

**Senate Foreign Affairs, Defence and Trade
Legislation Committee**

SUBMISSION COVER SHEET

Inquiry Title: Military Rehabilitation and Compensation Bill
2003 and Related Bill

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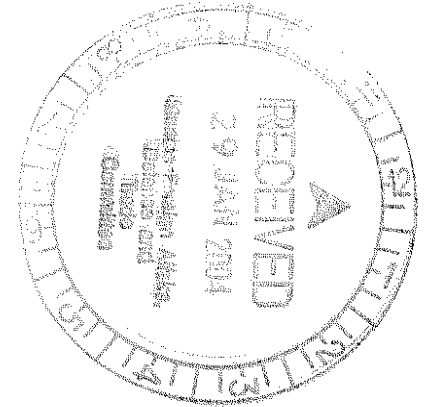
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26 January 2004

Mr Brenton Holmes
Secretary
Senate Foreign Affairs, Defence and Trade Legislation Committee
Parliament House
Canberra ACT 2600



Dear Mr Holmes,

Please find attached Appendix 1 which is this Associations submission to the inquiry into the Military Rehabilitation and Compensation Bill 2003 and related bills, being conducted by the Senate Foreign Affairs, Defence and Trade legislation Committee.

This Association is prepared to appear before the committee if required.

Yours Sincerely,

BRIAN MCKENZIE
NATIONAL PRESIDENT

Attachment:

Appendix 1 – Submission dated 26 January 2004 to the Inquiry into the Military Rehabilitation and Compensation Bill 2003 and related Bills.



**VIETNAM VETERANS
ASSOCIATION OF AUSTRALIA**

**SUBMISSION TO SENATE FOREIGN
AFFAIRS, DEFENCE AND TRADE
LEGISLATION COMMITTEE**

**TO THE INQUIRY INTO THE MILITARY REHABILITATION
AND COMPENSATION BILL 2003 AND RELATED BILLS**

26 January 2004

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SUBMISSION TO THE INQUIRY INTO THE MILITARY REHABILITATION AND COMPENSATION BILL 2003 AND RELATED BILLS

Preamble

For more than twenty five years, the Vietnam Veterans' Association of Australia (VVAA) has been a strong voice for the rights of veterans with war service; and their families. During that period we have also supported the interests of the ex-service community generally and serving Australia Defence Force (ADF) personnel. We take pride in the fact that the VVAA has been able to maintain a consistent lobby on behalf of the veterans of the Vietnam War in particular and for their dependants. It is worth noting that consecutive Commonwealth Governments have responded positively to many VVAA representations on behalf of its members.

The continuing involvement of the VVAA in the consultative processes put in place by the administrative arm of Government; and the introduction of a significant number of successful outcomes arising from that interaction, has entrenched this organisation as one of the more effective ex-service organisations (ESO's) contributing to the development of Government policy for veterans and their dependants.

As one of the ESO's who, through a national working party, have been closely involved with the development of this Bill, we are pleased to make a formal submission to this Senate Committee.

Background

Following lengthy and detailed internal considerations, the VVAA provided a wide ranging submission to the Review of Veterans' Entitlements (Clarke Review). Included within that set of documents was the VVAA view that there has been steady erosion in the ability and the ease with which a veteran, and his or her dependants, have been able to be compensated for war caused injury, disease or death.

It is our belief that since the introduction of the Veterans Entitlements Act (VEA) in the mid 1980's, there has been a continuing reduction in that regard. For example, the shift in 1994 to reliance upon arbitrarily applied mainstream medical opinion for the theoretical connection to service (Section 120A of the VEA).

That aside, the ex-service community has continued to take an active part in the consultative process, primarily because there has been a separate Act of Parliament for veterans. While that legislative separation remained, it has been felt that there was a means by which the special status given to veterans could be maintained to some degree. The currently used threshold of 'qualifying service', linked to the 'incurred danger from the enemy' test, is strongly supported by the VVAA and it is an example of the process at work.

The inclusion of veterans in the coverage of this Bill concerns the VVAA in terms of the potential loss of that special position. The rationale presented to the service and ex-service community by representatives of both the Government and the Opposition, offers the view that combined legislation is warranted because modern warfare is vastly different from that which is governed by the VEA. The argument is based upon the view that there has been a shift away from the use of large numbers of personnel, towards that of highly trained and specialised units, who are deployed for limited periods as part of a coalition or stand alone force.

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A focus on a philosophy of economic rationalism also plays a role here, in that it is said that the combining of legislation also brings about a more integrated and therefore efficient scheme. It will be more cost effective, with one Government Department administration to all persons with service in the ADF.

Against this background, the lesser number of future veterans to be covered by this Bill will be a minority group, as compared with the larger number of 'members' that will be covered. And, the VVAA is very concerned that there will be acceleration in the loss of these veteran's rights. This point is clearly illustrated by the fact that both 'veteran' and 'member' are defined in the Bill as 'the person'.

This loss of status for future veterans should not be exacerbated, because they are likely to be a minority group within a larger legal framework. The VVAA continues to rely upon the pledge given to veterans by the Prime Minister of the day, following the return of our troops from Gallipoli. "...we say to them 'you go and fight, and when you come back we will look after your welfare' – Prime Minister (Billy) Hughes 1916".

Australian veterans have answered the call of Government since before WW1. As the representative of the largest group of veterans since WW2, the VVAA has inherited responsibility for the retention of special treatment that has been reserved for those who have this particular form of service to the nation.

In relation to those personnel who do not or will not have 'qualifying service', the VVAA is generally supportive of the Bill and its accompanying transitional provisions. The VVAA is particularly keen to see the continuation of a more holistic approach to all serving and ex-serving personnel as reflected in the Bill; particularly in terms of closer linkages between compensation and rehabilitation.

Rehabilitation

When the VVAA made submissions last year to the Clarke Review, one of our key focus areas of comment was rehabilitation. At that time, our firm view was that veterans ought to be rehabilitated to the maximum extent possible. That view remains agreed VVAA policy.

Section 38 of the Bill, sets out the aim of rehabilitation and it is worth re-stating here:

"The aim of rehabilitation is to maximize the potential to restore a person who has impairment, or an incapacity for service or work as a result of a service injury or disease to at least the same physical and psychological state, and at least the same social, vocational and educational status, as he or she had before the injury or disease"

The VVAA has no difficulty with that broad aim and generally supports the thrust of the Bill in the area of rehabilitation. However, the Bill is not without its deficiencies in this crucial area.

In the overall context of change the new Bill, after enactment, will introduce to a serving member's conditions of service envelope, a new approach in relation to rehabilitation which, although broad in scope, is silent on the range of substantive operating protocols that will need to be put in place to make the intent of the Bill operable.

Having said that, the VVAA notes that the Department of Veterans' Affairs (DVA) has indicated to ESO's that it will fully involve them in the further development of those important operational protocols. Some preliminary work in this regard has already been done by DVA in conjunction with ESO's

Safety Net

Although the Safety Net provisions in the Bill propose a direct connection to the VEA Section 24 'Special Rate', a veteran covered by the new legislation will have a different set of criteria applied. This seems to be a reflection of Government philosophy aimed at making the Special Rate Pension the minimal amount of compensation available within the Bill and the phasing out completely of the historical nomenclature of Totally and Permanently Incapacitated (TPI), thereby identifying a "veteran" who suffered deprivation whilst incurring danger against the enemy as the same as a "member", who has not. This does not sit well with the VVAA.

With the endorsement of MTAWWE by the Clarke Review, the VVAA is strongly of the view that an option should be added to the Bill whereby the Safety Net be set at 75% of MTAWWE, paid to age 65 when superannuation and/or old age pension cuts in.

The Special Rate Pension provision would still apply for those who choose it, but this option is to be restricted to those with qualifying service, and paid for life under the same provisions as those now determined under the VEA.

Widening the scope of the Safety Net in this way provides choice to those who wish to have a higher income stream during the period when their children's needs are greatest. The down side which applies to all who choose 75% of wage until 65 as their means of compensation is that they will be required to roll over part of their pain and suffering element of compensation and pay a minimum of 8% of their income into a superannuation fund.

Special Rate Pension

The Special Rate Pension under the VEA is a key component of the Bill in terms of the Safety Net. However, as a Safety Net, it is totally inadequate.

VVAA submissions to the Clarke Review argued that the quantum of the Special Rate Pension is insufficient and totally inadequate in its present form because it has never been benchmarked or properly indexed. Notwithstanding the findings of the Clarke Review, the VVAA maintains its position that there has been considerable and continuing erosion to the Special Rate Pension.

VVAA policy for the restructuring of the Special Rate Pension, inclusive of both disability and remuneration loss components, is that it be benchmarked to an appropriate indicator such as the greater of MTAWWE or CPI. There also needs to be an immediate increase of around \$66 per fortnight to make up for the recent erosion that can be accurately measured.

Offsetting of Retired Persons' Superannuation

Generally, the VVAA takes no issue with the offsetting provisions contained in the Bill, as they appear to maintain what is the status quo within current legislation.

One unusual aspect in the Bill is the wording "Commonwealth Superannuation" which is taken to mean any superannuation arrangements that the person would have been contributing to or benefiting from at onset of injury or disease. For example, a member on full time duty with the ADF would be contributing to MBS, or in some instances DFRDB. Therefore "Commonwealth Superannuation" would be defined as that which was being contributed to while on full time service in the ADF when the compensable injury or disease occurred.

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In the case of a Reservist who is in the employ of the Commonwealth of Australia or a Commonwealth controlled corporation, serving either part time or on unpaid leave in order to render full time service for a set period, the Bill does not provide any relief whatsoever from its offsetting provisions. As the reservist would be contributing to a Commonwealth superannuation scheme, outside the military environment, he or she would be caught up in the offsetting provisions.

This, in our view, is discriminatory and may not be an intended consequence of the offsetting provisions of the Bill. The VVAA recommends that this aspect of the Bill be amended to ensure that equity and fairness be given to any Reservist ADF member rendering full or part time service.

Appeals Structure

The VVAA is aware that the Senate has already inquired into this area and the general thrust of the report recommended the continuance of the status quo in terms of the structure and some internal reforms.

The VVAA supports the rights of 'members' to a middle level review, on the grounds that other claimants against the Commonwealth already have that right (eg Refugee Review Tribunal, Immigration Review Tribunal and Social Security Appeals Tribunal etc).

Having regard to the bringing together under the Bill of veterans and members, it is the VVAA view that a means should be developed to maintain and perhaps improve the rights of review for veterans. In our view, the new legislation should find a suitable way in which to maintain the special status of veterans within an enlarged Veterans' Review Board or similar structure.

The AAT model seems the most obvious, in that it distinguishes veterans from members by having a separate 'Veterans Division'. At the Tribunal, 'members' are part of the 'General Division' and thereby the AAT maintains the distinction.

CONCLUSION

The VVAA is supportive of the bipartisan approach by the Parliament in introducing legislation that brings improvement to the lives of service and ex-service personnel injured or suffering a disease whilst in the service of their country in the ADF. However, we do not accept that service in the ADF should be on parity with civilian occupations. Service in the ADF is unique and warlike or non-warlike is dangerous by its very nature.

The VVAA is of the view that by integrating warlike, non-warlike and peacetime service under one Bill, a specific philosophy of distinction is being continued, for those who are veterans and those who are not. Building on that distinction, the VVAA's philosophy is that those with qualifying service are to be accepted as veterans who are "first amongst equals" and, consistent with that view, their rights and entitlements should mark them as such, by more than just the standard of proof provisions within the Bill.

Including veterans within a compensation framework for the military and altering the type of benefit paid, based upon the law of torts, and represents a major shift in philosophy which in our view represents the thin end of the wedge in terms of a reduction in the status of veterans.

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Historically, military compensation has focussed upon employability whereas by comparison it has always been about overall incapacity, for a veteran. The proposed legislation will inevitably shift the emphasis away from incapacity to employability and there is some flavour of this in that the attention given to rehabilitation may be granted at the expense of the payment of the economic loss component of the compensation.

In line with our submission on rehabilitation to the Clarke Review and our contribution to the ESO working party associated with this Bill, we are in agreement with the thrust of the Bill in terms of a holistic approach to rehabilitation. However, this should not be at the expense of the long promised lifetime pension, given in return for a lifetime of ill health, brought about by a veteran's war service.

In regard to the implementation of the new legislation, it has been our experience that a different mindset is to be found when comparing the treatment of a claimant in an employee /employer system with that of a veteran seeking a pension by way of compensation because of his or her war caused disabilities.

The VVAA is therefore very keen to see a continuing dialogue on the matter with the Repatriation Commission and the Department of Veterans Affairs' by providing a representative to any National Workshop or the Training and Information Program (TIP).

The VVAA also reserves the right to raise further issues verbally at an organised hearing or inquiry into the matter if requested to do so by our members.