

The Senate

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Foreign Affairs, Defence and  
Trade Legislation Committee

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Veterans' Entitlements, Treatment and  
Support (Simplification and  
Harmonisation) Bill 2024 [Provisions]

October 2024

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*(for Senator Steele-John from 4 July 2024)*

## Participating Members

Senator Jacqui Lambie

JLN, TAS

## Secretariat

Pothida Youhorn, Committee Secretary

Emma Wannell, Senior Research Officer

Benjamin Bradley, Administrative Officer

PO Box 6100

Parliament House

Canberra ACT 2600

Australia

[www.aph.gov.au/senate\\_fadt](http://www.aph.gov.au/senate_fadt)

Phone: +61 2 6277 3535

Email: [fadt.sen@aph.gov.au](mailto:fadt.sen@aph.gov.au)



## Abbreviations

AAT	Administrative Appeals Tribunal
ADA	Additional Disablement Amount
ADF	Australian Defence Force
AWW	Australian War Widows Inc.
CPSU	Community and Public Sector Union
Defence	Department of Defence
DFWA	Defence Force Welfare Association
DRCA	Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988
DVA	Department of Veterans' Affairs
EDA	Extreme Disablement Adjustment
EM	Explanatory memorandum
ESO	Ex-service organisation
FADT	Senate Foreign Affairs, Defence and Trade Legislation Committee
Human Rights Committee	Parliamentary Joint Committee on Human Rights
JSCFADT	Joint Standing Committee on Foreign Affairs, Defence and Trade
MRC Commission	Military Rehabilitation and Compensation Commission
MRCA	Military Rehabilitation and Compensation Act 2004
NAA	Naval Association of Australia
RMA	Repatriation Medical Authority
RSL	Returned and Services League of Australia
Scrutiny Committee	Senate Standing Committee for the Scrutiny of Bills
SoPs	Statements of Principles
The Bill	Veterans' Entitlements, Treatments and Support (Simplification and Harmonisation) Bill 2024
The Committee	Senate Foreign Affairs, Defence and Trade Legislation Committee
The Minister	Minister for Veterans' Affairs and Defence Personnel, the Hon Matt Keogh
The Royal Commission	Royal Commission into Defence and Veteran Suicide
TPI Federation	TPI Federation of Australia
VEA	Veterans' Entitlements Act 1986
VRB	Veterans' Review Board
VVAA	Vietnam Veterans Association of Australia



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# Chapter 1

## Introduction

### Referral of the Bill

- 1.1 On 3 July 2024, the Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024 [Provisions] (the Bill) was introduced into the House of Representatives by the Minister for Veterans' Affairs (the Minister), the Hon Matt Keogh MP.<sup>1</sup>
- 1.2 On 4 July 2024, pursuant to the Senate Selection of Bills Committee Report, the provisions of the Bill were referred to the Senate Foreign Affairs, Defence and Trade Legislation Committee (the Committee) for inquiry and report by 3 October 2024.<sup>2</sup>

### Structure of the report

- 1.3 The report contains three chapters:
  - This chapter covers the purpose and key provisions of the Bill, as well as the conduct of the inquiry.
  - Chapter 2 provides background information on the current legislative framework for veterans' entitlements, rehabilitation and compensation, previous inquiries into the complexity of the legislative framework, and the Government's consultation on the Bill.
  - Chapter 3 canvasses the key issues raised by submitters and witnesses, and sets out the Committee's views and recommendation.

### Purpose of the Bill

- 1.4 The Bill aims to simplify and harmonise the existing tri-Act framework of legislation governing veterans' entitlements, rehabilitation and compensation arrangements by creating a 'single ongoing Act' model. The explanatory memorandum (EM) states that this single Act will provide greater clarity and consistency around entitlements for veterans and their families.<sup>3</sup>
- 1.5 Currently, there are three pieces of primary legislation governing veterans' entitlements, rehabilitation and compensation:
  - (a) *Veterans' Entitlements Act 1986* (VEA);
  - (b) *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (DRCA); and

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<sup>1</sup> House of Representatives, *Votes and Proceedings*, No. 133—3 July 2024, p. 1704.

<sup>2</sup> *Journals of the Senate*, No. 119—4 July 2024, p. 3636.

<sup>3</sup> Explanatory memorandum (EM), p. 4.

(c) *Military Rehabilitation and Compensation Act 2004* (MRCA).

- 1.6 All three Acts provide for medical treatment and rehabilitation services as well as other allowances. Compensation can be broadly paid for impairment (loss of lifestyle and loss of function), incapacity for service or work (income loss), and service-related death of a veteran where there are dependants. Eligibility under each of the Acts is generally determined by when an individual's service occurred, the type of service rendered and the date of onset of an injury or disease.<sup>4</sup>
- 1.7 The current legislative framework is widely acknowledged as being complex, difficult to navigate and challenging to administer, contributing to delays and inconsistent claims processing.<sup>5</sup> The Department of Veterans' Affairs (DVA) noted that the structural differences between these Acts often results in 'very different and seemingly inequitable compensation outcomes for veterans with similar conditions'.<sup>6</sup> Calls to simplify these arrangements are longstanding.
- 1.8 The Minister stated that the Bill responds to the Royal Commission into Defence Veteran Suicide's (the Royal Commission) interim report which found that the veterans' entitlement system is so complicated that it adversely affects the mental health of some veterans and recommended legislative reform to simplify and harmonise the system.<sup>7</sup> The Royal Commission is discussed in further detail in Chapter 2 of this report.
- 1.9 The Minister explained the complexity of the current system and why reform is needed:

Veteran claims for benefits and support are currently assessed under three different pieces of legislation depending on the time someone served, and the nature of their service. Often veterans have had claims dealt with under all three pieces of legislation.

This is the result of decades of piecemeal change and fringe reform built on top of a century of different veterans' entitlements legislation.

...

Anyone who has engaged with the current veteran compensation system will tell you the system is unnecessarily complicated, difficult to understand and has negatively impacted veterans. This same complexity has directly

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<sup>4</sup> Department of Veterans' Affairs (DVA), *Submission 15*, p. 7.

<sup>5</sup> EM, p. 12.

<sup>6</sup> DVA, *Submission 15*, p. 7.

<sup>7</sup> The Hon Matt Keogh MP, Minister for Veterans' Affairs and Minister for Defence Personnel, *House of Representatives Hansard*, 3 July 2024, p. 12.

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contributed to delays, inconsistent processing, uncertain outcomes and claims backlogs.<sup>8</sup>

- 1.10 The Minister described the Bill as the ‘most significant reform of the veterans’ entitlements legislation since the introduction of the [MRCA] 20 years ago’ and as the ‘most significant shift in approach to veterans’ entitlements legislation in the nearly 40 years since the [VEA] was introduced’.<sup>9</sup>
- 1.11 The Bill sets out that the MRCA will operate as the single ongoing Act going forward from 1 July 2026, providing coverage for all future claims for compensation, irrespective of when and where the veteran served, or when their injury or illness occurred. To support this ‘single ongoing Act’ model, the VEA and the DRCA will continue in a limited form and be closed to new claims for compensation and rehabilitation from 1 July 2026.<sup>10</sup>
- 1.12 DVA stated that a key principle of the Bill is that ‘there will be no reduction in payments that veterans or families previously received or are receiving when the new arrangements commence’.<sup>11</sup>

## Provisions of the Bill

- 1.13 The Bill contains eight schedules.

### Schedule 1

- 1.14 Schedules 1 and 2 of the Bill provide for the main changes to the veterans’ compensation schemes, including closing the VEA and DRCA to new compensation claims and adding enhancements to the MRCA.
- 1.15 Schedule 1 would make the following amendments to the MRCA:
- opening the MRCA to pre-2004 conditions and close eligibility to compensation and rehabilitation under the DRCA and VEA from 1 July 2026;<sup>12</sup>
  - service classifications for pre-2004 operations that were recognised under the VEA would be replicated under the MRCA. Coverage for all types and periods of service in the VEA, including warlike, non-warlike, peacekeeping, operational, hazardous, and British nuclear test defence would be continued in the MRCA;<sup>13</sup>

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<sup>8</sup> The Hon Matt Keogh MP, Minister for Veterans’ Affairs and Minister for Defence Personnel, *House of Representatives Hansard*, 3 July 2024, p. 12.

<sup>9</sup> The Hon Matt Keogh MP, Minister for Veterans’ Affairs and Minister for Defence Personnel, *House of Representatives Hansard*, 3 July 2024, p. 12.

<sup>10</sup> EM, p. 4.

<sup>11</sup> DVA, *Submission 15*, p. 3.

<sup>12</sup> See: proposed schedule 1, part 2, pp. 12–44.

<sup>13</sup> See: proposed schedule 1, part 2, pp. 13–41.

- ensuring that there is no need for veterans to retest injuries or diseases already accepted under the VEA or DRCA;<sup>14</sup>
- simplifying permanent impairment compensation assessments under the MRCA by commencing payment from the first day of the month, based on the treating doctor's estimated date of effect;<sup>15</sup>
- incapacity payment recipients under the DRCA would be brought across and paid under the MRCA from the date of commencement, granting access to additional amount(s) for remuneration loading as part of their 'normal earnings' calculations, as well as removing the 5 per cent deduction that currently occurs under the DRCA for those eligible to receive superannuation;<sup>16</sup>
- adding a new provision to the MRCA allowing liability to be accepted for injuries that were sustained while a person was on duty as an Australian Defence Force (ADF) member, providing for a 'temporal' connection between service and medical conditions (such as heart attacks and strokes)—currently the MRCA requires a 'causal' link to service;<sup>17</sup>
- enabling legal personal representatives to have the option to convert a deceased veteran's permanent impairment compensation entitlement (excluding the lifestyle components) to an age-based lump sum, for payment to the estate;<sup>18</sup>
- increasing the cap on common law damages from \$110 000 to \$177 000;<sup>19</sup>
- streamlining information sharing processes between the Repatriation Commission, the Department of Defence (Defence) and the ADF to improve claims processing timeframes;<sup>20</sup>
- consolidating the provisions for rehabilitation and motor vehicle compensation and setting out the arrangements for those accessing an existing program or support to transition to the MRCA, to improve equitable access to these services—previously, VEA veterans have not had access to a comprehensive medical and psychosocial rehabilitation scheme like that offered under the DRCA and MRCA;<sup>21</sup> and
- including an instrument-making power to allow the Repatriation Commission to specify circumstances and the classes of persons who are

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<sup>14</sup> See: proposed schedule 1, part 2, pp. 13–41.

<sup>15</sup> See: proposed schedule 1, part 3, p. 47.

<sup>16</sup> See: proposed schedule 1, part 2, pp. 12–13.

<sup>17</sup> See: proposed schedule 1, part 3, pp. 51–52.

<sup>18</sup> See: proposed schedule 1, part 3, pp. 52–53.

<sup>19</sup> See: proposed schedule 1, part 3, p. 54.

<sup>20</sup> See: proposed schedule 1, part 3, pp. 55–57.

<sup>21</sup> See: proposed schedule 1, part 3, pp. 63–68.

required to obtain financial and/or legal advice before compensation or other benefits are paid under the MRCA, such as receiving a lump sum.<sup>22</sup>

## Schedule 2

1.16 Schedule 2 would make the following amendments to the MRCA:

- retains the automatic death compensation in respect of certain VEA veterans under the MRCA, with an increased funeral benefit cap of \$3 000 (up from the current \$2 000) for those who would have met the relevant VEA criteria. Additionally, funeral compensation with a combined cap of \$14 062.53 would be extended to all service-caused veteran deaths that occur on or after the date of commencement;<sup>23</sup>
- consolidating assistance and services provided under the acute support package, including enabling VEA veterans to access compensation for household services and attendant care services through the MRCA – which they previously did not have access to;<sup>24</sup>
- transfers the payment of Victoria Cross allowance to the MRCA (with no change to eligibility requirements) and adds a new instrument-making power in the MRCA to provide for decoration allowance to continue;<sup>25</sup>
- includes provisions relating to ex-gratia payments to former prisoners of war in other Acts and transfers the prisoner of war recognition supplement in the VEA to the MRCA, with no change to eligibility requirements;<sup>26</sup>
- consolidating arrangements for children’s education assistance into the MRCA, with access extended to the eligible children of DRCA veterans who transition to the MRCA – which they previously did not have access to;<sup>27</sup>
- broadening the Repatriation Commission’s instrument making power to provide special assistance to veterans and families under extenuating circumstances;<sup>28</sup>
- transfers elements of the framework for the provision of treatment, including Non-Liability Health Care, and the Repatriation Commission’s powers to determine specific treatment programs and classes of eligible persons, from the VEA to the MRCA, with no change in eligibility requirements;<sup>29</sup>

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<sup>22</sup> See: proposed schedule 1, part 3, pp. 68–69; DVA, *Submission 15*, pp. 16–17.

<sup>23</sup> See: proposed schedule 2, part 1, sections 268AA–268AE.

<sup>24</sup> See: proposed schedule 2, part 1, pp. 79–80.

<sup>25</sup> See: proposed schedule 2, part 1, pp. 81–84.

<sup>26</sup> See: proposed schedule 2, part 1, pp. 85–87, 91–95.

<sup>27</sup> See: proposed schedule 2, part 1, sections 257A–257C.

<sup>28</sup> See: proposed schedule 2, part 1, p. 105.

<sup>29</sup> See: proposed schedule 2, part 2, pp. 109–112.

- ensuring that upon acceptance of a new or worsening compensable impairment under the MRCA, any existing VEA/DRCA impairment would be included for the points thresholds to be eligible for the Gold Veteran Card under the MRCA;<sup>30</sup>
- integrating travel entitlements into a single system, payable under the MRCA, improving arrangements such as removing the 50 km round trip minimum, and those currently receiving benefits under the VEA will receive the higher MRCA reimbursement rates;<sup>31</sup>
- introduces 'presumptive liability' provisions that would facilitate consistent and streamlined claims processing by allowing the Repatriation Commission to make an instrument specifying certain injuries or diseases that may be accepted on an assumed basis;<sup>32</sup> and
- introduces the Additional Disablement Amount (ADA) into the MRCA, which is modelled on a similar payment under the VEA known as Extreme Disablement Adjustment (EDA). The new payment would ensure there is equivalent coverage for veterans who are prevented from accessing the EDA rate of compensation due to implementation of the single-ongoing Act model. Dependants of deceased veterans who were eligible for ADA under the MRCA will have access to a Veteran Gold Card, wholly dependent partner payment and, if applicable, compensation and access to education assistance for eligible young persons.<sup>33</sup>

### **Schedule 3**

1.17 Schedules 3, 4 and 5 make amendments to ensure all veterans and families access the same rights to review of their claims and entitlements and are overseen by the same statutory review bodies.

1.18 Schedule 3 proposes amendments to the administrative review process for decisions made in relation to veterans' compensation. The DRCA currently has a different review process to the VEA and MRCA. The proposed amendments will provide those seeking reviews of decisions made under the DRCA with a review process similar to that currently available under the other two schemes, including access to the Veterans' Review Board (VRB).<sup>34</sup> DVA described the VRB as an accessible, veteran-centric and non-combative environment for veterans and dependants to retest their claims, stating that 'access to the VRB removes

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<sup>30</sup> DVA, *Submission 15*, p. 17.

<sup>31</sup> See: proposed schedule 2, part 2, pp. 106–109.

<sup>32</sup> See: proposed schedule 2, part 3, section 27A.

<sup>33</sup> See: proposed schedule 2, part 4, pp. 120–125; DVA, *Submission 15*, pp. 17–18.

<sup>34</sup> Michael Klapdor, Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024, *Bills Digest*, No. 3, 2024–25, Parliamentary Library, p. 45.

the need for veterans to obtain legal counsel simply for a review of their claims'.<sup>35</sup>

- 1.19 The Administrative Appeals Tribunal (AAT) reviews of decisions by the VRB would continue as a second step in the review pathway. The internal review process for DRCA decisions will also be aligned with that for VEA/MRCA compensation decisions.<sup>36</sup>
- 1.20 The main provisions in relation to the VRB, its functions, powers and processes, will be moved from the VEA to the MRCA. A range of changes would be made in relation to processes, terminology, offences, appointments, and travel expenses, and are summarised in the EM.<sup>37</sup>
- 1.21 The 'Single Review Pathway' is proposed to begin 60 days after Royal Assent—earlier than the broader changes in the Bill which commence from 1 July 2026.<sup>38</sup>

#### **Schedule 4**

- 1.22 Schedule 4 of the Bill would transfer the powers and functions of the Military Rehabilitation and Compensation Commission (MRC Commission) to the Repatriation Commission. Provisions dealing with the Repatriation Commission will be moved from the VEA into the MRCA.
- 1.23 Currently, the MRC Commission and Repatriation Commission have equivalent functions with the MRC Commission having governance and decision-making powers in relation to the DRCA, and the Repatriation Commission having the same powers in relation to the VEA.
- 1.24 The membership of the proposed new Repatriation Commission under the MRCA will have a different membership to the current commissions. Presently, the four members of the Repatriation Commission are also members of the MRC Commission. The MRC Commission also has two members nominated by the Minister for Defence and one by the Minister for Employment and Workplace Relations (who has responsibility for the DRCA). The President of the Repatriation Commission and the Chair of the MRC Commission is currently the Secretary of the DVA.<sup>39</sup>
- 1.25 The Bill proposes that the new membership will have the DVA Secretary continue as President. There would be two full-time commissioners, including

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<sup>35</sup> DVA, *Submission 15*, p. 18.

<sup>36</sup> Michael Klapdor, *Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024, Bills Digest, No. 3, 2024–25*, Parliamentary Library, p. 45.

<sup>37</sup> See: EM, pp. 62–68.

<sup>38</sup> DVA, *Submission 15*, p. 18.

<sup>39</sup> Michael Klapdor, *Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024, Bills Digest, No. 3, 2024–25*, Parliamentary Library, pp. 46–47.

the Repatriation Commissioner and the Veteran Family Advocate Commissioner, and a number of part-time commissioners, including:

- a person nominated by the Minister for Defence—the nominee must be a permanent ADF member or a Defence public servant);
- a person representing Comcare;
- a person representing the Commonwealth Superannuation Corporation; and
- up to three additional commissioners as determined by the Minister.<sup>40</sup>

1.26 This would provide for 6–9 members of the MRCA Repatriation Commission—up from a maximum of five members for the current VEA Repatriation Commission and seven for the MRC Commission.<sup>41</sup>

### **Schedule 5**

1.27 Schedule 5 of the Bill moves provisions relating to the Repatriation Medical Authority and the Specialist Medical Review Council to the MRCA. This will transfer the legislative basis for the Statements of Principles (SoPs) used to establish liability to the MRCA.<sup>42</sup>

### **Schedule 6**

1.28 Schedule 6 of the Bill would change the date a disability compensation payment under the VEA ceases to the date of the veterans' death rather than the final payment instalment period preceding their death. This aligns with the MRCA.<sup>43</sup>

### **Schedule 7**

1.29 Schedules 7 and 8 set out the transitional provisions and consequential amendments required for the move to the new scheme, including the interaction with the law that was in force immediately prior to the commencement of the scheme.

1.30 Schedule 7 includes the following provisions:

- allowing for claims which span the period before and after 1 July 2026 (where a claim is made prior to commencement but not determined until after commencement);

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<sup>40</sup> See: proposed schedule 4, sections 360C–CB, pp. 201–202.

<sup>41</sup> Michael Klapdor, *Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024, Bills Digest, No. 3, 2024–25*, Parliamentary Library, p. 47.

<sup>42</sup> Michael Klapdor, *Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024, Bills Digest, No. 3, 2024–25*, Parliamentary Library, p. 47; DVA, *Submission 15*, p. 47.

<sup>43</sup> Michael Klapdor, *Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024, Bills Digest, No. 3, 2024–25*, Parliamentary Library, p. 47; DVA, *Submission 15*, p. 47.

- setting out the circumstances in which MRCA compensation can be paid for injuries or diseases previously compensated for under the VEA or DRCA, including cases where the veterans' condition has deteriorated or worsened;
- preserving the validity of functions previously done by the Repatriation Commission and the MRC Commission, the Repatriation Medical Authority and the Specialist Medical Review Council, in accordance with the legislation in place at the time. For example, SoPs previously issued by the Repatriation Medical Authority;
- transferring DRCA incapacity payment recipients to MRCA incapacity payments;
- transferring VEA Veterans' Children Education Scheme recipients to the MRCA Education and Training Scheme; and
- providing the Governor-General with a regulation-making power to prescribe transitional arrangements in relation to the reforms, including for providing a method to convert lump sum amounts into weekly amounts for the purpose of offsetting DRCA and VEA amounts against the new ADA. The EM states that this is a time-limited regulation-making power, but no time limit is imposed in the Bill.<sup>44</sup>

## Schedule 8

1.31 Schedule 8 of the Bill makes consequential amendments to a wide range of legislation, such as in the areas of social services, treasury, and health, to update references to the veterans' compensation schemes and the Repatriation Commission/MRC Commission—to reflect the MRCA as the primary statute for veteran matters and the merging of the commissions. The most significant consequential amendments are the updates to the *Social Security Act 1991* and the *Income Tax Assessment Act 1997* to take account of the new payment of ADA and the compensation payments and support schemes that have been shifted from the VEA to the MRCA.<sup>45</sup>

1.32 DVA stated that these amendments will ensure the same policy for the payments (and payments of a similar nature) currently listed, is applied to the tax and means test treatment for payments issued under the single ongoing Act.<sup>46</sup>

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<sup>44</sup> Michael Klapdor, *Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024, Bills Digest, No. 3, 2024–25*, Parliamentary Library, p. 48.

<sup>45</sup> Michael Klapdor, *Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024, Bills Digest, No. 3, 2024–25*, Parliamentary Library, p. 48; DVA, *Submission 15*, pp. 18–19.

<sup>46</sup> DVA, *Submission 15*, p. 19.

## Financial impact statement

1.33 The EM's financial impact statement states the measures in the Bill have a financial impact of \$222 million over four years to 2027–28.<sup>47</sup>

## Compatibility with human rights and legislative scrutiny

### Human rights

1.34 The statement of compatibility with human rights in the Bill's EM states that the Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.<sup>48</sup>

1.35 The Parliamentary Joint Committee on Human Rights (Human Rights Committee) considered the Bill in its *Human Rights Scrutiny Report 6 of 2024*. The Human Rights Committee commented on and suggested amendments to the Bill in relation to the rights to freedom of assembly and expression.

1.36 The Human Rights Committee outlined that the Bill would provide that a person commits an offence, punishable by imprisonment for six months, if they engage in certain conduct with respect to the VRB, including if they: insult a person in relation to the exercise of that person's powers or functions under the MRCA; interrupt proceedings of the VRB; create a disturbance in or near a place where the VRB is sitting; or engage in conduct that would constitute a contempt of court.<sup>49</sup>

1.37 The Human Rights Committee considered that this engages and may limit the right to freedom of assembly, and questioned the proportionality of the offence with the purpose of the measure to promote the effective operation of the VRB.<sup>50</sup>

1.38 The Human Rights Committee suggested that the Bill be amended to assist the proportionality of this measure and that the statement of compatibility be updated to provide an assessment of the compatibility of the measure with the rights to freedom of assembly and freedom of expression which are currently not referred to.<sup>51</sup>

1.39 At the time of writing, the Minister had responded directly to the Human Rights Committee, but that response had not been published.

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<sup>47</sup> EM, p. 7.

<sup>48</sup> EM, p. 12.

<sup>49</sup> Parliamentary Joint Committee on Human Rights (Human Rights Committee), *Human Rights Scrutiny Report 6 of 2024*, pp. 10–11. See: proposed Schedule 3, Part 1, item 10, section 353L of the Bill.

<sup>50</sup> Human Rights Committee, *Human Rights Scrutiny Report 6 of 2024*, pp. 11–12.

<sup>51</sup> Human Rights Committee, *Human Rights Scrutiny Report 6 of 2024*, pp. 14–15.

## Legislative scrutiny

1.40 The Senate Standing Committee for the Scrutiny of Bills (Scrutiny Committee) commented on the Bill in its *Scrutiny Digest 9 of 2024* and requested advice from the Minister on the following matters:

- what mechanisms are in place to report to the Parliament on any expenditure authorised by the standing appropriations;<sup>52</sup>
- whether incorporated documents under proposed subsection 287B(3)<sup>53</sup> will be made freely available to all persons interested in the law, and why it is necessary to apply the documents as exiting from ‘time to time’ rather than when the instrument is first made;<sup>54</sup>
- undue trespass on rights and liberties, and the appropriateness of the broad scope of offence provisions and significant penalties proposed in subsection 353L;<sup>55</sup>
- the appropriateness of the reversal of the evidential burden of proof and strict liability offences under proposed sections 353H and 353J;<sup>56</sup>
- why it is necessary and appropriate for the delegation of the Minister’s and Commission’s administrative powers under proposed subsection 212(1) and 360DB.<sup>57</sup>

1.41 The Committee understands that the Minister had responded to the matters raised by the Scrutiny Committee, but at the time of writing the Minister’s response had not been published.

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<sup>52</sup> Senate Standing Committee for the Scrutiny of Bills (Scrutiny Committee), *Scrutiny Digest 9 of 2024*, 14 August 2024, pp. 26–27.

<sup>53</sup> Note: this provision would amend the MRC Act to provide that an instrument made for the purpose of determining a class of persons eligible for services under the Veteran Suicide Prevention Pilot may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

<sup>54</sup> Scrutiny Committee, *Scrutiny Digest 9 of 2024*, 14 August 2024, p. 28. See: proposed subsection 287B(3).

<sup>55</sup> Scrutiny Committee, *Scrutiny Digest 9 of 2024*, 14 August 2024, pp. 29–31. Note: this provision would make it an offence for a person to undertake a number of actions—such as engaging in conduct that insults another person, interrupting proceedings, and creating a disturbance—that would be deemed to be contempt of the Veterans’ Review Board.

<sup>56</sup> Scrutiny Committee, *Scrutiny Digest 9 of 2024*, 14 August 2024, pp. 31–34. Note: these provisions would introduce a number of offences of strict liability, including: the failure of a person served with a summons to appear before the Board; failure to take an oath or affirmation; failure to answer a question as a witness; and failure to comply with a summons. Each of these offences is subject to six months imprisonment or 30 penalty points.

<sup>57</sup> Scrutiny Committee, *Scrutiny Digest 9 of 2024*, 14 August 2024, pp. 34–35.

### **Conduct of the inquiry**

- 1.42 Details of the inquiry were made available on the Committee's website.<sup>58</sup> The Committee contacted a number of organisations and individuals inviting written submissions by 31 July 2024. In response to requests from submitters for an extension to the due date, the Committee agreed to extend the submission due date to 10 September 2024.
- 1.43 The Committee received 32 submissions which are listed at Appendix 1.
- 1.44 The Committee held two public hearings in Canberra on 16 August 2024 and 13 September 2024. The witness lists for these hearings can be found at Appendix 2.

### **Acknowledgement**

- 1.45 The Committee thanks the individuals and organisations that took the time to contribute to the inquiry.

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<sup>58</sup> See: Senate Foreign Affairs, Defence and Trade Legislation Committee [website](#).

# Chapter 2

## Background

- 2.1 This chapter provides relevant background information relating to the Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024 [Provisions] (the Bill), including:
- key veteran and claims statistics;
  - a summary of the differences of the Acts comprising the current legislative framework;
  - relevant previous inquiries into the veterans' entitlements, rehabilitation and compensation framework; and
  - the Australian Government's consultation on the Bill.

### Key statistics

- 2.2 According to the 2021 Australian Census, more than half a million Australians (581 139) have served or are currently serving in the Australian Defence Force (ADF). There are 84 865 current serving members (full-time and reserve) and 495 276 former serving members.<sup>1</sup>
- 2.3 The Department of Veterans' Affairs (DVA) has forecast its client population to grow over the next ten years, increasing the number of veterans and family members affected by the proposed changes to the legislation. DVA provided the following table outlining the number of DVA clients, as at 2023, and the number of clients forecast in 2033. DVA noted that not all serving and former serving members engage with DVA, so their number of clients is less than the Census number.

**Table 1.1**

Total clients 2023	Forecast total clients 2033	Treatment population 2023	Forecast treatment population 2033
348 216	379 900	283 907	343 100

*Source: DVA, Submission 15, p. 103.*

- 2.4 In 2022–23, DVA received 38 433 liability claims and, in 2023–24, received 46 776 liability claims—an increase of 8 343 claims. Approximately 37 per cent of these

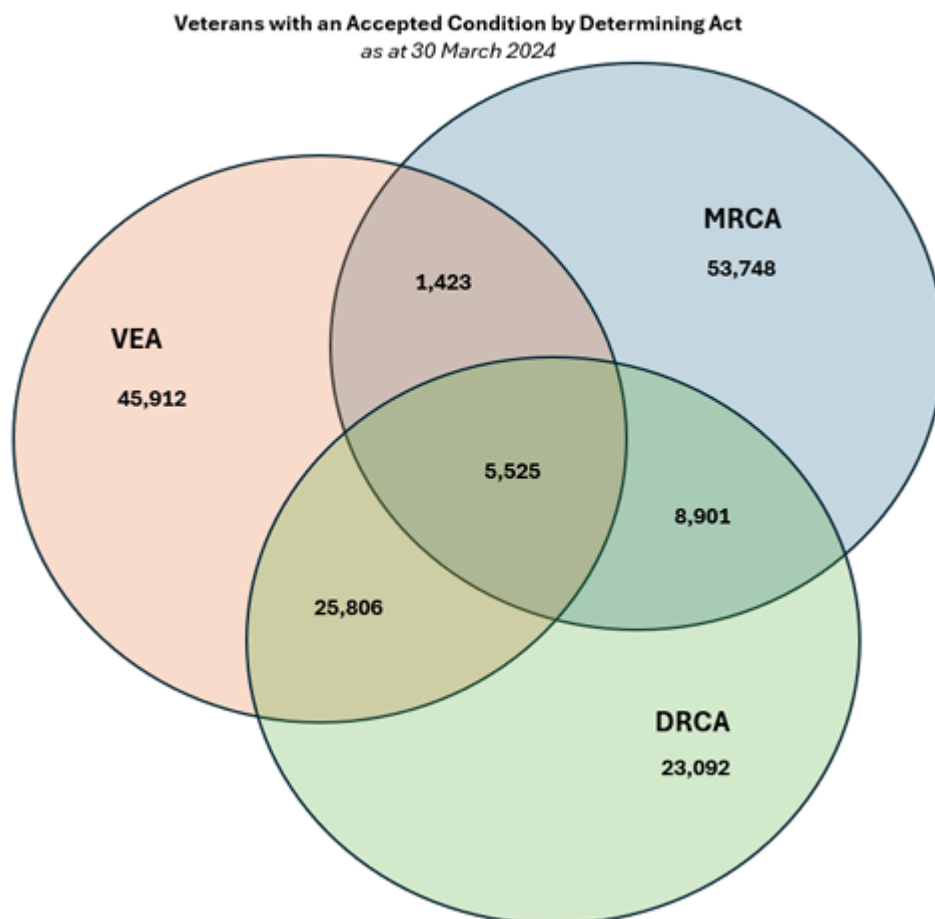
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<sup>1</sup> Australian Bureau of Statistics, [Service with the Australian Defence Force: Census](#), 2021 (accessed 5 September 2024).

claims were either dual or tri-Act claims, demonstrating the complexity of the process for both veterans and DVA claims processors.<sup>2</sup>

- 2.5 According to DVA, as of 30 March 2024, there were 164 407 veterans with an accepted service-related condition under one or more of the governing Acts as demonstrated in the following diagram:

**Figure 2.1 Veterans with an accepted condition by determining Act**



Source: DVA, *Submission 15*, p. 10.

- 2.6 The number of compensation claims being processed by DVA has increased significantly in recent years, as have the processing times. The average processing time has grown to be well above DVA's own performance targets with initial liability claims under the MRCA and DRCA averaging longer than a year, and the average time to process VEA compensation payments was 520 days in 2023–24 (see Figure 2.2).<sup>3</sup> Some claims processing times have improved in 2023–24, following budgeted additional resourcing which has enabled DVA to clear the claims backlog and focus on determining claims on

<sup>2</sup> DVA, *Submission 15*, p. 10.

<sup>3</sup> Michael Klapdor, *Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024, Bills Digest, No. 3, 2024–25*, Parliamentary Library, pp. 14–16.

hand to reduce the time taken to process them. DVA anticipates that the Bill will further improve processing times.<sup>4</sup>

**Figure 2.2 Average time taken to process compensation claims (days)**

Claim type	Target	2020–2021	2021–2022	2022–2023	2023–24
DRCA Initial Liability	100	246	336	460	480
MRCA Initial Liability	90	233	302	441	368
VEA Compensation Payment	100	272	357	480	520
VEA Application for Increase	100	100	151	162	182
MRCA Permanent Impairment	90	164	221	262	222
DRCA Permanent Impairment	100	188	196	259	305
MRCA Incapacity	50	45	65	99	80
DRCA Incapacity	50	47	72	100	87
VEA War Widow	30	61	77	88	112

Source: DVA, '[Claim processing times](#)', 15 August 2024 (accessed 6 September 2024); Michael Klapdor, *Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024, Bills Digest, No. 3, 2024–25, Parliamentary Library*, pp. 17–18.

Note: time is measured from date of claim receipt to date of determination.

## The current legislation

2.7 This section outlines the key differences between the Acts which would harmonised and simplified by the Bill. The Acts comprising the current tri-Act legislative framework, include:

- *Veterans' Entitlements Act 1986* (VEA);
- *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (DRCA); and
- *Military Rehabilitation and Compensation Act 2004* (MRCA).

2.8 The VEA is a pension-based scheme, providing periodic pension payments that can be paid for life, as both compensation and income support. The DRCA and MRCA are workers' compensation schemes, providing both lump sum compensation and periodic payments that can be paid up to Age Pension age.

<sup>4</sup> DVA, '[Claim processing times](#)', 15 August 2024 (accessed 6 September 2024).

All three Acts provide compensation payments as well as access to medical treatments and rehabilitation services. The VEA also provides for means tested income support payments for war widows/ers.<sup>5</sup>

- 2.9 The eligibility under each of the Acts is generally determined by when an individual's service occurred, the type of service rendered and the date of onset of an injury or disease. However, this also results in different levels of compensation and benefits for the same conditions, depending on the person's service, age and when an injury or illness occurred. This leads to inequities between different groups of veterans. Additionally, the way that impairment levels are assessed also differs between the three Acts.<sup>6</sup>
- 2.10 For example, the Productivity Commission's 2019 report *A Better Way to Support Veterans* found compensation amounts for those with impairment levels below 80 points can vary by more than \$100 000 depending on whether the person had warlike/non-warlike service or peacetime service. The value of compensation over a person's lifetime can vary based on the fact that the VEA provides access to lifetime disability compensation pensions, while MRCA and DRCA cover the period up to Age Pension age (for former ADF members).<sup>7</sup>
- 2.11 The total package of supports and compensation available can also vary based on differences in the rates of assistance for services such as attendants, home care and funeral benefits as well as eligibility for the Gold Card and education schemes for the children of veterans. For example, the Veterans' Home Care program under the VEA sets limits in terms of hours/days for personal care, domestic help, respite and garden maintenance (for example, 1.5 hours of personal care a week). The Household Services and Attendant Care programs under the DRCA and MRCA set a maximum value for the services available: \$574.76 a week for the DRCA and \$597.13 a week for the MRCA. The maximum funeral benefit under the VEA is \$2 000 while the MRCA can cover funeral expenses of up to \$14 639.09.<sup>8</sup>

### **Previous inquiries**

- 2.12 Over many years, a number of inquiries have identified concerns about the complexity of the current legislative framework governing veterans' entitlements, rehabilitation and compensation. These inquiries have highlighted

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<sup>5</sup> Michael Klapdor, *Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024, Bills Digest, No. 3, 2024–25*, Parliamentary Library, p. 6.

<sup>6</sup> For a description of the different methods for calculating impairment levels across the Acts, see: Michael Klapdor, *Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024, Bills Digest, No. 3, 2024–25*, Parliamentary Library, p. 8.

<sup>7</sup> Productivity Commission, *A Better Way to Support Veterans*, No. 93, 27 June 2019, pp. 18, 599–600.

<sup>8</sup> Michael Klapdor, *Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024, Bills Digest, No. 3, 2024–25*, Parliamentary Library, pp. 8–9.

the significant impact that this complicated tri-Act system has had on the wellbeing of veterans and their families, as well as the administrative burden this system has created for veterans, their families, advocates, and DVA staff. Each of these inquiries recommended that the legislative framework be simplified.

### **Senate and Joint Committees on Foreign Affairs, Defence and Trade**

- 2.13 In April 2019, the Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT) reported on its inquiry into the transition to civilian life from the ADF which had its genesis in the 2017 Senate Foreign Affairs, Defence and Trade (FADT) References Committee's report on its inquiry into suicide by veterans and ex-service personnel.
- 2.14 The 2017 Senate FADT References Committee report found the legislative framework for the veterans' compensation system to be complex and difficult to navigate and expressed concerns that inconsistent treatment of claims for compensation and lengthy delays in the processing of claims were key stressors for veterans and their families.<sup>9</sup> In response to the report, the Australian Government agreed to make a reference to the Productivity Commission to review the legislative framework of compensation and rehabilitation for service members and veterans.<sup>10</sup>
- 2.15 Recommendation 1 of the 2019 JSCFADT's report included the recommendation to:
- Reduce the complexity of the legislative framework reporting on the outcomes for veteran support (VEA, DRCA, MRCA) with the objective of transitioning over time to a single system under a single Act.<sup>11</sup>

### **Productivity Commission**

- 2.16 The Productivity Commission's report titled *A Better Way to Support Veterans*, published in June 2019, found that the veterans' compensation and rehabilitation system requires fundamental reform:
- The system fails to focus on the lifetime wellbeing of veterans. It is overly complex (legislatively and administratively), difficult to navigate, inequitable, and it is poorly administered (which places unwarranted stress

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<sup>9</sup> Senate Foreign Affairs, Defence and Trade References Committee, [\*The Constant Battle: Suicide by Veterans\*](#), August 2017, pp. 67–69.

<sup>10</sup> [\*Australian Government response to the Foreign Affairs, Defence and Trade Committee Report – The Constant Battle: Suicide by Veterans\*](#), October 2017, p. 8.

<sup>11</sup> Joint Standing Committee on Foreign Affairs, Defence and Trade, *Inquiry into transition from the Australian Defence Force (ADF)*, April 2019, p. xxi.

on claimants). Some supports are not wellness-focused, some are not well targeted and others are archaic, dating back to the 1920s.<sup>12</sup>

- 2.17 The Productivity Commission recommended simplifying the system by moving to two schemes:

By 2025, the Australian Government should create two schemes for veteran support—the current *Veterans' Entitlements Act 1986* (VEA) with some modifications ('scheme 1') and a modified *Military Rehabilitation and Compensation Act 2004* (MRCA) that incorporates the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (DRCA) ('scheme 2').<sup>13</sup>

- 2.18 DVA acknowledged that the Productivity Commission's proposal would have resulted in some simplification of the veterans' legislation framework. However, from the department's perspective, the retention of multiple Acts would preserve much of the complexity inherent in the current system, including the underlying inequities such as compensation offsetting and differences in entitlements, creating complexities by offering a choice of coverage for certain cohorts of working age. DVA submitted:

The VETS Bill goes beyond what the [Productivity Commission] considered possible by implementing a single-ongoing Act model rather than a dual scheme system, which more closely aligns with the core policy objectives of harmonising veterans' entitlements as outlined in both the [Productivity Commission] report and the Royal Commission's interim report.<sup>14</sup>

- 2.19 DVA provided the following table outlining which of the Productivity Commission's recommendations the Bill achieves, either fully or in part:

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<sup>12</sup> Productivity Commission, [A Better Way to Support Veterans: Overview and Recommendations](#), 27 June 2019, p. 2.

<sup>13</sup> Productivity Commission, [A Better Way to Support Veterans: Overview and Recommendations](#), 27 June 2019, p. 78.

<sup>14</sup> DVA, *Submission 15*, pp. 12–13.

**Figure 2.4 Addressing the Productivity Commission's recommendations**

Recommendation		Outcome of recommendation if legislation is approved
8.1	Harmonise the initial liability process	Fully achieved
10.2	Single review pathway	Fully achieved
13.1	Harmonise the DRCA with the MRCA	Fully achieved the part of the recommendation that was agreed by Government through the move to a single scheme
14.3	Interim compensation to be finalised after two years	Fully achieved
14.10	Harmonise the funeral allowance	Fully achieved
15.2	Simplify and harmonise education payments	Partly achieved
15.4	Remove and pay out smaller payments	Partly achieved with current payments grandparented
15.5	Harmonise attendant and household services	Partly achieved
15.6	Harmonise vehicle assistance	Partly achieved
19.1	Two schemes for veteran support	Achieved in a simpler way with one scheme

Source: DVA, *Submission 15*, p. 79.

### Royal Commission into Defence and Veteran Suicide

2.20 The Royal Commission into Defence and Veteran Suicide (the Royal Commission) was established on 8 July 2021 to inquire into systemic and institutional factors impacting defence and veteran suicide. It found that the current legislative complexity contributes to claims processing delays and uncertainty of compensation eligibility for veterans and families, contributing to poor physical and mental health outcomes for veterans and families in need of support.<sup>15</sup>

2.21 The Royal Commission's Interim Report, released on 11 August 2022, concluded:

In our view, it is necessary that the legislative framework for veterans' compensation and rehabilitation be reformed to simplify the system and improve consistency and fairness in approach and outcomes for veterans ...

We accept that there may be more than one valid model of reform. We also accept that there are significant and difficult policy questions that need to be resolved. These will include not only policy issues that have already been identified (including the service differential and the differences between the MRCA and DRCA regarding permanent impairment...) but other issues

<sup>15</sup> Royal Commission into Defence and Veteran Suicide, *Interim Report*, 11 August 2022, p. 185.

that will be identified as policy development work and legislative drafting are undertaken. There may also be important budgetary considerations.

...

There is no perfect solution and an endless search for one would not only be fruitless but would unjustifiably prolong the harm that is being done by the complexity of the current system. After many years of examination and consideration, and after many inquiries and reports, the urgent need now is for the Australian Government to *make a decision*. It should choose what it considers to be the best available model already identified and work towards turning it into legislation.<sup>16</sup>

2.22 The Interim Report recommended the Australian Government to develop and implement legislation to simplify and harmonise the framework for veterans' compensation, rehabilitation, and other entitlements. It outlined that the drafting of this legislation should be completed by 22 December 2023 and the Bill presented to Parliament by early 2024 to commence and be fully operational by 1 July 2025.<sup>17</sup>

2.23 On 9 September 2024, the Royal Commission released its final report which contained 122 recommendations aimed at:

... preventing harm and supporting early intervention and recovery; improving cohesion, collaboration and coordination in the delivery of support services; building institutional capability and capacity; and improving oversight, transparency and accountability across the ecosystem of agencies and institutions responsible for the health and wellbeing of serving and ex-serving ADF members and their families.<sup>18</sup>

2.24 DVA stated that its initial assessment of the Royal Commission's final report recommendations is that they are not directly affected by the Bill.<sup>19</sup>

## Government consultation

2.25 The Government held three rounds of public consultation which contributed to the development and drafting of the Bill. The first round was held from October to November 2022 and was focused on receiving feedback on Recommendation 1 of the Royal Commission's Interim Report and related Productivity Commission recommendations. According to DVA, the feedback indicated strong support for legislative simplification and harmonisation, but that there

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<sup>16</sup> Royal Commission into Defence and Veteran Suicide, [Interim Report](#), 11 August 2022, pp. 199–200. Original emphasis.

<sup>17</sup> Royal Commission into Defence and Veteran Suicide, [Interim Report](#), 11 August 2022, p. xvii.

<sup>18</sup> Royal Commission into Defence and Veteran Suicide, [Final Report](#), 9 September 2024, p. 3.

<sup>19</sup> Mr Luke Brown, First Assistant Secretary, Policy Division, DVA, *Committee Hansard*, 13 September 2024, p. 1.

was some concern about the potential for the reduction of existing or future benefits because of potential legislative reform.<sup>20</sup>

2.26 The second round of consultation ran from 16 February to May 2023 and sought feedback on the Government's proposed veterans' reform pathway which would establish an improved MRCA as the sole ongoing scheme, close the VEA and DRCA to new claims and grandparent all existing arrangements to ensure there is no reduction in entitlements currently or previously being received by veterans.<sup>21</sup> DVA submitted that the following key elements which arose during the consultation process were incorporated into the draft Bill:

- the safeguarding of current veteran and dependant entitlements by grandparenting existing payments;
- recognition under the new Act of previously determined compensable conditions, with no need to re-establish liability;
- continuation of the automatic eligibility for benefits for those dependants whose partner died while they had permanent impairments of more than 80 points or were eligible for the MRCA Special Rate Disability Pension;
- retention of two standards of proof when applying the Statement of Principles (SoPs);
- inclusion of the Additional Disablement Amount (ADA) in the MRCA to replicate the Extreme Disablement Adjustment (EDA) payment under the VEA to veterans who are of pension age and have high levels of incapacity due to service conditions;
- legislating the ability to prescribe conditions subject to presumptive liability;
- an exception to the prohibition of acceptance of liability under the MRCA for conditions related to service caused by tobacco use; and
- inclusion of the ability to accept liability under the MRCA by establishing a temporal connection between defence service and a medical condition.<sup>22</sup>

2.27 The third round of consultation was undertaken between February and April 2024 on an exposure draft of the Bill. In total, over 50 consultation sessions were held and 569 individual submissions were received and considered in developing the Bill.

2.28 DVA reported that the consultation revealed broad general support for the single ongoing Act approach with many organisations and individuals agreeing that this approach would achieve the stated outcome of simplifying the legislative system. Submissions expressed support for the expanded and

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<sup>20</sup> DVA, *Submission 15*, p. 20.

<sup>21</sup> See: DVA, *Veterans' Legislation Reform Consultation Pathway: Creating a simpler, easier to use system for the veteran community*, 2023. Available at: DVA, *Submission 15*, pp. 66–73.

<sup>22</sup> DVA, *Submission 15*, p. 21.

equitable access to benefits, for the MRCA as the single ongoing Act because of its greater focus on rehabilitation, and the inclusion of the ADA was well received by the veteran community.

- 2.29 While generally supportive of the single Act approach, some concerns were expressed about implementation issues such as timing, resourcing, legislation review and practical issues relating to veterans transitioning from coverage under the VEA and DRCA to the MRCA. There was also a strong view that there should be no detriment to veterans and families by way of reduction in any existing benefits in transitioning to a single ongoing Act.<sup>23</sup>
- 2.30 Based on feedback obtained during consultation on the exposure draft, the following changes were included in the Bill:
- veterans in receipt of DRCA incapacity payments will automatically transition to (more beneficial) MRCA incapacity payments from 1 July 2026;
  - where the Repatriation Medical Authority (RMA) updates a SoP between a primary level and secondary level (reviewable) decision, the version of the SoP that is most beneficial to the veteran's circumstances will be applied; and
  - an instrument-making power will be introduced to enable the Repatriation Commission to determine circumstances where a vulnerable veteran must receive financial advice before receiving a lump sum payment.<sup>24</sup>

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<sup>23</sup> DVA, *Submission 15*, pp. 150–151.

<sup>24</sup> DVA, *Submission 15*, p. 3. Note: a detailed table of the changes to the exposure draft since the consultation can be found in DVA, *Submission 15*, pp. 86–90.

# Chapter 3

## Views on the Bill

- 3.1 This chapter outlines a range of views put forward by the veteran community about the Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024 (the Bill).
- 3.2 The inquiry received submissions from ex-service organisations (ESOs) and veterans who largely expressed support for the primary aim of the Bill which is to harmonise and simplify the legislation governing veterans' entitlements, rehabilitation and compensation. Additionally, submitters were cautious about the impact the reform might have on the overall benefit to the veteran community, making the point that no veteran should be worse off because of the reform. Others also saw the legislative reform as an opportunity to improve some specific areas of veterans' benefits.
- 3.3 This chapter covers the following matters:
- support for the harmonisation and simplification of the legislation;
  - the benefits of more efficient administration of veteran claims;
  - positive experiences engaging with the consultation process;
  - a number of improvements in the Bill;
  - commentary on the timeframes related to the Bill;
  - a discussion on definitions and the use of certain terms in the Bill; and
  - suggestions to improve a number of veterans' benefits in the Bill.

### Support for the Bill

#### Harmonisation and simplification

- 3.4 Overwhelmingly, submitters agreed that the Bill's intended purpose to harmonise and streamline the three Acts into one Act was a positive step towards simplifying the framework of legislation governing veterans' entitlements, rehabilitation and compensation.<sup>1</sup>
- 3.5 126 Signal Squadron (Special Forces) congratulated the Minister for Veterans' Affairs and Defence Personnel, the Hon Matt Keogh (the Minister), and the Department of Veterans' Affairs (DVA) for 'achieving what many said was

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<sup>1</sup> See, for example: Australian Lawyers Alliance, *Submission 1*, p. 1; Veteran Family Advocate Commissioner, *Submission 10*, p. 1; Major General Greg Melick (Retd), National President, RSL Australia, *Committee Hansard*, 16 August 2024, p. 11; Mr Michael Carlon, *Submission 14*, p. 1; Opening statement and additional documents from Legacy Australia – public hearing 16 August 2024, Canberra, p. 1; Defence Force Welfare Association (DFWA), *Submission 22*, p. 1; Australian War Widows Inc (AWW), *Submission 5*, p. 3.

impossible—the creation of one single piece of legislation designed to address the needs of Australia’s veterans and their families’.<sup>2</sup>

- 3.6 The Veteran Family Advocate Commissioner, Commissioner Gwen Cherne, submitted:

The Veterans' Entitlement, Treatment, and Support (Simplification and Harmonisation) Bill 2024 is an important and significant step towards simplifying and improving the support system for veterans and families. The current system is overly complex, leading to stress and confusion, and ultimately impacting the health and wellbeing of those it is meant to support. This Bill aims to streamline processes, making it easier for veterans and families to access the benefits they deserve.<sup>3</sup>

- 3.7 The Productivity Commission acknowledged that the Bill reflects the findings and recommendations made in its 2019 report *A Better Way to Support Veterans* and supports the Bill’s aim to simplify the legislative arrangements, noting that:

... reform in this area necessitates difficult compromises, because it is not possible to achieve simplification without affecting some veterans’ potential entitlements.<sup>4</sup>

- 3.8 Legacy Australia, an ESO supporting veterans’ families when a veteran has either lost their life or health, commended the Australian Government on addressing Recommendation 1 of the Royal Commission into Defence and Veteran Suicide’s (Royal Commission) interim report through the Bill by:

... removing the complexity of the current three acts (VEA, DRCA and MRCA) through a harmonized single act based on a revised version of the MRCA. Legacy acknowledges that where possible the better parts of each piece of existing legislation have been included in the new version of the MRCA.<sup>5</sup>

- 3.9 One veteran submitted that the Bill is:

... the light at the end of the tunnel for Veterans, especially those caught up in the VEA, DRCA and MRCA lotto shenanigans, in relation to equality for permanent impairment.<sup>6</sup>

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<sup>2</sup> 126 Signal Squadron (Special Forces), *Submission 28*, p. 2.

<sup>3</sup> Veteran Family Advocate Commissioner, *Submission 10*, p. 1.

<sup>4</sup> Productivity Commission, *Submission 21*, p. 3.

<sup>5</sup> Legacy Australia, *Submission 9*, p. 1.

<sup>6</sup> Name withheld, *Submission 17*, p. 1.

### More efficient administration

3.10 Some submitters noted that the administrative efficiency that DVA will gain by being able to process claims against one piece of legislation, rather than three, will also have flow on benefits to veterans.<sup>7</sup>

3.11 Ms Margaret Jenyns, Head of Veterans' Services Support at RSL Queensland, stated:

With the single act, as time goes on, I believe that the benefits just by DVA only having to work through one particular legislation or one set of systems and one set of legislation will be incredibly beneficial to our veterans. I genuinely believe that we will have a better, more efficient process. At the moment, with three acts, it's confusing for everybody. The training that is required for DVA delegates and the training required for our own ESO advocates is immense. With this whole process, by going back to one legislation, the training, the system support and all that sort of thing can be potentially, if we work on it, so much more efficient and effective. I think it cannot help but benefit the veterans who are applying for assistance.<sup>8</sup>

3.12 Similarly, Dr Mark Lax, Vice-Chairman of Legacy Australia, took the view that:

... once [the Bill] is enacted, claims will be processed much quicker and hopefully with less resubmission to the department, which in turn will relieve them of the pressure of the backlogs and so forth.<sup>9</sup>

3.13 The Defence Force Welfare Association (DFWA) and the Community and Public Sector Union (CPSU) were also in support of the administrative gains for DVA resulting in faster claims settlement times to the benefit of veterans, but it was noted that the human resource levels in DVA must be maintained at appropriate levels to meet demand and that the changes must be complemented by additional training.<sup>10</sup>

3.14 DVA explained that the claims processing efficiencies would be achieved through 'new claims only having to be administered under a single Act, removing much of the complexity that exists in the current system', such as compensation offsetting, and differing eligibility and assessment criteria.<sup>11</sup> DVA stated that the benefits of improved administration would 'flow to veterans and families in the form of quicker, more-straightforward and more-consistent claim

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<sup>7</sup> See, for example: Ms Margaret Jenyns, Head, Veterans' Services Support, RSL Queensland, *Committee Hansard*, 16 August 2024, p. 11; DFWA, *Submission 22*, p. 2; Community and Public Sector Union (CPSU), *Submission 6*, p. 1.

<sup>8</sup> Ms Margaret Jenyns, Head, Veterans' Services Support, RSL Queensland, *Committee Hansard*, 16 August 2024, p. 11.

<sup>9</sup> Dr Mark Lax, Vice-Chairman, Legacy Australia, *Committee Hansard*, 16 August 2024, p. 13.

<sup>10</sup> DFWA, *Submission 22*, p. 2; CPSU, *Submission 6*, pp. 1–2. See, also: Australian Lawyers Alliance, *Submission 1*, p. 12.

<sup>11</sup> DVA, *Supplementary submission 15.1*, pp. 4–5.

outcomes, and would ensure that benefits and support services are commenced sooner'.<sup>12</sup>

- 3.15 Furthermore, DVA assured the Committee that the Australian Government had provided DVA with 'demand driven funding' in this year's Budget, so the scale of its operation is driven by the volume of claims on hand.<sup>13</sup> Additionally, DVA noted that the commencement date of 1 July 2026 provides enough time for DVA to ensure appropriate supports and training are in place for advocates and claims processing staff to ensure they can support veterans and their families through the transition.<sup>14</sup>

### **Positive experiences with the consultation process**

- 3.16 As discussed in chapter 2, the Australian Government held an extensive consultation process on the exposure draft of the Bill. A number of ESOs made note of the positive experience they had throughout the consultation process, as well as ongoing support provided by DVA.<sup>15</sup>
- 3.17 The Vietnam Veterans Association of Australia (VVAA) noted that they 'have been pleased with the extensive briefing programme of veterans' and ESOs undertaken by DVA'.<sup>16</sup>
- 3.18 RSL Australia recounted a number of instances where their concerns were alleviated by consultation with DVA. On Veterans' Home Care, for example, Ms Jenyns stated:

... the interaction with the department has been excellent. They've been very helpful and responsive with any questions. They've made themselves available for meetings with RSL staff. We are very happy with the way they have assisted us through this process ... [U]nder the MRCA, there is now attendant care and the other benefits. I was concerned because I couldn't see within the legislation where access to Veterans' Home Care was being carried across ... I wanted reassurance that the Veterans' Home Care program would continue to be accessible by them.

I attended a workshop in Brisbane not too long ago in relation to aged care. I was assured that it was in the legislation.<sup>17</sup>

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<sup>12</sup> DVA, *Supplementary submission 15.1*, p. 3.

<sup>13</sup> Mr Andrew Kefford, Deputy Secretary, Policy and Programs Group, DVA, *Committee Hansard*, 13 September 2024, p. 8.

<sup>14</sup> DVA, *Submission 15*, p. 64.

<sup>15</sup> See, for example: Ms Margaret Jenyns, Head, Veterans' Services Support, RSL Queensland, *Committee Hansard*, 16 August 2024, p. 8; Major General Greg Melick (Retd), National President, Returned & Services League of Australia (RSL Australia), *Committee Hansard*, 16 August 2024, p. 6.

<sup>16</sup> Vietnam Veterans Association of Australia (VVAA), *Submission 8*, p. 1.

<sup>17</sup> Ms Margaret Jenyns, Head, Veterans' Services Support, RSL Queensland, *Committee Hansard*, 16 August 2024, p. 8.

3.19 Similarly, Legacy Australia described its experience interacting with DVA as positive, stating:

We actually get on very well with the department. We have an annual advocacy forum, which we've just had a couple of weeks ago, wherein the department fully supported us ... We draw in our advocates from around Australia to get their impressions of how this has been working. That has been one of the most beneficial things we have found because we have the direct opportunity for the people out in the field to question the secretary and other members of the department ... To answer your question, I would say that it is a positive experience.<sup>18</sup>

### Other notable provisions

3.20 Submitters, including the Australian War Widows Inc (AWW), the Veterans Family Advocate Commissioner and Legacy Australia, acknowledged a number of improvements in the Bill, including provisions such as:

- an increase to the funeral allowance;
- improvements in the provisions covering bereavement payments;
- the introduction of presumptive liability, allowing the Repatriation Commission to specify automatic claims;
- increased reimbursement for medical travel;
- posthumous lump sum payments;
- creating a single commission by merging the Military Rehabilitation and Compensation Commission into the Repatriation Commission;
- payments to the primary carer of an eligible young person or child and education support for eligible young people;
- the ability to resubmit claims previously rejected under VEA or DRCA under MRCA; and
- extended liability coverage covering deaths due to on-duty medical events.<sup>19</sup>

### Key issues raised about the Bill

3.21 This section canvasses some of the key issues raised by submitters and witnesses throughout the inquiry, including concerns about timeframes related to the Bill, the use of certain terms in the Bill, the potential for improvements to particular veterans' entitlements in the Bill, and some concerns with DVA's consultation process.

### Timeframes

3.22 A number of issues were raised by submitters relating to timeframes, including:

- the Bill's release ahead of the Royal Commission's final report;
- the impact of the Bill's commencement date of 1 July 2026; and

<sup>18</sup> Dr Mark Lax, Vice-Chairman, Legacy Australia, *Committee Hansard*, 16 August 2024, pp. 16–17.

<sup>19</sup> AWW, *Submission 5*, p. 2; Veteran Family Advocate Commissioner, *Submission 10*, pp. 1–2; Legacy Australia, *Submission 9*, pp. 1–2.

- the timeframe for grandparenting.

### ***The Royal Commission***

- 3.23 Several legal groups raised concern that the Bill had been developed prior to the release of the Royal Commission's final report and recommendations.
- 3.24 The Australian Lawyers Alliance and Slater and Gordon submitted that the legislation had been drafted without consideration of the final recommendations of the Royal Commission, arguing that the Bill should not be finalised until the Royal Commission's final report is reviewed and its recommendations incorporated into the legislation, if appropriate.<sup>20</sup>
- 3.25 Mr Greg Isolani, a partner at KCI Lawyers specialising in veterans' compensation, added that the Bill is 'long overdue' and should not be rushed without reasonable and proper consideration of the range of issues that have been raised through the Committee's inquiry and of the recommendations from the Royal Commission.<sup>21</sup>
- 3.26 At a public hearing following the publication of the Royal Commission's final report, DVA stated that its initial assessment of the final report is that 'none of the recommendations cut across the content of the Bill'.<sup>22</sup> DVA also added that the Royal Commission's final report does note that the Bill 'will result in a harmonised scheme in line with the principles recommended by the Productivity Commission, which informed their interim report recommendation 1'.<sup>23</sup>

### ***The Bill's commencement date***

- 3.27 Legacy Australia raised a concern relating to the transitional period between the Bill passing parliament and its commencement on 1 July 2026. Legacy Australia was concerned that applicants could be disadvantaged by lodging claims during this period under the old three Act system before the new Act commences, and that it may result in veterans' delaying submitting their claims. Legacy Australia would have preferred a commencement date of 1 July 2025, but recommended that a no detriment clause be included in the Bill to ensure applicants will not be disadvantaged due to the delayed commencement date.<sup>24</sup>

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<sup>20</sup> Australian Lawyers Alliance, *Submission 1*, p. 2; Slater and Gordon, *Submission 7*, p. 1.

<sup>21</sup> Mr Greg Isolani, *Submission 29*, p. 17.

<sup>22</sup> Mr Luke Brown, First Assistant Secretary, Policy Division, DVA, *Committee Hansard*, 13 September 2024, p. 1.

<sup>23</sup> Mr Simon Hill, Assistant Secretary, Legislative Reform Branch, Policy Division, DVA, *Committee Hansard*, 13 September 2024, p. 13.

<sup>24</sup> Dr Mark Lax, Vice-Chairman, Legacy Australia, *Committee Hansard*, 16 August 2024, p. 16.

3.28 During a public hearing, DVA was asked whether some of the benefits in the Bill, such as the increased funeral payments and private vehicle reimbursements, could be brought forward and implemented sooner than 1 July 2026.<sup>25</sup> DVA responded that it would be possible, but that is not what is in the Bill currently before parliament.<sup>26</sup>

3.29 DVA added that the commencement date of 1 July 2026 'is not being driven by the department's ability to implement the changes from a practical perspective', rather it is about:

... the need for the veterans community to feel comfortable with the transition process to the new arrangements, understand how they would affect them, and to make some informed choices about what claims they want to make under the current arrangements and what claims they want to make under the new arrangements.

Interestingly, ... at some of the consultation forums that we have undertaken, there are divergent views on that question about the timeframe of commencement. Some people are advocating for it to commence earlier while others are advocating for it to commence later.<sup>27</sup>

### ***Grandparenting***

3.30 There were divergent views presented in submissions regarding the inclusion of grandparenting in the Bill. The Bill allows for veterans to submit new claims under existing VEA and DRCA legislation after Royal Assent up until the commencement date of 1 July 2026.

3.31 DFWA argued that time-limited grandparenting will disadvantage veterans and that grandparenting should continue indefinitely. DFWA supported grandparenting because it allows veterans the choice of making a new claim under the existing legislation or waiting to submit a claim under the new legislation, but DFWA believes that putting a time-limit on it equates to a loss of a condition of service. For example, DFWA is concerned that:

- a veteran who has served and been covered by VEA and DRCA for all their service can no longer make a claim under that legislation after the commencement date even if it is more beneficial than the new MRCA; and
- a veteran does not have a choice to grandparent when a new medical condition is diagnosed, even if it existed prior to the commencement date, or when a condition worsens or when they die.<sup>28</sup>

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<sup>25</sup> Senator Jacqui Lambie, *Committee Hansard*, 13 September 2024, pp. 3 & 7.

<sup>26</sup> Mr Andrew Kefford, Deputy Secretary, Policy and Programs Group, DVA, *Committee Hansard*, 13 September 2024, pp. 3 & 7.

<sup>27</sup> Mr Luke Brown, First Assistant Secretary, Policy Division, DVA, *Committee Hansard*, 13 September 2024, pp. 9–10.

<sup>28</sup> DFWA, *Submission 22*, pp. 4–5.

3.32 If indefinite grandparenting is not an option, DFWA recommended:

Veterans, who have not reasonably been able to get qualified Advocate support and advice in time to submit a grandparenting claim before 1 July 2026, be:

- (a) granted an extension of time to make a grandparented claim;
- (b) provided with assistance from DVA to find an Advocate able provide support; or failing that
- (c) provided with funding for a claimant to obtain legal support in submitting a claim.<sup>29</sup>

3.33 On the other hand, the Productivity Commission was critical that the Bill included the grandparenting of entitlements at all, stating that coverage across multiple Acts retains the underlying causes of complexity, making it difficult for veterans and their families to navigate and for DVA to administer. The Productivity Commission explained:

The Commission is aware that a considerable number of veterans and veteran groups want the system to be simplified without the loss of any entitlements. However, this is not possible—a system that does not reassess the existing benefits will continue to become more and more complex. Reform in this area is not possible without affecting some veterans' potential entitlements. And it is the reluctance by governments to remove payments and the grandfathering of compensation benefits that is, at least in part, the root cause of the complexity of the current system.<sup>30</sup>

3.34 DVA disagreed with both the position of DFWA and the Productivity Commission, stating that DVA is 'firmly of the view that the changes in the VETS Bill more comprehensively address the recommendations from the Royal Commission aimed at simplifying veterans' legislation'.<sup>31</sup>

3.35 DVA submitted that:

Although no new compensation claims lodged from 1 July 2026 will be assessed under the VEA or DRCA, certain provisions within these Acts will remain open to ensure compensation linked to previous claim determinations are honoured. Provisions in the VEA relating to Income Support and Qualifying Service will be retained under the VEA and will continue to operate for new claims received on or after 1 July 2026. DVA notes that many veterans and dependants who have previously been assured of receiving a payment for life (or until the end of their eligibility period) will have planned their finances and futures on the basis that these payments are safe and secure. These 'grandparenting' provisions are vital to ensure that beneficiaries do not have their payments reduced simply because a new system is implemented.

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<sup>29</sup> DFWA, *Submission 22*, p. 7.

<sup>30</sup> Productivity Commission, *Submission 21*, p. 3.

<sup>31</sup> DVA, *Supplementary submission 15.1*, p. 5.

...

The Bill also introduces safeguards to ensure any unique and unforeseen circumstances can be managed without detriment to veterans and families.<sup>32</sup>

## Definitions

3.36 One of the key issues raised by submitters was the contestation over the use or omission of terms in the Bill, in particular, ‘wholly dependent partner’ and ‘veteran’.

### *Wholly dependent partner*

3.37 Submitters raised concerns about the use of the term ‘wholly dependent partner’ in the Bill, which is argued to be no longer reflective of modern family dynamics. It was clear that there is strong opposition to the use of the term, however there was no consensus on what term should replace it.

3.38 According to Legacy Australia, the current interpretation of a ‘wholly dependent partner’ is not relevant in today’s context:

There's a certain emotional dependency. There's care dependency. There's educational dependency. There's many different types. When these acts were drafted, a family was mum, dad and a couple of kids. That no longer applies. Often, it meant that—I will use the term 'husband'—the male partner was the breadwinner and the female partner, the wife, was either the home carer and looked after the kids or had a lesser paid job. Of course, in those days, superannuation was minimal. So consequently, that definition generally applied when the male partner, who might have been the veteran, died and therefore left the family in financial distress. Quite frankly, that is no longer the case for several reasons. Families ... are now quite broad. Often, it is the surviving partner who is the breadwinner or is the higher earner and there is different superannuation. There is ComSuper superannuation payments as well as compensation payments.<sup>33</sup>

3.39 However, Legacy Australia acknowledged that whilst the understanding of the term has changed over time, it does not really present problems for them in terms of how successfully they advocate on behalf of veteran families. Legacy Australia stated if the term was not redefined in the Bill:

We would continue as is. We're very pleased generally with the legislation as it has been drafted. If, for example, you recommend that we don't have a definition of dependant or family, we will continue to offer that full range of Legacy services to those people regardless ... It just makes it clearer in terms of our dealing with DVA in particular where the demarcation might be.<sup>34</sup>

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<sup>32</sup> DVA, *Submission 15*, pp. 13–14.

<sup>33</sup> Dr Mark Lax, Vice-Chairman, Legacy Australia, *Committee Hansard*, 16 August 2024, pp. 13–14. See, also: Legacy Australia, *Submission 9*, pp. 3–5.

<sup>34</sup> Dr Mark Lax, Vice-Chairman, Legacy Australia, *Committee Hansard*, 16 August 2024, p. 14.

3.40 Australian War Widows Inc (AWW) is a strong advocate for replacing the term ‘wholly dependent partner’ with ‘widow/er’. AWW submitted:

In the present form of the MRCA legislation there is no mention of war widows/ers, instead the term “Wholly Dependent Partner” is used. The majority of war widows/ers across Australia are saddened and disappointed at being labelled with this term. Most war widows worked during their marriages and contributed to the family finances, not to mention keeping the family unit together during their husbands’ absences. When their husbands became ill due to their war service the “widows” cared for them and in actual fact, it was the veteran who was “dependent” ... The proposed terminology “Wholly Dependent Partner” could relate to anyone, it makes no reference to veterans or their defence service. AWW believes that it is disrespectful to those who have served, and shows contempt and ignorance towards widows/ers who are left behind.<sup>35</sup>

3.41 Alternatively, the Veteran Family Advocate Commissioner proposed that the term ‘wholly dependent partner’ be replaced with the term ‘bereaved family member’ for its clarity and inclusivity, stating:

Community discussions revealed that referring to a partner as wholly or partly dependent is not only outdated but also offensive. The feedback strongly favours ‘bereaved family’ as the future terminology, even though the older generation of veteran families still strongly prefers ‘widow(er).’ Embracing ‘Bereaved Family Member’ aligns with modern family dynamics and diverse compositions, making it more acceptable to younger partners and ensuring our language is both gender-neutral and relevant.<sup>36</sup>

3.42 RSL Australia agreed that there needs to be a new term and that ‘wholly dependent partner’ is not consistent with modern norms in relationships, and commented on the Veteran Family Advocate Commissioner’s suggestion stating that ‘bereaved family member’ does sound better than ‘wholly dependent partner’.<sup>37</sup> However, RSL Australia stated that the term needs to be more specific so that it clearly defines and identifies the different family members who are to be covered by the Bill, suggesting the following:

- Bereaved Family Member – Partner
- Bereaved Family Member – Dependent Child
- Bereaved Family Member – Other Dependent.<sup>38</sup>

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<sup>35</sup> AWW, *Submission 5*, pp. 1–2.

<sup>36</sup> Veteran Family Advocate Commissioner, *Submission 10*, p. 2.

<sup>37</sup> Ms Margaret Jenyns, Head, Veterans’ Services Support, RSL Queensland, *Committee Hansard*, 16 August 2024, p. 12.

<sup>38</sup> RSL Australia, *Supplementary submission 11.1*, p. 4.

- 3.43 In response to the concerns about the definition and use of the term ‘wholly dependent partner’, DVA stated that ‘everyone would agree that it’s not necessarily a contemporary description of modern families’,<sup>39</sup> however:

... there is no consistent view in the veteran community as to the preferred language associated with the ‘wholly dependent partner’ entitlement ... Work is underway with the Veteran Family Advocate Commissioner and relevant stakeholders to resolve this matter and any changes will be subject to Government agreement. The term ‘bereaved family member’ may not be specific enough for the purposes of the Act, as different benefits apply to different types of family members (e.g. surviving partner as distinct to dependent children).<sup>40</sup>

### ***Veteran***

- 3.44 A number of submitters discussed concerns about the word ‘veteran’ not being defined or used in the Bill, with the Bill instead referring to a ‘person’.

- 3.45 Major General Melick (Retd), National President of RSL Australia, noted that whilst this is an issue of semantics and the entitlements are still there and available regardless of whether the Bill refers to a ‘person’ or a ‘veteran’,<sup>41</sup> it is an issue that is of concern to a significant number of RSL Australia’s members:

There is no definition of ‘veteran’. They say this is a bill about veterans. Why isn’t it there? Of course, there’s no point in just having a definition of ‘veteran’ at the outset of the bill if it’s not used in the rest of the bill because at the moment it’s not. What we have is a bill that sets out a person who has these characteristics or attributes. Our view is that Commonwealth legislation should harmonise the use of the definition of ‘veteran’. It should be used in this act.

... the feedback we’re getting from our members is that they would like to see this bill recognise that they are a veteran, that the word be included, and then you give the various attributes to the term ‘veteran’ rather than ‘person’.<sup>42</sup>

- 3.46 In its submission, RSL Australia was strongly opposed to describing veterans as ‘just persons’<sup>43</sup> and emphasised that it:

... rejects any action to exclude the word ‘veteran/s’ from the Bill and any future Australian legislation. The identification, recognition and acknowledgement of the unique nature of military service is central to the

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<sup>39</sup> Mr Andrew Kefford, Deputy Secretary, Policy and Programs Group, DVA, *Committee Hansard*, 13 September 2024, p. 14.

<sup>40</sup> DVA, *Supplementary submission 15.1*, p. 7.

<sup>41</sup> Major General Greg Melick (Retd), National President, RSL Australia, *Committee Hansard*, 16 August 2024, p. 7.

<sup>42</sup> Major General Greg Melick (Retd), National President, RSL Australia, *Committee Hansard*, 16 August 2024, p. 6.

<sup>43</sup> RSL Australia, *Supplementary submission 11.1*, p. 3.

health and wellbeing of current and former serving ADF members, to informing defence and veteran policy and action, and it is part of Australia's DNA.

The [Bill] must, at a minimum, enable a clear cross reference to Section 4 of the *Australian Veterans' Recognition (Putting Veterans and their Families First) Act 2019* to ensure 'Veterans', their families and the community has a clear understanding of DVA's client base.<sup>44</sup>

3.47 The *Australian Veterans' Recognition (Putting Veterans and Their Families First) Act 2019* defines a veteran as 'a person who has served, or is serving, as a member of the Permanent Forces or as a member of the Reserves'.<sup>45</sup>

3.48 DFWA agreed this would be the most appropriate definition to include in the Bill:

This definition is in common use and has been accepted by the Veteran Ministers' Council with representatives from all states. A change to that definition is not supported and would add confusion.<sup>46</sup>

3.49 However, DFWA questioned why a definition of veteran was not included in the Bill, noting that the Consultation Report on the Exposure Draft of the Bill, dated June 2024, states: 'Following feedback on this matter, the Australian Government has decided to insert a definition of veteran into the MRCA'.<sup>47</sup>

3.50 DVA responded to this feedback explaining:

... the VETS Bill was amended prior to its introduction to Parliament to insert additional detail into the simplified outline of the MRCA. The changes incorporate the concept of a 'veteran' as a 'member or former member of the Defence Force'.<sup>48</sup>

3.51 However, whilst the Bill does have references to a 'member or former member', it precedes this with a reference to 'a person' rather than 'a veteran'.

3.52 At a public hearing, DVA clarified:

The MRCA, for the last 20 years, has not in a mechanical sense used the word 'veteran'. It refers to things like serving members of the ADF, former serving members of the ADF, part-time reservists and cadets—as in school-age cadets. To define a term in an act that then is not used in the provisions of the act, in terms of the advice and the conversations that we've had, would create ambiguity around the proper interpretation of that term.

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<sup>44</sup> RSL Australia, *Submission 11*, p. 9.

<sup>45</sup> *Australian Veterans' Recognition (Putting Veterans and Their Families First) Act 2019*, Section 4.

<sup>46</sup> DFWA, *Submission 22*, p. 12.

<sup>47</sup> DFWA, *Submission 22*, p. 12. See: DVA, *Consultation Report: Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024 – Exposure Draft, 2024*, p. 9.

<sup>48</sup> DVA, *Supplementary submission 15.1*, p. 6.

We did have this conversation explicitly with parliamentary counsel as part of the drafting ... Because the term wouldn't be otherwise used in the MRCA, the advice is that it would potentially add confusion and unnecessary complexity and open up pathways for litigation that are unhelpful. In terms of status recognition ... the *Australian Veterans' Recognition Act* achieves that purpose, and it's on that basis that the term is not in the MRCA.<sup>49</sup>

### **Veterans' entitlements and compensation**

3.53 Submitters and witnesses raised a broad range of matters that they would like to see addressed in the Bill to improve provisions relating to veterans' entitlements and compensation, including that the Bill should ensure that no veteran is worse off because of the harmonisation of the legislation. Whilst not all matters raised in submissions can be covered in this report, this section canvasses some of the key areas where concerns were raised.

#### *No veteran worse off*

3.54 In bringing together the three Acts into one, a number of submitters stressed the importance that no veteran be worse off.<sup>50</sup>

3.55 Ms Pat McCabe, National President of TPI Australia, emphasised that cases of winners and losers will not be known until the Bill is introduced and put into action, giving the following example:

Our fear, especially when the DRCA clients automatically transfer to MRCA, is that we really don't know if some are going to lose or some are going to win. We haven't been through it case by case. Our fear is that there will be people in that category alone who may be worse off.<sup>51</sup>

3.56 TPI Federation of Australia (TPI Federation) called for the Australian Government to ensure that simplifying and harmonising the legislation is to the benefit of all veterans.<sup>52</sup> TPI Federation recommended that the Bill be amended to ensure that veterans are no worse off if unforeseen or unintended consequences of merging the Acts occurs.<sup>53</sup>

3.57 From RSL Australia's perspective, Major General Melick stated:

The concern is to make sure that no veteran will be worse off. The Act makes sure that any veteran who has any entitlements under the previous Act is

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<sup>49</sup> Mr Luke Brown, First Assistant Secretary, Policy Division, DVA, *Committee Hansard*, 13 September 2024, p. 13; Mr Andrew Kefford, Deputy Secretary, Policy and Programs Group, DVA, *Committee Hansard*, 13 September 2024, p. 14.

<sup>50</sup> See, for example: TPI Federation of Australia (TPI Federation), *Submission 3*, p. 2; Ms Patricia (Pat) McCabe, National President, TPI Federation, *Committee Hansard*, 16 August 2024, pp. 2–4.

<sup>51</sup> Ms Pat McCabe, National President, TPI Federation, *Committee Hansard*, 16 August 2024, p. 4.

<sup>52</sup> TPI Federation, *Submission 3*, p. 2.

<sup>53</sup> Ms Pat McCabe, National President, TPI Federation, *Committee Hansard*, 16 August 2024, pp. 2–4.

preserved. It becomes difficult, then, to ensure that the best part of all three Acts gets incorporated in the new Act because there may be cost considerations. We are of the view that the right balance has been achieved, although over the next few years there may be discrepancies or imbalances that appear and, therefore, there will have to be modifications.<sup>54</sup>

- 3.58 During a public hearing, Ms Jenyns was asked whether the Bill should have a provision built in for situations where there is a lack of clarity on a veterans' entitlements, to ensure there will be a default to the benefit of the veteran. Ms Jenyns stated:

The legislation does cover the fact that if there is an anomaly that is identified for a person, the Repatriation Commission can step in and address that anomaly. So, I think that sort of meets what you are saying. I guess that's only for a person. If there is an anomaly across the board where it says a class of persons or a type of issue, the Repatriation Commission needs to be able to step in via an instrument or something to be able to address that. Certainly, there needs to be a fallback position where DVA can step in and say, 'Yes, we understand that there's a problem here and we can address it'.<sup>55</sup>

- 3.59 DVA highlighted in its submission that a key feature of the Bill is to 'ensure no veteran or dependant experiences a reduction in their current payments or previous payments when transitioning to the new scheme' by grandparenting existing payments, and that those benefits will continue to be indexed annually.<sup>56</sup> At a public hearing, DVA pointed out that there will be choices for veterans and their families to make as to whether they make a claim under the three Act system or under the new system and that outcomes for some veterans will be different, but not necessarily worse off. For example, a veteran may decide 'I would prefer a few thousand dollars extra in my lump sum compared to a Gold Card' – so DVA stated that there 'is some subjectivity in that'.<sup>57</sup>
- 3.60 RSL Australia suggested another way to address any unforeseen outcomes from the merger of the Acts, would be to write into the Bill that a formal review of the legislation be conducted within a period after the Bill is enacted. It was noted that when the MRCA was introduced in 2004, a similar review process was conducted.<sup>58</sup>

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<sup>54</sup> Major General Greg Melick (Retd), National President, RSL Australia, *Committee Hansard*, 16 August 2024, p. 6

<sup>55</sup> Ms Margaret Jenyns, Head, Veterans' Services Support, RSL Queensland, *Committee Hansard*, 16 August 2024, p. 11.

<sup>56</sup> DVA, *Submission 15*, p. 15.

<sup>57</sup> Mr Luke Brown, First Assistant Secretary, Policy Division, DVA, *Committee Hansard*, 13 September 2024, pp. 3–4.

<sup>58</sup> Ms Margaret Jenyns, Head, Veterans' Services Support, RSL Queensland, *Committee Hansard*, 16 August 2024, p. 7.

3.61 DFWA also recommended that the Bill include a requirement for a review to be conducted, noting that, given the large scale of the legislation, ‘it is inevitable that deficiencies will be identified during implementation which will require rectification’.<sup>59</sup> DFWA acknowledged that some problems may be fixable within existing operational or delegated flexibility arrangements, but others may require legislative change. DFWA recommended:

... a review to be conducted, with input from all stakeholders, within six months of Commencement date or 18 months after legislation receives Royal Assent, whichever is earliest. This review and resulting Amending Legislation requirement shall include an appropriate “sunset clause”. The review should include, but not be limited to:

- (a) governance arrangements,
- (b) benefit improvement and clarification,
- (c) operational process improvement,
- (d) Royal Commission recommended changes, and
- (e) the need for complementary new or amended legislation.<sup>60</sup>

3.62 In DVA’s *Impact Analysis 2024* report on the veterans’ compensation and rehabilitation legislation reform, the potential for a review is discussed as an option, stating ‘broader overall success of the new system should be measured at a reasonable interval post implementation’. The options for consideration included a review similar to what was suggested by submitters and are listed as follows:

- a legislative review similar to the “*Review of Military Compensation Arrangements*” which commenced in 2009, five years after the introduction of the MRCA and concluded in 2011;
- internal audit reporting directly to the DVA Executive; and
- engagement with the new Australian Centre for Evaluation.<sup>61</sup>

3.63 DVA further noted that the proposed implementation date of 1 July 2026 provides sufficient lead time to design a robust evaluation process.<sup>62</sup>

#### ***Gold Card eligibility for DRCA veterans***

3.64 Submitters and witnesses supported DRCA veterans being given access to the Gold Card in the Bill, but concerns were raised about the eligibility criteria requiring the application and acceptance of a new claim or for a previous impairment to have worsened by at least five impairment points.<sup>63</sup>

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<sup>59</sup> DFWA, *Submission 22*, p. 16.

<sup>60</sup> DFWA, *Submission 22*, p. 16.

<sup>61</sup> DVA, *Submission 15*, p. 165.

<sup>62</sup> DVA, *Submission 15*, p. 165.

<sup>63</sup> See, for example: DFWA, *Submission 22*, pp. 14–15; Mr Michael Carlon, *Submission 14*, p. 2; Name withheld, *Submission 17*, p. 3; RSL Australia, *Submission 11*, p. 14; Ms Margaret Jenyns, Head,

3.65 RSL Australia submitted it supports the provision of Gold Cards to eligible DRCA veterans and dependents, but articulated concerns about equitable treatment stating that the Bill:

... does not appropriately reflect the reality of current veterans living with impairment who receive compensation under the DRCA or VEA, nor will it put in place appropriate conditions for their equitable treatment under the reformed MRCA.

...

Achieving an overall impairment increase is reliant on the GARP [(Guide to the Assessment of Rates of Veterans' Pensions)] Combined Values Chart.<sup>64</sup> As an example of the inequity, a person on an existing 10 points impairment rating needs a further 10 points to achieve an overall increase of 5. A person on 80 points requires an additional 23 points to reach that overall increase of 5. In simple terms, the more impaired a veteran is, the higher the hurdle he/she has to jump.<sup>65</sup>

3.66 RSL Australia went on to propose that the overall intent of this aspect of the legislation should be to:

... move active clients into the new legislation as seamlessly as possible for both DVA and the veteran recipient. As such, the RSL submits that the criteria be rewritten to state that the increase in the person's overall impairment constitutes an increase of at least 5 impairment points, or that there is a 5 impairment point increase in the assessment of any single condition which has been accepted under the VEA or DRCA—whichever is the higher.<sup>66</sup>

3.67 Similarly, DFWA questioned why a reassessment of existing conditions under the new legislation was not sufficient to determine eligibility, stating that a veteran should not need to go through a process and stress of making claims for new injuries or worsened existing injuries. The DFWA submitted:

The proposed approach will create situations where some ex-DRCA Veterans more severely incapacitated than others will not qualify for a Gold Card while others, less incapacitated, will qualify. This is plainly wrong.

It is recommended that the criteria be re-written to include the existing criteria, with an addition of "or a review involving a reassessment of the veteran's accepted DRCA incapacities under new MRCA criteria qualifies for access to a Gold Card".<sup>67</sup>

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Veterans' Services Support, RSL Queensland, *Committee Hansard*, 16 August 2024, p. 9; RAAC Corporation, *Submission 18*, p. 22; Mr Gregory Isolani, *Submission 29*, pp. 11–12.

<sup>64</sup> See: DVA, [Guide to the Assessment of Rates of Veterans' Pensions](#), pp. 231–236.

<sup>65</sup> RSL Australia, *Submission 11*, p. 15.

<sup>66</sup> RSL Australia, *Submission 11*, pp. 15–16.

<sup>67</sup> DFWA, *Submission 22*, pp. 14–15.

3.68 Mr Michael Carlon, a volunteer advocate at the Portarlington & St Leonards RSL and representative of the Australian Special Air Service Association, explained the importance of amending the eligibility for DRCA veterans:

These veterans were injured during their service for Australia and as such they should have access to the same medical and concession provisions that VEA and MRCA veterans have. The introduction of the new Bill is the opportunity for our government to rectify past wrongs in respect to the issuing of a Gold Card to DRCA veterans.

Rectifying this matter would mean that DRCA veterans are no longer second class veterans—at no fault of their own, their situation is solely due to a Compensation Act that was ill conceived and short lived.<sup>68</sup>

3.69 DVA responded to these concerns explaining why the Bill requires a five-point worsening of a veterans' overall impairment level, or the acceptance of a new condition after commencement:

This requirement ensures that veterans are not unfairly receiving additional compensation for conditions that have already been compensated under the DRCA. The issue arises due to the existing compensation systems have differing approaches regarding specific entitlements. For example, permanent impairment compensation under the DRCA is assessed and compensated on a condition-by-condition basis, meaning a veteran can technically be paid compensation at a rate which exceeds 100% impairment. This cannot occur under the MRCA, where impairments from conditions are combined and compensated on a 'whole-of-person' basis. DVA notes that several submissions disagree that DRCA veterans should have to meet any additional threshold for a Gold Card once any new arrangements commence. It is likely that veterans who are impacted by these provisions may reach the relevant threshold levels under the MRCA at some point in the future irrespective.<sup>69</sup>

3.70 Furthermore, DVA added that retrospectively providing Gold Cards to all veterans covered by the DRCA, and otherwise meeting the requirements under the MRCA, would:

... require a manual re-assessment of likely more than a thousand claims of DRCA veterans in the first year which would be inconsistent with the approach to reform under the VETS Bill being based on date of claim, with movement to MRCA coverage from the VEA or DRCA to be where there is a new claim (or material exacerbation of an existing condition) after commencement, with existing benefits pre-commencement grandfathered.<sup>70</sup>

### ***Service differential and the Statement of Principles***

3.71 A number of submitters advocated for removing the service differential (between warlike and non-warlike service, or operational and non-operational)

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<sup>68</sup> Mr Michael Carlon, *Submission 14*, p. 1.

<sup>69</sup> DVA, *Supplementary submission 15.1*, p. 9.

<sup>70</sup> DVA, *Supplementary submission 15.1*, p. 9.

in favour of a single operational environment for injuries, illnesses, or the death of a veteran.<sup>71</sup> Concerns about the application of the Statement of Principles (SoPs), produced by the Repatriation Medical Authority (RMA), under the MRCA, which is retained in the Bill, was also discussed.<sup>72</sup>

3.72 126 Signal Squadron (Special Forces) explained the issue:

Currently there are two thresholds and standards applied to veterans who make claims to DVA. This has become known as the 'service differential' and has been the source of confusion and disenchantment among the veteran community for a number of years.

The service differential is used in conjunction with the Statement of Principles produced by the Repatriation Medical Authority to differentiate claims of injury, health conditions or death of those veterans with operational experience against those with non-operational experience. Those veterans with operational experience are judged on the 'Reasonable Hypothesis' of a claim and those with non-operational service are judged on the less generous provisions of the 'Balance of Probabilities'.<sup>73</sup>

3.73 126 Signal Squadron (Special Forces) expressed disappointment that the Bill does not remove the current service differential in favour of a single operational method of assessment for veterans regardless of where the injury, illness, or death of a veteran occurred. 126 Signal Squadron noted that the Productivity Commission, the Chief of the Defence Force at the time, General Angus Campbell AO DSC, and the Royal Commission, all supported the removal of the service differential.<sup>74</sup>

3.74 Slater and Gordon outlined the major problems with the SoPs and recommended that the SoPs be reviewed in the Bill as a matter of priority:

The SoPs are perceived to work against a veteran rather than in their support. Rigid, inflexible application of the SoP Risk Factors in determining a claim is inconsistent with the beneficial intent and provisions of the legislation, particularly where the veteran also suffers with [post-traumatic stress disorder] ... The current SoP structure is overly complicated and burdensome for veterans ... Namely, we urge the current SoP system be reviewed with a view to simplifying the process and reducing the unreasonable evidence requirements. Furthermore, provisions should be

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<sup>71</sup> See, for example: Dr Mark Lax, Vice-Chairman, Legacy Australia, *Committee Hansard*, 16 August 2024, p. 15; Productivity Commission, *Submission 21*, p. 4; NAA, *Submission 15*, pp. 7–8; Legacy Australia, *Submission 9*, p. 6; Australian Peacekeeper and Peacemaker Veteran's Association, *Submission 2*, p. 3; 126 Signal Squadron (Special Forces), *Submission 28*, pp. 7–8.

<sup>72</sup> See, for example: Mr Greg Isolani, *Submission 29*, pp. 6–7; Slater and Gordon, *Submission 7*, pp. 7–8; 126 Signal Squadron (Special Forces), *Submission 28*, p. 7; Australian Lawyers Association, *Submission 1*, pp. 6–7.

<sup>73</sup> 126 Signal Squadron (Special Forces), *Submission 28*, p. 7.

<sup>74</sup> 126 Signal Squadron (Special Forces), *Submission 28*, pp. 7–8. See, also: Mr Ross Dunn, *Submission 32*, p. 3.

made for conditions recognised in the medical community that are not yet reflected in SOPs. Legislation and specifically the Simplification Bill implementing this fundamental change should be a priority for the DVA.<sup>75</sup>

- 3.75 Furthermore, Slater and Gordon added that the Bill must be drafted to provide more certainty and clarity with the SoPs, stating that the fundamental issue with SoPs is:

... that they are premised on constantly evolving medical science, yet, despite endeavours by the RMA, they are not updated soon enough to reflect these changes. By the very nature of SOPs, they cannot be applied too rigorously and should only be referred to as a general guide. The strict interpretation approach needs to be removed.

The quantification and qualification required to prove the above factors is onerous on the veteran and serves to lengthen the claims process and restrict Commonwealth liability. If a claimant cannot immediately report the onset of symptoms or if their experience does not otherwise meet these strict parameters, their claim can be denied.

In comparison, a Commonwealth public servant covered by the existing SRCA must only demonstrate that on the balance of probabilities their injury arose out of or was aggravated in the course of their employment. In my experience, this test is less restrictive and contains fewer arbitrary technicalities that seem designed to block claims by veterans. The simplification Bill does not remedy this inequity.<sup>76</sup>

- 3.76 Australian Lawyers Alliance agreed that the two standards of proof should not be transferred to the new Bill, rather the ‘on balance of probabilities’ measure would be an appropriate standard of proof for this legislation, and that the SoPs should be treated as discretionary and as a guide, rather than determinative.<sup>77</sup>
- 3.77 Mr Greg Isolani concurred, stating that, in most cases, the SoPs are used to deny claims rather than as a framework to accept claims. Mr Isolani acknowledged that the strict application of SoPs can lead to the rejection of a claim where the medical evidence indicates there is a link between the claimed condition and the claimant’s ADF service, and therefore the interpretation and application of SoPs should have a degree of flexibility for delegates.<sup>78</sup> Mr Isolani recommended:

The Bill can overcome this “unintended outcome” of the SoP’s if there is a discretion for DVA at review level, including at the VRB [Veterans’ Review Board] and the AAT [Administrative Appeals Tribunal] to “override” the SoP ... [A decision] should also be reviewable by the VRB and the AAT if a request to override the SoP is refused by the [Military Rehabilitation and Compensation Commission].

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<sup>75</sup> Slater and Gordon, *Submission 7*, pp. 7–8.

<sup>76</sup> Slater and Gordon, *Submission 7*, p. 8.

<sup>77</sup> Australian Lawyers Alliance, *Submission 1*, pp. 6–7.

<sup>78</sup> Mr Greg Isolani, *Submission 29*, p. 6.

This approach allows DVA to obtain and / or consider medical evidence as to causation when strict adherence to the SoP factors would result in the claim failing despite evidence that the condition is service related.

It is recommended that all SoPs ... are reviewed by the Repatriation Medical Authority to determine, if, for example, using the DRCA standard of proof (Balance of probability) for the frequent ADF conditions would likely succeed. If so, the SoP's should be beneficially amended to ensure consistency of decision making.<sup>79</sup>

3.78 DVA explained that the Bill does alleviate some of the need to use the SoPs as it enables:

... the Repatriation Commission to specify, via legislative instrument, that claims for certain injuries and diseases can be accepted by DVA on a presumptive (i.e. automatic) basis without otherwise needing to engage with the Statements of Principles system. This would reduce the investigation required prior to determining such claims.<sup>80</sup>

3.79 Additionally, DVA reported that following consultation on the exposure draft of the Bill, it added a provision to ensure that where the RMA updates a SoP between the veteran's primary and reviewable decision, the version of the SoP which is most beneficial to the veteran's circumstances will be applied.<sup>81</sup>

3.80 Regarding the service differential, DVA acknowledged that this is a 'contentious issue amongst the veteran community and no consensus has been reached about whether it is appropriate to retain a service differential within the compensation system', however:

The use of different standards of proof reflects that evidence can be more difficult to obtain in the context of service in operational areas. It also reflects the view of successive Governments that operational service is 'unique' in nature when compared to peacetime service. The MRCA has always provided compensation for conditions attributable to all types of ADF service and retains the 'service differential' to recognise the circumstances of service on operations and the unquantifiable effects of combat.<sup>82</sup>

### ***Offsetting***

3.81 Offsetting was introduced to deal with the duplication of compensation that sometimes occurs when a veteran is covered under multiple Acts for the same claim. The impact of offsetting on lump sum payments was raised as a concern for a number of submitters. According to ESOs, there have been reports of

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<sup>79</sup> Mr Greg Isolani, *Submission 29*, pp. 6–7

<sup>80</sup> DVA, *Supplementary submission 15.1*, pp. 4–5.

<sup>81</sup> DVA, *Submission 15*, p. 43.

<sup>82</sup> DVA, *Supplementary submission 15.1*, p. 8.

veterans who have paid multiples over the original lump sum because of the offsetting provisions.<sup>83</sup>

- 3.82 RSL Australia expressed that this was an issue mainly to do with inappropriate actuarial advice and recommended that the Bill include a provision ensuring that veterans get appropriate advice before electing to receive a lump sum payment:

We are concerned, particularly about lump sum payments, because of the offsetting potential, that a proper and informed decision is made by the veteran before electing. The actuarial calculations used by the Commonwealth seem to be at odds with some of the ones that I've dealt with in my common law practice. DVA is considering the legislation to make sure that they are appropriate and that people get appropriate advice. That should include advice from either an actuary or a [Certified Public Accountant]. You have to balance not duplicating compensation ... We think it's important there is legislation to ensure that appropriate advice is taken before making elections.<sup>84</sup>

- 3.83 DFRA agreed that the Bill should include a provision to support veterans' access to professional financial advice to assist in their decision-making.<sup>85</sup>

- 3.84 TPI Federation highlighted the case of one Vietnam veteran who received a lump sum payment of \$171 000 and has paid back approximately \$322 000, as at 8 August 2024, through offsetting, noting that these repayments will continue through his lifetime.<sup>86</sup> At a public hearing, a potential solution was discussed:

**Senator FAWCETT:** ... Would the TPI Federation view a cap that once the impact of the initial offsetting had reached the value of that lump sum payment, all offsetting impact would essentially be removed and it would go back to the original? Do you think that would be a reasonable outcome?

**Ms McCabe:** I would have to discuss that in depth. In general, that is what we're looking for. The way it was explained to me was offsetting is not a repayment scheme for the advance funding. Because it is not a repayment scheme, it is ongoing repayments. To me, that is totally illogical. I know it's legal, but it's immoral to take back more than what you got initially, in our view. So it is any methodology you can come up with. In this case, the fellow got \$171,000. If you reach that limit of having been offset or paid back, or

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<sup>83</sup> Major General Greg Melick (Retd), National President, RSL Australia, *Committee Hansard*, 16 August 2024, p. 9. See, also: Opening statement and attachment from TPI Federation of Australia – public hearing 16 August 2024, Canberra, p. 3; Mr Barry Aldcroft, *Submission 13*, p. 1.

<sup>84</sup> Major General Greg Melick (Retd), National President, RSL Australia, *Committee Hansard*, 16 August 2024, p. 9.

<sup>85</sup> DFWA, *Submission 22*, pp. 10–11.

<sup>86</sup> Opening statement and attachment from TPI Federation of Australia – public hearing 16 August 2024, Canberra, p. 3. Other examples are provided by Sandgate RSL Sub Br Inc, *Supplementary submission 27.1*, p. 1 and Mr Barry Aldcroft, *Submission 13*, p. 1.

whatever words you want to use, that \$171,000, that should be the end of it.<sup>87</sup>

3.85 RSL Australia agreed that such a provision creating a safety net where the repayments ceased once the original value was reached would be welcome.<sup>88</sup>

3.86 Whilst DVA did not comment specifically on whether this kind of provision could be considered, it clarified the purpose of offsetting:

It is a misconception that offsetting represents the ‘paying back’ of an individual’s compensation. Compensation offsetting is the process of reducing one compensation payment in recognition of another compensation payment for the same incapacity or death. This includes compensation received via third-party and/or common law actions. The principle behind offsetting is to ensure that a person with eligibility under multiple Acts is not compensated more than a person in similar circumstances but who is only able to claim from one source.

...

Superannuation offsetting serves to ensure that a Commonwealth payment that is for the same purpose (i.e. for the veteran’s inability to work) is provided by the Commonwealth only once.<sup>89</sup>

3.87 In relation to how offsetting applies in the Bill, DVA explained:

The VETS Bill would see the future need to ‘offset’ payments received under different Acts eliminated, except in cases where existing payments are maintained under ‘grandparenting’ arrangements. Further, veterans with existing impairments under the DRCA or the VEA will be able to receive additional compensation for any worsening of their conditions under the MRCA without the need to reduce their existing entitlements.

Veterans who are granted [Disability Compensation Payment] will continue to be eligible for the benefit for life, however they may receive a reduced rate if they have already received lump-sum compensation. It would be inequitable to allow some veterans to receive compensation at a total rate that is higher than what their impairment and lifestyle ratings justify, solely because they are paid by two sources, whilst other veterans are limited to being compensated by one source.

Superannuation offsetting is usually discussed in the context of the existing SRDP but will also be applied to the new [Additional Disablement Amount] payment under the MRCA. Superannuation offsetting refers to the process which reduces these payments by 60 cents for every dollar the veteran is receiving in Commonwealth-funded any superannuation.<sup>90</sup>

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<sup>87</sup> Ms Pat McCabe, National President, TPI Federation, *Committee Hansard*, 16 August 2024, p. 2.

<sup>88</sup> Major General Greg Melick (Retd), National President, RSL Australia, *Committee Hansard*, 16 August 2024, p. 10.

<sup>89</sup> DVA, *Supplementary submission 15.1*, pp. 10–11.

<sup>90</sup> DVA, *Supplementary submission 15.1*, p. 11.

3.88 Additionally, DVA outlined that in response feedback during consultation that additional safeguards were needed to assist with the long-term financial security of veterans, the Bill inserts an instrument making power that allows the Repatriation Commission to specify circumstances and the classes of persons who are required to obtain financial or legal advice before compensation or other benefits are paid under the MRCA. This new power will be 'an important tool in helping veterans understand their financial decisions to minimise any detriment that could be caused by providing options to receive lump-sum compensation'.<sup>91</sup>

### *Access to legal representation*

3.89 Some submitters suggested that the Bill should be amended to allow veterans to have access to legal representation at the Veterans' Review Board (VRB).<sup>92</sup>

3.90 The Australian Lawyers Alliance was disappointed that the Bill excludes legal practitioners from appearing as a representative at a VRB hearing and argued that it 'is essential for veterans to have the option to utilise legal representation and assistance at all stages of the claims process' so that they can:

- navigate lengthy and complicated legislation;
- ensure their claims are presented correctly from the outset and during review;
- have additional support for those veterans and their families through these processes; and
- receive assistance in obtaining appropriate financial advice following a settlement.<sup>93</sup>

3.91 The Naval Association of Australia (NAA) noted that the Government argues that the reason not to allow legal representation at the VRB is so that the it 'remains less adversarial, with a veteran-friendly environment where matters can be resolved without the involvement of lawyers'.<sup>94</sup> However, the NAA is of the view that it is not fair to have veterans and advocates without legal training present cases to a VRB membership who have legal training, stating:

The NAA is concerned about this imbalance of justice and what appears to be a breach by the Commonwealth of its obligations under its Model Litigant Policy 5. In particular, not taking advantage of a claimant who does not have the resources to litigate a legitimate claim ... The NAA believes that if a veteran elects to be legally represented it is their decision not a legislator's.

...

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<sup>91</sup> DVA, Submission 15, pp. 16–17.

<sup>92</sup> See, for example: Slater and Gordon, *Submission 7*, p. 12; Naval Association of Australia (NAA), *Submission 19*, p. 6; Australian Lawyers Alliance, *Submission 1*, p. 2.

<sup>93</sup> Australian Lawyers Alliance, *Submission 1*, p. 2.

<sup>94</sup> NAA, *Submission 19*, p. 6.

The NAA recommends veterans should be given the option of legal representation at the VRB.<sup>95</sup>

- 3.92 Slater and Gordon agreed that the prohibition on veterans having access to legal representation at the VRB should be repealed and added that the VRB should 'become a full costs jurisdiction for the Applicant. That is, it will enable legal and other representatives to assess the merits of cases and pursue them on a "no win, no fee" basis'.<sup>96</sup>
- 3.93 However, this issue appeared to be divisive with others arguing that the prohibition on legal practitioners appearing at the VRB is reasonable.<sup>97</sup>
- 3.94 Mr Ross Dunn, a volunteer veterans' advocate at the Veterans' Support Centre, respectfully disagreed that veterans should have the option of legal representation at VRB hearings, stating:

While there are many solicitors and barristers in the VRB membership that is not a problem; legal training ensures proper consideration of evidence, legislation and precedents. So long as the VRB retains its informality and its understanding of the beneficial nature of veterans' legislation, and there is a generous proportion of veterans in the composition of the membership I see no need for veterans to 'even up' with their own lawyers. A VRB hearing is not a contest between the veteran and the Board, in the way that applicant and respondent face off in the AAT.

I think that the restriction on legal representation ensures that the VRB will continue to be veteran friendly and less adversarial than it would be with lawyers present. If veterans were able to appear with lawyers it would not take long for DVA to follow suit and the Board would start acting more as a referee between contestants.<sup>98</sup>

- 3.95 DVA stated that 'allowing for legal representation at the VRB would be seen to be at odds with the purpose of that body, to provide a non-adversarial, veteran-friendly and cost-effective merits review pathway'.<sup>99</sup>

### **Committee view**

- 3.96 The complexity of the current tri-Act legislative framework is widely acknowledged to adversely impact the health and wellbeing of some veterans. The Committee commends the Australian Government for pursuing the most significant reform of veterans' entitlements, rehabilitation and compensation legislation in decades.

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<sup>95</sup> NAA, *Submission 19*, pp. 6–7.

<sup>96</sup> Slater and Gordon, *Submission 7*, p. 12.

<sup>97</sup> See, for example: Royal Australian Armoured Corps Corporation (RAAC Corporation), *Submission 18*, p. 1; Mr Ross Dunn, *Submission 32*, p. 2.

<sup>98</sup> Mr Ross Dunn, *Submission 32*, p. 2.

<sup>99</sup> DVA, *Supplementary submission 15.1*, p. 13.

- 3.97 The Committee was encouraged by the positive feedback on the Bill, particularly in relation to the Bill's primary aim to harmonise and simplify the legislative framework which was overwhelmingly supported by inquiry participants. Submitters also reported positive experiences engaging with the Department of Veterans' Affairs (DVA) throughout the consultation process as well as receiving ongoing support and engagement.
- 3.98 The Committee notes that there were varied perspectives on the appropriateness of the Bill's commencement date of 1 July 2026. Legacy Australia, in particular, was concerned that applicants could be disadvantaged by lodging claims during the period between the passage of the Bill and the commencement date which could result in veterans' delaying submitting their claims. The Committee was assured by DVA that all factors had been considered in nominating this commencement date and that it was particularly important to provide the veteran community with enough time to feel comfortable with the transition to the new arrangements, to understand how the legislation would affect them, and to make informed choices about what claims they want to make under the current arrangements and what claims they want to make under the new arrangements.
- 3.99 The Committee welcomes DVA's assertion that a key feature of the Bill is to ensure that no veteran or dependant experiences a reduction in their current or previous payments in transitioning to the new legislation. DVA did note, however, that whether a veteran is 'better or worse off' is subjective, emphasising that there will be choices for veterans and their families to make which means that the outcomes for some veterans may be different under the new legislation, but not necessarily worse off.
- 3.100 On the matter of grandparenting, diverse views were put forward by submitters extending from advocating for indefinite grandparenting to removing grandparenting all together. The Committee is satisfied that the Australian Government has found the right balance between ensuring that veteran and dependant payments previously assured under the VEA and DRCA are secure, that there is adequate time for veterans to consider their options in the transition period as to whether they would prefer to lodge claims under the old or new system, and that grandparenting does not unnecessarily impact the core aim of simplifying and harmonising the legislative framework.
- 3.101 The Committee notes that there was disagreement around the use of certain terms in the Bill and agrees with the sentiment of submitters that the term 'wholly dependent partner' is not reflective of modern family dynamics. The Committee acknowledges that whilst the term is used in the Bill, DVA has indicated that it is a matter they are progressing with the Veteran Family Advocate Commissioner and relevant stakeholders to find a solution.

- 3.102 The Committee acknowledges that some ex-services organisations and veterans considered the legislative reform as being an opportunity to improve certain aspects of veterans' entitlements and compensation. The key concerns raised throughout the inquiry were also identified in DVA's consultation on the exposure draft of the Bill. The Committee commends DVA on acting on a number of the concerns raised through this process by amending the Bill, and notes that where issues have been categorised as ongoing legislative and policy issues, they may be resolved in the future as part of the legislative reform process or may be considered in the policy or administrative context during implementation.
- 3.103 The Committee acknowledges the importance of the issues raised by submitters and emphasises that the reform process does not end with this Bill. The Bill responds to the urgent recommendation of the Royal Commission of the need to simplify and harmonise the legislative framework for veterans' compensation to support better outcomes for veterans. The Committee echoes the point made by the Royal Commission that there is no perfect solution but the Australian Government needs to make a decision now. Moreover, to delay the reform in the search for a perfect solution would be a disservice to the veteran community.
- 3.104 The Committee supports the Australian Government's ongoing engagement with DVA on further improvements to the legislative framework, in consultation with stakeholders. The Committee welcomed the advice from DVA that an evaluation process is being designed to monitor and assess the implementation and progress of the legislation, should it pass. The Committee encourages DVA to release the details of the evaluation process as soon as practicable, including whether a legislative review similar to the *Review of Military Compensation Arrangements*, which was undertaken after the MRCA was introduced in 2004, will be undertaken.
- 3.105 The Committee is of the view that the Bill will achieve the objective to create a legislative framework that will make the system easier for veterans and families to navigate. By simplifying the legislation governing veterans' entitlements, veterans' health and wellbeing will be enhanced by making it easier for veterans and their families to understand and access their entitlements. By harmonising the legislation into a single Act, the differing benefit types and eligibility will also be aligned to ensure equitable compensation outcomes. Furthermore, by administering one Act, rather than three, DVA will be able to train staff and process claims more efficiently, facilitating more timely access to benefits and services for veterans and families.

**Recommendation 1**

**3.106 The Committee recommends that the Bill be passed.**

**Senator Raff Ciccone**

**Chair**

**Labor Senator for Victoria**



## Australian Greens' additional comments

- 1.1 The Australian Greens support the policy of harmonising the current veterans' entitlements, rehabilitation and compensation arrangements from three acts into one. However, there must be continued support and dialogue with veterans and their families to ensure that the intent of the Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024 (the Bill) is being met, in particular, that no one is left worse off.
- 1.2 This Bill represents an incremental bureaucratic change in how veterans' entitlements are managed in Australia. It is not in any way a response to the final report of the Royal Commission into Defence and Veterans Suicide (Royal Commission) and will not, by itself, make any of the essential changes needed to meet either the core recommendations or the spirit of that inquiry.
- 1.3 In short, this Bill is designed to benefit the government and bureaucracy, with any benefits to veterans being largely incidental.
- 1.4 It became clear through the inquiry process that the legislation governing veterans' entitlements, rehabilitation and compensation is overly complex, difficult to navigate and harms veterans and their families. The current approach of veterans being covered by the *Veterans' Entitlements Act 1986* (VEA), the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (DRCA), and the *Military Rehabilitation and Compensation Act 2004* (MRCA), is not fit for purpose.
- 1.5 However, the scope of the Bill itself is limited and does not address the fundamental issues in the way the government treats veterans. As the TPI Federation of Australia noted:

... the proposed changes to the legislation actually is not intended to alleviate suicidal ideation but rather tries to address issues that the Government and the Bureaucracy has with the legislation. This 'Simplification' is for the purpose of administration and not for the benefit of the Veterans and their families.<sup>1</sup>
- 1.6 While a simplified administration could, to some degree, empower veterans to navigate the bureaucracy, the point is clear that this Bill is not designed to address the myriad issues with veteran compensation itself.
- 1.7 Further to this point, the Bill, while a modest, useful step, should not be seen as a response to the findings of the Royal Commission as it does not address the fundamental flaws identified. More work needs to be done to ensure that rights and needs-based entitlements, rehabilitation and compensation are in place. We

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<sup>1</sup> TPI Federation of Australia (TPI Federation), *Submission 3*, p. 2.

look forward to working with the Government to achieve this and other recommendations of the Royal Commission.

- 1.8 In light of the submissions, while the Bill is generally supportable, elements of the Bill need further clarification and change. This includes more inclusive and appropriate language. As the Families of Veterans Guild pointed out:

The first thing that needs to be done is to include veteran families and to remove archaic language which perpetuates power dynamics and isn't consistent with contemporary standards. Language like 'wholly dependent partner', 'dependents' and 'attendants' no longer meets community expectations and devalues the role of veteran families. If the Bill were to include amendments to the *Military Rehabilitation and Compensation Act 2004* (MRCA) to replace this language with the words 'veteran families' or 'families of veterans' then the Act too would need to define them under s5 of the MRCA. To date, difficulties in defining veteran families has led to their lack of inclusion and engagement.<sup>2</sup>

- 1.9 The introduction of 'presumptive liability' provisions is also a positive step that goes some of the way to addressing the adversarial system. However, more clarity is needed on how these claims are processed and how the statements of principles regime are being applied.
- 1.10 Concerns were also raised both during the inquiry and historically over issues with eligibility. One example is the surviving 1965–72 National Servicemen who served overseas or personnel who were not in a 'warlike' condition as determined by the Department of Defence (Defence) but certainly were exposed to danger, such as personnel exposed to the nuclear test area for Maralinga or in perimeter patrol at Butterworth in Malaysia.
- 1.11 Of particular note is the peacekeeper actions where Australian Defence Force (ADF) personnel were at heightened personal risk but have not been classified as warlike service. The Department of Veterans' Affairs (DVA) provided on notice a table of peacekeeping missions that did not qualify as 'warlike' service, including but not limited to:
- United Nations Commission for Indonesia 28 January 1949;
  - United Nations Yemen Observation Mission 1 January 1965;
  - United Nations Interim Force in Lebanon 23 March 1978;
  - Sinai Multinational Force and Observers, established by the Protocol between the Arab Republic of Egypt and the State of Israel dated 3 August 1981.<sup>3</sup>
- 1.12 These were conflict zones, even if not designated 'warlike' by Defence and people serving were at heightened risk of injury and deserve appropriate

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<sup>2</sup> Families of Veterans Guild, *Submission 4*, p. 1.

<sup>3</sup> Department of Veterans' Affairs – answers to questions on notice from a public hearing held on 16 August 2024, Canberra (received 12 September 2024), p. 4.

support. As the Australian Peacekeeper and Peacemaker Veterans Association (APPVA) noted in its submission:

However, the APPVA is concerned that a legislative limitation on the definition of a veteran, risks recreating the historical problems created by differentiating between different classes of veterans, even when these veterans served side-by-side on the same operation. If this issue remains unaddressed, the government will simply recreate the policy complexity, inter-veteran tensions, administrative intransigence, and poor outcomes that have adversely impacted veterans' support arrangements for decades.<sup>4</sup>

- 1.13 There are also concerns over the new Repatriation Commission (RC). While the merging of the Military Rehabilitation and Compensation Commission (MRCC) with the RC does streamline the system to a point, it is unclear how this will work in practice. The MRCC previously had six members with very specific oversight of rehabilitation on compensation. However, the new RC will just keep three of the MRCC members, none of whom have expertise in the rehabilitation and compensation aspects of the previous commissions. The Families of Veterans Guild makes a series of positive recommendations to enhance the Commission's operations, including allowing for the Commissioner to consider community submissions and incorporate veteran family needs and considerations into decisions.
- 1.14 Due to these concerns and others with the implementation of the Bill it is important that veterans and veteran families are able to inform the Government of what issues emerge and if the intent of the Bill is achieved.
- 1.15 Furthermore, DVA made clear that the Royal Commission's final report recommendations are not directly affected by the Bill. This is, of course, understandable given the Bill was tabled and drafted well before the final report of the Royal Commission was delivered. However, it also means that extra time will be needed to understand the Royal Commission's final report and see the extent to which this Bill adheres to its recommendations.<sup>5</sup>
- 1.16 Due to these issues, the Defence Force Welfare Association recommended that a review be conducted, with input from all stakeholders, following the implementation of the Bill.<sup>6</sup> This would allow stakeholders to continue to engage with the changes being made and ensure the Bill is meeting the aims of making the system both harmonised and simplified. This is a sensible recommendation and reflects many of the discussions our office has had with veterans and their representatives about this Bill and the direction that veterans' entitlements reform needs to take.

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<sup>4</sup> Australian Peacekeeper and Peacemaker Veterans Association, *Submission 2*, p. 3.

<sup>5</sup> Mr Luke Brown, First Assistant Secretary, Policy Division, DVA, *Committee Hansard*, 13 September 2024, p. 1.

<sup>6</sup> Defence Force Welfare Association, *Submission 22*, p. 16.

1.17 To this extent, the Greens will press for oversight and a review mechanism when the legislation is debated in the Senate.

**Additional recommendation**

1.18 **The Senate initiates a review of the changes this Bill made to the *Military Rehabilitation and Compensation Act 2004*, to be conducted, with input from all stakeholders, within 12 months after the legislated changes commence.**

**Senator David Shoebridge  
Senator for New South Wales**

# Jacqui Lambie Network's additional comments

## Introduction

- 1.1 The Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024 (the Bill) proposes major reform to the legislative framework governing veterans' entitlements, rehabilitation and compensation arrangements.
- 1.2 The Bill provides that all claims for veterans' compensation will be determined under the *Military Rehabilitation and Compensation Act 2004* (the MRCA) from 1 July 2026. The *Veterans' Entitlements Act 1986* (the VEA) and the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (the DRCA) will continue to operate in a limited form.
- 1.3 The current legislative framework is widely regarded as being overly complex, difficult to navigate and challenging to administer effectively. These issues have resulted in significant delays in processing claims which negatively impacts the wellbeing of veterans. There have been ongoing calls to streamline and simplify these processes with the aim to improve efficiencies, reduce wait times and ensure greater consistency in outcomes.
- 1.4 The Bill was introduced in the Australian Parliament in July 2024 following an extensive consultation process originating from the Productivity Commission's report titled 'A Better way to Support Veterans'. In this report, the Productivity Commission concluded that the current legislative framework for veterans' compensation and rehabilitation is 'not fit for purpose' and 'requires fundamental reform'.<sup>1</sup> It further stated that the legislative framework governing veterans' compensation and rehabilitation is:

... out-of-date and is not working in the best interest of veterans and their families, or the Australian community ... It is overly complex (legislatively and administratively), difficult to navigate, inequitable, and it is poorly administered (which places unwarranted stress on claimants).<sup>2</sup>
- 1.5 On a similar note, the Interim Report of the Royal Commission into Defence and Veteran Suicide (Interim Report) described the current legislative framework for veterans as 'so complicated that it adversely affects the mental health of some veterans and can be a contributing factor to suicidality'.<sup>3</sup> The Interim Report made thirteen recommendations, the first of which urged the Australian

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<sup>1</sup> Productivity Commission, [A Better Way to Support Veterans: Overview and Recommendations](#), 27 June 2019, p. 2.

<sup>2</sup> Productivity Commission, [A Better Way to Support Veterans: Overview and Recommendations](#), 27 June 2019, p. 2.

<sup>3</sup> Royal Commission into Defence and Veteran Suicide, [Interim Report](#), 11 August 2022, p. 169.

Government to develop and implement legislation to simplify and harmonise the framework for veterans' compensation, rehabilitation, and other entitlements.<sup>4</sup>

- 1.6 I commend the Department of Veterans' Affairs (DVA) for bringing forward legislation that seeks to implement the first recommendation of the Interim Report to simplify and harmonise the legislative framework governing compensation, rehabilitation and other entitlements for our veteran community. I would also like to express my appreciation for their engagement and willingness to provide time and resources on this matter.
- 1.7 The legislative landscape for veterans is a contentious and complex area that has lacked meaningful reform for many years. The Bill, in its original form, spans over 300 pages and is accompanied by an explanatory memorandum of 115 pages. To get across the legislation with just two advisors was a considerable challenge, especially when coupled with other priorities spanning across all fifteen government portfolios and other electoral responsibilities.
- 1.8 The Jacqui Lambie Network (JLN) has actively engaged with numerous individuals and organisations to ensure a thorough understanding of the proposed legislation. The JLN sincerely thanks all those we have met for their invaluable time and guidance on this important matter. The shared insights have been instrumental in shaping our approach and ensuring that the needs of the veteran community are appropriately addressed.

### **Key issues**

- 1.9 The Bill's intended purpose to harmonise and streamline three existing Acts into a single Act is a positive step towards simplifying legislation governing veterans' entitlements, rehabilitation and compensation. However, it also represents a missed opportunity to tackle other systemic, structural and cultural issues that require urgent attention within Defence and Veteran portfolios.
- 1.10 It is essential that the new legislation is fit for purpose and effectively serves the needs of both former and current serving members of the Australian Defence Force.
- 1.11 Unfortunately, it remains unclear why the DVA has only implemented one recommendation from the Interim Report, instead of adopting a more comprehensive strategy to address major issues highlighted in the Bill's consultation process as well as recommendations from the Final Report of the Royal Commission into Defence and Veteran Suicide. A more holistic approach is urgently needed to address these critical issues.
- 1.12 The Bill can be improved by addressing the following key areas:

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<sup>4</sup> Royal Commission into Defence and Veteran Suicide, [Interim Report](#), 11 August 2022, p. 202.

- immediately implement straightforward recommendations from the Final Report of the Royal Commission into Defence and Veteran Suicide;
- bring forward the Bill's commencement date to ensure timely implementation;
- expand coverage of liability for members of the Australian Defence Force;
- provide legal representation for veterans;
- introduce changes around defective administration;
- clarify the definition of legal personal representative;
- improve access to healthcare and Gold Card eligibility;
- modernise statement of principles and standard of proof thresholds;
- improve the timeframe for processing claims;
- address the interpretation of clinical onset;
- clarify the meaning of primary responsibility for a young person or child; and
- introduce a statutory review period.

1.13 These issues are discussed in further detail below.

### **Royal Commission into Defence and Veteran Suicide**

1.14 The Bill was drafted before the Final Report of the Royal Commission into Defence and Veteran Suicide (Final Report) was published. Many stakeholders have raised concerns about this timeline, arguing that the Bill should not be passed until the Final Report and its recommendations are carefully reviewed and considered.

1.15 For example, Mr Greg Isolani, partner at KCI Lawyers specialising in veterans' compensation, argued that the Bill is 'long overdue' and 'should not be rushed without reasonable and proper consideration of the range of issues that have been raised through the Committee's inquiry and of the recommendations from the Royal Commission'.<sup>5</sup>

1.16 The DVA has not provided a clear explanation as to why the Bill was introduced before the Royal Commission into Defence and Veteran Suicide handed down its Final Report. Before the passage of this legislation, the DVA must provide a response to the Final Report.

1.17 The recommendations and findings of the Royal Commission into Defence and Veteran Suicide has helped identify systemic, structural and cultural issues relating to serving and ex-serving members of Australian Defence Force. As a minimum, the government should utilise this opportunity to urgently implement recommendations that seek to address the following critical issues:

- (a) military sexual violence (recommendations 21, 22, 23 and 24);

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<sup>5</sup> Mr Greg Isolani, *Submission 29*, pp. 16–17.

- (b) role and functions of the Inspector-General of the Australian Defence Force to facilitate the effective operation of our military justice system (recommendations 42, 43, 45, 50, 51 and 53);
- (c) quality, timeliness and effectiveness of healthcare for serving and ex-serving members of the Australian Defence Force (recommendation 62, 71 and 73);
- (d) transitioning from military to civilian life (recommendations 80, 81, 82 and 85);
- (e) veteran wellbeing (recommendation 87 and 89);
- (f) entitlements and claims processing (recommendations 90, 94, 95, 97, 98 and 101); and
- (g) utilise and coordinate data and research (recommendations 114, 115, 117 and 119).

### **Recommendation 1**

**1.18 The Australian Government immediately address systemic, structural and cultural issues within Defence and Veteran portfolios by introducing amendments to implement recommendations from the Final Report of the Royal Commission into Defence and Veteran Suicide.**

#### **Commencement date**

- 1.19 The transitional period between the introduction of the Bill in the Australian Parliament and its proposed commencement date has been subject to criticism in various submissions.
- 1.20 The Bill has a proposed commencement date of 1 July 2026, apart from Schedule 3 Part 1 which provide changes to the Veterans' Review Board and alternative dispute resolution processes. This section is set to commence 60 days after the Bill receives Royal Assent.
- 1.21 Given that almost the entirety of the Bill does not commence until 1 July 2026, it is imperative for the DVA to respond to the recommendations outlined in the Final Report of the Royal Commission into Defence and Veteran Suicide and consider improvements to the Bill until the commencement period.
- 1.22 The delayed commencement of the Bill means that the veteran community will need to wait approximately 21 months from the date of this report to start receiving its benefits. In the Senate Foreign Affairs, Defence and Trade Legislation Committee public hearing, I asked the DVA whether some of the benefits of the Bill, such as increased funeral payments (Schedule 2, Part 1) and private vehicle reimbursements (Schedule 1, Part 3), could be brought forward and implemented sooner than 1 July 2026. The DVA mentioned that it would be possible.<sup>6</sup>

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<sup>6</sup> Senator Jacqui Lambie, *Committee Hansard*, 13 September 2024, pp. 3 & 7.

1.23 Additionally, the Interim Report of the Royal Commission into Defence and Veteran Suicide mentioned in the recommendation to simplify and harmonise the framework for veterans' compensation, rehabilitation, and other entitlements that:

If the legislation is passed, the Australian Government should ensure that, by no later than 1 July 2025, the new legislation has fully commenced and is fully operation.<sup>7</sup>

1.24 The DVA has not provided a sufficient explanation for the delayed commencement of the Bill and has not fully implemented the recommendation from the Interim Report.

1.25 In its submission to the Senate Foreign Affairs, Defence and Trade Legislation Committee inquiry, the DVA stated that the new legislation is not scheduled to commence until 1 July 2026 to:

... allow veterans, advocates, and other stakeholders time to familiarise themselves with the new system and make informed decisions regarding the submission of claims under the current scheme or new arrangements [and] ... to allow sufficient time to train veteran advocates and delegates appropriately.<sup>8</sup>

1.26 To facilitate a timely transition, the DVA should consider advancing the passage of the legislation to 1 July 2025 in line with the recommendation from the Interim Report, accompanied by a robust educational campaign aimed at informing veterans, advocates and other stakeholders about the changes. This campaign should include a comprehensive communication plan utilising letters, emails, websites and other platforms to ensure a smooth transition to the new legislative framework.

## Recommendation 2

**1.27 The Department of Veterans' Affairs bring forward the commencement date of the Bill to 1 July 2025 in line with the recommendation from the Interim Report, coupled with a comprehensive educational campaign to inform veterans, advocates and other stakeholders about the new legislative framework.**

## Recommendation 3

**1.28 The Department of Veterans' Affairs bring forward the commencement of Schedule 2, Part 1 (funeral payments) and Schedule 1, Part 3 (private vehicle reimbursement) to 30 days after receiving Royal Assent.**

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<sup>7</sup> Royal Commission into Defence and Veteran Suicide, *Interim Report*, 11 August 2022, p. 202.

<sup>8</sup> Department of Veterans' Affairs, *Submission 15*, p. 8.

### Coverage of liability

- 1.29 The Australian Government should provide 24/7 coverage to members of the Australian Defence Force by recognising the unique nature of service which does not fall into the normal civilian tests of employment.
- 1.30 The coverage of liability should be extended to situations where members of the Australian Defence Force sustain injuries or fatalities during physical exercise or shore leave. Currently, these activities may not meet the statutory definition of a service-related injury or death, leading to significant concerns among members of the Australian Defence Force.
- 1.31 The heads of liability require that 'defence service' be 'rendered' and that the service be temporally or causally related to the claimed injury, disease or death before it can be determined to be a service injury, service disease or service death.<sup>9</sup> Only then can the injury, disease, or death be classified as service-related.
- 1.32 In other words, Slater and Gordon Lawyer, Brian Briggs, clearly summarised in their submission:
- The test is whether a person is on duty or is doing something required, authorised, or expected to be done with, or incidental to, the person's duties (Roncevich v Repatriation Commission (2005) 222 CLR 115).<sup>10</sup>
- 1.33 In practice, the application of this test proves challenging when dealing with factual scenarios encountered by members of the Australian Defence Force. For example, members can sustain injuries, contract diseases or die during periods of 'downtime' or approved leave, particularly while posted on seagoing ships or engaging in physical exercises, which are essential aspects of their service. This concern was similarly expressed by Mr Greg Isolani who stated:
- Essentially, the ADF expect members to be available to serve "24/7" – DVA will generally only cover members injured or who die while serving within their 'normal' working hours and performing Defence duty.<sup>11</sup>
- 1.34 The heads of liability coverage are insufficient for defence personnel and the legislation fails to address these gaps. To fully protect Australian Defence Force members, the legislation must be amended to reflect the reality of military service, which demands readiness around the clock, especially during deployments, exercises, and operations.
- 1.35 Moreover, the Bill neglects to recognise the distinctiveness of Australian Defence Force service, which does not conform to standard civilian employment definitions. The existing heads of liability fall short, especially in cases of injury or death occurring outside the narrowly defined scope of 'on-duty' service.

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<sup>9</sup> Sections 27 and 28 and the *Military Rehabilitation And Compensation Act 2004*.

<sup>10</sup> Slater and Gordon, *Submission 7*, p. 3.

<sup>11</sup> Mr Greg Isolani, *Submission 29*, p. 5.

## Recommendation 4

**1.36 The Department of Veterans' Affairs extend the coverage of liability to provide 24/7 coverage to members of the Australian Defence Force during all forms of deployment, exercise and operations.**

### Legal assistance

1.37 Access to legal representation is essential for veterans to navigate the complex entitlements, rehabilitation and compensation framework. Many veterans face significant barriers when attempting to claim entitlements or challenge decisions relating to service injuries, diseases or disabilities. Without access to legal representation, veterans may struggle to understand the intricacies of legislation and policy governing their claims, which can lead to delays, denials, and unnecessary financial and emotional distress.

1.38 A legal aid scheme funded by the DVA could bridge this gap, making legal representation more accessible to veterans, particularly when appeals are made to the Administrative Appeals Tribunal/Administrative Review Tribunal. Such a scheme could operate similarly to existing legal aid frameworks but would be tailored to address the unique challenges faced by veterans. By providing financial support for legal fees through a 'DVA Legal Aid-type scheme', veterans would have access to expert legal counsel, empowering them to challenge unjust decisions and pursue their rightful entitlements without incurring prohibitive costs or emotional distress.

1.39 Furthermore, veterans often encounter barriers that make it difficult for them to obtain legal representation, such as geographical isolation, limited financial resources, and a lack of understanding of the legal system. Establishing a DVA-funded legal aid scheme would alleviate these barriers, ensuring that no veteran is left without proper representation due to financial or logistical constraints. This could lead to more accurate determinations of compensation and care needs, directly contributing to better health outcomes for veterans.

1.40 Moreover, a legal aid scheme would provide not only access to justice but also an avenue for veterans to have their voices heard within a system that can sometimes feel bureaucratic and impersonal. By facilitating representation, veterans would have advocates who understand both the legal landscape and the lived experience of service, ensuring that their rights are protected and their cases are presented thoroughly and fairly. This would reduce the psychological strain on veterans who might otherwise face the daunting task of appealing without professional guidance, further supporting their overall wellbeing.

1.41 The Australian Lawyers Alliance similarly argued that it is essential for veterans to have the option to utilise legal representation and assistance at all stages of the claims process.<sup>12</sup> Ensuring timely and appropriate compensation through

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<sup>12</sup> Australian Lawyers Alliance, *Submission 1*, p. 2.

the assistance of experienced legal professionals is instrumental in improving veterans' quality of life, mental health, and overall wellbeing.

### **Recommendation 5**

**1.42 The Department of Veterans' Affairs establish a legal aid scheme to provide veterans with legal representation to improve access to justice and enhance the health and wellbeing of veterans through timely, fair, and accurate determination of claims.**

#### **Detriment caused by defective administration**

1.43 The Royal Commission into Defence and Veteran Suicide received numerous testimonies regarding not only delays by the DVA in recognising entitlements and processing payments, but also significant issues related to the defective administration of benefits and claims. These 'lived experience' accounts highlight the substantial impact of administrative failings, which have left many veterans and their families facing prolonged periods of financial insecurity and emotional distress.

1.44 There are numerous cases where veterans have suffered financial hardship as a direct result of the DVA's defective administration. In such instances, the process for seeking redress through the existing framework is highly limited and lacks transparency and clarity. The current scheme for recovering damages due to administrative errors results in lengthy, opaque, and discretionary procedures. This places an additional burden on veterans who are already grappling with the challenges of service-related injuries or illnesses.

1.45 The proposed Bill should address these deficiencies by introducing a clear and transparent compensation scheme specifically designed to handle claims arising from defective administration within the DVA. Such a scheme should define categories of compensation and provide clear guidelines on the types and levels of compensation available to veterans who have experienced detriment due to administrative errors. This will not only streamline the claims process but also offer veterans a sense of certainty regarding their rights to compensation in cases of defective administration.

1.46 The Bill should include a specialised scheme for addressing detriment caused by defective administration within the DVA. This scheme should be characterised by transparency, clear criteria, and an accessible appeals process, ensuring that veterans are not left without recourse when administrative failings result in significant financial or personal hardship.

### **Recommendation 6**

**1.47 The Department of Veterans' Affairs establish a dedicated compensation scheme for addressing detriment caused by defective administration to provide a timely and fair redress scheme for veterans.**

### Defining 'legal personal representative'

- 1.48 The definition of 'legal personal representative' in subsection 5(1) of the MRCA Act fails to capture the complexities of personal relationships. A significant issue arises regarding whether the estate of a deceased veteran has the authority to lodge claims with the DVA, obtain relevant documents, appeal decisions, and engage in other related matters. In instances where a Will exists but the executor, such as a former partner, has become disengaged due to separation or divorce, it can create a barrier for the next of kin, parents or new partners who may wish to participate in the DVA process.
- 1.49 The Executor may have no interest in the veteran's DVA file to ascertain what claims were submitted or what remains outstanding. In the absence of a Will, the next of kin, parent or new partner is often required to apply for Probate from the Supreme Court to receive the necessary legal status to engage with the DVA. This requirement effectively disenfranchises the deceased veteran's parents or new partners, who may wish to take a proactive role in communicating with the DVA or addressing outstanding matters, as they are denied the ability to receive documents, lodge claims, or initiate appeals.
- 1.50 As the next of kin, parents or new partners are not recognised as legal personal representatives, they are excluded from accessing DVA records and other service-related documents of the deceased veteran and barred from making any new claims on behalf of the veteran.
- 1.51 To address these shortcomings, the Bill should stipulate that the estates of deceased veterans possess the exclusive right to act on their behalf concerning any potential claims, including lodging DVA claims, obtaining documents, and appealing decisions.

### Recommendation 7

- 1.52 The Department of Veterans' Affairs provide that if the Estate of a deceased veteran fails to confirm in writing their intent to act on behalf of the veteran within a specified period of 60 days, the individual designated by the veteran as next of kin should be recognised as the legal personal representative for the purpose of engaging with the Department of Veterans' Affairs and managing claims related to the veteran's service.<sup>13</sup>**

### Access to healthcare

- 1.53 Access to healthcare is vital for veterans, who often face unique physical and mental health challenges as a result of their service. The Bill represents a missed opportunity to make a meaningful change to veterans' access to healthcare.
- 1.54 Unfortunately, many healthcare providers are reluctant to treat veterans using the Card system as the reimbursements rate established by the DVA does not

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<sup>13</sup> Greg Isolani, *Submission 29*, p. 9.

align with those payable by other competing entities such as private health workers' compensation.<sup>14</sup>

- 1.55 Moreover, the Bill does not introduce improvements to allied health arrangements for veterans, nor does it develop a comprehensive care model that adequately addresses the mental health needs of children of war veterans. The absence of early intervention strategies is particularly concerning, as highlighted by Mr Nicholas Hannay in his submission, who noted:

... early intervention has proven to provide better health outcomes and a lower cost for healthcare, which is born by DVA during the veterans later years.<sup>15</sup>

- 1.56 The current system's limitations prevent veterans from receiving timely and proactive care, which can exacerbate existing conditions and lead to more significant health issues over time. By failing to prioritise the health needs of veterans and their families, the Bill overlooks an essential component of their overall wellbeing and quality of life.

### **Recommendation 8**

- 1.57 The Department of Veterans' Affairs expand eligibility criteria to encourage general practitioners to accept Gold Cards and enhance access to allied health practitioners and other healthcare services.**

### **Standards of proof**

- 1.58 The current legislation governing veterans' compensation claims applies distinct standards of proof based on the nature of service. Specifically, the 'reasonable hypothesis' standard is applied to veterans and serving members with operational service, while the 'balance of probabilities' standard pertains to those with defence and peacetime service. This duality in standards creates disparities that complicate the claims process and undermine the principle of equity in the treatment of veterans seeking compensation.<sup>16</sup>
- 1.59 There is a consensus among stakeholders that a single, equitable standard is essential to ensure fairness in the claims process. The Australian Lawyers Alliance has also raised these concerns, noting that the existence of two separate standards adds unnecessary complexity to the claims process and perpetuates arbitrary discrepancies.<sup>17</sup> They advocate for the adoption of the 'balance of

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<sup>14</sup> Greg Isolani, *Submission 29*, p. 4.

<sup>15</sup> Mr Nicholas Hannay, *Supplementary Submission*, p. 1.

<sup>16</sup> Slater and Gordon, *Submission 7*, p. 3.

<sup>17</sup> Australian Lawyers Alliance, *Submission 1*, p. 6.

probabilities' standard across all claims, asserting that such a unified approach would simplify the process and foster greater fairness.<sup>18</sup>

- 1.60 Despite support for establishing a single standard of proof, the DVA has not provided a clear rationale for maintaining two different standards. Furthermore, the proposed legislation does not adequately address the complexities and issues surrounding the Statement of Principles (SOPs), which play a critical role in determining claims. Submissions from various stakeholders emphasise the need for enhanced discretion for decision-makers and a more frequent review of SOPs by the Repatriation Medical Authority to ensure they remain relevant and effective.<sup>19</sup>
- 1.61 There has been overwhelming support to establish a single standard of proof based on the higher 'balance of probabilities' standard. A single, fair standard should be established to ensure equity in the claims process.<sup>20</sup>

### **Recommendation 9**

- 1.62 The Department of Veterans' Affairs establish a consistent standard of proof based on the 'balance of probabilities' to ensure fairness in the claims process.**

### **Recommendation 10**

- 1.63 The Department of Veterans' Affairs clarify that the Statement of Principles should serve as discretionary guidance rather than a definitive determinant in the claims process.**

### **Timely decision-making and delays**

- 1.64 Delays in accepting liability can significantly impact a veteran's entitlement to compensation. These delays may shift the 'date of effect' for permanent impairment, potentially denying the veteran additional compensation or the ability to receive back payments for the weekly amount owed from an earlier period. Such administrative lag can place veterans in a precarious financial position and unnecessarily prolong their hardship.
- 1.65 Implementing a self-executing mechanism to address these delays is not unprecedented. Similar provisions already exist in schemes where automatic processes ensure timely decision-making. For example, Commonwealth compensation frameworks like Comcare have established time limits for claim determinations, providing an effective model that DVA could adopt.<sup>21</sup>

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<sup>18</sup> Australian Lawyers Alliance, *Submission 1*, p. 6.

<sup>19</sup> Slater and Gordon, *Submission 7*, p. 20.

<sup>20</sup> Slater and Gordon, *Submission 7*, p. 20.

<sup>21</sup> Greg Isolani, *Submission 29*, p. 13.

- 1.66 The DVA should be held to a comparable standard, with a clear, positive obligation to make timely decisions on compensation claims. A system of automatic interest payments would incentivise efficiency and ensure that veterans are not financially penalised by administrative delays.

### **Recommendation 11**

- 1.67 The Department of Veterans' Affairs establish a self-executing time limit (such as 90 days) to resolve claims for liability or incapacity payments, with interest applied to any delayed back payments, while including certain safeguards to account for reasonable delays such as receiving necessary information from external parties.**

### **Clinical onset**

- 1.68 Identifying a precise date of clinical onset can pose significant challenges for veterans seeking compensation, particularly in relation to meeting the requirements outlined in the SOPs. This difficulty arises when medical practitioners are asked to provide a specific date of onset, which may not always be feasible due to the complex nature of many health conditions.
- 1.69 A more effective approach would be for the DVA to request evidence from medical professionals regarding the general period during which the onset occurred, rather than a definitive date. By adopting this method, the DVA could gain a clearer understanding of the veterans' conditions and facilitate a more equitable claims process.<sup>22</sup>
- 1.70 This argument was put forward by Mr Greg Isolani, who emphasised that medical evidence should focus on identifying a broader period of onset rather than pinpointing a specific date.<sup>23</sup> The rigid requirement for an exact date can be counterproductive and create additional barriers for veterans. It is essential for the interpretation and application of SOPs to incorporate a degree of flexibility, allowing delegates to consider a range of months rather than a singular date. This flexibility would not only enhance the accuracy of claims assessments but also acknowledge the realities of clinical diagnosis, where symptoms may develop gradually and not conform to strict timelines.
- 1.71 To resolve these issues, the DVA should encourage its delegates to clarify the definition of clinical onset while fostering a more adaptable framework for determining onset periods. By prioritising a nuanced understanding of clinical onset, the DVA can better serve the needs of veterans and ensure that they receive the compensation they deserve.

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<sup>22</sup> Greg Isolani, *Submission 29*, p. 6.

<sup>23</sup> Greg Isolani, *Submission 29*, p. 6.

## Recommendation 12

**1.72 The Department of Veterans' Affairs revise the definition of clinical onset to allow for broader interpretations that facilitate the determination of onset periods rather than requiring exact dates, thereby improving the claims process for veterans.**

### **Primary responsibility for the daily care of the eligible young person or child**

1.73 The Bill seeks to introduce an additional lump-sum payment for individuals identified as having the 'primary responsibility for the daily care of the eligible young person or child'. This lump-sum payment raises important questions regarding the eligibility criteria and the definition of key terms.

1.74 While some organisations, such as Legacy Australia, support this initiative and have argued that it allows families to utilise funds effectively for caregiving needs, concerns persist about the implications of such changes. Legacy Australia stated in their submission:

... while this still does not guarantee that the payment will be used for the intended purpose (e.g., the child's education needs), it at least ensures that the funds can be used in the household that is providing primary care.<sup>24</sup>

1.75 Additionally, Mr Greg Isolani commented:

Fundamentally, the amount is paid to recognise the most serious injuries to Veterans assessed at 80 impairment points and to assist their EYP [(Eligible Young Person)] due to the extent of the injuries. It is designed to compensate them and their children, not someone who fits the definition of having the "primary responsibility for the daily care of the eligible young person or child".<sup>25</sup>

1.76 The Bill lacks a clear definition of 'primary responsibility' which could result in veterans, especially those who share caregiving duties with a former spouse, being excluded from eligibility despite their significant involvement in daily care. This ambiguity risks leading to unintended consequences, particularly in family court decisions. The Bill's explanatory memorandum fails to clearly articulate this definition, which raises concerns about how the DVA will support custodial parents, potentially leaving veterans vulnerable to exploitation in legal contexts and complicating family law disputes.

1.77 It is crucial for veterans with substantial injuries to retain control over the use of their compensation, and alternative support mechanisms, such as an increase in the Child Education Allowance, may better serve the needs of primary caregivers.

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<sup>24</sup> Legacy Australia, *Submission 9*, p. 2.

<sup>25</sup> Greg Isolani, *Submission 29*, p. 14.

### Recommendation 13

**1.78 The Department of Veterans' Affairs clearly define the criteria for determining 'primary responsibility for the daily care of the eligible young person or child' to avoid ambiguity and prevent unintended consequences for determining eligibility for compensation.**

#### Statutory review

1.79 The DVA should include a requirement for an independent statutory review to be conducted that actively involves input from relevant stakeholders. This review is crucial to ensuring that the implementation of the Bill does not lead to unintended consequences and it serves as a vital mechanism for accountability and transparency within the system.

1.80 A statutory review is an essential oversight mechanism that will evaluate whether the Bill achieves its fundamental objectives and remains responsive to the needs of the veteran community. By having a statutory review period, stakeholders can identify areas for improvement, which may foster a more effective and equitable system of support for veterans and their families.

1.81 As highlighted by the Defence Force Welfare Association, the independent review should encompass various areas, including but not limited to governance arrangements, operational processes, improvements or clarifications, and the need for complementary new or amended legislation.<sup>26</sup>

### Recommendation 14

**1.82 The Department of Veterans' Affairs include an independent review to be conducted 12 months after the commencement of the Bill and require the Minister to present the findings to both Houses of Parliament.**

#### Conclusion

1.83 The Bill represents a missed opportunity to address systemic, structural and cultural issues within the Defence and Veteran portfolios. Rather than serving as a vehicle for comprehensive reform, the Bill fails to address urgent and longstanding concerns that have been raised over many years.

1.84 Historically, governments have been slow to implement recommendations from Royal Commissions. To overcome this pattern, the Australian Government should utilise this opportunity to create an omnibus Bill that implements straightforward recommendations from the Final Report of the Royal Commission into Defence and Veteran Suicide. These reforms should include, but not limited to, critical areas such as military sexual violence, the role and functions of the Inspector-General of the Australian Defence Force, healthcare for serving and ex-serving members, entitlements and claims processing, better

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<sup>26</sup> Defence Force Welfare Association, *Submission 22*, p. 16.

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support to claimants, and leveraging data and research to improve outcomes for veterans.

- 1.85 Despite extensive feedback from veteran organisations and the wider community, the Bill does not adequately address the systemic failings within the DVA. This legislation overlooks key structural deficiencies and is an insufficient response to the deep-rooted challenges faced by veterans and their families.
- 1.86 The JLN acknowledges that reform of the veteran legislative framework is long overdue. However, further scrutiny and input from stakeholders, government, and the public remain essential to ensure that any reforms deliver meaningful change. Legislative reforms must aim to simplify the system for veterans and their families, with a renewed focus on rehabilitation and lifetime wellbeing, while continuing to secure fair compensation outcomes.
- 1.87 The JLN remains committed to working in good faith with the government and relevant organisations to ensure that the legislative framework serves the best interests of both serving and ex-serving members of the Australian Defence Force.
- 1.88 There is no justifiable reason for the DVA to continue delaying the implementation of straightforward recommendations that could greatly benefit the veteran community. These recommendations, developed through extensive engagement with veterans, organisations and advocates, have the potential to make a significant and positive impact on their wellbeing.

### **Recommendation 15**

- 1.89 The Bill should not be considered in Parliament until the Department of Veterans' Affairs provides a detailed and transparent response to the above recommendations, along with a clear plan to implement urgent reforms from the Royal Commission into Defence and Veteran Suicide that reflect the unique needs of serving and ex-serving members of the Australian Defence Force.**

**Senator Jacqui Lambie**  
**Senator for Tasmania**



# Appendix 1

## Submissions and additional information

### Submissions

- 1 Australian Lawyers Alliance
- 2 Australian Peacekeeper and Peacemaker Veterans' Association Ltd
- 3 TPI Federation of Australia
- 4 Families of Veterans Guild
- 5 Australian War Widows Inc.
  - Attachment 1
- 6 Community and Public Sector Union
- 7 Slater and Gordon Lawyers
- 8 Vietnam Veterans Association of Australia Inc
- 9 Legacy Australia Incorporated
- 10 Veteran Family Advocate Commissioner
- 11 RSL Australia
  - 11.1 Supplementary to submission 11
- 12 Mr John Miklavcic
- 13 Mr Barry Aldcroft
- 14 Mr Michael Carlon
- 15 Department of Veterans' Affairs
  - 15.1 Supplementary to submission 15
- 16 Mr Nicholas Hannay
  - 16.1 Supplementary to submission 16
  - Attachment 1
  - Attachment 2
- 17 Name Withheld
- 18 Royal Australian Armoured Corps Corporation
  - Attachment 1
  - Attachment 2
  - Attachment 3
- 19 Naval Association of Australia
- 20 Department of Defence
- 21 Productivity Commission
- 22 Defence Force Welfare Association
- 23 Mr Alan Huggins
- 24 Name Withheld
- 25 Name Withheld
- 26 Mr Bruce W. Tisdell RFD

- 27 Sandgate RSL Sub Br Inc
  - 27.1 Supplementary to submission 27
- 28 126 Signal Squadron (Special Forces)
- 29 Mr Gregory Isolani
- 30 Mr Roderic Thompson
- 31 Mrs Julie Anderson
- 32 Mr Ross Dunn OAM

### **Tabled Documents**

- 1 Opening statement and attachment from TPI Federation of Australia – public hearing 16 August 2024, Canberra
- 2 Opening statement and additional documents from Legacy Australia – public hearing 16 August 2024, Canberra
- 3 Opening statement from the Department of Veterans’ Affairs – public hearing 16 August 2024, Canberra

### **Answers to Questions on Notice**

- 1 Department of Veterans’ Affairs – answers to questions on notice from a public hearing held on 16 August 2024, Canberra (received 12 September 2024)
- 2 Department of Veterans’ Affairs – answers to questions on notice from a public hearing held on 13 September 2024, Canberra (received 27 September 2024)

## Appendix 2

### Public hearings and witnesses

***Friday 16 August 2024***

**Committee Room 2S3**

**Australian Parliament House**

**Canberra**

*TPI Federation of Australia*

- Ms Pat McCabe OAM, National President

*RSL Australia*

- Major General Greg Melick AO RFD SC (Retd), National President
- Ms Margaret Jenyns, RSL Head of Veterans Support - RSLQLD (via videoconference)

*Legacy Australia Incorporated*

- Dr Mark Lax, Vice Chairman

*Department of Veterans' Affairs*

- Mr Andrew Kefford, Deputy Secretary, Policy and Programs Group
- Mr Luke Brown, First Assistant Secretary, Policy Division
- Mr Simon Hill, Assistant Secretary, Legislative Reform Branch, Policy Division

***Friday 13 September 2024***

**Committee Room 2S3**

**Australian Parliament House**

**Canberra**

*Department of Veterans' Affairs*

- Mr Andrew Kefford, Deputy Secretary, Policy and Programs Group
- Mr Luke Brown, First Assistant Secretary, Policy Division
- Mr Simon Hill, Assistant Secretary, Legislative Reform Branch, Policy Division