

The War Pensions Act 1954 ([WPA](#)) is under re-write

The Act

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John Masters comments:

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The War Pensions Act 1954 (WPA) is under re-write (I think appropriately) by the Law Commission. I have had the privilege of a morning with Sir Geoffrey Palmer and the strong opportunity to say my piece. The term 'reverse onus of proof' is, of course, (they all say) going to be retained. My problem is that such a generic term hides some wonderful pieces of law in favour of the veteran that may, themselves, still be at risk if we don't fight strongly to not have them watered down.

I illustrate my point by copying four points I made to RNZRSA and Sir G to show what we must not lose.

1. The "reverse onus of proof" is expressed in much stronger and developed language in the Act (see Sec 17 (3)) where it is stated that **"any reasonable evidence"** will **"establish a presumption"** that the condition was due to service, and that presumption can only be rebutted by evidence that the condition **"was entirely due to other causes."** This is very powerful law, and we should have total clarity on its implications for veteran claimants, i.e., if an 86 year-old WW2 veteran states that his hearing is due to his service, then a Claims Panel must have proof that, regardless of whether he spent his post war career in a noisy foundry, no single part of his hearing loss was due to his service some sixty years before. If that proof is not before the Panel, they must allow the claim.
2. This point is strengthened by the Act's specific requirement (see Sec18 (1)) not to be bound by **"any technicalities or legal forms or rules of evidence"** but only by **"substantial justice and the merits of the case."** Our 86 year-old merely needs to say "I lost my hearing during the War" and the Claims Panel is bound by law to accept that statement without reservation unless it has irrefutable proof to the contrary (an almost impossible call).
3. The Act goes on to further ram home this point when it requires the Claims Panel (see Sec 18 (2) (c)) to **"draw from all the circumstances of the case all reasonable inferences in favour of the claimant"** and that he be given **"the benefit of any doubt as to the existence of any fact or circumstance that would be favourable to him."** Rather than listening to some Hearing Specialist who may well have found some inherent or generic or age-related hearing fault in our 86 year-old, the Claims Panel is bound by law to find in his favour. My experience is that the Claims Panel I belong to overturns Specialist's opinions in about five cases out of every hundred on these grounds.
4. A fourth principle often overlooked in these days of means tests and egalitarianism at all costs, is that Claims Panels are required (see Sec 25 (1) to take **"no account of the income or property of the claimant or any other person"** but that the claim shall be determined **"solely by reference to the nature and extent of the disablement."** Thus our 86 year-old may be a retired millionaire, or living with a rich widow, and that is no concern of the Claims

Panel (a principle not always observed in my experience). The reverse of the coin is where a veteran in stable circumstances believes he has not a need to make a claim but is unaware of the coming heart attack which could be attributable to his smoking free cigarettes sixty years ago.

These four points should provide the hallmarks, along with the application of a "veteran's perspective", of NEC directives to RNZR & SA Claims Panellists. We should be there to facilitate the awarding of pensions, not to sit in judgement or be judgemental.

Further to Noel's enquiry, I would emphasise that disablements outside the Presumptive List are virtually endless if a veteran has such a disability and believes it to be attributable to his service. The range of disablements I have seen as a panellist are amazing to read. I here list some that I know have been accepted by the Panel I belong to: Vincent's Disease; Dupuytren Contractures; Schatzki Ring (not what it sounds like!); Gout; Restless Legs; Septal Deviation; Depersonalisation Disorder; Macular Degeneration; Grover's Disease; Barrett's Oesophagitis; Obesity; Nightmares; Encephalitis Lethargica; Startle Reaction (10% pension granted. "Once or twice a week he gives a startled jump unprovoked by noise or surprise."); Male Gynecomastia (10% pension granted. Excess development of male mammary glands); Breast Cancer; Passive Smoking; Tiredness (25% pension granted)(he wasn't a Gunner either!).

All these disablements were accepted after specialist's advice to the Claims Panel as not being able to be discounted as attributable to service, and also after practical application of the benefit of the doubt. My point is that none of the example disabilities described above are "defined conditions" which would qualify to be eligible for assistance in USA or Australia.

The Act is very rickety but needs our very careful attention as it is re-written to ensure the essential kiwi intents originally put in place by Peter Fraser and his team are not lost.

This piece makes no points regarding the management of the Act and the claims process which is entirely another matter, and on which I also hold strong views but not relevant here.

Perhaps that is thruppence worth.

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