



Submission by the
Commonwealth Ombudsman

**DVA Veterans Advocacy and Support
Services Study**

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July 2018

Background

The Office of the Commonwealth Ombudsman (the Office) welcomes the opportunity to respond to the DVA Veterans Advocacy and Support Services Study (the Study).

The purpose of the Office is to:

- Provide assurance that the organisations we oversight act with integrity and treat people fairly, and
- Influence systemic improvement in public administration in Australia and the region.

We seek to achieve our purpose through:

- correcting administrative deficiencies through independent review of complaints about Australian Government administrative action
- fostering good public administration that is accountable, lawful, fair, transparent and responsive
- assisting people to resolve complaints about government administrative action, and
- reviewing statutory compliance by law enforcement agencies with record keeping requirements applying to telephone interception, electronic surveillance and like powers.

The Office is also the Defence Force Ombudsman (DFO), a function conferred on the Office in 1983 to provide assurance of independence and integrity in the management of complaints about matters of administration within the Australian Defence Force (Defence). The DFO provides an external and independent complaint-handling mechanism for serving and former members of the Defence, for administrative and employment matters that have not been resolved by Defence.

Complaints made to the DFO specific to serving members in Defence include decisions about promotion, demotion, discharge, postings, leave, housing, allowances and handling of Redress of Grievance processes. We can assess the handling of allegations of misconduct, harassment and abuse. We can also refer matters to the Inspector General Australian Defence Force, where it is found to be a more appropriate investigation avenue.

Complaints made to the DFO specific to the Department of Veterans' Affairs (DVA) include adverse decisions about payment entitlements, payment rates and calculations, offsetting of pensions, delays in the processing of claims, access to support and ancillary services and decisions relating to compensation and debt waiver.

From 1 July 2017 to 30 June 2018 our Office received 173 complaints about matters of administration by DVA. We investigated 31 (18 per cent) of these matters.

Response to Terms of Reference

Introduction

Our Office is aware of the significant number of inquiries and studies recently undertaken in relation to veteran health and entitlements. We are also aware about the difficulties faced by veterans in navigating the complex legislative framework that overarches the entitlements available to the veteran community. While we note there has been significant work undertaken by DVA on legislative and policy reform to provide enhanced services to veterans and their

families, our Office continues to receive complaints about DVA's actions and decisions around service related injuries and related entitlements.

This submission provides a breakdown of the main themes we observe in our complaints about DVA and an analysis of these issues. This may assist the Study in identifying which elements of veterans' entitlements and DVA service provision are potentially complex or difficult to navigate.

As our Office does not have a role in the oversight of ex-service and veteran advocacy organisations, we are unable to provide comment on issues specific to advocacy services. While we engage with ex-service and veteran advocacy services as part of our outreach program and the promotion of our Defence abuse reporting function, we do not analyse or assess the efficacy of such services.

Over the last five years our Office received 710 complaints about DVA. The most common themes arising from these complaints (noting complaints may raise multiple issues or themes) are:

1. Pension and Permanent Impairment payment decisions (raised in 23 per cent of complaints received)
2. Access to health care services, including rehabilitation and treatment options (16 per cent)
3. Incapacity benefits, including calculations and decisions (14 per cent)
4. Offsetting of payments and pensions (12 per cent)
5. Service delivery issues (12 per cent)

Decisions about claims for liability

Our Office has received a number of complaints in relation to decisions by DVA to reject liability for injuries and conditions relating to service. While we advise complainants of their rights to seek review of these decisions through either the Veterans Review Board (VRB), Administrative Appeals Tribunal (AAT) or both, the following issues often require consideration by our Office, particularly where veterans have financial, social and mental health vulnerabilities:

- The record of decision provided to the veteran does not include an adequate explanation as to why the claim was not linked to service. In these cases, we may request that DVA provide the veteran with either a reconsideration of the decision or a better explanation of the original decision. Without an adequate explanation regarding the reasons why the claim was rejected, veterans are unable to address these issues on review of the decision.
- The decision identifies a lack of connection to service on the basis that the injury or condition did not occur during the normal course of employment, despite the 'event' where the injury was caused being linked to military obligations. While it is our understanding that these decisions are often overturned at the VRB or AAT, the veteran is often not entitled to receive health care or income subsidy while the matter is under review and the review process can be long and arduous¹.

¹ Veterans Review Board Annual Report 2016–17 (page 11): Average time taken to decide an application was 52 weeks.
Administrative Appeals Tribunal Annual Report 2016–17 (page 25): Average time taken to finalise an application was 43 weeks.

- Limitation or lack of available records to substantiate the events raised by the veteran due to the passage of time or the particular service environments, resulting in DVA decision makers being unable to verify that the injury or condition was linked to service. As an oversight body, these are particularly difficult cases to investigate, as the only evidence may be the person's own account. However, we note a number of DVA policy changes as part of the Veteran Centric Reform, resulting in more beneficial assessments where there is a lack of verifiable evidence.
- The application of the Statement of Principle (SOP) in the DVA decision making process. While we investigate very few of these matters (due to the availability of review rights for complainants), we sometimes note that the decision record does not provide the veteran with an adequate explanation as to why the SOP was not met. As discussed above, without an adequate explanation regarding the reasons, veterans are unable to address any inconsistencies or evidence-related issues on review.
- The weighting of medical evidence provided in support of claims and the decision by DVA to seek additional medical reports by its own contracted providers. In addition, we have observed cases where DVA has put a higher weighting on the reports by its providers and the reasons for the higher weighting are not addressed in the decision record.
- Delayed and prolonged case processing linked to multiple medical assessments by DVA contracted providers. These cases are particularly concerning where the veteran has significant mental health issues and is unable to access the appropriate health treatment and income support. While DVA now has non liability health care and interim veteran payment schemes, the length of time a claim remains outstanding can still have significant impacts on vulnerable veterans, particularly mental health impacts.

Access to Medical Services and Health Care

Our Office has observed the following issues raised in complaints about health care and medical services for veterans:

- Veterans experiencing difficulty locating medical service providers who accept the scheduled repatriation rate. Our information indicates that this may be particularly notable for individuals seeking psychiatric, neurological and orthopaedic services.
- Medical service providers often have significant waiting periods given the high level of demand. Access may require significant travel by veterans to have their medical needs met inside the repatriation fee schedule. These issues are of particular concern for those with mobility, mental health and support barriers.
- Change to the medical service provider, for example, veterans may start a course of treatment with a provider who accepts the repatriation rate, but through the course of the treatment, the provider introduces treatment that is not fully covered by the repatriation rate and DVA is unable to pay for the continued treatment with the provider. This can result in further detriment to health where the veteran has to find a new provider and recommence waiting periods and subsequent treatments.

Offsetting

The application of offsetting, the complexity of offsetting calculations and the interaction between government agencies in relation to the treatment of lump sum compensation and superannuation payments remains one of our most significant complaint themes.

The general principle of compensation offsetting holds that a person should not be compensated twice for the same incapacity. Where a veteran has received compensation from another source for an incapacity which is also accepted under the *Veterans Entitlement Act 1986* (and therefore contributing to their impairment assessment), a notional assessment is conducted by DVA to establish how much pension would be payable to the veteran excluding the compensable condition. The difference between the total actual pension rate and the pension that would be payable excluding the compensable condition is determined to be the **notional rate**.

The complexities lie in the differing terminology, legislative provisions and application of offsetting between the three main veteran entitlement acts. Even where our Office attempts to provide a better explanation to veterans, the ability to simplify a complex legislative environment is limited.

In the majority of our investigations we have found that DVA has correctly applied offsetting, although where mistakes are made, they can, if not discovered quickly, have significant financial consequences². In addition, even where offsetting is applied correctly, DVA may have inadequately explained its decision to veterans.

We note that DVA has made significant efforts to simplify its decision letters regarding offsetting. While we have seen some improvement in the transparency in decisions to veterans, we continue to see cases where veterans were not provided clear information about the potential impact of offsetting, or where the offsetting calculations could have been better explained.

Claim delays

While our Office still receives complaints about claim processing timeframes, this issue has been significantly reduced with the commencement of the Veteran Centric Reform program. Where a veteran raises the issue of delay with our Office, we generally transfer the matter back to DVA in the first instance to expedite the finalisation of the claim.

Client Liaison Unit

Our Office has received a number of complaints in relation to process and policy around veterans having their access to DVA restricted and being referred into the Client Liaison Unit (CLU) for Unacceptable Complainant Conduct (UCC).

While it appears that in most cases the decision to place someone into the CLU was a decision open to DVA to make, there have been inconsistencies in the application of the UCC policy and procedures in relation to the CLU.

Some of the issues that veterans have previously brought to our attention include:

- being assigned to the CLU prematurely and often without a warning letter
- warning and decision letters signed by the wrong delegate
- lack of advice about the terms of access to DVA
- not providing review rights set out in the UCC policy

² [July 2018: Investigation into the actions and decisions of DVA in relation to Mr A.](#) Commonwealth Ombudsman Investigation into the Actions and Decisions of DVA in Relation to Mr A.

- DVA failing to give the veteran the right to appeal the access restriction and inclusion in the CLU.

We note the significant work undertaken by DVA to provide a more targeted approach with CLU veterans and acknowledge the dramatic reduction in the number of veterans in the CLU for UCC within the last two years. We welcome the initiatives undertaken by DVA and will continue to work with DVA on identifying any issues going forward.

The role of the Defence Force in the transition process

Our Office acknowledges the beneficial and extensive work undertaken by DVA and Defence through the Defence Community Organisation (DCO) concerning the transition of members out of Defence. The work that has been undertaken in the last five years has been positive in assisting veterans into civilian life and ensuring continuity of healthcare.

We have noted a reduction in the number of discharge-related complaints to our Office, particularly where members with significant health issues were being administratively discharged. Our Office will continue to work with both DVA and DCO to monitor these initiatives.

Complaints from Veteran Advocacy Organisations

We occasionally receive complaints about DVA from veteran advocacy organisations on behalf of veterans. From 1 July 2017 to 30 June 2018 we received 17 complaints where an advocate made the complaint on behalf of a veteran (10 per cent of the total number of DVA complaints for this period).

Generally advocates will raise matters with our Office where the veteran has significant vulnerabilities and revisiting the issue may cause distress. Alternatively, advocates may complain to our Office where the decision record fails to explain the reasons for a decision or where there are no review rights, for example in offsetting matters.

While the number of complaints raised by advocates appears low compared to representation on DVA claims³, many veterans advise our Office of the use of an advocate through the claims process, despite not using an advocate to lodge a complaint.

We also consult with Ex Service Organisations about complex and emerging issues veterans are experiencing with DVA. Over the last year many advocates raised the need for advocacy where a veteran has significant mental health issues or has experienced abuse during their service. In these cases, advocates advised that the veteran may not have the capacity to address their claims or fully comprehend the ramifications of decisions made by DVA. This can lead to the provision of incorrect claim information and a subsequent negative claim outcome, which in turn may exacerbate the risk of further harm to mental health.

For veterans who have suffered abuse, the use of an advocate can diminish the risk of further trauma by minimising the need to personally recount past traumatic events. This may be a consideration when considering service delivery and the application of trauma informed principles in areas dealing with abuse related claims for liability.

³The Review of DVA Funded ESO Advocacy and Welfare Services Final Report December 2010 at pages 115–116 provides a breakdown of the level of representational assistance.