



Submission No 13

**Inquiry into the Care of ADF Personnel Wounded and Injured
on Operations**

Name: The Hon. Jack Snelling MP

Organisation: Minister for Veterans' Affairs,
Government of South Australia



MVA12D00098.1

9 August, 2012

Mr Jerome Brown
Committee Secretary
Joint Standing Committee on Foreign Affairs, Defence and Trade
Department of House of Representatives
P.O. Box 6021
Parliament House
CANBERRA A.C.T. 2600

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Dear Mr Brown,

Inquiry into the Care of A.D.F. Personnel Wounded and Injured on Operations

I am writing to you in my capacity as the State Minister for Veterans' Affairs on behalf of the Veterans' Advisory Council (V.A.C.) of South Australia to make a submission to the Commonwealth Parliament's Inquiry into the Care of A.D.F. Personnel Wounded and Injured on Operations.

My submission is about the taxation treatment of wounded members of our Defence Force upon their return to Australia from active service overseas.

The V.A.C. is appointed by the state government and is chaired by former Governor, Sir Eric Neal A.C. C.V.O. It comprises sixteen members of the veterans' community, representing every ex-service organisation in South Australia. Members have served in every conflict in which Australia has been involved since World War II. The role of the V.A.C. is to provide advice to the state government.

The V.A.C. is particularly concerned at the inequity that appears to arise between the way wounded soldiers who are returned to Australia consequent upon their wounds are taxed, and the way other soldiers on active service deployment are treated.

The inequity, as described to me, applies to a soldier wounded in action and evacuated to Australia as a consequence. Under current arrangements a soldier in this situation is entitled to receive tax-free salary and accrues War Service Leave while in hospital, but not during outpatient treatment or rehabilitation.

This means that any soldier wounded in action also suffers a financial detriment. This is felt most by a soldier who is wounded early in a tour of duty. A soldier in this situation would lose

all tax-free pay and allowances after leaving hospital in Australia, thereby not only suffering physically and mentally in the line of duty, but also financially.

Clearly soldiers do not seek to be wounded, but nor do they shy away from a situation where they might become a casualty. It has been put to me that a wounded soldier should not be further disadvantaged. The solution suggested is that wounded soldiers medically evacuated to Australia remain on the same taxation arrangement as their in-country comrades until those in-country comrades are repatriated.

A paper prepared for the Veterans' Advisory Council of South Australia by Mr Michael von Berg M.C. is attached.

The recommendations in the paper are that:

- Defence and Government review current Conditions of Service as they apply to wounded members of the Australian Defence Force.
- A private ruling be sought through the A.T.O. to compensate wounded soldiers.
- A review of Tax ruling 23AD be determined. I am advised that a precedent has been established for non-warlike service in East Timor.
- Consideration be given to ex gratia payments equal to documented taxes deducted, to be made to all wounded soldiers from recent conflicts who have suffered detriment as described above.

Should you require any further information or an in-person presentation from Mr Michael von Berg M.C. about this matter please contact Mr Bill Denny A.M., Director, Veterans SA by telephone on (08)8226 8542 or by email: bill.denny@sa.gov.au.

Yours sincerely

Jack Snelling M.P.
Minister for Veterans' Affairs

encl. "Disadvantaged Wounded Soldiers - A Moral Dilemma." A paper by Michael von Berg M.C., Member, Veterans' Advisory Council.

Agenda Item

Discussion Document

“Disadvantaged Wounded Soldiers – A Moral Dilemma”

1. Introduction

The Australian Defence Force has been operating on a warlike and non/warlike level of intensity and service for almost 20 years. The men and women of the Forces have excelled in their allocated tasks in spite of the pressures that have been imposed on them and their families through training, rotations and the extreme difficulties faced in operational areas.

Not being privy to official figures it is estimated that there have been some 240 members of the Armed Forces wounded whilst on active service, some very severely, where there have been long periods of pain, discomfort and rehabilitation and in some cases severe mental anguish which are not assisted through the financial disadvantages imposed on wounded soldiers through no fault of their own.

The purpose of this agenda item and discussion document is to highlight an issue which may be legal in terms of legislation and current tax rules, but totally unfair and improper considering the pain and hardship that wounded soldiers have had to endure to defend/secure this countries international and strategic interests.

From the outset it must be made clear that there are no issues in relation to the appropriate DVA entitlements and benefits. In all cases these have been more than adequately covered by current legislation, DVA officers and ESO advocates where necessary. This issue is the taxation legislation affecting wounded soldiers upon their return to Australia.

2. Background

The background and research in relation to the issues to be raised have been conducted in one on one interview with soldiers that have been personally affected and disadvantaged. Some very seriously wounded and still in rehabilitation mode and others who are back on the job but seriously considering their future. The methodology and findings are more important than the identity of the individuals concerned. Although the sample tested is perhaps considered small the overall problem affecting some 240 wounded soldiers is considered to be significant, which needs to be seriously considered and rectified.

3. The Issues

a. Accrual of War Service Leave

A soldier wounded in action and evacuated to Australia is entitled to receive tax free salary and accrues War Service Leave only while he is in hospital, but not during out- patient treatment or rehabilitation. This

considerably disadvantages anyone who is wounded early in their deployment. For example a soldier wounded say after two weeks in country, would lose all tax free pay and allowances after leaving hospital based on the OPSLOG which is the documented period of deployment. Looking at this simplistically because the soldier had been wounded doing his/her job there is a considerable financial disadvantage imposed whereas the rest of the unit if able to complete the full period of deployment is better off based on the tax advantages and allowances.

b. Tax Benefits

A soldier should not be financially disadvantaged because he/she is wounded. A soldier who is wounded should be entitled to leave and allowances tax free for the period that his unit is deployed.

4. Conditions of Service

Appreciating that these issues are principally an ATO issue this should not be an excuse for obfuscation or buck passing. It is a matter for the senior leaders of the Defence Force and the Government to firstly agree and acknowledge that there is a problem and rectify it to ensure that wounded soldiers are not disadvantaged.

5. Operational Effectiveness

Those that have been privileged and proud to have served with the Armed Forces on active service know how important it is to work as a team in life and death situations, where split second decisions need to be made to achieve a suitable and successful outcome. Sometimes there is no time to think, but to act instinctively which is based on experience and training, but overlaid by a very strong commitment of survival and "looking after your mates".

Very few really understand what goes through a person's mind in a difficult contact situation against a determined enemy, unless they have been there themselves, and the last thing a soldier should be thinking about is losing benefits if he/she is wounded. There is absolutely no basis for this statement except when talking to some of the soldiers affected, statements like "not worth it", "they don't care", "nobody listens" and "getting out" does raise concerns if these soldiers are rehabilitated and deployed on another rotation. How will they be able to cope mentally or be operationally effective, knowing that if again wounded they would once again be financially disadvantaged?

6. The Fairness Test

Although an old employer/employee cliché it certainly is applicable here. Is it fair to financially disadvantage and psychologically further damage a soldier who has been wounded in some cases seriously through loss of limbs, sight, internal organ or psychological damage? Although there is no argument in relation to the tax legalities, penalising 240 wounded soldiers in this way is an unfair and unconscionable outcome.

7. Costs

Approaches to the Government to rectify this unfair financial situation seem to be continually countered by the “unbudgeted” argument and pressures on the budget which in this case is illogical. One must assume that the costs of deployment are accrued as a cost of doing normal business for the entire period for the rotation and if all of these 240 soldiers had not been wounded the full accruals would need to be paid. To consider the tax saved on the 240 wounded soldiers as some sort of saving is immoral. A rough financial model to address this situation is assumed and estimated as follows:-

- Average tax disadvantage per wounded soldier \$5,000
- 240 @ \$5,000 = \$1,200,000
- Amortised over a ten years operational period = \$120,000 per annum

Is it too much for the Government to consider this meagre amount in the grand scheme of things to ensure that our wounded soldiers are looked after and not disadvantaged? What value do we put on a soldier's eye or a limb?

8. Recommendations

- a. Defence and Government to review current Conditions of Service as it applies to wounded soldiers.**
- b. Seek a private ruling through the ATO to compensate wounded soldiers.**
- c. A review of Tax ruling 23 AD. Precedence has already been established for non-warlike service in East Timor (23 AD). A copy of this ruling is available if required at a later stage.**
- d. A consideration of ex gratia payments equal to documented taxes deducted to all wounded soldiers from recent conflicts if the above changes are unsuccessful.**

Michael von Berg MC
Veterans Advisory Council
Adelaide
14 Feb 2012.