

# **Report of the Review of Veterans' Entitlements**

**January 2003**

Commissioned by the Minister for Veterans' Affairs,  
the Honourable Danna Vale MP

Conducted by the Honourable John Clarke QC (Chairman)  
Air Marshal Doug Riding AO DFC  
Dr David Rosalky

# **Report of the Review of Veterans' Entitlements**

**Volume One – Introduction**

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# REVIEW OF VETERANS' ENTITLEMENTS

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6 January 2003

The Hon Danna Vale MP  
Minister for Veterans' Affairs  
and Minister Assisting the Minister for Defence  
Parliament House  
Canberra ACT 2600

Dear Minister

On 8 February 2002, you announced the establishment of an independent review of perceived anomalies in access to veterans' entitlements and of levels of benefits available to disability pensioners.

I am pleased to present the report of the Review conducted by Air Marshal Doug Riding AO DFC, Dr David Rosalky and myself.

Yours sincerely



The Hon M J Clarke QC  
Chairman

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# FOREWORD

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In February 2002, I and my colleagues, Air Marshal Doug Riding AO DFC and Dr David Rosalky, were appointed by the Minister for Veterans' Affairs, the Honourable Danna Vale MP, to undertake this Review of Veterans' Entitlements. The task proved to be much greater and more complex than any of us had imagined.

Following an initial briefing period, we consulted extensively with members of the ex-service community. This involved many meetings between May and September 2002, and consideration of over 3000 submissions covering a wide range of issues. This Report is the result of the many issues raised in those submissions.

My colleagues and I felt it necessary to include a considerable amount of background material in this Report, so that the reader might better understand the way the Australian repatriation system has developed. We also felt it useful to examine the intentions of parliamentarians when they made changes to the system over the past 90 years. It became very clear to the Committee that there is much misunderstanding about the system and the applicable legislation. This is not surprising, however, in view of the complexities of both.

The Report is presented in three volumes. The first covers background information, the second addresses eligibility issues and the third, pension issues. There is some deliberate duplication across chapters. The intention is to allow the reader to read on a particular issue of interest within one chapter without having to read across multiple chapters to obtain the information necessary to understand the Committee's position.

On most issues, we have tried to give not only our views, but also the arguments and reasoning behind them. We have attempted to take a principled approach to the issues. It is natural that some recommendations will please and some will disappoint. We trust, however, that the reader will understand the logic behind the decisions we have taken.

The submissions contained an enormous number of issues, concerns and proposals for change. The Committee has been unable to deal with them all in

the time available. We focused on the major issues, of which there were many, in the hope that our analyses of those issues would produce the greatest benefit to the veteran community and the Government.

I take this opportunity to thank the departments of Veterans' Affairs, Defence, and Family and Community Services. Staff of these agencies, together with the members of the Repatriation Commission, greatly assisted the Review.

My thanks also go to my fellow Committee members, Air Marshal Doug Riding and Dr David Rosalky, who brought a great deal of learning and experience to the Review. The three of us worked closely with the staff of the Secretariat and to them we owe a great debt. Their dedication and perseverance with the task at hand was admirable, and I very much appreciated their personal support. While it is not always desirable to single out one person, I make special mention of the Head of the Secretariat, Neil Bayles, whose knowledge of the veteran system and his enthusiasm for the task were outstanding.

Finally, the Committee thanks members of ex-service organisations and the wider veteran community. I was most grateful for their courtesies and their contribution to the Review. They hold a very special and highly respected position in Australian society that is well deserved. We should continue to hold them in high esteem.

The Hon M J Clarke QC  
Chairman

# ACKNOWLEDGMENTS

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A number of individuals and organisations have provided help and assistance to the Committee to undertake the Review.

The following members of the Review Secretariat were drawn from both the Department of Defence and the Department of Veterans' Affairs (DVA):

Neil Bayles  
Pat Clark  
Dick Freeland  
Rosemary Garvan  
Justin Harding  
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Shauna Spulak  
Tony Watson  
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The Repatriation Commission and DVA supported the Review in a range of different ways. Many sections provided comprehensive subject-matter briefing, including members of the Compensation and Support and Health Divisions. Additional support from DVA National Office was as follows:

- statistical information from the Business Information Section;
- financial and budget information from the Resources Branch;
- assistance in relation to legal and contractual matters from the Legal Services Branch and the Contracts Advisory Unit;
- website support from the E-Solutions Section;

- guidance and assistance in relation to the production of the final report from the Publications and Forms Unit;
- research assistance, and the coordination of many interlibrary loans, by the Library;
- assistance with promotional activities by the Media and Communications Section; and
- staffing and office accommodation assistance by the Personnel and Services Section.

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The Department of Defence and the Australian Defence Force provided a number of briefings and research assistance to the Committee. The Committee is also very appreciative of the hospitality and information provided during the tour of the Special Air Service Regiment base at Swanbourne, and for the inspection of HMAS Waller in Adelaide. The Psychology Research and Technology Group from Defence Personnel Executive provided valuable input to the Review.

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A number of consultants were engaged to provide services to the Committee and its Secretariat. The assistance given by the following companies is appreciated:

- Secretariat Australia Pty Ltd for submission processing services and advisory services on the conduct of the Review and the preparation of the Report;
- Buchan Communications Group for advisory services relating to communications and public relations activities;
- Ces White for research services;
- Graham McKenzie-Smith for historical research services;
- Acumen Alliance for economic and cost modelling services; and
- Biotext Pty Ltd for editing, typesetting, indexing and Internet production of the Review Report.

The Committee is very appreciative of the contribution made by the veteran community, including ex-service and other organisations. The information

provided by these groups, and the discussions with representatives, greatly assisted deliberations on the many issues examined.

Finally, we would like to express our special thanks to those many people who shared with us, in their submissions or at public meetings, often with great difficulty, their personal circumstances and experiences. They provided the human dimension to our task.

**Executive Summary  
and  
List of Recommendations**

# EXECUTIVE SUMMARY

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## INTRODUCTION

1. In February 2002, the Hon John Clarke QC (Chair), Air Marshal Doug Riding AO DFC and Dr David Rosalky were appointed to the Committee to undertake the Review of Veterans' Entitlements. The Committee was asked to consider perceived anomalies in access to veterans' entitlements and levels of benefits and support provided to veteran disability pensioners.

2. The Committee examined the history and development of the Australian repatriation system, the types of benefits currently available and other Australian Government community support systems.

3. The Committee concluded that the repatriation system has been, and remains, a major institution of social justice in Australia. It noted that the system does not sit in isolation, but interacts with other government assistance programs. The benefits and services available under the repatriation system need to be viewed in the light of the range of assistance available to veterans and their families as part of the general community.

4. Following consideration of the underlying principles and rationale of the repatriation system, the Committee developed the following expression of what it considered to be the essential core principle of the 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.

5. In consideration of the issues put before it, the Committee sought to uphold this core principle and maintain the tradition of generosity, balanced by fairness, that has underpinned the system.

6. The Committee was conscious of the concurrent development by the Government of the proposed new Military Compensation Scheme and the Government's policy objectives for that scheme. However, the Committee remained focused on its own terms of reference.

7. During the course of the Review, the Committee consulted widely with the veteran community, particularly ex-service organisations, and held many public and private meetings. The Committee accepted 3076 written responses to its call for submissions, and rejected a further 237 that fell outside the terms of reference. The Committee has attempted to address as many as possible of the issues submitted, but has not been able to respond to every item.

8. In assessing the potential costs of its recommendations, the Committee examined current and potential numbers of veterans and Department of Veterans' Affairs (DVA) beneficiaries, as well as expenditure levels. The characteristics of the veteran population, the levels of claims activity and DVA's expenditure help to quantify the concerns of the veteran community and some of the policy issues facing the Government that are the subject of this Review.

9. Notwithstanding common perceptions, the Committee's analysis showed that the real levels of expenditure on all veterans' pensions and related benefits, including health care, will not reduce for some years, despite the decline in numbers of surviving entitled World War II veterans.

10. A full list of the Committee's recommendations is provided immediately following this Executive Summary. The Report gives the reasoning behind the Committee's conclusions and recommendations.

11. The following are considered to be the key issues and associated recommendations of this Review.

## OVERVIEW

12. The Committee has made 109 recommendations across the range of issues it considered. The substantive issues are covered in full in Volumes 2 and 3. Each volume contains a summary of the recommendations for that volume and a discussion of the financial implications of those recommendations. Volume 1 contains background information to the Review.

13. The Committee has made several recommendations for the extension of the *Veterans' Entitlements Act 1986* (VEA) to cover different groups of veterans, but has also recommended against extensions of benefits in certain cases (see Volume 2). The Committee has estimated that its recommendations in this area will cost the Commonwealth Budget in the order of \$175 million over four years.

14. The Committee has recommended a more equitable and rational disability compensation pensions structure (see Volume 3). Modelling of this structure indicates that it may cost in the order of \$200–275 million over four years, depending on assumptions about the take-up rate by veterans of the new scheme. The Committee has also recommended a package of additional benefits for war widows (at about \$105 million over four years), a package for extremely

disabled veterans (at about \$20 million over four years) and an increase in the funeral benefit (at about \$25 million over four years). Furthermore, the Committee has recommended a new, integrated and comprehensive rehabilitation program for veterans. The Committee's recommendations in Volume 3 of the Report will cost in the range of \$350–425 million over four years.

15. The Committee believes that its recommendations, if accepted by Government, would provide a fairer and more equitable repatriation system. The total cost of all its recommendations is in the range of \$525–600 million over the first four budget years.

## **ISSUES RELATING TO ELIGIBILITY — VOLUME 2**

### **Background**

16. The eligibility provisions in the VEA have evolved from those created after War World I as Australian forces became engaged in subsequent wars and conflicts. The extension of benefits for peacetime Australian Defence Force (ADF) service in 1972, although intended as an interim measure pending a new military compensation scheme, substantially widened eligibility. Furthermore, there has been a need to modify the legislation to take account of Australia's involvement in various peacekeeping and peace making or peace enforcement activities overseas, which have been regarded as more dangerous than peacetime service in Australia.

17. Although many legislative measures were consolidated with the passage into law of the VEA in 1986, the eligibility provisions today remain complex and partly reflect historical concepts that are difficult to apply. The introduction of the 'warlike' and 'non-warlike' service classifications in 1994 was an attempt to bring some consistency to future classifications of service. However, it has resulted in calls for review of pre-1994 service using the newer system and a widening of definitions to include service within Australia.

18. Over many years, particular groups of service personnel and civilians have argued that their service or employment should be recognised as eligible war service or defence service and/or qualifying service under the VEA. Some of these groups are not currently covered by the VEA, while some already have some VEA entitlements but not qualifying service, and so are seeking the extension of qualifying service to enable them to access the service pension and the Repatriation Health Card – For All Conditions (Gold Card).

19. The Government responded to these concerns by including in the Review's terms of reference the requirement for the Committee to 'review and make recommendations on the current policy relating to eligibility for access to

*Veterans' Entitlements Act 1986* (VEA) benefits and qualifying service under the VEA'.<sup>1</sup> The Committee was specifically tasked to:

- consider the historical context and current interpretation of the provisions for qualifying service having regard to relevant parliamentary statements and the position reached by the courts;
- consider perceived anomalies with eligibility for access to VEA benefits and qualifying service that might be raised by some World War II veterans, veterans of the British Commonwealth Occupation Force in Japan, Australian participants in British atomic testing in Australia, Australian service personnel engaged in counter-terrorist and special recovery training, and other interested parties; and
- recommend possible changes to address any anomalies and to facilitate the equitable and efficient administration of the VEA.

20. Volume 2 of this Report addresses these parts of the terms of reference. The Committee received 2379 submissions on issues that raise, in the current criteria for access to VEA benefits, perceived anomalies created by the evolving and complicated eligibility provisions. Submissions fell into two broad categories.

21. The first category comprises those veterans whose service is covered by the VEA, but is excluded from being qualifying service by the current definitions. Examples in this category are:

- World War II veterans who served only in Australia outside the areas or the times specified as qualifying service;
- veterans of the British Commonwealth Occupation Force (BCOF) in Japan; and
- veterans with post-World War II service.

22. The second category comprises those armed services personnel who claim that their service should be covered by the VEA because they consider it to be beyond normal peacetime service. Participants in the British atomic tests were an example, as were those who have served in Australia in the Special Air Service Regiment (SASR) Counter-terrorist and Special Recovery (CTSR) group.

23. The issues raised in submissions have been grouped into categories, with each category the subject of a separate chapter in this volume. Each chapter provides the background to the issue, the history of relevant legislation, the issues raised in submissions and the Committee's conclusions and

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<sup>1</sup> Terms of Reference, Review of veterans' eligibility provisions and benefits for totally and permanently incapacitated and other veteran disability pensioners, issued by the Minister for Veterans' Affairs, the Hon Danna Vale MP (see Appendix 1).

recommendations. A summary of the significant conclusions and recommendations of the Committee is given below.

## **Qualifying Service — World War II**

24. The Committee notes that the distinction between qualifying service and other service in World War II has been the cornerstone on which the service pension and related VEA benefits have always been based. There is considerable support for maintaining the distinction between veterans who suffered the rigours of service that exposed them to harm from enemy forces and those who did not. There is widespread acceptance of the view that those veterans who were exposed to harm from enemy forces have been affected by that service in intangible ways. They should therefore be provided with additional assistance where they cannot work due to age or disability and do not have sufficient resources to provide a standard of living comparable to community norms. The Committee firmly holds that this distinction should be maintained. Thus, the Committee considers that qualifying service, and the benefits that flow from having rendered such service, should not be extended to all veterans of the Australian armed services who served in World War II as a form of recognition of their service.

25. In reviewing the eligibility provisions for qualifying service in World War II, the Committee found that the first part of the qualifying service test, which requires a veteran to have been serving in operations against the enemy, is relatively straightforward and adequately understood. However, the second part of the test, which requires that the veteran must have incurred danger from hostile forces of the enemy, is ill understood, and this lack of comprehension has led to considerable inconsistency in Administrative Appeals Tribunal (AAT) decisions. In addition, the operation of the Repatriation Commission's policy in the past has led to veterans who served overseas or in Australia's coastal waters being greatly advantaged against those who are now required to satisfy the incurred danger test.

26. The Committee believes that the 'incurred danger' element of the statutory test has been applied very narrowly in case-by-case examinations of claims because it involves the difficult concept of objective danger. In applying the incurred danger test, the AAT appears to have had regard only to immediate or imminent threat and has failed to consider whether service personnel had been subject to a more general risk from enemy forces, such as would have been identified by the military authorities at the time.

27. The Committee also concludes that policy has no place in determining qualifying service eligibility. The application of blanket policies of the Repatriation Commission, in which veterans have been regarded as having qualifying service even when they clearly did not experience any danger from

hostile enemy forces, is not only invalid in law but undermines the principle on which qualifying service benefits are based. On the other hand, the Committee notes the over-restrictive policy regarding service in Northern Australia and has concluded that such service should be regarded as qualifying service during the period 7 December 1941 to 7 September 1944. Similarly, service in Northern Australia, including the Torres Strait Islands, for any period between those dates should also be regarded as operational service under the VEA.

28. A significant number of submissions called for extension of qualifying service to those with dangerous, hazardous or arduous service (for example, aircrew instructing, parachute instructing, mustard gas and malaria experiments, and service in remote areas of Australia where climatic conditions were harsh and living conditions rudimentary). Service that is dangerous, arduous or hazardous is not necessarily qualifying service. Qualifying service must be assessed having regard to the task (service in operations against the enemy) and the risk of harm from enemy forces. The Committee accepts that many World War II veterans had service that was dangerous, hazardous or arduous. Provision is already made in the VEA for compensation, such as the disability pension and health care benefits, to be provided for any injury, disease or death related to such service. Those who had service that was dangerous, arduous or hazardous, but who were not tasked to an offensive or defensive role that exposed them to danger from hostile forces of the enemy, would not meet the qualifying service requirements.

29. The Committee also considers that there is no basis for extending qualifying service in World War II to service after the cessation of hostilities on 29 October 1945, the date prescribed in the VEA. Service after the cessation of hostilities was neither service in operations against the enemy nor service in which danger from hostile forces of the enemy was incurred.

## **Post-World War II Service**

30. The provision of repatriation benefits for operations involving the armed forces of Australia since World War II has not been done on the same basis as for operations in World War I and World War II. This difference is based on the reasoning that, unlike the world wars, subsequent conflicts have not involved formal declarations of war requiring mass mobilisations of troops. With the exception of service by national servicemen in Vietnam and areas of South-East Asia, deployments have comprised permanent members of Australia's armed forces who receive remuneration as compensation for serving in particular types of overseas deployments. Conflicts have also been in localised areas outside Australia, making it easier to define the area of operations.

31. Since World War II, the legislative framework, including the terms that have governed the provision of repatriation benefits, has been modified. The concept used from the end of that conflict was 'allotment for duty' in an operational area during a promulgated period of conflict. This ensured that entitled service personnel were administratively documented as having rendered operational service. As the nature of operational service became more complicated in the post-war period, new terms were progressively introduced to categorise the various types of service, including peacekeeping service, hazardous service, defence service and warlike and non-warlike service. These classifications eventually replaced allotment for duty as a determinant for entitlements under the VEA. Since 1997, the VEA has adopted definitions of warlike and non-warlike service in declaring the nature of service for operational deployments.

32. Drawing upon these contemporary definitions used to determine VEA entitlements, the Committee developed a framework to assess submissions on post-World War II eligibility anomalies. The framework was developed to be prospective, consistent and equitable.

33. Some 129 submissions to the Review related to post-World War II service, excluding service specifically mentioned in the terms of reference, and requested an extension of VEA entitlements or access to the VEA for specific peacetime service.

34. Issues specific to particular conflicts or operations were considered in the following groupings:

- Korea;
- the Malayan Emergency;
- Royal Australian Navy (RAN) service with the Far East Strategic Reserve;
- the Malay–Thai border and Malaya/Singapore;
- Indonesian Confrontation (hereafter referred to as Confrontation);
- north-east Thailand, including Ubon;
- Vietnam; and
- other service in South-East Asia.

35. Issues not directly related to conflicts were grouped as follows:

- reclassification of peacekeeping service as warlike service;
- submissions requesting a reclassification of specific hazardous service as warlike service;
- the establishment of access to the VEA for specific peacetime service; and
- requests for VEA coverage for all peacetime service.

36. In its consideration of submissions about post-World War II service, the Committee identified the following anomalies:

- Operational sorties by the Royal Australian Air Force (RAAF) over the Malay–Thai border in a certain period, particularly by crews involved in supply and leaflet drops, faced a degree of risk similar to that faced by Army personnel who were involved in air dispatch operations at the time and who have qualifying service. Therefore, these RAAF personnel should be retrospectively allotted for duty with entitlement to qualifying service and other benefits under the VEA.
- Under contemporary definitions, service in Malaysia as part of Confrontation would be declared warlike for the purposes of the VEA and accorded qualifying service. The Committee concludes that qualifying and operational service should be extended for service from 16 September 1963 to 16 August 1964 inclusive, for all armed services personnel on the posted strength of units located in the operational area of Malaysia. This would provide extra benefits to these members by allowing access to both disability and service pensions.
- Work by armed service personnel in PNG and certain Pacific islands on World War II explosive ordnance took place up until 1970 and submissions proposed that the risk of personal injury imposed by wartime explosive ordnance warranted extension of qualifying service. The Committee believes that the service does not justify a declaration of warlike service and hence qualifying service. However, in general, the Committee considers that the location, clearing and disposal of enemy wartime explosive ordnance would meet the criteria for non-warlike hazardous service. The Committee recommends that the Department of Defence review this service with a view to making a determination on such activities as non-warlike hazardous service.
- Improvised explosive device disposal (IEDD) personnel perform extremely dangerous tasks protecting the Australian community from improvised explosive devices set by extremists and criminal elements. The Committee believes that no amount of training can cater for the unpredictable nature of such devices and the inherent possibility of harm to the IEDD personnel. IEDD work is thus extremely specialised, hazardous, unpredictable and beyond conditions expected in peacetime. The Committee concludes that IEDD incidents attended by ADF IEDD operators should be declared non-warlike hazardous service under the VEA.
- The Committee found that service in the Berlin Airlift in the environment of the Cold War was dangerous, stressful, arduous and hazardous. The operation encompassed constant threats to allied forces from extreme

weather conditions and by Soviet fighter planes, which were monitoring the air corridors for breaches. It was not uncommon for hundreds of sorties to be flown within these air corridors each day and casualty figures were high. The Committee concludes that service in the Berlin Airlift should be classified non-warlike hazardous service. However, the Committee could not justify a warlike classification of this service.

- Submarine special operations conducted from the late 1970s to the early 1990s are currently classified as peacetime service. Submissions argued that these operations should be declared either warlike or hazardous service. The Committee held extensive deliberations regarding the nature of submarine special operations with the authors of submissions and senior Defence officials. Advice from the Department of Defence indicates that submarine special operations were not and should not be classified as warlike service. Nonetheless, the Committee concludes that the current definition of non-warlike hazardous service reflects the operational and environmental risk associated with submarine special operations.

37. In considering the many other issues raised in submissions, the Committee either could not justify a change in the current classification of service or referred the issue to the Department of Defence for further consideration.

## **British Commonwealth Occupation Force in Japan**

38. The first component of BCOF arrived in Japan in February 1946, well after the formal cessation of the period of hostilities for World War II on 29 October 1945. It was raised for an occupation task and cannot be seen as a mop-up operation of World War II. While BCOF service occurred during a technical state of declared war, it was not a continuation of World War II but a consequence of it and therefore should be viewed as a separate military operation to occupy and pacify Japan.

39. It is clear that the role of BCOF, in the early stages, was to enforce the peace and that the use of force to do so was authorised. At the time of deployment there was some uncertainty as to what action the Japanese might take. It was in this context that planners identified the need for BCOF to be structured to enable the force to engage in conventional combat operations against an armed adversary.

40. The Committee believes that the nature of BCOF service justifies reclassifying that service up to and including 30 June 1947 as warlike service. The Committee is also of the view that the nature of BCOF service changed to non-warlike in July 1947, when the majority of the force left Japan and families of remaining service personnel arrived.

41. The Committee recommends that service with BCOF be declared warlike from 21 February 1946 to 30 June 1947, with access to qualifying service including the service pension and Gold Card. Service from 1 July 1947 to 30 June 1951 should be declared non-warlike peacekeeping.

## **British Atomic Tests**

42. The Committee believes that the series of British atomic tests were a unique, extraordinary event in Australia's history. Atomic devices were exploded in Australia, with Australian forces potentially exposed to levels of radiation beyond what would today be considered safe levels. By any reasonable, commonsense measure, service in connection with the tests must be regarded as involving hazard beyond that of normal peacetime duties. On the basis of what is now known about the risks of cancers from ionising radiation and the inadequacies of some of the precautions taken in the conduct of the tests, individuals were put at risk of contracting disease from their exposure.

43. The Committee considers that service with the British atomic tests should be assessed as non-warlike hazardous service for the purposes of the VEA. A declaration of non-warlike hazardous service would provide the armed services personnel who participated in the testing program with immediate and free health care for all cancers and posttraumatic stress disorders whilst claims for compensation are made and determined under the VEA, and thereby address many of their concerns. The recommendation, if enacted, would provide the armed services participants with access to the compensatory provisions of the VEA under the more generous reverse criminal standard of proof.

44. The Committee notes the development of a nominal roll of Australian atomic test participants and the commissioning of a cancer and mortality study. However, it is apparent that many of the people whose names are currently on the preliminary roll may have left test sites before any tests were undertaken. The Committee also notes the advice from DVA that it is aware of the concerns regarding the accuracy of the nominal roll and that work is continuing to refine it further. The Committee also notes that a reconstruction of dosage estimates is proposed. These matters need to proceed quickly and the Government should assist with additional resources if necessary. The Government should also consider thoroughly addressing the concerns of the atomic test participants about access to records.

45. The Committee believes that it is inappropriate to declare service in the British atomic tests to have been warlike, because that service does not meet the criteria of being an activity required to pursue specific military objectives, such as a declared war using conventional combat operations against an armed adversary.

## **Counter-terrorist and Special Recovery Operations**

46. All Special Air Service Regiment (SASR) personnel, including those with service in the counter-terrorist and special recovery (CTSR) group, are entitled to coverage under the Military Compensation Scheme during their training, and only become entitled to coverage under the VEA when deployed on operations overseas. Submissions to the Committee from former members of the SASR claimed that the Military Compensation Scheme is not as generous as the VEA and, for that reason, the VEA should encompass counter-terrorist (CT) training.

47. Submissions also argued that SASR training is much more hazardous than other training and that it should be treated as operational service. The Committee finds that, although part of the training of the SASR, and in particular of the CT squadrons, is clearly hazardous, and there have been deaths and injuries, hazardous military training also takes place in other ADF units, including combat pilots, submariners, parachutists and clearance divers. Military training has never been regarded as operational service or hazardous service for the purposes of the VEA. For this reason, the Committee believes that no training in the ADF, including the SASR, should be declared non-warlike hazardous service.

48. It has been submitted that, in the past, warlike, non-warlike or hazardous service has only been declared for service outside Australia in support of, or in preparation for, peace enforcement, peacekeeping or peace monitoring operations. This is because military authorities have consistently taken the position that service within Australia could not be considered to be warlike or non-warlike. In the opinion of the Committee, there is nothing in the VEA that supports the proposition that warlike or non-warlike service can only be rendered outside Australia. In the context of recent terrorist attacks, the Australian community has been put on notice that incidents like the Bali bombing, or much worse, might occur in this country, and the Committee can see no reason why counter-terrorist operations, in the event of such an attack and call-out of the CT force by the Government, should not be declared to be warlike service.

## **Prisoners of War in Europe and Korea**

49. The Committee received a number of submissions from prisoners of war in Europe (POWs (E)) and prisoners of war in Korea (POWs (K)) or their war widows. The submissions argued for compensation payments for these veterans on the basis that they experienced similar levels of deprivation to POWs in Japan (POWs (J)), and that there is stigmatisation of POWs (E) and POWs (K) in the community for not receiving the payment.

50. In the 2001 Budget, the Government announced that an ex-gratia payment of \$25,000 would be made to all surviving POWs (J), to civilians interned by Japan during World War II, or to their surviving widow/ers. As some of these payments were authorised under regulations made under the VEA, the Committee has accepted and considered the submissions relating to POWs (E) and POWs (K) as being within its terms of reference. The \$25,000 ex-gratia payment was made to POWs (J) because of the unique suffering and hardships they endured as a group over and above those experienced by other POWs, and the payment was not intended as an additional benefit to all POWs.

51. On the basis of government intentions behind the \$25,000 payment to POWs (J), the Committee holds the view that an ex-gratia payment should not be made to all surviving Australian POWs (E), civilian detainees and internees who were held by the German-Italian forces during World War II, or to their surviving widow/ers. The Committee considers that a payment to POWs (E) would not fulfil the Government's intent, articulated when the ex-gratia payment to POWs (J) was legislated.

52. However, the Committee believes that there is significant evidence that the treatment and circumstances experienced by POWs (K) as a group were similar in a number of respects to those experienced by POWs (J). Therefore, it is the Committee's view that an extension of the \$25,000 one-off payment to POWs (K) would be consistent with the original intent of the Government's one-off payment to POWs (J). This payment should apply to all surviving POWs (K) and to surviving war widows of POWs (K).

## **War Widows' Eligibility**

53. The Committee received 169 submissions on various issues related to war widows' entitlements. These included issues about the adequacy of the war widow's pension and the income support supplement, which are discussed later in this Executive Summary.

54. The main issues raised about access to the war widow's pension concerned extension of that pension and/or the Gold Card to:

- widows of veterans regardless of whether the veteran's death was service related;
- widows of veterans in receipt of, or entitled to, the intermediate rate at the time of the veteran's death;
- widows of veterans who married another person after the veteran's death but who never claimed or received the war widow's pension prior to that marriage; and
- widows who were divorced from a veteran prior to the veteran's death.

55. The Committee concludes that it would be contrary to the compensatory principle on which the war widow's pension is based to provide it to all widows in the absence of a connection between the veteran's death and his eligible service.

56. While widows of intermediate rate veterans do not qualify for the war widow's pension automatically, they have a right to claim the pension on the basis that the veteran's death was related to eligible service under the VEA. The Committee considers that the fact that the VEA enables these widows to make a claim, and to receive the pension where the veteran's death is accepted as related to eligible service, makes adequate provision for widows of intermediate rate veterans.

57. Further, the Committee concludes that there should be no change to the current provisions of the VEA that extinguish the right to claim the war widow's pension after marriage to another person subsequent to the veteran's death. The Committee also concludes that the VEA should be amended so that a widow who enters into a marriage-like relationship after the veteran's death is treated in the same way as a widow who marries after the veteran's death.

58. The Committee also believes that the war widow's pension should not be made available under the VEA to former (divorced) spouses of veterans.

## **Civilians**

### **Eligibility**

59. Civilians are generally covered under the VEA only if a determination is made by the Minister for Veterans' Affairs deeming them to be members of the ADF for the purposes of the Act or parts thereof. The Minister also has the power to determine which provisions of the VEA should apply to a particular individual or group. This is a discretionary provision that gives the Minister wide powers. The Committee notes that attachment to the Australian armed forces has been the basis on which previous determinations for civilians have been made under the VEA.

### **Australian Women's Land Army**

60. The Review received five submissions in relation to benefits for members of the Australian Women's Land Army (AWLA) during World War II and had meetings with two branches of the Association representing those women. The underlying theme behind these submissions was that members should be provided with recognition for their contribution to the war effort through provision of compensation for injury or disease related to their service, and/or the Gold Card.

61. The Committee is satisfied that members of the AWLA were not attached to the armed forces, and it considers that the work they did in support of the war effort, as part of a civilian labour corps, did not warrant attachment. On this basis, the Committee concludes that VEA benefits should not be extended to members of the AWLA who served in that capacity during World War II. The Committee is concerned that many AWLA members are now suffering from ill health, but that there appears to be no system of compensation currently available to them. The Committee considers that the Government should investigate this further.

### **Civilian Surgical and Medical Teams in Vietnam**

62. Teams of civilian doctors and nurses were employed under contract by the then Department of External Affairs as part of Australia's contribution to a South-East Asia Treaty Organisation aid program. The Review received 10 submissions supporting extension of VEA benefits to this group and also met with some individuals and organisations who have sought VEA coverage on the same basis that it has been provided to Vietnam veterans of Australia's armed services.

63. The Committee concludes that the civilian surgical and medical teams were part of the civilian aid effort in South Vietnam, not the military effort. The teams were not attached to, and not under the command of, the Australian armed services, and their work did not warrant such an attachment. The Committee therefore recommends against extension of VEA coverage to the members of the teams. There may, however, be some team members who were on occasion called upon to relieve or assist armed forces doctors and nurses in military medical facilities; these members already have the opportunity to present their cases for consideration.

64. The Committee believes that some continuing dialogue between representatives of the teams and Comcare may be necessary to promote awareness of Comcare entitlements and procedures amongst those who have not claimed, and to resolve any remaining difficulties in access to compensation benefits under the *Safety, Rehabilitation and Compensation Act 1988* and its predecessors.

### **Merchant Mariners serving on MV Jeparit and MV Boonaroo**

65. The Review received five submissions concerning merchant mariners who served on MV Jeparit and MV Boonaroo on voyages to Vietnam before the ships were commissioned by the RAN. These submissions sought the same access to the VEA as granted to mariners who served on these ships in voyages to Vietnam under Navy command.

66. The Committee appreciates that the tasks and objectives of the merchant mariners serving on MV Jeparit and MV Boonaroo and those of the RAN ratings on those vessels were essentially the same (that is, the transportation of military supplies and equipment). It also recognises that those tasks and objectives did not change when the RAN commissioned the ships. The question for the Committee is whether merchant mariners who served on MV Jeparit and MV Boonaroo were in any sense attached to, and under the command of, the armed services. The Committee believes that they were not, and therefore cannot recommend extension of VEA coverage to them. The Committee notes that these mariners were and remain entitled to the civilian workers' compensation and rehabilitation conditions relevant to their employment in these vessels.

### **British, Commonwealth and Allied Veterans**

67. The main issue raised in submissions from British, Commonwealth and allied (BCAL) veterans and mariners was the extension of the Gold Card to those of them with qualifying service. Submissions sought the Gold Card on the same basis as that on which it was extended in 1999 to veterans of the Australian armed services and Australian mariners with qualifying service in the period of hostilities in World War II.

68. Other issues raised by BCAL veterans included:

- extension of the disability pension and associated compensatory benefits;
- removal of the strictures of the domicile test, which prevent some BCAL veterans who were minors at the time of their enlistment from being considered as Australian veterans under the VEA; and
- extension of qualifying service benefits to several groups of BCAL veterans currently ineligible.

69. The Review received a significant number of submissions from BCAL veterans and mariners advocating the extension of the Gold Card to those with qualifying service at age 70. Their arguments are outlined in the next section, dealing with the Gold Card.

70. The Committee accepts the general principle that the Government's responsibility for BCAL veterans and mariners does not extend to providing compensatory benefits, such as the disability pension and health care benefits, because provision of such benefits remains the responsibility of the government of the nation under which those veterans served. The Committee therefore concludes that extension of VEA disability compensation and health care benefits to all BCAL veterans and mariners is not supportable.

71. The Committee has also taken note of claims that compensatory benefits like the disability pension are sometimes not available from the country in whose forces a veteran served and, in some cases where they are available, they may be inadequate when compared with VEA compensatory benefits. The Committee does not believe that any unavailability of, or inadequacy in, the benefits provided by the country in whose forces the veteran enlisted is a justification for extending access to compensation benefits to all BCAL veterans and mariners. The VEA was never intended to be used as a top-up for less generous benefits provided by other nations.

72. The Committee considers that BCAL veterans who enlisted under the age of 21 should not be disadvantaged in terms of access to VEA benefits by virtue of a common law rule that does not recognise them as adults able to establish a domicile of choice until they reached the age of 21 years. To overcome this restriction, the Committee recommends a definition of domicile be inserted into the VEA that is specific to the provisions of the Act.

73. The Committee considers that those Commonwealth veterans whose service was confined to their country of enlistment during a period of hostilities should have the opportunity to have their qualifying service eligibility considered using the same test that applies for service outside the country of enlistment. The Committee therefore concludes that the VEA should be amended to allow those British and other Commonwealth veterans with service only within the country in whose forces they enlisted to be considered as having rendered qualifying service if they meet the same requirements that apply for service outside the country of enlistment. This will include British veterans who served only in the United Kingdom during World War II.

74. The Committee also concludes that the service pension and other benefits available to BCAL veterans with qualifying service should not be extended to service by BCAL veterans in wars or warlike conflicts in which the Australian armed services were not engaged.

## **Gold Card**

### **Principles for Provision of the Gold Card**

75. The terms of reference required the Committee to examine issues relating to access to benefits under the VEA. Submissions to the Review clearly show that the single most sought-after benefit under the Act is access to the Repatriation Health Card – For All Conditions (Gold Card). The Committee considered that this issue fell under the part of the terms of reference relating to access to VEA benefits.

76. The Committee notes that the means-tested service pension was originally introduced as a ‘burnt-out digger’s’ pension and that qualifying service has been the criterion for the grant of the pension. It accepts that this group should continue to be provided with additional means-tested benefits as an acknowledgment of the intangible effects of their war experience. However, the recent extensions of Gold Card entitlement to veterans with qualifying service irrespective of means has engendered qualifying service with an additional significance – in a sense, as a reward for serving in a theatre of war. The Committee considers that these extensions of eligibility for the Gold Card were inconsistent with a needs-based approach and are at odds with most past extensions of Gold Card benefits.

77. The Committee concludes that the primary purpose of provision of the Gold Card to veterans of the Australian armed services is to provide health care benefits to veterans with medical need due to severe service-related disablement and to veterans in financial need who have qualifying service. The Committee believes that any future extension of the Gold Card should be based on whether the veteran has qualifying service and is in financial need. The Committee does not believe that there are any grounds for providing the Gold Card purely as a reward for, or in recognition of, service in the Australian armed services.

78. With respect to veterans who already have a Gold Card because they are 70 years or over and have qualifying service, the Committee appreciates that it is now not possible to impose a means test on their eligibility for the card. However, on principle, the Committee considers that post-World War II veterans with qualifying service who have not yet turned 70 and who do not qualify on other grounds should only become eligible for the Gold Card at age 70 if they satisfy a means test.

79. Out of a total of 2742 submissions, 1316 submissions were received commenting on some aspect of Gold Card eligibility. The submissions on the Gold Card dealt with the following groups:

- veterans of the Australian armed services in World War II who do not have qualifying service and do not qualify on other grounds;
- veterans of the Australian armed services who served with BCOF in Japan;
- veterans of the Australian armed services (other than in World War II) who are 70 years of age or older, regardless of whether they have qualifying service;
- widow/ers of veterans who do not qualify for the war or defence widow/er’s pensions;
- partners and carers of veterans;
- disabled adult children of deceased veterans and war/defence widow/ers;

- children of veterans where the children are suffering disability or disease that is claimed to be linked with the veteran's exposure to toxic chemicals whilst on service;
- BCAL veterans and allied mariners; and
- civilians, such as members of the Australian Women's Land Army.

## **World War II Veterans**

80. The Review received 753 submissions about eligibility for the Gold Card in respect of service in the Australian armed services during World War II. The authors of these submissions argued that the Gold Card would be a tangible and practical recognition of their contribution to the war effort and their health care needs in their later years. After considering the submissions, the Committee concludes that eligibility for the Gold Card should be confined to existing groups. It should be noted, however, that some World War II veterans will become eligible for the Gold Card under existing legislative provisions if the Committee's recommendations relating to qualifying service in that war are accepted by the Government.

## **BCOF Veterans**

81. The Review received 62 submissions about eligibility for the Gold Card in respect of service as a member of the Australian armed services with BCOF in Japan. As with Australian World War II veterans, the Committee considers that blanket extension of the Gold Card is not warranted for all who served with the BCOF on the grounds of BCOF service only. However, if the Government accepts the Committee's recommendation extending qualifying service for BCOF service before 1 July 1947, the Gold Card would be extended to those veterans.

## **Post-World War II Service**

82. The Review received a small number of submissions in relation to veterans of the Australian armed services with post-World War II service who do not have qualifying service and who seek the Gold Card and/or other qualifying service benefits. These submissions argued that all veterans of the Australian armed services over a certain age (usually over 70 or over 80) should be provided with a Gold Card.

83. The Committee considers that there are no grounds for extending the Gold Card to all veterans who served in post-World War II operations. Furthermore, it does not consider that the VEA should enable the Gold Card to be provided to post-World War II veterans at the age of 70 solely on the condition that they have qualifying service. The Committee considers that the

Gold Card should be provided to veterans with qualifying service regardless of their age, but only if they are also in financial need. In the Committee's view, the VEA should be amended so that no further grants of the Gold Card are made at age 70 to veterans with qualifying service in a post-World War II operation who are not in financial need.

### **Widows and Widowers who do not Qualify for the War or Defence Widow/er's Pension**

84. The Review received 19 submissions seeking extension of the Gold Card to widows of veterans. Some of these submissions were from veterans who received a Gold Card and whose widows would not automatically qualify for the war widow's pension and the Gold Card. These veterans suggested that their Gold Card should be transferred to their widows. Widows of veterans claimed that the provision of a Gold Card to them would provide continuing recognition of the veteran's service and would also recognise the care that they provided to the veteran, often over many years. Some also referred to their own declining health and the comfort and security that the Gold Card would provide.

85. The Committee appreciates that some widows of veterans, particularly World War II veterans, are now elderly, reliant on a social security pension and in need of assistance with health care services not covered by Medicare. However, the Committee considers that provision of the Gold Card where there is no relationship between the veteran's service and the veteran's death is not in keeping with the philosophy that underpins the VEA.

### **Partners and Dependent Children of Veterans**

86. The Review received 176 submissions calling for extension of the Gold Card to partners, carers and/or dependent children of veterans. Most submissions seeking a partner's Gold Card were in relation to the partners of veterans receiving the special rate disability pension. While many of these submissions suggested provision of the Gold Card, some raised the alternative of providing health cover through the Defence Health Service. The Committee concludes that some health care assistance is warranted for veterans receiving the special rate or extreme disablement adjustment (EDA) who decide to take out private health insurance for their children. In considering what type of health care assistance should be provided, the Committee notes that the Gold Card has consistently been provided only to war and defence widow/ers and the dependent children of the widow/er and the deceased veteran. The Committee proposes that health care assistance should be in the form of a tax-free allowance for special rate veterans (who transfer to the proposed new disability pension structure) and EDA veterans who have dependent children

and who take out private health insurance. While not providing the extent of cover given by the Gold Card, the Committee considers that this type of assistance will better enable the families of certain special rate and EDA veterans to access private health insurance.

### **Disabled Adult Children of War Widows**

87. The Legacy Co-ordinating Council raised the issue of providing the Gold Card to disabled adult children of war widows.<sup>2</sup> The Council argued that the VEA makes no provision for those children but that the *Repatriation Act 1920* did. Legacy argued that most of the war widows caring for disabled adult children were elderly and should not bear this burden alone. Legacy also expressed the concerns of these widows for the fate of their children when the widow dies and their wish to ensure that their disabled children would have the security of Gold Card health coverage afterwards. The Committee recognises that this issue is related to a broader one in the community about the accessibility and adequacy of support available to widowed full-time carers of their disabled adult dependants through a wide network of community programs, Government funded and otherwise. The Committee did not have the time to explore fully the needs of this particular group of carers and their adult disabled dependants, but believes the concern raised by Legacy is worthy of government examination.

### **Disabled Children of Veterans Exposed to Toxic Chemicals**

88. The Review received a small number of submissions that claimed that some children of veterans suffer disability or disease linked to the veteran's exposure to toxic chemicals during his service. The submissions sought monetary compensation and/or health care benefits for the children. The Committee notes that special arrangements are in place under the Vietnam Veterans' Children Support Program to provide health care assistance for the children of Vietnam veterans where those children have been diagnosed with spina bifida manifesta, cleft lip, cleft palate, adrenal gland cancer or acute myeloid leukaemia. The Committee understands that DVA has initiated some research into paternally-mediated birth defects and that further research is being proposed. The Committee did not have the time, resources or expertise to assess whether there was a causal link between a veteran's exposure to toxic chemicals and disability or disease in his children. Consequently, the Committee is unable to make a recommendation on this issue, but notes that the issue is being examined by DVA through properly conducted research.

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<sup>2</sup> Submissions 1358 and 1358a.

## **British, Commonwealth and Allied Veterans and Mariners**

89. The Review received 268 submissions about extension of the Gold Card to BCAL veterans and mariners with qualifying service on the same basis that it is available to veterans of the Australian armed services and World War II Australian mariners. Most submissions were from veterans who served in the British forces during World War II. The Committee considers that the Commonwealth Government, as an employer, has a responsibility to consider first the needs of veterans of its own armed forces and their families. As with other members of the Australian community, BCAL veterans and mariners have access to benefits through Medicare and are eligible for a 30 per cent government rebate on private health insurance. In addition to these benefits, BCAL veterans and mariners may receive a service pension and Pensioner Concession Card benefits or a Commonwealth Seniors Health Card five years earlier than the community norm. They may also qualify for repatriation pharmaceutical benefits through the Repatriation Pharmaceutical Benefits Card (Orange Card) where they have World War II qualifying service and are 70 years of age or over. The Committee is also aware that an extension of the Gold Card to these veterans would be problematic, in that some of them already receive health care benefits for conditions related to their service from the country in whose forces they enlisted. The Committee believes that it would not be within the philosophy of the VEA for the Government to provide Gold Cards to BCAL veterans and allied mariners.

## **Civilians**

90. The Review received 30 submissions in relation to VEA coverage for civilians, some of whom were seeking entitlement to the Gold Card. Submissions from former members of the Australian Women's Land Army, for example, sought extension of the Gold Card for reasons similar to those put forward on behalf of ex-servicewomen of World War II who do not qualify. Civilians sought the Gold Card as recognition for the contribution they made. The Committee does not consider that the Gold Card should be provided purely in recognition of a type of service that a veteran performs. Similarly, the Committee does not consider that the Gold Card should be a means of providing recognition for service by civilians during a conflict in which the Australian armed services were involved. Any extension of the Gold Card to civilians hinges on the broader question of whether particular civilian groups should have access to the VEA. The Committee addressed several of these claims and did not recommend any extensions of the VEA to civilian groups.

## **BENEFITS AVAILABLE TO COMPENSATION PENSIONERS — VOLUME 3**

### **Overview**

91. The Committee's terms of reference for the special rate and other rates of disability pensions required it to:

- document and examine past and current disability compensation pension and related benefits available to veterans under the VEA;
- consider submissions made by interested parties as to the structure and appropriateness of those pensions and benefits;
- consider the extent to which the medical, social and vocational rehabilitation needs of compensation pensioners are being adequately met; and
- make recommendations on possible improvements in benefits and support programs to address any identified deficiencies, including the potential to restructure benefits and programs in order to assist the funding of desired reforms.

92. The Committee considers that the compensation arrangements for veterans should be comparable to those enjoyed by other Australian workers and should include an element of generosity in recognition of the veterans' service to the nation.

93. Most Australian workers' compensation schemes seek to minimise the social and financial impact of work-related disabilities through financial compensation and rehabilitation to assist employees to return to work. Employers have an obligation to provide financial compensation and supply effective rehabilitation. Employees usually have an obligation to participate in suitable rehabilitation and return-to-work programs.

94. By contrast, the repatriation compensation system is heavily oriented towards providing financial compensation for life as well as health care. The current disability pension rate structure encourages dependence on disability compensation support payments and provides relatively little rehabilitation and few incentives to work. Veterans' capacities to accumulate assets, including superannuation, that would help them enjoy a comfortable retirement, are thereby reduced.

95. Rehabilitation to restore veterans to their optimal level of function commensurate with their service-related disabilities, once an important part of repatriation compensation, declined in the early 1970s as special veterans' schemes were absorbed into those serving the general community. General community arrangements did not meet the needs of many veterans and some special arrangements for veterans have been reintroduced in recent years.

96. The Committee has made major recommendations for a revised system of disability compensation that, in line with contemporary military and civilian workers' compensation schemes, gives equal weight to rehabilitation, financial compensation and compensation services. These changes address the concerns of veterans about the long-term adequacy of their financial disability compensation and rehabilitation and will better serve them, their families and the nation, through providing increased benefits targeted to their needs over their lifetimes.

97. The new financial compensation structure recommended by the Committee is a package designed to provide a more rational and equitable compensation system with reduced disincentives and particular incentives for veterans to improve their health rather than depend upon financial compensation for the rest of their lives. It provides more compensation for younger veterans who are unable to work full or part time as a result of their war-caused disabilities, and assistance aimed at helping those who have family responsibilities. The proposed structure provides for reduced benefits post-working age, by which time the financial needs and pressures of raising families have eased.

98. The complementary recommendations about rehabilitation will greatly assist veterans to have a better quality of life, better job opportunities and reduced dependency on financial disability compensation. Veterans' families are also expected to benefit from the recommended rehabilitation arrangements.

## **Special Rate and Other Rates of Disability Pensions**

### **Submissions about the Structure, Levels and Treatment of Pensions and Benefits**

99. Many authors of submissions to the Committee expressed discontent, anger and frustration about the impact on their lives and those of their families of the structure and levels of the special rate and other rates of disability pensions and the related benefits. Another major concern was the treatment of disability pensions paid under the VEA as income for the purposes of age or disability support pensions or social security benefits. The point was strongly made that no veteran chooses to be totally and permanently incapacitated (TPI) and that all would opt for a normal working life in preference to relying on disability compensation and income support payments.

## **Adequacy of the Current Disability Pension Structure and Rates**

### *A Suitable Benchmark for Disability Compensation Payments*

100. The Committee has concluded that the Australian Bureau of Statistics Male Total Average Weekly Earnings (MTAWE) figure is a suitable benchmark for disability compensation payments, noting that this is a generous measure of average earnings across the Australian workforce. The Committee has used this benchmark in assessing claims that the value of disability pensions has been gradually eroded and that the pensions are consequently inadequate to meet veterans' needs.

### *Assessment of Veterans' Benefits Against the Benchmark*

101. Analysis of the special rate on its own against gross MTAWE would be too simplistic and therefore an invalid method of determining the adequacy of benefits. The Committee concludes that, in considering the adequacy of benefits in either the VEA or the social security system, the total benefits available from these complementary sources must be considered. Neither should be considered in isolation. Additionally, the benefits must be compared to wages net of taxation because of the taxation status of the various elements of the package.

102. The Review assessed how the total package of payments made through the special rate and war widow's pensions (including maximum income support pensions) has fared against community wage income over the past 30 years.

103. The total benefit of special rate payments, including maximum service pension, is currently close to or significantly over after-tax MTAWE for a veteran with qualifying service (90 per cent for a single veteran, 115 per cent for a couple), and has remained at this relative level for some years. When other non-cash benefits are included, the total special rate package provides benefits beyond those indicated by income level alone and is better than is indicated by a comparison of the special rate alone to the pre-tax level of MTAWE. The Committee also considers that the general rate, as part of a package of benefits, is appropriate at its current level.

104. The Committee has found no basis for a retrospective adjustment to the special rate to compensate for the reduction in its value as a proportion of the MTAWE since 1941. The arguments advanced for this did not take into consideration significant improvements since 1941 in welfare provision in Australia and in the total package of support for special rate recipients.

105. Overall, the current special rate disability package is broadly adequate when considered over the veteran's lifetime. Despite this, it does not meet the changing needs of recipients and their families throughout their lifetimes, particularly when they are facing the financial challenges of raising a family and

buying a home, although it provides levels of assistance to older recipients that may exceed their needs.

106. The Committee also received submissions about the adequacy of the war widow's pension and it examined movements in that pension against MTAW. It found that there had been some erosion of the income support supplement (ISS), and therefore in the value of the total payments to a war widow. However, payments to war widows, when ISS is taken into consideration, are approximately 30 per cent higher than social security payments to widows. When the total benefits available to war widows are taken into consideration (for example, benefits such as the Gold Card), there appears to be no case for substantial revision of the war widow's pension. However, certain aspects of support for war widows in particular circumstances required review, and these are addressed later in this summary.

## **Recommended Structure for Disability Compensation**

### **The Structure**

107. Earlier reviews of repatriation disability compensation arrangements undertaken by Toose during 1971–75 and Baume during 1993–94 developed approaches based on a uniform level of financial compensation for all veterans, varied only by veterans' degrees of disablement. The Committee regards the uniform approach as the only feasible one for repatriation disability compensation. It believes that a new structure of disability compensation benefits should assume the position recommended by Toose and Baume regarding distinction between compensation elements for non-economic and economic loss. Each of these elements should have its own distinct characteristics, following established principles in workers' compensation schemes.

108. The new structure is necessarily very complex, reflecting the complex nature of the veterans' entitlements environment. The detail is provided in Chapter 30 and Appendix 16. The levels of benefits provided under the new structure depend on a number of factors and these sections of the Report should be consulted for the detail. The following describes broadly the key elements of the proposed new structure.

### **Non-economic Loss Compensation**

109. Under the proposed new structure, compensation for non-economic loss would be inviolable. It would not be subject to taxation or means testing or assessed as income for other VEA or social security benefits, including income support and rent assistance. Compensation paid to veterans would be based on

an assessment of pain and suffering made under the Guide to Assessment of Veterans' Rates of Pensions and paid for life at a percentage of the general rate.

110. As payment for personal loss, non-economic loss compensation would be adjusted twice yearly to reflect increases in the Consumer Price Index, in order to maintain its purchasing power.

### **Economic Loss Compensation**

111. Access to income support payments for disabled veterans of normal working age who cannot work would be replaced with economic loss compensation for loss of income. This would be paid as an income substitute during the normal working life of a veteran. It would be taxable, or paid net of normal tax (not including any otherwise applicable rebates, including the pensioner and low income aged person tax offsets). The gross level (that is, before tax) of this compensation would be 75 per cent of MTAWÉ to a veteran assessed as being unable to work more than eight hours per week, or 37.5 per cent of MTAWÉ if the veteran can work for eight hours but not more than 20 hours per week. It would be adjusted twice yearly to reflect increases in MTAWÉ, in order to preserve parity with community income standards.

112. A portion of the economic loss compensation would be means tested, while the remainder would be free of means testing. The means-tested amount would be equivalent to the single rate of income support pension. The assessment would be applied to the combined incomes and assets of the veteran and his partner (excluding the partner's earnings from personal exertion).

113. The Committee supports the principle that a person should not be compensated twice for the same disability. Payments received for similar purposes, including invalidity superannuation, would be offset dollar for dollar against a veteran's economic loss compensation.

114. A veteran who is receiving compensation for a reduced capacity to work should be encouraged and supported to earn income within the assessed capability. Where practicable, his partner should also be encouraged and assisted to work to supplement family income. A veteran under 65 years of age would be able to earn up to one fifth (if a special rate pensioner) or one half (if an intermediate rate pensioner) of MTAWÉ without impact on the means-tested element of his economic loss compensation. The earnings concession would be separate from the basic income free area for the single service pension, which would apply in assessment of the means-tested component of the economic loss compensation. The partner's income from employment would be disregarded in the assessment of the means-tested element of economic loss compensation.

## **Assistance after Normal Retiring Age**

115. As a veteran who has been paid compensation for economic loss has not, in the main, had the opportunity to contribute to a superannuation scheme, the proposed structure makes provision for a payment at 10 per cent of MTAW (taxable, but paid in gross) in lieu of superannuation lump sums after a veteran's normal working life.

116. Income support, subject to the income and assets tests, would be available to a veteran and partner after normal retirement age as the service or age pension under the repatriation or social security system. Non-economic loss compensation at 100 per cent of the general rate would continue.

## **Assistance for Families**

117. The new pensions structure incorporates several features designed to assist veterans' families.

### *Reduced Means Testing*

118. As mentioned above, intermediate and special rate veterans, as appropriate, would also be encouraged to work, up to a limit, without suffering a benefit reduction. Their partners would be able to supplement the family income by working, without reducing the veteran's payments.

### *Carer's Allowance*

119. A veteran's partner who is unable to work because of a need to care for a veteran under 65 years of age who receives economic loss compensation at the special rate would receive a VEA carer's allowance of \$150 per fortnight. This would be more generous than the carer's allowance available through the social security system and would continue past the veteran's normal retirement age.

### *Non-economic Loss*

120. The Committee recognises that the families of disabled veterans also suffer non-economic loss. The Committee recommends:

- that the partner of a disabled veteran who is unable to work more than eight hours per week receive non-economic loss compensation at the rate of 75 per cent of that received by the veteran during the veteran's normal working life, and that this rate would reduce to 25 per cent at the veteran's normal retirement age; and
- that the partner of a disabled veteran who is unable to work more than 20 hours per week receive 37.5 per cent of the veteran's non-economic loss

compensation, reducing to 12.5 per cent at the veteran's normal retirement age.

121. Children of disabled veterans would also receive non-economic loss compensation if they are under 16 years, or up to 25 years if they are undertaking full-time education, at the rate of either:

- 20 per cent of that received by a veteran unable to work more than eight hours per week; or
- 10 per cent of that received by a veteran unable to work more than twenty hours per week.

### *Orphans*

122. The orphan of a veteran whose death was service related would receive an increased orphan's pension at the rate of 50 per cent of that received by the veteran at the time of death or 100 per cent if both parents are deceased. The benefit would continue up to 16 years of age, or up to 25 years if the child is undertaking full-time education.

### *Private Health Insurance*

123. The Committee recommends a subsidy approximating the difference between single and family rate health insurance for families of veterans who receive economic loss compensation at the special rate under the new structure, who have dependent children and who choose to take out private health insurance.

### *Housing*

124. The Committee understands that many veterans who are unable to work because of their accepted disabilities have difficulty in maintaining housing loan repayments. These veterans could be in danger of losing their homes and a greater part of the equity they have accumulated if they are unable to renegotiate loans. The Committee is aware that lending agencies are reluctant to extend housing loan facilities to a veteran being compensated for inability to work. In the time available, the Committee has been unable to conduct a detailed examination of this complex issue. It recommends the Government consider measures to assist veterans facing housing difficulties, for example through negotiation with lending agencies at the industry level.

### *Tertiary-level Education*

125. The Committee recommends that the Government consider providing additional assistance through the Long Tan Bursary Scheme or a similar scheme

to the children of veterans who receive economic loss compensation at the special rate, to enable those children to undertake tertiary education.

### **Disability Pension Not to be Regarded as Income**

126. As a principle, veterans should receive like compensation for like degree of incapacity, regardless of the qualifying or non-qualifying nature of their service. This principle is reflected in the proposed disability compensation structure, in that economic loss compensation replaces income support payments for veterans under normal retirement age. Also, non-economic loss compensation paid under the new structure would not affect the economic loss compensation payable to the veteran before normal retirement age, or the income support payments made to him from that time.

127. This principle should apply to all VEA disability compensation payments, including those received by veterans who do not transfer to the new structure. Disability compensation payments under either scheme should not be assessed as income in any means tests applied under the VEA or the social security system. This would also resolve two particular anomalies, in that disability pensions are currently exempted fully for the assessment of the service pension, but are counted as income for social security pensions and for the assessment of DVA rent assistance paid in addition to the service pension.

### **Access to Lump Sum Payments in Compensation for Permanent Disabilities**

128. Some ex-service submissions sought access to varying levels of lump sum payments to provide veterans with the capacity to meet substantial capital costs, for example house purchases. The Committee notes the opposition to this proposal from some ex-service organisations and the significant budgetary implications in paying lump sums. The Committee was unable to explore this issue in detail in the available time. The Government might wish to examine this issue further.

### **Outcomes**

129. The recommended structure addresses the shortcomings of current arrangements and provides a more rational basis for the payment of disability compensation to Australia's veterans, and one more in line with modern workers' compensation systems. In practical terms, the proposed structure would mean redistribution of a veteran's economic loss compensation to that period of the veteran's life during which it is most needed.

130. The total package of family benefits under the new structure would represent a significant improvement on current levels. It provides assistance to

families to meet additional needs at crucial times and thus reduces the stresses and strains on the veteran and family that often manifest in reduced health outcomes and family break-ups.

131. There would be an increased range of targeted benefits for veterans with families, including partner and child non-economic loss compensation, a carer's allowance for spouses providing full-time care to veterans, and a health insurance subsidy for special rate veterans with dependent children and who choose to take out private health insurance. Veterans receiving financial compensation at the intermediate or special rate would be assisted to work to supplement their income. In addition, a veteran's partner would be able to earn extra income without reducing the family's benefit, greatly enhancing the rewards of employment.

132. An increase in base compensation rates would be available to a single special rate veteran under normal retirement age. A smaller increase in these base rates would be available to a partnered veteran. However, many additional benefits would be provided for those veterans with families. The large gap between special and intermediate rates in the current disability compensation structure would also be addressed. An intermediate rate veteran would receive significant benefit increases, combined with the incentive to work part time without benefit reduction.

133. While benefits for both special and intermediate rate veterans would be reduced after a veteran's normal retirement age, the total benefit would still be generous, including non-economic loss compensation, a reduced economic loss compensation payment corresponding to superannuation for veterans who had a restricted working life, and continuing eligibility for either the service pension or the age pension.

## **Transitional Arrangements**

134. The Committee recognises that any arrangements for transition to a new disability compensation structure should ensure that existing special and intermediate rate pensioners are not disadvantaged. As the proposed structure is based on a redistribution of benefits between veterans above and below normal retirement age, the Committee believes that transition to the new scheme should be:

- obligatory for existing beneficiaries under 50 years of age; and
- voluntary for existing beneficiaries 50 years of age and over.

135. An existing special or intermediate rate pensioner 50 years of age or over should be given comprehensive advice on the implications of an election to the new structure, and adequate time to consider his position.

136. The new structure would apply to all new grants of special or intermediate rate, regardless of the recipient's age at the time the rate is granted.

137. The Committee proposes that the benefits of the new structure for special and intermediate rate, including the carer's allowance and the private health insurance subsidy, would generally be available only to a veteran and his family if the veteran transfers to the new structure or receives a grant of economic loss compensation under the new arrangements. An exception would be that the extended bereavement payment, recommended by the Committee for widows of veterans in receipt of the special rate at the time of the veteran's death, would be available to all such widows, whether or not the veteran transfers to the new structure.

138. Existing disability compensation conditions, including indexation arrangements, would continue for those beneficiaries who choose not to transfer. Some who choose not to transfer will benefit from changes, such as the disability pension no longer being regarded as income for all VEA and social security benefits.

139. The EDA would not be a feature of the new structure for veterans under 65 years of age at the date of the new legislation. However, a more targeted range of benefits would be available to them. Existing EDA veterans and those aged 65 or more at the date of the new legislation who meet the EDA criteria would be entitled to additional benefits.

140. A veteran currently receiving disability compensation up to 100 per cent of the general rate would be unaffected by the proposed structure.

## **Budget Costs**

141. The Committee's modelling indicates that the proposal would shift substantial budget funding from post-working age veterans to working age veterans through increased payments in the form of non-economic loss and economic loss compensation to working age veterans and additional assistance to their families.

142. The Committee estimates that all elements of the proposed new structure would have a net total cost to the Commonwealth Budget of between \$200-275 million over the first four years. This estimate depends heavily upon the assumptions made about the rate at which veterans would transfer to the new structure. The Committee's financial modelling assumes that a significant proportion of veterans would find the increased short-term benefits of the new scheme attractive.

143. An individual's decision to take up the new structure would depend upon a number of factors, including age, life expectancy, family commitments, whether or not he has qualifying service, and current and future needs. The

Committee expects the new structure to be attractive to many veterans because of its increased benefits for them before normal retirement age and its additional assistance for their families, despite reduced benefits beyond that age when compared to the current system.

144. The proposed structure would remove the present strong incentives to 'move up' to the special rate of disability compensation. Intermediate rate and special rate recipients would be encouraged and assisted to undertake paid part-time employment up to their maximum hours of 20 hours per week and 8 hours per week respectively. These factors would have long-term effects in reducing disability compensation and health care costs. These behavioural effects have not been taken into account in the Committee's modelling of the costs of its new structure, but could lower the costs into the future.

145. Addressing the anomaly concerning the treatment of disability pension as income so that veterans receive like compensation for like degree of incapacity, regardless of the nature of their service, would cost approximately \$75 million over the next four years. This amount is incorporated into the four-year estimate of \$200–275 million for the new structure.

### **Assistance for Extremely Disabled Veterans**

146. Submissions received by the Committee from EDA veterans argued for parity between the EDA and the special rate disability pension. The Committee believes that these claims come about because the special rate pension provides an inappropriate level of benefit after normal retirement age.

147. The existing anomaly would be removed by the new disability compensation structure, in which there will be very little difference in pension outcomes between veterans with and without economic loss compensation on turning 65 years of age. In addition, veterans without qualifying service would be able to receive increased social security benefits because the disability pension would not be treated as income.

148. As the Committee considers that 100 per cent of the general rate is an appropriate maximum for non-economic loss compensation under the proposed structure, it is inappropriate to compensate an extremely disabled veteran by providing a general rate adjustment. Extremely disabled veterans' needs would be better met through the range of targeted benefits described below. Accordingly, the Committee recommends that the EDA not be included in the proposed structure as a distinct level of non-economic loss compensation and that the EDA not be provided in the future for veterans under 65 years of age at the date of amending legislation.

## **Existing EDA Recipients and Veterans Aged 65 Years and Over**

149. All veterans currently receiving EDA would retain their current entitlements. Those veterans aged 65 years and over at the date of effect of any amending legislation would retain their eligibility to claim the current EDA.

150. Because of his generally higher rate of impairment, an extremely disabled veteran has needs similar to or greater than a special rate veteran for assistance in purchasing motor vehicles and parts. The Committee recommends that, in recognition of their physical impairments and corresponding need for mobility, extremely disabled veterans in the groups described in the previous paragraph be granted a Goods and Services Tax (GST) rebate on motor vehicles and parts in line with the rebate for special rate veterans.

151. Because an extremely disabled veteran receives health care at Commonwealth expense for all conditions, private health insurance for his spouse and children acquired at the family rate duplicates the cost of the veteran's health cover. The Committee recommends that extremely disabled veterans who have dependent children and take out private health insurance receive the private health insurance subsidy as proposed for special rate veterans transferring to the new pensions structure.

## **Future Extremely Disabled Veterans**

152. The Committee sees value in a package of assistance for future extremely disabled veterans who would not be receiving economic loss compensation at either the intermediate or the special rate because of age and who would not be able to receive the EDA at 50 per cent of the general rate. These veterans would continue to receive the disability pension at 100 per cent of the general rate and the Gold Card.

153. The Committee recommends that, in recognition of their physical impairments and corresponding need for mobility, these future extremely disabled veterans be granted a GST rebate on motor vehicles and parts.

154. The Committee recommends that an extremely disabled veteran with dependent children who takes out private health insurance also receive the subsidy for health insurance premiums.

155. An extremely disabled veteran living in his own home may be incapable of performing even minor day-to-day household and personal tasks because of his disabilities. The Committee recommends a means-tested home care allowance of \$150 per fortnight to assist future extremely disabled veterans to continue to live in their own homes.

## **Budget Costs**

156. The Committee's recommended additional benefits for extremely disabled veterans will cost approximately \$20 million over four years, although the costs of some of the additional benefits are included in the cost of the new pensions structure.

## **Assistance for War Widows and War Widowers**

### **Changes to War Widow/er's Pension**

157. The current structure of war widow's pensions is an unsatisfactory mix of income support and compensation payments. However, the Committee could not develop a new structure that would reflect a better mix of payments without disadvantaging some widows.

158. A war widow in receipt of the income support supplement (ISS) does not receive additional rent assistance. War widows renting in the private market are among the most needy in the Australian community and the Committee regards this situation as inequitable. The Committee recommends that rent assistance be provided in addition to the existing war widow's pension and ISS.

159. Submissions to the Committee raised the inability of Australian war widows living overseas to claim the ISS because of current VEA provisions requiring Australian residency. The Committee believes that there is some strength to the argument presented to it that these widows are DVA clients who are in needy circumstances and through illness or financial circumstances are unable to travel to and reside in Australia to claim the ISS. Their ties to Australia are established by their VEA entitlements. The ISS is an essential component of the war widow's compensatory package. Subject to the operation of the longstanding government policy that VEA or social security income support claimants must be present in, and resident in Australia, the Committee recommends that war widow pensioners living overseas be allowed to claim and be granted ISS.

160. The Committee is concerned that the former domestic allowance component (\$25 per fortnight) of the war widow's pension has been frozen for many years. It recommends that, in order to maintain the current adequacy of the war widow's pension, this component cease to be separately identified and that it be indexed in the same manner as the rest of the war widow's pension.

161. A war widow of a veteran receiving the special rate disability pension at the time of the veteran's death may suffer short-term disadvantage due to reduced income following the death of the veteran. The widow would need some time to adjust to a reduced level of disposable domestic income. The Committee recommends a transitional fortnightly payment equal to 50 per cent

of maximum rate economic loss compensation (net of tax) for seven fortnights after the veteran's death, reducing to 25 per cent for a further six fortnights. This benefit would be subject to the veteran and partner having satisfied the means test for payment of income support payments immediately before the veteran's death, had income support pensions been payable. The benefit, payable for six months in all, would be paid in addition to the normal bereavement payment of non-economic loss compensation (100 per cent of the general rate).

162. This benefit would also be available to the widow of a special rate veteran who did not transfer to the new structure. As the new bereavement payment would be based on economic loss compensation, the income support bereavement payment would not be available to these widows.

### **Budget Costs**

163. The total cost of these recommendations for increased assistance for war widows and war widowers would be approximately \$105 million over four years.

### **Funeral Benefit**

164. The Committee recommends that, as a more realistic contribution towards the cost of a funeral for a prescribed veteran, the maximum funeral benefit be increased from \$572 to \$1000, at a cost of about \$25 million over four years.

### **Other Issues**

#### **Dual Eligibility under the VEA and the *Safety, Rehabilitation and Compensation Act 1988***

165. Many veterans have eligibility to claim disability compensation under both the VEA and the *Safety, Rehabilitation and Compensation Act 1988* (SRCA). This causes inequitable outcomes amongst veterans with identical disabilities.

166. The Committee recommends that a veteran who has dual entitlement to claim disability compensation under both the VEA and the SRCA, but has not yet made a claim, be required to make a one-time election that restricts him to receiving benefits under one Act at that time and in the future.

167. The estimated savings from this are small over the first four years, but would grow, especially as more veterans with dual eligibility make claims.

## **Pharmaceutical Benefits Co-payment**

168. Some submissions to the Committee recommended that veterans receiving a disability pension be provided with exemption from the pharmaceutical co-payment. In recognition of veterans' service-related disabilities, substantial special assistance in purchasing pharmaceuticals is available under repatriation compensation arrangements to eligible veterans, war widows and dependants. Consequently, the Committee believes that the current arrangements are appropriate and no changes are required.

## **MEDICAL, SOCIAL AND VOCATIONAL REHABILITATION**

### **Objective of Rehabilitation**

169. The Committee believes that the objective of rehabilitation should be to restore veterans to their optimal level of function commensurate with their service-related disabilities, in order to provide them with better quality of life, maximised vocational outcomes and reduced dependency on financial disability compensation.

### **Adequacy of the Current Arrangements**

170. The Committee's examination of the current rehabilitation services shows that many veterans who suffer from service-related disabilities that require and would be amenable to rehabilitation are not being well served by the repatriation rehabilitation arrangements. Consequently, they are not realising their full potential following the onset of service-related disabilities. This has heavy costs for the veterans affected, their families and the nation.

171. There is widespread support amongst the veteran community for suitable rehabilitation linked to appropriate financial compensation. Many of the issues raised in submissions to the Committee are being addressed, but significant ones have been neglected and require attention.

172. The Committee found that the inadequacies of the current arrangements are:

- the lack of a policy framework for rehabilitation through the repatriation system;
- the lack of early rehabilitation intervention;
- the focus on seeking pensions to the exclusion of restoring functioning;
- the lack of coordinated programs of medical, social and vocational rehabilitation;
- the lack of expertise in rehabilitation medicine;

- the voluntary nature of the existing systems;
- the extent of the incentives for rehabilitation;
- the lack of evaluation data on many DVA rehabilitation programs; and
- the poor knowledge within the veteran community of available rehabilitation.

## **The Way Ahead**

### *Principles of Repatriation Rehabilitation*

173. The Committee recommends that the major principles of repatriation rehabilitation should be:

- DVA has a responsibility to provide suitable and comprehensive medical, social and vocational rehabilitation to veterans who require it as a result of service-related disabilities.
- The aim of rehabilitation is to restore veterans to their optimal level of function commensurate with their service-related disabilities in order to provide them with better quality of life, maximised vocational outcomes and reduced dependency on financial disability compensation.
- Veterans' participation in rehabilitation assessments and, where appropriate, rehabilitation programs, is an integral, obligatory part of the disability compensation provided under the repatriation system.

### *Rehabilitation Program*

174. The Committee recommends that DVA, as a priority, provide the resources to establish a suitable program of rehabilitation within a policy framework for the assessment of rehabilitation needs and the coordinated delivery of medical, social and vocational rehabilitation to veterans with service-related disabilities. Although this would require significant resources to implement, the Committee considers that such a program would provide better outcomes for veterans, their families and the community by improving the veterans' quality of life, maximising their vocational outcomes and reducing their dependency on financial disability compensation.

175. The Committee recommends that DVA pursue its efforts to provide rehabilitation services to veterans and promote them to veterans and DVA staff with the same vigour that it applies to the other elements of disability compensation. This will require a change of emphasis for DVA to a compensation and rehabilitation focused system.

176. The Committee has not costed rehabilitation programs. Such programs could be set at a number of levels, which would need to be determined as the

schemes are developed and tested. However, the costs of these programs are likely to be offset over time as rehabilitated veterans become less dependent on economic compensation.

### *Policy Framework*

177. The Committee recommends that the rehabilitation policy framework focus on:

- the principles of repatriation rehabilitation articulated above;
- factors within the Department of Defence that affect veterans' rehabilitation;
- early rehabilitation in conjunction with the disability payment assessment process;
- the role of experts in rehabilitation in the compensation assessment and rehabilitation processes;
- addressing the range of younger and older veterans' service-related mental and physical disabilities likely to require rehabilitation;
- coordination among providers of rehabilitation services, particularly for veterans with complex and chronic conditions;
- incentives for rehabilitation;
- evaluation strategies for rehabilitation programs;
- the obligations of veterans to participate in rehabilitation;
- the appeal rights of veterans in the assessment and rehabilitation processes;
- the frequency of reviews of individual veterans' rehabilitation programs; and
- the promotion of rehabilitation.

178. The Committee recommends that the development of the rehabilitation policy framework follow an investigation of best practice in rehabilitation and that experts in rehabilitation medicine be used in this process.

### *Implementation*

179. The Committee advocates that the recommendations in Chapter 31 be implemented in concert with its recommendations for a new disability pension structure because they will synergistically provide significant benefits for veterans, their families and the community.

180. The Committee recommends that, in accordance with priorities that should be determined by the Repatriation Commission, medical, social and vocational rehabilitation be made available progressively to all veterans who

would benefit from it, whether or not they transfer to the new disability compensation structure.

181. The Committee recommends that the Government consider the implementation suggestions provided by the Committee in Chapter 31.

### *Rehabilitation Complementary to Proposed Disability Compensation Structure*

182. Should the Government implement the disability pension structure recommended by the Committee, complementary rehabilitation arrangements are recommended for the veterans who will receive payments under that system. The Committee recommends that continued payment of the economic loss component of disability compensation payments should be subject to participation in appropriate, individualised rehabilitation. This requirement is based on the assumption that suitable rehabilitation assessments and services will be available. There will be no penalties for withdrawal from or failure to complete rehabilitation if this is outside the veteran's control.

183. The work test for special and intermediate rate eligibility should not be restricted to the work experience of the veteran before his disablement, but should include a broader range of employment options opened up by rehabilitation and training.

184. Safety-net arrangements should provide full payment of benefits during rehabilitation. Disability compensation for non-economic loss will be unaffected by the rehabilitation process.

## **ACKNOWLEDGMENTS**

185. Committee members acknowledge the significant contribution made to the Review by the veteran community. The Committee also acknowledges considerable support provided by the departments of Defence, Veterans' Affairs and Family and Community Services, the Australian Defence Force and the Repatriation Commission.

## **CONCLUSION**

186. The Committee believes that its recommendations represent a fair and balanced response to the many and complex issues before it. The implementation of the reforms suggested in this Report will ensure improved fairness, while continuing the tradition that delivers a beneficial level of support to Australia's veterans and their dependants.

# LIST OF RECOMMENDATIONS

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The Committee makes the following recommendations.

## CHAPTER 12: WORLD WAR II ISSUES

- 1 There should be no change to the statutory test of qualifying service for veterans of the Australian armed services or Australian mariners serving in World War II. The Committee notes, however, that the 'incurred danger' element of the test has been interpreted too narrowly, in that it does not take sufficient account of a credible risk of harm.
- 2 The *Veterans' Entitlements Act 1986* (VEA) should be amended to deem the following service during World War II as qualifying service during the period of hostilities:
  - Northern Australia
    - north of latitude 14.5 degrees south and islands and waters contiguous to this area, including the Torres Strait Islands, for any period between 7 December 1941 and 7 September 1944 inclusive.
  - Outside Australia
    - any area other than the West Pacific area – 3 September 1939 to 5 May 1945;
    - West Pacific area (except Papua and New Guinea and New Britain before 7 December 1941) – 3 September 1939 to 15 August 1945 – bounded by:
      - in the west, longitude 90 degrees east;
      - in the east, longitude 165 degrees east;
      - in the south, latitude 10 degrees south, including Papua and New Guinea; and
      - in the north, by and including the eastern regions of the Asian continent;
    - Papua and New Guinea, including New Britain – 7 December 1941 to 15 August 1945; and
    - in an aircraft engaged in operations against hostile forces or in patrols or reconnaissance over land occupied by hostile forces of the enemy in one of the areas above at the times prescribed above.

- 3 Service during the period of hostilities of World War II that is not deemed to be qualifying service under the VEA should be regarded as being qualifying service only if it meets the statutory test.
- 4 No change be made to the current provisions in relation to qualifying service after the cessation of hostilities in World War II.
- 5 Service in Australia north of latitude 14.5 degrees south and islands and waters contiguous to this area, including the Torres Strait Islands, for any period between 7 December 1941 and 7 September 1944 inclusive should be regarded as operational service under the VEA. Operational service should also include service immediately before or after that period of service, as currently applies under s.6A of the VEA for service outside Australia.
- 6 Where a veteran of the Australian armed services or an Australian mariner has qualifying service in World War II, that veteran or mariner should also be regarded as having operational service.
- 7 Operational service should also include service immediately before or after that period of service, as currently applies under s.6A of the VEA for veterans with service outside Australia and s.6B of the VEA for Australian mariners with service outside Australia.

## **CHAPTER 14: POST-WORLD WAR II ISSUES**

### **Korea**

- 8 No change should be made to the eligibility provisions under the VEA for HMAS Vengeance in 1954.
- 9 No change should be made to the eligibility provisions under the VEA for service in Kure, Japan as part of the British Commonwealth Forces Korea.
- 10 No extension of access to the VEA should be made for service in Korea after 19 April 1956 that was outside the demilitarised zone.

### **Malayan Emergency 1948–60**

- 11 No change should be made to the eligibility provisions under the VEA for RAAF service in Singapore during the period of the Malayan Emergency from 29 June 1950 to and including 31 August 1957.

### **RAN Service with the Far East Strategic Reserve 1955–71**

- 12 No change should be made to the eligibility provisions under the VEA in relation to RAN service in the Far East Strategic Reserve.

### **Malay–Thai Border 1962–66**

- 13 The aircrew of No 2 Squadron should be retrospectively allotted for service on the Malay–Thai border, with entitlement to qualifying service and other benefits under the VEA.

- 14 No change should be made to the eligibility provisions under the VEA for service in the area of Malaya or Singapore outside the Malay–Thai border region between the end of the Malayan Emergency and 27 May 1963.

### **Indonesian Confrontation 1962–68**

- 15 Operational and qualifying service should be extended for service on or after 16 September 1963 to and including 16 August 1964 for all defence personnel on the posted strength of units located in the operational area of Malaysia.
- 16 The Department of Defence should review the nature of service of 76 Squadron in Darwin during Confrontation in September 1964.
- 17 No change should be made to the eligibility provisions of the VEA for service by HMAS Diamantina or HMAS Moresby during Confrontation.
- 18 No change should be made to the eligibility provisions of the VEA for service in Papua New Guinea during Confrontation.

### **North-East Thailand including Ubon 1962–68**

- 19 No change should be made to the eligibility provisions of the VEA for RAAF service at Ubon for the period 31 May 1962 to 24 June 1965.
- 20 No change should be made to the eligibility provisions of the VEA for service on Exercise Ramasoon in Thailand in 1968.

### **South Vietnam 1962–73**

- 21 No change should be made to the eligibility provisions of the VEA for visits by HMAS Vampire and HMAS Quickmatch to South Vietnam in the period 25–29 January 1962.
- 22 No change should be made to the eligibility provisions of the VEA for the refuelling of ships by HMAS Supply whilst on Exercise Sea Serpent in Vietnamese waters on 3 May 1963.
- 23 No change should be made to the eligibility provisions of the VEA for service rendered by RAN personnel in United States Navy ships in South Vietnam waters before Australia's commitment of forces to the Vietnam conflict on 31 July 1962.

### **Service in South-East Asia following the End of the Indonesian Confrontation**

- 24 No change should be made in the VEA eligibility provisions for service in 4RAR or 8RAR in Malaysia after the end of Confrontation.
- 25 No further action should be taken in respect of peacetime service at Butterworth after the cessation of Confrontation and with ANZUK after the cessation of Confrontation.

### **Reclassifying Peacekeeping Service as Warlike**

- 26 No change should be made to the eligibility provisions of the VEA for peacekeeping service.
- 27 No change should be made to the eligibility provisions of the VEA for service with the United Nations Military Observer Group India Pakistan.
- 28 No change should be made to the eligibility provisions of the VEA for police involved in peacekeeping service.

### **Reclassifying Specific Hazardous Service as Warlike**

- 29 No change should be made to the eligibility provisions of the VEA relating to service providing humanitarian relief to the Kurds as part of Operation Habitat in 1991.

### **Establishing Access to the VEA for Specific Peacetime Service**

- 30 Service on submarines during special operations is not warlike service for the purposes of the VEA.
- 31 Service on submarines during special operations should be deemed non-warlike hazardous for the purposes of the VEA. Service on submarines in peacetime should not be covered under the VEA.
- 32 The Department of Defence should further review the activities of personnel undertaking covert intelligence gathering, or involved in covert signals operations, to determine their operational status for benefits under the VEA.
- 33 Service during which personnel are injured or killed as a result of major peacetime accidents is not warlike or non-warlike hazardous service under the VEA.
- 34 The Department of Defence should review the activities of defence service personnel who located, cleared and disposed of enemy wartime ordnance in Papua New Guinea and the Pacific islands, with a view to making a determination on such activities as non-warlike hazardous service.
- 35 Service by ADF improvised explosive device disposal (IEDD) personnel in IEDD incidents should be deemed non-warlike hazardous service under the VEA.
- 36 Service by improvised explosive device disposal (IEDD) personnel in IEDD incidents should be declared warlike or non-warlike in conjunction with other Defence Force elements conducting counter-terrorist operations.
- 37 Service with the United Nations Mine Clearance Training Team in Pakistan before 8 June 1991 should not be deemed non-warlike hazardous service under the VEA.
- 38 The Department of Defence should further review service with HMAS Mermaid and HMAS Paluma in East Timor during 2000.

- 39 No change should be made to the to the treatment of service with HMAS Supply during the French nuclear tests in the Pacific in 1973.
- 40 Service in Australia after World War II in logistical support of an overseas operation should not, of itself, be considered warlike or non-warlike hazardous service.
- 41 Service by members of the RAAF directly involved in the Berlin Airlift should be deemed non-warlike hazardous service under the VEA.

### **Providing VEA Coverage for All Peacetime Service**

- 42 There should be no extension of current VEA coverage for peacetime defence service.

### **CHAPTER 15: BRITISH COMMONWEALTH OCCUPATION FORCE (JAPAN)**

- 43 Service with BCOF should be declared warlike from 21 February 1946 to 30 June 1947.
- 44 Service with BCOF should be declared non-warlike from 1 July 1947 to 30 June 1951, inclusive.

### **CHAPTER 16: BRITISH ATOMIC TESTS**

- 45 Participation by Australian defence force personnel in the British atomic tests should be declared non-warlike hazardous and the legislation should be amended to ensure that this declaration can have effect in extending VEA coverage.
- 46 The Government should move quickly to finalise the cancer and mortality study.

### **CHAPTER 17: COUNTER-TERRORIST AND SPECIAL RECOVERY OPERATIONS**

- 47 Special Air Service Regiment training should not be declared non-warlike or hazardous service.
- 48 Geographical limitations should be excluded so that the Minister can declare ADF operations, including counter-terrorist operations, in or outside Australia as warlike or non-warlike where they meet the relevant criteria.

### **CHAPTER 18: PRISONERS OF WAR**

- 49 An ex-gratia payment should not be extended to surviving POWs (E) and interned civilians held captive by the German-Italian forces during World War II or to the surviving widow/ers of those who have died.

- 50 An ex-gratia payment should be extended to all surviving POWs (K) held captive by the North Korean forces during the Korean War and to the surviving widow/ers of those who have died.

## **CHAPTER 19: WAR WIDOW/ER'S PENSION ELIGIBILITY**

- 51 No change should be made to the eligibility provisions under the VEA to provide a war widow's pension to the widows of all veterans, regardless of whether the veteran's death is related to eligible service.
- 52 No change should be made to the eligibility provisions under the VEA to automatically grant the war widow's pension to all widows of veterans eligible for the intermediate rate at the time of the veteran's death.
- 53 No change should be made to the eligibility provisions under the VEA to extinguish the right to claim the war widow's pension after marriage to another person subsequent to the veteran's death.
- 54 The VEA should be amended so that those war widows who enter into a marriage-like relationship after a veteran's death will be treated, in regard to the right to claim the war widow's pension, in the same way as those who marry or remarry after a veteran's death.
- 55 No change should be made to the eligibility provisions under the VEA to enable the war widow's pension to be made available to former wives and former husbands of veterans.
- 56 Existing provisions of the VEA that preclude the payment of two war widow's pensions where a person is twice widowed should be retained.

## **CHAPTER 20: CIVILIANS**

- 57 Access of civilians to veterans' benefits under the VEA should continue to be based on the principle that provides eligibility only for those who were attached to the Australian armed services and who consequently came under military command of the Australian armed services. Therefore, VEA entitlements should not be extended to members of the Australian Women's Land Army, the Civil Constructional Corps, the civilian surgical and medical teams in Vietnam, merchant mariners on MV Jeparit or MV Boonaroo in Vietnam waters, entertainers in Vietnam, or QANTAS aircrew who flew in and out of Saigon.
- 58 Further investigation should be undertaken into the status of official entertainers in Vietnam.

## **CHAPTER 21: BRITISH, COMMONWEALTH AND ALLIED VETERANS**

- 59 There should be no blanket extension of VEA compensation and health care benefits to all British, Commonwealth and allied (BCAL) veterans and allied mariners.

- 60 The VEA should be amended to enable a BCAL veteran to be able to establish a domicile of choice in Australia before the age of 21 years, with all other common law tests used in determining domicile continuing to apply.
- 61 The VEA should be amended to allow British and other Commonwealth veterans whose only service was within their country of enlistment to be considered as having qualifying service if they meet the same requirements that apply for service outside the country of enlistment.
- 62 The VEA should continue to exclude the provision of qualifying service benefits for service in BCAL forces in wars or warlike conflicts in which the Australian armed forces were not engaged.
- 63 The VEA should be amended to allow British and other Commonwealth veterans who served in the operational area of Malaya and/or Singapore between 1 September 1957 and 31 July 1960 to be regarded as having rendered qualifying service if their service was the same as that of veterans of the Australian armed services in that operational area during that period.
- 64 The VEA should be amended to remove the campaign medal requirement for BCAL mariners, with qualifying service being subject only to whether the mariner was detained by the enemy or incurred danger from hostile forces of the enemy during the period of hostilities in World War II.
- 65 If the Government accepts the Committee's recommendation to accord warlike and qualifying service to veterans of the Australian armed services serving in Japan with BCOF between 21 February 1946 and 30 June 1947, British and other Commonwealth veterans serving with BCOF in Japan during that period and United States veterans performing a similar peace enforcement role should also be regarded as having rendered qualifying service.

## **CHAPTER 22: GOLD CARD**

- 66 The Repatriation Health Card – For All Conditions (Gold Card) should not be provided to veterans purely as recognition of service in the Australian armed services.
- 67 The Gold Card should not be extended to further categories of World War II veterans of the Australian armed services; however, should the Government accept the Committee's recommendations in relation to qualifying service for World War II service, veterans of the Australian armed services so gaining qualifying service should be entitled to the Gold Card.
- 68 The Gold Card should not be extended to all veterans of the Australian armed services for service with BCOF in Japan; however, should the Government accept the Committee's recommendations in relation to the classification of certain BCOF service as warlike, veterans of the Australian armed services with this service prior to 1 July 1947 should be entitled to the Gold Card.

- 69 The Gold Card should not be extended to further categories of post-World War II veterans without qualifying service.
- 70 The VEA should be amended so that there will be no further grants of the Gold Card to post-World War II veterans of the Australian armed services at age 70 on the basis of their having rendered qualifying service, unless the veteran satisfies some measure of financial need.
- 71 The Gold Card should not be extended to all widows of veterans: the VEA should continue to provide the Gold Card only to widows eligible for a war or defence widow's pension.
- 72 The VEA should be amended to enable assistance with private health insurance to be provided for the dependent children of veterans entitled to the special rate disability pension who transfer to the proposed new disability pension structure, or of veterans entitled to the extreme disablement adjustment, through the provision of a tax-free health care allowance, indexed to the Consumer Price Index, if the family takes out private health insurance.
- 73 The Government should examine the needs of war widows and others caring for severely disabled adult orphans of veterans and the adequacy of existing support systems to meet those needs.
- 74 The Gold Card should not be extended to all British, Commonwealth and allied veterans and mariners with or without qualifying service.
- 75 Access to the Gold Card should not be extended to civilians who do not qualify as veterans under existing provisions of the VEA.

## **CHAPTER 30: DISABILITY COMPENSATION ARRANGEMENTS AND A NEW STRUCTURE**

### **A New Disability Compensation Structure**

- 76 The Government should accept that the principles of disability compensation on which the Committee's proposed disability compensation structure is based are sound and appropriate for Australia's disabled veterans.
- 77 Following this acceptance, the Government should adopt and implement the proposed structure as soon as practicable, given its beneficial nature for veterans and their families.
- 78 The Government should adopt the proposed transitional arrangements.
- 79 As enhancements to the new structure, the Government should consider how additional assistance can be provided to veterans who experience difficulties in maintaining housing equity and to children of veterans who wish to undertake tertiary education.

## **Disability Pension to be Disregarded as Income**

- 80 The Government should no longer regard the VEA disability pension, paid under either the current or proposed structure, as income for any VEA or social security income support payments or benefits.

## **Other Matters**

### **War Widows**

- 81 The legislation should be amended to ensure that the current non-indexed component of the war widow's pension will no longer be separately identified and that it will be indexed in the same way as the main benefit.
- 82 An extended bereavement payment should be made available to the widow of a veteran in receipt of special rate disability pension at the time of the veteran's death.
- 83 Rent assistance should be provided in addition to the existing war widow's pension and income support supplement.
- 84 War widows living overseas should be able to claim the income support supplement.

### **Extreme Disablement Adjustment**

- 85 The extreme disablement adjustment (EDA) should not be included in the proposed disability compensation structure.
- 86 All veterans 65 years of age and over at the date of introduction of the new structure should retain the right to claim EDA.
- 87 All existing EDA veterans should retain their current entitlements.
- 88 All veterans in receipt of EDA now and in the future should have access to a Goods and Services Tax (GST) rebate on motor vehicles and parts.
- 89 EDA veterans should receive a private health insurance subsidy if they have dependent children and choose to take out private health insurance.

### **Extremely Disabled Veterans**

- 90 A veteran who is aged under 65 years at the date of introduction of the new structure and who, after reaching that age, is assessed under the Guide to the Assessment of Rates of Veterans' Pensions as having 70 disability points and a lifestyle rating of six, should not be granted EDA but instead should receive a benefit package including:
- disability pension at 100 per cent of the general rate;
  - access to a GST rebate on motor vehicles and parts;

- a fortnightly means-tested home care allowance of \$150 while living in his own home;
- a private health insurance subsidy if he has dependent children and chooses to take out private health insurance; and
- the Repatriation Health Card – For All Conditions (Gold Card).

### **Funeral Benefit**

91 The maximum funeral benefit should be increased to \$1000.

### **Eligibility for Disability Compensation under both the VEA and the SRCA**

92 The Government should require of a veteran with a dual entitlement under the VEA and the *Safety, Rehabilitation and Compensation Act 1988* (SRCA) a one-time election, which would restrict the veteran to receiving benefits under either the VEA or the SRCA at that time and in the future, if he has not already made a claim under either Act.

## **CHAPTER 31: REHABILITATION**

### **Key Recommendations**

#### **Principles**

- 93 The major principles of repatriation rehabilitation should be:
- The aim of rehabilitation is to restore veterans to their optimal level of function commensurate with their service-related disabilities in order to provide them with better quality of life, maximised vocational outcomes and reduced dependency on financial disability compensation.
  - Veterans' participation in rehabilitation assessments and, where appropriate, rehabilitation programs, is an integral, obligatory part of the disability compensation provided under the repatriation system.
  - DVA has a responsibility to provide suitable and comprehensive rehabilitation to veterans who require it as a result of service-related disabilities.

#### **Rehabilitation Program**

94 DVA, as a matter of priority, should provide the resources to establish a suitable program of rehabilitation within a policy framework for the assessment of rehabilitation needs and the coordinated delivery of medical,

social and vocational rehabilitation to veterans with service-related disabilities.

- 95 DVA should pursue its efforts to provide rehabilitation services to veterans and promote them to veterans and DVA staff with the same vigour that it applies to educating the veteran community and DVA staff about the other elements of disability compensation.

## **Policy Framework**

- 96 The development of a policy framework should follow an investigation of best practice in rehabilitation. Experts in rehabilitation medicine (e.g. Fellows of the Australasian Faculty of Rehabilitation Medicine) should be used in this process.
- 97 The rehabilitation policy framework should focus on:
- the principles of repatriation rehabilitation articulated above;
  - factors within the Department of Defence that affect veterans' rehabilitation;
  - early rehabilitation in conjunction with the disability payment assessment process;
  - the role of experts in rehabilitation in the compensation assessment and rehabilitation processes;
  - addressing the range of younger and older veterans' service-related mental and physical disabilities likely to require rehabilitation;
  - coordination among providers of rehabilitation services, particularly for veterans with complex and chronic conditions;
  - incentives for rehabilitation;
  - evaluation strategies for rehabilitation programs;
  - the obligations of veterans to participate in rehabilitation;
  - the appeal rights of veterans in the assessment and rehabilitation processes;
  - the frequency of reviews of individual veterans' rehabilitation programs; and
  - the promotion of rehabilitation.

## **Recommendations for Implementation**

### **General Arrangements for New and Existing Beneficiaries**

- 98 The recommendations regarding rehabilitation should be implemented in concert with the Committee's recommendations for a new disability compensation structure.
- 99 The recommendations, with the exception of those in the following section, 'Arrangements for Rehabilitation – Proposed Disability Compensation Structure', should apply to all veterans whether or not they transfer to the new disability compensation structure.

### **Arrangements for Rehabilitation – Proposed Disability Compensation Structure**

- 100 Should the Government implement the disability pensions structure recommended by the Committee, the following complementary rehabilitation arrangements should be implemented at the same time for the veterans who will receive payments under that system. These arrangements, described below, should be consistent with the other recommendations regarding rehabilitation.
- 101 Continued payment of the economic loss component of disability compensation payments should be subject to participation in rehabilitation. This requirement is based on the assumption that suitable rehabilitation assessments and services will be available.
- 102 Safety net arrangements should provide full payment of benefits during periods of rehabilitation. The desirability of specifying a period for which safety net arrangements should be provided should be investigated by DVA.
- 103 Veterans undertaking rehabilitation under the proposed disability payments structure should continue to receive payment for non-economic loss, together with a rehabilitation allowance to meet their economic needs. The rehabilitation allowance should be the same as, and in lieu of, the economic loss compensation.
- 104 While the rehabilitation allowance is paid, rehabilitation needs should be professionally assessed. Further, a rehabilitation plan should be developed that will help the veteran to recover from, improve, minimise or cope with the accepted disabilities. This action should not be required before the assessment of the veteran's eligibility for disability compensation. However, the assessment and rehabilitation should occur quickly, to be of greatest benefit to the veteran.

- 105 The rehabilitation program, agreed with the veteran, should be reviewed as necessary. DVA should use experts in rehabilitation medicine to establish appropriate guidelines.

### **Staged Implementation**

- 106 To best manage the introduction of a rehabilitation regime, priority should be given to veterans who are identified by appropriate experts as having service-related disabilities causing the greatest need for rehabilitation and who are also the most likely to derive significant benefits from rehabilitation. It appears to the Committee that veterans already receiving disability compensation for accepted mental health conditions would be a priority group.

### **Supplementary Recommendations**

- 107 The Government should consider the implementation suggestions provided by the Committee in the sections, 'The Adequacy of the Current Arrangements' and 'The Way Ahead', in Chapter 31 of this Report.
- 108 The Vietnam Veterans Counselling Service should be a part of the compulsory rehabilitation system.
- 109 DVA should give the Vietnam Veterans Counselling Service a more inclusive name, such as the Veterans' Counselling Service.