



**Australian Government**  
**Department of Veterans' Affairs**  
OFFICE OF THE SECRETARY

Senator the Hon. Ursula Stephens  
Chair  
Senate Foreign Affairs, Defence and Trade References Committee  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Senator Stephens,

Thank you for the opportunity for the Department of Veterans' Affairs (DVA) to present a submission to your Committee's inquiry into the mechanisms to support victims of abuse in Defence.

In support of the inquiry, I would like to provide you with the following information that illustrates the work that DVA has undertaken both independently and in consultation with the Defence Abuse Response Taskforce (DART) to ensure that victims of abuse are provided with the highest level of support when claims under DVA-administered legislation are considered. I should point out that the focus of the submission is limited to the interactions between DVA and the DART, DVA's operational response to the DLA Piper Review and other issues that are common to both organisations' processes. It is also important for me to clarify that DVA is not placed to offer a view on the responses of the Department of Defence or successive Governments to the DLA Piper Review or the DART processes which have been undertaken to date.

### **Interaction with the DART**

DVA has been involved in ongoing consultation with the DART since the terms of the Reparation Payment Scheme were first established. The Department recognised at an early stage the importance of this engagement, to ensure the DART was aware of the compensation and treatment available to veterans and members of the Australian Defence Force (ADF) for their service-related conditions. It was also critical that the Department worked with the DART to understand the possible impacts that a DART Reparation Payment might have on any compensation payable by DVA and that the interaction between the two assessment and payment processes is understood by the victims of abuse. The Department continues to work closely with the DART.

### **Memorandum of Understanding**

In November 2013, a Memorandum of Understanding (MoU) was formalised to allow the reciprocal sharing of personal information between the DART and DVA (with the consent of the claimant) to assist with the investigation of claims relating to allegations of abuse by both agencies.

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Notwithstanding that a formal MoU is now in place, the information provided to DVA by the DART may be redacted in certain areas to protect the privacy of some individuals and due to the sensitive nature of the information collected by the DART. Consequently, DART claimants are given the option of either providing particularly sensitive information to DVA themselves or expressly requesting the DART to provide this information directly to DVA.

As at 12 May 2014, DVA has submitted 13 requests for claimant information to the DART and the DART has made one request for information from DVA. To date, all requests for the provision of information have been produced within the agreed timeframes prescribed in the MoU and all are supported by a consent provided by the individual concerned.

### **DVA Claims Process**

In August 2012, DVA established a dedicated team in Melbourne to receive and manage all new claims relating sexual and other forms of abuse following the release of DLA Piper's Report. To support this process, a social worker was engaged to provide assistance to DVA clients and will, where agreed to by the client, act as the single point of contact.

The single point of contact:

- is the liaison between the client and the DVA claims assessors;
- provides the client with information on the status of their DVA claim, the investigation process and the outcomes; and
- ensures that the client is directed towards further support if required, e.g. through the Veterans and Veterans Families Counselling Service for counselling or through Centrelink for other possible benefits.

Training has been provided to DVA staff with responsibility for administering claims relating to sexual abuse by the Australian Centre for Post-traumatic Mental Health. This training has reinforced the need for sensitivity to be shown in the referral of clients for specialist medical examinations. As an example of this, women are offered appointments with female medical specialists if required.

If a claim cannot be accepted on the available evidence, the client is provided with the following options:

- to have the claim rejected so that it can be taken to the review level;
- to take the opportunity to submit more evidence to support the claim; or
- if the client has a claim with the DART, to seek additional information held by the DART that may support the DVA claim.

### **Difference in Standards of Proof**

It is important to be clear that a decision by the DART regarding a person's entitlement to a Reparation Payment will not lead to automatic acceptance of a compensation claim by DVA. The assessment of claims for Reparation Payments is separate from any assessment of claims for compensation payable by DVA and different standards of proof are used in these assessments by the DART and DVA.

Eligibility for a Reparation Payment by the DART requires only that an event or incident of abuse “plausibly” occurred, whereas eligibility for DVA compensation requires a diagnosed medical condition to be linked to a service-related incident. Under DVA-administered legislation (for peacetime service), delegates must be satisfied that, under the “balance of probabilities” test, the facts of the case are true and supported by sufficient evidence before determining whether an injury, illness or death is related to service. This is a long-standing and well-established standard of proof that is of a higher standard than “plausibility”.

It is therefore possible that a person may be entitled to a Reparation Payment but not compensation from DVA. Differences in the assessment of claims by DVA and the DART are not well understood by claimants. However, this is being addressed by both agencies through several channels, including the provision of factsheets to all DART applicants, discussions between DART case co-ordinators and Reparation Payment applicants and discussions between DVA staff and compensation claimants.

### **Provision of Factsheet to all DART Complainants**

In February 2014, DVA obtained agreement from the Chair of the DART, the Hon Len Roberts-Smith RFD, QC, that all DART applicants will be provided with an explanatory factsheet outlining the key differences between claims which are assessed by DVA and the DART. This factsheet was developed jointly by both agencies.

### **Income and Assets Test Issue**

In keeping with the principle that Reparation Payments are not intended to adversely affect an individual’s rights and entitlements, an amendment was made to the *Income Tax Assessment Act 1997* to exempt these payments from income tax. A number of Commonwealth agencies have also exempted Reparation Payments from the income test for means-tested Government payments through Legislative Instruments under each of their respective Acts.

However, any subsequent holding or investment of a Reparation payment will remain subject to “assets” testing of any income support pension which is provided under the *Veterans’ Entitlements Act 1986* (VEA) and/or the *Social Security Act 1991*, meaning an individual’s pension may be reduced as a result.

### **Upcoming Legislative Changes to DVA Non-Liability Health Care Arrangements**

Non-Liability Health Care (NLHC) arrangements are prescribed in the VEA and provide eligible veterans and ADF members with access to treatment for certain specified conditions, irrespective of whether or not these conditions are related to service. Treatment that can be provided under the NLHC arrangements is also independent of any claims which may be lodged for specific conditions with DVA.

Currently, ADF members with three or more years’ continuous full-time (peacetime) service on or after 7 December 1972 and before 7 April 1994 are able to access the NLHC provisions in the VEA. The Act does, however, contain an exception to the three year rule for those members who were not able to complete that period of service due to physical or mental incapacity.

Subject to legislative amendment (that will also remove the 7 April 1994 cut-off date), eligible DART recipients will have access to treatment for conditions including anxiety, depression,

post-traumatic stress disorder and alcohol and substance use disorders from 1 July 2014, regardless of whether or not those conditions are deemed to be related to service. The current exception to the three-year requirement mentioned above will be reflected in these amendments, providing access in cases where, for example, an individual has discharged from the ADF due to a “physical or mental incapacity to perform duties” that may be attributed to an instance of abuse.

### **Claim Statistics**

Between 1 January 2011 and 30 April 2014, DVA received 269 claims relating to sexual harassment or sexual assault, of which 205 claims have been assessed and 64 are still active.

In closing, I would like to thank you once again for the opportunity for DVA to lodge a submission to this inquiry and I hope the information which has been provided is of use for the Committee.

If you have any follow-up questions regarding the issues discussed above or if DVA can assist you in your investigations further, please do not hesitate to contact Mr Mark Harrigan, Assistant Secretary, Rehabilitation and Entitlements Policy Branch on (02) 6289 6775.

Yours sincerely

**S. Lewis PSM**  
Secretary

30 May 2014