

INTRODUCTION TO COMPENSATION AND REHABILITATION¹

Introduction

This is the first of a series of articles on the various Acts under which actively serving and ex-servicemen/women can secure support from the Department of Veterans' Affairs (DVA). In this introductory article, I will outline some of the considerations that affect DVA's administration of claims for compensation, setting the scene for more detailed discussion of each Act in subsequent articles.

The Acts under which you may be able to claim compensation or rehabilitation support use Act-specific language. Its being introductory, generic terms are used in this article to avoid confusion.

Current Acts

Claims by currently serving and ex-service personnel will be subject to one or more of the following Acts:

- *Veterans' Entitlements Act 1986 (VEA)*
- *Safety Rehabilitation and Compensation Act 1988 (SRCA)*
- *Military Rehabilitation and Compensation Act 2004 (MRCA)*

Superseded Acts Administered through Current Acts

The following Acts have been superseded, but remain current to the extent that the compensation applicable at that time is administered through one of the current, replacing Acts.

- *Repatriation Act (1920)*, replaced by the VEA for war service
- *Commonwealth Employees Compensation Act (1930)*, replaced by SRCA
- *Commonwealth Government Employees Act (1971)*, replacing the CECA, until replaced by SRCA

Defence Act (1903)

In some circumstances (eg, after the Blackhawk crash on High Range in 1996 and the Sea King accident in Indonesia in 2005) *the Defence Act (1903)* has been invoked to enable compensation that is otherwise not available through the principal compensation and rehabilitation Acts.

Which Act Applies to Me?

The Act that is applicable to you will depend on when, where and how you served. As a reflex, most who read this article will think of the VEA, not realizing that they may have entitlements under SRCA and, for some, MRCA. Also, some who submit a claim under VEA may be perturbed when their claim is not allowed because the injury or medical condition arose outside the period in which the VEA was in force. The following table indicates the combinations of Act and service under which you may be eligible to submit a claim for compensation for injury, disease or (by your survivors) death. Please note that the inclusions are indicative and that you should seek the advice of a trained and authorised Pension Officer or Advocate.

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Type of Service	VEA	SRCA	MRCA
Operational	WWII (overseas and Darwin), Korea, Malayia, Vietnam, Gulf War, NE Thailand 31May62 to 24Jun65, deployments to Bougainville, Yugoslavia and Kosovo, East Timor, Ethiopia and Eritrea, Sierra Leone, Iraq, Operation Slipper and Afghanistan	From 7Apr94	From and including 01Jul04
Peacekeeping	UN Peacekeeping missions between 29Jan47 in the Bakans to RAMSI in the Solomon Is to 24Jul03.		
Peacetime (F/T)	7Dec72 to 7Apr1994	From 1Dec88 to 30Jun04; however, compensation may be claimed under SRCA for injury or illness that occurred during the peirods covered by CECA (1930) or CGEA (1971).	
Peacetime (P/T)	No		
Pre-VEA Member	If enlisted before 22May86 and serving without a break after 7Apr94, may claim under VEA until 30Jun04.		

As you consider your options a reality check is, however, necessary. You will not be surprised that you cannot “double dip”; viz., a successful claim for the same condition or injury under two or more Acts will not result in multiple

compensation payments. DVA is required to offset a compensation payment under one Act by that made under another Act. The same condition or injury may, however, receive medical treatment under more than one Act. The significance of this provision will become clearer in the forthcoming articles.

Where can I get Information on Compensation?

The DVA website provides links to <Factsheets> in which you will find all the information publically available on your entitlements under the various Acts - as well as much more. You can find this information through www.dva.gov.au following the link <Factsheets> in the green <Quick Links> box on the right side of the home page. Once there, it is time to be adventurous. Opening the <Topic> link, takes you to a coarse level of sorting. Opening the <Keyword> link , on the other hand, takes you into an Aladdin’s Cave of information.

How do I lodge a Claim?

You can find the claim form relevant to each Act through the DVA website by following the link <Forms> in the green <Quick Links> box on the right side of the home page. Once you have opened <Forms>, on the left hand side of the screen you will see the link <Keyword>. Open <Keyword> and follow the links to the appropriate claim form as outlined next:

- VEA claim: open the alphabetical link “D,” across the top of the page, scroll down and open <Disability Pension> - Form D2582.

- SRCA claim: open the alphabetical link “S”, followed by <Safety Rehabilitation and Compensation Act 1988> - Form D2020.
- MRCA claim: open the alphabetical link “M”, followed by <Military Rehabilitation and Compensation Act 2004> - Form D2051.

Following each of the above links you will take you to a list of forms, each of which is numbered. My computer does not open the form from this list and I have to go back to the <Form Number> link on the left side of the screen. Having opened the <Form Number>, you will then be able to open and scroll down to the Form you want and open it. Some of these forms can be saved and completed electronically, while others do not yet have that facility.

Do I need Help?

Most of us have long ago developed a very high level of self-sufficiency and therefore feel quite capable of completing and lodging a “simple” claim form. If you take nothing away from this article than the following, it will have been worth your while reading it. Unless you are thoroughly familiar with the details in the various legislated documents DVA will use in assessing your claim, do **NOT** lodge a claim without the support of a trained and authorised Pension Officer or Advocate (“practitioner”).

Let me add a caution at this point: *The advice to get help is not self-serving or grand-standing.* As you will see below, behind the claim form sits an assessment process that utilises specific, legislated instruments. Unless you have read and understood the details and implications of the instruments that apply to your particular conditions and circumstances, you are unlikely to maximize the likelihood that your claim will be successful. Also, if DVA rejects your primary claim and you subsequently seek the support of a Pension Officer or Advocate, you may inadvertently have tied his/her hands through your initial self-help effort.

Where can I obtain Help?

At this stage, the RAAFA has across each State or Territory a small number of trained and authorised ex-RAAF practitioners. Your Division Secretary/ Welfare Officer will be able to give you the contact details of the RAAFA practitioner closest to you. Alternatively, the local RSL Sub-Branch, Legacy, Vietnam Veterans Association, Peacekeeper and Peacemaker Veterans Association, Naval Association, etc branches will either have, or will be able to guide you to a practitioner.

Be prepared to spend some time finding the practitioner that you feel best understands your circumstances and conditions. It may make the difference between a lifetime of either regret or the medical, financial and other support to which your service and circumstances entitle you.

For serving members, the RAAF has established a cell of trained practitioners at Amberley, which is authorised to facilitate preparation of primary claims under all of the current Acts. SQNLDR Mike Edwards presently commands the Compensation Claims Liaison Office. He is supported by a cadre of experienced case managers. The Office does not provide advocacy services, however, and appeals to the VRB or AAT will need to be referred to an external Advocate. First contact with the Office for a primary claim is by Freecall to: 1800 558 022.

What will I Need to Complete a Claim?

Irrespective of the Act under which you intend submitting a claim, DVA requires certain information. If you do not submit all the required information with your claim, inevitably, you will delay assessment as the Delegate who is assessing your claim will have to write back to

obtain it. So, take the time to collate the following information to facilitate preparation of your claim:

- Proof of Identity (see Form D0663 for details)
- Accident/Incident Report (ADF Form AC563)
- Witness Statements
- Service Medical Documentation (including Enlistment and Discharge Medical Questionnaires, and entries related to injury or illness)
- Service Documentation (including posting history, log book, trade training certificates)
- Copies of Routine Orders (substantiating authorisation of an activity)
- GP and Specialist Medical Reports (annotated on appropriate claim form or as attachments)
- Statement of Attribution (stating how injury/medical condition is related to service)
- DVA Questionnaires (eg., Lifting, Stair Climbing, Squatting, Tobacco Use, Alcohol Consumption, etc)
- Lifestyle Effects Report

How do I Access My Service Documentation?

Under the Freedom of Information Act, the ADF, DVA and other Government agencies (such as National Archives) are empowered on written application to release service and service medical documents to you or, at your election, to your Pension Officer or Advocate.

If you are a World War II veteran, DVA may already hold your documentation and you may obtain a copy by completing and posting or faxing Form 8601 to DVA's FOI Section.

If you are a post-WWII ex-serviceman/woman you can obtain a copy of your:

- Service Documents from:

Personnel Records - RAAF
Queanbeyan Annexe 2
Department of Defence
Canberra ACT 2600

- Service Medical Documents from:

Defence Force Health Records – Air Force
PO Box 7949
Canberra BC ACT 2610

If you are a serving member, you should obtain a copy of your documents through normal administrative and medical channels.

How does DVA Process a Claim?

While each Act stipulates a different determination methodology, in essence, DVA will consider your claim through three sequential processes.

- Eligibility. DVA's first step is to ascertain whether you are eligible to have your claim considered under the Act for which you have submitted your claim. The Delegate will therefore satisfy him/herself that you, as the person submitting the claim, are who you claim to be and that you have eligible service. In this regard, before completing a Claim Form you will need to have identified whether your period of service lies within the period of time within which the Act is law, whether the type of

service you undertook is covered by the Act, and whether you have sufficient service to fall within any length-of-service requirements in the Act. If the Delegate is satisfied you are eligible to claim under the Act, he/she will next determine if the Commonwealth is liable for the injury or medical condition you are claiming.

- **Liability.** To determine whether the Commonwealth is liable, broadly, the Delegate will first consider whether your claimed injury or medical condition is covered by the Act under which you have claimed; second, whether the medical diagnosis supports your claim that you have the injury or medical condition; and finally, whether the evidence you have provided links your injury or medical condition to the nature of the service you provided. If satisfied that the Commonwealth is liable, the Delegate will then assess the level of compensation or other support you are entitled to receive.
- **Entitlement.** The Delegate's assessment of your entitlement will focus on two considerations: how severe is the level of disability resulting from the injury or medical condition and, second, how severely does the injury or medical condition affect your quality of life. To determine your entitlement, the Delegate will consider your GP or Specialist's medical opinion and your assessment on the Lifestyle Report of what you can and cannot "do". DVA documentation provides guidance to the typical relationship between severity of conditions and the quality of life that results. If your quality of life is severely compromised by what might otherwise be considered a relatively minor ailment or injury, you will therefore need to provide independent evidence of that reality. The type of support that DVA may provide is discussed below.

What Documentation Does DVA Use?

I have stressed above that DVA will process your claim using a range of legislated instruments. Apart from the Acts themselves, essentially, DVA uses common instruments to determine claims under the VEA and MRCA, while a different assessment guide is used for claims under SRCA. The following instruments are used for VEA and MRCA:

- **SOP.** The Repatriation Medical Authority (RMA), a group of medical specialists appointed by the Minister, determines the Statements of Principle (SOP) that identify the injuries and medical conditions that the Commonwealth has accepted as possibly being related to service, and the way in which they may be related to service. SOP are collated in two "categories", one related to wartime service and the other to peacetime. Each category involves different standards of proof and different relationships between condition and service. The SOP for wartime service are less restrictive than those for peacetime. You can sight the SOP that relates to our condition and type of service through the RMA website. Open www.rma.gov.au and follow the link <SOPs> on the left side of the home page. This link opens a webpage that provides you two choices: you make open an alphabetical listing of all conditions across the top of the page, or open a "category" of condition dot-pointed below the alphabetical listing. When you follow the link to a medical condition you will open a page on which the "SOP No." is sub-divided into two columns marked "RH" and "BOP", each relating to a different standard of proof. The RH (reasonable hypothesis) column relates to operational service and the BOP (balance of probabilities) column to peacetime service. I will return to these standards of proof in the next Wings article, which will "discover" the VEA.
- **GARP.** The Guide to the Assessment of Rates of Veterans' Pensions (GARP) relates the severity of your injury or medical condition to a Medical Impairment Rating, and the consequences of your medical impairment for your quality of life to a Lifestyle Effects Rating. These Ratings are then combined to assess your level of entitlement

to compensation. For claims under the VEA, your entitlement to a Disability Pension is expressed as a percentage of the (so-called) General Rate. For more severe impairment and lifestyle effect, the Delegate may determine that you are entitled to a Disability Pension at the Special Rate (commonly known as TPI or, for older veterans, EDA). For a claim under MRCA, the process will be the same (although the Delegate will use different tables within another version of GARP) and financial compensation will take the form of Incapacity or Permanent Impairment Payments. More on this in later articles on the VEA and MRCA.

When you submit a claim under SRCA, you are seeking compensation under the workers' compensation scheme that covers all Commonwealth employees and is administered by COMCARE. A significant difference, however, is that DVA is the administering authority for SRCA claims submitted by current or former ADF members. As a result, there are differences in the assessment process and the nature of the compensation available. Commonly, however, both COMCARE and a DVA Delegate will assess the level of compensation by reference to the Table of MAIMS. From that document, the Delegate will award a percentage of a legislated maximum level of financial compensation for the total loss of function. Again, more on this in the later article on SRCA.

What Support may DVA Provide?

Irrespective of the Act under which you have claimed, in general terms, the range of support that the Delegate may determine will include some or all of the following:

- Financial compensation
- Medical treatment (related to your accepted conditions if a White card is awarded under the VEA or MRCA, and for all conditions if you are awarded a Gold Card)
- Rehabilitation
- Household services
- Attendant care
- Alterations to your home, aids and appliances

It is also important to note that the VEA provides for medical treatment for Tuberculosis, PTSD/Anxiety/Depression (Form TL219.2) and cancers (Form TL219.1) whether war-caused or not. In other words, you can apply for medical treatment for these conditions immediately and follow up later with a claim for compensation. Acceptance of these conditions and the grant of a White Card does not, however, signify that a claim for the conditions will lead automatically to the award of compensation.

Can I Expect a Fair Hearing?

One final thought is relevant. DVA sometimes gets "bad press" when a claim is rejected. If you hear such a story, I encourage you to ask about the quality of the claim, focusing on the complainant's understanding of the assessment process and knowledge of the SOP related to his/her conditions.

For me, the ethos within DVA was expressed authoritatively by a DVA officer at a recent training session: *Our objective, he said, is to ensure that every veteran or member receives his/her full entitlements. Not one bit less. Not one bit more.* It strikes me that we cannot expect fairer consideration than that.

Be that as it may, DVA accepts that, even with the best will in the world, errors will be made. Should that happen, if you are claiming under the VEA or MRCA you have recourse to the Veterans' Review Board, followed by (directly for appeals under SRCA) the Administrative Appeals Tribunal and finally the Courts.

Conclusion

This article has introduced some of the key issues in compensating serving and ex-servicemen/women for injuries, disease or death from service-related causes. As it is introductory, some of the considerations you will need to bring to bear when preparing to submit a claim have been touched on lightly, and generic terminology has been used. Following articles will address in detail each of the three Acts currently in force.

June 2011