

I refer to our conversations earlier this week and again today. It is with a great deal of anxiety that I commence this e mail. I do apologies for my abrupt manner but I invite the Senate Team to, just once, see the frustration from our side of the fence.

As stated I have been a practicing Advocate for around 20 odd years. Since 2001 I have been qualified to represent Veterans and their families at the Administrative Appeals Tribunal (AAT). After being selected to attend I completed a **five day** training program at the Australian National University. This qualified me, as what is referred to as a Level 4 Advocate. I have taken around 12 appeals to the AAT. Two were withdrawn as, after assessing the evidence, the case was without merit. A further case that was considered by the writer to be without merit, the applicant failed to appear on two separate occasions and the AAT decided not to relist it. The remainder were all conceded , prior to hearing, by the Department of Veterans' Affairs external review team.

This situation raises some questions.

I have been reliably advised that around 80% of decisions of the Veterans Review Board appealed to the AAT are resolved prior to hearing. An overwhelming majority resolved in favor of the Veteran. There is no way to confirm this figure.

Board Member Training.

Within the Veterans' Review Board members are changed periodically. I believe that members are appointed for a period of four years, then reappointed, should they wish, or not reappointed should there be grounds to do so. Members are also able to retire should they choose.

It is the writers understanding that once appointed the new members are provided with a **five day** training program They then sit in on the Board process for a further period of up to **five days** as an observer. They are then able to sit as a full member and are deemed "qualified" to write decisions and assess the validity of cases. I am not sure of the total accuracy of the process but am reasonably sure that is how it works. It is believed that there is **no** assessment process to validate the success of the training. It must be pointed out that these people are in a position to have a profound and everlasting effect on the lives of those within our Veteran Community should the Applicant decide to "give up" at that point or are unable to find the right support to take their case forward. All decisions are signed by three members. If a member decides that they do not agree with a particular decision that can "dissent" and write their own decision. The writer is aware of this but has only heard of it occurring once and has never personally witnessed it. Information received from an informed source

advised that it may occur as many as four times a year in Queensland. This raises the point that on any one hearing, when the wrong decision is made, there are actually three wrong decisions made, or, another possibility could be that junior Board members are sometimes deferring to a stronger personality or more senior member on that Board.

In financial year 2013/14 there were 3388 matters decided before the Veterans Review Board across Australia. Of these 51.5% of decisions were affirmed. That is to say the Veterans application at that level failed. 48.5 were conceded in favor of the Veteran. (see annual report) From there things become murky. There is no way of assessing how many of those cases were appealed to the next (AAT) Level. Of those that were appealed to the AAT there is no way of finding out how many were conceded prior to hearing by the Department of Veterans Affairs external review team. Similarly there is no way of assessing how many were withdrawn prior to hearing by the applicant. The figures are simply not kept.

In around 2013, from the floor at the RSL State Congress I requested the Repatriation Commissioner instigate a system where this could be monitored. Initially he agreed but I was later advised by the then Principle Member, of the Veterans Review Board, Mr. Doug Humphries, that it could not occur due to perceived "Privacy Issues" (form your own view on the credibility of that statement)

The only figures known are those that actually make it to hearing at the AAT. These, broadly, are decided in favor of the Veteran possibly up to 50% of the time. Again that figure is not qualified by data, as none is kept, just an observation over time by the writer, therefore may be distorted.

The writer has, over the years, appeared at the VRB around 25 times. No figures have been kept as to the number of cases decided in favor of the Veteran or Applicant. It is not the intention to repeat the figures offered above but it must be pointed out that, out of the 12 appealed there were 9 conceded prior to hearing in favor of the Veteran and 3 withdrawn. That is a success rate at that level of 75%. Again I will not stake my life upon the accuracy of these figures as we are talking from memory over a sixteen year period. (was conducting appeals prior to attending the course)

I will say that, if any other part of Government were operating within a similar accountability process and displayed such a poor getting it right record, there would be a public outcry.

I would like to say that the Board is paid to **get it right**. It is not paid to just hand down a decision.

It may be worth mentioning the the Volunteer Advocate, at a VRB hearing is the only person in the room who has nothing to gain. The Board Members are paid a handsome appearance fee and the Veteran is there to argue for their entitlements. The Advocate, as a volunteer will receive no benefit whatsoever and often must travel there at their own expense. It is the writer's experience that some Boards tend to treat Advocates with contempt. People seem to appreciate what they actually must pay for. The Principle Member has often said that the Board are grateful to the Volunteers that give up their time to assist them in their deliberations. It is such a pity to keep hearing this cliché and not seeing it supported by evidence.

over to you on that lot.

Since Professor Dunt handed down his report in 2009 there have been, I think, a further three reviews into the level of training. Currently the last review has been going for an 18 month period, starting in March 2014. At this point it is at the never ending round table followed by round table followed by working group round table and I believe another round table is slotted in for September. Maybe I am becoming a little facetious on this point. The quality and assessment process was covered, I think adequately, in my original submission so I do not intend to elaborate here except to say that the longer a bad process continues the more victims people like me will have to deal with. (ps. you are paying for it)

The point I wish to make is that the current review into the Department of Veterans' Affairs funded Training Information Program is taking so long there is a perception within the wider ex-service community that it is another exercise that has gone nowhere. There is no finalization date or recommended date of implementation of recommendations. In fact, despite requests, there have been no updates offered at any time to those who have showed interest enough to tender a submission. The senior Public Servant handling the Review, Danielle Cunningham, has been extremely helpful in keeping the writer informed on the progress of the review every time an update has been requested. Should the committee require some input to the current state of play, Ms. Cunningham can be contacted on

The quality of training provided under the current system is highly questionable. That system is allowed to continue because this review to change it has gone nowhere and the perception that it has bogged down in round table squabbling for protection of dunghills may not be without merit.

How does any of this fit into what you are reviewing

Those Serving military personnel that are trained under the above system are employed within the Military System to advise vulnerable and fragile current serving men and women of a process that, some with Law degrees, have trouble grasping . The Serving member of today should be entitled to accurate and qualified information on mental health as well as physical health issues in their dealings with ComSuper and DVA by people who are fully and comprehensively trained to understand a complex compensation system. Simply, if this were occurring there would be no real need for volunteer or paid advocacy immediately post service.

Probably the most important point needed to consider in this whole process, is that the sooner liability for a condition is admitted, the sooner the Rehabilitation process can commence. If a person is dumped from the Australian Defence Force, subjected to a lengthy appeals process that has been exacerbated by a support network of undertrained well-meaning volunteers and a less than adequate appeals system, the likelihood of a successful rehabilitation process is severely hampered, at best.

Recommendations.

1. That when a Veteran's Review Board decision is appealed to the Administrative Appeals Tribunal the Principle Member of the Veteran's Review Board is informed of both the appeal within a very short timeframe after the appeal is lodged and the outcome of the appeal.
2. All members of any Board where a decision is conceded prior to hearing or withdrawn is advised of that outcome
3. The Principle member retain a register of the number of decisions signed off on by each individual member that were, firstly appealed, then overturned. This figure would provide "quality assurance" information necessary to ensure that the Applicants are being treated fairly.
- 4 Within the Annual Report of the Veteran's Review Board the number of decisions appealed to the AAT are recorded and published along with the other figures.
- 5 The Senate Review seek information on the progress of the current TIP Review and monitor the timelines of progress.

In conclusion I would like to voice my own disappointment at the lack of time allocated to public hearings. There was more than one of some long serving volunteers with a wealth of "**COAL FACE** " Advocacy experience that would have relished the opportunity to appear and personally express their concerns. Again

we were denied the opportunity to bring to the attention of those in a position to make the system better, our view on how this may be achieved.

yours

William A. Kearney OAM JP (qual)
Volunteer Advocate.