



DEFENCE FORCE WELFARE ASSOCIATION

Patron-in-Chief: His Excellency General the Honourable David Hurley AC DSC (Retd)

NATIONAL OFFICE

PO Box 4166
KINGSTON ACT 2604

21 November 2021

Committee Secretary
Senate Legal and Constitutional Affairs References Committee
Parliament House
CANBERRA ACT 2600
(Via Email: legcon.sen@aph.gov.au)

SUBMISSION TO THE SENATE LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE INQUIRY INTO THE PERFORMANCE/INTEGRITY OF AUSTRALIA'S ADMINISTRATIVE REVIEW SYSTEM

INTRODUCTION

The Defence Force Welfare Association (DFWA) welcomes the opportunity to make a submission to the Senate Legal and Constitutional Affairs References Committee inquiring into the Performance and Integrity of Australia's Administrative Review System.

The Inquiry is of specific interest to DFWA, particularly given that the proper functioning, fairness and efficient performance of the Administrative Review System is of profound importance to the veterans' community as a whole. Veterans are a cohort of Australian society and are highly exposed to Commonwealth Administrative decisions, each of which have significant financial and welfare implications.

DFWA's interest derives from its agreed charter to*'foster the best interests and welfare of all members of the Australian Defence Force and their families in any matter likely to affect them during and after their period of service'*.

Arising from the accepted and now legislated principle enshrines in the unique nature of military service¹, veterans and their dependants may receive compensation, rehabilitation, or other entitlements from the Commonwealth.

To receive entitlements, veterans (or their dependants) must make a claim under one of the three relevant Acts, namely:

- Veterans' Entitlement Act 1986 (Cth) (the VEA).
- Safety, Rehabilitation and Compensation (Defence-related claims) Act 1988 (Cth) (the DRCA).
- Military Rehabilitation and Compensation Act 2004 (Cth) (the MRCA).

¹ Australian Veterans' Recognition (Putting Veterans and Their Families First) Act 2019 (Cth) s 5.

Claims are made through the Department of Veterans' Affairs to either the *Repatriation Commission* (RC) or the *Military Rehabilitation and Compensation Commission* (MRCC).

The claims processing is conducted by the Department, and Departmental staff (whether APS or labour hire staff) are appointed delegates of the commissions. To all intents and purposes, the Commissions are the Department of Veterans' Affairs.

Decisions made by delegates of the Commissions are administrative decisions. If a veteran is dissatisfied with the decision, depending on which Act and provisions a claim is made under, a decision may be reviewed:

- internally (reconsideration).
- by the Veteran Review Board (VRB).
- by the Administrative Appeals Tribunal, and/or
- by the Federal Court via the Administrative Decisions (Judicial Review) Act 1977 (Cth).

COMMENTS ADDRESSING INQUIRY TOPICS

(A) ADMINISTRATIVE APPEALS TRIBUNAL

Member Selection

DFWA is of the view that AAT members hearing veteran review cases should have appropriate qualifications such as in law or medico-legal domains.

DFWA is also of the view the members hearing veteran review cases should have a comprehensive understanding of the unique nature of military service.

Timeliness of Veterans Claims

Currently, veterans experience substantial delays when making claims under the various act. For instance:

- Many DRCA or MRCA claims are not allocated to a delegate of the MRCC (DVA delegate) for over a year.
- Once allocated to a delegate, the DVA performance target is to process claims within 90 (MRCA) or 100 (DRCA) days. DVA achieves this target in 24-31% of claims.²

The route and lodgement timeframes for a decision to be reviewed by the AAT varies significantly depending on which of the veterans' Acts to which the decision relates. The route may include internal reconsideration and the VRB.

During the period 01 July 2020 to 30 June 2021, the AAT finalised 210 veterans' appeals, 29% of which changed the decision under review. The median time to finalise applications was 41 weeks; only 57% of applications were finalised within 12 months.³

² Department of Veterans' Affairs Annual Report, 2021, DVA.

³ AAT Caseload Report For the Period 01 July 2020 to 30 June 2021, 2021, AAT.

It is not unusual for some veteran claims to take four years from initial application (to DVA) to finalisation at the AAT. This is unreasonable by any standard.

The claims process has significant financial and health consequences to the veteran. It is not controversial to say that it is highly stressful, or that the stakes increase if and as the veteran moves along the review/appeal pathway.

Extended timeframes are detrimental to the health and welfare of veterans.

DFWA is of the view that any measures that may reduce delays in finalising veteran claims, including time taken by the AAT to review decisions, must be considered.

Representation and Access to Justice

Where a veteran is dissatisfied with a reviewable decision made under one of the Acts, there are barriers to seeking a review, regardless of merit:

- To make an application to the AAT, veterans may represent themselves, or be represented by a friend or family member, a veteran advocate, or legal representative.
- In 2020-21, DVA's legal expenditure in defending veteran appeals was \$4.20 million.⁴
- While there is no fee to making an application, costs may only be awarded under certain conditions, to successful veterans under DRCA and MRCA, not VEA.

The lack of legal representation for veterans at the Administrative Appeals Tribunal is a major barrier to veterans accessing their entitlements.⁵

Some credit should be given to DVA for its *Litigation Policy for Veterans' AAT Appeals* (2020) which emphasises early resolution. This may have addressed some of the AAT workload; however, this policy does not remove the barriers to commencing litigation.

DFWA is of the view that any measures that *even the playing field*, between veterans and the Commissions, during litigation at the AAT, ought to be considered.

(B) TRANSPARENCY AND PARLIAMENTARY ACCOUNTABILITY

DFWA is of the view that transparency in the context of the administrative review system, and more broadly, the administrative law system, is of paramount importance to public confidence.

DFWA is satisfied the processes relating to veteran appeals at the AAT, are sufficiently transparent.

However, a common experience of the decisions of the Repatriation and the Military Rehabilitation and Compensation Commissions is that they are not transparent, to the detriment of veterans.

Determinations made by delegates fail to include sufficient information on their face for a veteran to understand the reasons. It is not uncommon for a veteran to receive a determination informing them of a debt of several thousand dollars, without any detail as to how the debt was calculated.

There are recorded instance of lack of applications made to the *Veteran Review Board*.

DFWA is of the view that any measures that improve transparency of administrative decisions, would have consequential improvements to the administrative review system more broadly.

⁴ Department of Veterans' Affairs Annual Report, 2021, DVA.

⁵ Veterans' Advocacy and Support Services Scoping Study, 2018, Cornall, R.

(A) ADMINISTRATIVE REVIEW COUNCIL

There have been many reviews into the veteran support system. Many are critical of the negative impact that the DVA claims process has on many veterans—as part of the whole support system.

These reviews have generally not looked in detail at the qualitative aspects of the administrative decisions being made by DVA delegates.

The Administrative Review Council's functions notably include:

- *to inquire into the adequacy of the procedures used by authorities of the Commonwealth and other persons who exercise administrative discretions or make administrative decisions, and consult with and advise them about those procedures, for the purpose of ensuring that the discretions are exercised, or the decisions are made, in a just and equitable manner.*⁶
- *to facilitate the training of members of authorities of the Commonwealth and other persons in exercising administrative discretions or making administrative decisions.*⁷

DFWA is of the opinion that these functions are critical to an efficient, just, and transparent administrative law system, particularly as they relate to veterans.

Whether these functions have been consolidated into the Attorney-General's Department in a manner which adequately maintains this capability within Government is unclear. There is conjecture as to whether the concerns relating to timeliness and transparency of veteran claims processing and decision making might have been addressed had the Administrative Review Council (ARC) not been abolished.

CONCLUSION

DFWA has identified that the exceptionally long delays experience by many veterans in having their claims even allocated to a DVA delegate, never mind the delays in processing and resolving a claim, is a grievance growing in voice in the veterans' community. Some claims submitted as far back as late 2019 have still not been allocated to a delegate. Many claims remain without a delegate after 12 months, notwithstanding those claims should be process in 90 days after receipt.

Readiness to Appear

At the discretion of the Senate Legal and Constitutional Affairs References Committee, I offer to appear personally, via video conference if appropriate, at any time to answer questions about this Submission, or other questions that may be deemed relevant to the Inquiry's Terms of Reference.

Yours sincerely,

Kel Ryan
National President
Defence Force Welfare Association

ABN: 49 929 713 439

⁶ *Administrative Appeals Tribunal Act 1975* (Cth) s 51(1)(ab)

⁷ *Administrative Appeals Tribunal Act 1975* (Cth) s 51(1)(g)