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RDFWA

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RESPONSE
TO
THE REPORT OF THE REVIEW OF VETERANS' ENTITLEMENTS
(The Clarke Report)

Introduction

1. The Report of the Review of Veterans' Entitlements (Clarke Report) is a very detailed, voluminous account of the Review's work. In presenting 109 recommendations, the report confronts interested parties, such as RDFWA, with a considerable challenge. To absorb the Review's reasoning, assess the implications of its recommendations and consult the Association's membership through the State Branches, has necessarily involved a lengthy process. This response is the outcome of that process.

Overview

2. The report shows clearly that the Review adhered closely to its Terms of Reference. In doing so, it has made recommendations that, if adopted, should result in improved access to VEA benefits for a significant number of veterans who have, at present, little or no access, as well as confer improved benefits on those who currently have access.

3. As far as RDFWA is concerned, the close attention the Review paid to its Terms of Reference might explain, in part, why some of the matters raised in our submission to the Review received no attention in the report, and inspired no recommendations. This is disappointing to us, as we saw them as important. We still do and will continue to press for their resolution.

4. RDFWA welcomes the general thrust of the report in two important areas. One is the proposal for a new structure for Special and Intermediate Rate pensions, and the other is the renewed emphasis on rehabilitation urged for recipients of VEA disability benefits.

5. The recommended re-structuring of Special and Intermediate rate pensions will solve the problems inherent in the ambiguous character of the present pensions structure. By identifying and separating economic and non-economic loss components of the pensions, the new structure has the considerable virtue of removing the means by which almost limitless scope for obfuscation, dissembling and prevarication was afforded to those arguing the adequacy or inadequacy of the Special Rate on both sides of the question. The vexed issues of benchmarking, and counting of disability pensions as income for the purpose of assessing social security benefits will also be much more easily dealt with under the proposed structure.

6. When it comes to some of the associated recommendations, in particular that dealing with disregarding the VEA disability pension as income for any VEA and social security income support payments or benefits, it is not clear whether those who choose not to transfer to the recommended disability pension structure will benefit in the same way as those who do. It is hard to see how the present 'TPI' pension, which will continue to be paid to those who do not transfer to the new structure, will fare any better at the hands of those who administer the Social Security Act (SSA) than it does now, since its dual function as disability compensation and income support will remain recognized and undifferentiated.

7. Under the new structure, since economic loss (ie income support) will cease at normal retiring age, the only disability compensation payments being received, and being disregarded as income for SSA purposes, will be those at 70 100% of the General Rate. The 10% of MTAWE recommended to be paid as superannuation substitute, and taxable, presumably will be counted as income. Thus, if the Special Rate is to be exempted from assessment as income, as is now the case for VEA Service Pension, the veteran who, staying with the present structure, at age 65 will be eligible for Special Rate + SSA pension will be better off from that point on than the similarly disabled veteran under the new structure who will be entitled to 70 - 100% of the General Rate + SSA pension component recognising 10% of MTAWE. In our view this creates a significant potential new anomaly, while removing a couple of old ones. Taking the 'whole package' view, as urged by the Review does reveal significant compensating advantages, but there will need to be a painstaking program of education of the veteran community in the new structure if it is to gain acceptability.

8. RDFWA welcomes the Review's recommendations in relation to rehabilitation. As a matter of principle, we see rehabilitation as an essential component of any just disability compensation system. It should encompass not only physical and psychological restoration but, in the case of veterans, there should be a degree of generosity in providing educational and lifestyle opportunities not excluding higher education loans and grants, technical training and small business establishment assistance where appropriate.

9. Linking payment of income support benefits to participation in rehabilitation assessment and programs, as the report recommends, we believe should be approached with great caution and sensitivity especially in the case of veterans with qualifying service. Sympathetic protocols will be critical to acceptability of the principle by affected veterans. These should be developed, and in doing so, we urge general acceptance of a principle that benefits are to be withheld or suspended in the case of a veteran with qualifying service only in rare instances of demonstrable intent to violate the integrity of the system, and then only as the last possible resort.

Specific Responses

10. We have considered all the report's recommendations, in consultation with our State Branches. What follows are specific responses in order as the recommendations appear in the report. We also re-state some of the matters we put to the Review in our submission, and in face-to-face representations. These are matters the Review chose not to include either in the body of the report nor in any of its recommendations, but which RDFWA believes should have received attention. They bear directly on access to the VEA, and on benefits. We urge government to give them due weight when putting together its plans for implementing the Review's recommendations.

Matters Not Addressed in the Report

11. **Risk Assessment.** Despite the Review's having given some consideration to this question in the report, there is still considerable lack of clarity about the circumstances under which the VEA applies to members of the ADF undertaking operations in the present and future military environment.

We put it to the Review that the system of ministerial determinations required by the Act should be more transparent, and should be administered in such a way that, in all but the most exceptional circumstances, ADF members committed to operations should know **before they are deployed** what the status of their service is to be under the Act. (This should also be the case under the new MCS.) We concede that in the majority of deployments, this is already the case, but for some special operations involving particular elements of the ADF it is not. In its submission to the Review, RDFWA suggested that special operations, at least, should be categorized (for example Category A, B, C, etc, operations) according to the degree of risk, or to put it in the terms used in the Act, according to how they meet the criteria for warlike, non-warlike, hazardous, peacekeeping, etc, operations. The category assigned may or may not be disclosed publicly, depending on the nature of the operation; but it should be a standard component of the briefing given to those taking part. This procedure would ensure that ADF members would know at all times exactly what their entitlements are in case of injury or illness related to their service. It would also allow claims for compensation, made perhaps years later, to be considered, at least as to standard of proof and entitlement to certain benefits, in the light of the category assigned to the operation, without having to consider what might be very sensitive operational details. It would also ensure that 'deniable' operations, should it become necessary to deny them, would not also result in denial of entitlements under the VEA (or the new MRCA, for that matter) to those taking part.

12. **NW Indian Ocean Deployments.** RDFWA made a detailed submission to the Review on deployments of HMMA Ships *PERTH*, *BRISBANE* and *HOBART* to the NW Indian Ocean in 1980 and 1981. The report makes no mention of this submission, and no recommendation deals with it. We again press the case of these ships' crews for the award of qualifying service. We believe that they meet the criteria set out in s7 of the VEA, and, although not WWII veterans, they satisfy the reasoning set forth in Chapters 11 & 12 of the report.

13. **Australians in Empire Units.** Our submission referred to Australians who, at the outbreak of WWII were overseas at work or study, and were stranded by the lack of means to return to Australia. They were prevented by circumstance from enlisting in any of the Australian Services but, faced with a common enemy, some enlisted in Empire units, mostly in the UK. Many did not meet VEA 'domicile' requirements, notwithstanding the fact that they played their part in WWII, sometimes in the same units carrying out the same missions as other Australians wearing the Australian uniform. Because of the 'domicile' rules under the Act many are denied access to VEA benefits. The report makes no mention of our submission, and does not address this anomaly.

Specific Recommendations of the Report

14. **Recommendations 1-22.** RDFWA supports these recommendations.

15. **Recommendation 23.** This recommendation seems to be based on the arguments put forward in paragraphs 14.118 - 14.121 of the report. These arguments are, however, inconsistent with the treatment of qualifying service in Ch 11, particularly in paragraphs 11.44 and 11.45. From the point of view both of 'rendered military service', and 'incurred danger', the fact that the veteran was assigned to safety duties on the ship is, in our view, irrelevant to the question of whether he rendered qualifying service. **RDFWA does not support recommendation 23.**

16. **Recommendations 24 - 43.** RDFWA supports recommendations 24 – 43.

17. **Recommendation 44.** It is clear from paragraph 15.42 that this recommendation should refer to 'peacekeeping service'. RDFWA supports recommendation 44.

18. **Recommendations 45-47.** RDFWA supports recommendations 45 – 47.

19. **Recommendation 48.** The report goes some way toward recognizing counter-terrorist operations, whether in Australia or not, as non-warlike hazardous service. In our view it does not go far enough to meet the anomaly inherent in the status for VEA purposes of the service rendered by members of the 'on-line' SAS CT squadron. The report concludes, rightly, in our view, that SAS CT training should not be considered hazardous service under the Act. The impossibility of analysing all the training activities of the ADF - in which all its members take part - and producing a catalogue according to hazard, which can be accepted by all, is clear enough to extinguish further consideration. But maintenance of readiness for CT action, and carrying it out are another matter. Once the CT squadron is placed 'online' to respond to terrorism, it has been committed to operations. It is in a position analogous to that of a force occupying a defensive position, awaiting an attack. And that there is a high risk of attack is confirmed both by recent experience and by threat assessment. In these circumstances, RDFWA is firmly of the view that members of the 'on line' CT squadron should be regarded as rendering non-warlike hazardous service. **RDFWA supports recommendation 48, subject to the above remarks.**

20. **Recommendations 49 - 53.** RDFWA supports recommendations 49 – 53.

21. **Recommendation 54.** In the interests of ADF morale, RDFWA strongly believes such 'marriage-like relationships' should, for the purposes of the VEA, be restricted to heterosexual unions. **With that reservation, RDFWA supports recommendation 54.**

22. **Recommendations 55-60.** RDFWA supports recommendations 55 - 60.

23. **Recommendations 61-65.** Taken separately or together, these recommendations do not amount to a satisfactory outcome for veterans who, though Australians, were unable to meet the domicile rules and were unable to return to Australia to enlist during WWII and therefore joined BCAL units. RDFWA supports recommendations 61 – 65 as far as they go.

24. **Recommendations 66-69.** RDFWA supports recommendations 66 - 69.

25. **Recommendation 70.** For better or for worse, award of the gold card in circumstances such as these has been established by precedent. Implementation of this recommendation would create an anomaly likely to be tolerated by no one, for nakedly budgetary reasons. **RDFWA does not support recommendation 70.**

26. **Recommendations 71-91.** RDFWA supports recommendations 71 - 91.

27. **Recommendation 92.** The criteria for accepting liability under VEA are very different from those applied under SRCA. Hence, the chances of acceptance of a claim under each are not only different, they are usually unpredictable. While this remains the case, any 'one-time' election is likely to be little more than a lottery, and unfair to claimants. **RDFWA does not support recommendation 92.**

28. **Recommendations 93-96.** RDFWA supports recommendations 93 - 96.

29. **Recommendations 97 and 98.** Inclusion of reference to 'Appeal Rights' in Recommendation 97 strongly implies an integral element of compulsion. As we have indicated above, RDFWA has reservations about the appropriateness of compulsory rehabilitation for veterans with qualifying service. With those reservations, RDFWA supports recommendations 97 and 98.

30. **Recommendation 99.** This recommendation will be hard to implement, as there can be no sanction applicable to a veteran in receipt of the Special Rate who does not transfer to the new compensation structure, and who refuses to undergo rehabilitation assessment. In some cases this will act as an incentive to remain in the old structure. Thus, there could emerge two categories of Special

Rate pensioner - one, whose economic loss benefits are at risk if he does not undertake rehabilitation, and one whose benefits are inviolable. **For this reason, RDFWA does not support recommendation 99.**

31. **Recommendation 100.** RDFWA supports this recommendation.

32. **Recommendation 101.** We have strong reservations about compulsory rehabilitation for veterans with qualifying service. **RDFWA does not support recommendation 101.**

33. **Recommendations 102-105.** RDFWA supports these recommendations.

34. **Recommendation 106.** Sympathetic protocols, sensitive to both the veteran' s desires and his needs, will be critical to implementation of this Recommendation. **Provided such protocols are put in place, RDFWA supports this recommendation.**

35. **Recommendations 107-109.** RDFWA supports these recommendations.

36. **Chapter 30, paragraph 30.38.** This paragraph contains a recommendation not contained in the list of recommendation s at the end of the chapter, or in the list of recommendation s in Volume 1 of the report. It recommends offsetting arrangements between VEA benefits and compensation received from other sources for the same disability. It includes ‘invalidity superannuation or other disability insurance benefits’ among these sources. If these benefits are payable as part of a contractual obligation incurred by an insurer in consideration of payment of premiums by the veteran - in other words, if the veteran has ‘bought’ his insurance cover - RDFWA sees no reason why these payments should be offset. Only benefits funded by the Commonwealth, directly or indirectly, should be offset, in our view. **RDFWA does not support this ‘Recommendation’ as it stands.**