

SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE COMMITTEE

THE INQUIRY INTO DLA PIPER'S REPORT OF THE REVIEW OF ALLEGATIONS OF SEXUAL AND OTHER ABUSE IN DEFENCE, AND THE GOVERNMENT'S RESPONSE TO THE REPORT

DEPARTMENT OF VETERANS' AFFAIRS - SUBMISSION

1.0 Background

1.1 DVA receives and determines claims for compensation under the *Veterans' Entitlements Act 1986* (VEA), the *Safety Rehabilitation and Compensation Act 1988* (SRCA) and the *Military Rehabilitation and Compensation Act 2004* (MRCA). A broad overview of the coverage provided by these Acts is at Attachment A.

2.0 Initial response to DLA Piper Review

2.1 When the DLA Piper Review was announced in April 2011, DVA introduced processes with Defence and DLA Piper to ensure that any callers to the DLA Piper Hotline who required DVA assistance were referred to a single DVA intake point. Once referred to this single point, the Client Liaison Unit (CLU) contacted each of the individuals to provide general information. This included claim forms and advice on the assistance that could be provided by the Veterans and Veterans Families Counselling Service (VVCS).

2.2 Specialised training on sexual and other abuse was provided to DVA staff. To further ensure support for those claiming compensation as a result of sexual and other forms of abuse, policy and procedural guides were updated to emphasise the need for sensitivity when liaising or requesting information from clients, and when referring clients for specialist medical examinations, etc.

3.0 Response to the release of Part One of the DLA Piper Report

3.1 Upon release of Part One of the DLA Piper Report DVA introduced further arrangements for dealing with claims relating to sexual and other abuse. These arrangements cover all claims for sexual or physical abuse, not only those relating to those who have approached the DLA Piper Review.

3.2 Additional specialized training in claims for compensation as a result of sexual or other forms of abuse was provided to staff with responsibility for examining claims. While this was provided to staff across Australia the majority of people attending this round of training were located in the Melbourne office.

3.3 A team was formed in Melbourne to deal with these claims. Since August 2012 all new claims are sent to the Melbourne team for consideration whereas existing claims continue to be investigated up to the determination point by the claims assessors in the originating location. Where the claim can be accepted it will be. Where the claim cannot be accepted on the basis of the available evidence, it is sent to the Melbourne team who contact the client to advise them of this. The team offers the client the following options:

- having the claim determined,
- taking the time to submit more evidence, or
- asking DVA to hold the claim in case further evidence is available as a result of the response to the DLA Piper Review.

3.4 The Melbourne team has established a process with the Defence Single Access Mechanism team that will facilitate the timely receipt of Defence information, so as to reduce the demands on the client claiming compensation. The Defence Single Access mechanism is an arrangement between Defence and DVA that facilitates the transfer of Defence information to DVA to support the investigation of a claim.

3.5 To support each client through the claims process, a single point of contact is provided. Initially this contact was through the Client Liaison Unit (CLU) but more recently the Melbourne team has included a staff member with social work qualifications to perform this role. This person is qualified to deal with clients that are most vulnerable. This single point of contact is the liaison point between the client and the DVA claims assessors. They provide clients with information on the status of their claim, the investigation process and the outcomes of the claim, and also ensure that they are directed towards further support if required.

3.6 DVA has been contacted by 22 people who have identified themselves as having contacted the DLA Piper Review. Seventeen of those people have also submitted a claim for compensation. In addition, DVA has around 83 claims currently being investigated, that appear to involve abuse.

4.0 Further support for individuals

4.1 Eligible individuals may also receive assistance from the VVCS, which is a free and confidential service available 24 hours a day across Australia. Although part of the DVA portfolio, for privacy reasons the VVCS is organisationally separate from the Department, maintaining its own systems and separate client data repositories.

4.2 The VVCS advise that they have received a total of 12 calls or contacts from clients identified as being related to the DLA Piper Review. Note that VVCS does not release personal details of clients to DVA or Defence, but has when appropriate encouraged clients to contact appropriate services when required. Therefore it is not known whether these clients have also contacted DVA.

5.0 Exchange of information between Defence and DVA

5.1 There is no single list of names or incidents provided to Defence by DVA in relation to claims for compensation arising out of sexual or other forms of abuse. Nor is there any list of names provided by Defence to DVA of clients that have approached the DLA Piper Review.

5.2 However, DVA is required under the SRCA and the MRCA to provide a copy of claims from ADF members who are still serving at the time they have claimed. In addition, where the person is still serving at the time their claim is determined under the MRCA, DVA must provide a copy of that determination to Defence.

5.3 As with all claims for compensation, DVA must investigate the claim to establish the facts of the case. As part of this process DVA will contact Defence through the longstanding Single Access Mechanism arrangements. This can include Service history, medical documents and any other evidence that may be relevant.

6.0 Assessment of claims under various legislation

6.1 The long period of time over which allegations have been made means that claims lodged with DVA will be subject to the VEA, SRCA or MRCA. Different tests for liability and assessment apply, but each Act requires that there is sufficient evidence that a particular incident occurred and that the incident resulted in a

diagnosed condition. The passing of time means that this evidence may not be available and claims may be unsuccessful. Further, claims will result in different compensation outcomes, even in claims where there are similar medical conditions. The table at Attachment A identifies the legislation under which these claims would be assessed and highlights the different standards of proof and outcomes.

SUMMARY OF SOME KEY DIFFERENCES BETWEEN COMPENSATION LEGISLATION

All claims for compensation relating to service in the ADF will be assessed under one of a number of different Acts, depending on the time and/or the type of the service, with different liability tests applying. These statutory compensation schemes will not provide equal access and outcomes for victims of alleged abuse. There are presently three Acts under which claims would be assessed, and the following is a brief summary of the Acts' coverage.

MRCA

The *Military Rehabilitation and Compensation Act 2004* (MRCA) provides treatment, rehabilitation and compensation for members and former members of the Australian Defence Force (ADF), their dependants and other eligible persons in respect of injury, disease or death related to service. The MRCA covers all service from 1 July 2004.

SRCA

The *Safety Rehabilitation and Compensation Act 1988* (SRCA) provides members and former members of the ADF with workers compensation and rehabilitation for injuries or diseases as a result of duties in the ADF. The SRCA covers peacetime and peacekeeping service up to 30 June 2004 and operational service between 7 April 1994 and 30 June 2004.

VEA

The *Veterans' Entitlement Act 1986* (VEA) provides treatment, benefits, allowances and compensation to veterans and their dependants, members of the Forces, members of Peacekeeping Forces or Australian mariners, their dependants and other eligible persons in respect to injury, disease or death caused or aggravated by war or eligible service. The VEA covers war service before 1 July 2004 and in certain circumstances, peacetime service between 7 December 1972 and 30 June 2004.

Issue	MRCA ⁽¹⁾	VEA ⁽¹⁾	SRCA ⁽¹⁾	1971 Act ⁽¹⁾	1930 Act ⁽¹⁾
Standard of Proof ⁽²⁾	Varies according to nature of service (will be either BoP or reasonable hypothesis)	Varies according to nature of service (will be either BoP or reasonable hypothesis)	Balance of probabilities (BoP)	Balance of probabilities (BoP)	Balance of Probabilities (BoP)
Access to Gold Card	Yes	Yes	No	No	No
Assessment tool	GARP(M) ⁽³⁾	GARP ⁽⁴⁾	PIG ⁽⁵⁾	Table of Maims	Table of Maims
Provision for mental health conditions	Yes (lump sum and incapacity payments if the accepted condition results in a loss of earnings)	Yes (pension)	Yes (lump sum and incapacity payments if the accepted condition results in a loss of earnings)	No lump sum payable (incapacity payments only)	No lump sum payable (incapacity payments only)
Permanent Impairment compensation ⁽⁶⁾	Choice of lump sum, ongoing amount (scaled according to level of impairment)	Pension (scaled according to level of disability)	Lump sum (scaled, according to level of impairment)	Lump sum (scaled, according to level of impairment), excluding mental health conditions	Lump sum (scaled, according to level of impairment), excluding mental health conditions
Medical evidence required	Must meet Statement of Principles ⁽⁷⁾	Must meet Statement of Principles ⁽⁷⁾	Specialist diagnosis	Specialist diagnosis	Specialist diagnosis
Non-liability healthcare for PTSD and Depression	Yes, for members with non-warlike or warlike service only ⁽⁸⁾	Yes, for members with eligible service ⁽⁸⁾	No	No	No

(1) **MRCA** - *Military Rehabilitation and Compensation Act 2004*; **VEA** - *Veterans' Entitlements Act 1986*; **SRCA** - *Safety, Rehabilitation and Compensation Act 1988*; **1971 Act** - *Compensation (Commonwealth Government Employees) Act 1971*; **1930 Act** - *Commonwealth Employees' Compensation Act 1930*.

(2) Balance of probabilities ("BoP") - The standard of proof used in civil law. The claimed relationship between a diagnosed condition and the member's service must be more probable than not. Reasonable Hypothesis is a more generous standard of proof generally applied to overseas service under operational conditions. The claim must succeed unless there is a reasonable doubt as to the existence of a causal link to service.

(3) *Guide to Determining Impairment and Compensation* (generally known as GARP(M)): A modified version of GARP for use in determining the amount of permanent impairment compensation payable under the MRCA.

(4) *Guide to the Assessment of the Rate of Veterans' Pensions* ("GARP"): the legislative instrument according to which the rate of pension payable under the VEA is determined.

(5) *Guide to the Assessment of the Degree of Permanent Impairment* (also known as the Permanent Impairment Guide, "PIG"): the document produced by Comcare to provide an objective basis for the assessment of the amount of permanent impairment compensation payable.

(6) Financial compensation scales are not equivalent across the Acts. Other compensation is available including medical treatment, incapacity payments (loss of earning allowance for VEA claims) and various rehabilitation services.

(7) Statements of Principles ("SoP"): The legislative instruments issued by the Repatriation Medical Authority which set out the factors that (according to sound medical-scientific evidence) must as a minimum be met in order to establish a causal link between a diagnosed condition and a member's eligible service. Each of these factors may result in a different outcome depending on the circumstances of the individual claim.

(8) Non-liability healthcare is available under s85(2) and s88A of the VEA for these and certain other conditions for members who have rendered World War 2, operational, peacekeeping, hazardous, British nuclear test and certain peacetime service.