

ADVOCACY, ENTITLEMENTS AND SUPPORT (AES) SPOT¹

Introduction

My apologies if it sounds a little trite: it is true to say of veteran and family support that *'we live in exciting times'*. Let's explore why.

Veteran-Centred Reform

In 2013 the Public Service Commission (PSC) reviewed the Capabilities of DVA.² It found that the Department's service delivery model was *'inefficient, confuses lines of accountability, is unsustainable, and is impacted by the physical location of staff across offices in capital cities and regional Australia'*. Even DVA's own staff reported that their operating system was *'disjointed, inconsistent and slow'*. No wonder that anecdotal evidence appears to put Delegates' average case load today at around 300+ files at any one time.

Facebook posts almost unanimously criticise the Department. Posts express frustrations and anger at lost files, interminable medical reviews, claims rejected that seem indisputable, inconsistent decisions between one claim and a similar one, inadequate rehabilitation support, and unexpected recovery of payments. In its findings the PSC summed up, what are in fact, too many veterans' perceptions: *'DVA is monolithic...impersonal, bureaucratic, somewhat labyrinthine and overall a bit mysterious in its decision-making'*.

That was in 2013. Around a year later the Minister for Veterans' Affairs endorsed the new strategic plan *DVA Towards 2020*. Its objective is total transformation of the Department. New strategies focus on the client, DVA's culture and its organisation.³ The transformation is termed *Veteran-Centred Reform* (VCR). Already, the changes are evident. Let's take MRCA claims for example. The Time to Process (TTP) target is 120 days. The mean TPP in FY2011-12 was 158 days. By FY2014-15 it had reduced to 144 days, and FY2014-15 to 109 days.

But this is not the only change. Many other fundamental changes are underway.

In May, the Minister announced an extension of mental health treatment⁴ under the Non-Liability Health Care program (Factsheet HSV109).⁵ In September, he announced that processing of 13 medical conditions would be streamlined.⁶ While some advocates has criticised the change, a single appeal pathway was legislated under MRCA and Alternative Dispute Resolution (ADR) extended to all States.⁷ In October, ESO Representatives were invited to DVA for a briefing by the VCR Taskforce about 'Lighthouse Project'.

Embedded deeply in VCR, Stage 1 of Project Lighthouse has engaged a wide sample of veteran and family cohorts (ESO members, advocates, young veterans, female veterans, dependents,

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² Australian Public Service Commission, *Capability Review Department of Veterans' Affairs*, Review Report: November 2013, online at http://www.apsc.gov.au/_data/assets/pdf_file/0020/64622/DVA-Capability-Review.pdf, p.35.

³ A summary of the strategies and actions being taken is at <http://www.dva.gov.au/about-dva/publications-and-forms/corporate/dva-strategic-plan/key-strategies>

⁴ http://minister.dva.gov.au/media_releases/2016/may/va035.htm

⁵ <http://www.dva.gov.au/factsheet-hsv109-non-liability-health-care>

⁶ http://minister.dva.gov.au/media_releases/2016/sep/va087.htm

⁷ http://minister.dva.gov.au/media_releases/2016/sep/va092.htm

Repatriation Medical Authority, Australian Medical Association, MRCC, VRB). The outcome is that veterans' priority is to *'get past the claims process quickly and get on with life'*. Stage 1 culminates in preparation of a *'First Pass'* business case for the FY17-18 Budget. If a Budget appropriation is legislated, a 5-year program of activities will be funded ranging from staff training and development, to organisational culture change, to new ICT hardware and software.

The Business Case rests in part on development of *'demonstration software'*. Now in *'beta'* form, the Lighthouse Project canvassed trial participants in late October. The trial software is limited to veterans with eligibility under MRCA who are suffering from *'wear and tear'* conditions of, for example, the spine or knee. The briefing mentioned that, during the cadre course, an SAS candidate lifts and bears weight in excess of the SOP for lumbar spondylosis. The software algorithm has been written around such facts, obviating the need for a lifting questionnaire to be prepared.

Even as a *'proof of capability'* prototype, the advance is extraordinary. Potentially, the software should reduce the time to determine liability to *'same day'*. Highly automated, the mature software will accept an on-line claim, compare the diagnosed condition with the veterans' service record and the relevant Statement of Principle (SOP) and recommend acceptance/rejection of liability. At best, the Delegate need only press the *'Go'* button and acceptance of liability is entered on the veteran's DVA file. Needs analysis follows, triggering offers of rehabilitation and compensation, as appropriate.

Clearly, there is an enormous volume of work to be done before algorithms are developed for all employment categories in all three Services. That, however, is the objective. It might be too late for the elders amongst us, but will make a terrific difference for those serving now and into the future.

SRCA for Defence Personnel

Although the *Safety, Rehabilitation and Compensation Act 1988* (SRCA) is the latest in a series of workers' compensation acts for Commonwealth employees that can be traced back to 1930, it has always suffered a fundamental flaw. Although administered by DVA, the legislation has been the responsibility of another Minister – currently the Minister for Employment.

Following advice to the ESO Round Table's Meeting on 12 May 2015 that Part XI of SRCA would be excised and legislation of a new defence-specific act, the *Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Bill 2016* was tabled in Parliament in 9 November 2016.⁸ The Bill is expected to be passed in the Autumn Session of Parliament. The intended commencement date is 01 July 2017.

Colloquially known as DRCA, from 01 July 2017 all defence personnel who would otherwise have claimed under SRCA will submit their claim under the *Safety, Rehabilitation and Compensation (Defence-Related Claims) Act 1988*. Except for transition provisions, the eligibility criteria and benefits are identical to SRCA. Transition provisions (Cls 63-68) ensure continuity of coverage for veterans for whom liability has already been accepted under SRCA.

Commission Deputy President, Craig Orme, DSM, AM, CSC, has advised all ESOs that:

'Should the new Act be passed by Parliament, eligibility and benefits under the Act will be the same as those currently available to serving and former ADF members under the existing SRCA. The new Act (if passed) will be the same as the current SRCA, so there will be no change to existing entitlements or access to benefits. The Bill simply replicates the SRCA.' He continued:

⁸ http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5756

'The Veterans' Entitlements Act 1986 and the Military Rehabilitation and Compensation Act 2004 will remain in place and will be unchanged by the new Act.'

As it is 'foundation legislation' – to use the Minister's term – the Bill is a little 'clunky'. Clause numbering is unchanged from SRCA, many clauses within the SRCA numbering system are missing, the Bill still uses the SRCA term '*employee*', and interpretation of SRCA by the Courts have had to be reconciled. The latter have been swept up in Cl 121(b) – a so-called 'Henry VIII clause' – the effect of which is to place '*reverse onus*' on the Commonwealth. In other words, if the effect of a provision in DRCA is different to that in SRCA, the veteran is not to be disadvantaged.

During a recent briefing by senior DVA officials, ESO Representatives were assured that once the Act is commenced, the 'clunk bits' will be removed. Terms like '*employee*' will be replaced by the appropriate military terminology. DRCA will be '*streamlined and simplified*.'

Needless-to-say, the advent of the Bill has energised the rumour mill. Some advocates have been trenchantly critical about the amendments affecting the award of costs by the AAT (Administrative Appeals Tribunal). They argue that the amendments are disadvantageous to veterans. From my reading, the objective is to ensure claims/appeals are resolved at the earliest possible stage along the pathway. Costs will be refused if a claimant provides a document that, had it been provided earlier, would have resulted in a determination at the earlier stage. Also, costs cannot be awarded if the claimant received legal aid support. If my interpretation is right, the rationale is pretty reasonable.

Progress with ATDP

The Advocacy Training and Development Program is powering ahead. A handful of ESO volunteers have done a phenomenal amount of work on course development. By the time you read this article, the DVA-contracted RTO (Registered Training Organisation) will have lodged the Welfare and Compensation Advocacy Level 1 and 2 courses with ASQA (Australian Skills Quality Authority). ASQA is expected to accredit the courses around the end of March 2017.

In the interim, the RTO has trialled a Mentoring course and RPL (Recognition of Prior Learning) process with 40 practicing Advocates. It is now rolling out RPL and mentoring across the advocacy community. So far, 150 Advocates have nominated and the program has begun. Any TIP-trained and practicing Advocate who wishes to gain ATDP certification may apply for RPL via www.atdp.org.au/applications/eois.php

A significant number of ESOs and Advocates have advised that information about ATDP has been sketchy. To simplify, the key differences between TIP and ATDP are:

TIP	ATDP
Unstructured training	Defined, competency-based and certified by Workplace Assessors
Courses available to all without consideration of experience	Structured formal courses (on-line and face-to-face) and workplace learning (OJT and mentoring)
Ad hoc courses without a clearly defined overall outcome	Learner progress is supported and monitored by mentors
Trainees chose courses based on availability	Communities of Practise end advocacy in isolation
Courses available until 30 June 2017 for TIP-trained advocates	ATDP single-pathway courses being rolled out from 01 July 2016
Application by www.tip.org.au	Enrolment by www.atdp.org.au
Unaffected unless/until transfer to ATDP by RPL or entry into single-pathway	May enter ATDP single-pathway at any time; certification available after ASQA accreditation of courses
VITA indemnification under current TIP Protocols will eventually cease	VITA indemnification under ATDP Protocols advised after ASQA accreditation obtained
ESO authorisation to practice as pension or welfare officer is undefined	ESO authorisation to practice as Advocate triggered by certification by RTO

An ATDP Newsletter is now being released regularly and a set of FAQs has been posted on the DVA website.⁹ The ATDP Secretariat is encouraging on-line inquiries and comments. The email address is: ATDPenquiries@dva.gov.au Use this address if you want your Branch to receive information directly from the Secretariat.

Conclusions

We all have an interest in ensuring that veterans and their families receive the full benefit of the legislation. Inevitably, Facebook sites will post and bar-rooms will echo to grievances about DVA performance for some time. The evidence is, however, that a transformation is underway and is already bearing fruit. This article will provide information that you can use to start countering complaint. We do indeed live in exciting times.

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⁹ <http://www.dva.gov.au/consultation-and-grants/advocacy-training/advocacy-training-and-development-program>