THE ROYAL AUSTRALIAN ARMOURED CORPS CORPORATION SUBMISSION TO THE PRODUCTIVITY COMMISSION INQUIRY INTO THE DEPARTMENT OF VETERANS' AFFAIRS 2018.

"Regard your soldiers as your children, and they will follow you into the deepest valleys; look on them as your own beloved sons." **Sun Tzu**

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30 May, 2018

THE RAAC CORPORATION
(ACN 156 250 958)

The Veterans' Compensation and Rehabilitation Inquiry
Productivity Commission
GPO Box 1428
Canberra City
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SUBJECT: SUMBMISSION TO THE PRODUCTIVITY COMMISSION INQUIRY INTO THE EFFICIENCY AND EFFECTIVENESS OF SERVICE DELIVERY TO VETERANS BY THE DEPARTMENT OF VETERANS' AFFAIRS.

PURPOSE

To brief and put before the productivity Commission (the Commission) in accordance with the announcement by the Federal Treasurer of an inquiry into the veterans' compensation and rehabilitation system for current and former serving members of the Australian Defence Force (ADF) and to assess if the system is currently for purpose and also fit for purpose into the future.

SCOPE OF SUBMISSION

This submission attempts to answer the following Terms of Reference (TOR); viz

- **The use of the Statements of Principles as a means to contribute to consistent decision-making based on sound medical-scientific evidence; and**

- **Whether the legislative framework and supporting architecture delivers compensation and rehabilitation to veterans in a well targeted, efficient and veteran-centric manner.**

This submission also acknowledges that the sheer depth and breadth of the issues canvassed by the Commission may result in individual ex-service entities lodging their own submissions which may differ from this.

The submission makes a total of 30 separate recommendations to the Commission.

The Royal Australian Armoured Corporation which is a member of the Alliance of Defence Service Organisations (ADSO)[1], welcomes the opportunity to contribute to this very important debate.

The Corporation acknowledges the Inquiry which is in essence being conducted in parallel with but separate to, the ANAO's audit into DVA practices, processes ands service delivery, is both timely and welcome. It is an inquiry the Corporation contends is critically important on many levels.

BACKGROUND

There has been over the past 32 years, an ongoing continual almost universal opinion, most particularly in the veterans' community, that a wide range of organisational, cultural and systemic failings over a considerable period of time have impacted significantly on the capacity of the Department of Veterans' Affairs (DVA) to provide effective service delivery to its stakeholder base to the detriment of that stakeholder base.

This has led to a significant loss of trust and confidence in DVA's capacity to deliver services and support to the veteran community, by veterans and their families as experienced in a series of Senate public hearings, most particularly and relevantly, the inquiry into veterans' suicides.

Many of these failings and Business Model breakdown, have now been identified through official reviews of the Department's performance over time and improvements are being made, albeit slowly, to enable DVA to provide a more efficient service delivery model with a complete veteran-centric focus as its priority through what is called the Veteran-centric Reform (VCR) process which has as its baseline, the Lighthouse Project.

[1] ADSO provides coverage for over 90,000 members in the ex-service community.
ADSO comprises The Defence Force Welfare Association (DFWA), Naval Association of Australia (NAA), RAAF Association (RAAFA), Royal Australian Regiment Corporation (RARC), Australian Special Air Service Association (ASASA), the Australian Federation of Totally and Permanently Incapacitated Ex-Service Men and Women, the Fleet Air Arm Association of Australia, Partners of Veterans Association of Australia, Royal Australian Armoured Corps Corporation (RAACC), the National Malaya & Borneo Veterans Association Australia (NMBVAA), Defence Reserves Association (DRA), Australian Gulf War Veterans Association, Australian Commando Association, the War Widows Guild of Australia, Military Police Association Australia (MPAA), the Australian Army Apprentices Association, the Women Veterans Network Australia, and the Combat Support Association.

DEFINING THE TERM "VETERAN"

The term ***"veteran"*** is a matter which consistent with the pace of definitions at the head of legislation, should also be placed at the head of this submission.
The issue of who ***"veteran"*** covers has created a degree of confusion among serving and former ADF members with the resultant feeling of disenfranchisement amongst members, serving and former.

The concerns expressed by both former and currently serving members at their confusion and frustration over this matter is noted and needs to be acted on.
The announcement therefore, on 8 November 2017, that a second Roundtable of Veterans' Affairs Ministers had by consensus agreed to a definition of definition of ***"veteran"*** was welcomed. It is an issue the Corporation has been championing for some time.

The Corporation notes the Roundtable agreed a veterans is defined as *"a person who is serving or has served in the ADF."* This is consistent with the very generous approach taken by UK, US and Canadian jurisdictions. A copy of the Corporation's previous contentions to DVA and more recently the ANAO[2] audit on the definition of ***"veteran"*** is at **Attachment A**.

The decision by the Roundtable to hold that such a term should not be subject to legislative definition, is not supported. The enshrining of the definition in law will in the Corporation's view, provide a degree of finality and certainty in that the definition will in law have a degree of permanency and absolute certainty.

The Corporation does not believe a roundtable consensus has the full weight of the law or any guarantee of permanency and therefore any consensus definition is considered to be at risk of being set aside due to the capricious nature of politics.

The differing categories of service in the ADF:

- Operational -war-like;
- Operational non-warlike,
- Hazardous service; and
- Eligible Defence service

will all have the term ***"veteran"*** apply to them.

Similarly, the Corporation considers it essential in so defining our current and former Defence members, that protection of specific veteran identifiers must be in place.
The Return from Active Service (RAS) Badge, the Army Combat Badge (ACB) Infantry Combat Badge (ICB) and the newly-promulgated Operational Service Badge (OSB) - Military members only, are very specific identifiers other than medallic recognition that a Defence member has rendered warlike service.

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[2] The contentions for the ANAO Audit were drafted by the RAAC Corporation by this writer for the ADSO submission.

This unique identifier takes on an added significance due to the colouring of all these badges in that they mirror the colour of the metal used to make the Victoria Cross. That lineage of homage from these badges to the ultimate award for conspicuous gallantry must remain, and remain with those returned members who have rendered warlike service. It is considered essential the broad and all-embracing definition of ***"veteran"*** does not operate to compromise this lineage of homage and service in war.

The Corporation notes the National RSL fully supports the introduction into law of a definition of ***"veteran"*** . The Corporation supports the submission by the Vietnam Veterans Federation of Australia (VVFA) that the definition be all-embracing to include Defence Reservists other than those who render continuous full-time service (CFTS).

The contention is that Australia is embarrassingly lacking in adapting its legislation to reflect the nature of service through a formal recognition enshrined in law, by defining ***veteran*** and through the enshrining in law of a Military Covenant, as is the case in Canada and the UK. The inclusion of such a definition in law is considered to be cost-neutral and imposes no burden on the public purse.

MILITARY COVENANT

The Corporation notes the acknowledgment by the Commission[3] of the unique nature of military service; viz

> ***The nature of military service***
> *An implicit principle underpinning veterans' support is that military service is unlike other forms of employment. Military service involves a requirement to follow orders (even where personnel may have to apply violence or place their own lives or health in danger), frequent relocations (both for military personnel and their families) and long and irregular hours (box 1).*
>
> *Military personnel are frequently placed in high-risk environments. There are risks in war or operational service and while in training or peacetime service. That said, the risks are likely to be higher (and less able to be managed by the defence force) while veterans are on war or warlike service.*
> *And the impacts from military workplace injuries and illnesses are significant.*[4]

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[3] *Compensation and Rehabilitation for Veterans*, Productivity Commission Issues Paper, May 2018, 30pp.
[4] Above, n.3 at p.1

The adoption of an Australian Military Covenant is seen to be a major priority for the Corporation and ADSO member organisations[5]. The Corporation considers adopting a Covenant to be integral to having placed on the public record once and for all, a final commitment first made by Prime Minster Billy Hughes to Australian troops in 1917 when he stated *inter alia* at the1917 Premiers' Conference[6], that the nation would do the right thing by them; viz

> *...We say the care of the returned soldier is one of the functions of the Commonwealth Government. Our soldiers do not fight for Queensland, New South Wales or Tasmania, but for Australia. They enlisted under the Commonwealth banner. They gout to fight our battles. We say to them: 'When you come back we will look after you'...*
> *The soldiers will say to the Commonwealth Government: 'You made us a promise. We will look to you to carry it out.'*

The Corporation contends the time is now ripe some101 years later, to finally and formally acknowledge the nation's enduring obligations to its service personnel and, in turn, the ADF's obligations to the Nation.

Significantly, the commitment by Parliament to adequately providing for injured and incapacitated veterans was made unambiguously clear 101 years ago when during his second reading speech of the 1917 Australian Soldiers' Repatriation Bill, in which Senator Millen President of the Executive Council, stated:

> *I tell the senate quite candidly that I am not at this juncture concerned about finance. I have put before the honourable senators a proposition representing the duty we owe to these returned soldiers, and whether it is going to cost more or less for the discharge of that duty, we have to shoulder it* [7].

That commitment made at that time is in the Corporation's view along with the commitment of then PM Billy Hughes, the predecessor of the Military Covenant being sought today. Senator Milne's statement has as much relevance in the 21st century as it did a mere 17 years after Federation.

Similarly the groundwork for a Covenant was in many ways reinforced by Baume (1994)[8] who argued *inter alia*:

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[5] The Corporation drafted a formal submission on behalf of ADSO to the Senate FADT Standing Committee Inquiry into veteran suicides in November 2016, which contained *inter alia,* the contentions for having a Military Covenant. This writer and the then National ADSO Spokesman both attended the Senate hearings on 18 November 2016.

[6] *Clarke Review, Report of the Review into Veterans' Entitlements 2003* , Vol 1, Chapter 4 Repatriation Principles, Clause 4.5, at p. 94.Cited form Lloyd and Rees, 1994, pp. 68-69, title not cited Online at https://www.dva.gov.au/consultation-and-grants/reviews/clarke-review#report [accessed 28/5/18].

[7] Above, n.6., Vol 1, Chapter 4, Repatriation Principles, Clause 4.6, at p. 94. See also, Toose J., 1975 *Independent Enquiry into the Repatriation System,* AGPS Canberra 1975, at pp. 19 -75, (cited from Hansard Vol. 82, p. 196).

[8] Above, n.6, Vol 1 Ch 4, clause 4.24 at p.99 cited from A Fair Go, Report on Compensation for Veterans and War Widows, Professor Peter Baume, March 1994

There is a strong and continuing obligation on the Australian community to recognise adequately the special contribution made to the nation by the veterans of our armed forces.

Significantly, even after over 100 years, the proposal for a Military Covenant finds strong political support in the Senate as evidence in the speech by Senator Mc Grath on 30 September 2014[9]. The speech is to be of itself alone, a major stand-alone Parliamentary argument for the adoption of a Military Covenant and echoes the commitment of Senator Mullen in1917. A copy is at **Attachment C**.

The statements by both Senators some 100 years apart are on any view, a comprehensive, unequivocal statement by the Government of Australia that it owes a duty to those who serve this country and that the binding duty to adequately provide for injured veterans, veterans' widows and dependents is a burden that this country has and will continue to be borne.

It follows that, consideration should as a priority be given to having a Military Covenant included in any legislation. It must form part of the document and must not on any level, be an appendage by way of a Preamble. It must be a **substantive part** of any Act, either current or proposed.

The Corporation notes and supports ADSO and the VVFA in respect of the inclusion of a Military Covenant in any legislation and welcomes the strong support of the National RSL in this matter, also.

The Corporation concurs with the National RSL's view that these two issues – defining ***veteran*** and introducing that definition along with a Military Covenant into law, should be actioned by the Government at the earliest possible opportunity.

The inclusion of a Military Covenant in law is considered to be cost-neutral and imposes no burden on the public purse.

Recommendation 1
That the Commission recommend to Government the inclusion in all relevant veterans' legislation, the definition of ***"veteran".***

Recommendation 2
That the Commission support and endorse the retention of the relevant returned member badges as cited in the submission, for issue only those Defence members who have rendered operational warlike service.

Recommendation 3
That the Commission support and endorse recommendation to the Government to consider drafting a Military Covenant to be enshrined in veterans' legislation.

[9] Hansard 30 September 2014, pp.88-89

GENERAL COMMENTARY ON COMPENSATION, SUPPORT AND HEALTH SERVICES DELIVERY

New Developments

The Corporation acknowledges, consistent with the honest broker principle, that DVA in its Veteran-Centric Review (VCR) process involving Project Lighthouse which is a major revamp/review of its current business process systems.

It is important to address at first instance some of the achievements by DVA in this space. To date, DVA has worked relentlessly over the past 333 days (to 29/5/18) to develop , trial and implement number of very significant steps addressing this topic.

These achievements include but are not limited to:

- Developing a single claim form for use across all three Acts;
- Implementing the automatic creation of a DVA file and tracking the medical and service files of all ADF members who enlisted on and from 1/1/2017 for the duration of a serving member's career;
- Developing implementing and applying a computer-based screening tool to calculate and determine which applicants are in a military trade which has heavy lifting as an employment requirement, eliminating the need to rely on memory to quantify the total weights lifted as required by Statements of Principle(SOPs);
- Introducing a new computerised claims processing system (DVA Webclaim)[10],
- Increasing coverage under non-liability HealthCare (NLHC) to include mental health treatment to all mental health conditions;
- Providing access to free mental health support after one day's service and
- Writing since 1/1/17 to all ADF members leaving military service and as part of that treatment support continuum, implementing the automatic issue of a White Card will soon accompany this letter on discharge.

Similarly and significantly, the Corporation notes that DVA's IT systems have been made to include an additional field to enable current and former ADF members who served before the introduction of a PMKeyS number to use their old service number to access MyService.

This writer was invited by the Secretary DVA to attend a personal briefing on 29/5/18 regarding the DVA transformation process including **MyService**[11] and be given a demonstration of the online claims system and receive a briefing on other initiatives. It was noted that **MyService and MyAccount** will be folded be co-located in **MyGovernemt** in due course.

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[10] Online at https://www.dva.gov.au/providers/dva-provider-news/save-time-claim-online-dva-webclaim [accessed 18/5/18]

[11] www.dva.gov.au/myservice

To get this point DVA staff have spoken to 1700 veterans and their families regarding the VCR process. Similarly, DVA have provided saturation-level briefings with ESOs in order to ascertain what ESOs what they believe reform should include. Thus level and depth of consultation has produced some very positive outcomes in indentifying veterans' needs.

The ease of operation for veterans both current and former, to access the data base and loge a claim is on any view, the most important groundbreaking achievement by DVA in the veterans' claims and support continuum to date. The ease of using an online claim form that is applied across all three Acts administered by DVA is simply astounding. This important, because in enabling veterans to be able to complete an online claim form in the safely ,security and comfort of their own home , is a hugely pleasing aspect of this process.

The White Card is automatically generated and sent to the veteran to enable early mental health treatment. The Corporation considers this move to be a major factor in enhancing early intervention for vulnerable veterans and contends this measure to be a life-saving initiative.

Similarly, the White Card will be created electronically to enable a veteran to have a copy on their smart phone as well as the actual card itself. Therefore, coverage commences immediately while a veteran is waiting for the hard card to be generated and sent in the mail. The reduction in time between online claim lodgement and actual receipt of an e-card for smart phone is extremely fast ensuring a veteran has no time lag in receiving their actual White (Smart) Card in order to access treatment. Again this is considered by the Corporation to be a significant tress-reducer for a veteran.

The Veteran-Centric Reform (VCR) and transformation process will expand this service for all claims and soon Smart Cards will have all conditions loaded, to streamline service with medical practitioners.

The Corporation considers the introduction by the Department of a Smart Card to be a very significant and positive major paradigm shift by DVA, towards improving their business systems and processes as well as enhancing a more efficient and seamless delivery of health services and support to veterans and dependants, post-service.

This is considered to be on any level, a significant game-changer.

The advantages of the automatic issue of a White Card to veterans for which the Corporation has campaigned, include:

- No stress and trauma for a veteran in navigating the legislative claims process to establish initial liability and a number of known conditions related to military service;
- Reduced instances of self-harm or worse;
- Eliminating unnecessary and lengthy delays in waiting for a liability and decision ready determinations for a service-related injury, illness or disease;

- Reinforcing the requirement for veterans to tell DVA only once will eliminate the soul-destroying requirement for veterans and their families to continually have to repeat one's experience to a new Determining Officer due to staff changes;
- Reduce the requirement on veterans to litigate through the appeals process;
- Provision of ongoing treatment of a service related illness, injury or disease for life; and
- Formal acknowledge by the Government as represented by DVA that they did incur, accelerate or aggravate an illness, injury or disease on service be it operational or non-operational service.

It is not an exaggeration to contend that the latter bullet point is seen as being on any view, the most crucial factor in enabling all veterans, particularly those who have been involuntarily (medically) discharged, retain a level of self-esteem and dignity, which has been denied to them as a consequence of the antiquated and convoluted business model employed by DVA in years past.

The issue of a White Card for treatment of all service-related conditions while not pensionable or compensable at first instance, is seen to be the major fact at issue in veterans remaining within a Government-funded treatment continuum post-service which has in the past been a fraught process in having to start a completely new post-service pension/compensation and treatment process all over again.

DVA Reaching out to the Veteran Community

Other initiatives include the Australia Post Office information kiosk test pilot first rolled out at Woden Post Office in the ACT in 2017 an now extended to two other Post Offices. Similarly, DVA are developing an e-Market

Veterans may access the information from specially trained Post Office staff in situ by way of posters, brochures or by Australia Post computers. Significantly and most crucially, veterans will be able to use the computer to email DVA to request the department contact them. The outreach potential of using the local Post Office is considered by the Corporation to be a major move in bringing DVA to the veteran community and not the other way around. That level of first-instance contact improvising basic advice and guidance operates to create a smoother path for veterans to travel when interacting with DVA.

Additionally, DVA has obtained permission to access on a trial basic, two Department of Human Services (DHS) Mobile Service Centres to travel to remote an regional areas providing a one-stop shop support to remote and rural communities. Suitably trained DHS staff will be able to bring DVA first-line support to veterans living remotely. It s hoped that of the trial is successful, additional vehicles with suitably-trained staff will be added to the fleet and increase DVA' outreach to veterans and their families. Again , the Corporation considered this to be a very significant improvement in DVA making itself available to veterans and their families.

The DVA Telephone Nightmare

It should be noted that DVA have done away with several hundred phone lines and in 2019 will b rolling out a single contact number 1800VETERAN which will finally enable veterans and veterans' partitioners to speak with a Department Office at the state branch where they reside, eliminating the need to use the current much-maligned system of being shuffled around, having to repeat their story.

The Corporation welcomes this move and sees it as a significant stress-remover for veterans practitioners an dveterans and their families who have to negotiate the lottery of using the current contact number.

Digitising Records

The current practice of relying on paper files ins being rapidly replaced across many Government agencies including DVA.

The normal practice of moving files by air freight with its attendant costs, between DVA branch offices resulted in approximately 1400or more files per week being flown to differ locations back and forth across Australia, the total tonnage of which was significant - not less than 25000 tons was being moved in this matter. Digitising files accelerated markedly in October 2o17 with 96% of MRCA files already digitised. DVA estimate they have at least 150 million pages of files and are at present digitising 1.5 million pages of records per week, through outsourcing this activity to a specialist firm.

The cost benefits for digitising to DVA are significant enabling the Department to reinvest these budget savings to other veteran-oriented initiatives. Similarly and most critically is that the security of veterans' of files is assured and the potential for files being lost is eliminated.

DVA contends the a development of online claims processing and related activities would not have been possible without the enactment of the *Veterans' Affairs Legislation Amendment (Omnibus) Act 2017*.

The Corporation agrees with this contention. The Act is the legislative enabler allowing Primary Decision-makers to be able to make a range of decisions on less complex claims, where the matter is straightforward e.g. Tinnitus or PTSD
The time saved through processing e-claims enables staff to process more complex claims.

As a member of the Cosson ESO Ginger Group (EWG) the Corporation championed the introduction of the proposed legislation in which it argued:

- The briefings given by DVA over the past two EWG meetings and the issues canvassed demonstrate a significant effort by DVA to remake itself to be able to better manage its affairs in the digital age.

- The proposed changes in both Draft Bills combined with Project Lighthouse as part of the VCR process are significant and will have long-lasting benefits for veterans and their families in the future.

- The task to bring this entire process to fruition is significant.
- It will require considerable courage by the Government and support from ESOs to ensure adequate funding for Lighthouse and the proposed IT solutions required to action digital claims management, are in place.

The Corporation contends, following a demonstration of MyService and other matters addressed, the drive by DVA to modernise its business model and make veterans the very core of its *raison d'être* is succeeding.

Notwithstanding these very significant and beneficial milestones, there us still a long way to go before complete reform of DVA processes is achieved and it is to legislative reform that the Corporation contends, this will fall.

Non-Liability Health Care (NLHC) issues – the need for extended coverage

Access to NLHC treatment is currently capped at seven conditions; viz

- Cancer (Malignant Neoplasm);
- Pulmonary Tuberculosis;
- Posttraumatic Stress Disorder (PTSD)
- Depressive disorder;
- Anxiety disorder;
- Alcohol Use Disorder; and
- Substance Use Disorder.

The Corporation contends strong grounds exist for expanding the current seven conditions to cover the top conditions which incur claims and in many instances, result in litigation through the appeals system, once again adding to the stress of veterans, in particular all musculoskeletal trauma.

Musculoskeletal trauma to the weight-bearing joints (spine, knees hips, ankles), is considered to be a long-tail condition in respect of treatment, rehabilitation and return to full pre-injury hours along with its attendant financial costs.

However, the degree of trauma and frustration experienced by veterans in attempting to have their claims successfully resolved notwithstanding the new online acknowledgement of for example, heavy lifting trades, a need exists in the Corporation's view to have the coverage for all musculoskeletal conditions extended under the NLHC provisions.

The inclusion of musculoskeletal trauma in NLHC coverage will operate to:

1. Reduce the need for litigation at all levels of the merits review system,
2. Remove removing the need for legal representation by veterans from the AAT onwards,
3. Eliminate the requirement at first instance, of veterans being forced to incur additional expenses in obtaining specialist reports,
4. Reduce expenditure of public monies through a reduction by the Commonwealth as represented by DVA in retaining Counsel and instructing solicitors to litigate against veteran appellants;
5. Reduce the number of appeals to the VRB and associated ADR process, reducing VRB costs and reducing any backlog of cases in the ADR and VRB appeals chain,
6. Reduce the workload on DVA and relevant merits review staff, and
7. Eliminate the stress and anxiety experienced by veterans with musculoskeletal injuries who have a legitimate entitlement to treatment at public expense.

The cost savings from these particular contentions are consider to be significant and would operate to divert costs saved to other essential DVA veteran support programmes.

The removal of a series of procedural and bureaucratic firewalls through including musculoskeletal trauma within the NLHC purview, will operate to significantly improve DVA's service delivery model, as well as greatly enhancing a more efficient and effective delivery of health services and support to veterans and dependants.

Notwithstanding the positive moves by DVA to streamline its business processes consistent with VRC and Project Lighthouse, the Corporation contends that further improvements need to be made to ensure the Department has the legislative processes in place to facilitate a less complex and clunky three-Act compensation and veteran management and support process.

Recommendation 4
That the Commission endorse and support the inclusion of musculoskeletal trauma in NLHC provisions for veterans.

TOR 1: The use of the Statements of Principles as a means to contribute to consistent decision-making based on sound medical-scientific evidence; and

ISSUE 1 – STATEMENTS OF PRINCIPLE (SOPs)

In its Issues Paper, the Commission asks the following questions[12]:

> *Have the Statements of Principles helped to create a more equitable, efficient and consistent system of support for veterans? Are there ways to improve their use?*
>
> *What is the rationale for having two different standards of proof for veterans with different types of service? Are there alternatives to recognise different groups of veterans? 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)?*

Q1. Have the Statements of Principles helped to create a more equitable, efficient and consistent system of support for veterans? Are there ways to improve their use?

The introduction of Statements of Principle (SOPs) in 1994 was contentious from the beginning. As subordinate law, they have the force of law. Their introduction flowed from the decision of the High Court in *Bushell*[13] and the subsequent recommendations of the Baume Report (1994)[14] from which the Government introduced a number of recommendations in the 1994-95 Budget, including:

- *The introduction of Statements of [Medical] Principles (SOPs) to guide decision-making in compensation cases*
- *The subsequent establishment of the Repatriation Medical Authority (RMA)*

In essence, the High Court in *Bushell*, established the supremacy of conflicting evidence to be that which was tendered by a person eminent in the relevant field of medical discipline. This manifested itself in the application of sound medical-scientific evidence as a the basis for meeting the SOP Risk Factors, which operated on many levels to disenfranchise veterans in seeking to have their disabilities accepted.

The *Veterans' Entitlements Act 1986* (Cth) (VEA) and *the Military Compensation and Rehabilitation Act 2004* (Cth) (MRCA) are the two principal Acts which apply the SOPs as part of the claims process.

The newly-enacted Safety*, Rehabilitation And Compensation (Defence-Related Claims) Act* 1988 (Cth) (DRCA) is silent on the matter of SOPs.

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[12] Above, n.3, at p.13

[13] *Bushell v Repatriation Commission* (1992) HCA 23 ALD 513 (15 September, 1993).

[14] The Auditor General Audit Report No.29 2000–2001 Performance Audit, Review of Veterans' Appeals Against Disability Compensation Entitlement Decisions, Appendix 1, at p.83 citing from *A Fair Go*, Report on Compensation for Veterans and War Widows, Professor Peter Baume, March 1994.

The use of SOPs required a strict application of the Risk Factors to enable a veteran to meet the relevant legislative criteria. Although claimants were required as a minimum, to meet only one of the Risk Factors for a claimed disability, the difficulty in quantifying the effect of service on a claimed disability was enormous, forcing veterans to quantify by level of exposure to sunlight or noise, pack years, alcohol consumption and weights for example, over a (lengthy) given period of time, leading up to the clinical onset of the disability being claimed.

The strictness and inflexibility of the application of the Risk Factor component operated to neutralise the beneficial intent of the VEA and later the MRCA.

This occurred due to veterans finding it impossible in many instances, to remember how much they carried to meet a minimum of for example during non-operational (eligible Defence) service, a cumulative total of 168,000kgs in the 10 years leading up to the clinical onset of a disability, in this example tendered to the Commission, Lumbar Spondylosis[15].

That particular feature of a SOP remains on any view, the most indefensible part of what is an extremely difficult and stressful process for any veteran under any Act, that uses the SOPs.

The overall effect of the use by DVA of SOPs was to cause veterans to walk away from their claims with their claim being inevitably defeated, regardless of the beneficial provisions contained in the VEA and now MRCA.

Paradoxically, the strict and inflexible application of the SOPs and Risk Factors throughout the entire claims, determination and merits review/appeals continuum, has resulted in one positive matter for veterans' practitioners. A SOP enables a veterans' practitioner to clarify with a client, if their client can meet any of the Risk Factors listed.

If a veteran client is unable to do so, it enables a practitioner to inform a client their claim or appeal is unsustainable , based on an inability to meet as a minimum, as required bylaw, a single Risk Factor. This gives a veterans' practitioner a degree of certainty. Additionally, it saves practitioners considerable time in pursuing what will inevitably be an unsuccessful or unsustainable claim or appeal, and puts the matter squarely before a veteran at first instance.

The Department has made major inroads in recent times as part of Project Lighthouse in having the quantifiable issues e.g. total weight carried, etc., simplified for contemporary veterans by matching a claimant's trade such as tank driver or rifleman to the relevant SOP, where an automatic entitlement in respect of spinal injury for example, is calculated by a Delegate. The implementation of this measure is a significant step in the right direction and is welcomed.

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[15] RMA SOP 63 of 2014, Factor 6 (i)Lumbar Spondylosis (BOP eligible defence service) online at www.rma.gov.au [accessed 18/5/2018]

Notwithstanding the continued improvements flowing from Lighthouse, a closer look needs to be taken at the language and terms used by the RMA in its drafting and promulgation of SOPs. The language is bewildering to say the least, and creates a formidable obstacle to the ordinary veteran reader in trying to make sense of what the document is all about.

The Corporation's very strong view is that that a complete rethink as to the form of words used in SOPs, needs to be undertaken by both DVA and the RMA in order to apply a more easily understood application f the Plain English law approach to a document that is subordinate law. As they stand, from a plain easily understood language point of view, they are considered to be not a user-friendly document.

The SOPs are a foundation document that require in law, certain proofs to be met. It follows that, SOPs should be in a form in which they are easily understood by veterans' practitioners and veterans endeavouring to meet the relevant proofs in evidence, to support a claim.

A review of the language used in SOPs must be undertaken if they are to retain a greater level of credibility and acceptance by veterans' practitioner and veteran clients.

Recommendation 5
That the Commission endorse and support the review of the language used in SOPs.

While the current BPR process being undertaken via the Lighthouse Project has seen the development of a computer-based screening tool to calculate *inter alia*, heavy lifting weights parameters based on military trade and posting, the lack of the application of this tool to VEA and DRCA claimants acts as a considerable fetter to DVA extending this facility to VEA claims and improving the smoothness and effectiveness of DVA's business model.

Q 2. What is the rationale for having two different standards of proof for veterans with different types of service? Are there alternatives to recognise different groups of veterans? 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)?

The issue of two differing categories of SOPs is a particularly vexing issue with veterans and veterans' practitioners.

The rationale for two standards of proof has its genesis in the High Court decision in *O'Brien*[16] and in the Full Federal Court decision in *East*.[17]

The Court in *East*[18] made it clear that the decision in O'Brien was based on purely economical reasons; (this writer's bold emphasis); viz

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[16] *Repatriation Commission v. O'Brien* [1985] HCA 10.
[17] *East v Repatriation Commission* [1987] FCA 242 (22 July 1987)
[18] Above, n.17, at [13], online at www.austlii.edu.au [accessed 18/5/18]

This situation was quickly seen by the Government as unacceptable. In May 1985, only three months after the High Court's decision in O'Brien, a Bill to amend s.47, amongst other provisions, was placed before Parliament. The Minister's Second Reading Speech—see Parliamentary Debates (House of Representatives) 16 and 17 May 1985 pp.2644-2648 -- makes it clear that the proposed amendment to s.47 was a direct response to the decision in O'Brien ***and that it was proposed on financial grounds****.*

At p.2645 the Minister said: "It has always been accepted that the repatriation pension system should be generous. ***Nevertheless generosity seems to have gone beyond reasonable bounds*** *in a situation where a pension must be granted in respect of a veteran's incapacity or death even if there is no evidence raising a reasonable possibility of a link between the incapacity or death claimed and the veteran's period of eligible war service. This in fact is the position because the effect of section 47, in the light of its interpretation by the courts, is to bring the determination of disability pension claims close to one of automatic acceptance for the vast majority of claims.*

It is not surprising that claims for disability pension are pouring into the Department of Veterans' Affairs and that expenditure on disability pensions and war widows' pensions is increasing rapidly—by 55 per cent and 70 per cent respectively over the past three years."

In order to mitigate the cost-saving attempts by the Government to reduce the number of pension claims, the Minster introduced the criminal standard burden which was noted by the Court[19]; viz

The Minister explained at p.2646 that the draft adopted the scheme discerned by Brennan J in his dissenting judgment in O'Brien:
"The Bill I am now introducing draws on Mr Justice Brennan's proposition.
It provides in respect of all claims for pension that, where the Repatriation Commission is reasonably satisfied that the material before it ***does not raise a reasonable hypothesis of a connection between the death and capacity of a veteran and the veteran's war service, or that any such hypothesis which has been raised, has been dispelled, a pension shall not be granted. The requirement that there be established such a reasonable hypothesis of a war service connection is intended to ensure that a pension is not payable merely because there is a theoretical connection which is of a remote, fanciful or tenuous nature.***

In addition, it is ***proposed to continue to apply the criminal standard of proof*** *to claims for pensions in respect of: First, a disability where a veteran had overseas war service or where, during service in Australia in World War II, the veteran was personally engaged in direct combat against the enemy; second, a disability where a veteran was allotted for operational service in Korea, Malaya, Borneo or Vietnam; third, a disability suffered by a member of the Defence Force where he served on peace-keeping duties overseas or where the member is involved in hazardous duties so designated by the Minister for Defence; and fourth, death for these three categories except where the veteran or member died or dies 40 years or more after eligible service.*

In respect of claims in relation to the four categories I have just mentioned, I want to make it clear that a claim must be granted unless the determining authority is satisfied beyond reasonable doubt that there are insufficient grounds for doing so. This is the standard of proof, subject to the proposed requirements that there be a reasonable hypothesis of a link between death or incapacity and service, that presently applies."

[19] Above, n.17, at [15].

The court defined Reasonable Hypothesis[20] to mean:

> *A reasonable hypothesis requires more than a possibility, not fanciful or unreal, consistent with the known facts. It is an hypothesis pointed to by the facts, even though not proved upon the balance of probabilities.*

The reverse standard of criminal standard of proof imposed on the Repatriation Commission when determining claims was inserted to place an onerous burden on the Government to establish a level of fairness to veterans who lodged claims for disability pensions. The reverse criminal standard coupled with the definition of a Reasonable Hypothesis which flowed from *East*, formed the bulwark of the Primary Decision-making process and can be found in section 120(2) of the VEA.

This provision mandates the reverse criminal standard of proof which must be applied in that a Delegate of the Commission, must be ***satisfied beyond reasonable doubt*** (s.120(2)) that where a ***reasonable hypothesis*** (s.120(3)) linking the disability with service cannot be disproved, the claim must succeed and a disability pension granted.

In essence, if a hypothesis is raised, the claim will succeed unless:

- Some fact necessary to support it is disproved beyond reasonable doubt; or
- Some of the facts inconsistent with the hypothesis is proved beyond reasonable doubt.

The Reasonable Hypothesis (RH) Test (it is not a standard of proof), must be assessed by reference to the SOPs vide s.120A of the VEA and vide s.338 MRCA.

The RH Test does not apply to non-operational service SOPs which are subject to the stricter civil standard, the Balance of Probabilities (BOP) as for civilian workers' compensation claims. The provisions of s.120B VEA and s.339 MRCA place a duty on a Primary Decision-maker to establish to a **reasonable satisfaction** the nexus between claimed disability and service.

The BOP SOPs for non-operational service set a higher evidentiary bar in that they contain fewer risk factors for a claimant to meet as opposed to the more generous suite of RH Risk Factors available to a veteran who has rendered operational service.

The question posed by the Commission as to the efficacy of two different SOP is one the Corporation contends is easily answered.

In that regard, we rely on the decision of Federal Court's in *Repatriation Commission v Kohn* (1989) FCA 244(3 July 1989), per Hill J, who held in relation to operational service (writer's bold emphasis added):

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[20] Above, n. 17, at [42].

> *54. The legislative policy behind the Veterans' Entitlements Act* ***is that a person who has rendered operational service in the sense defined in s.6(1) should more readily be able to obtain a pension than a person who has not rendered such service.*** *It was the intention of the legislature that it was only members of the Armed Forces who, in truth, were on service outside Australia during World War 2* ***who should receive this preferential treatment as to pensions. It cannot be conceived that Parliament intended that veterans who were at all times stationed in Australia but who travelled from one place in Australia to another and thereby were for short periods of time outside Australia, should be treated in the same way as veterans who fought in a theatre of war, sailors who served continuously on a ship engaged in or likely to become engaged in combat or members of the Air Force engaged in flying missions outside Australia.***

It is clear on the facts that the Court's decision, namely that Parliament had drafted a law to give preferential treatment to veterans who had actually rendered active (operational) service and applied this difference to the RH and BOP SOP regimes.

It follows that, a clear distinction exists in the assessment and grant of pensions of veterans who had rendered operational service and those veterans who had not and the differing SOPs form part of that assessment and decision-making process.

It is not an exaggeration to contend that the differing criteria and Risk Factors clearly enunciated the Govt's intent to do the right thing by those ADF members who had done the hard yards, at the expense of those who rendered eligible defence service in Australia.

The nature of military service is in many ways, regardless of the Government's beneficial intention towards veterans who render operational service overseas, demands that **equity of treatment** of veterans *per se,* must be paramount.

The beneficial application of RH SOPs by DVA has in some ways created a double-edged sword in assessing claims based on a veteran's service.
It is wells settled that, but for the aggravating circumstances of death or wounding by enemy action, the risk of death or injury in Australia towards veterans who have not deployed overseas, remains a constant. It follows that, conflict and confusion in the veterans' space as to why two differing standards apply, exists regardless of the type of service rendered.

The dichotomy that presents with the RH test and the BOP (civil) standard of proof has operated to create an evidentiary imbalance in the **equitable application** of the SOPs. As such, it is contended that consideration should be given to establishing a standard of proof or test that could apply to both operational service and eligible Defence service.

Failure to consider such a proposal fails the veteran community including currently serving ADF members.

Recommendation 6
That the Commission endorse and support a recommendation to Government that a compete review of the Reasonable Hypothesis Test and the Balance of Probabilities standard of proof be undertaken in order to create a more **equitable test** to be applied to a single SOP addressing both operational service and eligible Defence service.

The two questions posed by the Commission address the unique nature of military service in which it reported[21]:

> *Injuries incurred by defence personnel include crushed vertebrae and spinal injuries, brain injuries, gunshot wounds, falls causing back and shoulder issues, knee injuries, amputations, hearing loss, and back and lower limb injuries caused by requirements to carry heavy loads (JSCFADT 2013). In 2016-17, over 14 000 military personnel were involved in incidents and, of these, about 700 were involved in dangerous incidents (potentially leading to serious injury or death). (In 2016-17, there were about 58 000 permanent members of the Australian Defence Force (ADF), and about 22 000 reservists (DoD 2017).)*

The statistics cited above are a stark and brutal reminder of the toll the unique nature of military service exacts from its members throughout their careers and after.

The SOP system in place while decidedly unpopular with veterans and veterans' practitioners, can operate to ensure the correct category of claims assessment and determination is applied and the relevant SOPs applied. Consequently their place in the veterans' entitlement space is part of the disability pension and compensation landscape, and is considered to be the way of the future.

The fact no cross-vesting provisions exist for SOPs to apply to DRCA also act as a fetter to the use of the automatic calculating tool for claims made under that Act, also. The Corporation also notes the work currently under way to have the same automatic calculations for MRCA claims being cross-vested to apply to VEA claims and DRCA and supports that initiative.

It is common ground that SOPs are now a well-established fixture in the veterans' entitlements landscape, notwithstanding their unpopularity in some quarters.
It follows that, notwithstanding their acknowledged unpopularity, SOPs are now a permanent fixture in the veterans' compensation space.

The provisions of the DRCA 1988 are silent on the application of SOPs in that legislative regime.

As such, it is contended that all three Acts be harmonised to ensure consistent application of a specified set of minimum criteria to be met under any Act.
It is contended that SOPs be included in any harmonising exercise and in the event an Omnibus Bill is drafted, SOPs must feature in that draft, also.

Advances in Medicine

The Corporation notes and agrees with Slater and Gordon's[22] contentions in respect of out-of date SOPs. Advances in medical science appears not to have been taken up by the RMA in undertaking timely action to update the relevant SOPs with medical information beneficial to veterans in enabling them to meet the rigid standards applied in both RH and BOP SOPS. The failure by the RMA to have regard to the ever-changing nature and progress of medical science is on nay view, inexcusable.

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[21] Above, n.3,at pp. 1-2
[22] Briggs, B., Slater and Gordon Submission 27/10/17 to DVA Legislative Workshop held on 9/11/17, 20 pp, at p. pp. 91-0

The failure by the RMA to have regard to advances in medicine, to the benefit of veterans in and of itself acts as a deliberate fetter to a veteran being able to meet a Risk Factor that should be updated but is tragically, out of date.
This plays right into the hands of the Government in that it is an insidious cost-cutting tool and under the e current regimes in MRCA and is not considered on any analysis, to be beneficial.

This inflexible approach to SOPs is also applied by DVA who admitted in evidence to the Senate Inquiry into Suicides:[23]

> *The Commission must apply SoPs and accordingly, it does not (and cannot) seek evidence which contradicts the relevant SoP in the circumstances of an individual case. Claims are decided on the basis of the totality of evidence available to the Commission, with the relationship of the claimed condition to the veteran's service being determined according to the relevant SoP.*
>
> *DVA does not have any discretion in applying existing SoPs and must apply the factors strictly as they appear in the SoPs to claims made under the [VEA] and the [MRCA].*

This admission is a classic example of an organisation which has developed *a take it down to down to the wire* approach any cost, mindset.

That is given the attempts by the department to reform its corporate image, and business processes, profoundly disturbing and further reinforces the contention that legislation enacted for the benefit of veterans and used by DVA, is anything but beneficial.

The admission by the Department that DVA has no *"discretion in applying existing SOPs"* is completely disheartening that DVA fails manifestly to enquire of the RMA if any further new medical evidence related to a particular SOP is available.
In other words, DVA delegates are failing to examine all matters relevant to determining a claim before them under either legislative regime. By failing to do so, DVA is weaponising the non-beneficial aspects of the Acts it administers, which implies DVA is not acting as an honest broker.

The rigid and inflexible approach to the interpretation and application of SOPs by the VRB, AAT and courts of superior jurisdiction, is evidence of this. The application of the Rule of Mischief (literal approach) by Tribunals and Courts has continued to maintain the line that black-letter law is the operative approach and by not looking beyond the SOP i.e. lifting the procedural veil on the SOP in question to inquire as to any new medical evidence or advances, is failing the veteran community, manifestly.

Such a failure serves to add another layer of cost-cutting to the detriment of veterans.

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[23] *The Constant Battle: Suicide by Veterans*, Senate Foreign Affairs, Defence and Trade References Committee Report, August 2017, para 4.2 at 67, (207 pp).

By applying the SOPs strictly to the absolute letter of the law, veterans are on any level reduced to being victims of an abuse of process that can best be described as an act of procedural bastardry.

Interestingly, the Sensate Report noted that: *"DVA has indicated that delegates should be 'guided by' the SOPs".*[24]

This admission begs the question as to why this so-called indication has not translated into a Departmental Instruction and promulgated for Delegates on DVA's Consolidated Library of Information and Knowledge (CLIK) as for Delidio and s.31 reviews. The absence of any instruction n applying SOPs as a guide is something that must be rectified as a matter of urgency.

Recommendation 7
That the Commission support and endorse urgent action by DVA to promulgate a Departmental Instruction to Delegates instructing them to apply SOPs as a guide only.

Recommendation 8
That the Commission support and endorse by legislative harmonisation or new Draft Omnibus Bill, the application and inclusion of SOPs into the DRCA with a legislative provision that Delegates apply SOPs as a guide, only.

Advocacy – General[25]

The evidence adduced from successive reviews of the advocacy system and advocate training, indicates a considerable variation in the competency of practicing advocates. This occurs primarily due to some ex-service members undertaking to look after other veterans in the advocacy space with no formal training while other advocates undertake a level of training directly commensurate with their skill level in a field of veteran support in which they wish to practice, be it Pensions/Welfare, VRB or AAT.

The Corporation agrees with ADSO's contention that a proportion of failed claims (and appeals) are the result of inadequate advocacy. The Corporation notes as does ADSO, that no audit process exists for DVA to monitor or record the quality of advocates' work. As such this lack of monitoring has operated to adversely affect identification and further training of incompetent or poorly motivated Advocates.

The development and introduction of a new model of advocacy training and competency-based training under the aegis of the Advocacy Training and Development Program (ATDP) will hopefully remedy the issues surrounding incompetent representation which is it must be contended, is confined to a very small fraction of veterans' practitioners.

It is hoped the structured competency-based training regime such as that being implemented via the ATDP process, will enable DVA to monitor Advocates' success.

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[24] Above, n. 23, para 4.69 at 66.
[25] The author has been a practicing Veterans' Advocate since June 1986. He holds a TIP 4 Practising Certificate and enjoys a 100% success record.

The fact all ATDP training will be identical regardless of which State/Territory jurisdiction the training is delivered in, is considered to guarantee a complete uniformity of training and application of knowledge where previous training delivered under the Training and Information Programme (TIP) differed in each jurisdiction with its consequential disadvantages.

ATDP training value-adds to a universal level of knowledge which complements portability of qualifications without the need of veterans'' practitioners relocating attempting to fill in gaps in knowledge.

Limitations to successful advocacy training and monitoring

The Corporation notes that motivating and recruiting new Advocates from the contemporary veteran cohort to replace those who have been practising for the past 30 or more years, meets with significant challenges. These challenges are:

1. A marked reluctance by contemporary veterans to have anything to do with mainstream ESOs in particular in respect of a new Advocate training programme which is perceived rightly or wrongly, to be underwritten by DVA.

2. Contemporary veterans have lost a significant level of trust and faith in mainstream ESOs due to the recent scandals surrounding the nation's leading ESO, the RSL.

3. The walking away from Advocacy by post-Vietnam Advocates due to a range of factors, i.e., age, illness, exhaustion, frustration and disillusionment at having to work with three different Acts;

4. That process is considered to be demeaning and fails manifestly to take into consideration by way of an example, a TIP 4 AAT qualification, which on its face, carries advanced standing and four credit points towards a Graduate Diploma in Legal Studies at some tertiary institutions.

5. The haemorrhaging of highly experienced and qualified Advocates and the slow uptake by younger veterans in this space has now seen the Veterans Indemnity and Training Association (VITA) extend its coverage of veterans' practitioners until at least 2021, to enable development of a larger pool of ATDP-trained Advocates commence practising.

6. The loss of trained and highly-experienced Advocates and the slow uptake by younger veterans is considered by the Corporation to act to the detriment of the ability by veterans to be able to access Advocates to represent them when required. This will operate to impact negatively on the efficient processing of claims and appeals though this shortfall.

7. Notwithstanding the necessity for insurance coverage in this litigious age, the continued refrain that it is a matter of ensuring indemnity cover, is tiring to say the least. The closure of VITA coverage in 2021 gives ESOs sufficient time to examine taking out liability coverage for their entities and Advocates.
   The Corporation's annual liability insurance including GST and stamp duty, is costed at $2369.

The need to have the ATDP Programme in place and fully operational by 2021 will be governed by having sufficient numbers of trained veterans' practitioners available by 2021 – given the slow uptake, the VITA coverage ceases. Prior to that occurring, it is contended that a complete audit and review of ATDP processes should be undertaken to identify and rectify any defects in the training of and work undertaken by the new-model Advocates.

Recommendation 9
That the Commission endorse and recommend that DVA engage an external organisation to undertake a root and branch review and audit of the entre ATDP process from training through to actual work performed by veterans' practitioners and that this audit and review be undertaken in 2010 before ATDP takes over form VITA.

Recommendation 10
That the Commission endorse and recommend to Government that ESOs who utilise veterans' practitioners and who do not have liability insurance coverage, be required to take out liability insurance in order to practice and provide DVA with proof of coverage, on an annual basis.

Paid Advocates

The Corporation notes that a proposal to have an Institute of Professional Advocacy which has been discussed by ADSO members. In examining the need for such an entity, the issue of recruiting Advocates assumes greater significance given the proposal to remunerate Advocates under this model.

The recruitment of paid advocates is a reality that needs to be confronted given the issues and challenges discussed in this submission, thus far.

The challenge facing adequate veterans' representation paid or otherwise, flows from the post-service priorities of discharged ADF members. On discharge or retirement, ADF members are:

1. Focused primarily on settling down to a new life either singly or as a family unit and are not interested in joining ESOs;
2. Are primarily in the prime of their life;
3. Focused on obtaining employment in anew work environment;
4. Focused on starting a new life away from the ADF and in the main want to leave that life well behind them;
5. Typically persons who have served on average 10 years in the ADF; and
6. Have no first-instance interest in veterans' issues.

It is well settled that these priorities are reasonable in all the circumstances.
The development of an Advocacy model involving along with competency-based training, a remuneration package will operate to attract veterans who have a desire to practice in this field. Such a model should be supported.

Caveat

A caveat to considering paid advocacy is that at no time in the veterans' support continuum, should voluntary advocacy ever be subsumed or sidelined by paid Advocates.

The Australian ethos of looking after one another is deeply ingrained in the Australian psyche, more so in the psyche of those who serve the nation.

The concept of volunteerism and its altruistic intent must be considered and acknowledged at all times. The concept of a Digger looking after their mates is paramount in the ex-service communities' ethos and within the ADF and must never be sacrificed.

The Corporation contends voluntary advocacy which is the backbone of looking after current and former service personnel must be seen as being completely equal to any proposed remunerative model. The Corporation's position as to ensuring and maintaining equality of category of Advocates, voluntary or paid, is not negotiable.

Issues Surrounding Paid Advocates

Should paid advocacy become the norm, the following issues will need to be considered:

1. **Remuneration** – what remunerative level will be available to Advocates who practice at a particular skills level. Has consideration been given to examining remuneration for these differing levels of practice?

2. **Funding** – no answer has been obtained from the ATDP or the ex-service community as to a funding model for paid Advocates. It follows that not all ESOs will be in any position to contribute to funding advocacy services for any proposed Institute.

3. **Terms and conditions of employment** – conditions of employment including leave, workplace insurance/compensation cover and industrial representation will need to be considered?

4. **Hours of work** – there is a very strong possibility that veterans who are unable to undertake remunerative employment due to their accepted disabilities may be able to undertake paid Advocacy to supplement their Special Rate (TPI) pension (VEA) or SRDP Pensions (MRCA).

5. A danger exists in that the remunerative nature of such employment may operate to impinge on the legislatively-mandated maximum 8-hr (s.24 VEA)work cap or the 10-hr (s.199 MRCA) work cap. Consideration must also be given by SRDP recipients that offsetting any remuneration by a veterans' practitioner in receipt of a SRDP Pension, may also apply to the detriment of whatever they earn within the 10-hour cap.

6. The Corporation freely acknowledges that although the remuneration within the SRDP cap may be of such a level that offsetting may not occur, it contends the level of dislike of the offsetting provisions mandates that a degree of caution exist to ensure offsetting does not affect any such remuneration.

7. Similarly, veterans in receipt of TPI pension and who also receive a means and assets-tested Service Pension, will be legally required to notify the Repatriation Commission of any changes to their financial circumstances, including remuneration earned within the 8-hr cap. That remuneration will result in a reduction in Service Pension payments. Failure to do, so will result in overpayment and a self-executing clause in the Act operating to cause a veteran to receive letter of demand for funds overpaid.

8. Veterans in receipt of either class of pension and who do not wish to jeopardise them, should be accepted on a voluntary advocacy basis and with equal status to paid Advocates.

Recommendation 11
That the Commission support and endorse the inclusion of the10-hour work cap enshrined in s.199 MRCA 2004, to replace the 8-hr work cap in s.24 VEA 1986 in any harmonising exercise or in any Draft Omnibus legislation.

Recommendation 12
That the Commission support and endorse the establishment of an Institute of Professional Advocacy and examine further the funding of such an entity.

Recommendation 13
That the Commission support and endorse the concept of voluntary advocacy having equal status to paid advocacy.

TOR 2: Whether the legislative framework and supporting architecture delivers compensation and rehabilitation to veterans in a well targeted, efficient and veteran-centric manner.

ISSUE 1 – SIMPLIFIED LEGISLATION - THE NEED FOR AN OMNIBUS ACT

BACKGROUND

The recent addition of DRCA to the suite of veterans' compensation and support legislation has now added a third layer of what can best be described as a procedural minefield for veterans and their families to negotiate.

A need now exists to consider further harmonising of all three Acts as an **interim measure only**, until such time as a Omnibus Bill is drafted and enacted which will hopefully see the abolition of the three current Acts through their repeal and bring normality and a degree of sanity for veterans, to this confusing and hostile legislative landscape.

The vigorous pursuit of this objective by the RAAC Corporation in conjunction with ADSO has been acknowledged by the Senate[26]; viz

> *CHAIR: …. There is a minute or so left to me. You make the point:*
> *The complexity of the military rehabilitation and compensation structure is such that the Alliance will continue to advocate vigorously for the creation of a single purpose veteran-specific legislation …*

The advocating for a single Omnibus Act finds very strong support from the former Secretary DVA Mr Simon White PSM at the DVA Legislation Workshop on Wednesday 7 March 2018, responding after closing argument by this writer in which Mr White stated *"I love the thought of a single Act."*

Simply put, the Corporation, ADSO and the VVFA contend that three Acts is a terribly unwieldy and complex method of delivering support services to veterans and their families. As argued by the Corporation, these three Acts do not speak to each other.

The clunkiness and incompatibility of these Acts operates to put in place, lawfully mandated processes which act as a major fetter to DVA attempting to appropriately meet the challenges of improved service delivery.

The Corporation, which welcomes the improvements to the DVA claims assessment and determining system thus far, maintains the very strong view that the lack of statutory authority to enable DVA to put in place, the results of its improvements to the claims and determining system, will hobble the Department until legislative reform can occur.

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[26] Hansard Senate Inquiry into Veterans' Suicides, 18 November, 2016,Mc Laughlin/Jamison, per Senator Back at p.17.

DVA will not be in an position to deliver a more seamless and smoother business model and will still have to administer three Acts which are individually and collectively foreign countries to each other.

Absent any legislative reform such as that proposed in this submission (repeal of three Acts and introduction of one Omnibus Act) then DVA will continue to flail helplessly and remain unable to deliver on its commitment to bettering the lot of its client base.

The issues surrounding the minefield that navigating three different sets of legislation presents, is well settled and has been documented by the Senate Standing Committee into Suicides in November 2016 and its subsequent Report released in August 2017

The Standing Committee's report details the difficulties, challenges and tragedies this three-piece adversarial travesty creates. It makes for compelling reading and should as a matter of course, form the basis for considering legislative reform.

The points the Corporation contended in its submission to the November DVA Legislation Workshop in respect of legislative change remain extant, including *inter alia*:

1. Drafting a new Omnibus Bill incorporating the beneficial provisions of all three Acts with the ultimate aim of having the current Acts repealed; and

2. Harmonise all three Acts vesting the operation of beneficial provisions across them while as a concurrent activity, undertake drafting a new Omnibus Bill.

The contentions by the Corporation in which its stated position is the repeal of three Acts for one single Omnibus Act, finds support from the Dunt Review, which argued[27]:

> *It is widely recognised that the three military compensation schemes –Veterans' Entitlement Act (VEA), Safety Rehabilitation and Compensation Act (SRCA) and Military Rehabilitation and Compensation Act (MRCA) -are difficult for veterans to navigate and DVA delegates to advise and process. They also have differing aims - VEA is essentially a military compensation scheme, SRCA a worker's compensation scheme oriented to rehabilitation and MRCA has features of both…It would simplify the scheme considerably if the three acts could be rolled-up into one successor Act. It is worth noting that Canada and US have one scheme only and the UK one past and present scheme operating.*

The comment by Dunt that rolling all three Acts into one single Act to *"simplify the scheme considerably",* gives further weight to the argument as expressed by the Corporation and other entities including ADSO, the VVFA and the former Departmental Secretary DVA, that an urgent need exists to commence legislative reform at the earliest opportunity. Put simply, lives depend on this occurring.

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[27] Above, n. 23, para 64.9 at 73, (207 pp).

Significantly, Dunt's argument for an Omnibus Act finds support from the South Australian Government. In its report into veterans' suicides[28], the Senate Standing Committee noted the South Australian Government's submissions regarding the complexity of operating under three Acts as opposed to jurisdictions which opera under a single legislative framework (US, UK and Canada); viz

4.30 ***The complexity of the three legislatives schemes and the inconsistency of their application to veterans were a key issues raised during the inquiry.*** *It was identified as a key cause or contributing factor to a range of problems for veterans seeking to access compensation, rehabilitation, health services and other support. For example, the South Australian Government commented:*

This legislative framework is cumbersome, complex, confusing and difficult to navigate for advocates, DVA staff and members of the serving and ex-serving community. *In some circumstances a veteran may have a claim under more than one Act requiring the claimant (or their advocate) to make a number of applications to more than one compensatory scheme.* ***The assessment process within DVA requires delegates to have a thorough understanding of all legislation in order to assess the validity of a claim.***
The complexity of the legislative framework can lead to significant delays to the processing of claims adding unwarranted stress to those involved. It is worth noting that both the US and Canada operate a single scheme and the UK operates one past and one current scheme. This approach removes any overlap between legislative elements simplifying the process.

Consideration should be given to a complete review of Commonwealth veteran related legislation that preserves veterans' entitlements while simplifying the process under a single Act.
(This writer's bold emphasis added)

The primary fact at issue is the differing processes required to determine claims and different time frames, results in significant emotional damage to veterans and their families.
The introduction of a standardised claims form which can be applied across all three Acts electronically or in hard copy is a welcome step in the right direction.
The Corporation notes that the introduction of a new claims processing system will enable the Department to handle claims made under all three Acts. This will go a long way towards eliminating lengthy claims processing times such as an average (mean) of 110 days for SRCA claims[29] and 72 days for VEA claims.[30]

An additional and pernicious obstacle to a more effective claims processing timeline is in obtaining medical reports from specialists. The time taken for any member of the public let alone veterans, to see a specialist is in many instances, well over three months. This impacts significantly incurs in the claims processing continuum exacerbate the inability of departmental Determining Officers to complete the process.

The effects of a slow, non user-friendly and clunky claims processing system was an issue the Senate hearing identified that as being linked with suicides as was contended by the Australian institute for Suicide Research and Prevention (AISRP) who argued:

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[28] Above, n.23, clause 4.30, at p. 54. Cited from Submission No 187, p.4, Government of South Australia.
[29] DVA Annual report at p. 59, online at https://www.dva.gov.au/about-dva/accountability-and-reporting/annual-reports/annual-reports-2016-17 [accessed 19/5/18]
[30] Ibid, at p. 46.

> *Unfortunately the DVA compensation system is complex and slow, and provides disincentives to work depending on the compensation Act the person falls under. Additionally, veterans report that they feel a sense of uncertainty regarding their future and feel they cannot progress their lives until their compensation issues are finalised. They explain feeling paralysed, 'in limbo'.*[31]

Processing of claims under VEA (and previously the SRCA) are on any measure the primary sticking point ion the compensation and liability continuum.

The acknowledgment by the former Secretary that "*We have known for some time that many aspects of DVA's current operating model including scale, processes and systems would become unsustainable.*" [32] and act as a significant fetter to a smooth and efficient determination process, is commendable and the work being undertaken by the Department through the Lighthouse Project and VCR process is going a long way towards rectifying that pain point for veterans and their families.

According to Slater and Gordon (2017)[33], DVA does not operate mandated time frames for veterans claims through the investigation, assessment and determination process, a policy that is inconsistent with overseas veterans' jurisdictions.

The Corporation agrees with this contention and also recommends the Commission obtain a copy of the Slater & Gordon document as it addresses a range of issues that are properly before the Commission and with which the Corporation agrees.

It is not an exaggeration to contend that a lack of mandated time frames operates to the detriment of DVA achieving measurable and effective time frames for claims due to protection from Mandamus the Repatriation Commission, enjoys.
The Corporation submits Mandamus should be removed and deemed statutorily-enforced deemed time frames be incorporated into all three Acts.

In so arguing, the Corporation acknowledges the primary stumbling block to DVA operating within a specified time frame, lies squarely with lengthy waits for veterans to see medical specialists.

Similarly, the challenges facing veterans negotiating the claims and determination process were again graphically illustrated by Slater and Gordon in their submission to the Senate ADF and Veterans' Mental Health Inquiry[34]; viz

> *We are witnessing Veterans being drawn into a system of combative legislation with a bureaucracy of Departments shifting responsibility. My team can attest to the voices of other Veterans advocates and ex-service organisations that lodging claims with the DVA for compensation and treatment of physical and mental issues is "like going through a meat grinder, it grinds you up".*

The implementation of a range of initiatives discussed in this submission at pp.6-7 are considered to be a major step in the right direction for DVA and augur well for continued reform in its administration of the Veterans' Affairs portfolio.

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[31] Above, n.23, para 3.43 at 51.
[32] PSC Capability Review into DVA 2013, 52pp, at p.42, [accessed 19/5/18].
[33] Above, n.22, at p. 5
[34] Senate FADT Committee Inquiry into Mental Health of Australian Defence Member and Veterans 2015, para 5.30, at 118.

That improvement in service delivery can be markedly enhanced through new single-Act legislation.

Any such reforms which are not cost-neutral, will require a significant commitment from Government to ensure recurrent and other funding is made available to keep the system functioning as is expected by al current and former Defence members, regardless of historical cohort.

The Corporation is of the view that the Slater and Gordon submission should be considered by the Commission as the matters addressed are very relevant to the Commission's inquiry.

Protection of Entitlements

Should any harmonising or Omnibus legislative drafting action be undertaken by the Government as represented by DVA, it is critically important that the pension and compensation entitlements enshrined in VEA 1986 and MRCA 2004 remain shielded from any harmonising or drafting action which may cause detriment to the current pension and compensation regimes under both Acts.

It is the Corporation's stated and non-negotiable position as is that of the National President of the Vietnam Veterans' Association of Australia (VVAA) that **no harmonising or Omnibus action must ever cause detriment** to occur to veterans in receipt of pension or compensation benefits under either Act.

Recommendation 14
The Corporation recommends the Commission endorse and recommend to Government the drafting of an Omnibus Act including all relevant beneficial provisions in the three current Acts and that no detriment to pension and compensation entitlement occur either through an Omnibus draft or harmonsing of all there current Acts.

Recommendation 15
The Corporation recommends the Commission endorse and recommend to Government that statutorily-mandated time fames claims be incorporate into all three Acts and also be included into any proposed Omnibus drafting exercise.

ISSUE No 2 BENEFICIAL LEGISLATION

1 Beneficial Provisions

A need exists in any harmonising or drafting exercise to ensure the beneficial provisions enshrined in s.119 of the VEA 1986 and s.334 MRCA 2004, are carried over to DRCA, in the first instance. These provisions are considered to be the fundamental bedrock of any remedial legislation, as it must be remembered that all three Acts are considered to be remedial in nature in their application and operation for veterans and their families, and their remedial nature flows from these beneficial provisions.

It is noted that DRCA is silent on the matter of beneficial provisions.
That deficiency of silence in a material particular is considered on its face, to be a fundamental flaw in ensuring equality of the application of beneficial provisions across all three Acts. As such, it is a deficiency that needs to be addressed in any amendment or Bill drafting exercise.

2 The Beneficial Nature Of The Legislation

The nature of such legislation is in the Corporation's view, quite plain.
It is beneficial in nature and its application and should be construed beneficially in favour of the veteran as held in *Whiteman*[35]. The Court in *Whiteman* (supra) citing from *Starcevich* and *Hawkins,* held:

> *"the legislation should…be given a reasonably liberal interpretation; it has often been pointed out that it is a matter of great public importance to provide adequately for incapacitated ex-servicemen."*

It is contended that, consistent with the Common Las decisions cited, the provisions of all three Acts should be so construed and *"should be given a liberal interpretation"* as held in *Starcevich*[36].

The decision of the Federal Court in *Tracy*[37], held that *"…the Act is to be construed "to give the fullest relief which the fair meaning of its language will allow"*

In the second appeal in *Tracy*[38], the Full Federal Court followed the decision in *Hawkins* and other authorities that a legislative provision *"and in particular this legislation, should be construed generously".*

The legislation currently in force is seen by many veterans and their families as not being so construed. It is common ground that the manifest failure to construe the legislation beneficially by Departmental Delegates, is identified as major driver of stress and anger amongst all veterans, regardless of the nature of service.

There is a binding duty reinforced by the Common Law on the Commonwealth as represented by its agent DVA and its Delegates, not to put too narrow a construction on the beneficial provisions, so as to deprive the veteran to an entitlement under the Act (*Tracy supra*). The primary decision-makers are still being perceived as applying too narrow a construction in respect of veterans' circumstances and denying them procedural fairness.

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[35] *Whiteman* v *Secretary Dept of Veterans' Affairs* (1996) per Madgwick J, 43 ALD 225 at 232-233. *Starcevich v Repatriation Commission* (1987) 76 ALR at 454; 18 FCR 221 at 225 followed; *Repatriation Commission v Hawkins* (1993) 117 ALR 225 at 231;30 ALD 51 at 56 followed)

[36] *Starcevich v Repatriation Commission* (1987) 14 ALD 162, per Fox J

[37] *Tracy v Repatriation Commission (1999) 57 ALD 403 per Lee J. (Bull v Attorney-General (NSW)* (1917) 17 CLR 370 per Isaacs J at 384 followed; *Holmes v Permanent Trustee Co of NSW Ltd* (1932) 47 CLR 113 per Rich J at 119 followed).

[38] *Tracy v Repatriation Commission* [2000] FCA 779 (9 June 2000) per Burchett, Sundberg and Hely JJ.

Any harmonsing exercise or for that matter, drafting of an Omnibus Bill (which is the preferred option) must, in all the circumstances, have regard to the judicial approach to beneficial legislation, its remedial effect and equitable application by Delegates of these legislative and Common Law principles.

A failure by Delegates as the Primary Decision-makers, to have regard to the beneficial applicants of all three Acts and considerable persuasive authority, connotes lazy decision-making leading to an abuse of process and a denial of natural justice.

Recommendation 16
That the Commission endorse and support a reommendation to Government that drafting of an Omnibus Bill be undertaken with a brief to incorporate all beneficial provisions from all current Acts into one draft Bill and that such an exercise be undertaken in consultation with the ex-service community.

ISSUE No 2- GARP (M)

Medical Impairment

The provisions of the DVA Guide to the Assessment of Rates of Veterans' Pensions 5th edition (GARP 5) has been cross-vested to MRCA under the guise of GARP(M).

The ratings for medical impairment are contained in GARP 5 and apply to all Disability Pensions up to and including 100% of the General Rate (GR) and the relevant equivalent in GARP 5 (M) for MRCA medical impairment assessments.

The premise for GR pensions is that a veteran's pensionability is assessed on the degree of medical impairment and Lifestyle Effects which assists mathematically in determining the level of pension up to 100% of the General Rate of pension..

The Permanent Impairment for Compensation Tables at Chapter 23 in GARP 5(M) for MRCA claims in respect of impairment assessments for compensation payments, are calculated to three decimal places and operate to reduce by mathematics, the impairment rating for calculation of a veteran's compensation sum.

This in effect, operates to place a cash value on a veteran's service and sacrifice to the nation and then reduces that value by applying these Tables. That further cheapens a veteran's service and sacrifice in respect of the injury, illness or disease suffered by a veteran as a consequence of his or her service to the nation.

The deliberate derating of a claimant's entitlement to an equitable compensation sum by a set of mathematical values such as this, is considered on any level to be the most egregious application of legislation designed to deny benefits to persons for whom the legislation was intended to benefit. That is unconscionable and indefensible.

It is not an exaggeration to contend that the application of such a policy to use a set of mathematical tables so designed, operates to rob veterans of their legitimate entitlement to equitable compensation payments.

In developing an Omnibus Bill[39] it is the Corporation's stated position that the entire GARP 5 (M) should not be vested in any rewrite as it is considered to operate to the advantage of the Commonwealth and to the detriment of the veteran. The use of this particular process makes it demonstrably clear that by applying this Guide, the Commonwealth as represented by DVA, is not acting as an honest broker.

This contention finds support from Creyke and Sutherland[40] who wrote that s.67(2) in MRCA requires the Commonwealth to use two tables that are not used for VEA veterans under GARP 5.

The major difference in this respect is that GARP 5 (M) is used to calculate the amount of compensation to be determined and paid in the following categories of service:

> *Warlike and non-warlike service as distinct from peacetime service, because different compensation factors will apply for the same impairment rating."*[41].

The fact these Tables are used to calculate payment of compensation eligibility in the case of for example, a veteran who suffers prolapsed discs at L4 and L5 in peacetime and another veteran who suffers precisely the same injury on operational service, can be assessed for an identical injury incurred in different service category circumstances, defies comprehension.

The Apportionment Tables in GARP 5(M) maintain to a certain degree, the numerical values calculated in the same Tables in GARP 5. Similarly, the Combined Values Charts in both versions of GARP are the same.

A difficulty arises however in the application of the apportionment of permanent impairment to calculate payment of compensation under GARP 5(M), a factor which does not apply to GARP 5.

The calculations in **Tables 23.1 and 23.2**[42] in GARP 5(M) clearly show in the shaded areas, a clear and deliberate attempt to keep a veteran's permanent impairment rating required to calculate payments, away from the higher and more financially beneficial numerical values which would if applied beneficially, in a non-discriminating and non-punitive manner, allow for a grant of more equitable compensation payments for permanent impairment. A copy of the Tables is at **Attachment D**.

The use of **Tables 23.1 and 23.2** are oppressive and manifestly unjust.
They act as a fetter to equitable decision-making and place veterans in a situation where litigating through the appeals process and its adverse consequences on their health, is the only option to consider.

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[39] A suggested title for any new Omnibus Act could be the ***Veterans' and Compensation Act 2018*** (VECA). It is important that the word **'Veterans'** features in the title.
[40] Creyke, R., and Sutherland, P., ***Veterans' Entitlements and Military Compensation Law*** 3rd edn, 2016, Federation Press, Leichhardt NSW, 870pp.
[41] Above, n.40, at p.626.
[42] **GARP 5 (M) Chapter 23 Calculating Permanent Impairment Compensation** pp. 224-227

The use of these Tables as opposed to those in GARP 5 creates a class of haves and have-nots, and is clear on the facts that this is a deliberately created uneven playing field for veterans, and is many ways suggestive of a discriminatory practice in applying three different tests in the example above, for the same injury.

The perception by veterans and ESOs alike that the deck is stacked against a veteran, finds significant credence in examining the use of this iniquitous and egregious set of money-saving Tables.

Recommendation 17
That the Commission endorse and recommend that GARP V in its application to MRCA 2004 be repealed an that GARP 5 be cross-vested in its application to the relevant provisions of MRCA 2004.

Collateral damage

The collateral damage to veterans in having to negotiate this torturous MRCA compensation process including vide GARP 5 (M) is well settled.

Nothing in the application of **Tables 23.1 and 23.2** for MRCA claimants remotely meets the Commonwealth's duty to apply an Act beneficially or in a remedial manner as cited in case law in this submission. The process is complex and flawed and in some cases, tragically and fatally flawed.

This was contended by ADSO in its appearance before the Senate Standing Committee into Veterans Suicide[43] in which the following point by the ADSO National Spokesman was made:

> *They have to be dealt with at the root cause, and the root cause is the three compensation systems and the complexity that is there. We desperately need a simple, singular, easy-to-claim-for, beneficial, fair compensation system for our ADF personnel.*

The above contentions by the Corporation and ADSO were further emphasised in the appearance again by the Corporation and ADSO before the Senate Standing Committee inquiring into DRCA[44], viz

> *There is a whole range of components that are causing veteran suicides and the suicides of serving people. The complexity of the whole process and the barriers they face, particularly for those who are most vulnerable and least able to cope with the bureaucratic processes, simply adds to the stress and the tension. When you think about it, it becomes too much when these are heaped on the veteran who is already suffering, often from some sort of mental issue. I hear that there have now been 15 suicides this year, and this has got to stop. We are all getting it wrong. It is about time we focused on the veteran and not on the processes or the niceties of structures and legislation. We need to focus on the individual veterans.*

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[43] Hansard Senate Inquiry into Veterans' Suicides, 18 November, 2016,Mc Laughlin/Jamison, per David Jamison at p. 29.
[44] Hansard, Senate Inquiry into DRCA, 15 March, 2017, Mc Laughlin/Jamison, per David Jamison, at p. 12.

In its report into veterans' suicides, the Senate Standing Committee noted[45]:

> *3.98 A large number of submissions from veterans focussed on the issues confronting them due to the complex legislative framework of veterans' entitlements and its administration by DVA. Problems with the compensation claims process were often perceived as key stressors and contributing factors to suicide by some veterans. Further consideration of improvements in these areas will be addressed in the next chapters. However, in the view of the committee, there is a lack of research in this specific area. In particular, the impact of DVA claim assessment processes as a stressor on veterans and their families. On the evidence received, the committee considers this topic merits an independent investigation. The results of this study should be used to improve and restructure DVA*

The Combined Values Chart at Chapter 18 in GARP 5[46] relating to VEA matters, is constructed to enable the use of whole numbers with the capacity to round up or down as required. It is more easily followed and understood by veterans practitioners.

The most notable aspect of Chapter 18 is that it does not discriminate against veterans as to the nature of their service. It applies equally to operational, peacekeeping and eligible Defence service alike, without fear or favour.

Similarly, the application of the Comcare Permanent Impairment Guide (PIG) should be ceased and substituted by GARP 5 to apply to DRCA, completing a whole-of-package approach, by using one set only of easily understood and applied impairment criteria and Tables.

While also created to derate medical impairment arithmetically when calculating combined values, GARP 5 is still considered to be a more effective and less discriminatory tool compared to its cousin in GARP 5 (M) due to the lack of permanent impairment tables.

The contention is that any harmonising exercise must include the insertion and application of GARP 5 *in toto* across MRCA and DRCA.

Similarly, the application of GARP 5 *in toto* in an Omnibus Bill should apply across all three Acts to ensure harmony and consistency of application to all veterans, and in the decision-making process by Departmental Delegates.

The complexity of having to work through three differing compensation regimes and its cascading effect on a veteran's health, is profound and well-documented.

It is aggravated by factors such as the manifestly unfair and discriminatory application of GARP 5(M) and in particular, Tables 23.1 and 23.2 as discussed.

The alleviation of some of the stress and burden on a veteran by repealing all three Acts and creating a single Omnibus Act will greatly enhance reduction of stress and anger amongst vulnerable veterans with complex needs, and their families.

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[45] Above, n. 23, August 2016, at p.42

[46] GARP 5, Chapter 18, Combined Values Chart, pp.231-236.

The pursuit of this objective by the Corporation in conjunction with ADSO has been acknowledged by the Senate[47]; viz

> *CHAIR: .... There is a minute or so left to me. You make the point:*
> *The complexity of the military rehabilitation and compensation structure is such that the Alliance will continue to advocate vigorously for the creation of a single purpose veteran-specific legislation ...*

The contentions expressed thus far in this submission , put the need for major legislative reform to enable DVA to support veterans and their families smoothly, seamlessly and in a manner consistent with its business model, beyond doubt.

ISSUE 3 - OTHER ISSUES RELATED TO BUSINESS SYSTEMS AND PROCESSES

Training of Delegates

The delivery of services to veterans and their families is the bedrock of the Repatriation Commission, MRCC and SRCC as administered by DVA.
The standard and level of customer service to veterans is politically sensitive for any number of reasons, including the approach by DVA staff in their interactions with veterans, their families and veterans' practitioners.

DVA's comment at bottom of page 28 in its Lighthouse Report:

> *To create trust, DVA needs to consider changes to its language, processes and behaviour.*

speaks volumes for the position it now finds itself in.

A significant amount of rebuilding lost trust and respect right across the board has commenced and needs to continue. This is particularly so in respect of its corporate and cultural attitude towards veterans and their families. VCR needs to continue to reverse the frank and commendably honest admissions made by DVA

In order to ensure effective and efficient processes are in place and are being implemented to the standard required by law and by the veteran community, a greater focus needs to be made on staff training. The Corporation considers this to be a major organisational priority. In its Report, the PSC noted:

> *In addition, comprehensive induction training needs to be developed, including DVA's strategy and service model, and be consistently implemented across all locations.*[48]

Delegates (Primary Decision-makers) are the glue that hold the fabric of the Repatriation Commission as administered by DVA, together.
As such, they should be trained to a level of competence and professionalism that all stakeholders expect, in order to enhance the highest level of service delivery.

Training should at a minimum include, but not be limited to:

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47 Above, n.44, Senator Back, at p.13.
48 Above, n.32, at p.22.

- Two weeks theory including the law and the beneficial intent of the legislation and introduction to SOPs;

- One week on-the-job practical exposure;

- One week continuation training followed by a 12-month period of being mentored; and

- The 12-month period should include additional competencies to be completed online.

- Confirmation of assimilation of training must include the use of a quarterly Professional Development Appraisal system (PDA) which is overseen and managed by a Senior Determining Officer at EL1 level.

All training must have as its underlining ethos, the culture of care, gratitude and respect for serving and former Defence personnel and their families, in respect of their service and sacrifice to the nation.

Similarly, consideration should be given to introducing a permanent ongoing training regime whereby specific competencies could be completed by staff online.

A similar training programme is in operation in the AFP for sworn members where certain training modules, operational and non-operational must be completed online.

Failure to do so reflects adversely on a member's Professional Development Assessment (PDA).

The involvement of ESO practitioners as an introduction to what veterans and their families endure and what veterans expect is critical to improving an appreciation of the needs of veterans and improving the culture of support to veterans, must form part of the theory phase.

Successful completion of the 12-month phase should result in a certificate of competency being awarded.

An additional measure is the use of Veterans' Practitioners in workshops.
The development of workshops in which both Delegates and Advocates can exchange experiences and workshop possible solutions to problems encountered should be considered as an aid to improving both cultural change and enhancing relations between the ex-service and Defence communities and DVA.

Cultural awareness

An addition to the training regime proposed above, relates to the inclusion of empathetic cultural awareness in respect of the unique nature of military service and what that service generates in terms of veterans issues. It must also include modules addressing telephone interaction with veterans and their dependants.

The Army adage, *"Dress is attitude and attitude is 60% of the pass mark,"* has particular application in this instance. Dress can be substituted by **telephone manner and attitude** toward veterans and their dependants.

In its report into suicide of veterans[49], by the Senate Foreign Affairs, Defence and Trade References Committee noted the PSC's observations in respect of culture and training within DVA:

> *The ASPC review team concluded that DVA faced 'significant challenges to enhance its capability and mobilise its workforce so it can transform into an efficient and effective modern public sector organisation meeting government and community expectations'. It identified three key areas of 'needing urgent attention' for DVA to transform:*
> *• operating structure, governance arrangements and information and communications technology (ICT);*
> *• **approach to clients, culture and staffing**; and*
> *• efforts to formulate effective strategy, establish priorities and use feedback.*[50]
>
> (Writer's bold emphasis added)

It is not a good look for DVA's attempts to improve its Business Model when the widow of a TPI veterans is contacted by a junior Departmental officer and informed within three days of the veteran's death, *"you don't have an entitlement to a Defence Widow's pension."*

The distress and confusion created results in a negative perception of DVA as being anything but a veteran-centric organisation. The consequences of such a call can result in attempts to improve Departmental culture being vapourised by a single telephone call.

The Corporation contends that in order to strengthen and improve service delivery and support services, that further emphasis be placed on staff being made aware of the requirement to act with courtesy and sensitivity to the rights, duties and aspirations of veterans and their dependants.

The Senate Inquiry into veteran suicides made a significant number of recommendations which also flowed for the suicide of Jesse Bird[51], have equal application in terms of staff sensitivity and empathy to a veteran or veteran's widow's needs and need to be further reinforced.

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[49] Above, n.23.
[50] Above, n.23, para 5.13, at p.74.
[51] Above, n. 23, paras 3.44 and 3.45 at p.25.

To do less is to traduce all that is being attempted. ADSO contends there is still a degree of work in ADSO's view to be done in this staff training and development field.

Instances such as this impede DVA's capacity to provide ongoing support and health service delivery efficiently compassionately and effectively to veterans and their dependents.

Given the increased public and political sensitivity surrounding the Veterans' Affairs portfolio and the increased use of social media, it is critically important that appropriate training in staff/veteran/widow customer relations and interaction, be considered a matter of the highest priority.

Recommendation 18
That the Commission endorse and support a recommendation that a formal skills-based induction and continuation training regime be put in place for DVA staff.

ISSUE 4 - LEGISLATIVE ISSUES AFFECTING SERVICE DELIVERY, COMPENSATION AND VETERANS' SUPPORT

DRCA Reconsiderations – Caesar Judging Caesar

It is acknowledged that as a clone of the SRC Act 1988, the DRCA 1988 will retain the appeal processes available to public employees (and previously all ADF members) vide Part VI ss.60-67, namely through to the AAT after a decision by a **determining authority** as defined in s.60(1).

It is acknowledged that the VRB dismissal provisions do not in these circumstances, apply to an appeal under DRCA to the AAT given the *Administrative Appeals Tribunal Act 1975* (Cth) will have jurisdiction over any appeal.

However, it is also contended that the merits review process other than a determining authority (IRO) is required to maintain equity and **complete impartiality** in reviewing and determining an application for reconsideration.

The process via the VEA is to have an automatic review vide s.31 noting that a s.31 Reviewing Officer has the discretion absolutely, to decline to intervene.

Consequently, a s.31 refusal or affirmation of a primary decision, can be appealed to the VRB and from there if required, to the AAT.

Under DRCA, the process on refusal of a claim, is for a veteran to seek a reconsideration by a determining authority and if necessary, to then proceed to the AAT with the added burden of seeking legal representation and being subject to an adversarial process. DRCA defines determining authority vide s.60(1) thus:

> "***determining authority**, in relation to a determination, means the person who made the determination."*

The difficulty with that determination lies in the fact there is no statutory separation of a primary decision being referred to a person other than the same primary decision-maker.

Significantly, the DRC Regulations are completely silent on giving effect to a reviewing authority to examine a request for reconsideration of a primary decision. That is an any level, a complete abrogation of a decision-maker's duty to act impartially in a matter before them, in this instance, for a second time

It is tantamount to Caesar judging Caesar, and comprehensively compromises that impartiality.

For these reasons alone, it is critical that in order to maintain a hrmonised approach across three Acts to enhance equity for veterans throughout, the addition of provisions vesting a single-path appeals process from DRCA to the VRB is needed.

Recommendation 19
That the Committee endorse and support a recommendation that DRCA be amended to include a provision in the Act similar to that in s.31 VEA, and that any such provision also be included in any future Omnibus drafting.

MRCA 2004

The MRCA is an amalgam of a number of Acts. It has on any view since its commencement, been an unmitigated disaster

It is an Act that deems veterans receiving the Special Rate Disability Pension (SRDP) to be double-dipping and offsets a SRDP by 60% in circumstances where a SRDP veteran is in receipt of superannuation. The unconscionability of this action speaks for itself. This was made abundantly clear to the Senate Inquiry into veterans suicides; viz

> *It is a bad act. It is bad law. It is a cheap and nasty cut and paste of the VEA, the SRC and some working men's compensation thrown in. The act needs repealing. It needs a complete rebuild or a total repeal. It is operating to defeat the claim and to create unnecessary and unwarranted tension and distress amongst claimants themselves. It is bad law, pure and simple.*[52]

The Act has no redeeming features other than the fact it has beneficial provisions similar to those in s.119 VEA 1986, and the families of deceased veterans are better off financially under MRCA than they are under VEA. Funeral benefits under MRCA are superior to those under VEA, namely $11470 under MRCA and DRCA and a mere $2000 under VEA.

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[52] Senate Foreign Affairs, Defence and Trade References Committee Inquiry into suicides by veterans and ex-service personnel, 18 November 2016, Hansard, Mc Laughlin/Jamison, per Noel Mc Laughlin, at p. 21.

The fact funeral benefits under VEA have not been increased in the 32 years the Act has been in operation stands as an indefensible and deliberate attempt by the Federal Government to save money. The adage about death being the great leveller, does not stand up with the parsimonious approach by Government to VEA-based funeral support. Even with bereavement payment added to that of a TPI-based funeral benefit which tops out at approximately $7,000 dollars, the VEA funeral benefit is still well short of the MRCA benefit.

Notwithstanding these very few positives, MRCA 2004 as it currently operates, stands as a blot on the veterans' entitlements landscape and no amount of harmonsing will undo the intent of that Act, namely to save the Commonwealth money at the expense of veterans and their families, with sometimes tragic results for veterans.

This Act and its catastrophic effect on veterans has been the subject of intense examination in no less than three Senate Inquiries alone. It is now time for the Commonwealth to draft a new Omnibus Bill incorporating all beneficial provisions from all three Acts and repeal all three Acts as a matter of faith with the veteran community.

It is contended that the application of legislation which acts in a financially parsimonious and crushingly cold and bureaucratic manner, is an abrogation by the Commonwealth of its duty to not put a cash value on the service and sacrifice of those who serve the nation.

The continued application of MRCA operates to offend the Veteran-centric Reform (VCR) process currently under way by DVA, as part of Project Lighthouse.

Unless action is taken to rid the veteran and ADF community of this Act, the VCR process will be for naught and DVA will continue to struggle, as will veterans and their families.

Accrual of Rights

If any example of a convoluted and clunky process and be exemplified to demonstrate the failure of DVA to act within the threshold questions, it is in this area of accrual of veterans' rights in respect of the SOPs. This particular issue is also emblematic of the Government as presented by its agent, DVA, failing manifestly in its duty to act as an honest broker.

This facet of business delivery makes it demonstrably clear that regardless of improvements discussed in the submission there are areas in which improvement or reform is seriously lacking. In Re: *Petersen and MRCC [2008[53]]* the Tribunal noted:

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[53] Re: *Petersen and MRCC* [2008], AATA 1145, (19 December 2008) at [16] online at www.austlli.edu.au [accessed 19/5/18].
See also Creyke R, and Sutherland, P., *Veterans' Entitlements Law* 2016, 3rd Edn, Federation Press, Leichhardt NSW, at p. 343.

> *....there is an important difference between the VE Act and the MRC Act when it comes to determining which SoP should be applied, where the SoPs which were in force at the time the claim was made have subsequently been repealed and replaced by the current SoP. While under the VE Act, the Full Court of the Federal Court in Repatriation Commission v Gorton [2001] FCA 1194; (2001) 110 FCR 321 recognised rights which may have accrued under repealed SoPs thus resulting in a sequential approach when considering the SoPs, s 341 of the MRC Act mandates that where there exists a current SoP, it is the current SoP which must be applied. Further, s 341(3), inserted for the avoidance of doubt, declares that* ***no rights, privileges, obligations or liabilities are acquired or accrued*** *which would permit the MRC or the Tribunal, when making a decision on reconsideration or review, to apply any SoP that is no longer in force.*

In *Gorton (supra)* their Honours referred to *Keeley's*[54] case (discussed and applied) where the Federal Court per Lee and Cooper JJ, addressed the provisions of the *Acts Interpretation Act* (1901) (Cth) in which the Court addressed s.50; viz

> *"Where an Act confers power to make regulations, the repeal of any regulations which have been made under the Act shall not, unless the contrary intention appears in the Act or regulations effecting the repeal:*
>
> *(a) affect any right, privilege, obligation or liability acquired, accrued or incurred under any regulations so repealed;*

The provision of Section 341(3) MRCA offends the relevant provision of the *Acts Interpretation Act* 1901. The provisions of s.341(3) in effect acted to completely destroy any legitimate entitlement of a veteran to statutory relief through the beneficial application of an accrued right available to a veteran under the VEA 1986.

The insertion of this provision in MRCA is to be seen for what it represented, namely another attempt at cost-cutting at the expense of veterans' rights and entitlements.

The implications for MRCA veterans are dire, forcing them to appeal against an adverse decision based on a SOP under MRCA 2004. They find themselves in a position where they are denied a legitimate access to a benefit under veterans' entitlements under law, that is extended to a class of veterans under a different Act.

This is on any view, an unconscionable and indefensible application of a bad policy based on bad law as demonstrated by section 341(3).

The failure by the Government to not introduce harmonising provisions to cross-vest this very important entitlement – namely the right to access the statutory comfort of a right and a privilege available to other veterans, gives rise to the not unreasonable inference that the Government is not complying with its duty to act as an honest broker or model litigant.

It is the Corporation's contention that, consistent with procedural fairness, amendments to cross-vest the accrual of rights of superseded SOPs should as a matter of priority, be enacted to allow coverage for appellants under MRCA.

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[54] *Repatriation Commission v Keeley* [2000] FCA 532;(2000) 98 FCR 108 at [20] online at www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2001/1194.html [accessed 19/5/18].

Additionally, should the DRCA 1988 be harmonised to have SOPs apply to that Act similarly a grant of access to accrued rights should also be applied to that Act.

Should a new Omnibus Bill be drafted, accrual rights provisions must as a matter of course, form part of that legislation. The failure by Government to undertake this remedial action will contribute to adversely affecting DVA's capacity to meet the tests set in both threshold questions.

The Corporation notes that legislative change can be cost-neutral or incurs a cost.

It is pertinent to note the Department's budget of $11.4 billion this FY covers 300,000 veterans and widows. The budget is not capped but is based on need in case Australia went to war again.[55]

Part of that uncapped Budget should involve forward planning to ensure that legislation to enhance have business systems and processes in place for effective and efficient service delivery.

The Corporation considers it vitally important that that DVA should continually plan for war on a legislative basis to ensure the practical application of support to veterans returning from future conflicts and widows, are in place. If not, DVA runs the risk of being caught unawares as was the US Veterans' Administration, Post-Vietnam.

It follows that, legislative reform will also enable DVA to manage compensation, support and health service delivery more effectively to the benefit of its stakeholder base and staff who deliver these services. Without that legislative reform and development, the system within DVA will continue to remain clunky, complex and adversarial, rather than as an efficient and effective whole. Staff will be hampered through ineffective legislative authority to apply the outcomes of the VCR process to actual execution of these processes in their business model.

The threshold questions posed by the Commission clearly imply that in order to meet them, continual legislative reform is a major plank of Departmental war planning. the legislative reforms currently being undertaken by DVA, ADSO contends the Department and Government need to go further in the veterans' entitlements space in terms of Omnibus legislation, harmonising beneficial provisions and accrued rights.

To do any less is to fail the veteran community.

Recommendation 20
That the Committee endorse and support a recommendation that MRCA be amended by repealing the provisions of s. 341(3) and that any such provision also be excluded from any future Omnibus drafting.

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55 Statement by senior DVA staff, DVA Legislation Workshop 9 November, 2018.

Recommendation 21
That the Committee endorse and support a recommendation that the generous MRCA funeral benefits be extended to VEA 1986 and that funeral benefits be adjusted in line with twice-yearly CPI increases.

ISSUE 5 – DRCA BENEFICIAL PROVISIONS

The recent enactment of ADF-specific compensation legislation is welcomed and this apples particularly to the Henry VIII Clause[56] enshrined in s.121(B); viz

The inclusion of this section is significant as it provides ultimate protection to members covered by DRCA. The provision in the Act imposes what can only be described as a reverse disadvantage on the Commonwealth.

In essence, the provisions of this section make it possible for the Minister to make regulations modifying the Act, reversing by modification, the primary legislation (DRCA) having supremacy over the Regulations.

The section will enable the Minister to make a Regulation in circumstances such as a Federal Court decision which reads down an appeal or part of the Act that would act to the detriment of all ADF members covered by this Act; viz

> ***121B Regulations modifying the operation of this Act***
>
> *(1) The regulations may modify the operation of this Act.*
>
> *(2) Before the Governor-General makes regulations under subsection (1), the Minister must be satisfied that it is necessary or desirable to make the regulations to ensure that no person (except the Commonwealth) is disadvantaged by the enactment of this Act.*

As it stands, the Corporation's contention is that a deficiency exists in a material particular through the absence of the same ameliorating DRCA provisions in the VEA and MRCA. It should, in the interests of equity and natural justice, apply to all veterans across the entire legislative landscape governing veterans' matters and not just one Act.

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[56] A Henry VIII clause is the term given to a provision in a primary Act which gives the power for secondary legislation (regulations) to include provisions which amend, repeal or are inconsistent with the primary legislation. The effect of a Henry VIII clause is that whoever who makes the regulations has been delegated legislative power by the Parliament. In other words, the executive arm of government would have the power to make regulations which can modify the application of the primary statute. The original Henry VIII clause was contained in the *Statute of Sewers* in 1531, which gave the Commissioner of Sewers powers to make rules which had the force of legislation (legislative power), powers to impose taxation rates and powers to impose penalties for non-compliance. A later *Statute of Proclamations* (1539) allowed the King to issue proclamations which had the force of an Act of Parliament. Both these were passed during the time of Henry VIII. Online at http://www.ruleoflaw.org.au/wp-content/uploads/2012/08/Reports-and-Pres-4-11-Henry-VIII-Clauses-the-rule-of-law1.pdf [Accessed 20/10/17].

The statutory first-aid that is able to be performed under this section by the Minister in exercising a power and function vide s.121B is being denied to claimants under the other two Acts. This is unfair and operates to create an imbalance in the application of natural justice. It does in many ways deny procedural fairness to persons subject to processes not under DRCA.

The Corporation's contention is that the decision of the Full Federal Court in *Gorton* flowing from *Keeley* as discussed in this submission, clearly supports the contention that s.341(3) is bad law. The correction of that bad law provision, would be but one example of an accrued right situation that could have been cured if mirrored provisions to s.121B in DRCA, were cross-vested in or inserted in VEA and MRCA.

The Corporation gave evidence to the Senate Standing Committee inquiring into DRCA on 15 March 2017[57]. A copy of the Hansard evidence adduced, is at **Attachment E.**

The Corporation's contention is that harmonsing this generous provision across all three Acts should be undertaken as a matter of priority and should also be incorporated into any Omnibus draft.

Recommendation 22
That the Committee endorse and support a recommendation that the provisions of s. 121B DRCA be incorporated into any legislative amendments to VEA and MRCA and into any future draft Omnibus Bill.

ISSUE 6 – LEGAL AID FOR VETERANS

The current policy for granting legal aid to veterans applies only those veterans who have rendered operational service. Legal aid for veterans who have rendered eligible Defence service only, is at member's expense.

The funding for legal aid to assist veterans prosecuting their appeal from the VRB to the AAT or to a Court of superior jurisdiction are come within the budgetary purview of the Commonwealth Attorney General's Department.

Veterans appeal funding is contained within that budged and is not separated from the main legal aid budget.

It follows that, the allocation of funding for a veteran's appeal is subject to the vagaries of competing legal aid interests. This is considered to be an unacceptable situation and an one which actually militates against veterans prosecuting an appeal to seek natural justice, with the risk of limited or no funding, causing a veteran to vacate their appeal.

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[57] Foreign Affairs, Defence And Trade Legislation Committee Inquiry into Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Bill 2016, 15 March 2017, pp . 10-11, per Noel Mc Laughlin. McLaughlin/Jamison appearing.

According to Clause 4.3 of the ***Australian Pro Bono Manual***, Clause 4.3 Legal Aid[58] a series of tests - Merit and Means Tests, must be applied in Commonwealth matters; viz

> ***The merits test***
> *Matters that fall within the guidelines for grants of legal assistance are also likely to be subject to a merits test. The test to be applied in Commonwealth matters has three elements:*
>
> - *the chances of the proposed legal proceedings being more likely than not to succeed; and*
> - *the 'ordinarily prudent self-funding litigant' would risk his or her own funds in undertaking the proceedings proposed; and*
> - *the costs involved in providing legal assistance are warranted by the likely benefit to the applicant, or to the community.*
>
> *Every commission has its own test that it applies to matters arising under state law. These tests are similar in principle to the Commonwealth test.*
> *Note, however, that in limited circumstances certain types of applicants or certain types of matters may not be required to pass a merits test*
>
> ***The means test***
> *Every commission applies a means test. In limited circumstances and depending on the jurisdiction, certain applicants and types of matters will not be subject to a means test.*
>
> *The means test will assess both the income and assets of the applicant. The income and assets of any person financially associated with the applicant will also be assessed (for example: a spouse, parent or trust providing financial support to the applicant).*
>
> *In assessing income, the commissions may allow for certain deductions, such as deductions for rent, dependants and child-care costs. Similarly, some assets may be fully or partially exempted from the commission's assets assessment, such as the full or partial value of the applicant's house, car, or tools of trade.*

The fact each legal aid commission has its own tests suggests a lack of coordination among State and Territory jurisdictions. This is seen to be an inconsistent approach in terms of veterans' matters and is considered to be on any level, unacceptable.

The Corporation's stated position is that legal aid funding for veterans who have rendered operational service should be segregated from mainstream legal aid funding used to assist appellants in matters related to prosecuting appeals for social security recipients which according to Clause 4.3, form the majority of appellants.

This imbalance in clients and a subsequent weighting of funding toward the majority client base is considered to be manifestly unjust and hinders attempts by veterans to seek natural justice. It is considered to be a slap in the face to those who have literally put their lives on the line for the nation.

The nexus between legal aid funding and the provisions of this TOR lie in the fact veterans and veterans' widows are up against a system they perceive as being loaded against them.

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[58] Online at http://www.nationalprobono.org.au/probonomanual/page.asp?sid=4&pid=9 [accessed 20/5/18]

An unsuccessful appeal to the VRB which is prosecuted at AAT level in which legal aid funds may be unavailable, insufficient or fail the Merits Test, places an appellant at a significant disadvantage, all due to a decision made under the DVA assessment and determining system enshrined in VEA, MRCA and DRCA.

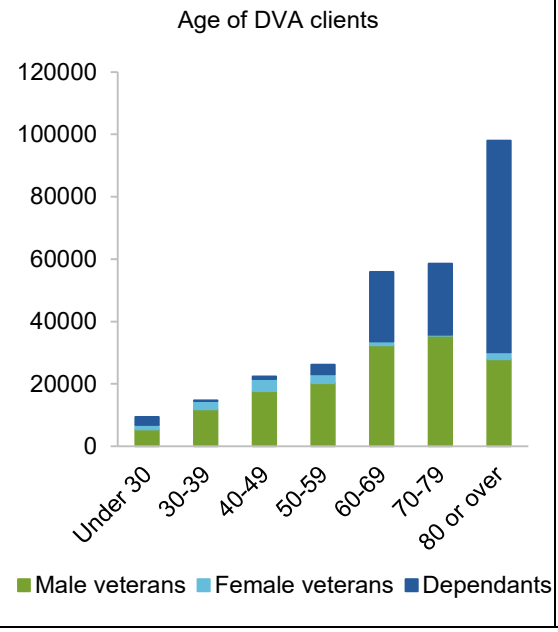
This leaves veterans or veterans' widows with only two choices in this instance, to walk away and concede defeat or to commence from scratch with a reconstructed claim with the risk of a further refusal of claim. It is a vicious circle and one the Corporation contends is intertwined with legal aid funding. The Corporation notes the Commission's graph[59] at Table 1, showing veteran and veterans' dependants demographics by State, in which the following figures[60] provided from unpublished DVA data indicate:

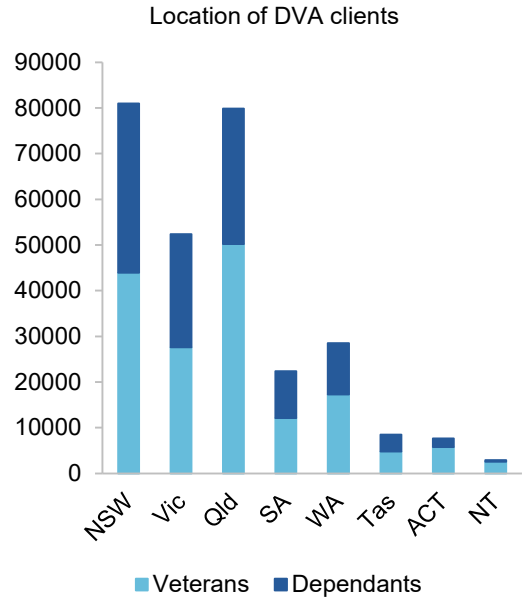
Box 2 Some facts about Australian veterans and DVA clients

Little is known about Australia's total veteran population. According to DVA, there were about 317 000 living veterans at the end of June 2017 and, of these, about:

- 25 000 served in the Second World War
- 43 000 served in the Vietnam War
- 58 000 served in post-1999 conflicts
- 147 000 have peacetime service between 1972 and 1994 (DVA 2017a).

However, DVA's estimate does not include all veterans with peacetime service[a]. The RSL (2016) said its best estimate is that there are between 300 000 and 500 000 living veterans in Australia.
The below figures highlight some of the characteristics of DVA's clients (as at December 2017) — DVA has about 165 000 veterans and 130 000 dependants as clients.





[a] The estimates do not include veterans with post-1994 service who have not seen operational service. Therefore it is not a complete estimate of living veterans

Source: Productivity Commission analysis based on unpublished DVA data.

Table 1: Source: Productivity Commission Issues Paper Box 2 at .p.5 [accessed 21/5/18].

[59] Above, n.3. at p.5
[60] Above, n.3, Box 2, at p.5.

The demographics cited could in the Corporation's view, be used as a form of baseline from which to create a veterans' legal aid funding model.

The figures cited in the graph in Table 1 would quite reasonably include veterans who had appealed to the AAT and who required legal aid. It would require additional data from the VRB and/or AAT as to State/Territory appellant demographics, to provide a better picture of numbers per jurisdiction from which to calculate a separate veterans' legal aid funding pool on a *pro-rata* basis based on veteran population.

The Corporation contends a three-year assessment period of previous appeals would provide a reasonable picture legal aid funding allocated to veterans' appeals, which could then be used as a basis for a separate legal aid funding pool.

It follows that, where a shortfall in legal aid funding per jurisdiction may occur (due to complexity and level of appeal i.e. Federal Court), sufficient supplementary funding must as a matter of course, be made available from the Commonwealth Attorney-General's Department budget to offset any shortfall.

The Corporation does not dispute the intent by Government to ensure adequate funding of public monies into legal aid is carefully apportioned, however maintains the view veterans and veterans' widows access to legal aid funding should be allocated to a separate legal aid fund.

Recommendation 23
That the Committee endorse and support a recommendation to Government that the Attorney-General's Department and DVA, give full consideration to examining and developing a veterans' and veterans' widow-specific legal aid funding model, to be apportioned to each state legal aid commission on a per-capita basis having regard to the DVA jurisdictional demographics.

Recommendation 24
That the Committee endorse and support a recommendation to Government that legal aid funding for veterans and veterans' widows, be separated from mainstream legal aid funding.

ISSUE 7 – TRANSITION (DISCHARGE) FROM SERVICE

The Corporation notes the Commission's comments relating to transition from the ADF in its Issues Paper.[61] The discharge/retirement process for serving ADF members is a complete change from the rigours of a disciplined and structured military career, requiring a different organisational and management dynamic.

Discharge may be at completion of engagement, retirement, at own request or involuntary (medical, RNI etc).

Notwithstanding the category of discharge being actioned, the discharge process is on any view and on any level, a fraught process for separating members and their families.

It means a total severing of an involvement in a life in which career, rank, status, achievement pride, camaraderie and being a part of the nation's defence and security, is no longer the case. Discharged members find themselves as just another civilian with no status.

For some ADF members, separation from the Service can be a daunting and at times a traumatic experience. This occurs as a direct consequence of going from membership of an organisation that is held in high esteem, in which close binding ties in a team situation were the norm, and membership of a profession that is unique in every way, to being just another face in the crowd, bereft of camaraderie, mateship, a sense of belonging, purpose and pride in one's service. This separation from the Services has resulted at times in tragedy.

It is well settled that the duty owed to a discharged member ceases with immediate effect the date and time of discharge takes effect.

Unit commanders and the ADF no longer owe a former member any further duty of care as that is extinguished from the first moment of their discharge/retirement date of effect.

As part of its VCR process DVA has developed a website[62] to assist veterans who are transitioning from the ADF, to seek employment. The demonstration given to the Corporation on 29/5 indicates that the website will be an invaluable tool for veterans seeking employment. DVA are in regular contact with ESOs including the Australian Veterans Employment Coalition. DVA urges veterans who are who are preparing their CVs should put on the first page the term, "**I Served.**"

The Cooperation endorses that exhortation by DVA, wholeheartedly.

The issue of transition has been addressed by the Corporation in its formal submission of 13 April 2018, to the Joint Standing Committee on Foreign Affairs, Defence and

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[61] Above, n.3. at p. 17-18.

[62] https://veteransemployment.gov.au/ See also, https://www.smh.com.au/national/coalition-aims-to-help-adf-veterans-move-from-military-into-civilian-careers-20171117-gzn76z.html [accessed 30/5/18].

Trade Inquiry into matters raised in the Defence Annual Report 2016-17, undertaken by the Defence Sub-Committee, Chaired by Senator Linda Reynolds CSC.

In its submission to the Senate Sub-committee, the Corporation contended, *inter alia*:

1. The transition to civilian life of ADF members is a major activity at all levels of Defence and DVA. The coaching/mentoring role by Transition Support Centres is integral to the success of member transition.

2. It is noted that the Defence Annual Report is completely silent on the effectiveness or otherwise of transition processes.

3. This is surprising as a lack of such information operates to prevent Defence and to some extent DVA, analysing the strong and weak points of any such process. Such a lack of statistical information operates to prevent any remedial steps to be taken to rectify weaknesses and build on strengths.

4. It is the Corporation's contention that in order to enable the success or otherwise of transition to be measured, a need exists to collect the relevant data to measure that process. It follows that, a follow-up survey of discharged ADF members should be considered.

5. Any survey should not consist of forced-choice questions and should be sent to ADF member when they reach their first six months of civilian life.

6. Any such survey would be automatically computer-generated at the six-month mark.

7. Transition Handbooks will need to be amended to include survey information.

8. The information gained from the surveys may then be used by Defence and DVA to re-calibrate the transition process where needed.

9. Without such a survey, information related to measuring the effectiveness of transition in any subsequent Defence Annual Report, is of little or no consequence.

A copy of that submission is at **Attachment F.**

ISSUE 8 – MATTERS NOT SUPPORTED

The inaugural DVA Legislation Workshop in November 2017 sought information from all ESO attendees, a list of legislative reform ideas for future discussion.

The resultant responses included reform proposals the Corporation does not support. These are:

1. **Lawyers should be allowed to appear before the Veterans' Review Board.**

2. **The Veterans' Review Board should become a full costs jurisdiction for the Applicant. And a full costs jurisdiction for the Applicant in the event of a successful outcome against DVA.**

Point 1: Lawyers should be allowed to appear before the Veterans' Review Board.

1 As contended by this writer at the Workshop, the VRB is generally the Court of last resort for a veteran and the fact Lawyers are expressly prohibited from appearing at the Board is a good thing and is well settled (s.147 B VEA).

2 That was very strongly supported by the workshop participants. To even contemplate having lawyers at a 1st Tier level Tribunal, is fraught with risk and will and should be vigorously resisted. The rationale for no lawyers at the VRB is clear.

3 The Board is **inquisitorial** in nature and **not adversarial**.
By adding legal practitioners the dynamic changes to a veteran's/widow's detriment, by having lawyers arguing at ten paces and confusing the veteran. Similarly, the use of an Advocate as the Digger's Friend has in this writer's experience as a Practising Advocate, been a tremendous boon. By adding legal practitioners to appear before the Board will incur an extra cost to the veteran and potentially, the taxpayer through legal aid funding which as discussed, may not always be available. The less formal and inquisitorial nature of the VRB's operation is considered by the Corporation, to be the jewel in the merits review appeals continuum.

Point 2: The Veterans' Review Board should become a full costs jurisdiction for the Applicant. And a full costs jurisdiction for the Applicant in the event of a successful outcome against DVA.

1 To even contemplate making this Tier 1 jurisdiction full costs, defies comprehension. There is a real danger that if such a proposal was even remotely considered, the effect on veterans and veterans' widows who are appealing an adverse decision, will feel intimidated at the thought of engaging in a full-costs appeal and withdraw their appeal – notwithstanding the ADR process in place. This potentially gives effect to what can only be described as a most egregious application of cost-cutting, meaning the Commonwealth, as represented by DVA, wins again to the utter detriment of the veteran/widow.

2 Again, the spectre of legal aid funding is present. In the current climate the issue of adequate legal aid funding is hostage to reduced public spending, competing legal and budgetary priorities and efficiency dividends.

3 There is no element at all of the honest broker or mode litigant approach present, by giving this proposal even the most fleeting thought.

4 Both points 1 and 2 fail manifestly, every test of reasonableness.

ISSUE 9 - LEFT IN LIMBO - DEFENCE RESERVISTS

The involvement and value of Defence Reservists in augmenting regular AFD assets is invaluable, particularly in the context of the increased operational tempo the ADF has found itself in since INTERFET, 1999.

Defence Reservists undergo the same training as their regular ADF counterparts and are at equal risk of death, injury or mutilation by either enemy action or accidents during training activities. The VEA 1986 provides no Repatriation cover for Defence Reservists.

The MRAC Act 2004 which comprises 440 sections, contains a mere 13 references to the term ***Definition of…***and does not include a definition of Defence Reservist.

Extension of NLHC to Defence Reservists in Certain Circumstances

The Act provides for coverage of Defence reservists who undergo continuous full-time service (CFTS).

In addition to coverage for operational (CFTS) service, the Corporation was informed at the briefing that Defence Reservists after one day's service now have access to NLHC coverage where they have been involved in:

- Operational service
- Disaster relief operations - domestic or international;
- Suffer serious injury during training;
- Border Patrol duties.

CFTS Reservists also have access to DVA's NLHC coverage in certain (limited) circumstances, as discussed in this submission.

The Act does not provide for any cover for other Reservists who render standard Reserve service and who incur an injury illness or disease during Reserve commitments or the acceleration or aggravation, thereof.

The application of this policy under MRCA is considered by the Corporation to be an unacceptable lacuna in the DVA support continuum in terms of honouring and looking after those who serve the nation, albeit as full-time Regular ADF members or as CFTS or non-CFTS Reserve members.

The effect of a catastrophic injury on a Reservist on CFTS or non-CFTS is equally as real, for example, spinal trauma. The pain and physical and physical effects are the same. To deny non-CFTS Reservists equality of cover and support under MRCA is completely illogical and is in effect not only another example of Government cost-cutting infused throughout the Act at the expense of injured non-CFTS Reservists.

It is not an exaggeration to contend the exclusion of non-CFTS Reservists would appear to be drifting very closely to discrimination on the grounds of class of Reservist.

It goes against the grain of supporting a vital component of the ADF which has proven itself time and again, since Federation. It is contended that the Government owes a duty to ensure Defence Reservists are in receipt of equal cover, protection and support under the relevant legislation, as are their Regular ADF counterparts.

In referring to the Campbell Review into MRCA (2011), the Senate Standing Committee into veterans' suicides noted the review:

> *concluded that the objectives of the MRCA were sound and that the unique nature of military service justified rehabilitation and compensation arrangements specific to the needs of the military.*[63]

The inference from Campbell to be reasonably gained, is that Reserve service regardless of class of service is justified in terms of rehabilitation and compensation coverage. Nothing in that conclusion operates to sever Reserve service from full-time service in this context. To deny otherwise, is to deny reality. Nothing in the current Act operates as a beneficial approach for coverage of all classes of Defence Reservist.

Recommendation 25
That the Committee endorse and support a recommendation to Government that amendments be made to MRCA 2001 to include full coverage for Defence Reservists regardless of classification of Reserve service, and that any drafting of Omnibus legislation include full coverage for all classes of Defence Reservists.

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[63] Above, n. 23, clause 4.12, at p. 48.

ISSUE 10 - DANGEROUS WATERS – LEGISLATIVE TRADE-OFFS

In its submission to the March 2018 DVA Legislation Workshop, the Corporation took issue with DVA's comment if legislative reform is progressed, it will need to through *"a Budget process and offsets identified."*

The contentions put forward by the Corporation in its submission in respect of offsets (trade-offs) , remains unchanged; viz

- The proposal to identify offsets to have improved provisions for veterans and their families which incur a cost, deserves a comment.

- The unique nature of military service carries with it a particular term and condition of service in that ADF members may be required to give their life in the service of the nation.

- That job requirement must at any level be reciprocated with an appropriate degree of support and compensatory relief.

While the Corporation acknowledges that fiscal restraint is Government fiat, it is contended that such a proposal by the Department is not good business practice to trade off very hard-won entitlements for veterans and their families, by the practice of giving with one hand and taking with another.

The Corporation is not prepared to cross the road to agree with this. To seek from ESOs what trade-offs should be considered is to ask ESOs to betray their constituencies.

What Repatriation benefits veterans currently have, in many instances resulted from bitter and hard-won campaigns over 30-odd years, though consistent lobbying to achieve the objective of improved pension, compensation and other benefits for veterans and their families.

The funeral benefits and financial compensation packages for families of deceased veterans enshrined in MRCA 2004 as a consequence of the Blackhawk disaster is a case in point. Such an approach again affirms the Corporation's contention that DVA should be quarantined and shielded from any Government-mandated efficiency dividend.

As long as there are offsets in bargaining with veterans' entitlements, veterans and their families will continue to suffer disadvantage.

This cannot be allowed to happen.

Recommendation 26
That the Committee endorse and support a recommendation to Government that DVA's budget be quarantined from efficiency dividends in order to retain a degree of fiscal strength that will not require offsets (trade-offs) to be considered and implemented, to he detriment of the veteran community and serving ADF members.

ISSUE 11 – THE TWILIGHT ZONE OF REHABILITATION

This is an area that is perhaps the most contentious given that one Act, the VEA 1986 is not rehabilitation-focused an provides for disability pension coverage and health care to veterans for natural life. In contrast, the MRCA 2001 is very strongly focused on rehabilitation.

Under the VEA, once veterans are assessed and granted a disability pension, they essentially have no further contact with DVA other than lodgement of an AFI or claim for a new disability. However under MRCA due the pervasive nature of the legislation related to rehabilitation, it is not an exaggeration to contend that in some instances veterans are better off under a VEA regime than that of MRCA.

The inconsistency of approach to veterans with significant and permanent accepted disabilities, is best illustrated by the approach to those unable to work find themselves in.

Under MRCA (s.199) veterans are entitled to a grant of SRDP pension which is that Act's equivalent of a s. 24 VEA Special Rate (TPI) Pension. The grant of SRDP comes with a caveat. According to DVA, "*Those eligible for the SRDP receive a Gold Card. Participation in rehabilitation is a precondition to being assessed as eligible for the SRDP.*" [64]

For veterans to be considered eligible for grant of SRDP, veterans must participate in a rehabilitation programme. in order to be granted the SRDP Gold Card.
This is concerning Fact Sheet MRC09 is inconsistent with the law stated in s.199(1)(d) which states, *"rehabilitation is unlikely to increase the person's capacity to undertake remunerative work."*

MRCA contains 18 references to rehabilitation in the Table of Contents, no of which mandate compulsory rehabilitation as a precondition for a SDRP veteran.
Similarly, the provisions of MRC09 are also silent on any legislative authority to make rehabilitation a precondition for grant of SRDP.

It is also significant to note the use of the term ***"person"*** instead of ***"veteran"*** again operating to *de minimis* a veteran's service and deliberately ignoring a claimant as a veteran and reducing a veteran to a mere civilian worker. This again offends most grievously, the unique nature of a veteran's service.

The application of caveat on a veteran who is assessed as being unable to undertake more than 10 hours remunerative work per week clearly and unambiguously acknowledges that the veteran is incapable of earning a living, based on the effects of their accepted war or service-caused disabilities.

Put simply a SRDP veteran is incapable of earning a living of any sort.

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[64] DVA, 'Special Rate Disability Pension (SRDP)', Factsheet MRC09, online at https://www.dva.gov.au/factsheet-mrc09-special-rate-disability-pension-srdp [accessed 28/5/18].

The caveat or Catch-22 of the grant of SRDP on imposing on a veteran an onerous and unreasonable obligation to participate in a rehabilitation programme at the highest level of disability pension, defies logic.

It is on any view completely inconsistent with the provisions of s. 199 (b) which state:

> *(b) as a result of the injuries or diseases, the person has suffered an impairment that is likely to continue indefinitely;*

The operative phrase in this instance is ***"indefinitely."*** It is not an exaggeration to contend that the level of damage a veteran where SRDP eligibility is being considered, is of such a nature that any attempts t become a contributing member of society will be for naught.

It follows that, the provisions of s. 199 (c) which states:

> *(d) the person is unable to undertake remunerative work for more than 10 hours per week, and rehabilitation is unlikely to increase the person's capacity to undertake remunerative work.*

should at the first instance, be amended to have the second half of the sentence commencing with *"and rehabilitation…"* should be completely excised from what is a brutally punitive and impossible test for badly damaged veterans to meet.
It is completely unconscionable and indefensible.

As it stands, this provision and the rehabilitation caveat imposed on the most badly affected veterans comprehensively defeats any beneficial intent of this legislation, offends all Common Law decisions in respect of beneficial intent, confirming the Corporation's contention that the Act is bad law.

It is not an exaggeration to content the provisions of VEA 1986 in respect of TPI veterans is on any level, far more beneficial.

Such a position by DVA in its administration of the Act, presupposes a SRDP veteran will recover. This is ludicrous in the extreme. The physical damage or mental damage or both, to a veteran at the level of pension eligibility, clearly argues in favour of a veteran being granted a SRDP without any further strings attached.

The rehabilitation caveat is unconscionable and is to be seen for what it is – another money-saving measure for the Government as represented by DVA.

In trying to claw back from SRDP-category pensioners that level of pension based on a rehabilitation programme which will most likely never succeed, the Government is in fact keeping a SRPD veteran in a twilight zone of stress and uncertainty by placing a SRDP veteran undergoing a rehabilitation programme, never knowing if the SRDP is be cut, forcing them to go through the review process all over again.. The stress that places SRDP veterans - in particular vulnerable PTSD veterans, under, needs no further elaboration.

This is particularly so in circumstances where a veteran too ill to work, is forced to step on the merry-go-round of constant doctor's visits to obtain doctors' s certificates in order to receive disability payments. There is no incentive on the merry-go-round for a veteran to seek work and places them at significant risk of becoming chronically dependent on compensation payments to the extent they are psychologically unable to go job hunting.

Failure to lodge such certificates results in payments being ceased forcing a veteran to start the process over again with its attendant stress and trauma to the veteran, particularly in circumstances where PTSD is one of the disabling conditions.

A failure with MRCA is the complete absence of any legislative provisions to enable veterans to be considered for grant of Temporary SRDP status for up to two years in order to see if rehabilitation of a veteran is successful.

The provisions of s.25 of the VEA 1986 provides for temporary payment of Special Rate Pension (TTPI) in certain circumstances within a period of time determined by the Repatriation Commission. In general terms this is seen to be between 12 months and two years and in this writer's experience, is considered to be a very effective measure in gauging grant of TPI or not at the end of the specified period.

This level of pension is seen to be what is best described as an *order nisi* whereby after further assessment a determination granting pension at substantive TPI level is seen to be an *order absolute*. The lack of this feature in MRCA is a fundamental flaw in the SRDP continuum and is a legislative defect that needs to be cured.

Similarly, in respect of VEA higher level pensions, s.23 VEA provides an Intermediate level of pension payment for veterans who are able to undertake remunerative work for up to but not including 20 hours per week.
Again, no such provisions exist in MRCA.

These ameliorating provisions enshrined in VEA make a mockery of the SRDP provisions in MRCA, that is ,SRDP and nothing in between which operates to the detriment and disadvantage of a MRCA veteran.

The beneficial levels of to higher-level disability pensions available to VEA veterans before gaining a TPI pension, are an excellent sounding board by which to asses how a veteran is rehabilitating and allows a determining authority to assess the need to grant a full SRDP pension without the egregious caveat contained in s.199 (c).

The inclusion in MRCA of two additional higher-tier pensions similar to the TTPI and Intermediate Rate of pension under VEA will provide veterans with a stable time frame in which to have their conditions assessed for permanent SRDP, and will remove the stress of having to continually chase doctors' certificates for that specified time while on a Temporary SRDP.

The Corporation contends that a three-tier Hierarchy of pensions scale at the upper level of pension payments similar to the hierarchy under VEA called Above General Rate (AGR) levels, should be considered for MRCA veterans; viz

- Intermediate level (Tier 1)
- Temporary level (Tier 2)
- SDRP level (Tier 3).

Similarly, an Intermediate-equivalent MRCA pension will enable veterans to undertake paid work for greater than 10 hours, albeit on a restricted basis.
The risk to that lies in the egregious and indefensible offsetting that is enshrined in MRCA. Any salary earned under the restricted work-hour regime of an Intermediate equivalent under MRCA, should apply a different method of offsetting.

Any offsetting should not, under any circumstance, be equivalent to the 60% offsetting penalty in the Act, but should be calculated, based on the weekly disability payments i.e., an amount deducted from the pension, using a formula for VEA Service Pensions where a pro-rata deduction is calculated based on a veteran's after -tax earnings. This contention finds strong support from the National RSL.

Recommendation 27
That the Committee endorse and support a recommendation to Government that the provisions of s. 199(c)MRCA be amended to excise the rehabilitation caveat contained in that section.

Recommendation 28
That the Committee endorse and support a recommendation to Government to investigate the efficacy including in MRCA, two additional levels of Upper Rate Disability Pensions similar to those in s.23 (Intermediate Rate) and s. 25 (Temporary TPI Rate) enshrined in the VEA 1986.

Recommendation 29
That the Committee endorse and support a recommendation to Government that any implantation of an Intermediate-style pension be offset using a formula for VEA Service Pensions where a pro-rata deduction is calculated based on a veteran's after–tax earnings.

The Government Status of Veterans' Affairs Portfolio

It is well held that when diplomacy fails, military action follows and the machinery of Government implements plans to deploy Defence members on active service, and in this particular context of the Corporation and its remit, this means soldiers.

Defence executes Government policy though deploying soldiers on active eservice. They are a blunt instrument of Government policy and execute that policy as they are trained to do, namely to break things and kill people, sometimes up close and personal.

Returned service personnel are never the same again. They present with a range of profound and life-changing conditions they carry with them to the day they die.

The ultimate end-point for members executing Defence and Government foreign policy these circumstances, is DVA. It is the entity which must then prepare and care for veterans who are affected by their operational service and those who render non-operational service.

To that end its place as a critical support entity in the veterans' support space for both current and former serving members, is well settled.

The size of the Department in budgetary terms and its charter, basically to action the promise made by Billy Hughes s promises in1917, is taken quite rightly as Holy Writ by veterans and all Australians. The debt to veterans is deeply embedded in the fabric of the Australian psyche.

A number of things occur in respect of the Department of Veterans' Affairs:

1. DVA must have a Government to continue to **have the courage** to honour Billy Hughes' pledge and ensure sufficient budgetary funding is made available to the Department in order for it to continue to engage in the BPR processes it needs to undertake to enhance smoother efficient and effective service delivery;

2. Government must accept the fact that organisational change and process renewal change in this particular portfolio is ongoing and comes at a cost to the taxpayer a cost the Corporation strongly believes is one that is happily and readily borne by all Australians.

3. Any detraction from sufficient budgetary support will adversely affect all that is trying be done in the veterans' space and will also incur the wrath of both veterans and ordinary Australians who will quite rightly view Government parsimony towards its veterans nothing less than a betrayal of their service and sacrifices.

4. The importance of the Veterans' Affairs Portfolio is considered to be of an order of magnitude that demands its inclusion in Cabinet and remain relegated to the darkness of the outer Ministry. It is not considered to be an appropriate action to have such a vital portfolio consigned t o the outer Ministry and as such is seen to be a subtle insult to veterans who served, suffered, sacrificed and died for this nation.

5. It is not an exaggeration to contend that, given DVA's close a, cooperative and very tight relationship with Defence, the portfolio should be given equal ranking through elevation to Cabinet status.

Recommendation 30
That the Committee endorse and support a recommendation to Government that sufficient funding is made available to DVA to discharge its responsibilities and to also aid in ongoing transformational (VCR) change.

Recommendation 31
That the Committee endorse and support a recommendation to Government that consideration be given to elevating the Veterans' Affairs Portfolio to cabinet status.

SUMMARY

In summary, DVA's current attempts to initiate massive and far-reaching reform in its business processes are welcome but still have along way to go.

ESOs owe a duty to provide DVA with significant input and advice to the VCR process and DVA owes a duty to listen to the issues put on the table by ADSO members at the quarterly ESORT meetings. DVA cannot afford to shut its ears to the matters placed by the Corporation and kindred ESOs who belong to ADSO ,on the ESORT table.

The issues discussed in the submission are many and varied and represent just a fraction of the issued that will come before the Commission.

The Corporation's contention is that the matters discussed in this submission are of such a nature, that noting less than remedial action by DVA acting as an agent of the Commonwealth Government, to rectify the issues discussed, is required.

CONCLUSION

The conclusion is:

1. The changes implemented by DVA under Project Lighthouse and the VCR process to date are extraordinary and have gone a long way to easing the burden and reduce the stress of lodging claims by veterans.

2. The improvements to the system discussed in this brief are most welcome but must also be tempered with the caveat that there is still a long way to go for a Department the size of DVA to be able to change course completely in respect of massive transformational change and reform within the organisation

3. NLHC coverage needs to be extended to cover musculoskeletal trauma

4. A definition of ***'veteran'*** must be enshrined in veterans' legislation and a Military Compact must also be enshrined in veterans' legislation.

5. Returned from Active Service badges and new equivalents must be quarantined and retained for issue to current and former Defence members who rendered operational warlike service, only.

6. The drafting of omnibus legislation and the three Acts administered by DVA must be a priority for Government and conducted as a concurrent activity to harmonising all three current Acts.

7. Legislative harmonising of all three Acts must occur, ensuring mirrored beneficial provisions apply across all three Acts while an Omnibus Bill is being drafted.

8. Pension benefits currently in operation under VEA 1986 and MRCA 2004 must be protected from any legislative harmonising or Omnibus drafting exercise and must not under any circumstances be interfered with to the detriment of veterans.

9. SOPs and their prejudicial application by DVA and related appeals bodies should be downgraded by Departmental Instruction to **advisory status**, only.

10. The RMA should be directed to ensure a more effective monitoring of advanced in medical science and knowledge be established to ensure Departmental Delegates of the Repatriation Commission and MRCC are kept fully aware of changes to assist in the assessment and determination of claims.

11. The provisions of GARP (M) for MRCA claims are a clear attempt by Government not acting as an honest broker, to derate veterans' entitlements due to Tables that are clearly weighted against them and their use should be abolished and substituted with the provisions of GARP 5.

12. Defence Reservists should have MRCA coverage for all Reserve service and not just not just Reservists who have completed CFTS.

13. An Institute of Professional Advocacy and paid Advocates looks like being the only solution to the slow uptake of veterans' practitioners.

14. Voluntary Advocates will always have a place and role in the veterans' support sphere and as such must not be ignored and must be treated as an equal by any entity that employs paid Advocates.

15. Training of Departmental Delegates must be of such a nature and quality that the interaction between a veteran and the Department is productive at all times.

16. Trade-offs at the expense of hard-fought and hard-won veterans' entitlements as part of any legislative process, are not supported.

17. Funeral benefits across al there Acts shod be the same.

18. The provisions of s.199 MRCA should be amended to include a three-tier SDRP hierarchy of pensions, based on the three levels of AGR Pension under VEA.

19. The provisions of s. 199(c) relating to rehabilitation should be excised completely.

20. Legal practitioners should remain ineligible from appearing at the VRB and the VRB must not become a full-costs jurisdiction.

RECOMMENDATION

That the Commission note the matters discussed therein and give serious consideration to the provisions of Recommendations 1 to 30.

Submitted for your consideration and action.

Noel Mc Laughlin
Chairman
RAAC Corporation
30 May, 2018
(submitted electronically)