

Progress on the War Pensions Reference

**Address to meeting of the
RNZRSA Affiliates Forum**

9 September 2009

**Rt Hon Sir Geoffrey Palmer SC
President
Law Commission**

**ANZAC House, Willis Street
Wellington
1.00pm**

The Law Commission's review of the War Pensions Act 1954 is nearing its end stages. However, we have been considerably held up. More than six months ago we asked the Treasury to cost the RNZRSA's submission. We are still waiting for the results of this request, but expect to receive a progress report from them reasonably soon. The difficulty is understandable. Currently, there are many demands on the Treasury's time due to the economic climate.

The RNZRSA's submission is important to this review. We wanted to assess the financial implications of the proposals in this submission. In the current economic climate it is essential that we fully understand the financial implications of any option we recommend. It is very difficult to progress the review without costings.

The Law Commission has not been idle during this period. We have carried out some in depth research into several issues that are central to this review. In June we sent a Researcher to Canada to find out as much as possible about the Canadian veterans' system.

In 2006, the Canadians introduced a new scheme. This is known as the New Veterans Charter. It applies to Canada's younger veterans. The New Veterans Charter takes an innovative approach to assisting veterans who have been impacted by their service.

After visiting Canada, we have learned that there are several aspects of their scheme that could greatly enhance new legislation in New Zealand. This particularly relates the scheme that will apply to veterans who have served after 1 April 1974.

The New Veterans Charter introduced a suite of different types of assistance to help injured veterans with every aspect of their life. It provides assistance that is needs-based. It works to ensure a seamless transition from military to civilian life, and ongoing support if needed. It offers comprehensive support that helps restore and maintain independence.

The New Veterans Charter has a particular focus on rehabilitation. The rehabilitation assistance encourages and incentivises wellness. The veterans' health is looked at holistically, and the wellbeing of family members is included in this. The assistance is

structured in a way as that reduces the barriers for accessing rehabilitation. Less has to be proven before rehabilitation is provided.

The result is that injured veterans can receive rehabilitation quickly. This is significant as research has shown that early intervention has a major role in promoting recovery. While veterans qualifying for rehabilitation generally receive income replacement payments to enable them to continue to support themselves and their families, the question of entitlement to compensation for impairments is quite separate from the issue of rehabilitation.

We learned that the New Veterans Charter has been established as a living document. We want to propose this for our new legislation. As a living document, the legislation is subject to regular reviews and will be amended where improvements are necessary. Veterans' groups have a role in reviewing and making recommendations on the legislation. We think that this is a very helpful feature for a scheme like this.

We sincerely believe that an approach like the Canadian's New Veterans Charter is best for younger veterans. We realise that there is an element of risk in undertaking something new, but we believe that it will be worthwhile because of the benefits to our younger veterans.

We propose including a provision requiring regular reviews of the legislation in the new Act. By making our legislation a living document, the Government would be accepting that the scheme can be fine-tuned and amended in the future. Never again would veterans have to wait more than 50 years for a review of the legislation.

The visit to Canada provided confirmation that our proposal to split our legislation into two schemes to cover veterans with service before 1 April 1974 and veterans with service after 1 April 1974 is the correct approach. Canada has done this, with their division point coming after service in Korea. This was the most logical approach for them given their military and legislative history. The approach has allowed targeted assistance to be given to veterans at different stages of their lives.

It is not just in the scheme for modern veterans, where Canada has provided inspiration. We were very impressed with their programmes of medical treatment and independence assistance for veterans of all ages. They provide coherent package of assistance, particularly for the most elderly and most in need. These programmes focus on looking after these veterans generally, rather than limiting assistance to compensation for service-related disabilities.

Having recently gone through the introduction of new legislation, the Canadians provided useful advice about how to transition successfully to a new scheme. They recommend building in enough time to re-educate staff and veterans' advocates, to establish new administrative systems and policies and to test everything carefully. They highlighted the importance of doing this well, and not taking short-cuts.

We were encouraged by learning what we have from Canada. It is helpful for us to learn from their experiences and to use successful aspects of their scheme as a model for how to address the needs of younger veterans. Our final report will incorporate much of what we have learned from Canada, along with information we have obtained from earlier visits to the United Kingdom and Australia.

We have been reflecting further on the beneficial evidential provisions and decision-making under this scheme. We have come to a greater understanding of the shortcomings of the War Pensions Act in this area. Decision-making using the beneficial evidential provisions is fraught with uncertainty, complexity and subjectivity.

We are committed to having beneficial evidential standards in the new legislation to the same level as is provided in the current law. We think that this benevolence is justifiable and deserved. We do not want to change that.

But the system is desperately in need of a solution to improve the decision-making. This thinking has led us to relook at presumptive decision-making instruments as a method of improving decision-making. In particular, we have closely examined the Australian Statements of Principles, and we are impressed by what we see.

Statements of Principles are instruments that set out a number of factors that establish a relationship between a medical condition and service. If there is a Statement of Principles in place for a particular medical condition, a veteran must meet one of the factors in order for a claim to be granted.

The Repatriation Medical Authority, a body of five preeminent medical experts, has the role of determining Statements of Principles for specific medical conditions. The Repatriation Medical Authority reviews research from around the world about the causation of different medical conditions in order to develop the Statements of Principles. Statements of Principles act as expert evidence concerning all possible causes of a medical condition in veterans as a group.

In effect, Statements of Principles provide presumptive rules in relation to particular medical conditions. If a Statement of Principles is in place, the veteran does not have to prove the causation of the medical condition. A relationship to service will be presumed if a factor in the Statement of Principles is met.

The Australian legislation has a similar rebuttable presumption to section 17 of the War Pensions Act. Statements of Principles do not apply instead of these beneficial evidential provisions, but are fundamentally based upon them. The Repatriation Medical Authority builds the reduced evidential requirements into the standards required to satisfy the Statements of Principles. The presumptions in Statements of Principles are based on much lower levels of evidence than would be required to prove the claim to the balance of probabilities.

We think that a system that has Statements of Principles to apply the beneficial evidential standards has a number of advantages over our current system.

- Statements of Principles lead to decision-making that is consistent and equitable.
- There are fewer elements of the decision for a decision-maker to make a subjective judgment on.
- Veterans know in advance the rules that will be applied to decide their claims.

- The same evidence of causation from the most up-to-date international research is available to all veterans.
- Preeminent medical experts guide the decision-making and a benevolent approach is built into every factor that can be used to presume a relationship to service.
- Decision-making is much simpler, speedier and more efficient.
- Veterans would have a greater understanding of the reasons for decisions.

There has been a concern that adopting Statements of Principles would mean that New Zealand would be ceding the authority to decide the decision-making rules that apply in our system to the Australians. While we think that it would be very sensible to share as much information as possible with the Repatriation Medical Authority and potentially borrow their Statements of Principles, we would not advocate a wholesale adoption of Australia's rules.

If we adopt a Statements of Principles approach here, the decision on the rules applying in New Zealand should be made by New Zealand experts bearing in mind New Zealand conditions. We would recommend that New Zealand experts review the Australian Statements of Principles and decide whether each one should apply in New Zealand. If necessary, the Statements of Principles could be adjusted to meet New Zealand's requirements. We foresee that the Expert Panel could have this role. There would be a considerable amount of work required to set these up, but we think this would be worthwhile.

We think that Statements of Principles certainly warrant consideration.

We are looking forward to producing our report. We intend to recommend legislation that will be an improvement upon the War Pensions Act, both in the substance of the assistance provided and in the processes for administration and decision-making.