



**AUSTRALIAN PEACEKEEPERS & PEACEMAKERS VETERANS
ASSOCIATION INCORPORATED**

(INCORPORATED IN NSW)

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Member of:

*National Emerging Issue's Consultative Forum
NSW DC Advisory Consultative Forum
NSW State TIP Consultative Forum*

*To: APPVA National President
Mr Dave Penson
Incumbent National Hon. Secretary
Mr Paul Copeland*

Emerging Issues Forum 10 September 2010 Post Report

Emerging Issues post report which was conducted on the 10 September 2010 in Canberra was opened by the new chair/ Repatriation Commissioner MAJGEN Mark Kelly AO at 09.00am.

Forum Members Submissions

- Compensation and its effects on child support and divorce proceedings
Ray Brown IPSA
- Temporary Accommodation
Allan Thomas APPVA
- MRCA
Allan Thomas APPVA
- Retention of Soldiers in the ADF who have been wounded or seriously injured
Allan Thomas APPVA
- The impact of deeming on income payments
Kylie Russell ASASA
- Transition – the cost (financial and emotional) to the Ex-Serving Organisations of when defence members, seek their assistance when they have been mishandled discharging (transitioning) from Defence
Anne Pahl RSL & PMAC

Compensation and its effects on child support and divorce proceedings Ray Brown IPSA

Purpose of the Submission

This topic was for discussion of the history of the outcomes of CSA and divorces can and do have on men & women who have varying degrees of permanent impairment (PI) and have to pay child support and/or divorce settlement.

IPSA would like to see if other ESOs have any similar situations and if so to what extent could this increase.

If the EIF feel there are grounds for concern then further investigations and information to other groups need to be finalised.

Background

IPSA also stressed previous conversations with ex-service people and from personal experience as well as an interesting article from the USA (attached) has caused me to investigate this further with the aid of these forums.

IPSA also mentioned the fact that large number of service people doing more rotations operationally. Those who suffer injuries and major medical condition can be a drain on the family especially husband/ wife thus causing breakups because of financial stress, sometimes due to claim processing and reduction of income the family becomes unable to function and arguments escalate. Then this happens and children are involved the impact it has can and does lead to self harm/ suicide.

Issues for Consideration

If seen as a possible issue discussion about the application of the Child Support Act and the expectations and considerations of military compensation payments as income as opposed to a personal injury compensation payment.

To explore the military compensation acts, their definitions relating to compensation and provisions of being garnished because of other legislation whether intended or unintended.

USA Article

Public Law 108 – 183, 702 passed by the 108th Congress HR 2297 on December 16, 2003
Section 3 (A) reads in part:

Sec. 720. Clarification of applicability of prohibition on assignment of veterans benefits to agreements requiring payment of future receipt of benefits.

(3) (A) This paragraph is intended to clarify that, in any case where a beneficiary entitled to compensation, pension, or dependency and indemnity compensation enters into an agreement with another person under which agreement such other person acquires for consideration the

right to receive such benefit by payment of such compensation, pension, or dependency and indemnity compensation, as the case may be, except as provided in subparagraph (B), and including deposit into a joint account from which such other person may make withdrawals, or otherwise, such agreement shall be deemed to be an assignment and is prohibited.

For Immediate Release 76

June 10, 2010

Attention All U.S. military Personnel!
(Active Duty, Reservists, Retired, Disabled)
ALERT!

Whether you are currently in the Military or a Veteran receiving Service connected disability, and you are considering getting married at any time in the future, the information contained in this press release will protect your earned benefits in the event of an unforeseen divorce.

(VIDEO LINK) <http://www.youtube.com/watch?v=GJZS96P6dH8>

Operation Firing For Effect (OFFE), The Veterans Advocacy Group is advising all military personnel to file a Premarital (Prenuptial) Agreement before getting married.

According to OFFE, it has become routine for civil court judges to award a significant portion of a disabled veteran's disability compensation to the ex-spouse as alimony/support. Most family court judges and attorneys consider veteran's disability compensation as a divisible marital asset. This practice by civil court judges is an infraction of the federal laws which were written to protect such benefits. (USC, Title 38, section 5301)

OFFE has spent the past 7 years attempting to correct this injustice and reinforcing the federal protection of earned veteran's benefits. It is our belief that such benefits earned by brave young American men and women on the battlefield and in the line of duty are sacred and belong solely to the veteran wounded or injured. USC Title 38, supports our position and forbids third party attachment under any legal or equitable process whatsoever, either before or after receipt by the veteran.

(VIDEO LINK) <http://www.youtube.com/watch?v=eSB--oleahE&feature=playerembedded>

Premarital (Prenuptial) agreements are easy to acquire. Many attorneys do these types of contracts. A simple version of a Pre Nup would state that in the event of a divorce or separation the veteran would retain all disability compensation, services, and benefits awarded to them by the Department of Veterans Affairs. You can do a simple search of the internet to find sample forms, as well as detailed explanations describing the legally binding aspects of a pre-marriage contract. All of the information you will need to file a PreNup in your state is available on the internet, or at your public/base library.

The reality is some lowlife attorneys and corrupt courts have squirmed their way into military retirement pay several years ago. USFSPA. Now the legal worms have found a way to suck the blood out our disabled veterans. Everyday in court rooms across this country severely disabled veterans are wrongfully stripped of their earned disability benefits. State court judges do not recognize, and will not honor the federal laws written by Congress to protect veterans' benefits. OFFE is currently monitoring over 100 cases across the U.S. In the cases we are following many veterans have found themselves without adequate finances to provide

for themselves. Many of those disabled veterans are ending up homeless and emotionally distraught with suicidal thoughts after going through a divorce and losing their disability benefits. This is a very critical situation and we urge you not to take it lightly. It is a sad day in this country when our battlefield scared and disabled veterans have to fight to keep their earned benefits. Even with a Federal Law protecting our benefits, severely disabled veterans are being victimized in civil courts every single day.

So, if you are thinking about marriage, you need to think about protecting your veteran's benefits too. Contact a trustworthy attorney first.

(VIDEO LINK) <http://www.youtube.com/watch?v=6J09GFlgv7E>

OFFE assumes full responsibility for the content of this advisory hand has published this information as a veteran affairs service for our young men and women serving in uniform. We strongly advise you not to ignore this advisory. Don't allow yourself to become a victim of this divorce court scam.

For more information, visit; <http://jerebeery.com?AREA%205301.htm>

Please give this article the widest possible distribution, especially on all Bases and Posts!

WWW.OFFE.ORG

Temporary Accommodation Allan Thomas APPVA

Purpose of Submission

Availability of Facilities for Soldiers Who are Financially Strapped

Background

Temporary Accommodation is normally required as a result of family breakdown and the veteran is in financial distraught; the family breakdown is regularly associated with PTSD and the veterans money is being paid in maintenance and pre existing house hold debt. Some of these guys are having extended stays in places like ward 17, other health clinics or they are being absorbed with friends on a temporary measure, and others are living in cars, caravans or tents. 90% of these personnel that require temporary accommodation are current serving members.

Issues for consideration

Are there any adequate facilities that can be looked at to house these soldiers, if the government can afford to utilize old government establishments to hold refugees surely we could look at those avenues to take care of current serving members and ex serving members of the Australian Defence Force.

MRCA

Allan Thomas APPVA

Purpose of Submission

Clarification on MRCA Legislation, Soldiers Entitlements on Death, Special Rate Disability Pension SRDP and GARP M

Background

Soldiers Entitlements

The context of issues surrounding MRCA and when advising soldiers pre-deployment of entitlements in the case of death and what the families entitlements are. I cannot believe that soldiers are taking out death covers prior to deployment when MRCA provides a good benefit for the soldiers family, through MSBS on death of a soldier today would receive an amount of \$500,000 and through MRCA they would receive a sum of \$500,000 which in total a family would receive in the vicinity of \$1M this is not including the benefits for each child. I feel this is why IPSS should be involved in pre-deployment process to ease the minds and his immediate family rather than subject or entice them into taking out private death cover.

Special Rate Disability Pension

Special Rate in the land of MRCA does not exist we need to refer to this as the **Permanent Impairment Allowance** offered to current serving and ex-serving members of the defence force who served on or after the 1 July 2004.

Disability Pension in the land of MRCA no longer exist and is currently referred to as **Periodic payment** available to defence members who make a claim for such payment. Certain politicians who aren't conversant with the new act have taken the liberty now of embossing the MRCA Gold Card with the letters TPI for the purpose of obtaining benefits within States. The TPI emboss only applied to the VEA not MRCA.

GARP (M)

Calculating Permanent Impairment Compensation

in Chapter 23 of GARP (M) in the second paragraph it states:

Different factors apply for any combination of impairment (no rounding up or down) and lifestyle effect (were rounding to nearest integer is allowed).

Combining impairment Ratings

if all accepted conditions have been given impairment ratings, the ratings are to be combined by applying Table 18.1 (Combined Values Chart) in this guide.

“if this was the case then why when delegates of the Rehabilitation Compensation Group when giving a permanent impairment rating to a claim round this rating to the closest integer of five when chapter 23 of GARP(M) takes into account all impairment points after first integer of five.

If a ex-service member has 48 impairment points is he/she rounded up to 50 points to get full entitlements or does he/she fall under the 50 points and only receive half of full entitlements.

In regards to the GARP (M) query an email was sent on 18 August 2010, to all TIP Chairs in the states to raise the concern and to remind trainers and interested advocates and officers of the requirements of Chapter 23 of GARP (M) and the instruction not to round.

Retention of Soldiers in the ADF who have been wounded or seriously injured

Allan Thomas APPVA

Purpose of the Submission

APPVA acknowledge the progress that is made in the ADF regarding retention of soldiers that have been wounded or seriously injured, however what we don't see is the retention of those with mental illnesses. APPVA are aware that the ADF are looking at retaining soldiers who are on certain types of psycho pharmaceutical medications however is this constrained to acute cases of depression, adjustment disorder, anxiety disorder or other mental illnesses? I am not sure if those veterans suffering from PTSD being afforded the full rehabilitation care that they should be entitled and are they being retained after some improvement to the condition(s).

Background

APPVA would like to see quarterly psych evaluation reports conducted with the first 12 months after deployment to ascertain if the soldier who has been exposed to high levels of conflicts has been diagnosed with PTSD and to what level. The level of PTSD would not be disclosed from those reserve soldiers who have also deployed as of a battle group on both active and peacekeeping duties the same process need to apply as to what effects it has on a soldier and his family lifestyle.

Issues for Consideration

APPVA would like to see more early Intervention processes offered to the soldier and his family, TMS/IPSS feedback to region where soldiers and family are residing? So advice and monitoring can be maintained by VVCS and the nearest ESO in that locality?

A register of personnel who have been discharged medically unfit MEC 4 or those who have discharged at own request with service injuries would help ESOs better handle those who slip through the gaps this can be allocated to TMS/IPSS to disseminate to regional VAN offices to offer those defence personnel contacts in relevant ESOs who may be able to deal with their injuries/illnesses under the applicable act(s).

Concerns

More and more soldiers who are transitioning out and are posted closer to their region of discharge are being administered by another unit who are unaware of their needs or injuries prior to discharge this could be an array of things from injuries to mental health issues.

In regards to Reservists this is an ongoing issue that has escalated to a degree that when they come back from overseas duty with the battle group and then get transferred back to their original unit, the unit they go back to are unaware of the injuries or mental illnesses he/she has on return and as a consequence they end up leaving unaware that it may have been caused by their deployment overseas with that particular battle group.

The Impact of Deeming on Income Payments

Kylie Russell ASASA

Purpose of Submission

Investigate the current DVA Policy regarding Deeming and Determine if this is different to the ESO interpretation of Deeming.

Background

Relates to veterans that have completed a retraining course as a part of a rehabilitation program, this relates to SRCA and MRCA.

On completion of the course the veteran is informed by the GP the amount of hours that they are cleared to work each week.

With Employment the payments are reduced.

If the veteran does not gain employment DVA determine the average wage for the occupation and reduces the payment regardless. This timeframe is determined by the allocated case manager.

Issues for Consideration

How is the timeframe determined?

Does this take into account job vacancies for the specific profession, ability to secure part time employment, hesitation by employers to employ the veteran due to medical history etc

DVA's Response to the Deeming Submission

Regarding the legislative authority for deeming a person with tan ability to earn exists in subsections 181(3) – (5) of the MRCA. These provisions are almost identical to subsection 19(4) of the SRCA and states that:

- If a person fails to seek suitable work
- The person fails to accept an offer of suitable work
- An offer of suitable work is made and accepted but the person fails to begin or continue the work; or
- And offer of suitable work is made conditional on the person completing a rehabilitation program both the person fails to do so;

Then the delegate must have regard to:

- The weekly amount the person would be earning in that suitable work; and
- Whether the failure was reasonable;

In determining actual earnings.

It is important to note that one of the considerations in determining what work is suitable is the availability of that work in the labour market.

Successful completion of a vocational rehabilitation program is defined by the person actually obtaining suitable work.

Policy advice from the Military Rehabilitation and Compensation Commission (MRCC)

The Commission's policy is outlined in the Principles Guiding Rehabilitation under MRCA (which includes the Protocols of Rehabilitation under the MRCA), which were agreed with Ex Service Organisations prior to the enactment of the MRCA.

They are equally applicable to our administration of the SRCA rehabilitation provisions. In particular protocol 28 states: that if the person can show genuine yet unsuccessful attempts to obtain employment they will not be "deemed" when suitable employment is not possible.

Accordingly we continue to assist a person to find suitable work, through an active rehabilitation program, for as long as a person continues to demonstrate a commitment to the job seeking phase of their rehabilitation program.

Transition

Anne Pahl PMAC and RSL

The cost (financial and emotional) to the Ex-Serving Organisation of when Defence members, seek their assistance when they have been mishandled Discharging (Transitioning) from Defence.

Purpose of the Submission

Recently the Chief of the Army released a Directive, Management of Medical Discharges in Army dated June 2010, to all Commanders serving within the Army outlining in very strong words the following "*Commanders are responsible for the health and welfare of members under their command. I expect commanders to be actively engaged to ensure our injured and ill are administered and managed effectively*".

The RSL would like to see that all 3 services (Navy, Army and RAAF) support the intent of this Directive and follow all the Defence Instructions in regards to handling Defence members discharging from the ADF including DI (G) PERS 16-15 Australian Defence Force Medical Employment Classification system.

We would like TMS to remain an important issue also an improved relationship and consultation between Defence, DVA and ESO who have the skills to provide the support required for smooth transition and to all Defence members and their families.

The RSL supports a "one stop shop" on all ADF bases where Defence, DVA and trained ESO pension support people sit beside each other to handle members discharging from Defence. Unit Commanders could use the service provided in the "one stop shop" by referring their Defence families to be put in touch with the right support services, for example financial,

legal when required, talking to them about Medicare, Comsuper, Compensation and further entitlements etc prior to them transitioning.

Background

Too many times it has been the responsibility of the ESOs to “pick up the pieces” with young serving members leaving the ADF not the right way. ESOs are providing huge financial welfare support, assisting members with housing, providing money until their compensation claims have been determined once leaving the ADF when they have discharge medically and supporting them find appropriate low cost medical attention. ESOs are also providing emotional support to members and their families and too many left answering the hard questions such as why they feel that they have been perceived to be neglected by Defence and their Unit Commanders.

Attention must be given to ADF members identified for discharge so that they are aware of what will happen to them post discharge. The Navy has recently identified Regional Warrant Officers to handle and provide complex case management to sailors who require extra attention and focus by assisting and linking them with all Defence and DVA services to help them discharging. However only the high profile cases get their attention?

We would like to see more responsibility and better management of when a Defence member is discharged either ADMIN or MEDICALLY. Also that support should be given and provided when that member decides or a decision has been made for them to discharge.

Issues for consideration

All ADF unit Commanders must take responsibility when their members discharge so that appropriate services have been made available to assist the Defence members transitioning from service.

More care must be taken to bridging the gap between Defence and DVA.

The difficult position left to ESOs Pension Officers and Advocates when Defence has not discharged and ADF member appropriately (the right way). For example when members are discharging from the ADF administratively when they should be medically discharged. Also leaving the military without claims submitted to DVA or they are waiting to be determined which opposes DI (G) PERS 16-15.

ESOs are “picking up the pieces” and supporting members and their families when Defence does not assist appropriately their members discharging from the ADF. Recently the RSL, especially in Victoria, has spent huge amounts of welfare money providing financial support, paying rent, car loans and general household bills assisting Defence members who have not left the ADF the right way.

The above topics for discussion were pretty much circulated around finance and accommodation which was common with all ESO representatives who attended the EIF on this day, transitional issues were a constant talking point in particular reservists. MRCA and it’s legislation was a focus of mine as DVA continue to emboss TPI on cards associated with the MRCA act for the purpose of recognition of entitlements. The question I posed to the forum members is why we continue to reflect back on old legislation habits for the purpose of

recognizing a condition in a different act that being “TPI” which only refers back to the VEA act not MRCA. I also made contention to Section 18 and 23 of MRCA and how it is very confusing to practitioners and that some of the teachings were implemented in MRCA courses nationally, in reply to my submission an email was sent out to TIP national to all TIP Chairs to ensure that this practice was to cease.

Guest speakers on the day at the EIF forum were:

- Mr Farrelly who spoke about Service Delivery Reform in DVA
- Mr Callan who spoke about the Role of the Defence Community Organisation
- Col Squire who spoke about Media and the impact of Defence Members and their families
- Professor Warfe who spoke about the DVA Review of Services to Younger Veterans, Widowers and Dependants

The day concluded with an open forum for members to raise any other issues for discussion and then dates for the next EIF meeting in 2011.

Any important issues that arise prior to the next emerging issues forum meeting please advise me your representative so I can table this for discussion and give you feedback in my next post report.

Yours Sincerely,

Allan Thomas

“Looking After Our Own”