

23 June 2011

The Honourable Warren Snowdon, MP  
Minister for Veterans' Affairs  
Suite M-1-49 Parliament House  
**CANBERRA ACT 2600**

Dear Minister,

## **REVIEW OF MILITARY COMPENSATION ARRANGEMENTS**

### **INTRODUCTION**

1. Thank you for inviting feedback from the veteran community before finalising the Government's response to this important Review. 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. Accordingly, this submission is only concerned with matters affecting dependants.

2. The Steering Committee provided many opportunities for Legacy to present its position and to communicate the wishes of other ex-service organisations and individual widows about issues concerning dependants. The cooperation of the Steering Committee was sincerely appreciated. We particularly wish to express our appreciation for the invitation to Legatee Ian Wills to directly discuss dependants issues with the Steering Committee on several occasions.

3. In providing its submission to the Review, Legacy drew attention to a number of unresolved issues that were first raised in the Parliamentary Inquiry into the provisions of the Military Rehabilitation and Compensation Bill, 2003. A number of other issues affecting dependants were also directed to the Inquiry following experience with the new legislation. Legacy appreciates those concerns that have been addressed in the Report of the Review. It is not intended to include them in this submission. The intention of this submission is only to highlight matters affecting dependants that, in the opinion of Legacy, remain outstanding.

### **DEFINITION OF A DEPENDANT (Paragraphs 9.54 – 9.60)**

4. In essence, compared with the Veterans' Entitlement Act, VEA, the Military Rehabilitation and Compensation Act, MRCA, introduces a new requirement, formerly only applied to peacetime service, of requiring a claimant to prove "economic dependence" on the member.

5. It is submitted that the definitions for a partner and children in the MRCA, which are against the often stated bipartisan political agreement for MRCA to be developed on the best features of SRCA and VEA, are not relevant in contemporary society and are less beneficial than under the VEA.

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6. The stated justification for not addressing the restrictive definition of a dependant in the Report was that this option provided a slightly more beneficial treatment for de facto couples and an erroneous statement that 'no examples were brought to the Committee's attention that the economic dependence requirement under MRCA had resulted in a claim being inappropriately denied' (the details of which were advised to the Committee).

7. Minister, your attention is drawn to the second reading speech of the then Minister for Veterans' Affairs, on 18 February 2004, when introducing the Military Rehabilitation and Compensation Bill to Parliament, wherein she restated that the intention of the Government, supported by all parties, was to 'bring together the best features of the Veterans' Entitlement Act 1986 and the Military Compensation Scheme ...' The MRCA fails this test. It is recommended that Government review the decision of the Review not to base these definitions on those contained in the VEA.

## **RECOGNITION OF PARTNERS AND FORMER PARTNERS IN SPECIAL CIRCUMSTANCES**

8. The Committee was sympathetic to the situation of former partners who were economically dependent on a member or former member at the time of death. This is particularly so when the former partner is responsible for caring for a child of the partner. The Committee correctly recognised that situations could exist in which a former partner continues to be economically dependent on a member and suggested that the Military Rehabilitation and Compensation Commission, MRCC, should further consider the question of compensation to a former partner; (paragraphs 9.61 to 9.72).

9. This recommendation is strongly supported by Legacy.

10. A partner, or eligible young person, who was living with a deceased member immediately before the member's death is taken to have been 'wholly dependant' on the member for assessing "economic dependence". This concession is appropriate in a normal domestic situation. However, members of the ADF are often on 'detachment' when their lives are at greatest risk. Exigencies of the service, remote locations of Defence establishments, partner career requirements and educational stability for children also militate against full time 'living with' situations in many cases. It is suggested that the further consideration by the MRCC include the published policy for recognition of partners, for the purpose of establishing their 'living with' status, due to the special nature of military service.

11. Also, the logic of not recognising those partners who need to separate or divorce because of the veteran's accepted service related disabilities, especially for the safety of themselves and their families, is hard to fathom. A recent precedent has been set under the VEA (the Moxham case) and such situations are recognised for the purpose of the Service Pension. Failure to compensate these clearly justifiable cases is an anomaly under both the VEA and the MRCA. It is recommended that the Government direct that this opportunity be taken to decide how to process these cases. Justice is currently being denied the few cases involved.

## **TIME FOR DEPENDANTS TO MAKE THE LUMP SUM/INDEXED PENSION DECISION (Paragraph 8.47)**

12. The Report did not make a specific recommendation about extending the time allowed to make an election to receive an age-based lump sum in lieu of periodic payments for *death benefits*. However, it did

recommend that, in the case of *Permanent Impairment*, claimants continue to be allowed six months to make an election. (Instead, the Steering Committee recommended that, for Permanent Impairment cases, 'the MRCC should provide clear policy and guidelines about what constitutes "special circumstances" for the purposes of an extension'.)

13. Legacy and other ESOs submitted to the Committee that, because of the nature of modern households and the associated complexity of establishing the state of their financial affairs, the time allowed for a widow(er) to make an election should be extended to 12 months.

14. To apply the *permanent impairment* recommendation to *death benefits* would add considerably to the cost of administering cases by both the Department and ESOs, add to the frustration of widow(er)s and have no apparent benefits.

15. It is recommended that Government direct that an extension to 12 months be applied to death benefit provisions. There would be no cost implications in doing so.

#### **OPERATIONAL SERVICE DIFFERENTIAL (Paragraphs 9.47 to 9.49)**

16. The Report provides arguments both for and against a 10% differential being applied for death benefits due to operational service. The Report notes that the unique nature of operational service is recognised through remuneration and allowances and the more beneficial standard of proof under MRCA (and VEA). Legacy submits that, from a widow's point of view, the impact of the tragic death of a partner due to service is the same. The location of the death is not relevant. Legacy does not support the payment of an operational service differential for compensation for a wholly dependent partner.

#### **BENEFITS TO ELIGIBLE CHILDREN (Paragraph 23.4)**

17. Legacy had sought to increase pensions for eligible children under the VEA to the same level as eligible children under MRCA. Regrettably, the Committee did not accept that the anomaly of different rates under the VEA and MRCA are an unintended difference and concluded that no change should be made.

18. This conclusion is inconsistent with the terms of reference for the Review which called for a review of legislative schemes that govern military compensation for service before 1 July 2004 and of any anomalies that exist.

19. Legacy highlighted the significant difference in payment rates between the two schemes and submitted that the VEA children's benefits were demonstrably inadequate. It will be appreciated that, as this is a decreasing group of only about 200 children, the cost of addressing this anomaly would be minimal.

20. The only argument advanced against correcting this anomaly was that correction 'may provoke arguments to increase all other benefits to the highest level'. This is a selective use of this argument, not applied elsewhere, and demonstrates a disturbing lack of sympathy for one of the most deserving groups in the Defence community.

## **PERSONS NOT COVERED BY CIVILIAN WORKERS' COMPENSATION SCHEME (Paragraph 30.20)**

21. The Australian Defence Force employs local civilians to conduct vital tasks such as the provision of interpreting services to troops whilst actually deployed on operations. They are especially vulnerable both on operations and off duty, being branded as traitors by some for providing vital services to the ADF. In attempting to assist the family of an Iraqi interpreter murdered because of his association with the ADF, deficiencies in the process for providing assistance and compensation have been revealed. The Steering Committee considered that civilians in this category should only be provided with access to the MRCA where they are:

- integrated with the ADF in an Area of Operations;
- employed and subject to military command and control; and
- subject to the relevant provisions of the *Defence Force Discipline Act*, 1982.

22. Legacy recommends that the Government accept the associated recommendation in the Report. However, it is also recommended that you, as Minister for Defence Personnel, also require that locally employed civilians in this role be formally employed as 'defence civilians' under the *Defence Act*, 1903 to meet the above requirement. Otherwise, the families of this special category of civilians who cooperate with the ADF will be denied compensation under the MRCA.

## **INDEXING THE NEW LUMP SUM (Paragraph 9.40)**

23. The Report recommends that the new combined lump sum be based on yet another index, wage price indexation, to differentiate it from income support. Traditionally, indexing of war widow's pensions has been based on a variety of different indexes. Only recently, after a long campaign, have all elements of the war widow's pension been consolidated and indexed in a way that will not erode its benefit compared with the 'age' and 'service' pensions. This proposal has the potential to once again erode the value of this payment and is strongly opposed for this reason.

## **AUTOMATIC GRANT OF DEATH BENEFITS FOR DEPENDANTS OF PRISONERS OF WAR (Paragraph 23.74)**

24. Legacy has consistently argued that provision for the automatic grant of the war widow's pension to partners of prisoners of war, that was included in the VEA, should also be included in the MRCA. This was discussed in the report but was not recommended at this time due to the 'difficulty' in defining a prisoner of war in the types of warfare currently being experienced and that Section 424 could be applied if needed. It is argued that Section 424 of MRCA does not provide the certainty of recognition of partners that a specific provision would provide for the peace of mind of members of the Defence Force who may be incarcerated. Legacy also disagrees that defining a prisoner of war is too difficult.

## CONCLUSIONS

25. Legacy appreciates the positive recommendations affecting dependants that flow from the Review. However, it would be appreciated if the Government could:

- agree that the definition of a dependant not include the peace-time requirement for 'economic dependence' – which is more restrictive than the VEA definition;
- agree that the MRCC review include the published policy for establishing the 'living with' status of dependants;
- provide guidance to the Department of Veterans' Affairs on the process for establishing the eligibility of partners who are forced to separate or divorce because of a veterans accepted service related disabilities;
- direct that the time for dependants to make the lump sum/indexed pension decision be increased from six months to 12 months;
- note that Legacy does not support an operational service differential for dependants;
- agree that benefits for the small number of children covered under VEA be increased to those provided under the MRCA;
- agree that locally employed civilians employed in vital operational tasks, such as interpreters, be provided with access to the MRCA and that Defence be directed to formally employ them as 'defence civilians';
- not agree that another index be adopted to index the new lump sum for dependants; and
- agree to include in MRCA the automatic grant of the war widow's pension to the partners of prisoners of war.

Yours sincerely,



John Pepperdine  
**Chairman**