



ADSO ALLIANCE OF DEFENCE SERVICE ORGANISATIONS

PRODUCTIVITY COMMISSION INQUIRY INTO COMPENSATION AND REHABILITATION FOR VETERANS

ADSO SUBMISSION

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PREFACE

The genesis of this combined ESO submission to the Productivity Commission is the Unique Nature of Military Service. For a century, this uniqueness has predicated beneficial legislation and public policy for the men and women that have served and are serving in the Australian Defence Force (ADF).

ADF personnel voluntarily surrender to the State their life, liberty and security. No other calling, occupation or profession requires that these fundamental human rights be relinquished. Military law stipulates that members of the ADF execute orders on command and engage in activities with a high probability of death, wounding or serious life-long injuries. Only the Profession of Arms willingly accepts such risk.

The unique nature of military service demands unquestioned adherence to unity of purpose. The individual voluntarily subordinates personal freedom to the cohesion of the unit in defence of the Nation. The unique nature of service is marked by unique culture. Selfless devotion to duty, pride in service and commitment to the Nation and Government denote that culture.

The unique nature of service imposes on the State a reciprocal duty of care for serving and ex-ADF personnel. That obligation is as inescapable as it is enduring.

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ADSO ALLIANCE OF DEFENCE SERVICE ORGANISATIONS

2 July 2018

The Veterans' Compensation and Rehabilitation Inquiry
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

EXECUTIVE SUMMARY

FOR

ADSO SUBMISSION

TO

PRODUCTIVITY COMMISSION INQUIRY INTO COMPENSATION AND REHABILITATION FOR VETERANS

1. This submission to the Productivity Commission is premised in the Unique Nature of Military Service. For a century, this uniqueness has predicated beneficial legislation and public policy for the men and women that have served and are serving in the Australian Defence Force (ADF). ADSO submits that no justification exists for any fundamental change.
2. The Department of Finance (DoF) May 2016 *Functional and Efficiency Review* of the Department of Veterans' Affairs (DVA) recommends that *service delivery functions be either outsourced or transferred to other agencies*. As DVA was already outsourcing its medical and rehabilitation services at the time of the Review, ADSO is concerned that DoF is pursuing transfer of other DVA functions to other agencies. The Alliance of Defence Service Organisations (ADSO)'s concern is reinforced by DoF's statement in its FY2016-17 Annual Report that its Reviews in FY2015-16 *delivered savings of about \$2.7 billion*. This is incontestable evidence of economic rationalism.
3. ADSO is concerned that the DoF approach would justify further Budget constraint putting downward pressure on DVA's appropriation. DVA would be progressively reduced to a rump, in time justifying its abolition. This would be absolutely unacceptable to the veteran community. ADSO is concerned that the Issue Paper presumed a similar approach. The response would be trenchant.
4. ADSO notes that the Nation's duty of care, first legislated in the *Australian Soldier's Repatriation Act 1920* and unaltered in the *Veterans' Entitlements Act 1986* (VEA), has already been weakened in *DRCA* and *MRCA*. Comparison of the Explanatory

Memorandums and Second Readings of VEA and the *Military Rehabilitation and Compensation Act 2004* (MRCA) confirms transition from overt beneficial intent to, at best, implicit acceptance of obligation. Either the Government preserve in veterans' legislation a commitment to the Nation's defence, or that 100-year old national value and legislative tradition are broken.

5. We are further concerned that Government may see the downturn from intense ADF operations as an opportunity to resile from the Hughes Government's commitment to veterans, widows and orphans after WWI. In this respect, we note the Issue Paper's invidious comparisons of veterans' entitlements and the social services available to the civilian community. Any such thinking is totally unacceptable to the veteran community. Inevitably, any reduction in entitlements would provoke a vigorous response.
6. ADSO submits that the Inquiry is an opportunity for the Nation's century-old social contract to be reinforced and veterans' legislation to be amended to include a Military Covenant. We note that Canada and New Zealand have already done so. Failure to do likewise will perpetuate Australian veterans' legislation as third in terms of world's best practice. Failure to do so undermines the sacrifices of life, health and wellbeing that the Government and Nation have expected, and continue to expect, of ADF personnel and their families in both peace and conflict. The ramifications of economic rationalism for national security and societal values are decidedly perilous.

RECOMMENDATIONS

7. ADSO recommends that the Productivity Commission Inquiry into Compensation and Rehabilitation for Veterans find that:
 - a. the national defence and social consequences of a purely economic approach to veterans' support are unacceptable;
 - b. a Military Covenant be legislated in VEA, *Safety Rehabilitation and Compensation (Defence-related Claims) Act 1988* (DRCA) and MRCA to bring Australian veterans' legislation up to world's best practice;
 - c. a social enterprise be formed by which:
 - (i) DVA, Defence, ESO/VSCs and ATDP and the independent VRB and AAT would work in close partnership; and
 - (ii) an entity be incorporated to deliver legislated wellbeing outcomes for veterans and their families; and
 - d. 'warlike' service be redefined so that the Beyond Reasonable Doubt standard of proof is applied to all service including peacetime service where:
 - (i) the risk of injury, disease or death is high; and
 - (ii) 'clusters' of conditions occur amongst veterans with toxic or other exposures.



ADSO SUBMISSION TO PRODUCTIVITY COMMISSION INQUIRY INTO COMPENSATION AND REHABILITATION FOR VETERANS

The purpose of this Act is to recognize and fulfil the obligation of the people and Government of Canada to show just and due appreciation to members and veterans for their service to Canada.
Veterans' Wellbeing Act 2005.

Every person who performs any function or exercises any power under this Act must do so in acknowledgement, on behalf of the community, of the responsibility for the injury, illness, or death of veterans as a result of them being placed in harm's way in the service of New Zealand.
Veterans Support Act 2014

Behavioural economics reminds us to question our assumptions on how well we know what people want or think, how they engage and make decisions, what shapes and drives their daily interactions
Dr Martin Parkinson, AC, PSM
25 June 2018

1. Introduction

- 1.1 The Alliance of Defence Service Organisations (ADSO) is grateful for this opportunity to respond to the Productivity Commission Inquiry on Compensation and Rehabilitation for Veterans. Our response focuses on the relevant principles and high-level policy that underpin the veterans' compensation and rehabilitation system.
- 1.2 Our submission is premised on the Unique Nature of Military Service. For a century, this uniqueness has predicated beneficial legislation and public policy for the men and women that have served and are serving in the Australian Defence Force (ADF).
- 1.3 On Ministerial declaration, a wide range of other persons can be covered by veterans' legislation. Wherever we use the term 'veteran' in this submission we include serving Permanent and Reserve ADF personnel, veterans and their dependants, war widow(er)s and all Declared Persons.
- 1.4 We request that the Commission note this Submission is a joint response from ADSO's eighteen Members,¹ and is supported by Legacy and the RSL. Being an

¹ ADSO represents around 90,000 ex-ADF personnel that are members of the following organisations (at 6 June 2018): Defence Force Welfare Association (DFWA), Naval Association of Australia (NAA), Air Force Association Ltd (AFA), Royal Australian Regiment Corporation (RAR), Australian Special Air Services Association (ASASA), Australian Federation of Totally and Permanently Incapacitated Ex-Service Men and Women (TPI), Fleet Air Arm Association of Australia (FAAA), Partners of Veterans Association of Australia (PVA), Royal Australian Armoured Corps Corporation (RAACC), National Malaya and Borneo Veterans Association Australia (NMBVAA), Defence Reserves Association (DRA), Australian Gulf War Veterans Association (AGWVA), Australian Commando Association (ACA), War Widows Guild of Australia (WWG), Military Police Association Australia (MPAA), Women Veterans Network Australia (WVNA), and Combat Support Association CSA).

Alliance, ADSO has canvassed its member organisations to identify common ground. We have also encouraged our Members to make their own submissions so that their individual concerns are known by the Inquiry.

- 1.5 This Submission opens at Sections 2 and 3 with two key issues (Social and Economic Context, and Emotional and Behavioural context). The subsequent Sections are:
 - a. grouped under the Issue Paper headings, and numbered sequentially starting at Section 4; and
 - b. disaggregated for clarity and numbered sequentially within each Section (sub-headed in *italics* relating to the Issue Paper questions).

2. Social and Economic Context

- 2.1 ADSO is concerned to learn that the May 2016 *Functional and Efficiency Review of DVA* recommended that *service delivery functions be either outsourced or transferred to other agencies*.² Our concern is exacerbated by the Department of Finance report that Functional and Efficiency Reviews (FERS) in FY2015-16 delivered administrative and program savings of about \$2.7 billion.³ We are further troubled by formal advice that FERS are held confidentially by DoF and the entity reviewed and are not available for proper scrutiny by those likely to be impacted by these considerations.
- 2.2 As DVA's medical and rehabilitation services are already outsourced, ADSO is therefore concerned that DoF intends the transfer of DVA's other functions to other agencies. Were the Inquiry to take a purely economic approach, further Budget constraint would be justified, putting downward pressure on DVA's appropriation. In time, DVA would be disbanded. Any move in this direction will provoke an outcry across the veteran community.
- 2.3 ADSO is therefore concerned that questions in the Issue Paper presume that a purely economic approach is appropriate. We are deeply concerned that the Inquiry may redesignate veterans as just another subset of society with no greater call on the Budget than any other. ADSO submits that, if carried through into legislation and policy, a century-old social contract with ADF personnel and their families would be breached.⁴ This would be perilous for the Nation's defence.
- 2.4 ADSO rejects the presumption that criticisms reported in the Senate Committee Report necessitate fundamental change in veterans' legislation or administration. We submit that the Inquiry is a crucial opportunity for the following principles to be reinforced or adopted:

Guild of Australia (WWG), Military Police Association Australia (MPAA), Women Veterans Network Australia (WVNA), and Combat Support Association (CSA).

² ANAO Report No 52 2017-18 *Efficiency of Veterans' Service delivery by the Department of Veterans' Affairs*, p7.

³ <https://www.finance.gov.au/publications/annual-reports/15-16/transformation-innovate-and-improve-purpose/>

⁴ A social contract is not a loose intellectual construct. It is a social value, legislative philosophy and administrative practice, with a 100-year history. It is real. Its manifest in the beneficial intent of veterans' legislation and accrued rights, both of which are reinforced in case law.

- a. The social impact of ADF service and ex-ADF personnel are brought to account.
 - b. The budgetary consequences of veterans' legislation are counter-balanced by its social benefits.
 - c. Veterans' legislation and administration necessitate social as well as economic benefit-cost analysis.
 - d. Veterans' support necessitates adoption of a social enterprise model (para 4.1B below).⁵
- 2.5 ADSO recognises that these principles beg the question: *Why should ex-ADF personnel be treated differently to other members of the community?* Heery J resolves this question (para 4.3 below). The Government and Nation have an acquired duty of care⁶ when they commit ADF personnel to harm's way. This is the underlying reason why ADSO has long-advocated a Military Covenant.⁷
- 2.6 We discuss at para 6.2B.e. research which found that around 65% of ex-ADF personnel 'thrive' following transition, while around 30% 'struggle' merely to 'survive'. This suggests that, with around 5,500 personnel transitioning per annum, DVA will need to meet the demands of around 1,650 new clients each year. These join the 280,800 existing DVA clients,⁸ each of whom must be support administratively.
- 2.7 We note that many of those who thrive after transition later need DVA support for a wide range of muscular skeletal conditions related to the rigours of their earlier military service. The multi-year delay that Vietnam veterans experienced before the clinical onset of PTSD and prostate cancer also exemplify this trend, as do the delayed onset of medical conditions caused by nuclear irradiation and exposure to toxic chemicals.
- 2.8 DVA's Annual Report 2016-17 shows that it receives around 11,000 new claims per annum.⁹ DVA reports that the average age of outstanding cases in FY2016-17 was 28 days against a median time-to-process (TTP) target of 30 days.⁹ In comparison, the Department of Human Services (DHS) reports that around 70% of its cases are finalised within a 49-day target.¹⁰ Relevantly, DHS reported that its lowest

⁵ In this respect, ADSO invites the Inquiry to read this submission in conjunction with our submission of 18 March that is already posted on the PC website.

⁶ *Duty of care* is a legal *obligation* to take reasonable *care* not to cause harm to another person that is reasonably foreseeable.

⁷ *'Defence Force personnel and their families make and have made a unique contribution to the nation, a contribution that needs formal support and recognition by Australia's parliament. The men and women of Australia's Defence Force make a contribution like no other, defending our freedoms and liberties at home and abroad'* Senator McGrath (Queensland), Hansard, Wednesday, 9 September 2015, page 6370:
<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2Fdb54029c-32cd-4ccd-90ad-be29c251c7de%2F0040%22>

⁸ https://www.dva.gov.au/sites/default/files/files/publications/datastatistical/execsum/execsum_dec17.pdf

⁹ <https://www.dva.gov.au/about-dva/accountability-and-reporting/annual-reports/annual-reports-2016-17/departments-veterans-2#figure3>

¹⁰ <https://www.humanservices.gov.au/organisations/about-us/annual-reports/annual-report-2016-17/appendix-annual-performance-statement>

performing attributes were 'Time to receive service' (46.3%) and 'Ease of access' (56.7%).¹⁰

- 2.9 Looking forward, ADSO advocates' experience is that younger veterans' rate of mental health and musculoskeletal injuries is already higher than the WWII, Korea, Malaya/Malaysia and Vietnam generations. This suggests that the generation of currently serving ADF personnel and younger veterans will not only have higher expectations than their predecessors (para 4.3d. below) but will also need a higher level of DVA support.
- 2.10 These data suggest that, despite the complexity of the claims lodged by clients, DVA is delivering services more quickly than DHS is servicing its civilian clients. A recent survey of DVA clients found an 83% satisfaction rate (Note 107). In comparison, DHS report an 85% satisfaction rate. Assuming that the survey questions and analysis are comparable, the data suggest that DVA clients are much more demanding about the services they receive from DVA than civilians do from DHS.
- 2.11 We submit that veterans' high expectations of DVA:
- a. underscore the specific nature of the veteran-Delegate relationship;
 - b. are a measure of the influence veterans' structured and disciplined ADF experience have long after transition;
 - c. epitomise the value veterans place on Public Service Officers who understand their unique ADF culture and the specific needs of their Mates who have been damaged by their service;
 - d. will place high level demands on DVA as younger veterans' mental health, musculoskeletal and as-yet-undiagnosed/not clinically evident conditions; and
 - e. are incontestable evidence of the past, current and future need for a stand-alone Department dedicated to honouring the Nation's obligation to care for its veterans.

3. Emotional and Behavioural Context

- 3.1 ADSO's engagement with the DVA Leadership Group shows acceptance that DVA decision-makers can make mistakes with profound psychological and economic consequences for the claimant. This is why, in legislation, determinations are reviewable and why reviews are independent of the primary decision-maker. It is some claimants/appellants' emotional and behavioural response to mistakes that concerns us.
- 3.2 ADSO notes the influence disgruntled ex-ADF personnel and others had during the Senate References Committee Inquiry into Suicide by Veterans and Ex-service Personnel. We recognise that '*Suicide by Veterans*' was a political process. We trust therefore that this Inquiry will achieve an objective outcome.

4. Assessing the Veterans' Compensation and Rehabilitation System

4.1A What should the priority objectives for veterans' support be?

- a. ADSO submits that the priority objective for veterans' support was established during and immediately after WWI, and continues to this day. We submit the following evidence:
 - (i) No other Australian employment category requires a person to surrender their right of self-determination, apply extreme violence in the name of the State, or be prepared to lay down their life for their Nation. This commitment presents unique challenges for ADF personnel and especially their families.
 - (ii) the Nation's obligation established in the *War Pensions Act 1914* (WPA):
to 'grant...Pensions upon the death or incapacity of members of the Defence Force whose death or incapacity results from their employment in connexion with warlike operations.'
 - (iii) Successive Prime Ministers and political leaders have proclaimed the Government and Nation's obligation to veterans (Attachment to this Submission), which have been reinforced by the Prime Minister's public commitment to veterans at the Dawn Service in Villers-Bretonneux this year:
'...the best way to honour the courage and sacrifice of the diggers of World War One, is to support the servicemen and women, the veterans and the families of today'.¹¹
- b. The specifics of veterans' entitlements has evolved over the century. Without resiling from our commitment to veterans' compensation entitlements under the VEA/DRCA/MRCA, ADSO supports the objective of rehabilitation:
To 'maximise the potential to restore a person who has an impairment, or an incapacity for service or work, as a result of an injury or disease to at least the same physical and psychological state, and at least the same social, vocational and educational status, as he or she had before the injury or disease' (MRCA 2004, s37).
- c. ADSO submits that the Nation's historical obligation and the current focus of veterans' legislation can be combined into a contemporary statement of the priority objectives for veteran support:
In the event of 'incapacity of members of the Defence Force' as defined in MRCA 2004 s5, rehabilitation is the priority; but, if for any reason it proves infeasible, veterans and/or their dependants as defined in MRCA 2004 s15(2) are entitled to a 'grant of pensions' and other entitlements provided in VEA, DRCA and MRCA when the veteran's 'death or incapacity results from their

¹¹ Prime Minister, The Hon Malcolm Turnbull, MP, 25 April 2018

employment in connexion with warlike', non-warlike or hazardous 'operations' or peacetime service.

4.1B Why?

- a. Before addressing the rationale for our response, we draw the Inquiry's attention to the disparity between the broadness of the section heading and narrowness of the question. ADSO would be concerned if that narrowing indicated the Issue Paper presumed that veterans' support is just another social cost to be cut.¹²
- b. To address veterans' support in economic terms alone is to ignore the societal consequences of successive Government's history of expeditionary campaigning. Begun before Federation,¹³ that tradition continues today and seems unlikely to change.
- c. ADSO submits veterans' support must be viewed as a social enterprise¹⁴ - albeit one funded by ESOs and Commonwealth (without coordination). This approach has two limbs:
 - (i) Its social limb is evident:
 - (a) on the one hand, in veteran suicides, dysfunctional veterans and families, and employers' perception of veterans as physically and psychologically broken; and
 - (b) on the other, in the enhanced social capital veterans bring back to the community in return for the latter's investment in the Nation's defence.
 - (ii) Its economic limb also has two dimensions:
 - (a) one, the cost of veterans' legislated entitlements;¹⁵ and
 - (b) the other, the (as-yet uncanvassed) economic benefits of veterans being employed and budgetary savings on social welfare obviated through dedicated and successful rehabilitation and families reintegrated into society.
- d. Combining the social and economic limbs, ADSO notes that the most recent Fairfax-Lateral Economics Well-being Index assessed that mental illness alone costs \$214b annually, representing 12% of Australia's annual economic output.¹⁶

¹² We refer here to neoliberal dogma marked by Prime Minister Thatcher's use of economics to change her nation's 'heart and soul' – to reverse State support. See: <https://www.margaretthatcher.org/document/104475>

¹³ Maori, Sudan and Boer Wars.

¹⁴ 'Social enterprise' has no settled definition but the term refers to a business for a social purpose: using a business strategy to achieve a social, cultural or environmental goal or another kind of community benefit, rather than for the economic benefit of shareholders or owners. <https://communitydoor.org.au/social-enterprise/what-is-a-social-enterprise> accessed 6 Jun 18.

¹⁵ As discussed in para 13.3A, these include service pensions and military retirement benefit schemes accessed from mandated retirement ages or on acceptance of a disability.

¹⁶ 'The wellbeing index adjusts gross domestic product to take account of knowhow, health, work life, social inequality and environmental degradation and puts a dollar figure on Australia's collective wellbeing. It provides a richer, deeper measure of national welfare than GDP, which is an economic indicator and simply doesn't measure some things that really matter.' <https://www.smh.com.au/business/the-economy/the-small-improvements-that-could->

- e. We submit that veteran mental health issues and their consequences for family wellbeing contribute to this loss. On the other hand, the social and economic return to society and the economy by those veterans that ‘thrive’ and those that, once rehabilitated, ‘survive’ is significant.

4.2 *In what way does the current legislation support or hinder achievement of those priority objectives?*

- a. Despite differences between *War Pensions Act 1914 (WPA)*, *Australian Soldiers’ Repatriation Act 1920 (ASRA)* and *VEA’s* focus on compensation, and *DRCA* and *MRCA’s* on rehabilitation, fundamental legislative aspects are consistent. ADSO therefore submits that any material change in veterans’ legislation would subvert successive Government and the Nation’s acceptance of the unique nature of military service. It would be a fundamental break with around 100 years of legislative principle.
- b. The validity of this is evident in the similarities in legislation:
 - (i) *VEA’s* predecessors, *WPA* and *ASRA*, use definitions that remain apt today:
 - (a) As do *VEA* and *MRCA*, the *WPA* provided a ‘*grant of Pensions upon the death or incapacity of members of the Defence Force...result[ing] from employment in connexion with warlike operations*’.
 - (b) The beneficiaries identified in *MRCA*, s15(2) mirror those in *ASRA*. (In the context of current political discourse, *ASRA’s* definition of ‘Member of a Family’ and ‘Other dependants’ is notably clear-sighted.)
 - (c) ‘Member’ in *MRCA*, s5, mirrors *ASRA’s* definition of a ‘Member of the Forces’ as ‘a person employed on active service outside Australia [or] enlisted or appointed in connexion with preparations or operations’.
 - (d) The inclusion in *MRCA* of Australian Defence Force Cadets is seated in the *Defence Act 1903*; as were certain benefits provided to widows and orphans after the Blackhawk collision over High Range.
 - (ii) The complexity of veterans’ legislation was criticised so robustly that the Senate Inquiry saw it as ‘*arguably the most important issue [raised]*’ (p. xxv). On critical analysis, ADSO submits that such criticism can be understood:
 - (a) On one view, excluding endnotes:
 - *VEA* comprises 216 sections over 1223 pages;
 - *DRCA*: 161 sections over 182 pages;
 - *MRCA*: 440 sections over 400 pages; and
 - the location at Chapter 4 in *MRCA* of calculations that in *VEA* are Schedules would also be perceived as a complexity (although very few claimants/appellants/advocates are likely to have delved into these parts of either Act).

(b) From a procedural perspective:

- The task for the advocate and VEA-eligible client is fundamental: to establish liability. Subsequently, the level of impairment is determined through communication between the Delegate and the client's treating GP/Specialist or a DVA-contracted medico-legal specialist, and the Lifestyle Effects of the impairment through the Combined Impairment assessment. The outcome is a disability pension and a medical treatment card.
- On the other hand, both DRCA and MRCA engage DVA, DVA client and advocate in gathering medical evidence for determination of Incapacity Payments (INCAP). While this is analogous to the post-liability VEA process, it can involve regular medical appointments until Permanent Impairment (PI) is determined. This process can be prolonged as PI is not determined until the condition is 'stable' and 'unlikely to improve' after 'all reasonable rehabilitation'. Subsequently, the client is required to decide whether to accept a lump sum payment, a 'weekly amount' or a combination of both.

(c) Some current veterans with eligibility under all three Acts face an additional level of complexity. ADSO submits that the determination of compensation for those veterans is opaque.¹⁷ To an already sceptical veteran, inevitably, the inaccessibility of guidelines spurs further suspicion.

(d) ADSO notes that Chapter 4 of the Senate's Report situates criticism in the context of a veteran enduring the stresses of:

- separation from the service and 'mates' companionship and support;
- (for too many) debilitating musculoskeletal or mental health conditions;
- locating housing, moving and settling in;
- finding comparably remunerated employment in an increasingly casualised workforce; and
- integrating into a community with different values and imperatives.

(e) Any one of the preceding stressors is significant. Together, they would be deeply disturbing.¹⁸ It is against this backdrop that the advances through VCR (Veteran Centric Reform) must be evaluated. These include:

- the development of MyService,
- close collaboration between DVA with Defence and CSC around and during discharge,

¹⁷ The relevant CLIK page advises that the Multi-Act Claims Procedures are contained within the Military Compensation Reference Library, which is available only to DVA staff. See <http://clik.dva.gov.au/compensation-and-support-reference-library/multi-act-claims-procedures> accessed 06Jun 18.

¹⁸ An indication of the severity can be determined from the Holmes-Rahe Stress Inventory: <https://www.stress.org/holmes-rahe-stress-inventory/> accessed 6Jun 18.

- a proactive internal culture change program in DVA,
 - concurrent Needs Assessment and Liability Determination,
 - employment by DVA of Case Coordinators, and
 - the digitalisation of files.
- (f) ADSO also notes that the DVA-convened series of Legislative Forums facilitated by Peter Sutherland¹⁹ and attended by ESO representatives and qualified advocates have identified and prioritised several legislative reforms. We commend the Forum proceedings to the Inquiry.
- (g) Finally, the Senate Inquiry's conclusion that legislative complexity was arguably its most important issue must be tempered by three realities:
- The Senate Inquiry was conducted before the effectiveness of VCR initiatives had become clear to veterans.
 - The critical opinions expressed in submissions and by witnesses are the product of pre-VCR experiences with DVA.
 - Few named submitters and witnesses have attended briefings on VCR, nor have trained advocates that are now involved in advocacy training.

4.3 What principles should underpin the legislation and administration of the system?

- a. ADSO notes that the first Minister for Repatriation, Senator Hon E.D. Millen, referred to a '*national obligation*' when addressing the Senate on 18 July 1917. We submit that Heerey J's '*Repatriation Legislation and Litigation 1920 to 1994*'²⁰ shows that Senator Millen initiated a tradition that, until this Inquiry, has been the incontestable principle that underpinned veterans' legislation and administration:

'Australian repatriation legislation has long contained provisions for the resolution of disputed claims unusually favourably to claimants, as compared with claims for other Government benefits. These procedural advantages are only understandable as a national acceptance that volunteering to put life and health at risk for the nation demands special recognition when that risk eventuates' (our emphasis).

- b. The question is therefore: What has changed since 1994 that would cause this principle to no longer be appropriate? ADSO is concerned the primary cause is:
- (i) diversion of national focus from the social good achieved through government expenditure; and
 - (ii) fine focus on the cost of social programs, and finding budgetary savings.²¹

¹⁹ Visiting Fellow at the ANU College of Law, solicitor and co-author of two standard texts on veterans' legislation.

²⁰ *Ena Mavis Deledio v Repatriation Commission* [1997] 1047 FCA (10 October 1997), at 11.

²¹ We note that Michelle Guthrie, Managing Director of the ABC echoed our concern in her Address to Melbourne Press Club on 19 June 2018. Paraphrasing: '*...whittling away funding represents a real opportunity cost and, in the end, serves only to punish those [who put their life at risk and created a disruptive domestic environment for their family].*'

- c. For the reasons below, ADSO submits that this Inquiry is the timely opportunity for the principle documented by Heerey J to be revisited.
- (i) Volatility in the international environment, high level indebtedness in the major economies, and consequences for emerging economies seem likely to play to successive Governments' predilection for expeditionary campaigns. Since the ballot during Vietnam, the defence of the Nation has relied on all-volunteer ADF (including Reserves).²²
 - (ii) Indeed, the contemporary veteran community is an all-volunteer force - both Permanent and Reserves forces. ADSO submits that, given the community's responses to conscription during WWI and Vietnam, Australia cannot afford to do anything that would undermine volunteerism in defence of the Nation.
 - (iii) Support for national defence and the 'fair go' remain the nation's overriding societal values. We recognise, however, that, traditional values are driven by:
 - (a) social media, which ensures otherwise isolated complaints are:
 - canvassed instantly and widely,
 - generalised to all veterans or groups of veterans, and
 - trivialised;
 - (b) the wider societal structure being:
 - less deferential,
 - more mobile with fewer firm friendships,
 - more connected, with wider circles of acquaintances,
 - less community-minded, and
 - more focused on the individual's rights; and
 - (c) the decline societal resilience since the early 1900s.
- d. Accepting that our relationship with the younger veteran community is not as close as we would like, we submit the following characteristics of the groups that are Members of ADSO.
- (i) They:
 - (a) care no less deeply about mates' wellbeing than older veterans,
 - (b) use social media to stay in contact with their mates in a way that was impossible less than a generation ago and therefore:
 - learn very quickly about a 'mate' or veteran's family in crisis, and

²² We note that voluntary enlistment may be facilitated by competitive pay and allowances, but argue that veterans' entitlements in the event of injury, disease or death are also contributory. Political opposition to conscription may, of course, have to change in a future disrupted international environment (global recession, sea level induced mass migration, resource depletion, food and water insecurity.).

- have established organisations that can provide peer support almost immediately.²³
- (ii) More generally, ADSO understands and supports the broad position that the younger veteran community has taken. Compared with earlier generations:
 - (a) their expectations of government are higher;
 - (b) they expect professional resolution of their issues using the latest technologies;
 - (c) they insist that advocates focus on the veteran and family;
 - (d) they specifically want advocates' support with:
 - suicide awareness,
 - the veteran and family in crisis, and
 - reintegration into community.

4.4 *Is the current system upholding these priority objectives?*

- a. Spurred by societal distrust of politicians and despite assurances such as the Prime Minister's at Villers-Bretteux, veterans share a robust underlying scepticism about governments' commitment to the century-old 'national obligation'. Lower societal resilience and expectations of immediate resolution further fuel scepticism. Social media's instantaneous and wide dissemination of complaint also erode trust.
- b. ADSO notes the Recommendations of the ANAO Efficiency Review,²⁴ and the Minister and Secretary's agreement with the recommendations.²⁵ We submit that:
 - (i) The changes so far achieved through VCR continue to improve DVA's veteran support system.
 - (ii) Much has yet to be done, especially in adoption of emergent IT practices (para 4.4.d).
 - (iii) Department-wide culture change, in particular, can be expected take many years to reach fruition.
 - (iv) The few public airings intemperate posts on some Facebook sites, of 'Likes' or 'Shares', and populist support by some politicians are misleading.
 - (v) In the context of para 3.4, the risk for the Inquiry is that emotive complaints are misunderstood to indicate systemic failure.

²³ An example is the VetGuard App supported by Veterans 360 Australia. See: <https://v360.org.au/VetGuard/>

²⁴ <https://www.anao.gov.au/work/performance-audit/efficiency-veterans-service-delivery-department-veterans-affairs>

²⁵ http://minister.dva.gov.au/media_releases/2018/jun/va047.htm
http://minister.dva.gov.au/media_releases/2018/jun/va047.htm

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- (vi) On a range of Facebook sites,²⁶ whenever a veteran posts about a positive experience with DVA it attracts a string of 'Likes'. That this occurs is a vital counterpoint to the criticism that undermines VCR's achievements.
- c. ADSO invites the Inquiry to consider the findings of the Public Service Commission (PSC)'s 2013 Capability Review of DVA, in light of the Secretary's response to that Review, the Department's strategic plan '*DVA Towards 2020*', and the outcomes being achieved by both VCR and its advocacy training limb (ATDP).
- d. We submit that critical comparison provides evidence of the extent to which DVA's strategic change objectives are being achieved. This does not suggest, however, that there is not yet much work yet to be done. The significant IT issues faced by DVA and the need for it to embrace the digital age through Big Data and Artificial Intelligence are key outstanding weaknesses.
- e. ADSO submits that, although a number of significant outcomes have yet to be realised, the following PSC criticisms are now close to being, or have been, remedied:
- (i) Unstable Operating Model:
 - (a) high volume serviced through multiple mainstream systems
 - (b) geographically-dispersed, 'matrix' delivery model
 - (c) sub-scale, financially unsustainable producing sub-optimal outcomes
 - (d) 200 individual and aging ICT systems across the Department
 - (ii) Internal Focus and Organisational Culture:
 - (a) Executive Management Group focused on operational matters
 - (b) disaffected operational staff
 - (c) credibility of middle-level managers questioned
 - (d) risk averse, siloed and rules-bound culture
 - (e) imbalance between administrative responsibility and client expectations
 - (iii) Outcomes for Client:
 - (a) inconsistent service levels
 - (b) decision-makers ill-prepared to explain unfavourable legislatively-correct decisions to clients
 - (c) transition:
 - from manual, to IT-based systems,
 - from self-imposed pressure to acquiesce, to understanding
 - from risk aversion, to considered judgement

²⁶ Typical are: DVA Claims, Cards and Payments Veterans Information Group; DVA Gold Card Benefits and Concessions; and DVA Overpayments.

4.5A *Where are the key deficiencies in the system?*

- a. ADSO submits that, although the following are operational issues, they impact on our Members, and have embedded principles or high-level policy ramifications that predicate discussion.
 - (i) ADSO Members continue to receive complaints about the delivery of out-sourced rehabilitation services. Without excluding other deficiencies, the most common are:
 - (a) perceived unreasonable demands or brusqueness,
 - (b) poor levels of contact between client and service provider,
 - (c) the distance between the client and service provider (especially in country areas); and
 - (d) the consequences of removing autonomy from State and Territory DVA offices in claims handling.
 - (ii) Accepting that the following concern may be resolved by a change of Defence policy and practices, Reserves are not eligible for Non-Liability Health Care unless they render at least one day of continuous fulltime service. The meanness of this policy is evident in the facts. Reservists:
 - (a) typically undergo the same training courses as fulltime personnel;
 - (b) are exposed to same physiological and psychological stressors and risks as fulltime personnel;
 - (c) may train in readiness to deploy and have deployed on operational service;
 - (d) have been engaged in disaster relief; and
 - (e) have pulled refugees' bodies out of the water on border protection operations.
 - (iii) Despite MRCA provisions that require veterans to obtain financial advice, the offer of (often) very significant compensation lump sum payments to younger veterans and dependants is poor social policy and an abrogation of duty of care to provide life-long support for those whose service results in serious injury, illness or death.
 - (iv) ADSO submits that the effect of this specific provision will be experienced by veterans (who elected a lump-sum payment) when they reach retirement age. At that, those that have been severely impaired by their service, have not worked and therefore contributed to a compulsory retirement benefits scheme, will receive only the Aged Pension or Service Pension if they have had Qualifying Service. Accepting this is the result of a personal decision, we submit that it is an unacceptable return for a lifetime of severe impairment in defence of the Nation.
 - (v) While capable of resolution by a change of Defence policy and practice, some veterans are being placed at unacceptable risk. The following

- discharge situations result in the veteran being placed in financial jeopardy (viz. no CSC and/or DVA payments):
- (a) those discharged when DVA has rejected their primary claim(s); and
 - (b) those allowed (some are known to be encouraged) to discharge voluntarily rather than undergo the MECRB (Medical Employment Classification Review Board) process; and
- b. At the level of principle and high-policy, ADSO submits that:
- (i) at root, no matter how successful is VCR, distrust of government and continuing criticisms by some veterans will continue to bring unwanted pressure on DVA in the short to medium term; and
 - (ii) this disconnect between these realities and VCR's accelerating changes will not be closed until VCR's improvements demonstrate to enough of those currently critical that their concerns have been resolved.
- c. ADSO notes that some pundits claim Australia's veteran's legislation is world's best practice. A reading of Canada, New Zealand, US and Britain's veterans' legislation shows that Australia is ranked no better than third:
- (i) Canada:
 - (a) has promulgated a *Bill of Veterans' Rights*;²⁷
 - (b) s2.1, provides that: *The purpose of this Act is to recognize and fulfil the obligation of the people and Government of Canada to show just and due appreciation to members and veterans for their service to Canada. This obligation includes providing services, assistance and compensation to members and veterans who have been injured or have died as a result of military service and extends to their spouses or common-law partners or survivors and orphans. This Act shall be liberally interpreted so that the recognized obligation may be fulfilled* (our emphasis); and
 - (ii) New Zealand's *Veterans Support Act 2014* legislates:²⁸
 - (a) at s32, a *Code of Veterans' Rights*.²⁹
 - (b) at s10, *General Principles*:
Every person who performs any function or exercises any power under this Act must do so...in acknowledgement, on behalf of the community, of the responsibility for the injury, illness, or death of veterans as a result of them being placed in harm's way in the service of New Zealand.
 - (iii) On the other hand:
 - (a) Britain's *Armed Forces (Pensions and Compensation) Act 2004* provides pension benefits only, with veterans receiving health benefits through the National Health System. Furthermore, Pensions Appeals are heard

²⁷ <http://www.veterans.gc.ca/eng/about-us/veterans-bill-of-rights/vbor>

²⁸ <http://www.legislation.govt.nz/act/public/2014/0056/60.0/DLM5538053.html>

²⁹ The Code contains similar principles that those in VEA s119 and MRCA s334

by the Social Security Commissioner.³⁰ Britain's veterans' entitlements are seen widely to be miserly and inferior.

(b) US Veterans entitlements appear to be subject to an extraordinary number of Acts, each of which is independent and under regular review by Congress. An indication can be gained from the current US Senate Veteran Affairs Committee's calendar.³¹

- Clearly, the US legislative environment is fundamentally different from Australia, Canada and New Zealand's.³²
- One key provision is, however, embedded in US, Canadian and New Zealand veterans' legislation, that is absent from Australia's. From the US Department of Veterans Affairs Act H.R. 3471 (100th). Acceptance that the veteran's impairment is caused by the need to protect America, the lives of Americans and the rights soldiers earned for the public (our emphasis).

- d. ADSO submits that world's best practice is legislated acceptance of the nation's obligation to care for veterans and their families. The Canadian, New Zealand and US governments have legislated this commitment. To date, it has proceeded no further legislatively in Australia than Explanatory Memorandum, Second Readings of a Bill, utterances of gratitude, and commemoration of lives sacrificed.
- e. ADSO notes that the Inquiry ToR require definition of legislative best practice. In this respect, ADSO advises that it has been campaigning for a decade to have a Military Covenant accepted by the Government. A recent meeting between ADSO and Hon Darren Chester, Minister for Veterans' Affairs, will lead to development of a draft proposal. In short, it recognises the unique nature of military service and the special bond, largely unwritten before, of mutual obligations between the Nation and the members of the Australian Defence Force.
- f. Given Australia Government's continuing expeditionary propensities, the Covenant must be legislated in VEA, DRCA and MRCA. Justification rests on Senator Millen's 1917 legislation of a 'national obligation' and Heerey J's judgement that veterans' favourable benefits can be understood only as acceptance that voluntarily putting life and health at risk in the Nation's defence demands special recognition.
- g. ADSO submits that, given the trend in economic decision-making, to ensure that veterans' entitlements are not eroded in future, it is time the century-old national

³⁰ See: <https://www.legislation.gov.uk/ukpga/2004/32/contents>

³¹ <https://legiscan.com/US/pending/senate-veterans-affairs-committee/id/2333>

³² The fundamental difference can be gauged in the following excerpt from the Summary of H.R. 3471 (100th): the US Department of Veterans Affairs Act: 'This bill passed into law over the objection of some of President Reagan's fellow Republicans, who were committed to preventing the U.S. federal government from expanding further...The funds under Title 38 are similar to public assistance funds as they share the same reason for receiving them; to care for those who cannot care for themselves. However, these funds are not welfare or a hand out. These are Compensation funds because the loss of ability was caused by the need to protect America, the lives of Americans and the rights soldiers earned for the public.' (our emphasis) <https://www.govtrack.us/congress/bills/100/hr3471/summary>

value and established legislative tradition were embedded VEA, DRCA and MRCA. It is time that current veterans' legislation enshrines:

- (i) the unique nature of military service, and
 - (ii) the Government and Nation's obligation to veterans and their families.
- h. ADSO submits that unless veterans' legislation is amended, Australia will remain ranked no better than third in world's best practice. Given the expeditionary propensity of successive governments, failure to legislate introduces potential risk to Australia's national security.

4.5B Where are the key deficiencies in the administration of the system?

- a. Discussion of deficiencies must be placed in context. The deeply-held views of some veterans heard by the Senate Inquiry are part of that context. ADSO submits that some Inquiry submissions will stimulate emotional and behavioural responses that are rooted in historical (pre-VCR) experiences and, to some extent, are still unresolved today.
- b. ADSO respects the grievances aired by those veterans who believe the system has failed them. Noting the Minister's comments on her appointment, the veteran community expects Secretary Cosson to continue to drive the reform agenda:

*'As chief operating officer she has been instrumental in the reform process currently underway and I'm confident that we can continue to deliver an improved level of service... our efforts over the next 12 months will [focus on] younger veterans and...the transition from military service.'*³³

As it has since DVA's Annual Report 2013-14,³⁴ ADSO will continue to critically support implementation of the Reform agenda.

- c. We submit that information and engagement are key deficiencies. Remediation will require an aggressive approach. The National Consultative Consultation Framework, a link on the Department's webpage (Feedback), occasional posts on the DVA Facebook site, and online (e-News) or hard copy (VetAffairs) newsletters, while necessary are not sufficient. Despite the penetration of social media, word-of-mouth and direct emails remain powerful engagement tools.
- d. Advocates have a crucial role to play. My Service and the Online Claim significantly facilitate accessibility, but have an equally significant down-side. They encourage a veteran to submit claims directly to DVA without consulting an advocate. Advocates' are therefore seeing a decreasing number of primary claims but increasing appeal workload to the VRB. We submit that this is slowing down

³³ Reported by Stephen Easton, 11/04/2018 in: <https://www.themandarin.com.au/91195-elizabeth-cosson-appointed-dva-secretary-turnbull-announces-gender-parity-top/> accessed 8 Jun 18.

³⁴ '2013-14 ... DVA embarked on a journey of service delivery reform ... Changes were made to Veterans' Access Network services, to respond to changing demographics; to claims processing, which has resulted in improved times taken to process claims; and to the structure of the Department, to provide greater accountability and oversight of the reform programme.' <https://www.dva.gov.au/about-dva/accountability-and-reporting/annual-reports/annual-reports-2013-14/overview/secretarys> accessed 7 Jun 18.

- the determination of appeals through ADR. The next DVA and VRB Annual Reports will (or will not) substantiate advocates' perception.
- e. By bypassing the advocate, DVA has inadvertently excised one of its strongest support mechanisms. In saying that, ADSO accepts that a substantial number of TIP-trained pension officers were critical of DVA. TIP-trainers noted that many pension officers focused on VEA and were not across SRCA or MRCA.
 - f. ADSO submits that, while criticism has not ceased, ATDP represents a break from past behaviours.
 - g. At the date of writing:
 - (i) 470³⁵ TIP-trained pension and welfare officers (25% are dual accredited in Wellbeing and Compensation) have accepted the challenge of RPL,³⁶ and another 180 await scheduling for RPL.
 - (ii) These numbers evidence a high level of commitment to professionalism by 40% of the estimated 1,600 practicing pension officers.³⁷
 - (iii) Around 500 trainees are enrolled in a learning pathway.³⁸
 - (iv) Before enrolment, ATDP trainees are assessed for their suitability³⁹ for advocacy.
 - (v) Accreditation requires all compensation trainees to demonstrate competency in all three Acts.
 - (vi) ATDP
 - (a) has now conducted four RPL sessions for Level 3 (VRB) Advocates,
 - (b) has piloted the Level 4 (AAT) Advocate's RPL, and
 - (c) will roll-out the Level 3 and 4 Compensation training pathways, consolidation and assessments courses in CY2019.
 - h. We expect these advances to strengthen advocates' collaboration with Delegates. The break from history is therefore foreshadowed by a thorough understanding of legislation and policy, competency assessment, nationally consistent advocacy services, and a shared commitment to making the 'system' work.
 - i. ADSO strongly supports closer engagement of VCR and ATDP to further increase the efficiency and cost-effectiveness of the system. Claimant's use of the Online

³⁵ At 23 Jun 18. For updated data see: <https://www.atdp.org.au/atdpMain.php>

³⁶ Recognition of Prior Learning. <https://www.atdp.org.au/atdpMain.php> accessed 9 Jun 18.

³⁷ Veterans' Advocacy and Supporting Services Scoping Study, Discussion Paper, May 2018; p8.

³⁸ http://www.pc.gov.au/data/assets/pdf_file/0009/227439/sub004-veterans.pdf, pp6-7, the number of FTE advocates needed to meet demand (around 1100) is less than TIP trained and were practicing. The Scoping Study Discussion Paper suggests that around 1600 were practicing at the time of release of that paper. https://www.dva.gov.au/sites/default/files/files/consultation%20and%20grants/atdp/advocacy_study_discussion_paper.pdf Section 1, accessed 21 Jun 18.

³⁹ See: <https://www.atdp.org.au/guidelines.pdf>

Claim form and MyService is, however, the arbiter. ADSO submits this problem can be readily overcome:

- (i) the Online Claims portal⁴⁰ advises that claimants can be assisted by a DVA officer or an ESO, and hyperlinks are provided;
- (ii) on the other hand, MyService has no advice whatsoever about advocacy support;⁴¹
- (iii) ADSO recommends two corrective actions to improve effectiveness and efficiency:
 - (a) References to DVA assisting completion of online applications be removed as, in our understanding, it is contrary to OBAS policy.
 - (b) When ATDP's Advocacy Register is rolled-out, the hyperlink [Contact an ESO](#) be replaced by [Find an Accredited Advocate](#).

The latter remedy is particularly important. ADSO Members and ATDP contact with younger veterans reinforces how critical they are about the difficulty in locating an advocate and the quality of support provided too often by old-style pension officers.

5. A system to meet needs of future veterans

5.1 What should the system of veterans' support seek to achieve in the longer term?

- a. ADSO submits that Australia's rehabilitation and compensation system is not best practice in terms of support for veterans. We reject, however, any presumption that best practice is closer to workers' compensation⁴² or the US and UK's levels of support.
- b. If this is a presumed option, it concerns us. As discussed in para 4.2(b), it would breach the legislative principle established in ASRA and continued to this day - DRCA and MRCA's focus on rehabilitation notwithstanding. We reiterate that the Inquiry include a social and economic cost-benefit analysis and adopt a social enterprise approach to veterans' advocacy.

⁴⁰ The following advice is provided on: <https://www.dva.gov.au/oneservices/oscf/aboutClaim.html>

'Need Assistance?

Assistance from DVA

DVA staff can help you complete this form. [Contact DVA](#)

Assistance from ex-service organisations

You can also seek the assistance of an Ex-Service Organisation (ESO) of your choice prior to completing this form.

[Contact an ESO](#)

And on the Claim for Compensation link:

Other Assistance

Other persons of your choice (e.g. legal practitioner) can also assist you at your own cost.'

⁴¹ Opening the link leads to the advice: 'MyService is an online claims processing portal that streamlines and simplifies the way you make DVA claims.' <https://www.dva.gov.au/my-service/#/> accessed 9 Jun 18.

⁴² We refer to the 'Scope', p2: '...whether the arrangements reflect contemporary best practice, drawing on experiences of Australian workers' compensation arrangements and military compensation frameworks in other similar jurisdictions (local and international)',

5.2 What factors should be considered when examining what is in the best interest of veterans?

- a. As emphasised in para 4.2.a.(i), veterans and their families 'best interests' were enshrined in legislation in 1920 and the same principles and definitions prevail into the current legislation. ADSO submits therefore that veterans and their families' best interests were considered a century ago and have survived not only changes in '*the characteristics of service members...advances in recognising conditions that may arise from service [and] development in methods of, and philosophies for, treatment...*' but also, swings in political interest and adverse economic cycles.
- b. We do, however, endorse strongly the Issue Paper implication that the '*methods of, and philosophies for, aiding transition from service*' need further consideration. As discussed in para 4.5A.a.(iv), despite the work done collaboratively by Defence, DVA and CSC, transition support of the most at risk remains rudimentary. To the extent possible, advocates are being trained to support this cohort. Workshops ATDP convened with younger veterans between 2015 and 2018 redefined veterans and families' compensation and wellbeing needs.⁴³ Key changes are:
 - (i) Adoption of a 'Healthy Veteran. Healthy Family' model.
 - (ii) Training in transition, crisis and reintegration into community.
 - (iii) Re-focusing support on veteran and their family's wellbeing.
 - (iv) Embedding in Wellbeing Advocacy, the full range of needs (physical, emotional and behavioural, relationships, financial, and life stages).
 - (v) Placing compensation in its rightful place as episodic occurrences in a lifetime of wellbeing support.
 - (vi) Training advocates to 'walk beside' the veteran so as to:
 - (a) de-institutionalise (where needed),
 - (b) strengthen resilience, and
 - (c) build self-sufficiency

5.3A How have veterans' needs and preferences changed over time?

- a. ADSO challenges any presumption that veterans' current needs and preferences are not known? We submit the question should read: *How can veterans and their families' future needs continue to be incorporated into veteran-specific legislation, policy and administration?* We also submit the answer is demonstrated by DVA's Project Lighthouse's participatory research methodology. Preparation of the

⁴³ ADSO encourages the Inquiry to request ATDP's CFMG (Capability Framework Management Group) a copy of the report: 'Submission to the SGB for Out-of-Session Ratification: Recommendations of Welfare Curriculum Workshop Integrating Younger Veterans' Needs, 18-21 December 2017.' Alternatively, see: www.atdp.org.au/policy Library 1, Part A, Vol 3, MILADVW002, UoC Workshop Report

Business Case and the roll-out guidelines for VCR was exemplary. Veterans' needs and preferences were genuinely ascertained and are embedded in VCR.

- b. ATDP (largely independently but mutually supportively) also used participatory research to identify contemporary veterans and their families' needs. In combination, VCR and ATDP have supported ESORT's strategic focus, reinstitution of the Operational Working Party, and creation of the Younger Veterans' Needs and the Female Veterans and Families Forums.
- c. ADSO submits that:
 - (i) providing contact with veterans and families remains highly participatory and the many other DVA-commissioned research projects and the RMA's scientific-medical research continue, future needs will be identified.
 - (ii) the real challenge will be for DVA to compete successfully for the resources it needs to maintain the Nation's century-old commitment.

5.3B How can the system better cater for the changing veteran population and the changing needs of veterans?

- a. ADSO supports the robust criticism aired by many respondents at the Senate Inquiry. We reiterate that:
 - (i) Australia's veterans' compensation and rehabilitation system will not be considered world's best practice until as a sign of good faith a Military Covenant is legislated; and
 - (ii) the real challenge is for DVA to compete successfully for the resources it needs to sustain the Nation's commitment to veteran support.
- b. We submit that:
 - (i) national defence and veterans' support are not just another social expense;
 - (ii) transfer to another Department of the medical and rehabilitation services administered by DVA would achieve no significant budgetary gain;
 - (iii) the only rationale for transfer can be economic rationalism, which would:
 - (a) have DVA reduced to a policy rump, and
 - (b) as quickly thereafter, DVA's elimination;
 - (iv) any of these 'solutions' would:
 - (a) be an abrogation of the Nation's responsibility,
 - (b) be contrary to the century-old accepted obligation, and
 - (c) cement Australia's veterans' legislation in third place in world's best practice or worse.
- c. That said, as posed, the question has two limbs: (1) how can the system best be developed to account for future changes in veteran population, and (2) how can the system best be developed to account for future changes in veterans' needs:

- (i) Veterans' Population: Assuming the term population means '*all the people of a particular type or group*', ADSO submits that *changes of veteran population will have only a budgetary impact. In this respect, we submit that, were the cost of DVA's support services to be appropriated to another portfolio, it would be merely a cost transfer not a saving. Unless the Issue Paper is suggesting that the Inquiry intends to examine the principles upon which the DVA appropriation is based, this limb appears to not require any other response.*
- (ii) Veterans' Needs: ADSO reiterates that the participatory research used by Project Lighthouse was not only highly effective but has also established best practice for determining veterans and families' needs.

6. How should the nature of military service be recognised?

6.1A What are the key characteristics of military service that mean veterans need different services or ways of accessing services to those available to the general population?

- a. ADSO is gravely concerned by the speculative presumptions under this heading in the Issue Paper: '*...services may be duplicating those available to the general population [which] can be costly and lead to little or no benefit for the veteran population*' (our emphasis). We submit that:
 - (i) this may have 'bandwagon appeal' to those that address issues from a purely economic perspective,
 - (ii) but begs identification of where duplication and cost-benefit imbalance are occurring; and
 - (iii) If duplication does exist to some extent, it is justified by the Nation's long-term commitment to caring for veterans, war widow(er)s and dependants.
- b. ADSO recognises that, if the question is re-phrased from a purely economic perspective (Why should military service necessitate different services or ways of accessing services to those available to the general population?):
 - (i) police and fire-fighters place their life in danger in the line of duty, and
 - (ii) ambulance, accident and emergency medical staff, and SES may be traumatised by their work experiences.

The rationale for discrete services and services access for veterans is not to be found there.
- c. The rationale therefore has another context:
 - (i) None of the preceding occupations surrender their human rights under the Universal Declaration of Human Rights.
 - (ii) None of the preceding occupations:
 - (a) legitimises training for and the application of lethal force on behalf of the State; or

-
- (b) if they fail when tasked, jeopardise the Nation's freedom;
 - d. All of the preceding occupations enjoy:
 - (i) the benefits of unionism,
 - (ii) various protections in State and Federal workers' legislation, and
 - (iii) the right:
 - (a) to negotiate their conditions of service, and
 - (b) of access to arbitration processes.
 - e. ADSO is also concerned by the Issue Paper assertion that: *'Where the veterans' support system provides different levels of support or sets different hurdles for accessing support to veterans with similar needs but different service histories, the differences need to be justified and understood by veterans.'* (We also infer a relationship between this assertion and the questions about SoP at Section 8B below.) ADSO submits that:
 - (i) While the assertion may appeal to some veterans, in our experience it is far from the norm.
 - (ii) Said another way, ADSO would be concerned if some grievances aired at the Senate Inquiry were misunderstood by this Inquiry as support for fundamental change.
 - (iii) If our perceptions are valid, our disquiet is reinforced that dogma would determine veterans' entitlements.
 - f. That said, we support strongly the declaration by Veterans Affairs Ministers that ADF personnel with a day's continuous fulltime service are 'veterans'. But, we are concerned that it suggests a level of misunderstanding of veterans' issues.⁴⁴
 - (i) In our experience, ADF personnel with only peacetime service commonly declare they could not be a veteran because they do not have operational experience.
 - (ii) Unintentionally, the Ministers' declaration is potentially divisive and potentially damaging to an ADF that is integrating permanent and reserve personnel (para 4.3 above).
 - g. ADSO submits that, as enshrined legislatively for a century, those personal sacrifices justify veterans' legislated entitlements. Said another way, despite adverse economic cycles, successive governments and generations have accepted a national obligation to care for those who train to defend, and are prepared to lay down their life for, the Nation's freedom.
 - h. We therefore reiterate that:

⁴⁴ Veterans Ministers' Roundtable, Canberra, 8 November 2017.

- (i) until Australian veterans' legislation embeds the Government and Nation's indebtedness to veterans and their families for national security, the presumption will 'have oxygen'; and
- (ii) unless the Inquiry establishes in detail whether duplication and cost-benefit imbalance are real, the presumption is fallacious.

6.1B How should these characteristics be recognised in the system of veterans' support?

- a. ADSO resubmits that the key characteristics of military service and the rationale for veterans' support are so deeply embedded in social consciousness that they are now a national tradition.⁴⁵ The tradition is evidenced by legislative intent for over a century, despite amendments and new veterans' legislation.

6.2A What is the rationale for providing different levels of compensation to veterans to that offered for other occupations, including people in other high-risk occupations such as emergency services workers?

- a. Further to para 6.1A above:
 - (i) Serving men and women are, voluntarily, at the Government and Nation's behest, ready for deployment to war zones and for disaster response, immediately, irrespective of their domestic circumstances.
 - (ii) Unlike all other sectors of the national economy, the ADF has no recourse to industrial processes not any right to industrial action.
 - (iii) ADF personnel's everyday effort is focused on preparation, both physically and mentally, for conflict and disaster relief.
 - (iv) Deployed Servicemen and Servicewomen do not go home at night.
 - (v) Their families accept emotional and physical separation as their personal contribution to the Nation's security.
- b. The expenditure of significant resources through DCO (Defence Community Organisation) attests to the level of deprivation associated with service in defence of the nation.
- c. That deprivation in the name of service to the Nation has ramifications throughout life is attested to by expenditure on VVCS (Veterans and Veterans Families Counselling Services).
- d. ADSO submits that the levels of compensation to which veterans and their families are legislatively entitled are justified by:
 - (i) ADF personnel voluntarily surrendering their personal agency;
 - (ii) the disruption of the normal family life that civilians experienced; and

⁴⁵ 'A tradition is a belief or behaviour passed down within a group or society with symbolic meaning or special significance with origins in the past.' <https://en.wikipedia.org/wiki/Tradition> accessed 10 Jun 18.

- (iii) the higher likelihood of death, injury or disease compared with civilian occupations including emergency services workers.

6.2B Are there implications for better policy design?

- a. ADSO submits that better policy design is impossible unless a broad social and economic approach to veterans' support is adopted. The following suggest that the Government is sensitive to the view that the Nation's defence and its treatment of veterans are in conflict:
 - (i) the additional appropriations for VCR,
 - (ii) public consternation about the incidence of veteran suicide, and
 - (iii) the robust criticism of veterans' support heard by the Senate Inquiry.
- b. ADSO reiterates its concern about the economic presumptions that appear to underpin the Issue Paper. To suggest that comparison of ADF and civilian occupations would lead to better compensation policy reinforces our concerns. We submit that the economic cost of veterans' support also creates social and economic opportunities (para 2.4)
- c. ADSO submits that the social capital veterans and their families bring into the community is a more than fair return on investment (ROI) for the Nation's commitment to funding its defence. As discussed at para 4.1B. c., the ROI has social and economic limbs.
- d. ADSO proposes that the Inquiry include a social and economic cost-benefit analysis, with sensitivity analysis of the variables. The analyses would include:
 - (i) the social capital that an ex-ADF Member returns to society through their organisational skills, national focus and personal resilience;⁴⁶
 - (ii) the social capital lost through dysfunctional community members;
 - (iii) the cost of training, equipping and sustaining an ADF Member over the period of service;
 - (iv) the economic return from their income, employer and employee taxes, consumption and GST across their working life.
- e. Research shows that around 65% of ex-ADF personnel 'thrive'⁴⁷ following transition and around 30% either 'survive' with DVA support or 'struggle' with intensive advocacy and DVA support.⁴⁸ We submit that the return to society and

⁴⁶ Many veterans that are unable to work resort to volunteer service which also contributes to their community. A challenge is to encourage younger veterans on INCAP and PI to undertake voluntary service in the spirit of mates helping mates.

⁴⁷ Those that thrive, contribute to the economy following transition into the broader society and economy.

⁴⁸ Research by Dr Verity Greenwood, Macquarie University, suggests that discharged service personnel can be considered in four categories – those that:

- **thrive:**
 - comprise around 65% of personnel transitioning from ADF

economy by those that thrive more than offsets the societal and budgetary consequences of the 30% that need immediate DVA support.

- f. We discussed at para 2.6 that, each year, around 1,650 new clients join the 280,800 existing DVA clients. DVA's Annual Report FY2016-17 advised that it has received around 11,000 new claims pa over the last three financial years, with the average age of outstanding cases being 28 days (para 2.8). ATDP advises that experienced volunteer advocates expend around 25 hours on a primary claim, 50 hours on a VRB appeal and 100 hours on an AAT appeal.
- g. These data are stark evidence of the care and effort required to deal with the complexity of veterans' conditions. We reiterate that the already high-level incidence of suicide, mental health and musculoskeletal injuries will increase as the current cohort of serving ADF personnel and younger veterans age. Increasing international turmoil and successive governments' predilection for expeditionary warfare and international disaster relief suggest that there will be veterans into the future. The need remains for a stand-alone Department that understands at a foundational level the unique culture, employment characteristics and complexly interactive needs of veterans and their families.

6.3 *Are differences in support and ways of accessing support based on different types of service (such as operational, peacetime and Reserve service) justified?*

-
- ESOs and DVA may never hear from them
 - **survive:**
 - represent around 20% of personnel transitioning out of the ADF
 - ESOs will help them with:
 - primary claims for compensation
 - an appeal (not unusually, if they self-lodged the primary claim)
 - wellbeing support, which may be of long-term nature
 - monitoring support by DVA rehabilitation service provider
 - **struggle:**
 - from experience, represent:
 - probably up to 10% of people transitioning out of the ADF
 - the major workload for ESOs
 - typically, the client-base for DVA Case Coordination
 - the major source of complaints about DVA, VRB, CSC
 - inevitably in crisis on first contact with ESO advocates
 - probably medically/administratively discharged precipitately, and:
 - homeless
 - impoverished - receiving no CSC or DVA-provided income
 - substance abusing (opioids prescribed by ADF medical officers)
 - abusing alcohol
 - having severe relationship problems, with long-term consequences for spouse and children (cont.)
 - isolated and/or alienated
 - sometimes suicidal
 - **'lost'** - typically:
 - homeless, destitute, mentally ill, alcohol/substance abusing
 - a major long-term concern to their mates
 - a major ethical challenge for Government and significant practical problem for society

- a. ADSO submits that determination of liability differs with the standard of proof which is, in turn, related directly to the type of service; however, any differences in support are related to the level of impairment, not the type of service.
- b. From one perspective:
 - (i) Irrespective of whether service has been warlike, non-warlike, peacekeeping, or peacetime, permanent or reserve, all veterans are covered by at least one veteran-specific Act.
 - (ii) Although location and availability of IT services affect veterans' accessibility to support, DVA's telephone services, and My Account/Online Claim Form/MyService, and Advocates are non-discriminatory.
 - (iii) Accredited Wellbeing and Compensation Advocates do not discriminate between veterans on the basis of type of service.
- c. From another perspective, a relationship does exist between determination and type of service. For example:
 - (i) Irrespective of the nature of service, all medical conditions are determined at the Reasonable Satisfaction standard of proof (Balance of Probabilities).
 - (ii) With respect to determination of liability, veterans with:
 - (a) operational service (be they Permanent or Reserve personnel called up for fulltime service) are subject to the Beyond Reasonable Doubt standard of proof (Reasonable Hypothesis); and
 - (b) peacetime service, the Reasonable Satisfaction standard of proof.
 - (iii) Once liability has been accepted, determination of the level of impairment and compensation vary between Acts:
 - (a) All VEA claims are subject to the same Combined Values Chart in VEA-specific Guide to the Assessment of Veterans' Pensions (GARP V).
 - (b) Claims lodged under DRCA are assessed against the Guide to the Assessment of the Degree of Permanent Impairment.
 - (c) For MRCA, the compensation entitlements are assessed using different Tables in the MRCA-specific Guide to the Assessment of Veterans' Pensions (GARP M) that relate to the type of service, resulting in different levels of compensation for warlike/non-warlike or peacetime service.
 - (d) Rehabilitation support is related to the Act under which the veteran has eligibility.⁴⁹

⁴⁹ VEA: <http://clik.dva.gov.au/compensation-and-support-policy-library/part-3a-veteran-payment/rehabilitation> ;
MRCA: <http://clik.dva.gov.au/rehabilitation-libraries>

- (e) As identified in para 4.5 b.(ii), access to NLHC (Non-Liability Health Care) for mental health conditions is available to Reservists only if they have rendered one day's continuous full-time service.⁵⁰
 - (f) Access to NLHC for cancer and tuberculosis depends on the nature of service.²⁹
- (iv) Irrespective of Act or type of service, medical treatment is regulated by the Scheduled Fee,⁵¹ and the range of treatment by the Treatment Card:
 - (a) Gold Card: all clinically-required conditions irrespective of whether liability has been accepted.
 - (b) White Card: except for NLHC, only those conditions for which liability is accepted.
- d. ADSO submits that:
 - (i) As the support available depends on many individual-veteran-specific variables, it is not possible to make a categorical statement about justification.
 - (ii) For example, many volunteers enlist as peace-keepers knowing they will acquire the skills and experience to be peace makers in the event of operational deployment.
- e. We discuss at para 8B.2A below whether SoP should include two standards of proof.

7. The complexity of veterans' support

7.1A What are the sources of complexity in the system of veterans' support?

- a. ADSO submits that complexity is a challenge only if the veteran has eligibility under more than one Act. We accept that this affects a significant number of veterans.⁵²
- b. While we are familiar with the view that legislative complexity is difficult for advocates, we are aware of the persistent aversion of some to undertaking TIP training in DRCA and MRCA. This situation no longer exists for advocates that have been accredited by RPL through ATDP. Accreditation requires they demonstrate competency in all three Acts. Given the increasingly litigious nature of society, practicing without indemnification accrues a high level of risk.⁵³

7.1C What are the reasons and consequences (costs) of this complexity?

⁵⁰ <https://www.dva.gov.au/factsheet-hsv109-non-liability-health-care>

⁵¹ See: <https://www.dva.gov.au/providers/doctors> and <https://www.dva.gov.au/providers/fee-schedules/dental-and-allied-health-fee-schedules>

⁵² Namely, those that either enlisted before or after 22 May 86 and served beyond 7 Apr 94 (dual VEA/DRCA eligibility) or also served beyond 1 Jul 04 (eligibility under VEA/SRCA/MRCA). VerBosity, Special Issue 2012, p61. <http://www.vrb.gov.au/pubs/VerBosity2012.pdf>

⁵³ TIP-trained pension officers that do not undertake RPL will not be covered by VITA indemnification insurance beyond 30 Jun 19 at Levels 1 and 2 (primary claims), and 31 Dec 21 at Levels 3 (VRB) and 4 (AAT). <https://www.atdp.org.au/documents/VITAletter.pdf>

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- a. As pointed out at Note 17, the inaccessibility of DVA policy and processes for multi-Act claims is a source of disquiet for advocates, veterans and families. This is a specific problem during preparation for reconsideration or review.
 - b. There is no cost to the veteran or family, irrespective of whether the advocate is a volunteer or ESO-paid representative or the time taken to prepare even the most complex claim or appeal. The costs may, however, be significant if the veteran engages a lawyer. ADSO understands that the Fee Agreement typically required by 'No win-No fee' solicitor incurs administrative expenses of between \$10, 000 and \$15,000 and an invoice on-success of 40% of the determination.
 - c. If the appeal is unsuccessful, the veteran may be left in dire financial straits. If the appeal is successful, the compensation entitlement will be significantly eroded.
 - d. ADSO submits that such losses have life-long social and economic consequences for the veteran. Such concerns underpin our proposal that the Inquiry include a comprehensive social and economic analysis.

7.1D What changes could be made to make the system of veterans' support less complex and easier for veterans to navigate?

- a. ADSO submits that:
 - (i) this question is rooted in now-redundant perceptions of the system, and
 - (ii) this Inquiry:
 - (a) identify unjustified criticism of the current system in submissions, and
 - (b) be wary of placing undue weight on criticisms repeated from the Senate Inquiry.
- b. We note the simplifications already achieved under VCR as well as those planned but not yet completed. We draw the Inquiry's attention to the effectiveness of Case Coordinators DVA has employed, Delegates' accelerating culture change, ongoing DVA-ESO consultations on specific issues, and accreditation of advocates under ADTP.
- c. While we are aware that some veterans still feel alienated by the system, VCR is making navigation simpler than it was at the time of the PSC review. MyService and culture change are ongoing improvements that have been particularly effective.

7.2 Can you point to any features or examples in other workers' compensation arrangements and military compensation frameworks (in Australia or overseas), that may be relevant to improving the system of veterans' support?

- a. Despite DVA's successful improvement of compensation and rehabilitation service delivery through VCR, Australia's veterans' legislation is not world's best practice. ADSO would be deeply concerned if purely economic considerations were used to justify reduced veterans and families' entitlements.

- b. Veterans and their families are not just another subset of society whose entitlements can be subsumed, with no more justification than dogma, into the broader communities.
- c. ADSO acknowledges that each system of compensation and rehabilitation is the product of different social responses to need. We invite the Inquiry to reread pages 8-9 of the submission we posted on 18 May in which we identify the differences between Australia's veteran support system and Canada's Bureau of Pensions Advocates. The differences are far more elementary. Comparing Australia and Canada's deployment focus.
 - (i) Since 1947, the Canadian Armed Forces have:
 - (a) completed 72 international deployments on operational missions, and on any given day, around 8,000 Canadian military personnel (one-third of the deployable force) are preparing for, engaged in or are returning from an overseas mission;⁵⁴
 - (b) committed 4000 personnel to Gulf War 1 in Iraq;
 - (c) had a 10-year commitment in Afghanistan with 3700 members of their defence force deployed at their peak; and
 - (d) the majority of its deployments are for UN peacekeeping duties.
 - (ii) In the same period Australia has deployed for combat⁵⁵ in Korea (17,000), Malaya and-Confrontation (unknown), Vietnam (c. 60,000), East Timor (c. 2,500), African continent (unknown), Middle East Area of Operations (MEAO; c. 40,000), and currently around 2,400 personnel are deployed.⁵⁶
 - (iii) Inevitably, the difference in commitment (predominantly peace-keeping versus overwhelmingly combat) has had a fundamental effect on the national psyche. For Australia, it remains the rationale for the beneficial intent of veterans' legislation.

7.3A *Is it possible to consolidate the entitlements into one Act?*

- a. ADSO Members are participating in the Legislative Forum that is considering this matter. Along with other participants, we are seeking to advance the concept, but note legal advice from both within and external to the Department that the differences in entitlements make consolidation difficult.
- b. We are therefore placing priority on the intermediate step of harmonising the three Acts. DRCA is the most open to harmonisation, which could include adoption of SoPs and the option of a disability pension (or a combination of pension and lump sum payment), rather than only a lump sum payment.

7.3B *If so, how would it be done?*

⁵⁴ https://en.wikipedia.org/wiki/List_of_Canadian_military_operations accessed 10 Jun 18.

⁵⁵ For a full listing of ADF operations for which Qualifying Service is determined, see pp152-155 of: <https://www.dva.gov.au/sites/default/files/files/health%20and%20wellbeing/rehabilitation/rchandbook.pdf>

⁵⁶ <http://www.defence.gov.au/Operations/> accessed 21 Jun 18.

- a. With respect to 7.3A.b, ADSO submits that, irrespective of whether harmonisation of the three Acts is possible, the Beyond Reasonable Doubt standard of proof should be applied more broadly.
- b. By definition, the term 'warlike' covers service where casualties can be expected. This suggests that pursuant to VEA, s2C(5) and MRCA s6.1(a) the Defence Minister may determine in writing that a type of service is warlike.
- c. ADSO submits the more beneficial Beyond Reasonable Doubt standard of proof should include:
 - (i) peacetime commitments where live ammunition is used,
 - (ii) war games (such as led to the accident at High Range),
 - (iii) certain toxic exposures (eg. F111 DSRS and tri-service fire-fighters),
 - (a) prescription of pharmaceuticals that subsequently have unacceptable side effects,⁵⁷ or
 - (b) other high-risk activities.
- d. This broadening would be applied to both Permanent and Reserve forces.

7.3C What transitional arrangements would be required?

- a. We submit that this matter is best resolved by the Legislative Forum.

7.3D How might these be managed?

- a. We submit that this matter is best resolved by the Legislative Forum.

7.4 Are there approaches, other than grandfathering entitlements, that can preserve outcomes for veterans receiving benefits or who may lodge a claim in the future?

- a. We submit that, in the context of Australia's cultural adherence to the 'fair go' and the complex interaction between the current Acts, in the absence of a new Act grandfathering is the only way in which existing entitlements could be preserved.
- b. We submit that, rather than a cursory response here, the Inquiry refer the matter for resolution at the policy level by the Legislative Forum. This would be followed by detailed, informed and protracted workshopping by DVA, ESO representatives and the legislative draftsman. Again, the participatory research model utilised by Project Lighthouse is apposite.

⁵⁷ For example, the neurotoxic effects on some veterans of Mefloquine and Tafenoquine. We note that the British House of Commons Defence Committee has resolved that the risk and severity of the side effects are not acceptable for Britain's military personnel. <https://publications.parliament.uk/pa/cm201516/cmselect/cmdfence/567/567.pdf> accessed 21 June 2018. We also note that the Senate FADT Committee is to inquire into the matter: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Mefloguine

8A. The claims and appeals process

8A.1 How could the administration of the claims and appeals process be improved to deliver more effective and timely services to veterans in the future?

- a. To reiterate, ADSO maintains that the criticism heard by the Senate Inquiry is, for the most part, being resolved. VCR has already improved DVA's administration, and ATDP continues to professionalise claims and appeals. We draw the Inquiry's attention to the DVA Response to Member Submission tabled at ESORT on 9 March 2018. We submit that the document is a comprehensive catalogue of the effects of VCR.
- b. From our perspective, the outstanding challenge remains resourcing. In this respect, ADSO advocates' current impression is that the time to process primary claims and ADR reviews has lengthened this calendar year. We note:
 - (i) the discussion of new primary claims activity⁵⁸ and time to process primary claims in DVA's current Annual Report;⁵⁹ and
 - (ii) that the VRB Annual Report 2016-17 identifies:
 - (a) an increase in average time to complete the s137 to s148 stage (17.3 days up from 11.8 days in 2015-16),
 - (b) a decrease in the Certificate of Readiness to Hearing stage (99.9 days down from 109.9 days in 2015-16),⁶⁰ and
 - (c) the average time to finalise under ADR was 94.7 days (against its target of finalising the majority of applications within 12 months).

8A.2 Are there diverging areas of the claims and appeals process under the different Acts that could be harmonised?

- a. ADSO submits that, even committed advocates that routinely submit primary claims under each of the three Acts and are in regular contact with Delegates, would find this question difficult to answer authoritatively.
- b. We submit that the question is best answered statistically by the Commissions, VRB and AAT.
- c. We therefore caution that answers to this question by any other respondent will be anecdotal, and therefore subjective. There are many variables that will affect anecdotal responses.

8A.3 Are there aspects of the claims and appeals process that result in inequitable outcomes for veterans, such as limitations on legal representation?

⁵⁸ <https://www.dva.gov.au/about-dva/accountability-and-reporting/annual-reports/annual-reports-2016-17/departments-veterans-2#figure3> accessed 11 Jun 18.

⁵⁹ <https://www.dva.gov.au/about-dva/accountability-and-reporting/annual-reports/annual-reports-2016-17/departments-veterans-2#figure4> accessed 11 Jun 18.

⁶⁰ <http://www.vrb.gov.au/pubs/VRB%20Annual%20Report%202016-17-inclFrontBack.pdf> pp 29 and 31, accessed 11 Jun 18.

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- a. ADSO submits that:
 - (i) this question has historical roots that are no longer valid; and
 - (ii) resolution requires a break from habitual thinking about advocacy, but not a radical departure.
 - b. We are aware that one cohort of veterans and advocates maintains that lawyers must represent at the VRB and AAT. We understand that they will accept no other outcome. The cohort appears to be unaware of the improvements being made by VCR and ATDP. While these initiatives have not yet eradicated shortfalls in determinations and reconsiderations, or advocate training and service delivery, the trends mitigate ongoing criticism and inflexible positions.
 - c. That said, activism has led, in part, to this Inquiry. In that respect, the activists' efforts command respect. The challenge now is to ensure that activism is balanced by deliberation and judgement.
 - d. We note that, over the period 1992 to 2016, TIP trained as many as 10,000 ex-ADF personnel as volunteer pension or welfare officers and VRB/AAT advocates. Many of these volunteers have given long and faithful service to veterans, war widow(er)s and families. Their contribution to veteran advocacy is ongoing testimony to the tradition of 'Mates helping Mates'. Neither its effect nor its importance can be over-estimated.
 - e. That said, some younger veterans have expressed concern at workshops about advocacy support.⁶¹ The Inquiry may receive similar criticisms, but we submit they should not be generalised. MRCA's balance of rehabilitation and compensation is consistent with most younger veterans' wish of to secure the support to which they are entitled, and to get on with their lives.
 - f. As noted at para 4.5B.g., ATDP has now accredited 470 TIP-trained pension and welfare officers through RPL and another 180 await scheduling. This is direct evidence of commitment to professional advocacy. RPL and ATDP training pathways accredit only those that demonstrate competency in all three Acts.
 - g. We therefore submit that VCR's improvement of claims processing, the VRB's introduction of ADR, and ATDP's professionalisation of advocacy are rapidly invalidating this question. That said, we do not believe that VCR or ADTP have removed all possibility of inequity. ADSO is committed to collaborating with DVA to identify and resolve inequity. Specific issues for attention include:
 - (i) attracting younger veterans, and especially women, to advocacy;

⁶¹ <http://atdp.org.au/policy/> Follow links to <Library 1>, <Part A – ATDP Implementation>, <Vol 3 – 10620NAT>, <Younger Veterans Workshop Report Jul15>, page 21. This criticism has been raised at every workshop with younger veterans since, and was evident in the attitude of some pension officers undertaking TIP Refresher courses before they ceased. War Artist Ben Quilty's 'Trooper M', former commando Michael Bainbridge, recently reiterated the positive outcome most younger veterans want when interviewed recently by ABC News: 'He was adamant he didn't want to be a pensioner for the rest of his days.' <http://mobile.abc.net.au/news/2018-04-09/former-commando-mick-bainbridges-fight-for-justice/9601156>

- (ii) support of veterans and families during and after transition;
- (iii) trainee advocates access to mentors;
- (iv) the relative locations of demand for advocacy services and availability of advocates; and
- (v) ESO management of the transition from a combination of TIP-trained and ATDP accredited advocates to solely the latter.

8A.4 Will the Veteran Centric Reform program address the problems with the administration of the veterans' support system?

- a. As will be evident in our responses above, ADSO submits that not only will VCR address the problematic administration of veterans' support, but, in conjunction with ADR and ATDP, has already made significant improvements. That said, we are concerned that:
 - (i) the level of resourcing appropriated to DVA (and VRB) is adequate to meet the time-to-process targets they are committed to meet; and
 - (ii) the ageing IT systems at DVA are a significant resourcing issue and potentially a single point of failure..
- b. We draw the Inquiry's attention to the complexities the Commissions and VRB are encountering in progressing claims and appeals (Notes 8, 9 and 10), and the consequences for processing time. We submit that the Inquiry take these issues into account.

8A.4A Are advocates effective?

- a. ADSO acknowledges the evidence⁶² that too many TIP-trained pension or welfare officers and some Level 3 and 4 Advocates did not deliver high quality advocacy services. Variables underpinning this outcome included:
 - (i) any individual that offered to assist as a pension or welfare officer, irrespective of their suitability were sent to TIP training;
 - (ii) TIP trainers' typical reliance on pedagogy⁶³ rather than andragogy⁶⁴;
 - (iii) with few exceptions, ESOs unpreparedness to mentor and provide supervised on-the-job training;
 - (iv) few ESO Executives' interest in or support of advocacy;

⁶² Review of DVA-Funded ESO Advocacy and Welfare Services, December 2010; Report of the ESORT Working Party on TIP Accreditation (2013); and Review of Veteran's Advocacy Training – Summary Paper (2015). Accessible on <http://www.atdp.org.au/policy/> Library No 1, Part B – ATDP Development.

⁶³ Pedagogy is concerned with teaching and instruction. Its focus is classroom teaching.

⁶⁴ Andragogy focuses on adult learning, differentiating the different ways in which adults and children learn.

- (v) the number of TIP-trained pension/welfare officers and, to a lesser extent, VRB and AAT advocates with a low level of commitment to delivering high quality advocacy services; or
 - (vi) BEST-funding induced imperatives on volume of claims rather than successful claims.
- b. ADSO submits that committed volunteers at the CFMG-level of ATDP⁶⁵, building on the strengths of TIP training, have already made significant in-roads into the weaknesses identified by reviews of advocacy/advocate training. Improvements include:
 - (i) suitability assessment by ESOs of prospective candidates for ATDP training,
 - (ii) accreditation and the concomitant requirement for personal commitment,
 - (iii) insistence on competency in all three Acts,
 - (iv) introduction of Wellbeing-based advocacy,
 - (v) adoption of the 'Healthy Veteran. Healthy Family' model,
 - (vi) refocusing advocacy on life-long Wellbeing,
 - (vii) regarding Compensation support as episodic in a wellbeing support continuum,
 - (viii) introduction from 1 Jul 18 of mandatory continuing professional development (CPD),
 - (ix) cross-training of Wellbeing and Compensation Advocates, and
 - (x) the roll-out in 2019 of quality assurance are fundamentally changing advocacy practice.
- c. These changes are to be followed from 1 Jul 18 by the addition to the Wellbeing learning pathway of a Level 3 (MILADW003), inclusion in both MILADW002 and 003 of units of learning from the Certificate IV in Community Services to further strengthen wellbeing advocacy and to create career pathways to counselling.⁶⁶
- d. ADSO has already identified the need for VRB and AAT training to incorporate units of learning in legal studies.⁶⁷ We argue that a thorough understanding of legislation and the ability to reason legally is advantageous at the VRB and mandatory at the AAT. We have ensured that our thoughts are known to ATDP.

⁶⁵ https://www.dva.gov.au/sites/default/files/files/consultation%20and%20grants/reviews/atdp_blueprint.pdf pp9-10.

⁶⁶ <http://atdp.org.au/policy/> Library 1, Part A – ATDP Implementation, MILADW002 Curriculum Workshop Proceedings, para 29-33.

⁶⁷ http://www.pc.gov.au/data/assets/pdf_file/0009/227439/sub004-veterans.pdf pp16-17. Possible units include LAW10069 or LAW101157 and LAW00051 at Southern Cross University; or selected units from the Diploma of Legal Studies at Brisbane TAFE: <http://tafebrisbane.edu.au/course/16358/diploma-legal-services-online>

- e. At the AAT, an advocate will encounter argument submitted by the Respondent's barrister. In this regard, we are pleased that the DVA Leadership Group has responded positively to complaints by TIP-trained volunteer Level 4 Advocates and has reviewed its model litigant obligations.

8A.4B How could their use be improved?

- a. Despite the progress made, ADSO Members admit they must acknowledge their own failings. Despite clear weaknesses over 25 years of TIP-training and the findings of numerous reviews,⁶⁸ few ESOs deliver adequate advocacy services. On the other hand, Veteran Support Centres (VSC) are generally delivering high quality advocacy services.
- b. We submit that, unless ESOs return to the purpose for which they started a century ago, none of the advances being made through VCR, ADR and ATDP will achieve their full potential. The challenges are not to be under-estimated. Highly federated structures, robustly protected autonomy at the state and (especially) local levels, and poor information flow between the various organisational levels are issues that many ESO have yet to resolve.
- c. Although ESOs face major challenges, ADSO submits that DVA, Defence, ESOs, VSC, and ATDP will have to collaborate to get the best outcome from the VCR, ADR and ATDP initiatives. Funding of advocacy services will be a key issue for resolution. In this respect:
 - (i) our earlier submission outlines an option that builds on strengths and mitigates weaknesses that are not easily solved;
 - (ii) we are aware that the legislative review underway in the ACNC and the Senate Inquiry into Charity Fundraising⁶⁹ may fundamentally affect ESO support of 'welfare' activities; and
 - (iii) the FY2018-19 joint DVA-ESO review of BEST funding is another opportunity to link collaboration and the future funding of advocacy service delivery.

8A.4C Are there any lessons that can be drawn from advocates about how individualised support could be best provided to veterans?

- a. Although some support was weak, we find it difficult to accept that a committed advocate is not already providing individualised support.
- b. In this respect, we submit that it must be galling for a volunteer advocate to commit to delivering high quality advocacy services when their ESO's Executive Committee is disinterested.

⁶⁸ These include the (December 2010) Review of DVA-Funded ESO Advocacy and Welfare Services, (2013) Report of the ESORT Working Party on TIP Accreditation, and (2015) Review of Veteran's Advocacy Training.

⁶⁹ Select Committee on Charity Fundraising in the 21st Century:
https://probonoaustralia.com.au/news/2018/06/senate-approves-inquiry-charity-fundraising/?utm_source=Pro+Bono+Australia+-+email+updates&utm_campaign=9e9de7f793-EMAIL_CAMPAIGN_2017_08_18_COPY_02&utm_medium=email&utm_term=0_5ee68172fb-9e9de7f793-147757297&mc_cid=9e9de7f793&mc_eid=c9419a7656

- c. If ESOs accept the challenge of returning to their roots, they will open a dialogue with their advocates that will go far to remedying many – but, by no means, all – of the criticisms that were heard by the Senate Inquiry.
- d. Reiterating the evidence: the TIP-trained pension/welfare officers that have undertaken RPL demonstrate a high level professional commitment by accepting that their competency should be assessed. We know, however, that mentoring and CoP (Communities of Practice) have still not achieved their potential. While ATDP accepts that its own efforts have not been sufficient,⁷⁰ we submit that some ESOs general disinterest in advocacy and mentoring, and the aversion of some to supporting Communities of Practice (CoP), remain primary weaknesses.

8B. Statements of Principles

8B.1A Have the Statements of Principles helped to create a more equitable, efficient and consistent system of support for veterans?

- a. ADSO submits that, as the question can only be answered authoritatively by the few advocates' whose practice spans the introduction on SoPs in 1994, few responses will be authoritative.
- b. Anecdotally, the introduction of SoP did bring – and, logically, would have to have brought – consistency to determinations:
 - (i) In the absence of SoP, Delegates had no legislated connection between service and condition.
 - (ii) Again, logically, if Delegates have a legislated instrument to refer to, their determinations would have to have become more efficient and equitable.
- c. ADSO therefore submits that, logically:
 - (i) equity would have resulted from elimination of uncertainty about connections between conditions and service; and
 - (ii) efficiency would have resulted from elimination of deliberations about conditions and service.

8B.1B Are there ways to improve their use?

- a. We submit that education and supervised training are the best way of improving the use of SoPs.
- b. We note that both TIP and ATDP include an SoP course:
 - (i) It was a (so-called: enhancement course for TIP-trained compensation officers.

⁷⁰ ADSO is aware that, since ATDP was launched in September 2015, a handful of experienced volunteer advocates working long hours has had primary carriage of development and implementation of ATDP, with the support of small groups of volunteer subject matter experts that have undertaken specific intense tasks.

- (ii) It is a mandatory unit of learning within ATDP, which will improve their use by accredited Compensation Advocates.

8B.2A What is the rationale for having two different standards of proof for veterans with different types of service?

- a. ADSO is committed to maintaining two standards of proof.
- b. We submit that the primary benefit of two standards of proof lies in the RMA's legislated medical-scientific obligation.⁷¹
 - (i) The legislation provides for the RMA to make an SoP under the Beyond Reasonable Doubt standard of proof (RH) even though the epidemiological evidence does not meet the Reasonable Satisfaction standard of proof (BoP).
 - (ii) In practice, a veteran that has rendered operational, peacekeeping, warlike/non-warlike or hazardous service therefore receives any benefit of doubt in the medical-scientific evidence.
- c. ADSO submits that allowing the benefit of doubt to flow to those with combat experience is fair. We are, however, aware that:
 - (i) some peacetime activities entail risk equivalent to combat (para 7.3B); and
 - (ii) some personnel who deploy may be employed in non-combat positions.
- d. This raises a conundrum that ultimately pivots on judgement:
 - (i) From one perspective: the more beneficial standard of proof for operational service reflected long-standing societal values and legislative practice.
 - (ii) From another: deployed personnel whose service did not put them in immediate danger should be subject to the same standard of proof as another who did not deploy but was prepared to do so.
 - (iii) ADSO strongly rejects the view at 8B.2A.d.(ii), and submits that:
 - (a) clustering of conditions in those that have deployed suggests they were exposed to diseases and/or toxins that are not present in Australia;⁷²
 - (b) as epidemiological research may not link service and condition at the Reasonable Satisfaction standard of proof (BoP), the Beyond Reasonable Doubt's more beneficial standard of proof (RH) provides a legislated safety net; and
 - (c) the Beyond Reasonable Doubt standard of proof be broadened to classify as 'warlike' all service - including peacetime service - in which

⁷¹ VEA, s196B(5) and (8).

⁷² An example in case law is exposure to dioxins in drinking water distilled on RAN ships from sea-water proximate to the Vietnamese coast. The Gulf War syndrome is another example, albeit one not yet accepted on the basis of the available medical-scientific evidence (www.rma.gov.au/sops/condition/gulf-war-syndrome).

the prevailing risk is, or later proves to have been high enough to entail casualties (para 7.3B.c.).

8B.2B Are there alternatives to recognise different groups of veterans?

- a. ADSO notes that some advocate and veterans see inequity in different types of service attracting different standards of proof. We understand that some see this as contrary to the notion of a *'fair go'* in an egalitarian society, while others argue that they were prepared to deploy but were not for reasons out of their control, and should not therefore be disadvantaged. While we understand such views, on balance, we do not support them.
- b. We note a Senate Committee's critical comment that major accidents in peacetime can uncover: *'the inadequacy of compensation for ADF members who [are] severely injured on peacetime service and for the families of those killed'*.⁷³ This comment is strongly supported by the evidence. Clear examples, include those:
 - (i) involved in (so-called) *'clinical'* trials during WW2,
 - (ii) who rendered service in support of Britain's atomic testing,
 - (iii) tasked to enter F111 fuel tanks during the Deseal-Reseal (DSRS) Program,
 - (iv) killed or injured in the Black Hawk accident in 1996, and
 - (v) exposed during firefighter training to at least 130 toxic chemicals including PFOS/PFAS.
- c. We submit that truly beneficial veterans' legislation would:
 - (i) extend the application of *'warlike'* to include peacetime training activities in which the inherent level of risk is war like; and
 - (ii) embed an explicit provision that extends the Beyond Reasonable Doubt standard of proof to cover *'clustering'* of signs or symptoms within cohorts with similar service experience for which epidemiological evidence is not yet conclusive.
- d. We specifically draw the Inquiry's attention to precedents:
 - (i) the allocation of a Gold Card to British Nuclear Test veterans;
 - (ii) the special provisions enacted after the Black Hawk collision; and
 - (iii) while less than adequate, the creation of SHOAMP following inquiry into *'clusters'* of conditions amongst DSRS participants.

⁷³ Senate Report: Affairs, Defence and Trade Legislation Committee, Provisions of the Military Rehabilitation and Compensation Bill 2003 and the Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Bill 2003, para 2.9. See: http://parlinfo.aph.gov.au/parlInfo/download/publications/22684/upload_pdf/HPP022016002423.pdf;fileType=application%2Fpdf#search=%22EXPLANATORY%20Memorandum%20MRC%20Bill%202003%22

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- e. These precedents also highlight a trend. Whether by design or otherwise, veterans' benefits approach truly beneficial only when:
- (i) the magnitude of the situation necessitates special action, or
 - (ii) death has reduced the number of beneficiaries to the point where the cost to the Budget can be (roughly) fitted within DVA's existing appropriations.

8B.2C What would be the costs and benefits of moving to one standard of proof for all veterans (for example, would it make the claims process easier)?

- a. ADSO submits that this question has two cost-benefit limbs: one at the level of the advocate and the other the veteran's compensation entitlement.
- b. There are no costs or benefits at the level of advocacy. Apart from referring to a different SoP for different types of service, and either GARP 5/GARP M/the PIG depending on the Act, an Advocate will use the same advocacy process. Indeed, the ESO Portal has eliminated differences in process.
- c. Costs do, however, accrue when entitlements are considered. But, again, the reality is not simple and only for MRCA is the quantum of compensation directly related to differences in service and therefore, indirectly, the standards of proof.
 - (i) With respect to VEA, compensation entitlements are the same irrespective of type of service.
 - (a) A veteran can be entitled to compensation at the General or Special Rate irrespective of whether he/she has operational or peacetime service.
 - (b) Similarly, a veteran's widow(er), may be entitled to a Widow(er)'s Pension irrespective of the type of service rendered by the spouse.
 - (c) A benefit and cost difference occurs if the veteran: is entitled to the following means and income tested support:
 - has Qualifying Service. in which case, while alive, the veteran is entitled to a Service Pension; or
 - is receiving a Centrelink Disability Pension or Defence Force Income Support Allowance.
 - (ii) As DRCA does not (yet) utilise SoPs, no cost-benefit accrues for veterans for whom liability has been accepted under that Act.
 - (iii) GARP M provides different Combined Impairment Tables for Warlike/ Non-Warlike and Peacetime service. At its Chapter 23: 'The factors for warlike and non-warlike service reflect a premium where impairment has resulted from that service rather than peacetime service' (our emphasis). For two veterans with the same level of impairment and lifestyle rating, the 'premium' is a higher combined impairment rating, hence Permanent Impairment (PI) compensation, for veterans with warlike/non-warlike service. The veteran with warlike service will also have Qualifying Service

further increasing the difference in cost and benefits associated with two standards of proof.

- d. ADSO submits that, if the question implies consideration of a purely economic resolution, the relationship between the RH and the Nation's security must be analysed.

9. System Governance

9.1A Do the governance arrangements for the veterans' support system encourage good decision making — from initial policy development to its administration and review?

- a. ADSO submits that all Government agencies with decision-making and review responsibilities in the veterans' jurisdiction are subject to the same legislation and are overseen by the Public Service Commission.
- b. Therefore, if decision-making is defective because of policy or administration, then efficiency/capability review and parliamentary oversight should identify shortcomings:
 - (i) The 2013 Capability Review of DVA and the ANAO Efficiency Audit of DVA exemplify this process.
 - (ii) VCR is evidence of reforms arising from critical review of performance.

9.1B If not, what changes could be made?

- a. Apart from ACNC oversight, ESOs' delivery of veterans' support is unregulated and unsupervised. Quality assurance of decision-making and advocates' performance is self-initiated and self-directed.
- b. The evidence is (para 8A.4B(a)) that supervision and support of advocates remain significant weakness within the veterans' support system:
 - (i) Improved governance may be externally imposed. The ACNC Act is being reviewed and, prudently, ESOs are preparing now for stricter regulatory oversight.
 - (ii) Remediation of performance weaknesses will have to be self-motivated.
- c. From another perspective, from late CY2018 ATDP will progressively roll out a QA system. Eventually, all agencies that prepare and determine claims and appeals will be included. This system has the potential to improve governance at the operational level.

9.2A Are incentives sufficiently aligned between agencies, or are there areas of conflict that could be better managed?

- a. ADSO is not aware of any conflict between agencies within the veterans' jurisdiction. Nor are we aware that agencies should need incentives to provide legislated services.

9.2B If there are any incentive problems how can they be resolved?

- a. ADSO submits that the delivery of higher quality advocacy services may be encouraged by a change of BEST policy. In this respect, ADSO notes that DVA is to review of BEST policy in FY2018-19. We will be proposing that BEST eligibility be aligned with accreditation of advocates and ESOs' support of CoP.

9.3 Is the veterans' support system sufficiently transparent and accountable for both veterans and the community?

- a. ADSO submits that the National Consultation Framework and issue-specific workshops are sound foundations for transparency and accountability. We accept, however, that the following weaknesses undermine transparency and accountability:
 - (i) DVA's conservative information dissemination policy and use of IT; and
 - (ii) internal communications from the national to state to local levels within many ESOs.

9.4A What role should ESOs play?

- a. ADSO submits that, to deliver high quality advocacy services, ESOs must be fully effective partners in the veterans' support system. Changes in DVA's National Consultation Framework have enhanced the partnership at the national level, and Deputy Commissioners' Forum at the State level. VAN Offices in some population centres and occasional visits by Deputy Commissioners provide a level of contact between DVA and the local-level of ESOs.
- b. Despite modern ICT's ability to disseminate identical information instantly across a network, internal communications remain a weakness within many ESOs. The federated structure of traditional ESOs and inadequate contact with the many younger veterans' organisations also impede information dissemination.
- c. ADSO is currently redeveloping its strategic plan. Our strategic objectives include strengthening communications and relationships between our 18 Members. We also will enhance delivery of high quality advocacy services.

9.4B Are there systemic areas for improvement in the ESO sector that would enhance veterans' wellbeing?

- a. We submit that the Inquiry undertake a comprehensive social and economic cost-benefit analysis, and adopt a social enterprise model for the delivery of advocacy services.
- b. We invite the Inquiry to re-read our 18 March submission. We propose incorporation of a professional body to train advocates, ensure professional standards, assure high quality service delivery, insure practitioners, and relieve ESOs of the advocacy support tasks they are unable to perform.

10. The role of the ADF – minimising risk

10.1A What obligations should be placed on the ADF and individual unit commanders to prevent service-related injuries and record incidents and injuries when they occur?

- a. ADSO understands that ADF policy makes prevention and recording of service-related injuries a responsibility of command. This suggests that these matters are for a commander's Annual Performance Reports, and that shortcomings leave a commander open to disciplinary action. We also understand that Pre-Command Courses reinforce these responsibilities. In a wider context, these responsibilities are consistent with the Workplace Health and Safety Act 2011.
- b. That said, there are a number of examples where commanders' failure to recognise risk have resulted in serious injury, disease and death. Examples include the FIII DSRS Program, and the injuries resulting from the loads lifted and carried by soldiers in training and combat. This suggests the need for a higher level of alertness to risk by some commanders, and attention to risk within the chain of command.
- c. The military is a profession. Professionalism is marked by adherence to ethical, performance and accountability standards, and CPD (continuing professional development). Professionalism suggests that CPD include regular reminders of responsibilities and dissemination of information about serious infractions.
 - (i) ADSO recognises that some personnel will see this argument as detrimental to the ADF's war-fighting purpose.
 - (ii) We counter-argue:
 - (a) The nation has an obligation to provide benefits to veterans and families beyond those available to the wider community.
 - (b) The ADF has a responsibility to ensure that risk is reasonably contained so that the Commonwealth does not bear avoidable expenditure.

10.1B To what extent do cultural or other issues create a barrier within the ADF to injury prevention or record-keeping?

- a. As can be inferred from para 10.1A, there will inevitably be a clash of culture within the ADF between those ensuring combat readiness and those responsible for the wider consequences of risk. Many ADSO Members have been placed in situations during ADF service where they had to weigh the risk of injury and ensuring combat readiness.
- b. Many ADSO Members will also have observed commanders that veered towards risk containment and were derided for being over-cautious. On the other hand, those that emphasised combat readiness were not uncommonly lionised as 'good leaders'. If the perfect ADF culture were achievable, it would balance the risk of injury/disease/death during training without detracting from combat readiness.
- c. Fundamentally, whether the balance is right is not validated until the Nation commits to combat. ADSO submits that the Nation's freedom cannot be

jeopardised in the interest of injury prevention and record-keeping during training.

10.2A The ADF is not financially accountable for the cost of compensation or for the cost of treating service-related injuries and illnesses after a veteran leaves the ADF. Is this a barrier to the ADF having an adequate focus on preventing injury and illnesses and providing early intervention and rehabilitation support?

- a. ADSO submits that the header-statement to this question is fundamentally flawed. The ADF is one organ of the State. DVA is another. Each has a legislated purpose, and appropriation to achieve its purpose. If one is relieved of the cost, it is borne by the other. In other words, the question begs cost, rather than responsibility, transfer
- b. From another perspective, the statement seems to hint that if the ADF were financially responsible for the cost of compensation and treatment, it would place higher priority on risk aversion. ADSO submits that, the structure of Government renders the notion of financial 'carrot and stick' curious
- c. The ADF is responsible for the nation's defence. It trains in peacetime to be ready for combat in the event of conflict. As discussed at para 10.1 above, it is a command responsibility to contain reasonably the risk of injury/disease/death. The risk threshold should be lower in peacetime than when forces are committed in combat. The evidence is, however, that this is not always so.
- d. That said, the culture of command is now very different to that during WWI. The mass slaughter on the Western Front stands in stark contrast to the very low number of deaths in the MEAO over almost three times the duration of combat operations. Battlefield casualty evacuation, inflight triage and rapid transfer to major hospital facilities once the casualty is stabilised are key differences.
- e. In other words, even when committed to combat, ADF commanders by culture and medical technology are as reasonably as currently feasible containing the ensuing cost of compensation. Once the veteran has been medically discharged, DVA has legislative responsibility for rehabilitation and compensation.

10.2B If so, how might this be remedied?

- a. ADSO would be concerned if this question presumes that, if the ADF is financially liable for the cost of rehabilitation and compensation, DVA's appropriation could be reduced. We submit that, unless the Defence appropriation were capped, the cost of compensation and rehabilitation would have to be added to the Defence budget. In other words, costs would be transferred, not eliminated.
- b. We recognise that transfer of rehabilitation and compensation to Defence would remove the purpose of DVA. Some staff and administrative savings would result. Were the Defence budget capped, the new staff and administrative costs would have to be borne within the existing appropriation. This suggests there would be a cost for national security.

- c. We submit that the question contains an implicit conflict of interest. Training for and conducting combat operations does not sit reasonably with responsibility for compensation and rehabilitation of those injured/diseased/killed. The organisation that created the death, disease or injury would be administering the system that provided rehabilitation and compensation.
- d. From a purely economic perspective, this might be seen as an advance. On the other hand, it would jeopardise combat readiness. ADSO submits that the series of questions in this Section is unimpressive.

11. Providing financial compensation for an impairment

11.1A *Is the package of compensation received by veterans adequate, fair and efficient?*

- a. ADSO endorses the Issue Paper invitation to consider compensation packages as a whole. We submit that, unless an holistic approach is taken, considerations will:
 - (i) focus invidiously on the differences, and
 - (ii) ignore the research-led, societally-accepted and balanced focusing of compensation and rehabilitation.
- b. That said, ADSO reiterates that Australia's veterans' legislation is not world's best practice and our concern that Inquiry is adopting a purely economic approach. We submit that:
 - (i) efficiency conflicts with adequacy and fairness, and
 - (ii) this conflict can only be reconciled if the social and economic limbs are analysed.
- c. ADSO submits that, as the three Acts were societally and economically relevant at the time they were enacted, comparison now of their relative adequacy, fairness and efficiency is facile. In this respect:
 - (i) During WWI, from a population of around 4.9 million, 416,809 men (38.7% of male population) enlisted, of whom 61,514 were killed and around 156,000 wounded, gassed or taken prisoner.⁷⁴ In other words, around 43.9% of veterans, or around 14.5% of the male population, returned with some level of incapacity. The consequences overwhelmed the Nation.
 - (ii) At the end of June 2017, the Australian population was around 24.5 million, of whom around 80,000 were Active and Reserve personnel⁷⁵ (around 17% female). Over the period of deployments since MINURSO (Western Sahara) in 1991, despite many tens of thousands of deployed personnel the ADF has suffered around 63 casualties.⁷⁶ The social and economic consequences of

⁷⁴ <https://www.google.com/search?q=Number+of+Australians+deployed+during+WWI&ie=utf-8&oe=utf-8&client=firefox-b-ab> and <https://www.awm.gov.au/articles/encyclopedia/enlistment/ww1> accessed 13 Jun 18.

⁷⁵ https://en.wikipedia.org/wiki/Australian_Defence_Force

⁷⁶ https://www.awm.gov.au/articles/encyclopedia/war_casualties

ADF deployments over the 'contemporary' era are therefore diametric to the WWI experience

- d. The data reinforce the legislative philosophy embedded in *DRCA* and *MRCA*. Through rehabilitation, those that can be, are helped to '*restore [their health and wellbeing] to at least the same physical and psychological state, and at least the same social, vocational and educational status [they] had before the injury or disease.*'
- e. ADSO submits that, in today's social and economic context, this is equitable, fair and efficient.

11.1B If not, where are the key shortcomings, and how should these be addressed?

- a. ADSO submits that, whether or not there are 'shortcomings', must be viewed from two perspectives: one historical, the other by snapshot.
 - (i) As discussed at para 11.1A, each Act is the product of its time. If there are shortcomings they are the result of societal and economic imperatives at that time.
 - (ii) For this reason, seeking to identify shortcomings now comparatively by snapshot is fallacious.
- b. That said, ADSO submits that key shortcomings arise when the veteran has dual eligibility. Commission policy is outlined in CLIK.⁷⁷ In brief:
 - (i) *VEA-DRCA*: ADSO understands why some veterans would see *VEA-DRCA* dual eligibility as a shortcoming. Whereas *VEA* General Rate disability pensions are calculated on the veteran's degree of incapacity, *DRCA* payments are based on incapacity to undertake remunerative employment. This perceived shortcoming is then compounded by the veteran's compensation entitlement. Case-by-case analysis is necessary to ascertain the reasonableness of the perception:
 - (a) Where the veteran's conditions have been accepted under both Acts, the *VEA* General Rate disability pension is offset (reduced or ceased) by the *DRCA* payments
 - (b) Where the veteran's conditions have **not** been accepted under both Acts, there is no off-setting. DVA indicates that most *VEA-DRCA* dual eligible veterans are in this situation.⁷⁷
 - (ii) *VEA-MRCA*: Veterans with operational service immediately before 30 Jun 04 can be expected to be receiving *VEA* entitlements for another 50 years.⁷⁸ A proportion of these veterans will, however, have also rendered service

⁷⁷ <http://clik.dva.gov.au/military-compensation-mrca-manuals-and-resources-library/incapacity-policy-manual/2-investigating-entitlement-incapacity-payments/213-dual-eligibility-under-vea-and-srca-or-mrca>

⁷⁸ Based on current ABS Life Expectancy at Birth data: <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/3302.0.55.001Main%20Features22014-2016?opendocument&tabname=Summary&prodno=3302.0.55.001&issue=2014-2016&num=&view=> accessed 13 Jun 18.

under MRCA. In that event, the veteran is subject to dual eligibility, and will receive only incapacity payments under MRCA.⁷⁹ As the latter foregoes a disability pension until death, they may consider this a shortcoming. From an economic perspective alone, the reasonableness of their situation requires case-by-case analysis. Even if only the relative value of the payments are considered, the buying power of the income will depend on each veteran's decisions.

- c. Analysis underscores a challenge the Inquiry is facing. Its ToR are an outcome of the Senate Inquiry; however, in some cases, personal grievances were aired, or were uninformed of veterans' legislation, or were unaware of the changes resulting from VCR and ATDP, or were suffering from emotional and behavioural conditions. Inevitably, the Inquiry will receive submissions from some of these respondents.

11.2A *Is access to compensation benefits fair and timely?*

- a. ADSO is concerned that, before this question can be addressed, the term 'compensation' must be clarified. We submit that the question invites two perspectives:
 - (i) one encompassing both monetary compensation and rehabilitation; or
 - (ii) the other, as suggested by the titles of *DRCA* and *MRCA*, focused narrowly on monetary compensation for economic and non-economic loss.
- b. Reflecting our concerns about underlying presumptions, we answer from the encompassing perspective. We focus broadly on the legislated benefits.
- c. When compared with Canada's *Veterans' Wellbeing Act 2005* and New Zealand's *Veterans Support Act 2014*, the range of Australian veterans' benefits can be considered fair at the operational level. On the other hand, Australian benefits are operationally superior to those provided in US and UK legislation. ADSO notes that the UK's provision of veterans' medical support through the National Health Service (NHS) is specific to that nation.⁸⁰ The tortuous history of the NHS and ongoing conflict over flaws in design and service provision⁸¹ are a salutary warning. ADSO rejects any thought that veterans' medical administration might be transferred to DoH or support for incapacitated veterans to NDIS.
- d. We submit that, whether compensation is 'timely' depends on when criticism was made. The PSC Report is critical of DVA's capability before 2013. DVA and VRB Annual Reports are public evidence that the time-to-process claims and appeals is reducing. Again, the Inquiry is faced with balancing veterans and others' criticisms with statistical data.

⁷⁹ Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Regulations 2004

⁸⁰ <https://assets.publishing.service.gov.uk/media/57a08d91e5274a31e000192c/The-history-and-development-of-the-UK-NHS.pdf>

⁸¹ <https://www.thesun.co.uk/news/6257337/simon-stevens-chief-executive-nhs-england-labour-councillor/>

- e. That said, examples of totally inadequate performance cannot be ignored. The Jesse Bird⁸² case provides incontestable evidence that, despite broad systemic improvements, manifest failings continue to occur. These do DVA no favours, and invigorate the Facebook sites that air individual grievances and make them appear general failings.

11.2B In particular, are there challenges associated with the requirements in the MRCA and DRCA that impairments be permanent and stable to receive permanent impairment compensation?

- a. ADSO submits that difficulties encountered in applying the terms ‘permanent’ and ‘stable’ are well known. In 2015 DVA convened an ESO Consultative Group (ESOCG) to input to the SRDP Review Steering Committee.
- b. Documents circulated at the time evidence DVA’s awareness of the problems, and endeavours to resolve them.⁸³ Changes of MRCA policy about volunteering and education were recommended by the ESOCG and appear to have been acted upon.⁸⁴

11.2C How could these provisions be improved?

- a. ADSO submits that there are two options to improve the provisions.
- b. Option 1. The terms ‘permanent’ and ‘stable’ must be placed in legislative context. MRCA defines:
 - (i) ‘stable’ in terms of ‘*the likelihood of improvement*’ - s73(b); and
 - (ii) ‘permanent’ in terms of ‘impairment is likely to continue indefinitely’ - s68(1)(b)(i) and s199(b).The ESOCG noted that the terms ‘likely’, ‘likelihood’ and ‘unlikely to improve’ are consistent with the ‘reasonable satisfaction’ standard of proof. It proposed that the terms be clarified in policy to mean ‘more probably than not’.
- c. Option 2. Legal opinion indicates that the definitions in the *Social Security Act 2011* has wider application. The advice is that, as it is Commonwealth legislation, the SSA definitions are applicable to veterans’ legislation. The *Social Security (Tables for the Assessment of Work-related Impairment for Disability Support Pension) Determination 2011* s6(4), defines ‘permanent’⁸⁵ and s6(6) defines

⁸² <https://www.dva.gov.au/consultation-and-grants/reviews/government-reports/bird-review-recommendations>

⁸³ See: *Review of the Special Rate Disability Pension*; ESO Consultative Group Meeting, February 2014, *Review of Military Compensation Arrangements Background*; and DVA Discussion Paper: *Matters to be considered by the Review of the Special Rate Disability Pension*.

⁸⁴ See: <http://clik.dva.gov.au/rehabilitation-policy-library/6-psychosocial-rehabilitation/69-psychosocial-rehabilitation-and-further-education> and <http://clik.dva.gov.au/rehabilitation-policy-library/9-vocational-rehabilitation/98-retraining-and-further-education>

⁸⁵ Permanency of conditions

(4) For the purposes of paragraph 6(3)(a) a condition is permanent if:
(a) the condition has been fully diagnosed by an appropriately qualified medical practitioner; and
(b) the condition has been fully treated; and

Note: For **fully diagnosed** and **fully treated** see subsection 6(5).

‘stable’.⁸⁶ ADSO submits that the Legislative Forum consider whether the SSA definitions should be included in DRCA and MRCA.

11.3A Is there scope to better align the compensation received under the VEA, MRCA and DRCA?

- a. ADSO submits that this matter is being addressed by the Legislative Forum. We propose the Inquiry recommend that the matter be resolved collaboratively by DVA and ESOs.
- b. The doctrine of accrued rights is well established in law.⁸⁷ We submit, therefore, that any alignment of compensation between the three Acts be subject to the accrued rights already legislated separately in each Act. Any change of accrued rights would breach the nation’s social contract with veterans.
- c. ADSO is, however, concerned by a trend that is evident in veterans’ legislation. Comparison of the Explanatory Memorandum and Second Reading of the *Veterans Entitlements Bill 1985* and *Military Rehabilitation and Compensation Bill 2003* shows the beneficial intent of the former is not repeated in the latter.
 - (i) VE Bill 1985. The (then) Minister for Veterans’ Affairs made repeated references to the intended benefits of the proposed legislation.⁸⁸
 - (ii) MRC Bill 2003. The (then) Minister for Veterans’ Affairs stated only that ‘*the new scheme recognises the distinctive nature of military service [and is] proof of the government’s commitment to a military-specific rehabilitation and compensation scheme*’.⁸⁹

11.3B In particular, could the provisions for permanent impairment compensation and incapacity payments in the MRCA and DRCA be made consistent?

- a. ADSO submits that this matter is being addressed by the Legislative Forum and proposes the Inquiry recommend that the matter be resolved collaboratively by DVA and ESOs.

(c) the condition has been fully stabilised; and

Note: For **fully stabilised** see subsection 6(6).

(d) the condition is more likely than not, in light of available evidence, to persist for more than 2 years.

⁸⁶ Fully stabilised

(6) For the purposes of paragraph 6(4)(c) and subsection 11(4) a condition is fully stabilised if:

- (a) either the person has undertaken reasonable treatment for the condition and any further reasonable treatment is unlikely to result in significant functional improvement to a level enabling the person to undertake work in the next 2 years; or
- (b) the person has not undertaken reasonable treatment for the condition and:
 - (i) significant functional improvement to a level enabling the person to undertake work in the next 2 years is not expected to result, even if the person undertakes reasonable treatment; or
 - (ii) there is a medical or other compelling reason for the person not to undertake reasonable treatment.

Note: For **reasonable treatment** see subsection 6(7).

⁸⁷ *Dunlop v Repatriation Commission* [2002] FCA 1400 (15 November 2002) at 55; *Repatriation Commission v Keeley* [2000] FCA 532 (28 April 2000) at 44-46; and <http://www.austlii.edu.au/au/journals/UWALawRw/2006/6.pdf>

⁸⁸ Hansard, House of Representatives, Wednesday 16 October 1985, 2178.

⁸⁹ Hansard, House of Representatives, Thursday 4 December 2003, 23806.

11.4A Are there complications caused by the interaction of compensation with military superannuation? How could these be addressed?

- a. ADSO submits that the complications arising from this interaction are well known, and being resolved jointly by DVA, CSC and Defence. We are aware that, while administrative failures still occur, transmission of information about impending medical discharges has improved over the last 12 months.
- b. While ADSO endorses the work being undertaken collaboratively, we submit that the consequences of any failure are unacceptable.
 - (i) First, it places a veteran in financial jeopardy.
 - (ii) Second, it creates another significant stressor at a time when stress is high, exacerbating mental health issues.
 - (iii) And third, in the social media era, failure inevitably leads to vitriolic posts that further undermine DVA's credibility.

11.4B What is the rationale for different levels of compensation to veterans with different types of service in the MRCA?

- a. At para 8b.2A we have discussed the rationale for SoPs creating different levels of compensation.
- b. Extending from that discussion, we submit the following rationale for different levels of compensation under MRCA depending on the veterans' type of service:
 - (i) While we have not been able to obtain data to compare the rate of death by training accident versus the rate on deployment, prima facie, the risk is higher in combat, and the rate would be higher.
 - (ii) Clustering of conditions suggests that veterans who have deployed may have been exposed to diseases and/or toxins that are not present in Australia.
 - (iii) We note that '*ADF members who are assigned for operational duty and who deploy overseas on operations are provided with enhanced benefits.*'⁹⁰ These allowances and other benefits can be viewed in two ways:
 - (a) From a manpower perspective, they suggest that the rigours of deployment merit a higher level of remuneration than peacetime service.
 - (b) From a purely economic perspective, the extra remuneration may be viewed as ample compensation for increased risk.
- c. The latter view is countered by veterans' legislation. MRCA provides compensation where the veteran is unable to undertake remunerative employment until either the condition improves and the veteran returns to some form of work, or becomes permanent and stable.

⁹⁰ <http://www.defence.gov.au/PayandConditions/ADF/OS-ADF.asp>

11.4C *Should these differences continue?*

- a. ADSO reiterates from paras 11.1 and 11.2 that elimination of the differences would break a historical social contract. It would be contrary to the accrued rights that are product of different social and economic imperatives.

11.5A *For those veterans who receive compensation, are there adequate incentives to rehabilitate or return to work?*

- a. ADSO submits that younger veterans eschew the thought that compensation is all that is needed (para 8A.3.c.). The last option for most younger veterans is to spend the rest of their life not working. This is also borne out by the proportion of veterans that 'thrive' (Note 6).
- b. In our experience, the majority of younger veterans with an entitlement want rehabilitation, medical support, and employment, and to get on with the next stage of their life.
- c. Many return to the community and seek civilian employment at around 25 to 30 years of age. Unless they receive a Class A or B MSBS invalidity pension, or INCAP and PI payments, they must work to support themselves and their family. As discussed at para 2.4, less than 30% of veterans need some form of legislated support. The majority just get on with life.
- d. MRCA prioritises rehabilitation ahead of compensation. Accordingly, 45 weeks after determination, INCAP reduces to 75% of the veteran's discharge wage. PI is only determined when all reasonable rehabilitation has been undertaken and the condition(s) is/are permanent and stable. These are compelling incentives for a veteran with a family to house, feed and educate.

11.5B *Are there examples of other compensation schemes that provide support for injured workers and successfully create incentives to rehabilitate or return to work?*

- a. ADSO submits that as DRCA and MRCA are grounded in workers' compensation philosophy, it is unlikely that there are better examples.
- b. We also submit that MRCA, in particular, legislates return-to-employment support programs.
- c. In our understanding, insurance-based workers' compensation programs apply termination of financial support as a 'stick', but leave it to the employer and individual to find their own 'carrot'.

12. Helping people to transition from the ADF

12.1A *Are transition and rehabilitation services meeting the needs of veterans and their families?*

- a. ADSO's contact with younger veterans supports ATDP workshop findings.⁹¹ Few advocates provide adequate transition support or monitor rehabilitation. These

⁹¹ <http://atdp.org.au/policy/> Library No 1, Part A, Vol 3, 10620NAT.

findings reorientated advocacy training. ATDP training now includes facilitating veteran transition and family's reintegration into the community.

- b. We are critically aware that veterans discharged involuntarily on medical, disciplinary or psychiatric grounds need special support. The AIHW study found that suicide by veterans who discharged medically is 3.6 times the rate of those who discharged voluntarily.⁹² ATDP training now includes suicide awareness as a mandatory unit of learning.
- c. We are also aware anecdotally of deficiencies in the quality of some out-sourced rehabilitation services. Complaints include inadequate contact between the service provider and the veteran and, especially in country areas, the distance between the service provider and veteran. ADSO submits that this is an area of complaint that requires further investigation.

12.1B Are veterans getting access to the services they need when they need them?

- a. ADSO monitors several Facebook sites that veterans follow. We are struck by the widespread unawareness of legislated entitlements and services. Posts frequently precipitate a string of similar posts, many including and reinforcing misinformation. Individual experiences are generalised, and misinformation becomes 'accepted wisdom'.
- b. We are aware from briefings by Defence that a range of initiatives are being implemented to minimise misinformation and unawareness. DVA has opened On Base Advisory Services (OBAS) and posts visit schedules on its website.⁹³ Some ESOs participate in Transition Seminars. Some Advocates have been cleared to visit bases to deliver services face-to-face.
- c. ADSO submits that complaints about difficulties in accessing services must be tempered with an understanding of human dynamics. We note that a number of respondents to the Senate Inquiry discussed the human issue.⁹⁴ No matter how much information is available, most veterans understand and, especially, retain only that which is their immediate need. Culture change practice indicates that regular exposure to simple messages eventually re-aculturates. Social media facilitates that process.

12.1C What could be done to improve the timeliness of transition and rehabilitation services, and the coordination of services?

- a. Our submission does not dismiss the need for improvement. Key needs well before transition include awareness of DVA, the location of advocates, DVA factsheets and claim portals, and the value of ESO/VSCs. Social media posts show that too few veterans and families have this knowledge. Compounding the issue, too few ESO/VSC have the capacity to ensure veterans are 'on their radar' and are contacted to ascertain their needs.

⁹² JSCFDT, 2013, *The Constant Battle: Suicide by Veterans*, para 3.16.

⁹³ <https://www.dva.gov.au/serving-members/base-advisory-service-visiting-schedule>

⁹⁴ JSCFDT, 2013, *The Constant Battle: Suicide by Veterans*, paras 6.29-to 6.34 – selected readings.

- b. We submit that all stakeholders have an equal role in information dissemination. The first challenge is to identify the key information that veterans and families need to access the rehabilitation and compensation system. Advocates have a key role to play; but, must not foster dependency. Younger veterans want guidance to self-sufficiency. The ATDP Advocacy Register and the Defence ENGAGE website will facilitate veterans' access to services and information.
- c. Once within the system, the challenge is to locate the information needed. ADSO submits that the amount of information is overwhelming. The DCO (Defence Community Organisation) website and DVA Factsheets are, however, reasonably 'user friendly'. The Advocate has a key role to play.
- d. The Defence-DVA-ESO/VSC partnership is essential to timely and coordinated transition and rehabilitation services; however, is not yet mature. Changes of focus within the National Consultative Framework are strengthening DVA-ESO understandings. But, each forum is largely siloed. Externally, relationships between the national, state and local levels of most ESOs are less effective than necessary. These weaknesses must be remediated.
- e. A robust partnership, mutual trust, and eschewing egoistic responses are essential. ADSO's strategic plan focuses Members on the century-old 'Mates helping Mates'. Whether an advocate is a volunteer or salaried is irrelevant. The founding tradition applies.
- f. Veterans' post-WWI activism led to ASRA. Its beneficial intent has survived a century's societal and economic change (albeit weakly in MRCA). While VCR is inculcating veteran-centricity in DVA, its potential will not be realised unless ESO/VSCs play their full part in meeting the challenges of veterans' support. Timely and the coordinated transition and rehabilitation services cannot be DVA's responsibility alone.

12.1D What changes could be made to make it easier for ADF personnel to transition to civilian life and to find civilian employment that matches their skills and potential?

- a. ADSO has been advised at ESORT that '*transition starts from the first day of joining the ADF*'. Each serving member should be made aware of the skills they are acquiring through their service. Those that complete a specific tertiary or trade qualification have a good start; however, the individual needs to understand their worth to the ADF and the value of their ADF skills and qualifications to civilian employers. This balance must be well known before they consider leaving. Handing out a certificate on completion of a training course is insufficient.
- b. On the other hand, ADSO is aware that media attention to veterans' mental health and suicide has led some sectors to avoid employing veterans. ASASA, an ADSO Member, has raised the matter with the Minister and at ESORT. Remedial action has been taken; however, if a broader view, then active countering is required. ADSO submits that this responsibility cannot be met by Government agencies alone.

- c. We note that the Ministerial Forum has supported establishment of a Veteran Support Services Accreditation Association. The body would accredit ex-service organisations' that deliver veterans' services.⁹⁵ For the reasons advanced in our prior submission,⁹⁶ ADSO does not support the Ministers' proposal. We would, however, support creation of a joint ESO-interdepartmental body to facilitate veterans' skills-matching and employment.
- d. In this respect, this question must be put in perspective. ADSO submits that, even if ADF service tends to institutionalise some veterans, around 65% of veterans initially thrive. They do so because they have the innate resilience or self-sufficiency to transition effectively. As discussed at paras 2.6 and 6.2B.f., another 20% of veterans 'survive', 10% are 'struggling' and 5% are 'lost'. Scaling these data up to the average 11,000 claims lodged with DVA per annum, around 3,300 veterans need DVA and advocate support with their claims. Additionally, the VRB deals with around 2,800 appeals and the AAT with around 350 per annum.
- f. ADSO submits the first task in assisting those 3,300 claimants and 2,800 VRB appellants is to identify and focus on their characteristics. In this respect, we note the differences in the numbers of suicide for each service, and wonder if they indicate underlying issues. We are curious whether selection criteria at recruitment, nature of employment, satisfaction with service employment, or skills needed or developed during service are significant. We commend DVA's Transition and Wellbeing Research Programme to the Inquiry.⁹⁷
- g. We reiterate that these data must be placed in the context of the unique culture of ex-ADF personnel and the complex interactions between their mental health, musculoskeletal and life/health-threatening exposures. The need for a stand-alone Department that understands the unique culture, employment characteristics and complexly interactive needs of veterans and their families is incontestable.

12.2 Veterans who are medically discharged are generally in higher needs categories than people who access other rehabilitation and compensation schemes, and have exhausted options for return to work in the ADF. How should this be reflected in the design of rehabilitation services for veterans?

- a. ADSO supports this contention. Our only significant concern is anecdotal evidence that rehabilitation is failing some veterans (see para 4.5.b.(i)). We note that outsourcing is consistent with a purely economic approach. We presume, therefore, that the current design is unlikely to change.
- b. This suggests that, even if the rehabilitation system did not provide for veterans with high category needs, it is unlikely to change. As the current design engages

⁹⁵ <https://www.dva.gov.au/about-dva/publications/vetaffairs/vol-33-no4-summer-2017/ministers-coordinate-efforts-make>

⁹⁶ http://www.pc.gov.au/data/assets/pdf_file/0009/227439/sub004-veterans.pdf pages 14-15.

⁹⁷ <https://www.dva.gov.au/health-and-wellbeing/research-and-development/social-research/transition-and-wellbeing-research>

commercial service providers, they need to balance profit and quality of service. ADSO members with commercial experience advise that this entails committing enough resources to avoid critical oversight, but not so many that profitability is jeopardised.

- c. This analysis leaves open only two main ways in which the rehabilitation system can be improved: tighter contractual arrangements linked to more exacting performance criteria and more rigorous oversight by DVA. Advocates have a key role in monitoring rehabilitation service providers' service delivery, and ATDP a key role in ensuring that Advocates are trained to do so.

12.3A How should the effectiveness of transition and rehabilitation services be measured?

- a. ADSO submits that measurement of effectiveness is far more complex than the question implies. The many sources of complexity include:
 - (i) engaging and coordinating data from Defence, DVA, the Department of Education and Training, and the Department of Industry, Innovation and Science, ESO/VSCs, advocates and veterans;
 - (ii) longitudinal research involving surveys and statistical data-gathering;
 - (iii) identification of military skills that are comparable with civilian employers' needs;
 - (a) ascertaining pre-discharge veterans' post-discharge job preferences;
 - (b) defining the end-of-transition period so that post-discharge surveying is bounded;
 - (c) surveying employment post-discharge;
 - (d) surveying satisfaction with employment secured;
 - (e) measuring unemployment data, and disaggregating by category of discharge:
 - medically,
 - administratively,
 - disciplinarily, and
 - voluntarily.
- b. ADSO notes that this research would be facilitated by the Ministerial Forum's agreement that ABS include a survey question in the next Australian census to enable identification of veterans.⁹⁸

12.3B What evidence is currently available on the effectiveness of transition and rehabilitation services?

- a. ADSO submits that ESO/VSC do not have access to data on transition or rehabilitation. These data are not shared by Defence or DVA.

⁹⁸ <https://www.dva.gov.au/about-dva/publications/vetaffairs/vol-33-no4-summer-2017/ministers-coordinate-efforts-make>

- b. We understand, however, that the current evidence about transition and rehabilitation would include:
 - (i) the research undertaken by DVA;⁹⁹
 - (ii) statistical data on unemployment, homelessness and criminality collected by Commonwealth, State and private-sector agencies; and
 - (iii) data collected by advocates on individual veterans that seek their support.

12.3C How can the service system be improved?

- a. ADSO submits that 'improvement' cannot just focus on 'efficiency'. This begs a mechanistic, presumes that value is not being gained for money, and speculates that savings can be made if the right 'systemic' factor can be found.
- b. ADSO submits that no single action will remedy current or future performance shortfalls. Veterans' rehabilitation and compensation, transition, reintegration into community and employment must be solved systemically. However, system improvement confronts many 'wicked' problems.¹⁰⁰ Two of the most intractable are human and organisational.
- c. For most ESO/VSCs, siloing is a key organisational challenge. This impedes collaboration and information flow. Changing from an inward to an outward focus is, at least, part of the resolution.
 - (i) We submit that the volume and detail of easily accessible information should ensure that no veteran or family member is unaware of misinformed. The challenge is to encourage the information-needer to use their initiative to find the source.
 - (ii) Failure to address human behaviour¹⁰¹ may cut the cost of veterans' support, but will increase the cost of other social services. These include Medibank, hospitals, mental health/alcohol/drug rehabilitation facilities, and prisons.
 - (iii) To reiterate, the overarching 'wicked' problem is the 550 veterans and their families that are 'struggling', not the 4000 that are 'thriving', or the 1000 that are 'surviving' with the current level and quality of veterans' support. Improvement must therefore focus on the pre-conditions that culminate in 550 'strugglers'. The AIHW Study indicates that remediation must address medical, disciplinary and administrative discharge.

12.4A In some countries, rehabilitation services are provided to the families of severely injured and deceased veterans. Is there a rationale for providing such services in Australia?

- a. ADSO is concerned that the Scoping Study is challenging whether:

⁹⁹ <https://www.dva.gov.au/health-and-wellbeing/research-and-development-dva>

¹⁰⁰ <https://www.apsc.gov.au/tackling-wicked-problems-public-policy-perspective>

¹⁰¹ Australian Public Service Commission, 2007, *Changing Behaviour: A Public Policy Perspective* <<http://www.apsc.gov.au>>

- (i) *'all of the payments available are necessary and beneficial'* (para 13.2B below);
- (ii) *'they are achieving value for money outcomes'* (para 13.2C); and
- (iii) *'having generally available income support payments also available to veterans through DVA'* is appropriate (para 13.3A).

We accept that the Issue Paper is seeking to elicit responses to questions, not present a coherent proposition. Never-the-less, the contradictions within the banks of questions are curious.

- b. We submit that to a certain extent families' needs are already provided for in legislation and already funded through DVA.
 - (i) VVCS provides mental health services to veterans' children that are affected by inter-generational mental health. Although inadequate from a social perspective, VVCS also provides limited mental health support for separated or divorced spouses of veterans. Our Members (especially PVA) advise that, because of their partner's behaviour, spouses will frequently have severe mental and physical health issues – especially if there has been domestic violence. VVCS also provides family counselling.
 - (ii) Widow(er)s and eligible dependants are entitled to the (Gold card where the spouses death has resulted from service-related injury or disease. Other entitlements are promulgated in DVA Factsheets.¹⁰² We submit that the Inquiry compare these entitlements with those it has identified in other veterans' jurisdictions.
- c. Defence recognised in 1986 the crucial importance of settled families to their mission objectives, and commissioned research into the main problems facing service families.¹⁰³ Although support ceases on discharge, Defence currently offers a range of programs for the spouses of serving personnel irrespective of the veterans' service and health.¹⁰⁴ DCO support also includes a 24-hour help-line.¹⁰⁵ Defence Families Australia also advocates direct to the Assistant Minister and CDF on issues affecting service families.¹⁰⁶
- d. ADSO submits that the challenge is for spouses and dependants to make themselves aware of the support that is available to them.

¹⁰² **VEA:** <https://www.dva.gov.au/factsheet-hsv59-eligibility-dva-health-card-all-conditions-gold-or-totally-permanently-incapacitated>

MRCA: <https://www.dva.gov.au/factsheet-mrc01-overview-military-rehabilitation-and-compensation-act-2004-mrca>
¹⁰³ http://www.defence.gov.au/dco/master/documents/publications/hamilton_review.pdf

¹⁰⁴ For example: <http://www.defence.gov.au/DCO/Family/Partners/Special-needs.asp>

¹⁰⁵ DefenceFamilyHelpline@defence.gov.au

¹⁰⁶ <https://dfa.org.au/our-advocacy/partner-employment/>

12.4B If so, what evidence is there on the effectiveness of these services?

- a. ADSO submits that the occasional supportive posts on Facebook reflect a higher level of satisfaction with DVA and Defence support services than the critical comments heard by the Senate Inquiry indicate. We also note that 83 per cent of over 3,000 veterans, war widow(er)s, carers and dependants of all ages, surveyed randomly by ORIMA Research in 2016, expressed overall satisfaction with DVA services.¹⁰⁷
- b. From another perspective, ADSO acknowledges the amount and depth of research commissioned by DVA. We also acknowledge the number of joint ESO-DVA Forums/Consultative Groups/Working Parties created to investigate issues. The challenge for the Leadership Group must be to absorb the product of this work and to collate it into a service development framework. We submit that, despite due criticism and failures in individual cases, the evidence is there that DVA, CSC and Defence provide effective transition services for most veterans.

13. Income support and health

13.1A Is health care for veterans, including through the gold and white cards, provided in an effective and efficient manner?

- a. In responding to this question, ADSO submits that health care is another system within a network of systems that together are the veterans support system. We note the multitude of actors within the various systems and the extraordinary complexity of interconnections between them. Each actor and connection is a variable that affects outcomes. Assessment of the 'effectiveness and efficiency' of veterans' health care necessitates acknowledgement that it is a complex system within a system of systems.¹⁰⁸
- b. Within the veterans' health care system, the variables include:
 - (i) whether the Card is White or Gold;
 - (ii) a decision by the clinician about whether the Card will be accepted/not accepted, which has two subordinate variables: eligibility and payment;
 - (iii) with respect to payment, whether the Medical Benefits Schedule fee plus Veterans Access Payment are adequate compensation for the service;
 - (ii) the service provider's quality of service, again with two variables: efficiency and effectiveness; and

¹⁰⁷ <https://www.dva.gov.au/about-dva/publications/vetaffairs/vol-33-no2-winter-2017/2016-client-satisfaction-survey-results> and <https://www.dva.gov.au/about-dva/accountability-and-reporting/veterans-affairs-portfolio-annual-reports/annual-reports-2-11>

¹⁰⁸ The complex interactivity between, and non-linear responses of the variables (day-to-day crises) reflect the 'wicked' nature of the system/system of systems.

- (iii) the veteran's satisfaction with the service delivered, again with at least two variables: the immediate health outcomes and the long-term health and wellbeing arising from the service.

We note that of these variables, DVA has control of one only – the type of card issued.

13.1B Has the non-liability coverage of mental health through the white card been beneficial?

- a. Our advocates' experience is that this initiative has been very successful. It has given the Advocate a means of responding immediately and positively to need.
- b. On the trends, is changing veterans' perception of DVA. In this respect, the rapidity with which the veteran receives approval is a very positive influence.

13.2A Is there scope to simplify the range of benefits available, and how they are administered?

- a. ADSO notes that this question seeks 'to simplify'. We submit that whether simplification is necessary depends on how veterans' income and health support is approached.
- b. If the range of benefits is viewed as a broad canvass of entitlements or accessed through the legislation, the complexity is almost unfathomable. We submit, however, that there is another approach.
- c. Our advocate's experience is that no veteran is ever presented with the whole canvass of entitlements or the Act, and requested to decide. Rather, the claims or appeals process, the legislation and legislative instruments, supported by policy, take the veteran along a defined pathway.
- d. As the veteran reaches each decision point, a written determination is issued, can be read at leisure, is supported by Factsheets, and is typically clarified by an advocate.
- e. As the veteran is presented with decision options related to a specific point along a decision pathway, optimally the process is viewed as a '*decision tree*'.¹⁰⁹ Rather than seeking to simplify the range of benefits, we submit that:
 - (i) veterans be encouraged to seek an Advocate's support, and
 - (ii) decision trees be created to facilitate navigation of the range of benefits as they stand.

13.2B Are all of the payments available necessary and beneficial?

- a. ADSO submits that this question conflates a dynamic process into a snapshot. It also focuses on a narrow area of veterans' support and begs identification of

¹⁰⁹ A decision tree is a map of the possible outcomes related to options available. It allows a veteran to consider the options based on their relative benefits, to decide on the option most amenable to current and projected needs. After <https://www.lucidchart.com/pages/decision-tree> accessed 14 Jun 18.

which payments are being questioned. As posed, the question is curious, and can only be answered globally.

- b. The reality is that benefits – of which income support and health care are just two – are continually changing. Indeed, the Issue Paper has raised at para 13.1B a recent, fundamental change, and noted at page 19 that *'allowances and benefits ... have evolved over time'*. And, veterans' entitlement to (White Card) treatment of mental health conditions (if they have one day's CFTS) is both necessary and beneficial.
- c. Another change, that initially appeared to be a beneficial simplification, was the issue of a White Card for health care under DRCA. Originally, DRCA health care under provided that *'in the circumstances'* the cost of treatment was *'appropriate'* relative to *'charges customarily made'*. The change aligned the cost with of scheduled fee.
- d. That the change resulted in a loss of benefits became clear when veterans sought to replace hearing aids.
 - (i) Before the change, veterans received whatever hearing aids best met their need.
 - (ii) After the change, they received only base-level hearing aids and bore the cost differential if they wanted the class of aids they were used to.
 - (iii) DVA very quickly established the Hearing Services Working Group to investigate the matter. But, ADSO learned that all proposals for changes in entitlements must be very thorough considered.

13.2C Are they achieving value for money outcomes?

- a. ADSO submits that this question cannot be answered meaningfully unless the variables that define cost and benefit are provided.
- b. We are concerned that the question:
 - (i) deals only with the direct value-cost relationship; and
 - (ii) ignores:
 - (a) the consequential costs for other portfolios of reduced DVA services,
 - (b) the opportunity costs if benefits were reduced, and
 - (c) the social value of the services provided.

13.3A What are the benefits of having generally available income support payments also available to veterans through DVA?

- a. ADSO rejects utterly any thought veterans' affairs legislation be administered by anything other than an independent Department. We reiterate that:
 - (i) Military service is unique, incontestably unlike any other societal activity.

- (ii) Volunteers' preparedness to surrender fundamental human rights in peacetime, to risk exposure to disease and danger during disaster relief, and to lay down their lives in time of conflict in defence of their Nation are without peer.
 - (iii) For a century, this selflessness devotion to the Nation has predicated legislated entitlements that are more beneficial than the welfare provisions available to society's disadvantaged.
 - (iv) An all-volunteer ADF depends on a risk-return calculus: personal risk of death, disease or injury in preparing for and defending the Nation is offset by an obligation of support for the period of the veteran's (or survivors') life.
 - (v) To subvert the Nation's duty of care in pursuit of suspect economic dogma would provoke not only veterans' enmity but also jeopardise the Nation's security.
- b. Reference to the DVA website identifies that the Service Pension, Age Service Pension, Invalidity Service Pension, Partner Service Pension, and Social Security Age Pension (Paid by DVA) are defined as 'Income Support'.¹¹⁰
- (i) Comparison of the maximum payment rates of the Service and Partner Service Pensions, and the Centrelink Age and Disability Support Pensions reveal that each is identical (\$907.60 per fortnight on 14 Jun 18).¹¹¹
 - (ii) There does not, however, appear to be any relationship between the Centrelink Disability Support Pension and the various VEA disability pension rates, nor does there appear to be any equivalent for Additional Disability Pension for Specific Disabilities.¹¹²
 - (iii) From a Budgetary perspective, there is no clear benefit in moving from DVA to Centrelink payment of the Service, Age Service, Partner Service and Social Security Age Pensions. The payments must be made. The appropriation would simply have to be transferred to another agency.
 - (iv) As discussed at para 13.3B there may be a cost in transferring payment of the VEA Invalidity Service Pension to Centrelink.

13.3B What are the costs?

- a. ADSO wishes to register in the strongest terms, its concern that the questions in this Section appear to suggest the Inquiry is exploring the transfer of Veterans' Affairs to Human Services. We reiterate that, while such a move may seem reasonable from a purely economic perspective, it would be a fundamental

¹¹⁰ <https://www.dva.gov.au/benefits-and-payments/income-support>

¹¹¹ <https://www.dva.gov.au/factsheet-is30-pension-rates-limits-and-allowances-summary> and various Centrelink Secure sites accessed by Google Search: [Disability Support Pension](#) and [Payment Rates for Disability Support Pension](#).

¹¹² <https://www.dva.gov.au/factsheet-dp43-disability-pension-and-war-widower-s-pension-rates-and-allowances>

- breach of a century-old social contract. It would be tantamount to the Nation's security being aligned with Commonwealth support of the disadvantaged.
- b. If ADSO understands the extent to which payments rely on information technology, apart from the staff effort required to set up, authorise and audit payments, there appears to be little benefit in Centrelink paying any of the pensions currently administered by DVA.
 - c. ADSO submits that transfer of these payments to Centrelink would create inefficiencies.
 - (i) Claims determination would be separated from the ensuing compensation and income support management and administration functions.
 - (ii) Were Income Support Payments to be transferred but Disability Pensions, INCAP and PI not, two agencies would be managing and administering veterans' payments.
 - (iii) Further arguing against transfer, veterans with qualifying service but receiving compensation payments under *DRCA* or *MRCA* would have the latter payments administered by DVA and their Service and Partner Service Pensions paid by Centrelink.

14. Summary

- a. ADSO is concerned that the DoF May 2016 *Functional and Efficiency Review* of DVA recommended that, inter alia, 'service delivery functions...be transferred to other agencies'. Our concern is exacerbated by the DoF's FY2016-17 Annual Report noting that its Reviews *delivered savings of about \$2.7 billion* in the preceding year. ADSO is therefore concerned that, were the Productivity Commission to take a purely economic approach, further Budget constraint would be justified, putting downward pressure on DVA's appropriation. This would progressively reduce DVA to a rump, in time justifying its abolition. This would be absolutely unacceptable to the veteran community. ADSO can assure that the response would be trenchant.
- b. ADSO is already concerned that the Nation's duty of care for veterans, first legislated in *ASRA* and unaltered in *VEA*, has already been weakened in *DRCA* and *MRCA*. Comparison of the Explanatory Memorandums and Second Readings of *VEA* and *MRCA* confirms transition from overt to, at best, implicit acceptance of obligation. ADSO would be profoundly concerned if the Productivity Commission were to discard 100-years of beneficial intent on basis of now-questioned economic dogma. Either the Nation preserve in veterans' legislation its commitment to its own defence, or that 100-year old national value and legislative tradition are broken.
- c. We are further concerned that Government may see the downturn from intense ADF operations as an opportunity to resile from the Hughes Government's commitment after WWI. In this respect, we note suggestions in the Issue Paper of invidious comparisons between veterans' entitlements and the social services

available to the civilian community. Any such thinking is totally unacceptable to the veteran community. Inevitably, the response would be trenchant.

- d. ADSO submits that the Inquiry is an opportunity for the Nation's century-old social contract to be reinforced and veterans' legislation to be amended to include a Military Covenant. We note that Canada and New Zealand have already done so. Failure to do likewise will perpetuate Australian veterans' legislation as third in terms of world's best practice. Failure to do so undermines the sacrifices of life, health and wellbeing that the Government and Nation have expected, and continue to expect, of ADF personnel and their families in both peace and conflict. The ramifications of economic rationalism for national security and societal values are therefore decidedly perilous.

15. Recommendations

- a. ADSO recommends that the Productivity Commission Inquiry into Compensation and Rehabilitation for Veterans find that:
- b. the national defence and social consequences of an economic rationalist approach to veterans' support are unacceptable;
- c. a Military Covenant be legislated in *VEA 1986, DRCA 1988 and MRCA 2004* to bring Australian veterans' legislation up to world's best practice;
- d. a social enterprise be formed by which:
 - (i) DVA, Defence, ESO/VSCs and ATDP, and independent VRB and AAT would work in close partnership; and
 - (ii) an entity be incorporated to deliver legislated wellbeing outcomes for veterans and their families; and
- e. 'warlike' service be redefined so that the Beyond Reasonable Doubt standard of proof applies to all service including peacetime service where:
 - (i) the risk of injury, disease or death is high; and
 - (ii) 'clusters' of conditions occur amongst veterans with toxic or other exposures.

Kel Ryan
National Spokesman
Alliance of Defence Service Organisation

Attachment: Statements by Prime Ministers and Political Leaders

STATEMENTS BY PRIME MINISTERS AND POLITICAL LEADERS

1917-BILLY HUGHES (THE 'LITTLE DIGGER'):

We say to them go out and fight and when you come back we will look after your welfare. We have entered into a bargain with the soldier and we must keep it.

1944, JOHN CURTIN:

When the war is over, our obligations to our fighting men will not have ceased, we must satisfy that solemn debt of honour which all governments owe to the fighting men and their dependents, for having stood between the enemy and those at home.

1969 GOUGH WHITLAM:

They should be given war service homes, repatriation health benefits, civilian rehabilitation training, scholarships for their children and generous retirement and resettlement allowances.

2011-JULIA GILLARD:

Many will not serve again. Some will not walk again. None will be forgotten. Our country will recognise and respect our wounded as well as our dead. Our country will take care of these Australians as they have taken care of us.

2014 TONY ABBOTT:

Those who served must know that their country will not ask them to bear the emotional wounds of war alone.

2016 BILL SHORTEN:

Our obligation is for practical help, a caring arm and a helping hand for those who come home and better support for their families. The uncomfortable truth is that as a Nation we have been better at honouring the dead than offering decent support for the living.

2016 MALCOLM TURNBULL:

When we look back at Australia's treatment of veterans, the sad truth is that our actions have not always matched their best interests. We honour their service by caring for the wounded honouring the fallen and caring for their families and never forgetting that the best way to honour the Nation's past heroes is to support and care for the heroes and veterans of today.