

12 October 2010

The Honourable Warren Snowdon, MP
Minister for Veterans' Affairs, Defence Science and Personnel
Parliament House
CANBERRA ACT 2600

Dear Minister,

LEGACY 2011 WISH LIST

INTRODUCTION

1. As you are aware, Legacy is an independent, voluntary organisation dedicated to assisting widows and children of deceased veterans of war and peacekeeping operations, and members of the Australian Defence Force, whose deaths are accepted by Clubs as being service deaths as defined in the MRCA.
2. I wish to emphasise that Legacy exists to support those who are less able to provide for themselves, the partners and children of deceased members of the Defence Force and eligible mariners. Sadly, with the passing of many World War 2 veterans, this sector now comprises a very large proportion of the ex-service community.
3. The purpose of this letter is to bring to your attention the priority list of issues that Legacy wishes the Government to consider in developing the Commonwealth Budget for the year 2011-2012. These issues mainly affect the most needy in the ex-service community. They are addressed in the following paragraphs and summarised in a list at Annex C. No priority has been assigned to any particular item on the list.

ELECTION COMMITMENTS

4. **Support Legacy proposals affecting dependants in the Review of Military Compensation.**

Legacy understands that the Government will give priority to implementing its election promises in its first budget. One of these is the Review of Military Compensation. Labor's Plan for Veterans' Affairs' committed Labor to 'taking all appropriate action in response to the Review to ensure that services and support for veterans and serving members evolves with their needs.' The Review also considered issues affecting dependants. Issues raised by Legacy are in its submission enclosed. Legacy would appreciate the opportunity to discuss them with you before decisions are taken on the Review.

5. **Eligible dependants be included in the Pharmaceutical Reimbursement Scheme**

Your Government also undertook to fulfil the previous election commitment to address the cost of pharmaceuticals for war-caused disabilities. Unfortunately, the published plan to implement the 'Pharmaceutical Reimbursement Scheme' is discriminatory in that it excludes the dependants of veterans who suffered the ultimate disability of death. If the

proposed reimbursement scheme is restricted to veterans, it would be unfair and contrary to previous practice which provided common medical treatment for both disabled veterans and their dependants if the veteran's death is proven to be service-related. Justification for including dependants is provided in the Legacy submission to the Pharmaceutical Costs Review, a copy of which is enclosed. It is recommended that urgent consideration be given to including eligible dependants in the 'Pharmaceutical Reimbursement Scheme'.

6. Support for Review of DVA Funded Advocacy and Welfare Services

Legacy welcomes the Government's commitment to continue to provide advocacy and welfare support to the veteran community.

OTHER PRIORITY ITEMS FOR BUDGET CONSIDERATION

7. Recognition of widows who do not qualify for the War Widow's Pension by the issue of a Special Commonwealth Seniors Health Card

Legacy is conscious of the hurt felt by the many widows who do not qualify for the War Widow's Pension. They feel that the meritorious service of their husband/partner has not been recognised and that their contribution is not appreciated. This is because, unless the cause of death of the veteran is service-related, the widow receives no recognition, despite providing many years of dedicated care to the veteran, who may often have suffered from other service-related illnesses. This hurt is compounded by the misconception held by some widows that the Gold card issued to their husband/partner would transfer to them on his death.

Politicians of all persuasions will be well aware of claims of discrimination by affected widows and attempts by Legacy to redress this major concern. The obvious solution is to provide all widows of veterans with qualifying service a Gold Card, but it is appreciated that the prohibitive cost precludes this for the present.

The purpose of this initiative is to adapt the current Commonwealth Seniors Health Card to provide tangible recognition to these widows. This proposal has the advantages of not requiring the development of new eligibility criteria, it includes a recognised means test, the numbers are known, and the processes involved have already been developed. Apart from the design, manufacture and issue of a new card, cost of adoption of the card would be minimal.

In responding to this proposal in July of this year, the then Minister, Mr Alan Griffin MP, referred to difficulties that would be expected in identifying widow(er)s who are not currently identified by the Department's IT systems. May I respectfully suggest that this concern could be overcome quite easily by seeking applications from any widow(er)s, not already known to the Department, in public newspapers. May I also suggest that the benefit would fully justify the cost of the mailout – the other main objection.

8. Increase pensions for eligible dependant children of veterans under the VEA to the same level as eligible children under the MRCA, where the veteran's death is service-related.

Improved pensions have been provided under MRCA for the children of veterans whose death is service-related. The number of children receiving benefits under the VEA and SRCA is extremely small – 200 as at June 2010. It would cost very little to bring the benefits under these Acts into line with benefits agreed to be necessary under the new legislation. Legacy feels that anomalies in this area, based purely on the date of introduction of legislation, cannot be tolerated.

The Clarke Review was not privy to proposals affecting children in the MRCA but the need to improve benefits for children was agreed in general terms. Legacy notes that the MRCA recognises the inadequacy of the VEA in respect to children's benefits and increased them accordingly. That is the point of this proposal. The cost of increasing benefits to the small number of children currently entitled to assistance under the VEA would be very small. The need to remove this unfair anomaly, affecting a declining number of children who have lost at least one parent, is surely justified.

9. **Eligibility for funeral benefit under the VEA be expanded to include funeral expenses for all Australian veterans with qualifying service, regardless of the place of death.**

Funeral benefit is payable under the VEA to the estate of a deceased veteran who was receiving payment as a TPI, EDA or multiple amputee; or was a POW or whose death has been accepted as service-related. A benefit is also payable to a veteran or former member of the Forces:

- who died in needy circumstances; or
- whose treatment was provided under DVA health care arrangements through the Veterans' Entitlements Act 1986 (VEA) or the Military Rehabilitation and Compensation Act 2004 (MRCA) and who died:
 - in an institution; or
 - travelling to or from an institution; or
 - after discharge from an institution in which the veteran was being treated for a terminal illness; or
 - while being treated for a terminal illness at home

An 'institution' includes a hospital, a nursing home or hostel, a medical centre, an outpatient clinic or a rehabilitation or training establishment.

These eligibility criteria cover most holders of Gold Cards or White Cards who died of accepted disabilities. However, there are some exceptions where the cause of death is unexpected, and the death occurs other than in an institution, usually at home. To avoid discrimination against the very few in this category, it is recommended that the Act be amended to include those who died elsewhere, subject to their being eligible for treatment, irrespective of location.

10. **Access to the Veterans' and Veterans' Families Counselling Service (VVCS) by adult disabled dependants of veterans of all conflicts; not just Vietnam veterans.**

The VVCS provides an outstanding service helping veterans and their families address problems in their lives with the aim of finding effective solutions for an improved quality of life. However, with the exception of the sons and daughters of Vietnam veterans, access to the services of the VVCS by adult dependants is restricted to those under 26 years of age.

Prior to the introduction of the VEA in 1986, adult disabled dependants of veterans remained classified as dependants, irrespective of age, and were entitled to full medical treatment benefits provided under the Gold Card. Unfortunately, that benefit was lost with the VEA. Since then, no specific benefit for this special category of dependant has been provided under the VEA or MRCA. You will appreciate that because of their mental and/or physical disabilities, these sons and daughters continue to be dependant on their parents for the remainder of their lives. This is particularly onerous for widow(er)s who are left to care for disabled dependants after the death of their partners. It is contended that the retention of age limits in determining the dependency status of disabled dependants is

inappropriate. It is understood that Defence has removed age discrimination in respect to adult disabled dependants of serving members, demonstrating a lack of coordination between the Departments.

It is requested that the decision to extend eligibility for counselling and/or psychiatric assessment through VVCS for the older former children of Vietnam veterans be extended to adult disabled dependants. The number of dependants in this category is estimated to be about 2000, but few would need access to VVCS services. Disabled dependants comprise some of the most disadvantaged in the Veteran Community. The demands on their carers are also very stressful, generating the need for counselling of their parent(s). It is sensible that both the parent and dependant be counselled together by the same organisation. Access to the VVCS would provide direct benefit to adult disabled dependants and valuable reassurance to their veteran parent or the veteran's widow.

The Clarke Committee was not able to investigate the needs of this particular group of adult disabled dependants and their carers, but considered that the concern brought to its attention is worthy of examination and recommended accordingly.

The VEA was designed to provide compensation to veterans and their eligible dependants where war has had some special impact on their lives. There can hardly be a more needy case than the loss of a father by a disabled dependant! It is strongly argued that this omission from the VEA, which has created unfair anomalies between individual disabled mature adults, needs to be corrected as a priority. Any suggestion that disabled dependants of veterans, whose service-related death occurred after 1986, seek assistance under social security and health legislation perpetuates an anomaly, is contrary to the Clarke report and discriminates against the most disadvantaged in the veteran community.

11. Provision of compensation to families living in Australia of locally employed staff who are killed or who subsequently die of service-related injuries while serving with the ADF in overseas theatres of operations

There is currently no compensation payable to the widows of locally employed staff, such as interpreters, who are directly employed in overseas theatres such as Iraq and Afghanistan. Provision exists to do so in Section 8 of the MRCA, but no action has been taken to provide for this class of employee of the Australian Government despite the passage of time. It is understood that following representation by Legacy, Defence is 'investigating' the issue but there has been no perceived progress.

It is argued that Australia has a legal and moral obligation to compensate the families of loyal employees who place themselves at risk by assisting the ADF in pursuit of Australian Government objectives and who die as a consequence.

It is recommended that the Australian Government accept liability for the compensation of Australian based families of locally enlisted employees who die as a consequence of service in support of the ADF engaging in operations in overseas theatres of operations. (The Government should resist attempts to avoid Australia's obligation by establishing devious contractual arrangements with unsophisticated locally employed civilians.)

12. Abolish tax on DFRB/DFRDB/MSBS military superannuation pensions, including reversionary pensions, from age 60, in line with the majority of the Australian community.

Military superannuation pensions are paid from what are called 'untaxed' superannuation funds. Under the taxation changes introduced by *Better Super*, those pensions are not only taxed but are also included in pensioners' total income for tax purposes.

The only reason the military schemes were 'untaxed' was because of a Government convention that it did not pay tax to itself. Had it done so, the net cost to the Government (ie the taxpayer) would have been exactly the same.

There is no evidence that any Government considered the benefits to the taxpayer of the compulsory payments of 5.5% (DFRDB) or 5% (MSBS) taken from each serving member's pre-tax salary.

The *Better Super* distinction between 'taxed' and 'untaxed' schemes is artificial but creates real disadvantages for military superannuation pensioner including their widows and widowers. The most obvious disadvantage is that their superannuation pensions are taxed until the day they die. Also, any additional income from savings bank interest or other sources is taxed at their marginal rate, not at the base rate like other Australians aged over 60.

The present tax regime, despite including a 10% tax rebate after age 60, is clearly not equitable with the treatment given to most other Australian superannuants.

13. Protect military superannuation pension purchasing power

The purchasing power of military superannuation pensions has been, and continues to be, eroded by CPI based indexation. During the recent election campaign, the unfairness of this methodology compared with income support pensions and parliamentary superannuation pensions was publicly acknowledged by many politicians from all main political parties. The Labor election policy document notes that the Government had accepted the Mathews Review recommendation against changing the current indexation methodology. However, the possibility of the Government considering other avenues to address this issue was suggested at public meetings. Legacy's interest in this issue is due to concern for the welfare of the large number of dependants who rely on military reversionary superannuation pensions.

14. Standardise the reversionary (spouse) rate for DFRB/DFRDB/MSBS to the pre-2004 Parliamentary Scheme

Under current military superannuation schemes, a spouse of a member receives a proportion of the member's pension. The spouse pension for MSBS is 67% of the deceased member's pension. For DFRDB, the spouse pension is 62.5% of the uncommuted pension. Both rates are considerably less than the pre-2004 Parliamentary (PCSS) Scheme of 82.5%

Spouses of military superannuants deserve to be treated more equitably, given the special nature of military service.

15. Recognition of all veterans' widows (not just those in receipt of the War Widow's Pension) as members of the veteran community

Many widows of veterans with commendable service and who suffered from their military service are unable to qualify for the War Widow's Pension because their husband's death is not recognised as being service-related, even if the veteran suffered from debilitating service-related disabilities. They feel that they have been neglected by Governments and are particularly concerned by reference to 'war widows', to their apparent exclusion, in discussing matters affecting the ex-service community. This proposal, which is included in the Wish list each year to highlight a continuing problem, seeks improved recognition of this sometimes neglected group within the ex-service community.

Politicians, bureaucrats and other ESOs, when appropriate, are urged to refer to both war widows and non-war widows as 'veterans' widows' to acknowledge both classes of widow. They have good reason to feel hurt by their exclusion.

There are no cost implications for this item.

CONSULTATION

16. I look forward to discussing these issues with you in the coming weeks. I shall be accompanied by Legatee Ian Wills, who is Chairman of Legacy's National Pensions Committee and who is in regular touch with your staff, As usual, a representative of the War Widows' Guild will be invited to join us to provide the views of the Guild.

17. At Annex C is an abbreviated list of the above items, for ease of reference. The numbering is not meant to convey any particular order of priority.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'David Kelly', with a stylized, cursive script.

D W A (DAVID) KELLY
Chairman

SUMMARY OF LEGACY WISH LIST 2011

1. Support proposals affecting dependants in the Review of Military Compensation.
2. Eligible dependants be included in the Pharmaceutical Reimbursement Scheme.
3. Support Government's commitment to Advocacy and Welfare Support.
4. Recognition of widows who do not qualify for the War Widow's Pension.
5. Increase pensions for eligible dependent children of veterans under VEA to the same level as eligible children under MRCA, where the veteran's death is service-related.
6. Expand eligibility for VEA funeral benefits to all Australian veterans with Qualifying Service, regardless of place of death.
7. Access to VVCS by adult disabled dependants of veterans of all conflicts; not just Vietnam veterans.
8. Provision of compensation to families of locally employed staff living in Australia who are killed or subsequently die of service-related injuries while serving with the ADF in overseas theatres of operations.
9. Abolish tax on DFRB/DFRDB/MSBS military superannuation pensions, including reversionary pensions, from age 60, in line with the majority of the Australian community.
10. Protect military superannuation purchasing power.
11. Standardise reversionary rate for DFRB/DFRDB/MSBS to the pre-2004 Parliamentary scheme.
12. Recognise all veterans' widows (not just those in receipt of a War Widow's Pension) as members of the veteran community.