



Royal Commission Update - Canberra Day 28 - 7 April 2022

RSL References

Positive:

- 9:08 Mentioned Burwood RSL sub-Branch
- 11:01 Mentioned membership of sub-Branches in VWCMNC
- 12:34 – Mr Kelloway canvassed a peak body through ADSO - RSL and Legacy said no at the high-level and that it is not possible to see themselves as part of that sort of Peak Body

Negative:

NA

ESO and ESO governance

- Key reforms – PIMA and focus on Advocacy
 - Drift from mates helping mates in ESOs, advocacy done on the side, with commemoration as a focus
 - need a voice for advocates in advisory capacity to ESORT
 - history where ATDP people feel value to support of veterans has not been respected, leading to difficulty for hearing advocates at ESORT level
 - at ESO level, communication of policy in one direction is still a weakness, up to ESOs to resolve that
 - improve quality of advocacy for advocates themselves to create Professional Institute of Military Advocates (PIMA), with advisory capacity to ESORT
- Key reforms – Good governance
 - Need overarching, independent body that governs veterans' support system, claims as a sub-part
 - Issue of suicide should have been raised by ESORT – should not have been last to support calls for RC – if they had sound relationships with the grassroots, it would have been brought forward earlier – “If it was true ESOs represented veterans today, there wouldn't be 4-5,000 ESOs”
 - Outside DVA, operating in commercial manner, holding people accountable with Australian Institute of Company Directors
- Overarching independent body at enterprise level i.e. Veterans Services Commission as outlined in the Productivity Commission –
 - Mr Kelloway canvassed the VSC through ADSO - RSL and Legacy said no at the high-level and that it is not possible to see themselves as part of that sort of Peak Body
 - Should not be dominated by APS staff
 - Mr Lindgren believes it should include ADF

- Need governance structure to implement RC recommendations and hold bodies accountable - important that ESOs don't have leading role
- Covers life of veteran and family from day one

General Summary

- Discussion on utility and future of Veterans' Review Board
- Discussion on claims processing and advocate space, particularly among ESOs
- Discussion of claims processing and DVA legislation
- Discussion of the function of the Commonwealth Ombudsman as it relates to the ADF

9:00am - 10:30am - Douglas Humphreys OAM (Former Principal Members, Veterans' Review Board)

- 9:08 Mentioned Burwood RSL sub-Branch
- Processing is the most important thing - 60,000 claims is shameful
- No argument why there should not be a single stream of review for veterans' entitlement - DRCA shouldn't be excluded, with decisions going to AAT - veterans don't want to go to court-type setting of AAT

VRB operations

- Beneficial legislation, it needs to be applied beneficially - VRB is closer to a round table discussion - want veterans to say everything they want to say - respect the veteran and their service - qualitative difference in experience
- Quantitative benefits of the VRB - Alternative Dispute Resolution (ADR) - outreach of proactive contact with veteran/advocate re. evidence - better resource use
- VRB subject to resource reductions as part of the 'efficiency dividend' - now only two registries - use videoconferencing and teleconferences - only Brisbane and Melbourne
- Think folding VRB into AAT would be a massive mistake - specialist board for veterans - Case hold is 2600-2900 - appeal rate is only 2.4% - remarkably low - when referred to AAT, overturned rate is 0.4% -
- VRB - undoubtedly independent - but also resourced and funded by DVA for IT, floorspace - how far can you appease your funder? - should be formal MOU between DVA and VRB re. several matters, does not exist at the moment
- IT issues - biggest problem relating to calculations under multiple schemes/entitlements - highly trained advocates doing calculations by hand
- VRB left alone in terms of recruitment - Act could be tinkered with - Terms for members could be extended - funding allocated by Secretary - could be base rate funding, with additions for additional cases - also advantage of linkages with DVA
- Increase in role of National Registrar - become statutory appointment - similar role to Principal Registrar of AAT
- VRB members are some of the lowliest remunerated

Process

- Conceptually there are some easier questions - i.e. service, name - more difficult - is there a diagnosis - more difficult - does it meet the threshold under the SOPs - even more difficult - reasonable hypotheses, determining whether or not there is evidence it was Defence Service caused - when those on the VRB don't understand the legislation or the SOPs, how can we get a proper decision
- Does VRB have a feedback mechanism for DVA when there is a pattern being overturned - no analysis that he knows of at systemic level
- SOPs are easy to read - cut out arguments re. causation to the veteran's benefit - RMA updates SOPs wherever possible

Staffing

- Delegates act as gatekeepers – process claim based on information before them – to find extra information is much more time intensive – so they denied the claim, and then the VRB would do the extra work –
- Many of the delegates are not highly graded (APS) – not highly remunerated, no highly educated or trained – need higher level training to be able to reach out for evidence – DVA shouldn't do internal reviews, should be sent straight to the VRB
- Cannot take contractor off the street and expect them to get it right – requires knowledge, training, and experience – need trained, highly-skilled delegates to deal with the legislation and processes

Reservists

- Found that not having non-liability health care (NLHC) for reservists is insulting – reservists as second-class people
- Believes injuries suffered in service are the same, no matter if they happened in operation or not

DVA

- Impact of efficiency dividend and staffing caps is pernicious for DVA and quality of service offered – public service has been deskilled – need institutional knowledge – use of contractors and one of grants
- Previous reports and inquiries haven't been properly implemented

10:45am - 12:45pm Ian Lindgren (Vice Chairperson, Australian Peacekeeper and Peacemaker Veterans' Association Ltd) - Richard Kelloway OBE MID (Senior Advocate, Veterans Wellbeing Network Mid North Coast) - Nikki Noakes (CEO, Veterans Centre Australia)

- **Nikki Noakes** – former RAN – VCA – 7 staff, 10 volunteers – continuing and growing need for support for veterans during transition – wellbeing first approach to veterans and families – no membership required – some come before discharge
 - Support clients in ADF Rehabilitation area, word of mouth referrals, Government referrals, DVA service portal, many finding own claims difficult through MyService, so then come to VCA – average 10 inquiries per week
 - Complexity – coverage under multiple acts for same condition, including different documents and outcomes
 - Process gets in way of outcome
 - Request for records – go through case management with veterans/Member including stabilisation, psychosocial, crisis management, education and engagement with DVA, move to resilience phrase, transition phase – each veteran and family has individual needs
 - Efficiency dividends – turnover makes building relationships difficult
 - MyService – clunky – becomes too hard to use for individual veterans –
 - Veterans Support Officers at bases – DVA staff – help with claims and using MyService
 - Effects of claims processes on veterans – can be debilitating – can exacerbate challenges for clients already with challenges – some clients who were well, and got worse – stress of time it takes, poor communication, confusing
 - Claims likely to continue to grow – some cultural shift towards help-seeking
 - Key reforms – giving clients self-agency, build around the individual
- **Richard Kelloway** – VWNMNC has 15 practising advocates, with 30 additional helpers – 11 ESOs – 300 cases – supported 900 veterans and families – practice veteran wellbeing-centred advocacy – Mr Kelloway has 48 clients himself
 - Word of mouth, cold calls, significant referrals from DVA client coordinators – mentioned RSL sub-Branches as part of referral networks
 - Legislation – complex – understands difficulty in harmonisation – DVA and ATDP handbooks can be useful in dealing with complexity – operational ways around complexity – need better

- knowledge base for advocates etc. – need to simplify complexity through training/mentoring – wellbeing advocate also deal with 16 other Acts they must work to
- Claims process for veteran – start a claim through essential info (proof of ID, medical summary, authorisation to act) – provided wellbeing support through compensation claim process and what is available in the community – to get claim lodged requires medical evidence where veteran is required with support to get that evidence, then statement of attribution to be written (with support from compensation advocate helping to understand SOPs) – once liability is accepted, legislation is triggered, meaning community and MRCA/DRCA supports are available
- Major issue – quality of relationship between advocate and delegate – where relationship is not good, advocate will wait for delegate to make contact – link b/w veteran, advocate and delegate
- Beneficial intent of legislation is being applied – delegates not being obstructive – good job by case coordinators, giving priority, but can mean other veterans miss out – personal intervention by an advocate may help a case to get moving, few who would use that capriciously –
- Affected negatively by efficiency dividends and turnover – contracting out has removed institutional knowledge
- 7 domains of AIHW veterans-wellbeing model are important
- Veterans Centric Reform – some benefit in improving processing and has focused on beneficial intent of the legislation – culture has changed in DVA
- IT – electronic transformation – brought MyService and that has issues – if advocacy support is not there, then statement of attainment lodged will be of lesser service – 84% of MRCA claims lodged by veterans with advocates have been rejected – they use ESO Portal instead – still clunky
- VCR and change of culture need to be taken further – focusing wellbeing care on the family
- Communication with delegates – no difficulty – dedicated contact number
- Claims likely to continue to grow
- Key reforms –
 - Drift from mates helping mates in ESOs, advocacy done on the side, with commemoration as a focus
 - need a voice for advocates in advisory capacity to ESORT
 - history where ATDP people feel value to support of veterans has not been respected, leading to difficulty for hearing advocates at ESORT level
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 - improve quality of advocacy for advocates themselves to create Professional Institute of Military Advocates (PIMA)
- **Ian Lindgren** – 10 volunteers, with 4 fulltime – 4 advocates – 76 cases – support participants in modern operations incl. DFAT, AFP, Police who deployed and other orgs that deploy in national interest – personal role in testifying – strategic level engagement with DVA and provide advice to Minister for Veterans Affairs
 - Word of mouth, no membership required – contacted by advocates, doctors, veterans
 - Concerned legislation is too difficult – system is overly complex, system of systems – there is no one portal where info is available – whereas other compensation systems at State level there is one portal where you can see what happens – legislation does not pass muster – can be simplified
 - Feeling of unnecessary replication of communication – causes frustration – where information gets siloed within DVA or among delegates – if delegates think outside rigid processes, use initiative, can provide acceptable level of service – system focuses on processes, not on outcome for veterans
 - Mechanisms in Act require DVA to act in certain ways and orders – systemic issue of not being permitted to use initiative
 - Efficiency dividends – no effect
 - Multiple IT systems from 80s, 90s and now – no practical reason this can't be simplified – State systems have commercially viable off the shelf packages

- Psychiatrists don't want to work with DVA due to tone of correspondence, lack of help offered, time taken to address a claim
- Growth in claims - likely to continue
- Key reforms - Good governance
 - Need overarching, independent body that governs veterans' support system, claims as a sub-part
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Questions

- Overarching independent body at enterprise level i.e. Veterans Services Commission as outlined in the Productivity Commission -
 - Mr Kelloway canvassed the VSC through ADSO
 - RSL and Legacy said no at the high-level
 - Not possible to see themselves as part of that sort of Peak Body
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 - Need governance structure to implement RC recommendations and hold bodies accountable - important that ESOs don't have leading role
 - Covers life of veteran and family from day one
- US Veterans Board?
- PIMA - advisory capacity to ESORT
- If it was true ESOs represented veterans today, there wouldn't be 4-5,000 ESOs
- ADR processes at VRB have been successful

1:45pm - 3:15pm Gerard McAleese (Senior Solicitor, Veterans' Advocacy Service, Legal Aid NSW) - Bill Georgiannis (Solicitor in Charge, Government Law, Legal Aid NSW) - Geoff Lazar (Solicitor, Veterans' Advocacy Service, Legal Aid NSW)

- In NSW, 2 lay advocates, 4 solicitors - broad work of primary claims at DVA, reps at Tribunal, face-to-face outreach for COVID, applications for reparations under DART, partnerships with hospitals including NCVH Concord, law reform, transition seminars, CSC matters - only State-based team in NSW - some Commonwealth funding
- VAS clients come through word of mouth, online applications, referrals from stakeholders - 70% of claims are original claims
- Found transition seminars useful
- CSC scheme can make it more difficult - in general, see them first as those in transition get seen first - baseline entitlement - then you can look at incapacity payment from DVA
- Prefer to do the work of working out dates of service, injury and where they line up against legislation - DVA often wrong or doesn't interpret it beneficially enough - path of reasoning of arriving at findings often not provided - this should be provided for transparency, veterans understanding - helps to nip mistakes in the bud
- Recent reforms haven't made drastic improvements in the system - improvements since 2019 for particularly simple claims - delays create additional problems, including distress on clients - lodge claims by email, don't use the portal - VEA submissions made to the prescribed email address, or it won't be lodged - this affects backpay -
- Sometimes if there's confusion, lodge for same thing multiple times - not just complexity of legislation - decision by client whether they want pension or lump sum payments, or mix - no access to financial advice - should be available to make that choice

- Legislative complexity more important than how it's administered - turnover of staff that means they don't know how legislation is interpreted - contract labour is not sufficient - Deployment cycle is too busy
- Internal doctors may ask for another diagnosis - argue with treating psychiatrists
- Issue re. psychiatrists for veterans generally - many psychiatrists won't do DVA work - too complex, doesn't pay - especially in rural or regional areas - don't want to write reports for DVA under the SOPs
- Endorse Productivity Commission's call for two systems
- Frustrating for veterans - difficult process - executive decision-making can be reduced, fight or flight triggered - makes process extremely hard - has driven and exacerbated mental health issues
- Compensation not available for deceased by suicide Members or veterans unless they were dependents - propose scheme based on suffering from a death - effectively a reparation payment - acknowledges impact of that death

3:30pm - 5:00pm - Penny McKay - Acting Commonwealth Ombudsman

- Role of the Commonwealth Ombudsman - independent oversight agency - insurance that Government agencies overseen act with integrity - aim to improve administration in Australia in the region - audits, reports, investigations, engagement - no power to make mandatory decisions or take mandatory actions - also Defence Force Ombudsman (DFO)
- Includes taking on reports of Defence Abuse - complaints of abuse and unacceptable for Defence agencies - Need good complaints reports in Defence
- Formal process for follow up on recommendations made to Agencies
- Complaints overview - increase of complaints DVA by 34% during past year
- May be some underreporting of abuse to the Ombudsman - culturally-based

Defence Abuse Reparation Scheme (DARS)

- DARS team has 23-25 in team - no analysis of the DART case studies, but final report - need to lodge intent to make a complaint by end of this year - recommended that this is extended
- Can facilitate counselling for a complainant, ADR, restorative engagement (RE) processes, limited time access to reparation payments - depends on what complainant wants -
 - RE suffered through COVID because its face-to-face
 - Counselling through Open Arms - facilitated referral provides additional support
- Broad forms of abuse in regulation sexual abuse, physical abuse, serious bullying and harassment - reports can go back a long way
- Demographic breakdown - proportion of females in reporting cohort is about 23-24% - no comment
- Will do deeper analysis of data where cases of abuse may have led to death by suicide up to 2014 - will be ongoing function in terms of contemporary abuse
- Reporting has grown regarding abuse in past 5 years - due to increased awareness through word of mouth and advertising, referrals from legal and advocacy firms
- Regular contact between DFO and Defence to feed back systemic issues if there are any - current acting Ombudsman has not fed back any