

Our ref: JKC:HM:507141
Your ref:

14 September 2005

Ms Kathleen Henry
F1 11 De Seal Re Seal Support Group
BY EMAIL: fog@bigpond.net.au

Dear Kathleen

19 August 2005 announcement F1-11

Further to my telephone conversation with Kathleen last week, I confirm that I have had the opportunity to speak with Senior Counsel relating the significance of the announcement of the compensation proposal and its relevance to the time limitation issue for the bringing of actions. I understand that Simon Harrison from my office has separately had some communications with Ian Fraser.

The basic proposition is that common law actions can be commenced up to one year after the injured person becomes aware of what is a “material fact of a decisive nature”.

While the law in respect of the meaning of “material fact of a decisive nature” continues to develop (there are currently proceedings before the High Court in respect of covert police officers in Queensland), it is certainly arguable that the announcement by the Government may amount to a relevant factor.

The writer had previously advised affected servicemen that the relevant extension date may have been the release of the Report into the chemical exposure. The one year period from the handing down of the Report has obviously well and truly passed by this time.

The best advice that can be given at this stage is that the issuing of common law actions should be brought as a matter of urgency. The courts will always look to further delay as being a basis for denying an extension of the limitation period.

The writer has previously acted on behalf of a number of the Voyager disaster servicemen and is well aware of the very significant legal battles that those men had to undertake to obtain damages.

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Ms Kathleen Henry

14 September 2005

I would urge your members to seek legal advice at their earliest possible opportunity. As I have indicated, I have spoken with Senior Counsel who is also concerned that any actions (if they are to be commenced) are brought on an urgent basis.

It still remains a question for legal advice as to whether a particular serviceman would be better off pursuing common law action or taking their rights under either the *Veterans' Entitlements Act* or the Military Compensation Schemes. There is no "one hat fits all" in these matters. It is very important that every claim be considered in respect of the three main schemes (leaving aside the Military Superannuation Scheme). There is no basis for a lawyer simply to give advice that a particular scheme is the preferable course of action in every matter.

I can be contacted on 3853 8859 or by email jcockburn@nrh.com.au should any of your members wish to speak with me.

I would be pleased for you to make this letter available on your website for general publication.

Yours faithfully

NICOL ROBINSON HALLETTS

per:



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