.e. ***The DVA 4D's*** (Delay-Deny-Defend & Damage)) are omitted, becoming yet another "inquiry" shaped so as to avoid any examination of the biggest filthiest ugliest elephant in the room, the DVA itself!

The Only Remedy - A Royal Commission into DVA

24. After the Senate inquiry into Veteran' Suicide titled 'The Constant Battle' which constructively avoided evidence that DVA itself, is both **(a)** a 'Constant Battle' and **(b)** a major factor in Veteran' attempted and successful suicide, it has become obvious the only process remaining open to Veterans' and their families to finally expose this immoral and criminal organization, is through a Royal Commission.

25. Injured former ADF members' beyond initial injury events and transition, experience recurring imploded health (Physical and Psychological), employment and income loss, the loss of homes and a life's work. As demonstrated, we are pitted against teams of DVA staff who thrive on exploiting injuries, incapacity, chronic pain, disturbance, impairments and obliterated personal circumstances -- using their knowhow, power and complicated statutes, processes, systems and resources-of-state to wage exhausting targeted campaigns against people severely compromised, in order to defeat claims and reviews with the sole focus being to reinforce **(A)** DVA Wrongdoing and **(B)** Protect DVA wrongdoers… at all cost.

Misleading Ministers, Misfeasance-in-Public-Office and a Royal Commission

26. In my assessment the only avenue to properly examine and comprehend DVA Complex Corruption and the hierarchical sophistication involved e.g. Misleading Ministers through MINREPS built from fraud, conscious-maladministration, misrepresentations of statute, case law and secret deletions of policy (i.e. Misfeasance-in-Public-Office) is through a Royal Commission ---- a 'Royal Commission' that would in my opinion make the recent Banking Royal Commission look like a Sunday School picnic by comparison.

27. Finally in respect of the primary topic/subject of this submission (No 8) the evidence outlined demonstrates DVA senior staff:-

    1. Coordinate decisions with reviews to ensure both are denied and defeated.

    2. Mislead both DVA Ministers and Senators, concealing DVA tortious acts which when properly examined,

    3. Demonstrate DVA staff are entirely focused on:

        a. Preserving DVA Wrongdoing and,
        b. Protecting DVA Wrongdoers, at all cost.

Yours sincerely

Martin J. Rollins
20052018 – 1320 OSTDVAC

Supplementary Extracts and Notes:

As of 20 May 2018:-

- Actual Time Taken to Process (TTTP) **= 3,931 Days** (ie 10 years', 8 months' and 15 days)

NRFA Version 1 - May 2015

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7.111 On **16 August 2010**, an internal email indicated that Mr Rollins requested, **through KCI Lawyers**, that **SRCA Claim 9** be resolved on the basis **of current policy**, which would require the application of **Incapacity Handbook paragraph 32.3.5.**

The email noted that:

"following discussions with the business area [12 July 2010], the Incapacity Handbook paragraph 32.3.5 has been amended to remove any reliance that Rollins or his representative could place on it for the purpose of his outstanding claim as well as the CDDA Scheme claim." 239

7.112 **We note that this policy was the subject of review** as **part of the Department's review** of SRCA Claim 7 **under the CDDA Scheme**.

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235 Letter from KCI Lawyers to the Department dated **15 December 2009.** **Repeat letter, re Incap Policy 32.3.5.**
236 Letter from KCI Lawyers to the Department dated **15 January 2010.** **Repeat letter, re Incap Policy 32.3.5.**
237 Letter from KCI Lawyers to the Department dated **1 February 2010.** **Repeat letter, re Incap Policy 32.3.5.**
238 Letter from KCI Lawyers to the Department dated **11 August 2010.** **Repeat letter, re Incap Policy 32.3.5.**
239 **Email from** ████ ████, ████, ████, ████, ████ ████
cc ████ **16 August 2010.**

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NRFA Version 2 - Apr 2016

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6.113 On **16 August 2010**, an internal email indicated that Mr Rollins requested, **through KCI Lawyers**, that SRCA Claim 9 be resolved **on the basis of current policy**, which would require the application **of the SRCA Incapacity Handbook paragraph 32.3.5**.

The email noted that:

"following discussions with the business area [12 July 2010], the Incapacity Handbook paragraph 32.3.5 has been amended to remove any reliance that Rollins or his representative could place on it for the purpose of his outstanding claim as well as the CDDA Scheme claim."290

6.114 **We note that this policy was the subject of review** as **part of the Department's review** of SRCA Claim 7 **under the CDDA Scheme**.

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289 Letter from KCI Lawyers to the Department dated 11 August 2010. **Repeat letter, re Incap Policy 32.3.5.**
290 Email from ████
████ dated 16 August 2010.
291 Letter from the Principal Legal Advisor, Business Integrity & Legal Services Group, the Department to Mr Rollins dated 13 September 2010.
292 Letter from the VRB to Mr Rollins dated 27 September 2010.
293 Letter from KCI Lawyers to the Department dated 1 October 2010.
294 Letter from the Department to Mr Rollins dated 22 October 2011.

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KCI Lawyers actual summary of letters issued to DVA-SES during CDDA 2010

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Letter-KCI Lawyers to the Department re Incapacity Policy 32.3.5-dated 30 November 2009.
Letter-KCI Lawyers to the Department re Incapacity Policy 32.3.5-dated 15 December 2009.
Letter-KCI Lawyers to the Department re Incapacity Policy 32.3.5-dated 15 January 2010.
Letter-KCI Lawyers to the Department re Incapacity Policy 32.3.5-dated 01 February 2010.
Letter-KCI Lawyers to the Department re Incapacity Policy 32.3.5-dated 05 February 2010.
Letter-KCI Lawyers to the Department re Incapacity Policy 32.3.5-dated 22 February 2010.
Letter-KCI Lawyers to the Department re Incapacity Policy 32.3.5-dated 26 May 2010.
Letter-KCI Lawyers to the Department re Incapacity Policy 32.3.5-dated 07 July 2010.
----DVA CDDA Scheme: Secret Deletions of Incapacity Policy 32.3.5 - 12 July 2010----
Letter-KCI Lawyers to the Department re Incapacity Policy 32.3.5-dated 11 August 2010.
Letter-KCI Lawyers to the Department re Incapacity Policy 32.3.5-dated 03 November 2010.
Letter-KCI Lawyers to the Department re Incapacity Policy 32.3.5-dated 30 November 2010.

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Note: 1. DVA concealed 'Deletion' of policy from KCI Lawyers

The Deleted policy

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19.50 This view of assessing AE in circumstances of total physical incapacity, as espoused in ***Cage NSWCA* and *Thompson v Armstrong*** appears to have been supported by the former item **32.3.5 of the SRCA Incapacity Handbook** that applied as at the time of assessment of SRCA Claim 7, which, as pointed out by Mr Rollins in his submissions for the purposes of the CDDA Investigation, stated:

> "if the client is totally incapacitated in any week and unable to contribute to the running of the business, the AE for the week should be zero even though the business itself may continue to derive an income."

19.51 **We note that this passage has been deleted** from subsequent versions of the SRCA Incapacity Handbook. **We understand that this amendment came about in approximately August 2010 during the CDDA Scheme investigation of SRCA Claim 7 Decision and SRCA Claim 7 Decision – Review.** At this juncture, we refer to our responses to Questions 5 in relation to the CDDA Scheme Investigation and Question 9 in relation to the SRCA Incapacity Handbook respectively.

19.55 However, in our opinion, the wording of section 19(2)(b) requires an assessment of the earnings that the ***"employee earns from any employment (including self-employment) that is undertaken by the employee during that week".*** It is our opinion that section 19(2)(b) requires an examination and determination **of the earnings that can be attributed to the client's mental or physical labour during that week. Therefore, in our opinion, if an applicant is incapable of generating earnings from employment in a week, then there can be no AE in that week.**

19.56 **Therefore, we do not believe it was necessary or correct to have deleted the passage quoted at paragraph 19.50 from the more recent versions of the SRCA Incapacity Handbook. Additionally, we note that the delegates did not have regard to this passage in SRCA Claim 7 Decision or SRCA Claim Decision 9**.

19.57 **It is our opinion, based on our understanding of Comcare's advice to the Department (we refer to our response to Question 2 in this regard) that our assessment may be consistent with Comcare's approach to determining AE**. the distinction between assessing AE in circumstances of total incapacity versus partial incapacity **would be consistent with the approach to determining AE taken by Comcare**. We discuss this further in our response to Question 2.

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The Deletion

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27.16 **We note that the following passage of the SRCA Incapacity Handbook 2009 has been deleted** from subsequent versions of the **SRCA Incapacity Handbook**:

> ***"If the client is totally incapacitated in any week and unable to contribute to the running of the business, the AE for the week should be zero even though the business itself may continue to derive an income."***

27.17 We confirm that, whilst **this was the relevant SRCA Incapacity Handbook** as **at the time of SRCA Claim 7, this passage was not applied.**

27.18 **We note** that ██████████ **in the CDDA Minute, suggested that this statement was in clear conflict with** "*the adopted legal view on these issues, as outlined, and the above departmental policy, namely, Item 15.2 of the SRCA Incapacity Handbook*":600 *"While NWE is a representation of what the client could earn but for the injury, the AE is a representation of what he/she is capable of earning after that accident.*

*Although NWE is a relatively fixed amount (although subject to annual indexation)the AE may be a more variable amount contingent upon the client's actual circumstances, i.e. including the degree of physical recovery from injury, retraining status etc. Thus, 'Ability to Earn' in suitable employment may vary from week to week with changes in his/her medical condition and progress of the rehabilitation program. Delegates are responsible for ensuring that the AE is an accurate reflection of ability to work rather than mere employment status."*601

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Reinstate the Policy

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27.19 In our opinion, **the two passages are not inconsistent**, **noting that** the latter passage suggests that **AE will depend on the applicant's actual circumstances** and that AE In suitable employment will vary on a week to week basis and **will depend upon medical evidence**.

We confirm our response to Question 1 at Chapter 19, namely, **it is our opinion that total periods of physical incapacity should be excluded from an assessment of AE**.

We recommend that if the Department agrees with our assessment, **then this passage should be included in any revised SRCA Incapacity Handbook (i.e. reinstate the passage from SRCA Incapacity Handbook 2009).**

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NRFA Final – March 2016 – Page 2

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F1.11 In our view, **it was not necessary or correct to have deleted former item 32.3.5 of the SRCA Incapacity Handbook** from the more recent versions of the SRCA Incapacity Handbook.

F1.12 **Delegates did not appear to have regard to former item 32.3.5 of the SRCA Incapacity Handbook in SRCA Claim 7 Decision or SRCA Claim 9 Decision**.

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Note: 1. Delegates had 'regard' to it alright (Nov 2008) then concealed it.

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F1.18 **SRCA Claim 7 Decision and the SRCA Claim 7 Decision-Review erred** in equating gross business income as AE **without conducting an analysis of appropriate deductions to be made in respect of business expenses, taxes**, and **GST**.

Additionally, both delegates did not conduct an assessment of AE under section 19(2)(a) of the SRCA by assessing the costs of employing another person to do the work Mr Rollins was undertaking in the context of his business.

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Note: 1. SRCA Claim 7 is Nov 2008

2. SRCA Claim 7-Review (Recon) Dec 2008 i.e. DLA Philips Fox.

Note: 3. NRFA exclude any ref to:-

- Employment loss,
- Business (self-employment) loss and
- never mentions incapacity as the cause.

Findings in relation to SRCA Claim 7 and SRCA Claim 9

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19.183 It is our opinion, Mr Rollins' total period of incapacity between 1 November 2007 and 16 March 2008 **ought to have been excluded from the assessment of AE**.

19.184 In respect of the periods of partial physical incapacity, we acknowledge that the case law demonstrates the problems associated with attempting to assess AE by reference to business earnings above.

19.185 **It is our opinion that both the SRCA Claim 7 Decision and the SRCA Claim 7 Decision–Review erred** in equating gross business income as AE without conducting an analysis of **appropriate deductions to be made in respect of business expenses, taxes, and GST.**

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Note: '*SRCA Claim 7-Review*' is Reconsideration-Decision maker DLA Philips Fox

I.e.: it was secret DVA law firm DLA Philips Fox Dec 2008 who "*Erred*"

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Additionally, in our opinion, **both delegates did not conduct an assessment of AE under section 19(2)(a)** of the SRCA by assessing the costs of employing another person to do the work Mr Rollins was undertaking in the context of his business.

19.186 **Similarly, we note in SRCA Claim 9 Decision, [redacted] also equated gross business income with AE and did not conduct an assessment of AE under section 19(2)(a).**

In our opinion, **this is not consistent with the case law** in respect of the assessment of AE for a self-employed applicant.

19.187 We consider that [redacted] ought to have considered the costs of employing another person to do the work Mr Rollins was undertaking in the context of his business. We note that, it is our opinion that section 19(2) of the SRCA, requires an analysis of AE under both limbs of section 19(2) of the SRCA to be undertaken, with the higher sum being found to represent the applicant's AE. This is not to say that Mr Rollins would have been entitled to IP in respect of his applications as the section 19(2)(a) assessment may have resulted in his AE being higher than NWE.

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Note: 4. NRFA constructively avoids 'Defective Administration' finding.