

Remarks at Launch of the Law Commission Issues Paper “Towards a New Veterans’ Entitlements Scheme: A Discussion Paper on a Review of the War Pensions Act 1954”

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In September 2007, the Government gave the Law Commission a reference on the War Pensions Act 1954. I must confess that my knowledge of the War Pensions Act at that time was very limited. My only brief foray into this area of law was at the time when the Accident Compensation Scheme was being considered – now nearly 40 years ago.

The strange thing is that the immense change that the introduction of ACC made to the injury compensation landscape in New Zealand should have significantly impacted the War Pensions Act. But the issues never seemed to have been fully considered in relation to war pensions. This is the source of some of the problems with the current War Pensions Act.

Since the Law Commission began working on this project, it has become indisputably clear to me that the War Pensions Act is in desperate need of review. Although the Act served veterans of the two World Wars quite well for many years, the needs of veterans has now changed. And society itself has also changed.

The Act is now out of date. It is not going too far to say that it is very bad legislation indeed by modern standards. That is not to say that the scheme itself is bad, but simply that the legislation behind it is bad.

The first problem is the drafting. It is an old statute and it is not written in plain English. This means there is little chance that those who claim under it can understand it properly. The Act also poses formidable challenges for those who administer it. It is not a piece of legislation that yields up its secrets easily.

There is another problem. The War Pensions Act has been changed over the years. For the best of motives the RSA and governments have tried to keep it up-to-date. But

there have now been so many piecemeal changes that they often do not make sense. Much of the legislation is unclear.

Furthermore the War Pensions Act concentrates on physical injuries in a war environment. The problems of modern veterans, especially those affected by such things as post traumatic stress disorder or environmental hazards, are not adequately dealt with under the statute.

As mentioned, the fact that this Act has not been updated in the face of major changes such as the introduction of ACC, has been problematic. Let me just give you one example of the injustice that the failure to revise this statute over the years has caused. The funeral grants paid for veterans are worth \$2,152.03. There are conditions attached to this. The accident compensation benefit is much more generous. Where someone dies as a result of an injury and is covered under the Accident Compensation scheme, a funeral allowance of up to \$5,101 is paid and there are no conditions attached to it.

Many other anomalies could be cited in this strange and ungainly piece of legislation.

This Act is cumbersome to administer. It does not set out criteria for decision-making, but in many cases leaves decisions to discretion. The claims and decision-making processes could be far more accessible and transparent.

The Law Commission thinks that the War Pensions Act needs to be thoroughly revised.

Even if the present Act were drafted in plain language without any policy changes at all, it would be an enormous improvement.

But the Law Commission is aware that it will be necessary to review and take submissions on the whole of the policy in the Act in order to ensure that we have a fair and robust scheme that adequately meets the needs of our veterans. There are a vast number of issues that need to be explored if we are to give this area of law the thorough revision that it needs. That is why we have written a relatively long Issues Paper of 280 pages.

We have tried to canvass all of the relevant issues in detail so we can get to the bottom of them and provide an Act that will endure for another 50 years.

In designing new legislation to last many years, it is necessary to take into account the future.

The nature of our Armed Forces has changed a lot. There has been increasing diversity in the New Zealand Defence Force, both within the Force itself and in the numerous activities and duties they are required to carry. The experiences of military personnel in being sent to situations of conflict and risk differ markedly from what the majority of our older veterans experienced.

How these new veterans should be assisted and have their position in society respected and honoured is an important issue going forward. New legislation must meet the needs of service personnel who have served in these modern conflicts.

At the same time we must honour those veterans who are now becoming elderly, particularly the veterans of World War II. Their average age is now around 85. The new legislation will need to make sure that the rights and entitlements of our elderly veterans are brought up to a modern standard.

Reconciling the obligations of the past with the needs of the future may turn out to be a difficult task for the next phase of the Law Commission's work. It may be necessary to have two new statutes, rather than one, in order to take account of the different positions of these two groups.

That has certainly been the case with the law reform that has occurred in the United Kingdom, Australia and Canada. All three countries have introduced new veterans' schemes in recent years and have maintained any existing scheme for older veterans.

The Law Commission welcomes submissions on this Issues Paper. We are keen to hear the views of veterans and others on the policy issues and possible options which we have raised in the paper.

I must say I have enjoyed this voyage through a legal curiosity. It is necessary to remember, however, that this is an important statute. The current appropriation is around \$300m a year.

The Law Commission hopes to make a positive contribution to a better system of entitlements for veterans in the future. It is necessary to ensure that the statute is doing justice to an important segment of the New Zealand community.