

CHAPTER ONE

CONDUCT OF REVIEW

1

ESTABLISHMENT OF REVIEW

1.1 Leading up to the federal election of 10 November 2001, the campaign platforms of both major political parties contained assurances that, following election to government, arrangements would be made for an independent review of perceived anomalies in veterans' entitlements legislation.

1.2 During the election campaign, the Prime Minister, the Hon John Howard MP, also announced that the level and adequacy of benefits available to totally and permanently incapacitated (TPI) veterans would be examined as part of the promised review.

1.3 In February 2002, the Minister for Veterans' Affairs, the Hon Danna Vale MP, formally announced the appointment of the Review Committee and provided terms of reference for the Review. The terms of reference are detailed in Appendix 1 and information about the Review Committee is in Appendix 2.

APPROACH TO TASK

Call for Submissions

1.4 Advertisements were placed in a number of national and regional newspapers on 9 and 10 March 2002 inviting submissions to the Review (Appendix 3). Information about the Review was also included in the March 2002 edition of *Vetaffairs*, a newspaper distributed by the Department of Veterans' Affairs (DVA) to the veteran community. The Minister for Veterans' Affairs also circulated information to government parliamentary representatives.

1.5 The Secretariat received many telephone inquiries about the Review and over 700 copies of the terms of reference and guidelines for submissions were posted to organisations and individuals.

1.6 The Committee originally requested lodgment of submissions by 18 April 2002 to assist it to meet its tight timeframe. However, the Committee recognised the strong level of interest in the Review and continued to accept submissions until 30 August 2002. A total of 3076 written submissions were accepted by the Review, including 334 supplementary submissions. Appendix 4 lists public submissions.

1.7 The Committee rejected 237 submissions that fell outside the terms of reference or were personal inquiries. However, with the permission of their authors, many of the rejected submissions were subsequently referred to other organisations, mainly DVA, for consideration.

1.8 Submissions were acknowledged by the Secretariat within about four weeks in most instances and acknowledgments advised authors about the Committee's process.

Public Consultation

1.9 The Review Committee undertook an extensive public consultation program during May, June and July 2002, visiting all state and territory capitals as well as three regional centres (Lismore, Townsville and Newcastle). The consultations allowed Committee members to seek additional, first-hand information in support of written submissions and to hear from other individuals presenting matters of concern. The Committee found the public meetings most helpful in understanding the issues and putting a human dimension to the concerns of the veteran community.

1.10 Appendix 3 contains an example of the promotional advertisements that appeared in relevant local, regional and national newspapers inviting ex-service organisations (ESOs) and individuals to speak with the Review Committee at public meetings. A newsletter was forwarded to all authors of submissions to the Review informing them about the public meetings.

1.11 A total of 11 public meetings, attended by approximately 1300 people, were conducted (Table 1.1). The Committee was addressed by 280 people at these meetings. A complete list of all who spoke at each meeting is provided in Appendix 5. Full transcripts were taken of all public meetings and made available on the Review's website.¹

¹ <http://www.veteransreview.gov.au>.

Table 1.1
Public meetings held by the Review Committee

City	Approx. no. of attendees	Date	Location
Perth	130	Wednesday 22 May 2002	Novotel Langley Hotel
Sydney	200	Thursday 23 May 2002	Wesley Conference Centre
Canberra	120	Wednesday 5 June 2002	National Convention Centre
Darwin	15	Thursday 12 June 2002	Mirambeena Resort
Lismore	70	Monday 24 June 2002	Lismore and District Workers Club
Townsville	30	Tuesday 25 June 2002	Southbank Hotel and Convention Centre
Brisbane	230	Wednesday 26 June 2002	Brisbane City Hall
Hobart	40	Monday 1 July 2002	Hobart Function and Conference Centre
Melbourne	270	Wednesday 3 July 2002	Melbourne Convention Centre
Adelaide	150	Tuesday 9 July 2002	Adelaide Convention Centre
Newcastle	60	Thursday 11 July 2002	Newcastle City Hall

1.12 Private meetings were also conducted with a wide range of ESOs and individuals who had put submissions to the Review. A list of private meetings is at Appendix 5. Those meetings were most constructive, giving the organisations and individuals an opportunity to present their submissions personally. The Committee sought to understand and clarify the submissions at those meetings. At some of the meetings, the Committee accepted additional papers or sought additional information and views, treating the additional material as supplementary submissions. If, during any of the meetings, any ESO proffered an alternative proposal or view to that put in its submission, it was asked to lodge a supplementary submission that could be made publicly available.

Meetings with Government Agencies

1.13 The Committee had one preliminary meeting with the Repatriation Commission and two further meetings with the Commission to discuss its submission. The Committee also received oral briefings on particular issues from staff of DVA, the Department of Defence, the Australian Defence Force (ADF) and the Department of Family and Community Services (FaCS). All these meetings were most valuable. The Committee also sought factual information from the departments as required. All information sought was forthcoming and was very useful to the Committee.

1.14 The Committee records its appreciation to the Repatriation Commission, DVA, the Department of Defence, the ADF and FaCS for their assistance.

Site Visits

1.15 The Committee also undertook two site visits. While in Perth, the Committee visited the Special Air Service Regiment base at Swanbourne, where it was briefed by the Commanding Officer, Lieutenant Colonel P W (Gus) Gilmore, and received a tour of the facility as well as a counter-terrorist demonstration. The Committee thanks the Department of Defence, Commander Special Operations and the Regiment for the opportunity. The Committee also thanks the Regiment and its Regimental Association for the hospitality extended.

1.16 While in Adelaide, the Committee visited the Australian Submarine Corporation in Osbourne to see a Collins submarine, HMAS Waller. This gave the Committee a better appreciation of the nature of submarine service. The Committee thanks the Navy and the Department of Defence for organising a very comprehensive inspection of the submarine.

1.17 When in Sydney visiting the Vietnam Veterans' Federation of Australia centre at Granville for discussions on the Federation's submission, the Committee was shown the facilities and operations of the centre.

Website

1.18 The Review's website² operated from 8 March 2002. The website was updated regularly and provided current information on the activities of the Review. From 19 April 2002, public submissions were made available progressively on the website, allowing interested persons access to the views and issues presented by other individuals and organisations.

1.19 About 80 per cent of submissions were treated as confidential and, therefore, did not appear on the website. The Committee's guidelines indicated that submissions would be made public unless confidentiality was sought. However, it became evident that many submissions had been sent without authors being aware of the submission guidelines or understanding the possibility of their submissions being made public.

1.20 The information contained in those submissions was often very personal, such as service history, financial circumstances, state of health and family details. In order to protect the privacy of the authors and others mentioned, the Committee decided that any submission containing this type of personal detail would be treated as confidential and would not be included on the website without the express request of the author.

² <http://www.veteransreview.gov.au>.

1.21 Transcripts of the public meetings were also included on the website within two weeks of meetings being held.

1.22 The website proved a valuable and effective means of sharing information about the Review, allowing comment and debate about the issues. Some 27,788 visits were made to the website from its establishment in March until the end of September 2002.

Examination of Submissions

1.23 The Review Committee appreciated the considerable time and effort that individuals and organisations put into preparing their submissions. Many submissions consisted of one page, while some were substantial documents. Some submissions were very comprehensive, clear and logical. Many demonstrated considerable depth of feeling about the issues.

1.24 The Committee received submissions covering a wide range of issues. However, the majority fell into five main categories:

1. extension to a range of groups of eligibility for different types of benefits under the *Veterans' Entitlements Act 1986* (VEA);
2. the law and policies for qualifying service;
3. possible extension to different groups of eligibility for the Repatriation Health Card – For All Conditions (Gold Card);
4. the value and type of benefits and support for disability pensioners and their families; and
5. disability pension being regarded as income in the assessment of social security pensions under the *Social Security Act 1991*.

1.25 To be inclusive, the Committee took a very broad interpretation of its terms of reference and was generous in accepting submissions, except where the submission clearly sought to make a personal claim. This was meant to enable the veteran community to have its say and, more importantly, to ensure that relevant issues were not excluded prematurely from consideration. The Committee was keen to ensure that as big a picture as possible of the issues was available and to try to deal with the broad ambit of concerns in the veteran community.

1.26 However, there were clearly matters raised in submissions that were very marginal to, or indeed outside, the Committee's terms of reference. Some marginal issues are discussed in Appendix 6, and some of the issues outside the terms of reference are listed in Appendix 7. The most commonly raised issue outside the terms of reference, unless it was linked to a prerequisite for entitlement under the VEA, was eligibility for medals. The authors of those

submissions were offered the opportunity to have their submission referred to the Department of Defence for examination.

1.27 In some submissions, the authors raised concerns about the handling of their personal cases. In those instances, the Secretariat advised the author that it was prepared to refer the submission to DVA for examination and reply. Over 160 submissions were referred to DVA with the authors' written consent. Several submissions were also referred to the Repatriation Medical Authority as they raised concerns about particular Statements of Principles produced by the Authority, which were also outside the Committee's terms of reference.

1.28 There were other significant issues raised that the Committee considered were outside its terms of reference. These included:

1. the provisions of the current Military Compensation Scheme and entitlements of individual claimants under that scheme (although the Committee kept itself aware of developments in the new scheme);
2. Defence Service Homes eligibility issues;
3. the content and application of the Guide to the Assessment of Rates of Veterans' Pensions;
4. the operation of the Repatriation Private Patient Scheme and access to private hospitals for veterans and war widows; and
5. Goods and Services Tax issues.

1.29 A number of submissions sought the Committee's support for health studies. While the Committee understands that health studies can be an important basis for justifying additional pensions or provision of new programs, health surveys of different veteran groups were considered to be outside the terms of reference for the Review.

1.30 The Committee received many submissions dealing with the complexities of the current system of Statements of Principles. The Committee accepted these submissions, but ultimately did not feel that the Government intended this to be an area for examination because the subject was not stated specifically in the terms of reference.

1.31 The Committee also accepted submissions on aspects of service delivery by DVA. Similarly, it accepted submissions raising concerns about the repatriation determining system. Those submissions generally also raised legislative and policy matters within the terms of reference. It was important for the Committee to read those submissions in case there were particular major concerns upon which the Committee could make useful recommendations, but the Committee made it clear throughout that its principal focus was on legislation and policy issues.

1.32 The Review has not been able to respond to every issue raised. The submissions contained hundreds of different proposals for reform and not all could be commented upon in the Report. Nor could the Committee deal extensively with every perceived anomaly raised. However, the Committee attempted in the time available to address as many as possible of the issues submitted. While some views and proposals in the submissions may not be reflected in the Report, the Committee was aware of them and took them into account.

Analysis

1.33 The Committee examined all material gathered from submissions, private and public meetings, site visits and briefings.

1.34 Some questions raised with the Committee required substantial study of other primary sources by the Secretariat. The Committee attempted to verify information provided to it by reference to as many sources as was practicable.

1.35 The Committee examined parliamentary debates and initial repatriation legislation to ascertain the original parliamentary intent of certain programs and decisions. It also examined relevant decisions of the High Court and Federal Court.

1.36 In respect of eligibility issues covered in Volume 2, the Committee, through the Secretariat, undertook historical research into the facts of particular service. The Committee was unable to complete the historical research required to assess some perceived anomalies raised in submissions. Where this was so, the Committee has suggested further research by DVA or the Department of Defence.

1.37 The issues before the Committee were extremely complex, reflecting the complexity of the repatriation system as it has evolved and is currently administered. In order to deal with complexities before it, the Committee has outlined developments of the system, distilled its understanding of the original parliamentary intentions and described the principles on which it believes particular aspects of the system should be based. In addition, the Committee has attempted to explain the reasoning behind its conclusions and recommendations. In doing this, the Committee hopes that all stakeholders will be properly informed and have a clear basis on which to deliberate on its recommendations.

PREVIOUS REVIEWS

1.38 A number of reviews of the repatriation system have been undertaken in recent years. These reports provided extremely useful background information and guidance for the Committee. Where relevant, references to particular reviews are made throughout this Report. Previous reviews consulted included:

- *Independent Enquiry into the Repatriation System* by the Hon Mr Justice P B Toose CBE, June 1975 (referred to as the Toose Report);
- The Report of the Advisory Committee on Repatriation Legislation Review, November 1983 (referred to as the Advisory Committee Report);
- Study of Returned Servicewomen of the Second World War, 1985;
- *The Veterans' Entitlements Act Monitoring Committee Reports* by the Hon P B Toose CBE QC, May 1988 (referred to as the VEA Monitoring Committee Report);
- Report on Inquiry into the Needs of Australian Mariners, Commonwealth and Allied Veterans and Allied Mariners by Miss J McGirr, October 1989;
- Audit Report No. 8, 1992–93, Efficiency Audit, Department of Veterans' Affairs, Compensation pensions to veterans and war widows by the Auditor-General, December 1992 (referred to as the Auditor-General's Report 1992–93);
- *A Fair Go: Report on Compensation for Veterans and War Widows* by the Hon Professor P Baume AO, March 1994 (referred to as the Baume Report);
- *Report of the Committee of Inquiry into Defence and Defence Related Awards* by General P C Gratton AC OBE, March 1994 (referred to as the CIDA Report);
- Inquiry into Military Compensation Arrangements for the Australian Defence Force, March 1997;
- *Review of the Repatriation Medical Authority & the Specialist Medical Review Council* by Professor D Pearce, October 1997;
- *The Review of the Military Compensation Scheme*, conducted by Mr N Tanzer AC, March 1999 (referred to as the Tanzer Report); and
- *Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955–1975* by Major General the Hon R F Mohr RFD EL RL, February 2000 (referred to as the Mohr Report).

1.39 Additional information about these previous reviews can be found in Appendix 8.

STRUCTURE OF REPORT

1.40 The Committee's Report is presented in three volumes.

1.41 An Executive Summary and a full list of the Committee's recommendations are included in Volume 1. Appendices provide further information about previous reviews. Lists of submissions and meetings conducted by the Committee are also included as appendices.

1.42 Volume 1 provides a general overview of the Review and the way in which the Committee approached the task before it. It also gives a brief history of repatriation, the underlying principles upon which the repatriation system is based and the benefits currently available. The volume also briefly describes other government systems and their interaction with the repatriation system. One chapter discusses the proposed new Military Compensation Scheme and how the Committee took into account the Government's policy objectives for that scheme. Statistical data, including future projections about the veteran community, DVA payment recipients and the DVA treatment population, are also provided.

1.43 Volume 2 addresses the requirement in the Review's terms of reference (which form Appendix 1 of this Report) to 'review and make recommendations on the current policy relating to eligibility for access to VEA benefits and qualifying service under the VEA'. The volume itemises the various matters put forward in submissions, and reports on the Committee's deliberations and recommendations in connection with this aspect of the Review.

1.44 Volume 3 responds to the requirement in the terms of reference for the Committee to 'review and make recommendations on ... the benefits available to disability compensation pensioners under the VEA'. Background on disability pensions and compensation payments, as well as information on current benefits, is included. The Committee's consideration of the present arrangements and its recommendations for a new compensation structure are covered in this volume, together with its view in favour of renewed emphasis on rehabilitation as an integral aspect of the compensation structure. Volume 3 also contains a glossary giving definitions of terms used in the Report and a comprehensive bibliography.

1.45 Full details of source material in bracketed references throughout the text may be found in the bibliography.

1.46 Throughout this Report, for ease of reference, the male possessive 'his' is used with the word 'veteran', because the vast majority of veterans are male. It is, however, recognised that there are female veterans. A reference to 'his' should be inferred to mean 'his or her'. Similarly, the term 'war widow' has been substituted for 'war widow/er' throughout, and the female possessive used.

CHAPTER TWO

INTRODUCTION

2

THE REPATRIATION SYSTEM

2.1 During the course of the Review, the Committee discovered that the Australian repatriation system is a unique instrument of public administration. The repatriation system cannot be described as ‘welfare’ in the accepted sense, although the welfare of those who fought and sacrificed so much for the common good is its principal objective. It was originally formulated during and immediately after World War I in response to a strong sense of national obligation to those who served in that war.

2.2 Australians, generally, may be unaware of the extent to which repatriation has grown in the course of some 80 years. About 540,000 returned personnel of Australian, Commonwealth and allied forces are actually and potentially eligible for benefits under the *Veterans’ Entitlements Act 1986* (VEA). The Department of Veterans’ Affairs (DVA) presently provides benefits to some half million veterans and their dependants – somewhere in the vicinity of 2.7 per cent of the total population. The Department expends about \$8.9 billion per year, approximately 5.5 per cent of total Commonwealth Government outlays. It employs about 2500 staff and has an extensive network of offices and agents around the country.

2.3 These cursory observations clearly demonstrate that repatriation continues to be a priority of the Commonwealth, 84 years after the Armistice. It remains, moreover, a key instrument in the delivery of the social justice that is inherent to the Australian egalitarian ethos.

THE LEGISLATION

2.4 The VEA is a complex piece of legislation. Eligibility and assessment rules for benefits, and the interrelationships between different aspects of the system, are extremely complicated. Those veterans coming to the system for the

first time may face difficulties in understanding the system without some help from those with expert knowledge. In response to this, DVA has set up a network that provides advice and information, and programs that train representatives of ex-service organisations (ESOs) to guide veterans and their dependants through the application process. The complexity of the legislation was raised as a concern in several submissions. This issue was outside the Committee's terms of reference, but the Repatriation Commission and the Government may wish to consider a restructure of the legislation to facilitate its understanding and administration.

VETERAN COMMUNITY NEEDS

2.5 The veteran community is a special group with special circumstances. Veterans and their dependants want their needs to be addressed holistically, so that the delivery of assistance is effective and consistent. Accordingly, it has been emphasised by their representatives, virtually since the inception of the repatriation system, that compensation, income support and health care should be administered by one dedicated agency. The veteran community often remarked in submissions that the repatriation system is compensatory and they are not social welfare recipients. While some submissions were critical of DVA and the system for denying benefits in the past, most spoke favourably of DVA's service culture and its empathy for the veteran community. It can also be stated with assurance that the general public continues to support the ongoing work of repatriation.

SUPPORT FOR THE REVIEW

2.6 When the Committee was appointed, it was apprised of various issues that were the subject of considerable concern and some division within the veteran community. Notwithstanding these issues, the Committee found the veteran community to be remarkably dignified and courteous during the course of the public consultation process. Meetings were both orderly and constructive, and the veteran community responded in an overwhelmingly positive manner to the Review. The Committee wishes to state that it placed the highest possible value on the contributions of individual veterans, their families and ESOs.

COMMUNICATION

2.7 It became apparent to the Committee and its Secretariat, from telephone inquiries and from a number of the submissions received, that many members of the veteran community misunderstood the nature of the Review. Many

perceived that this was an opportunity to have their personal circumstances reviewed or previous applications to DVA reconsidered. The Committee had no power to investigate personal claims and advised this when acknowledging submissions and forwarding these submissions to DVA for further action.

2.8 Many respondents also considered that the Review was similar to a parliamentary or judicial inquiry where evidence on oath is taken to gather information and views. The Committee had no statutory or parliamentary powers; it relied on the cooperation of individuals and organisations to provide information.

2.9 The Committee and its Secretariat sought to respond to misunderstandings about the role and powers of the Committee in letters to authors of submissions, in press advertisements and in its website content.

SUBMISSIONS TO THE REVIEW

2.10 The large number of submissions received (3076 – more than most parliamentary inquiries would receive) indicated a high level of interest in the Review by the veteran community. The number of submissions was also considerably higher than for any previous review conducted regarding the repatriation system, military compensation and Defence awards. The submissions contained an enormous amount of historical material and represented a significant body of veteran community views on the repatriation system.

2.11 In general, views were presented with clarity and conviction. Transcripts of public meetings, as well as the tone of submissions, indicated some discontent with different aspects of the system.

2.12 A significant proportion of submissions argued that aspects of the repatriation system have been allowed to erode over time, and that successive governments have failed to adhere to their responsibilities to provide appropriate compensation, assistance and recognition to the veteran community. Certain groups also argued strongly that they should be covered under the repatriation system and that their claims had not previously been considered fairly. There was a clear message throughout the submissions concerning recognition of sacrifices made in the country's service.

2.13 Another consistent trend in the thinking of veterans was that there had been too much emphasis placed on budgetary considerations. Two themes emerged in support of this contention. First, when the repatriation system was born in the aftermath of World War I, there was a strong sense of the nation's obligation to provide compensation, rehabilitation and support to veterans making the transition back into civilian life. Second, the sacrifice of those who

served to maintain the Australian way of life – with all of its freedom and prosperity – should be recognised by the guarantee of at least an average standard of living, especially for those so disabled by their service as to be unable to earn an income.

WEIGHT TO BE GIVEN TO VIEWS PRESENTED TO THE REVIEW

2.14 One of the difficulties in a review of this kind is to obtain a sense of the overall level of satisfaction of the veteran community about repatriation coverage and benefits. Those people who are dissatisfied and aggrieved take the opportunity of such a review to present their cases. Those who are happy with their benefits tend to stay silent. Whether this latter group is a silent majority is difficult to say. However, there has been considerable veteran community interest in this Review and its outcomes. The Committee can only examine the views presented to it.

2.15 The Committee has given the views of ESOs equal weight to those of individuals. No ESO's views have been given any greater weight than those of another because of the status or size of either organisation. In its analysis of particular issues in this Report, the Committee has sometimes referred to the views of particular organisations. That is not to suggest that other views were dismissed; all views have been considered on their merits.

PRINCIPLES AND RATIONALE FOR CURRENT ENTITLEMENTS

2.16 It has been the Committee's approach in the first instance to examine issues on their merits against sets of principles. The Committee sought to define the underlying rationale for the repatriation system. It distilled into one core principle a large number of principles, espoused by parliamentarians, both past and recent, and by previous reviews of repatriation legislation. In then examining particular issues, the Committee sought to understand the rationale behind the past and current legislation and policies, by reference to parliamentary debates and other statements by government politicians.

2.17 Of course, principles can change over time. Governments and parliaments have the right to redefine principles and set new policies and programs. In some cases, original principles have been distorted or obscured by subsequent re-expressions or new decisions.

2.18 Administration of the law by public servants over time and across a broad range of clients can and does cause divergence of practice from principle.

The judiciary may also interpret the wording of a statute in a way that may be at odds with the original intent of the government that proposed the legislation.

2.19 The Committee felt a need to examine the history of changes in legislation and policies and to restate original parliamentary intentions, or sometimes to identify and recommend a new principle in keeping with the underlying rationale of the system.

2.20 Some submissions were simply requests for extensions or increases in benefits without an explicit statement as to the principles, rationale or assumptions behind the request. Moreover, many such submissions were based on the veteran's personal situation and were coloured by perceptions of injustice. The Committee believes that there must be a policy rationale for a particular benefit or eligibility criterion that, in turn, must be explored logically in order to make a judgment about the fundamental proposition. Confusion and frustration can occur when this process is not followed.

2.21 Having examined principles behind particular issues, the Committee considered the costs of proposals and possible flow-on effects of those proposals with the strongest basis in principles. While the very credible concerns about the justice of various claims were uppermost in its thinking, the Committee was nonetheless conscious of the need to present recommendations that reflected an awareness of responsible financial constraints. In short, the Committee considered it much better to make recommendations that were well justified in a policy sense, and that held a prospect of acceptance within the overall budgetary context, than to provide a 'wish list' of propositions based on greatest demand.

BUDGETARY IMPLICATIONS AND CLIENT NUMBERS

2.22 The Veterans' Affairs portfolio is not an island – its expenditure has to be approved within a total budget picture that takes account of all the Commonwealth Government's spending priorities. All portfolios operate within that framework. It is not easy for governments to find substantial additional funding to spend on particular portfolios. Some sections of the veteran community understood this process well, while others clearly perceived that the obligations owed by Government to veterans totally transcended any budget constraints. The Committee acknowledges these obligations, but equally appreciates the dilemmas for governments in satisfying the demands and needs for services from all sectors of the community.

2.23 Some submissions referred to the expected rapid decline in numbers of the World War II veteran community and argued that the consequent reduced expenditure should be directed towards improved benefits for surviving veterans. This overlooks the fact that as the veteran community has aged, its

demands upon the system have increased. Medical advances and resultant treatments have added to costs while extending the life expectancy of veterans.

2.24 While the number of veterans receiving entitlements may fall, real costs may continue to rise for some time. DVA will be required to provide funding for the health care of an increasing number of veterans and widows in their 80s and 90s, an age when they will require the maximum possible support. War widow numbers will continue to increase for another five to six years and disability pensioner numbers, which have remained relatively constant in recent years, will decline relatively slowly. Service pensioner numbers will continue to fall steadily.

2.25 Thus, for some years yet, DVA's budget will not fall in real terms. Ultimately, there will be a turning point in real costs, but this is a long way off. It is also problematic, at best, to conclude that future engagements by Australian Defence Force (ADF) personnel will not increase demands on the repatriation system and/or the proposed new military compensation system. The people's representatives in the Federal Parliament will determine access to and levels of benefits at the appropriate time.

2.26 Despite ever-present budgetary constraints, successive governments have adopted a generous approach to the provision of repatriation benefits. Over the years, access has been widened to cater for new groups of veterans and benefits have been improved to meet the changing social and health needs of the veteran community. This is not to imply that the portfolio has been exempt from cost-saving measures. There have been such measures, but in recent Budgets the expenditure on the portfolio has increased both through greater demand for benefits and through new initiatives. Over the years, governments have also built health, education and welfare systems that benefit veterans and their families as members of the Australian community.

2.27 The Committee's terms of reference required it to consider how programs might be restructured to fund future improvements. The Committee's task has not been a cost-cutting exercise. However, in analysing the matters indicated in the terms of reference, the Committee has looked at whether changes should be made that may fund improvements in access to, or levels of, benefits. The terms of reference mention the Government's desire to achieve fair, consistent and appropriate compensation for veterans. 'Fairness' is difficult to define and can be an emotive term. It implies some measure of balance between differing needs. The Committee agreed with a previous review, undertaken by the Hon Professor Peter Baume (1994, p. 7), that fairness requires a balance between fairness to the veterans (adequate compensation), fairness to taxpayers (protection of revenue) and fairness to other recipients of community support (relativities between payments).

2.28 It has been the Committee's task to be 'fair and consistent' in recommending what it sees as 'appropriate' benefits. All these words have different meanings depending on context and on the situation of the individual or organisation making the evaluation. It suffices to say that the Committee has made the utmost effort to develop recommendations within the meaning of these terms, always bearing in mind the unique situation of Australia's veterans and recognising that veterans' needs differ in many respects from those of the general community.

ASSESSMENT OF ANOMALIES

2.29 There are few instruments of public policy more complex and demanding of patient and detailed consideration than the Australian repatriation system. No reasonable person with a basic understanding of the repatriation legislation would deny that the system has flaws. However, while the Committee is aware that past decisions have created apparent anomalies or inconsistencies, it believes that reinforcing one poor decision with another is not desirable. There are also boundaries to be drawn and, in many cases, these have seemed arbitrary to those adversely affected. Perceived anomalies may have a rational basis, in which case they are not real anomalies but justifiable differences.

2.30 The Committee has tried to assess the basis for particular past decisions to ascertain whether there is a sustainable rationale for different entitlements for different groups. Reform of the system to address a particular anomaly may produce another in turn – and has indeed done so. The Committee has taken care not to create further anomalies, but this can be a tall order.

2.31 In many situations, past decisions taken in the interests of, or against, sectors of the veteran community have confused principles with rationales for particular entitlements. This has led to some sections of the veteran community making comparisons of their circumstances with those of others and arguing for equal treatment, without any justification based on principles. Some of the situations that have developed over time have become complicated well beyond simple understanding. Solutions have been difficult to devise without creating other problems or flow-on effects.

2.32 Comparisons of service, especially across different wars, conflicts or deployments, on several measures (e.g. levels of danger, hazards or sacrifice) are often very difficult, but the Committee's terms of reference required it to assess particular service against criteria or principles. The integrity of the system requires that similar service be compensated similarly. However, this has not always been achieved. In some instances, particular decisions have to be

considered as isolated cases and intellectual boundaries put around them to contain their flow-on impacts.

OTHER COUNTRIES' BENEFITS

2.33 Many submissions made references to the repatriation systems of other countries, especially the United States, the United Kingdom, New Zealand and Canada. They argued that provisions made by those countries set precedents for the Australian repatriation system. It needs to be kept in mind that the repatriation systems of other countries have each developed in their own unique social, historical, cultural and legal contexts. There are also differences, particularly between the United States and Australia, in the parliamentary processes that create laws. It should also be understood that the legislation of other countries can contain both more and less favourable provisions than those contained in the Australian repatriation legislation. Comparisons of the benefits or eligibility rules between various countries can therefore be fraught with difficulty. Considerable care needs to be exercised in arguing that what one country provides should be replicated in Australia, despite what appear on the surface to be parallels between the systems or the service performed by veterans.

THE NEW MILITARY COMPENSATION SCHEME

2.34 The Minister for Veterans' Affairs asked the Committee to be aware of the Government's policy objectives with the development of the proposed new Military Compensation Scheme. The Committee and Secretariat received briefings from the Australian Defence Organisation, the Repatriation Commission and DVA on the development of the new scheme. Several submissions, including those from the Defence Organisation and the Repatriation Commission, also alerted the Committee to the proposals for such a new scheme. Some of the ESOs also informed the Committee of discussions about the scheme between the key agencies and the veteran community.

2.35 However, it became apparent that the new military compensation legislation would not be finalised before the Committee completed its review. While the Committee took account of the Government's policy intentions and kept itself abreast of the debate within the veteran community over various issues, the Committee felt it had to proceed to form its own views on the matters before it. Issues relating to the proposed new Military Compensation Scheme are discussed further in Chapter 7.

NATURE OF SERVICE REVIEW

2.36 The Committee also became aware of an internal review by the Department of Defence into the classifications of warlike and non-warlike service used by the Defence Organisation for certain defence, taxation and veterans' benefits. This system is based on definitions agreed by Cabinet in 1994 to apply to all subsequent ADF deployments.

2.37 That review team, headed by former Brigadier David Webster, briefed the Committee in September. While the Committee assisted the review team in its deliberations and took note of its initial analysis, the team's results were not available before the completion of the Committee's Report. However, the background to the Department of Defence review was relevant to the Committee's task.

CHAPTER THREE

HISTORY OF REPATRIATION SYSTEM

3

ANTECEDENTS

3.1 The obligation of the state to recompense the soldiery for service in its defence is an ancient one, dating at least from the Assyrian empire *circa* 1200 BC (Lloyd and Rees 1994, p. 7). Resettling veterans on land taken from vanquished barbarians or rival senatorial families was popular in ancient Rome and a linkage between land and resettlement appears frequently in the ensuing centuries, across a number of cultures. In Britain, pensions granted by statute began during the reign of Elizabeth I, with an Act of 1603 conferring the right of pension to a veteran 'maimed in the Queen's service' (Toose 1975, p. 19).

3.2 In 1681 under Charles II, the Chelsea Hospital system was established to provide treatment and convalescence for 'war damaged' or 'time-expired' soldiers. These men were known as 'in-pensioners'. Four years later an 'out-pensioner' scheme was established, with a gratuity for disablement payable at a flat rate for all ranks. In 1806, the amount of pension was made proportionate to the extent of the injury incurred (Toose 1975, p. 19). The debilitating effects of tropical disease were also recognised, in acknowledgment of the role of the military in forging and preserving the empire.

3.3 Widows and children of veterans were first provided for in Britain during the Crimean War (1854–56) through the Royal Patriotic Fund Corporation, a body reliant on public subscription with some support from the War Office. Similar funds were established in the Australian colonies in response to the sending of contingents to the Sudan Campaign, the Boxer Rebellion and the Boer War. While those organisations were assiduous in raising funds from the public, they were far less so in the actual distribution of money to veterans, and tended to be derelict in attending to the needs of those for whom they had been established.

EARLY DEVELOPMENT

3.4 The *Defence Act 1903* made provision for members of the Defence Force or their widows in the event of incapacity or death resulting from wounds or disease acquired while on active service. However, members of the Defence Force employed on active service were specifically excluded from the Commonwealth *Workmen's Compensation Act 1912*, apparently out of concern about the extent of the probable liabilities that would be incurred in time of war (Toose 1975, p. 20).

3.5 Nevertheless, Australia's commitment to the imperial war effort in 1914 necessitated the Commonwealth providing more fully for returned servicemen. Accordingly, in November 1914, the War Pensions Bill was introduced into the Parliament and received bipartisan support. The resulting Act granted pensions to Defence Force members killed or incapacitated as a result of service in warlike operations. Beneficiaries included those who enlisted or were appointed to active service outside Australia, or who served on a ship of war. Home service did not qualify. Disease was also included, with the proviso that it was contracted on active service. In 1915, the Act was amended to include members of the Army Medical Corps Nursing Service accepted or appointed for service outside Australia, and the following year it was extended to members on home service (Toose 1975, pp. 20–21).

3.6 Another significant early piece of legislation was the Australian *Soldiers' Repatriation Fund Act 1916*, although not for the reasons originally envisaged by its authors. The fund was in principle virtually identical to the failed patriotic funds of the 19th century, reliant on public subscriptions, with some augmentation from the Government, but established by statute rather than by the citizenry. It failed most singularly to achieve anything by way of fundraising, largely because of the prevailing political climate. Nevertheless, it did help shape the early model of the Australian repatriation system.

3.7 In early 1917, an executive committee of the trustees of the fund made a series of recommendations to the Prime Minister. They were:

- that the entire question of the re-establishment of discharged soldiers and the care of the dependants of soldiers generally should be made the concern of a Commonwealth authority; and
- that the Commonwealth authority should devise a substantially uniform system of dealing with returned soldiers and the dependants of soldiers on service or soldiers who died as a result of service in respect of:
 1. immediate amelioration;
 2. care of the totally incapacitated;
 3. vocational training of the partially incapacitated;
 4. employment generally;

5. assistance towards permanent re-establishment;
6. care of dependants;
7. coordination of governmental and private efforts for the expansion of existing industries and promotion of new industries to meet the demand for employment; and
8. assembling and administration of funds (Toose 1975, pp. 24–5).

3.8 The recommendations were debated at an interstate conference shortly thereafter, at which it was decided that the Commonwealth should have definite control over all matters relating to repatriation, and that states should administer land settlement in conjunction with the Commonwealth through the Soldiers' Settlement Board of Australia (Toose 1975, p. 24).

3.9 It is worthwhile to note the burgeoning activities of ex-service organisations (ESOs) in this period as more and more Australians returned from Europe. Pre-eminent among those ESOs was the Returned Sailors' and Soldiers' Imperial League of Australia (RSSILA), now known as the Returned & Services League of Australia (RSL). Through exceptionally skilful organisation, building on public sentiment in favour of the returned diggers, the League was able to exert considerable pressure on the Commonwealth Government. In particular, it achieved recognition of compensation as a right, rather than as an act of gratuity, which in turn signalled the end of the voluntary system exemplified by the patriotic funds.

THE AUSTRALIAN SOLDIERS' REPATRIATION ACT 1917

3.10 In response to the recommendations of the Trustees, the Vice-President of the Executive Council and soon to be first Minister for Repatriation, Senator Edward Millen, introduced the Australian Soldiers' Repatriation Bill into the Parliament on 18 July 1917. Among other things, the legislation provided for benefits and assistance to discharged servicemen, children under 18 of the deceased or incapacitated, and to widows in special circumstances.³

3.11 The Act was proclaimed on 8 April 1918 and the new Department of Repatriation began operations on the same date. The Minister was given overall responsibility for the administration of the Act, and a part-time honorary Repatriation Commission of seven was appointed with power to make recommendations to the Government for regulations granting benefits and assistance.

3.12 Millen introduced amendments to the Act shortly afterwards, saying that the Repatriation Department accepts 'as the minimum obligation the

³ Australia, Parliament 1917, *Debates*, Vol. LXXII, p. 184.

responsibility of providing the returned soldier with an opportunity of earning at least a living wage, and that until such opportunity is forthcoming subsistence be granted' (Toose 1975, p. 26).

3.13 The Repatriation Commission considered that the achievement of the objectives would entail expenditure on:

1. sustenance while awaiting employment;
2. sustenance while undergoing training;
3. sustenance while undergoing treatment or care in hospitals or special institutions;
4. sustenance while awaiting the allotment of land, and during the initial period of land occupancy;
5. medical treatment after discharge, including the provision of artificial limbs and other surgical aids;
6. emergency grants to cover exceptional necessities;
7. fees to educational institutions;
8. tools of trade, professional instruments and personal equipment;
9. small business plant and livestock;
10. homes;
11. passages to and from the Commonwealth;
12. transportation within the Commonwealth;
13. allowances to dependants; and
14. funeral expenses (Toose 1975).

3.14 The practical working of the repatriation system was governed by regulation, rather than by the provisions of the Act, principally because there was no precedent for the scheme and policy was therefore unfolding and changing at a rate too rapid to be accommodated within a formal legislative framework.

THE AUSTRALIAN SOLDIERS' REPATRIATION ACT 1920

3.15 New legislation in the form of the *Australian Soldiers' Repatriation Act 1920* repealed the *War Pensions Act 1914* and the *Australian Soldiers' Repatriation Act 1917*. Administrative changes under the new legislation included the reform of the Repatriation Commission into an incorporated body of three members, with Repatriation Boards (also of three) constituted for each state. The boards were responsible for determining and assessing claims, with an appeal from their decisions available to the Commission. Commissioners were paid for their work for the first time. At the same time, the Repatriation Department assumed responsibility for the payment of pensions from the Treasury (Toose 1975, p. 27).

3.16 The new Act also expanded entitlement for pensions through the introduction of the so-called 'occurrence clause'. This gave cover in respect of death or incapacity resulting from any occurrence happening during the period of service. As a result, the death or injury need not have had any causal connection with the individual's service; it must merely have occurred during the period of service (Toose 1975, p. 27).

3.17 Perhaps most significantly, the *Repatriation Act 1920* introduced the concept of a 'special rate' pension for those totally and permanently incapacitated (TPI) or blinded as a result of war service. Often referred to as 'the TPI pension', its initial rate of payment was £4 per week.⁴

3.18 Amendments to the Act in 1921 and 1922 saw the Department accept liability for medical and hospital treatment of servicemen upon their discharge and for the administration of artificial limb factories. In addition, a Fifth Schedule to the Act was inserted after representations were made to Minister Millen by the Limbless Soldiers Association. This provided for an extra allowance to this class of veteran that brought their overall benefit to substantially the same level as that of special rate recipients (Toose 1975, p. 29).

THE BLACKBURN ROYAL COMMISSION

3.19 On 27 August 1924, a Royal Commission chaired by Dr C B Blackburn was established to inquire if:

... the present method of determining whether an ex-soldier's disability is due to or aggravated by war service [is] adequate to decide the degree to which it is aggravated and what portion of his present incapacity can be regarded as having resulted from war service. (Toose 1975, p. 29)

3.20 After consideration, the Royal Commission found that:

In the majority of cases the present machinery for determining disability and assessing pensions is sufficient. There are, however, certain types of disabilities that are, for various reasons, inadequately determined. The inadequacy, to some extent, has been due to defects in the *Australian Soldiers' Repatriation Act* ... (Toose 1975, p. 29)

3.21 The Royal Commission's deliberations and findings on the matter of the appeals system provide an excellent illustration of the evolutionary gulf that exists between accepted policy strictures then and now. For instance, it was accepted that there would be no final body of appeal, but rather that the Repatriation Commission could reconsider a case virtually *ad infinitum*, provided that the claimant could adduce new evidence on each occasion. Other

⁴ *Australian Soldiers' Repatriation Act 1920*, the second schedule

recommendations included that the Repatriation Commission should not have medical practitioners as members, but only as technical advisers or referees, and that it was proper for a veteran to discuss his file, but most improper for him to actually see it (Lloyd and Rees 1994, pp. 232–5).

THE TWENTIES AND THIRTIES

3.22 Throughout the span of the Bruce–Page Government (1923–29) there was no minister appointed with sole responsibility for repatriation. Rather, the job was passed among a number of ministers and attended to only on a part-time basis. The absence of any consistent political control of repatriation, in combination with the lack of an appeal mechanism from decisions of the Repatriation Commission, resulted in considerable disquiet among the veteran community. It was felt that there were insufficient checks on the freedom of action of both the Department and the Commission.

3.23 The Government eventually moved to assuage these concerns in 1929. The Health Minister, Sir Neville Howse, who had general responsibility for repatriation, introduced legislation to establish War Pensions Entitlement and War Pensions Assessment Tribunals. An important principle laid down in the legislation related to the onus of proof. Once the appellant had made out a *prima facie* case, the onus was on the Repatriation Commission to disprove it (Toose 1975, p. 31).

3.24 By the 1930s, a condition known as ‘burnt-out digger syndrome’ began to attract official attention. A report from the Commonwealth Statistician in 1934 found a 13 per cent excess mortality rate among veterans compared with similarly aged civilians. In response, the Government introduced a service pension payable to returned soldiers at age 60 rather than at 65 (Lloyd and Rees 1994, pp. 251–6). This was the first repatriation income support measure, all previous benefits having been compensatory in nature.

WORLD WAR II

3.25 The *Australian Soldiers’ Repatriation Bill 1940* introduced separate pension bases for troops who served overseas and those who served entirely in Australia. In the former case the ‘occurrence clause’ had application, but not in the latter. The *Seamen’s War Pensions and Allowances Act 1940* also came into force that year, providing for compensation and other benefits to Australian mariners (Toose 1975, pp. 35–8).

3.26 Three events of significance occurred in 1943. The first was new legislation to pension those who had served in New Guinea on the same basis as

those who served overseas. The second was a liberalisation of the standard of proof provisions in the *Repatriation Act*. This effectively enshrined the reverse criminal standard of proof in legislation. The third was the extension of the area in which the Citizens' Military Force could be used. Previously, the militia was confined to service within Australia. Now it could be used in the South-Western Pacific Zone within an area fixed by proclamation for a period up to six months after the end of the war (Toose 1975, pp. 37, 38).

THE FIFTIES AND SIXTIES

3.27 The *Repatriation Act* was extended through the 1950s to provide benefits, including the service pension, to those who served from 27 June 1950 to 19 April 1956 and were allotted for duty in the operational area in Korea, or from 29 June 1950 to 1 September 1957 in Malaya. The Act was later amended in the 1960s to cover Australian armed services personnel serving in the Indonesian Confrontation. In 1957, the *Repatriation (Far East Strategic Reserve) Act 1956* brought members of the Far East Strategic Reserve within the purview of the repatriation system, although the nature of their service was considered not to be the same as that of personnel in World War II or Korea. As a consequence they did not, at that time, receive eligibility for the service pension.

3.28 Increasing Australian military involvement in South-East Asia led to the passage of the *Repatriation (Special Overseas Service) Act 1962*. This legislation

... extended repatriation benefits for [s]pecial service in prescribed areas overseas, where Australian forces were engaged in 'warlike operations'. This provision was instrumental in providing pensions and benefits for Vietnam War veterans. (Lloyd and Rees 1994, p. 319)

3.29 A major reform to the war (now disability) pension structure took place in 1965 with the introduction of the intermediate rate, midway between the 100 per cent general rate and the special rate. The intention was to provide a greater level of compensation to veterans who were quite severely disabled, but nonetheless capable of engaging in employment on a part-time or intermittent basis.

3.30 The last major reform of the 1960s was the extension of the service pension to those with 'special service' under the *Special Operations Act* in 1968.

THE SEVENTIES

3.31 During the 1970s, peacetime coverage under the *Repatriation Act 1920* (to be preserved in the *Veterans' Entitlements Act 1986* (VEA)), was extended to serving military personnel (including national servicemen). This created a dual

entitlement, as those individuals were already covered by the normal Commonwealth employees' compensation legislation. The situation was intended to be a short-term bridging measure pending the implementation of a new, separate Military Compensation Scheme. Unfortunately, that legislation did not eventuate for another 22 years. The *Military Compensation Act 1994* ended peacetime coverage under the VEA.

3.32 Between 1971 and 1975, Justice Paul Toose of the New South Wales Supreme Court undertook a wide-ranging inquiry into all aspects of the repatriation system. A principal recommendation was that the various pieces of legislation be consolidated into one Act. This eventually occurred in 1986 with the passage of the VEA. But Toose's most enduring legacy is the underlying principles of repatriation that he expounded in his report (see Chapter 4).

3.33 In 1973, the Commonwealth began to partially exempt the disability pension from the service pension means test. The initial amount was 25 per cent, followed by an increase to 50 per cent in 1975, 60 per cent in January 1982 and finally 100 per cent in November of the same year.

3.34 From 1974, virtually all the Commonwealth's training schemes were transferred to the Department of Labour and Immigration. The following year, British, Commonwealth and allied (BCAL) veterans became eligible for the service pension. Between 1976 and 1979, Consumer Price Index (CPI) indexation of the major pensions was introduced, linking them to changes in the CPI. In accordance with a recommendation of the Toose Report, the Department of Repatriation became the Department of Veterans' Affairs (DVA) on 5 October 1976.

3.35 The appeals and review structure changed in 1979 with the establishment of the Repatriation Review Tribunal, which replaced the Entitlements Appeals Tribunal and the Assessment Appeals Tribunal. There were also increased avenues of appeal to the Federal Court and High Court on matters of law.

VETERANS' HEALTH CARE

3.36 After World War I, the Repatriation Department assumed responsibility for providing medical treatment for discharged soldiers suffering service-related disabilities. The Department's facilities were limited, and medical treatment was usually provided by arrangement with institutions established during the war by the Defence Department.

3.37 With the cessation of hostilities and the return to civilian life of the majority of servicemen, control of the military hospitals, sanatoria and artificial limb factories that had been built in each capital city was transferred

progressively to the Repatriation Department. This was completed by 1922. To supplement the centralised outpatient facilities, arrangements were made by the Department for general practitioner and pharmaceutical services in country areas.

3.38 Similarly, after World War II, the Repatriation Department took over the much larger and more modern Army hospitals built during the war to meet immediate and post-war needs. These institutions became repatriation general hospitals and certain of the older institutions were retained and used as auxiliary hospitals to provide for special inpatient and outpatient needs.

3.39 By the time of the Toose Enquiry in the early 1970s, the continuing relevance of the repatriation general hospitals had come into question, with some submissions arguing that they should be amalgamated with hospitals in the state health systems. They were ultimately transferred to state government or private enterprise control by 1995, and DVA now purchases almost all its medical services from these and other agents.

THE EIGHTIES

3.40 Allied veterans were made eligible for the service pension in 1980. It was necessary that they had served in a theatre of war, had at no time been a member of enemy forces and had been resident in Australia for 10 years.

3.41 In the early 1980s there were two particularly significant court cases, *Law* and *Bowman*, both of which had far-reaching ramifications for the repatriation system. The *Law* case of 1981 'effectively conceded cigarette smoking in war-time as a causative element in entitlement' (Lloyd and Rees 1994, p. 358). This decision led to a very significant increase in claims for compensation resulting from smoking-related illnesses.

3.42 In *Bowman*, also in 1981, the Federal Court held with respect to the TPI pension that 'the effect of incapacity on ability to earn could only be gauged by reference to the market in which the applicant might expect to earn'. Also, it was

... sufficient in testing whether an applicant's ability to earn is due to his war-related disability to consider whether he would be equally unable to earn if he were free of this disability. The only hypothesis involved in this would be the consideration of the applicant free of his disability. (Lloyd and Rees 1994, p. 391)

3.43 This case significantly broadened potential eligibility for the TPI payment.

3.44 In 1981, peacekeeping operations were given coverage under the VEA and in 1982 this was made retrospective to World War II. Also in 1982,

Australian, Commonwealth and allied mariners became eligible for the service pension. In the following year, the Commonwealth Government established a royal commission into the effects of the herbicide 'Agent Orange' on Vietnam veterans. Headed by Mr Justice Evatt, the commission ultimately found there was no connection between the spraying of the herbicide and health problems in Vietnam veterans. Similarly, no link was found to account for birth defects in the children of Vietnam veterans. The Commission's findings engendered considerable controversy and the issue is still without final resolution nearly two decades later.

3.45 In 1984, an income and assets test was introduced for the service pension and social security income support payments, replacing the sole income test. In May 1985, the Treasurer brought down an economic statement that had a noticeable impact on veterans' benefits. Among other things, the war widow's income support supplement was frozen, grants of dependants' pensions were terminated, and changes to the standard of proof were announced in response to the *O'Brien* case, in which

... a majority of the High Court held that it was not necessary for the material in a particular case to 'provide some positive reference in favour of the requisite connection between death and incapacity and war service'. (Creyke and Sutherland 2000, p. 402)

3.46 Unsurprisingly, this decision led to a subsequent large increase in the number of claims for disability pension. Changes to the standard of proof provided that

... where the Repatriation Commission is reasonably satisfied that the material before it does not raise a *reasonable hypothesis* of a connection between the death and incapacity of a veteran and the veteran's war service ... a pension shall not be granted. (Lloyd and Rees 1994, p. 400)

3.47 In addition, the reasonable hypothesis standard was restricted to those who had 'engaged in combat, the civil standard [applying] in other cases' (Lloyd and Rees 1994, p. 400).

3.48 In 1986, Toose's recommendation for a single Act consolidating all repatriation legislation was finally implemented. The VEA left most of the law unaffected, but did attempt to make crucial changes in certain areas relating to the disability and war widow's pensions. In particular, the Minister emphatically restated in the second reading speech that the special or TPI rate of disability pension should not be granted to veterans over the age of 65, except in very rare cases.

3.49 To oversee the early years of the VEA, a committee of eminent persons chaired by Justice Toose and known as the Veterans' Entitlements Act Monitoring Committee (VEAMC) was established. While generally finding the

operations of the new legislation to be satisfactory, the VEAMC nevertheless recommended increased compensation for frail, aged veterans with high levels of impairment and restricted lifestyles. The result of this was the introduction of the extreme disablement adjustment (EDA), payable to extremely disabled veterans over 65 at effectively 150 per cent of the general rate disability pension.

RECENT DEVELOPMENTS

3.50 Australian personnel were involved in several, mainly United Nations-sponsored, activities throughout the 1990s. These tended to be of a peacekeeping or peace-enforcement type, and included deployments to Namibia, the Gulf, Rwanda, Cambodia, Somalia, Bougainville and Timor. The level of access of veterans of these engagements to VEA benefits has primarily depended on whether the service was declared 'warlike' or 'non-warlike'.

3.51 In terms of the operation of the VEA, two events took place that directly challenged the way the repatriation scheme had been operating. These were the Auditor-General's Report 1992-93 (Auditor-General 1993), and the *Bushell* case, which was considered by the High Court in 1992 (Creyke and Sutherland 2000, p. 177). The first made a series of critical findings relating to what were seen as tenuous causal linkages between service and disability. The concerns of the Auditor-General were confirmed by the *Bushell* decision of 1992.

3.52 Essentially, the High Court held that the establishment of a reasonable hypothesis – which the Commission must thereafter rebut beyond reasonable doubt to defeat certain claims – could be established if a specialist in a medical field found a causal link, notwithstanding that every other specialist in that field did not. This decision had the potential to substantially widen the scope of successful compensation claims. In response, the Government appointed a committee of review headed by the Hon Professor Peter Baume, Head of Community Medicine at the University of New South Wales, to examine and make recommendations.

3.53 The Baume Report made a number of contentious recommendations on both points. The 'reasonable hypothesis' was considered too generous and the report recommended its replacement with the normal civil 'balance of probabilities' test. Regarding the *Bushell* decision, Baume recommended that an independent medical body be established to decide what factors caused particular disabilities. As a result, the Repatriation Medical Authority (RMA) and a Specialist Medical Review Council (SMRC) were established in 1994, the first body to formulate Statements of Principles (SOPs) on which medical conditions could be accepted as service related, and the second to hear appeals from decisions of the RMA. The recommendations on onus of proof were not

taken up, but the RMA and SMRC were established despite opposition from some sections of the veteran community (Baume 1994).

3.54 Between 1995 and 2001, a number of studies were commissioned or undertaken by DVA into the health and mortality rates of Vietnam veterans. In part, these were in response to long-standing claims by Vietnam veterans of health problems and higher death rates peculiar to them. Many new programs targeting benefits and assistance to Vietnam veterans and their families were initiated as a result of these studies. A number of other studies for other veterans or service personnel have since commenced, including cancer and mortality studies for Korean veterans and British atomic test participants, and a health study for Gulf War veterans.

3.55 Rehabilitation of disabled veterans was given increased emphasis in 1997 with the introduction of the Veterans' Vocational Rehabilitation Scheme (VVRS), which allowed veterans to undertake training and subsequent employment without jeopardising their pension entitlements. The scheme has been generally well received, with a gradual increase in participation occurring in recent years.

3.56 The Military Compensation and Rehabilitation Service (MCRS) was transferred from Defence to DVA in 1999 under a service agreement between the two departments.

3.57 That year also saw the extension of the Repatriation Health Card – For All Conditions (Gold Card) to all World War II Australian veterans with qualifying service who were aged over 70. A subsequent extension effective from 1 July 2002 granted the Gold Card to all post-World War II Australian veterans aged over 70 with qualifying service. In addition, a Repatriation Pharmaceutical Benefits Card (Orange Card), giving World War II BCAL veterans aged 70 years or more with qualifying service access to the Repatriation Pharmaceutical Benefits Scheme, came into effect on 1 January 2002.

3.58 The last major review of repatriation legislation before the present one occurred in 2000. The report of Major General R F Mohr into service entitlement anomalies in respect of South-East Asian service between 1955 and 1975 recommended the extension of benefits to veterans of several conflicts not previously covered by the VEA.

CONCLUSION

3.59 Australia's repatriation system has often been described by successive governments as either the most, or one of the most, generous in the world. The Committee cannot comment on whether or not that statement is true without exhaustive analysis of other countries' systems and the context in which they

operate. However, the Australian repatriation system emerged in its own unique social, political and economic context. Furthermore, it has evolved considerably over the past eight decades or more. The *Repatriation Act 1920* was amended approximately 80 times before its replacement by the VEA, and there have been many changes to the latter. Nevertheless, the system's essential elements have remained in place and there can be no doubt that it has been a major institution of social justice in 20th century Australia, touching the lives of many Australians.

3.60 Repatriation is a fundamentally benevolent concept. The nation as a whole has always held that 'the right thing' should be done by our veterans. In keeping with this, the scheme has developed in a cautious and incremental fashion.

3.61 The Review has sought to maintain this tradition of generosity balanced by fairness.

INTRODUCTION

4.1 The Committee considered that the comprehensive nature of the Review, as set out in the terms of reference, required a review of the core principles of the repatriation system. This chapter examines and evaluates those principles. Subsequent chapters will address subsidiary principles that relate to particular aspects of the system.

STATEMENTS OF INTENT

Early Statements

4.2 Much of the framework for the current repatriation scheme was developed during World War I and its immediate aftermath. The contemporary flavour of the debate at the time of introduction can be gauged to some degree from the statements of the major political figures.

4.3 Defence Minister, Senator George Pearce, spoke in the second reading of the War Pensions Bill 1914 on the moral obligation of the nation to provide for war veterans and widows:

One of the saddest spectacles in the past has been to see men who have been willing to risk their lives in the defence of the country left destitute and the dependants of men who have laid down their lives for their country having to live on charity ... It would be an eternal disgrace to this young and rich Commonwealth if any of the relatives of those who are going to war had to beg for a living. We desire in this bill to make such modest provision as will keep the wolf from the door of any of those who are unfortunately bereaved of their breadwinners ... The bill also provides for a pension for any man who is disabled or incapacitated so that he cannot earn his living or a living for his wife and family or others dependent on him. (Toose 1975, p. 21)

4.4 Opposition Leader in the Senate, Senator Edward Millen, concurred:

As to the principle of this Bill, there will be not one word of hostile criticism from one end of Australia to the other ... I should like to say, and the Minister of Defence has been good enough to mention it, that when the war broke out, one of the first things I did was to determine, as far as was in my power, that the experience of the South African campaign should not be repeated. I took the initial steps to prepare such a measure as this. Having obtained Cabinet approval of a scheme, I caused an outline of it to be published in the press, and to that extent I feel under an obligation to attempt in this Chamber to redeem what I regard as a promise to the men who were then being invited to enlist and who are enlisting today.⁵

4.5 The Prime Minister, the Hon William Morris Hughes MP, considered soldier resettlement and Commonwealth responsibility for veterans at the 1917 Premiers' Conference:

The responsibility of the Commonwealth in regard to the settlement of returned soldiers is altogether different from that of ordinary land settlement. We say the care of the returned soldier is one of the functions of the Commonwealth Government. Our soldiers fight not for Queensland, New South Wales or Tasmania, but for Australia. They enlisted under the Commonwealth banner. They go out to fight our battles. We say to them: 'When you come back we will look after you' ... The soldiers will say to the Commonwealth Government: 'You made us a promise. We look to you to carry it out'. (Lloyd and Rees 1994, pp. 68-9)

4.6 In his second reading speech to the Australian Soldiers' Repatriation Bill 1917, the Vice President of the Executive Council, Senator Edward Millen, described repatriation as an earnest attempt to fulfil Australia's obligations to those who fought and suffered heroically in its defence:

I confidently believe that there will be throughout Australia a general endorsement of the declaration which I now make, that the nature, extent, and duration of the work of repatriation require it to be accepted as a national responsibility, to insure [*sic*] the proper discharge of which must involve the direct action of the National Government itself.

I tell the Senate quite candidly that I am not at this juncture concerned about finance. I have put before honourable senators a proposition representing the duty we owe to these returned soldiers, and whether it is going to cost more or less for the discharge of that duty, we have to shoulder it.⁶

4.7 In 1918, Defence Minister, Senator Edward Millen emphasised the need to rehabilitate as well as support and compensate the disabled veteran:

⁵ Australia, Parliament 1914, *Debates*, Vol. XXIV, p. 2100.

⁶ Australia, Parliament 1917, *Debates*, Vol. LXXXII, pp. 185, 196.

[Repatriation is] not the mere conferring of money or other gifts on a soldier for services rendered, but ... implied an effort on behalf of the nation ... to aim at and as far as possible secure the satisfactory re-establishment in civil life of the returned soldier. That carries with it the obligation that where men returned maimed or wounded, in order to secure their satisfactory re-establishment in civil life, everything possible should be done to secure their return to health, or to make good the physical defects from which they are suffering. (Toose 1975, p. 26)

4.8 The general tenor of the debates leaves little doubt as to the attitude of the Parliament and an examination of *Hansard* reveals a significant degree of bipartisan support. The debates also accurately reflected the opinion of the public at large. In essence, it was generally held that the nation should undertake to care for those who had been hurt, maimed or disadvantaged in any way as a consequence of service to empire and country.

4.9 It was accepted that repatriation was a Commonwealth responsibility. Patriotic funds based on voluntary contributions from the citizenry first appeared during the Sudan Campaign of 1885 and subsequently during the Boer War of 1899–1902. However, they proved to be an inconsistent and unsatisfactory means of compensation, with large amounts of money remaining undistributed to veterans several years after the cessation of the conflicts. They faded into irrelevance after the passage of the *War Pensions Act* in 1914. In addition, various attempts by state governments to deliver benefits in the form of soldier resettlement schemes based on land grants for agriculture proved unsatisfactory, again because of inconsistent approaches.

4.10 It was recognised that introducing repatriation legislation was establishing a system that would be required to continue for many decades. This recognition was reflected by Senator Millen on 24 May 1920, during the second reading stage of the Australian Soldiers' Repatriation Bill 1920:

...this problem will be with us for a great many years in the shape of an obligation to care for the wounded, the widows and orphans of our soldiers.⁷

4.11 Former Attorney-General, H V Evatt, captured the essence of the repatriation system in 1945:

The *Australian Soldiers Repatriation Act* 1920–43 is not based upon any well-known type of legislation. Though it may have something in common with Workers' Compensation, it is an instrument which is largely *sui generis* [self-generating]. It represents the desire of the Australian people, through their National Parliament, to ensure that members of Australia's gallant fighting forces who have become wounded or sick as a result of their service shall be properly cared for, and that they and their dependants, and

⁷ Australia, Parliament 1920, *Debates*, vol. XCL, p. 641.

the dependants of deceased members, shall be provided for by a war pension and otherwise assisted in the economic struggle for life. The bearing of these forces in the field commands the admiration of the world, and too much cannot be done in the way of reparation to recompense them for the sacrifices they have made in the sacred cause of liberty. (Lloyd and Rees 1994, pp. 275–6)

4.12 In the course of 84 years since the Armistice, the repatriation system has grown to cover subsequent wars and conflicts and certain peacetime defence service. Furthermore, numerous changes to policies and programs have occurred in response to the developing needs and expectations of the veteran community.

Recent Statements

4.13 Historical statements of the intent of the system have been reinforced by more recent statements made by politicians of both sides, including Prime Ministers and Ministers for Veterans' Affairs.

4.14 The Prime Minister, the Hon R J L Hawke MP, told the RSL National Congress on 2 September 1985:

The Labor Government firmly believes that we should be generous in our treatment to those who have suffered disabilities because of their participation in war and in the treatment of the widows and orphans of those who have died as a result of war service.

4.15 Minister for Veterans' Affairs, Senator the Hon Arthur T Gietzelt, said in the Budget statement of 19 August 1986:

The greatest commitment continues to be to those veterans who suffer as a result of their war service. Their treatment and compensation for their disabilities are of the highest priority.

4.16 On 18 September 1992, at Anzac House in Melbourne, the Minister for Veterans' Affairs, the Hon Ben Humphreys MP, stated:

The Government has re-affirmed the Commonwealth's responsibility to provide compensatory health care for veterans.

This mandate encompasses the continuing recognition of a debt and obligation on the Commonwealth to provide and arrange comprehensive health care and support services to eligible veterans and their dependents. [sic]

Such services are compensation to help improve their lifestyle and rehabilitate them from the effects of war service.

4.17 At the Sandakan Memorial Service of 1 August 1993, the Prime Minister, the Hon P J Keating MP, declared:

The events in Sandakan should be known because we should never forget that there have been generations of men and women prepared to die for Australia.

We owe a debt to them. Every succeeding generation owes them. Their sacrifice helped us survive.

4.18 The current Prime Minister, the Hon John Howard MP, addressed the RSL National Congress in Brisbane on 4 September 2002, saying:

The obligation to care for our returned men and women is an unqualified and ongoing obligation.

4.19 Welcoming Special Air Service troops on their return from Afghanistan on 3 April 2002, Mr Howard stated:

All that a nation can do for people who put their lives on the line to defend the values of that country, is to honour that commitment, to care for them if they are hurt, to generously support them and to make certain that their loved ones are cared for and looked after. I hope that we have done that over the last four months and I hope that in the months and the years ahead, that we will continue to do that.

4.20 In Albury on 24 May 2002, Minister for Veterans' Affairs, the Hon Danna Vale MP, told the 23rd Annual Congress of the Vietnam Veterans Association of Australia:

... the Government recognises that it is not enough to equip our troops and send them out in the service of the nation.

We have an obligation to make sure their needs are met if they are injured, or to care for their widows or children if they pay the ultimate price for that service.

PREVIOUS REVIEWS

Toose Review

4.21 Of several earlier reviews, the most comprehensive examination of repatriation principles was that undertaken in the course of the Toose Enquiry between 1971 and 1975. Justice Toose formulated a comprehensive statement of what he regarded as the essential philosophical and ethical considerations underpinning the system as a whole. He expressed these considerations in a series of core and subsidiary principles (Toose 1975, pp. 40-1):

- The nation is specially indebted to those who have voluntarily given service to it in time of war by enlisting in the armed forces, thereby endangering their lives and health and probably suffering economic loss.

- The nation recognises that it has a similar commitment to those whom it compulsorily enlisted for war service.
- The nation therefore has a duty to ensure that those who have thus served, together with their dependants, are properly cared for to the extent that they should never have to beg or rely on charity.
- Governments accordingly have an obligation to make arrangements as follows:
 - Those who have served should be suitably rehabilitated and re-established back into civilian life at the conclusion of their service.
 - Those who have suffered incapacity that could be related to their service should be appropriately and adequately compensated on a long-term basis both financially and by the provision of high-quality medical and hospital care.
 - Some financial provision or compensation payment should be made towards the care of their dependants during rehabilitation and re-establishment and also during any continuing incapacity.
 - In cases where death has resulted from service, adequate provision should be made for the care of widows and any other dependants, including the education of the children of the deceased.
 - Those who have served overseas or in a proclaimed theatre of war are likely to have encountered greater danger and/or more arduous service than those who had home service and, accordingly, they should have a more extensive cover.
 - Compensation and other benefits should be available as a matter of right and not as a welfare handout and, in cases of doubt, the doubt should be resolved in favour of those claiming to be entitled.
 - Compensation should be assessed according to actual degree of incapacity and regardless of the economic situation of those entitled; this incapacity should be assessed on equal terms for those disabled in like degree.
 - Such benefits should be provided whether or not similar arrangements are available to civilians in respect of accident or illness arising in civil life.
 - All benefits should be constantly re-examined to assess whether or not they are still appropriate and to consider if any adjustments or additional provisions are needed to meet new situations as they become apparent.

- Cover should be extended to defined peacetime situations for which there is inadequate provision under existing civil arrangements.
- To ensure these principles are constantly and efficiently maintained, the administration thereof should be in the hands of one single-purpose Department.

4.22 Toose went on to describe the fundamental requirement for entry to the system as: ‘... the fact of service in, or in conjunction with, the Armed Forces of Australia during time of war or in war-like operations’ (Toose 1975, p. 99).

4.23 He concluded:

During and immediately following major wars the nation, having been deeply conscious of its duty and promises to those who served and the lack of community facilities to cater for them, has made as a top priority generous provision for compensation in respect of service-related death or incapacity and the re-establishment back into civilian life of those who served. This has been done notwithstanding the great financial burdens and the disruption of the economy caused by the conduct of war.

In this respect the compensation of members of the Forces through the separate arrangements of the Repatriation System has been fully justified.

If the promises which have been made are to be honoured, present and future governments should continue to exercise great vigilance to ensure that in times remote from wars and warlike operations, the compensation properly payable to members of the Forces and their dependants, and the provision of appropriate care, are maintained at levels which are at least the equal of those available for the community generally.

Accordingly, for the foreseeable future, I consider that it is necessary that the Repatriation System be retained in order to ensure the delivery of compensation to members of the Forces, particularly those who served in periods of national involvement in armed conflicts and to whom successive governments have given clear and unequivocal guarantees. (Toose 1975, pp. 67–8)

Baume Review

4.24 In consequence of a report by the Australian National Audit Office in 1992–93, the Government commissioned a new inquiry to examine compensatory benefits to veterans and war widows. Chaired by the Hon Professor Peter Baume, it generally endorsed the principles laid down by Toose, but augmented them to reflect developments that had occurred in the interim. Baume (1994, p. 7) observed that:

There is a strong and continuing obligation on the Australian community to recognise adequately the special contribution made to the nation by the veterans of our armed forces. This includes maintaining a comprehensive

and generous Repatriation Scheme which compensates veterans for the effects of any war-caused disability and incapacity, in a manner which is relevant to their needs. At the same time, the scheme should take account of the fact that, over recent years, more broad-ranging pension, vocational, educational, rehabilitation and home-support schemes have been introduced for the community as a whole. These were not available, either at all or to the same degree, when the Repatriation Scheme first began. They too, have an important role to play in meeting the needs of veterans and war widows, as they do for all citizens.

4.25 Of Toose's core principles, Baume (1994, p. 9) wrote:

One of the important principles not expressly mentioned but implied by Justice Toose in the above list is that the Commonwealth has a responsibility to provide compensation and care to veterans and their dependants for incapacity or death related to service.

4.26 Baume then elucidated an augmented set of principles that were intended as the foundation of the future governance of the repatriation system and against which his committee assessed all proposals for change. The system should:

- maintain the established general principles of repatriation compensation set out and discussed in the report by Justice Toose;
- ensure that the scheme remains generous but not excessive in comparison with Australian community norms;
- ensure fair compensation consistent with the extent to which service contributes to disability and incapacity;
- deliver a relevant mix of services including compensation, income maintenance and a range of support that complements services available to the wider community;
- meet the changing needs of veterans and war widows;
- direct payments towards the most needy veterans with the greatest war-caused disability and limited income, with less emphasis on those veterans who are less disabled and who earn or have greater income;
- provide incentives to encourage veterans and their spouses to engage in paid employment;
- define the extent to which monies paid under the scheme are either compensation or income support;
- exempt the compensation element of any payment from taxation and from income or asset testing;
- achieve timeliness, consistency and equity in claim assessment and decision making;

- promote health and encourage veterans to take responsibility for self-help measures rather than focusing on disability and enhancement of benefits;
- encourage participation and involvement by veterans and war widows in publicly available health and welfare schemes that meet their needs; and
- ensure legislative and administrative simplicity (Baume 1994, pp. 10–11).

CONCLUSION

4.27 The Committee notes that the early and recent political statements of parliamentarians about the system reflect the intent of the Australian people. It also takes cognisance of analyses put forward by Toose and Baume. The Committee accepts the general thrust of most of the principles stated by Toose and Baume; it has concerns over the expression of some, but notes that they reflected the issues facing those reviews.

4.28 The Committee regards many of the principles espoused by Toose and Baume as, in essence, subsidiary ones that include particular repatriation benefits granted, but derive from a higher-level core principle.

4.29 The Committee has taken the following as its expression of the essential core principle of the repatriation system:

The Government, in expression of the nation's debt of gratitude, shall provide a beneficial level of compensation and support to veterans and their dependants for incapacity or death resulting from service in the armed forces during times of war or of conflict or in warlike and non-warlike operations.