



**DFWA SUBMISSION TO  
PRODUCTIVITY COMMISSION INQUIRY  
INTO COMPENSATION AND  
REHABILITATION FOR VETERANS**

## DFWA SUBMISSION

Submission by the Defence Force Welfare Association to the Issues Paper (May 2018) circulated by the Productivity Commission Inquiry into Compensation and Rehabilitation of Veterans.

### DFWA Background

Prior to WW2, Australia did not maintain a regular Army and after, maintained an “Interim Army” until the mid-1950s when regular forces were permanently established. There were issues with military superannuation and there was no organisation prepared to represent serving members of the ADF. The existing veteran organisations were focussed only on “returned” Veterans.

The Regular Defence Force Welfare Association was formed in 1959 with the encouragement of the government to represent the interests of members of the regular Defence Force in the issues confronting them. In more recent times, with the changing role of the Reserves, the “Regular” was dropped from the name and we became DFWA to reflect the role of representing Reserve and Regular members of the ADF, both former and currently serving.

The enduring purpose of DFWA remains as:

*“to foster the best interests and wellbeing of all members of the Australian Defence Force and their families in any matter likely to affect them during or after their period of service.”*

In doing this, DFWA was instrumental in the formation of the Alliance of Defence Service Organisations (ADSO) in 2010 to promote collaboration among ESOs and to provide a more united Veteran voice to government, parliament, the media and public.

## PREFACE

Concern over Veteran suicide prompted the inquiry by the Senate DFAT References Committee which produced the report, *The Constant Battle: Suicide by Veterans*. The report recognised the adverse effect that dealing with an apparently remote and non-empathetic bureaucracy had on some vulnerable Veterans with mental health problems and at risk of suicide.

One recommendation of the report was that DVA review staff training to ensure understanding of military service and health issues and in how to interact with Veterans with mental health issues. The report also registered concern regarding the use of temporary and short-term contract staff with little understanding of the Veteran. It is noted that DVA is attempting to change the culture in DVA to be more understanding of the Unique Nature of Military Service and its impact on Veterans, and generally improve efficiency and effectiveness through its Veteran-Centric Reform (VCR).

Another recommendation of the Senate Report resulted in this Productivity Commission Inquiry addressing efficiency and effectiveness of rehabilitation and compensation service and service delivery to Veterans.

It is of concern to DFWA that in the Issues Paper, the Uniqueness of Military Service which shapes the Veteran culture is given lip-service, that Veteran rehabilitation and compensation is treated as “welfare” and that ADF members are regarded as “workers”. It is also of concern that the efficiency and effectiveness thrust seems focussed on practices in and service delivery by non-veteran oriented organisations. The thrust of the questions in the Issues Paper seem to point in the direction indicated by The Department of Finance (DoF) May 2016 “Functional and Efficiency Review of the Department of Veterans’ Affairs (DVA)” which recommended that service delivery functions be either outsourced or transferred to other agencies. It is pointed out that such agencies would have less understanding of Veteran culture than DVA which is, at least, trying to address this issue. This lack of understanding is recognised as one of the causes of tragic instances which was the genesis of this Report in the first place.

Should the Productivity Commission Report recommend outsourcing, with delivery of services by other agencies selected by regular competitive tender and consequently subject to periodic change, it will need to address certain challenges that will arise. How will these organisations acquire and maintain an understanding of the military ethos, culture and values and how a Veteran-Centric service delivery model will be maintained. It will need to answer the question of how this will be achieved when DVA has difficulty in achieving this with its own staff and organisation, contracted in staff, some outsourced services already. The means of doing this and the governance mechanisms to assure this, will need to be addressed and costed.

## DFWA SUBMISSION

DFWA welcomes the opportunity to respond to the Issues Paper released by the Productivity Commission Inquiry on Compensation and Rehabilitation for Veterans. We have had input into and fully support the submission by the ADSO. In making this submission, DFWA has sought input from our state and territory branches and has taken the opportunity to address issues of particular concern to DFWA and to expand on some issues raised in the ADSO submission.

This submission is in three parts.

- Part 1. Executive Summary. [[ExecSum](#)]
- Part 2. General Response to the Issues Paper. [[Part2](#)]
- Part 3. Responses to the Specific Questions Raised in the Issues Paper. [[Part3](#)]

To ease navigation [[Links](#)] are provided throughout the document.

## PART 1: EXECUTIVE SUMMARY

DFWA has chosen to make the submission to the Issues Paper in two Parts because some statements made in the introductory sections of the Issues Paper and some of the wording of Questions raised some concerns.

A major concern is that the Issues Paper gives superficial treatment of the Unique Nature of Military Service and its enduring effect on Veterans. DFWA considers that the superficial treatment indicates a lack of understanding of this by the Productivity Commission similar to the lack of understanding shown in some instances to Veterans by remote bureaucrats. Throughout the Issues Paper, there is a definite focus on efficiency, value for money, etc. at the expense of effectiveness. Comparisons with other service delivery organisations are invited to identify best practices, i.e., what processes the other agencies use to deliver superficially similar services efficiently to a general clientele, but forgetting the Veteran unique needs. This lack of understanding of the Veteran and insistence on following the organisation's processes was a contributing factor to tragic instances that lead to this Inquiry in the first place. Accordingly, in Part 2 of the response, DFWA has attempted to explain the impacts of the Unique Nature of Military Service in more detail to assist in the Productivity Commission's understanding and to make the point that for services and service delivery to Veterans to be effective, the Productivity Commission must take account of the Veteran culture, ethos, values and ways of thinking.

Another concern is that the complexity of legislation affecting the Veteran has focussed almost exclusively on DVA related legislation, the three Acts. These are undoubtedly important, cause the greatest number of problems for Veterans as a whole and need to be addressed. However, the provision of military superannuation services by CSC has not been addressed. There are complex problems related to Disability Benefit compensation payments and for Transition. These problems affect CSC, DVA and ADF. For the Veteran, the problems are even more complex and can involve the Australian Taxation Office and the Family Court. While not as many Veterans are affected by these complexities, the Veterans who are affected are those being medically discharged, i.e., the group of Veterans which will include all those most vulnerable and at most risk – the ones featured in the first sentence of the Issues Paper. Again, this issue is addressed in Part 2 of the DFWA response.

In Part 3, we respond to most of the questions, often referring back to our response in Part 2. A summary of the main suggestions, conclusions and recommendations from Parts 2 and 3 are in the following table, cross referenced to the source paragraph or question in Part 2 or Part 3.

## Summary of Suggestions, Conclusions and Recommendations

Part 2 – General Response to the Issues Paper	
Para 6-7 <a href="#">Link1</a>	<p><b>Conclusion.</b> To avoid confusion for stakeholder readers and unhelpful distractions in considering the findings of this Inquiry, the Productivity Commission must define the term “Veteran” for the purpose of this Inquiry.</p> <p><b>Recommendation.</b> For clarity, it is suggested that the accepted ADF usage be adopted when referring to a Veteran, i.e., a person who has served more than one day continuous full time service (CFTS) in the ADF. Where it is necessary to differentiate Veterans, e.g., operational environment vs a non-operational environment, this should be made clear in the text.</p>
Para 54-55 <a href="#">Link2</a>	<p><b>Conclusion.</b> The current Issues Paper and inquiry direction is DVA centric, not Veteran-Centric. It does not address efficiency and effectiveness in the complex and stress-inducing areas in interactions with CSC services and service delivery.</p> <p><b>Recommendation.</b> The Productivity Commission addresses the governance, efficiency and effectiveness of all Veteran services provided by all agencies, including CSC.</p>
Para 66-67 <a href="#">Link3</a>	<p><b>Conclusion.</b> There is a need for the ex-service community to have a clear role in the nomination of a Director following business best practice, endorsed by the same legislation, as shown by the ACTU having a similar role for its constituency.</p> <p><b>Recommendation.</b> It is recommended that the ESO Community be responsible for the nomination of the Director representing former and current ADF member interests in military superannuation schemes.</p>
Para 70-71 <a href="#">Link4</a>	<p><b>Conclusion.</b> There is a case for responsibility for military superannuation to be transferred to the Minister responsible for delivery of services to current and ex-members of the ADF. This is the current dual-hatted role of the Minister for Defence Personnel and Minister for Veteran Affairs. This would assist the addressing of the governance issue with an initial focus on compensation, inefficiencies regarding medical administration, offsetting payment problems and support timely sharing of information. Effective delivery of joined up service to Veterans would be more likely, than at present. It would also assist in the development of a more Veteran-Centric culture as is being progressed in DVA and essential for delivering effective service to Veterans.</p> <p><b>Recommendation.</b> It is recommended that responsibility for military superannuation schemes should be transferred to the Minister for Veteran Affairs.</p>

### Part 3 – Response to Specific Questions

<a href="#">Q a3</a> Para 11	<p><b>Recommendation.</b> It is recommended that following principles be accepted as underpinning legislation and administration:</p> <ul style="list-style-type: none"> <li>a. There is a national obligation to appreciate and provide appropriate care and compensation to Veterans and their families suffering incapacity or death as result of military service; and</li> <li>b. To fulfil the national obligation, the administration of access to and provision of care, support and compensation shall be interpreted to the benefit of the Veteran.</li> </ul>
<a href="#">Q d6</a> Para 74	<p><b>DFWA Suggestion.</b> DFWA suggests that the current VCR is an embryonic CPI mechanism that has shown success and could be grown into a fully-fledged ongoing CPI programme, supported by Legislation and appropriate resourcing. It would involve Introduction of new legislation that could include the following:</p> <ul style="list-style-type: none"> <li>a. Has a goal of harmonising the existing Acts, (benefits, entitlements, processes and governance) to maximise benefit effectiveness for all Veterans and introduce efficiencies in processes and their overhead.</li> <li>b. In the interim, where a Veteran has complex case spanning more than one Act, allows the Act that best meets a member's needs as decided by the Veteran, to be used regardless of qualifying periods or service (the 3 Acts would remain);</li> <li>c. Facilitates phased amendments of all Acts that transferred the most appropriate beneficial aspects into all Acts. This could be product or process that provides a more effective benefit to the Veteran or facilitates a more efficient process supported by IT. This would be supported by formal Change Management processes and cost-benefits analysis.</li> <li>d. Options should be developed in the Legislative Forum. Legislation would require formal, ESO representation in the governance of the Change process. ESO are key stakeholders representing both the Veteran and the Advocacy service assisting Veterans.</li> <li>e. Provides flexibility for government in providing more equitable and effective benefits to Veterans, based on formal Veteran community advice and when budgetary priorities permit.</li> </ul>

<a href="#">Qe1</a> Para 85 - 86	<p>86c. Provision of access to the policy and processes that DVA applies in assessing multi-Act claims, would aid understanding of process and reasons for decisions and remove an unnecessary complexity for Veterans and Advocates in preparing for reviews. This would improve the likelihood of better prepared submissions leading to faster resolution times and less likelihood of further appeals.</p> <p><b>Recommendation.</b> It is recommended that DVA provide Veterans and Advocates access to the policy and processes that DVA applies in assessing multi-Act claims.</p>
<a href="#">Qf2</a> Para 129-133	<p>129. <b>Conclusion.</b> If the ADF had full visibility of the costs for rehabilitation and compensation of Veterans by DVA and CSC, and there was an overall governance regime able to identify the through life cost of a Veteran (enlistment to grave), these could have been considered in the cost-benefit analyses of civilianisation of uniformed posts. With consideration of these costs and benefits, it is likely that the wholesale ADF civilianisation program may have had a different outcome and that many of those lost ADF positions would have been retained, overall financial costs reduced and the rehabilitation of Veterans been more effective and efficient.</p> <p>130. <b>Question f2. If not, what changes could be made.</b></p> <p>131. The example provided illustrates that there is an argument for the rehabilitation and compensation costs incurred by DVA and CSC for those medically discharged from the ADF should be as captured and recognised as arising due to operational decisions of the ADF. Further, visibility of such costs in a whole system cost benefits analysis, would lead to better and more informed policy development. It does not mean that the ADF should be responsible for the administration of DVA functions.</p> <p>132. Suggestions for other changes related to Governance issues are addressed in Part 2 – Failure to Address Complexity, Impacting on Veterans and Part 3 – ADF- Minimising Risk.</p> <p>133. <b>Recommendation.</b> It is recommended that:</p> <ul style="list-style-type: none"> <li>a. the rehabilitation and compensation costs incurred by DVA and CSC for those medically discharged from the ADF should be identified as incurred due to operational decisions of the ADF; and</li> <li>b. The average rehabilitation costs incurred by DVA and CSC for a member discharged with a Class A or B Invalidity Benefit be included in any cost-benefit analysis when the ADF considers uniformed ADF positions for civilianisation.</li> </ul>
<a href="#">Qf3</a> Para 135	<p><b>Recommendation.</b> It is recommended that the ADF review current processes for issuing Security Passes for Advocates with the aim of providing a simplified system providing on-base access for Advocates at no cost to the ESO.</p>



<a href="#">Qf5</a> Para 142 - 143	<p><b>Conclusion.</b> In the interests of transparency and accountability, the cost of Veteran support should be clearly identified as costs attributed to:</p> <ul style="list-style-type: none"> <li>a. the operational deployments of ADF, i.e., the costs of committing the ADF to missions in defence of the Nation; and</li> <li>b. training and support for operational deployments.</li> </ul> <p><b>Recommendation.</b> It is recommended that:</p> <ul style="list-style-type: none"> <li>a. governance arrangements be put in place to provide overall transparency of the end-to-end cost of Veteran support; and</li> <li>b. Costs of Veteran support be presented to the community showing costs attributed to previous and current operational deployments and costs associated with training and support of operations.</li> </ul>
<a href="#">Qg1</a> Para 158	<p><b>Recommendation.</b> The command chain continues to ensure adequate time is allocated post-operation and post-exercise:</p> <ul style="list-style-type: none"> <li>a. For members to ensure any personal injuries are recorded (however, for reasons stated, this is not always successful); and</li> <li>b. For the command chain to ensure that all incidents where injury could have happened to individuals under command are recorded, especially where individuals may not have self-reported.</li> </ul>
<a href="#">Qh2</a> Para 182 - 183	<p><b>Conclusion.</b> It is concluded that the lack of clarity regarding the role of “the concept of economic and non-economic loss” has in the design of the disability payments, causes confusion regarding assessment of fairness.</p> <p><b>Recommendation.</b> It is recommended that the basis for design of compensation package in terms of economic and non-economic loss, and/or other factors be stated clearly in a policy document.</p>
<a href="#">Qh2</a> Para 185 - 186	<p><b>Conclusion.</b> It is concluded that the lack of transparency regarding policy and processes regarding offsetting and the principles on which offsetting is based among DVA and CSC payments for the same disability/ies hinders accountability, creates unnecessary suspicions of inequitable outcomes and creates distrust of DVA and CSC by the Veteran community.</p> <p><b>Recommendation.</b> It is recommended that DVA publish policy document clearly explaining policy and processes applied in calculating payments and offsets between:</p> <ul style="list-style-type: none"> <li>a. Payments under the 3 DVA Acts for the same disability; and</li> <li>b. The Invalidity Benefits paid by CSC for All Incapacities and the DVA Incapacity Payments for those accepted as Service caused.</li> </ul>

<a href="#">Qh5</a> Para 194 - 195	<p><b>Conclusion.</b> It is considered that the terms 'likely' and 'likelihood' are consistent with the 'reasonable satisfaction' standard of proof. (with MRCA)</p> <p><b>Recommendation.</b> It is recommended that the terms be clarified in policy to mean 'more probably than not'.</p>
<a href="#">Qh12</a> Para 210a	<p>i. <b>Conclusions.</b> At present, the rehabilitation services contracts do not appear to require a Veteran-Centric approach or require appreciation of Veteran issues. The model used is that for the general community and the Veteran is expected to fit in.</p> <p>ii. <b>Recommendation.</b> DVA review the rehabilitation service provider contract to ensure inclusion of appropriate Veteran-Centric approach to support attendance at tailored rehabilitation sessions.</p>
<a href="#">Q h12</a> Para 210b	<p>i. <b>Conclusion.</b> The stress induced by thought of dealing with DVA can disincentivise some Veterans' to return to work.</p> <p>ii. <b>Recommendation.</b> DVA review processes of a Veteran returning to work to adopt a flexible administrative reporting process agreed with the Veteran and/or Advocate.</p>
<a href="#">Qi4</a> Para 235	<p><b>Recommendation.</b> It is recommended that the current ADF policy on training and civilian recognition of training be reviewed with an aim of providing a simplified and more easily accessible training for ADF members to gain civilian recognition of qualifications whilst still serving.</p>
<a href="#">Qj3</a> Para 262-263	<p><b>Conclusion.</b> It is concluded that any changes to simplify access to benefits are likely to be driven by cost reduction efficiency measures which may cause changes to benefits rendering them less effective for the Veteran and introduce increased risk to the Veteran.</p> <p><b>Recommendation.</b> It is recommended that any proposals to simplify the range of benefits or access to the range of benefits, should be subject to formal Continual Process Improvement, including Risk Assessments to ensure that effectiveness of service to the Veteran is enhanced and Veteran focussed.</p>
<a href="#">Qj5</a> Para 269 - 270	<p><b>Conclusion.</b> All benefits were introduced to meet specific Veteran needs identified at a particular time. As such, all benefits should be subject to periodic review for utility and effectiveness and efficiency of delivery.</p> <p><b>Recommendation.</b> It is recommended that all benefits should be subject to periodic review as part of a Continual Process Improvement program, including Risk Assessments to ensure that effectiveness of service to the Veteran is enhanced and Veteran focussed and delivered efficiently.</p>

[Qj6](#)Para 274  
- 275

**Conclusion.** Moving elements of Veteran services to other non-Veteran organisations, e.g., Centrelink, will only exacerbate the problems which initiated this Inquiry in the first place.

**Recommendation.** It is recommended that:

- a. All Veteran services, including superannuation be delivered through DVA; and
- b. DVA continue with a Veteran-Centric Reform programme including education and training of staff of the impact of military service on Veterans.

## PART 2

### GENERAL RESPONSE TO THE ISSUES PAPER

1. This Part addresses:
  - a. Elements in the introductory commentary of the Issues Paper that are not explored in the Issues Paper Questions area, but need to be addressed.
  - b. Other areas in introductory sections of the Issues Paper and in some of the Issues Paper Questions that require a response because the Productivity Commission appears to:
    - i. Ignore the official stated reason as to why the Inquiry was initiated.
    - ii. Make invalid assumptions regarding Veterans and services.
    - iii. Approaching the task with a civilian, bean-counter mind-set rather than being focussed on the Veteran.
2. Issues addressed are:
  - a. What is a Veteran? [[Part2a](#)]
  - b. Genesis and Focus of This Inquiry. [[Part2b](#)]
    - i. Unique Nature of Military Service. [[Part2c](#)]
    - ii. What is the Unique Nature of Military Service? [[Part2c1](#)]
    - iii. Psychological and Cultural Conditioning, [[Part2c2](#)]
    - iv. Lack of Appreciation of the Unique Nature of Military Service Evidenced in the Commission's Issues Paper. [[Part2c3](#)]
    - v. It is Important for the Productivity Commission to "Get It." [[Part2c4](#)]
    - vi. Terms of Reference - Careless Use of Terminology. [[Part2c5](#)]
    - vii. Issues Paper - Incorrect Assumptions and Conclusions. [[Part2c6](#)]
    - viii. Issues Paper - Civilian Employer/Employee Mindset - Not Veteran-Centric. [[Part2c7](#)]
  - c. Failure To Address Complexity Impacting On Veterans. [[Part2d](#)]
    - i. Requirement for Veteran Focus. [[Part2d1](#)]
    - ii. Issues with Complexity with Invalidity Benefit Payments by CSC. [[Part2d2](#)]
    - iii. Veteran Needs. [[Part2d3](#)]
    - iv. Non-Examination of CSC Service Delivery to Veterans. [[Part2d4](#)]
    - v. CSC Governance of Military Superannuation. [[Part2d5](#)]
    - vi. Governance of Military Superannuation and Interface with the DVA. [[Part2d6](#)]

## WHAT IS A VETERAN?

3. There needs to be clear and consistent use of the term “Veteran”.
4. There are many different usages of the term by the public, media, and in the various Acts. There are different views promoting strong feelings within sections of the older “Veteran” community, regarding those ex-ADF with “real war” experiences and those who have none. Many younger “veterans” who have seen operational or warlike service consider the term ‘Veteran’ applies only to the older generation - II, Korean or Vietnam Veterans, and not them.
5. The ADF currently regards a person (Regular or Reserve) who has served more than one day continuous full time service (CFTS) in the ADF, as a Veteran. The Issues Paper also acknowledges that DVA accepts this understanding. It is noted that this criteria is also used to establish eligibility for some Non-Liability Health Care (NLHC) treatment provided by DVA.
6. **Conclusion.** To avoid confusion for stakeholder readers and unhelpful distractions in considering the findings of this Inquiry, the Productivity Commission must define the term “Veteran” for the purpose of this Inquiry.
7. **Recommendation.** For clarity it is suggested that the accepted ADF usage be adopted when referring to a Veteran, i.e., a person who has served more than one day continuous full time service (CFTS) in the ADF. Where it is necessary to differentiate Veterans, e.g., operational environment vs a non-operational environment, this should be made clear in the text.



## GENESIS AND FOCUS OF THIS INQUIRY

8. The genesis of this Inquiry was the report *“The Constant Battle: Suicide by Veterans”*, by the Senate Foreign Affairs, Defence and Trade References Committee. Among the issues involved, it highlighted concerns and tragic consequences regarding the unwarranted stress for Veterans and their families in dealing with claims and delays in processing and supported the principle that support delivery to be effective, it must be “Veteran-Centric”.
9. “Veteran-Centric” must not just be a handy convenient phrase. It requires a focussed approach in all considerations of this Inquiry, particularly when considering the nature and the design of services and assessing how services are to be delivered, where the primary concern is that the delivery method must Veteran-Centric, otherwise delivery will not be effective.
10. To be “Veteran-Centric” requires understanding of the Veteran, the ethos, culture, values that have been deliberately created, developed and maintained in Military Service for sole purpose of the defence of the Nation.

## UNIQUE NATURE OF MILITARY SERVICE

### What Is the Unique Nature of Military Service?

Australia is a signatory of the Universal Declaration of Human Rights (United Nations – 1948). Article 3 states: “Everyone has the right to life, liberty and security of person.”

***But ADF men and women do not.***

Their ‘life, liberty and security of person’ is in the hands of the State. That’s unique. No other calling, occupation or profession – including police and emergency services – ***is required by law to surrender these rights.***

Uniquely, ***Military Law*** may require an ADF member to kill other human beings, to order another ADF member to kill, to order other ADF members to take an action with a high probability they may be severely wounded or killed and may themselves be ordered to take an action with a high probability of being killed or wounded. ***Severe custodial penalties apply for non-compliance.*** In day to day ADF life, minor infringements such as using insulting language or unauthorised absence may result in up to 12 months incarceration.

***ADF people have no right of trial by jury.***

A unique military justice system applies, including Defence magistrates and military courts.

***Industrial law does not apply to ADF men and women.*** Legally, ADF people are ***members***. They are ***not employees***. ADF members surrender ‘employee’ rights including pay and conditions negotiations. They have no union. Remuneration is an ***arrangement***, not an ***agreement***.

***Consequently, the ADF’s culture is unique.***

***Team needs take priority over individual needs and rights.*** Total trust in other team members is essential because the consequences are so dire. A person who only looks after him or herself, is inconsiderate of other team members, is an anathema. Pride in achieving individual skills that are valuable to the team, is rewarding in itself. And the team, the ADF, reciprocates by providing subsidised sustenance, shelter and health care – as well as most administration – even though the member has little choice over what is provided.

***This deliberately created military culture becomes ingrained.*** That is partly why some Veterans refuse to seek support, not wanting to give up or to be a burden to others. Pride is important but it can be misplaced. And ‘welfare’ is a pejorative word, no matter how many experts claim otherwise. Needing ‘welfare’ is seen as an indication of failure or weakness, so self-harm rates for those discharged are higher than for those still serving. No longer part of the ‘team’, no longer valued, no mutual support.

***Support for serving and former ADF men and women must be as unique as their service is unique. It is inappropriate, indeed dangerous, as shown by recent experience, to attempt ‘normalising’ support to general community and business practices.***

Military Service is fundamentally unique. The reciprocal obligation this places on the State is as inescapable as it is enduring.

### Psychological and Cultural Conditioning

11. Generally, all military Initial training conditions recruits for the demands of military life, including preparedness to injure and kill other people, and to face mortal danger without fleeing. It is a physically and psychologically intensive process which re-socializes recruits for the unique nature of military demands. For example:

- a. Individuality is suppressed (e.g. same short haircut, issuing uniforms, communal living and denying privacy);
  - b. Daily routine is tightly controlled (e.g. Wake at 0600-Lights out 2200, recruits must make their beds in a prescribed way, polish boots, and stack their clothes in a certain way, and mistakes are punished);
  - c. Continuous stressors deplete psychological resistance to the demands of their instructors (e.g. depriving recruits of sleep, food, or shelter, shouting insults and giving orders intended to humiliate); and
  - d. Frequent punishments serve to condition group conformity and discourage poor performance.
12. ADF initial training is approximately 10 weeks of intense physical, mental, skills, weapon and individual and focussed on the “team” and unity. The team needs have priority over individual needs and rights. Hence drill, marching in groups, with instant obedience to orders, is a basic building block in group conformity to achieve a common task. There is a large emphasis on attention to detail with no excuses for what others might perceive as minor infractions in dress, layout of clothing on shelves and in drawers, performance standards, procedures etc., designed to create a mindset that carries over and gives confidence in precisely how and what individuals are doing in team tasks in heat of battle.
13. This team culture is further reinforced through:
- a. Encouragement to participate in team sports throughout their service.
  - b. The building of total trust in other team members, relying on each other even in dire, life-threatening circumstances to do what is expected, especially in combat drills. Any ex-Army member, even years later, would know the drill if they heard “Ambush Right”, meaning we are being attacked from the right. The drill is the exact opposite of what a non-trained person would regard as ‘normal’.
  - c. Achieving individual skills and expertise to do the tasks that are valuable to the team and being able to look after oneself without requiring assistance from other team members or being a drag on the team.
  - d. An innate understanding that it is an insult to be regarded as a ‘Jack Man’ from ‘I’m all right Jack’; a person who will look after him/herself first, before other team members, a slacker who does not pull their weight in team tasks.
  - e. Trust in the ADF system to look after certain things, e.g. all medical, food, accommodation, travel, clothing, etc. are provided, (no choice: get what ‘employer’ provides), changing jobs/locations – a majority of the administration is done for the member, who never has to think about it.
14. All ADF on-going skills, trade and professional training, and daily routine reinforces team work and the development of individual skill to enhance team results. The ethos and values developed are aimed at developing the automatic response of ADF members to do whatever ordered or whatever it takes to



achieve the team mission on the battlefield, regardless of personal risk. Some may call it brain-washing.

15. In many respects, the ADF provides individual support so that the individual can focus on 'the Team'. An ADF member rarely has to think about basic individual needs. Then along comes Transition (planned or unplanned). Transition shifts decision making and responsibilities for individual needs back to the individual which is a complete role reversal. Reintroduction into civilian life requires a member to quickly adapt to cultural changes devoid of a supportive team environment. It is an adaptation that the ADF does not adequately address at present.
16. This military culture becomes ingrained. It goes part of the way in explaining why:
  - a. Some Veterans refuse to seek support – pride not to require support, not to have given up, not to be a burden to others.
  - b. Suicide rate of those discharged is higher than those still serving. No longer part of the team, no longer valued, the mutual support/camaraderie of the ADF workplace is not there.
  - c. High proportion of “homeless” (5%) are ex-military. (Report in the Courier Mail 12 Apr 18).
  - d. “Welfare” is regarded as a pejorative term, no matter how many experts say otherwise. Needing “welfare” is regarded as indication of failure or weakness.
17. It is because of the ‘Unique Nature of Military Service’ that support for Veterans both serving and ex-serving must be unique and it is inappropriate to normalise Veteran support to community standards where this would go against an ingrained culture, fostered and nurtured by the ADF for the defence of Australia. It is not something that all can just “turn off” easily, many never can. This is generally accepted in society, that military service changes people for life. This is illustrated by frequent calls to bring back National Service, aimed at giving youth a sense of purpose, accepting responsibility etc. France is re-introducing a form of National Service with similar aims.

#### **Lack of Appreciation of the Unique Nature Evidenced in the Commission’s Issues Paper**

18. A common feeling among Veterans, when trying to explain aspects of military life to those who have not experienced it, is that non-Veterans just do not understand what the Veteran is saying. It is almost like people are talking different languages.
19. As Stuart Cameron (former President RSL Qld) stated <sup>[1]</sup>, “Many in the wider community do not – and cannot appreciate – what servicemen and women have been through and we should not expect them to understand. This is what separates us from the wider community we served.”
20. For everyday life, most Veterans just accept this lack of understanding, get on with life, and possibly just recall elements of it with reunions and the like – or just shut the experience from their minds. Invariably, they give up talking about it with non-Veterans. But for all, the experience affects them in various degrees for life, and for some it affects them, and their family and friends, in the most tragic of ways.

**It is Important for the Productivity Commission to “Get It.”**

21. A frequent complaint from some Veterans having difficulty dealing with DVA staff, is the DVA staff do not “understand”. Some of these Veterans are in the most vulnerable and “at risk” group identified in the Senate Veteran Suicide Inquiry. **It is crucial therefore, for the output of this Inquiry to have any credibility**, especially amongst the most vulnerable Veterans, that any Report shows an understanding of the Unique Nature of Military Service and acceptance of the impacts of this on Veterans, particularly the most vulnerable.
22. At present, the Issues Paper makes some mention, but does not show understanding. E.g., in the Issues Paper, the ‘Unique Nature of Military Service’ morphed into the ‘nature of military service’ and ‘feature of military service’ implying just a few little differences. This is not just words. It indicates a blurring of focus and a downplaying of the importance of uniqueness by the Productivity Commission. Additionally, the nature of the discussion in parts of the Issues Paper, the wording of questions, indicates a lack of understanding on the part of the Productivity Commission of the concept of the Unique Nature of Military Service and its impacts.
23. It is DFWA’s contention that even for a non-Veteran, the DVA processes and those of the CSC administering Invalidity Benefits, would bring unwarranted stress. However, for some Veterans, this stress is exacerbated due to the effects of their ADF experience and the Unique Nature of Military Service. It is these Veterans who are most at risk. **It is critical for this report to produce beneficial results** that the Productivity Commission gain an understanding of the ADF experience, the Unique Nature of Military Service and the customs, culture and values it creates.
24. **Other Example?** The situation has some similarities with earlier days in the feminist movement. Many battles were and still are fought against words and phrases in common use. To many of those adversely affected, this indicated a lack of appreciation and understanding of the feminist values and beliefs, while the non-affected wondered what the feminists were on about or tried to minimise it. Such understanding regarding language use is now accepted as necessary in addressing feminist concerns. While some may regard aspects of that as over the top political correctness, there is no doubt tackling the use of words and phrases had a marked effect in addressing feminist movement concerns.
25. Imagine if the government set up a Productivity Commission Inquiry into say, Salaries and Remuneration of Women, and all of the Commissioners and staff involved in the Inquiry were male with perhaps one or two females. It would have been demanded that at least half, probably more, should have been female. Imagine if the Productivity Commission was tasked to inquire into efficiency and effectiveness of delivery of services to the Indigenous population and requiring cognisance of the customs, culture and values of the Indigenous peoples, and there were no indigenous people on the Inquiry staff. The culture, ethos and values of Veterans are just as real and were created and fostered specifically for the defence of the Nation.
26. How many of the Productivity Commissioner staff involved in this Inquiry are Veterans? If a rationalisation of that answer is that it doesn’t matter in dealing with the issues to be addressed (efficiency and effectiveness), would that sort of response be acceptable to a feminist or Indigenous focussed Inquiry?
27. However, things are what they are, but the nature of this Inquiry demands that the Commissioners understand and take cognisance of the Unique Nature of Military Service and its impacts on Veterans.

An understanding is reflected in the very language used. May we suggest that the Commissioners endeavour 'to walk in the Veterans' shoes' and to be careful with your words, assumptions and inappropriate attempts to normalise Veterans to fit civilian models.

28. The current lack of understanding and appreciation is illustrated by assumptions implicit in Productivity Commission papers so far.

### **Terms of Reference - Careless Use of Terminology**

29. The TOR refers to "workers compensation arrangements and frameworks ... in other similar jurisdictions (local and international)". There are further references comparing ADF members to "other workers" and "other Government employees". The wording as used implies that ADF members are just a different category of "worker" or "employee". This wrong on several counts:
- a. ADF personnel are NOT workers or employees. They have no employee or workers' rights. They are not public servants in uniform. It is not just a "different job". This has been recognised in statements by the Defence Force Remuneration Tribunal (DFRT) and by findings in the High Court of Australia<sup>1</sup>. This is not just legal-speak, it is a fact that permeates in day to day practices, conduct and services rendered by ADF members and inculcated in development and maintenance of the underlying culture and values of the ADF. That these values are different and deeply ingrained is illustrated in the difficulties some Veterans experience in transitioning to civilian life.
  - b. There are no similar "local jurisdictions". None. There may be misconceptions resulting in attempts to equate police and other emergency services as similar to ADF service because of dangers faced and horrible things experienced and the often heroic actions by those non-ADF people. However, police and emergency service personnel have "rights" and, for example, are not put in situations where they may be compelled, by legal sanction as ADF members can be, to put themselves at high risk or even certainty, of wounding (mental and physical) or death. Additionally, due to the operational environment, unlike emergency services people, ADF injury reporting and treatment, due to operational conditions and tempo of activities, may not occur for days or even weeks after the event, if at all.
30. That the correct use of terminology is important, has been recognised by the DFRT which commented<sup>2</sup> "It is of concern to us that throughout the joint submissions the parties frequently made reference to an 'offer'. We consider that terminology to be incorrect and misleading. There is no 'offer' afforded ADF personnel. The term 'arrangement' purposely avoids any perception it is the result of an agreement voted on and accepted by members of the ADF. It may be better, in the future, that other terminology is used.
31. This is good advice for the Productivity Commission as well.

### **Issues Paper - Incorrect Assumptions and Conclusions**

32. The Commission has made judgements and conclusions (at this early stage of the Inquiry – before much evidence is presented) based on wrong assumptions about military service. (See Box). The

<sup>1</sup> Referenced in C v Commonwealth of Australia [2015] FCAFC 113 (21 August 2015)

<sup>2</sup> DFRT Decision – Workplace Remuneration Arrangement 2014 - 2017: Matter 9 of 2014, para 24.

language used also indicates a mindset and a way of thinking which does not really indicate an appreciation of the implications of the Unique Nature of Military Service.

*The unique features of military service have led to a system separate from, and more generous overall than, the system of workers' compensation and support generally available to civilian workers, including:*

- *easier access to support (through a lower burden of proof for accepting liability for a condition)*
- *a higher level of compensation than that available to other Australian Government employees.*

Would a Feminist Inquiry dare assert, that a woman has a more generous work package overall than men because it allows more generous leave than is available to males, including full paid maternity leave?

33. The comparison of ADF members (Box) is with “workers” and “other Government employees”. Legally, ADF members are not workers or employees (see previous footnotes). This has large impacts on day to day ADF Service. The statement is unacceptable because:

- a. Generalised comparisons based on a single condition of service are not valid;
- b. It indicates a bias, as a broad judgement is made about “generosity” before evidence is presented.
- c. Generosity has implications of treatment considered better than “fair”.
- d. The alleged “generosity” is questioned:
  - i. When compared to a common law claim, or a claim being assessed under the SRCA (applicable to Public Servants), the SOPs can be seen as quite limiting in terms of the assessment of liability<sup>3</sup>.
  - ii. The military compensation system is one of the few compensation schemes that does not include time frames for responding to claims or for making key decisions. Every state and territory compensation system in Australia has time frames for decision making under compensation schemes.
  - iii. The hearing devices provided to public servants under Comcare SRCA (and previously provided to Veterans), meet the clinical need. Those now provided to Veterans have serious shortcomings and do not meet the clinical need as before<sup>45</sup>. It is noted that hearing loss is one of the most common disabilities suffered by Veterans and recognised as service caused.
  - iv. The compensation for multiple lower limb injury (again, a common disability due to military service), is significantly less than that provided to public servants under

<sup>3</sup> Senate Inquiry into Veteran Suicide, Submission 160 Slater and Gordon. P24.

<sup>4</sup> Foreign Affairs, Defence and Trade Legislation Committee, Senate committee Hearing 15 March 2017.

<sup>5</sup> See Attachment 1. HEARING AIDS DVA SUPPLIES ARE TO A LOWER STANDARD THAN COMCARE

SRCA<sup>6</sup>. Such injuries in the public service are comparatively rare, but for ADF are common.

- v. The alleged “lower burden of proof” for compensation liability for ADF peacetime service, including hazardous training environments, is the balance of probability. This is the same burden of proof that applies to general workplace compensation. (Note DFWA considers that the “reasonable hypothesis” standard should apply for some peacetime ADF service where risks are deliberately higher to reflect combat conditions. See Part 3 – Response to Qe10.)

34. The “generosity” generalisation and comparison claim made in the Issues Paper is invalid. The battle environment is not the same as a civilian work environment in risk or duration, not even for emergency workers who cannot be compelled, by penal sanction, to enter such “working” conditions. The compensation and support schemes need to be appropriate to the situation.

### Issues Paper - Civilian Employer/Employee Mindset - Not Veteran-Centric

35. The Issues Paper Section on ADF Minimising Risk, includes the question:

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

36. The Issues Paper provided no caveats to this question. The question has a total civilian employment mindset rather than a Veteran-Centric mindset. There is no recognition of the military operational environment or the Unique Nature of Military Service in this question.

37. **Injury in Battle.** The question infers that unit commanders can prevent injuries in battle. This indicates a very basic misunderstanding. The nature of military service is that ADF members may be required (ordered) to undertake actions where there is a high probability of injury or even death - unlike any other “calling”.

38. **Injury in Training.** This high probability risk can also apply to some training in peacetime settings. ADF members need to be able to operate with confidence on a hostile battleground where the enemy is trying to kill them. The training has to prepare them for that. This includes undertaking tasks in training with some risk generating a “fear factor” which they must handle on the battlefield. As a simple example. Much weapon training on the range is conducted with ADF members using ear protection. On exercises, simulating combat, use of ear protection would limit awareness and hinder communication. It would also not prepare the member for the loud noise of battle and how to operate with it. This is a simple example, however there are numerous others which place the member at higher risk training in Australia than would be acceptable in other occupations. Not to train with some deliberate risk, would mean inadequate preparation for the battlefield, thus endangering not only the individual, but also others relying on the individual. Training without some risk would be negligent.

39. **Battle Recording of Injuries.** There also seems to be an expectation that commanders and the military organisation, in the heat of battle should be recording injuries “when they occur”. That is, change the focus from the whole purpose of the ADF, winning the battle, completing the mission, with as few as casualties as possible to one of doing paperwork to satisfy some bureaucratic requirement possibly

---

<sup>6</sup> Senate Inquiry into Veteran Suicide. Submission 160 Slater and Gordon. P41.

many years later. Inability to deal with this sort of bureaucratic mind-set is exactly what has driven many vulnerable Veterans to just give up, and tragically for some, to suicide.

40. The tempo of battle precludes recording injuries when they occur. Even on training exercises, there are also limitations on time available to record injuries “when they occur”, especially minor injuries treatable “on the go” and not requiring medical evacuation. All deployed ADF members nowadays are trained in rather advanced first-aid that would once have been the province of trained medical officers. The tempo of activities on exercises is sometimes greater than on operations. This often precludes the recording when injuries or incidents occur. On exercises, there is an economic need to complete as many training activities (battle simulation) in as short a period as possible. This tempo is sometimes greater than experienced in operational situations where there is a lot of “alert” time spent waiting for something to happen. (Hurry up and wait).
41. There is an obvious requirement for the ADF and chain of command to allocate time for administrative tasks after battlefield and training priorities have been met. This includes catching up on injury and incident recording not done during the operation or training exercise. But even this will not catch everything. ADF members who have just experienced traumatic events in operations may be reluctant to talk. Having seen terrible injuries to others, they will make light of their own relatively light injuries and not report them. After exercises, ADF members are reluctant to spend time on return from exercise addressing administrative tasks which would impinge on getting home to the family.
42. However, it is imperative that the command chain ensures adequate time is allocated post-operation and post-exercise:
  - a. For members to ensure any personal injuries are recorded (however, for reasons stated, this is not always successful); and
  - b. For the command chain to ensure that all incidents where injury could have happened to individuals under command are recorded, especially where individuals may not have self-reported.
43. **Duty of Care.** Notwithstanding the previous paragraphs, all ADF activities in peace and war involve a duty of care by the command chain and this includes an assessment of risk to ADF members and others (collateral damage). This duty of care is integral to an assessment of risk. The assessment of risk to ADF members is assessed against other risks, including but not limited to:
  - a. the risk to the military mission in operations and the impacts that failure of the mission would have;
  - b. the risk to others involved in and affected by the military mission in operations and the impacts that failure of the mission would have on others; and
  - c. for training, the risk to the ADF member and the team in future operations, if they had not been exposed to that risk during training.

## FAILURE TO ADDRESS COMPLEXITY IMPACTING ON VETERANS

44. The Commission has been asked to undertake a comprehensive examination of how the current compensation and rehabilitation system for Veterans operates, how it should operate into the future, and whether it is 'fit for purpose'. In undertaking this task, the Commission is to:
  - a. review the efficiency and effectiveness of the legislative framework, and the effectiveness of governance and service delivery arrangements, and;
  - b. take into account the current environment and challenges faced by Veterans.
45. Figure 1 in the Issues Paper identifies three DVA oriented Acts, VEA, DRCA and MRCA and also identifies the compensation paid.
46. However, compensation paid in the form of Invalidity Benefits under the Defence Force Retirement and Death Benefits (DFRDB) scheme, the Military Superannuation Benefits Scheme (MSBS) and ADF Cover is not included in the Figure or discussion.
47. Figure 2 on Governance, identifies the organisations involved, i.e., Defence, with the Repatriation Medical Authority, including the Specialist Medical Review Council, and DVA, including the Veteran Review Board (VRB) and the Administrative Appeals Tribunal. The Figure does not show the Commonwealth Superannuation Corporation which administers the military superannuation schemes providing "compensation." Or the Superannuation Complaints Tribunal or the AAT...
48. The compensation arrangements of superannuation scheme and those of identified in Figures 1 and 2 of the Issues Paper are intrinsically linked. This is evidenced by the offsetting provisions between CSC administered Invalidity Benefits and DVA administered Incapacity Payments.
49. In the Issues Paper, there is a passing reference to offsetting the payments against DRCA and MRCA compensation, and just one question." *Are there complications caused by the interaction of compensation with military superannuation? How could these be addressed?"*
50. There are no questions on the efficiency and effectiveness of the legislative framework, and the effectiveness of governance and service delivery arrangements of the CSC compensation schemes

### Requirement for Veteran Focus

51. As stated earlier, the genesis of this Inquiry was the Senate Inquiry regarding Veteran suicides. The group of Veterans most at risk are those newly discharged from the ADF, especially those compulsorily discharged on medical grounds with mental health issues. This report acknowledges, "When personnel separate from the ADF they can also experience a loss of identity and separation from social support and they can find it difficult to integrate into civilian life (having to make choices previously made for them by the ADF). These factors can increase the risk of mental health problems, including depression and post-traumatic stress disorder (PTSD)". However, the issue of having to make choices for themselves is just one aspect which can be easily rectified by training. The different values, culture and ways of working, developed and maintained deliberately by training and practice throughout service life are probably the cause of greater difficulty requiring time to adjust.

### Issues with Complexity with Invalidity Benefit Payments by CSC



52. **Complications.** This “most at risk group” of Veterans will be eligible for Invalidity Benefits paid by CSC. This Invalidity Benefits regime places additional complications on top of those already experienced in the diverse and complex DVA regime. Complications include the following which are covered in detail in Annex A:

- a. Military superannuation, especially related to Invalidity Benefits, is recognised by Department of Finance, the ATO, some Ministers and by the judiciary as highly complicated and technical, more so than civilian schemes.
- b. Multiple medical examinations of same condition by ADF, CSC and DVA for different assessment purposes.
- c. Uncertainty and delays of Invalidity assessment by CSC creating uncertainty and stress during Transition of ADF members being medical discharged.
- d. Lack of transparency regarding the full offset of Invalidity Benefit payments for all Veteran impairments against the DVA Incapacity Payments for a smaller sub-set of these impairments.
- e. Large financial bills for Veterans regarding Lump Sums when communication between CSC and DVA breaks down.
- f. Confusion and stress caused by unco-ordinated assessment and decision making by CSC and DVA during Transition.
- g. CSC not providing the Veteran’s entire medical file to the medical assessor resulting in an incorrect CSC medical assessment only resolvable by FOI and Appeals process.
- h. Complications involving many agencies, (DVA, CSC, Centrelink, CSA, ATO) when a Veteran is administratively discharged from the ADF, and then subsequently having that discharge re-categorised as a Medical Discharge.
- i. Family Court action splitting CSC Invalidity Payments which are offset against DVA Incapacity Payments. Method calculated offsets was wrong costing Veterans thousands of dollars. Only now being addressed by DVA.
- j. Stress induced by Invalidity Benefits (Class A and Class B) being subject to review for life for DFRDB recipients, and until age 55 for MSBS recipients. Bad management of the process, no Advocacy support or protection on CSC matters for the Veteran, all contribute to the increase mental health issues.

53. The Issues Paper addresses DVA compensation, administration and governance of Veteran support delivered by DVA and to lesser extent Defence. CSC rates hardly a mention in compensation and administration issues and nothing as far as Governance. Both are also key entities in Transition. DVA rates a mention. CSC is ignored. Complex decisions have to be made by Veterans concerning both, especially during Transition. This interactive area is complex and affects mainly the most vulnerable group of Veterans i.e., those kicked out of the ADF on medical grounds, of not being good enough.



54. **Deficiency.** The areas not being addressed are related to CSC and to the interworking of CSC with Defence and DVA include, but are not limited to the following:
- a. Medical record sharing, medical assessments and administration.
  - b. Timely offsetting information sharing between agencies.
  - c. Timely provision of information to other agencies and the Veteran.
  - d. Transition.
  - e. Governance.
  - f. Lack of established expertise, ownership, governance in the “interworking” area within government agencies involved.
55. **Conclusion.** The current Issues Paper and inquiry direction is DVA centric, not Veteran-Centric. It does not address efficiency and effectiveness in the complex and stress-inducing areas in interactions with CSC services and service delivery.
56. **Recommendation.** The Productivity Commission addresses the governance, efficiency and effectiveness of all Veteran services provided by all agencies, including CSC.

### Veteran Needs

57. The complexity is compounded by the lack of expert advice available to the Veteran. While CSC does provide financial advice, it is all about the CSC benefits. Under MRCA, Veterans can access financial advice regarding Permanent Impairment option. The ESO Advocates, even under the new Advocate Training and Development Programme (ATDP), are only trained in DVA administered Veteran legislation and have no expertise in CSC. CSC offers no training for Advocates. The ADF Financial Advisors panel has expertise in the high asset clients and are not really interested in the basic Veteran. Advice provision is in silos. The complexity falls on the Veteran, already stressed out by being rejected by the ADF family and kicked out of the ADF on medical grounds.
58. The only non-provider, neutral expertise and advice in this area are a very few self-taught ESO Advocates. The most accessible and available advice is from some younger Veterans who have established social media support groups on Facebook. It is interesting to note that the number of members of these groups addressing CSC complex issues are over 8000. Further, the great bulk of the issues addressed concern Invalidity Benefits, the area where there is overlap in benefits with DVA. The membership is about the same number as those Facebook sites dealing with DVA issues. This indicates that there are similar levels of dissatisfaction and need for support in dealing with CSC as there is for DVA.
59. There is a requirement for the Inquiry “to take into account the current environment and challenges faced by Veterans”. These social media sites make clear much of the current environment and the challenges faced by Veterans in dealing with CSC, yet have not been addressed in the Issues Paper.
60. This informal group of self-taught Veterans originally started by representing themselves at the AAT and Federal and Family Courts against other sides represented by fully qualified legal teams. They

represented themselves initially because solicitors did not believe they had a case. The Veterans won. These groups provide advice and support to other Veterans in their dealings with CSC and at hearings in the AAT, Family Court and Federal Court.

### **Non-Examination of CSC Service Delivery to Veterans**

61. The Productivity Commission recently inquired into the efficiency of superannuation funds and was critical of some default membership funds and the low returns of some poorly performing funds. CSC was not examined in that Inquiry. It is of note that:
- a. ADF members of MSBS and DFRDB funds have no choice of funds unlike members of most funds on which the Productivity Commission reported.
  - b. The interest on the notional accumulated military superannuation funds was the CPI, which is lower than some of the poorly performing funds criticised by the Inquiry.
  - c. It is also noted that the CSC is also excluded from scrutiny by the Royal Commission into the financial sector, yet has been experiencing record numbers of complaints. The ex-service community, young Veterans and older Veterans, formal ESOs, and Veteran social media groups are united in their disquiet over the management of CSC of Invalidity Benefits as illustrated by the joint media statement released by the RSL and ADSO (See Box).

**The Returned & Services League of Australia (RSL)  
Alliance of Defence Service Organisations (ADSO)**

**18 January 2018**

**JOINT MEDIA STATEMENT  
ROYAL COMMISSION INTO MISCONDUCT IN THE  
BANKING, SUPERANNUATION AND  
FINANCIAL SERVICES INDUSTRY**

**Call to include the Commonwealth Superannuation Corporation**

The Returned & Services League of Australia (RSL) and the Alliance of Defence Service Organisations (ADSO) call on the Government to include the Commonwealth Superannuation Corporation (CSC) in the Terms of Reference of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

CSC administers military and other superannuation funds for over 700,000 people, including 230,000 serving and former servicemen and women. Unlike members of Industry Super Funds who have the ability to switch funds if they are dissatisfied, ex-service members of the CSC do not. They are reliant on an external moderator to ensure fairness and justice. The Royal Commission is the ultimate arbitrator.

Given the magnitude of the CSC influence on the wellbeing of former servicemen and women the RSL and ADSO members consider this represents a compelling reason to include CSC within the Terms of Reference. CSC is the only significant superannuation entity in Australia to avoid examination.

Allegations exist that CSC is not fully compliant with the Superannuation Industry Supervision Act. For example, some in the Veteran community claim that CSC misreports invalidity benefits (paid to servicemen and women discharged for medical reasons) to both the Australian Taxation Office and to the Family Court. And, all too often, Veterans report that CSC fails to respond convincingly to valid approaches by them seeking clarification of their concerns.

A consequence of this practice could result in Veterans (and their families) already suffering trauma being subjected to unwarranted financial and further emotional hardships. These and other allegations clearly require the same scrutiny as would similar assertions involving industry superannuation funds. The voices of 230,000 serving and former servicemen and women should be heard, not be silenced.

The RSL and ADSO call on the Government to amend the Royal Commission's Terms of Reference to include an examination of the military superannuation funds administered by the Commonwealth Superannuation Corporation.

**Contacts**

**National President RSL:**  
**Robert Dick** 0448 889 848

**ADSO National Spokesman:**  
**Kel Ryan** 0418 759 120

62. It is suspected that some of the problems arising in the management of military superannuation by CSC has been the attempts, supposedly in the name of efficiency and effectiveness, to normalise it with public sector superannuation funds administered by CSC, under the Superannuation Industry (Supervision) Act (SISA) and SIS Regulations (SISR).

## CSC Governance of Military Superannuation

63. Governance of CSC administered superannuation schemes is vested in directors with various stakeholders represented. Directors are appointed by the Minister for Finance and Deregulation, nominated for their experience and knowledge by:
- a. the employer,
  - b. the Australian Council of Trade Unions (ACTU); and/or
  - c. the Chief of the Defence Force (CDF). (Two directors).
64. It is noted that members of military superannuation schemes include:
- a. serving ADF members for which the ADF has responsibilities, and :
  - b. former members of the ADF for whom the ADF has no responsibilities.
65. The former members of the ADF include those Veteran on Invalidity Benefits, i.e., those medically discharged (rejected) by the ADF. As stated, the ADF has no further responsibilities for those medically discharged and if fact, is quite enthusiastic in removing members who adversely impact on ADF operational readiness and effectiveness. It is easy to conclude that the ADF does not want responsibility for these Veterans and wants to pass responsibility to DVA and CSC as quickly as possible.
66. The CDF appoints two directors, ostensibly to reflect the duality of the role in representing both “employer” and “employee/past employee”, (although those terms are inappropriate in the military context). DFWA submits that the CDF cannot adequately represent the interests of former ADF members and it is clear that the ADF does not want responsibility for them. Similarly, there is a conflict of interest where the CDF appoints trustees representing both employer and employee. While the CDF is supposed to consult with ESOs on the CDF appointments, this has not happened in recent years. This conflict would be easily resolved by the ESO Community being responsible for appointing the member/former member trustee, similar to the role of the ACTU. Several ESOs already represent both current and former ADF members interest on official forums, e.g., both the RSL and DFWA are “official intervenors” on the Defence Force Remuneration Tribunal and the DFWA officially represents current ADF members on the Public Safety Industry Advisory Committee (See Part 3 – Question i4.). Additionally, several ESOs objectives include support to both current and former ADF members, e.g., RSL and DFWA.
67. **Conclusion.** There is a need for the ex-service community to have a clear role in the nomination of a Director following business best practice, endorsed by the same legislation, as shown by the ACTU having a similar role for its constituency.
68. **Recommendation.** It is recommended that the ESO Community be responsible for the nomination of the Director representing former and current ADF member interests in military superannuation schemes.

## Governance of Military Superannuation and Interface with the DVA

69. As indicated in the previous paragraphs and in Annex A, there are many issues concerning the delivery of services by CSC and the complexity of interworking between CSC and DVA regimes. The problems and the lack of governance in this area is long recognised and solutions proposed as illustrated in the following extract from the Review of Military Compensation Arrangements Report - Volume 2 18 Mar 2011 (See Box – the emphasis is DFWA's).

### Administration - Invalidity benefits

**12.60 It is questionable why there are two legislative arrangements and two Australian Government agencies to administer unique invalidity benefits for former ADF members.**

12.61 Superannuation benefits are managed within the compliance umbrella of the *Superannuation Industry (Supervision) Act 1993*. It is important that ADF members continue to have the same level of assurance that this Act provides, but it is not impossible to envisage effective administration arrangements being managed predominantly within the ambit of the Military Rehabilitation and Compensation Commission (MRCC).

12.62 While this Review has not examined the superannuation legislation or operations in any depth, there does appear to be a fundamental gap, in that there is no rehabilitation component after discharge from the ADF. The invalidity benefit level increases with higher incapacity levels. There is little incentive for improving the quality of life through participation in the workforce.

**12.63 The complexity of a former member receiving military superannuation benefits in full for life and top-up benefits from the MRCC until age 65 under a rehabilitation regime would be reduced if the legislation was more integrated and a single agency held responsible.**

12.64 DVA and ComSuper officials have consulted on the issues involved in streamlining the administration of invalidity benefits, following previous reviews. It is recommended that a strategy be developed to reinvigorate these discussions and prepare a proposal to be considered by the Australian Government.

### Death benefits

**12.65 One submission [12](#) is critical of the lack of cooperation between agencies in the administration of death benefits.** Stress was caused to the family of a Special Air Service Regiment soldier killed in Afghanistan in 2005 when DVA accepted a widow's claim, but Comsuper did not do so for some time afterwards. Comsuper, as the administrator, could only pay a benefit in line with the requirements of the rules or trust deed of the relevant scheme.

12.66 DVA is likely to have an ongoing relationship with the surviving partner through the issue of a Repatriation Health Card – For All Conditions (Gold Card), additional weekly payments and education benefits for the children. The *Superannuation Industry (Supervision) Act 1993* precludes DVA directing scheme trustees on how or to whom a superannuation death benefit is to be paid. However, there appears to be **some advantage in the Department of Defence and then DVA taking on case management coordination in regard to deceased members' families.**

12.67 While the primary decision making would need to be undertaken by trustees authorised under the rules of the superannuation scheme, an administrator for all Commonwealth benefits would assist the bereaved in negotiating the system. Once a death claim is determined, there may be advantages in using one system or another (DVA or ComSuper) for payment of pension benefits to the surviving partner and children.

**12.68 The Committee recommends that the scope for streamlining the administration of superannuation and compensation invalidity and death benefits, by aligning legislative definitions and consolidating service delivery, should be further considered across government.**

70. No substantive action has been taken in response to this recommendation and the problems for Veterans persist. The following other factors are relevant:
- a. As noted earlier (AAT Cases 28 May 2018), Justice Logan observed that DFRDB and MSBS superannuation and Invalidity Benefits were unlike any other superannuation funds including those other funds managed by CSC. Military superannuation was complex, difficult to understand and a “technical mess”. The complexity has also been recognised by the Department of Finance (Discussions Hislop and Department of Finance on DFRDB Issues of Sep 2017)
  - b. There are other federal superannuation schemes, for the judiciary and MPs having greater similarities with other public sector schemes than does military superannuation, yet these are not administered by CSC.
  - c. There are no other public sector superannuation schemes that had such complex interactions with other compensation bodies and which continue throughout the life of the member.
  - d. There are no other superannuation or compensation schemes both of which included periodic review of medical impairment and possible changes to rates of payment until at least 55 years.
  - e. Both MSBS and ADF Super/Cover formally recognise the Unique Nature of Military Service as a major consideration in the design of the benefits and system to provide a Veteran focus. The Unique Nature of Military Service also shapes service delivery by DVA. Undoubtedly, this is the source of some complexity common to both regimes, and are major differences from non-military superannuation and compensation and rehabilitation regimes.
  - f. Additionally, there is no Minister or standing organisational entity responsible for the interaction between DVA and CSC with a focus on delivering a “joined-up” effective and efficient service to Veterans.
71. **Conclusion.** There is a case for responsibility for military superannuation to be transferred to the Minister responsible for delivery of services to current and ex-members of the ADF. This is the current dual-hatted role of the Minister for Defence Personnel and Minister for Veteran Affairs. This would assist the addressing of the governance issue with an initial focus on compensation, inefficiencies regarding medical administration, offsetting payment problems and support timely sharing of information. Effective delivery of joined up service to Veterans would be more likely, than at present. It would also assist in the development of a more Veteran-Centric culture within the military superannuation organisation as is being progressed in DVA and essential for delivering effective service to Veterans.
72. **Recommendation.** It is recommended that responsibility for military superannuation schemes should be transferred to the Minister for Veteran Affairs.

## PART 3

### QUESTIONS FROM THE PRODUCTIVITY COMMISSION'S ISSUES PAPER

1. Several questions were posed in the Issues Paper. Some questions have not been addressed by DFWA because our input is covered by the response provided by the Alliance of Defence Service Organisations (ADSO). In responding to the questions raised some of the answers were covered in Part 2 of the DFWA response and are cross-referenced. Questions are grouped as follows and may be accessed by clicking on the appropriate [\[Link\]](#).
  - a. Assessing the veterans' compensation and rehabilitation system. [ [a](#) ]
  - b. A system to meet the needs of future veterans. [ [b](#) ]
  - c. How should the nature of military service be recognised? [ [c](#) ]
  - d. The complexity of veterans' support. [ [d](#) ]
  - e. The claims and appeals process. [ [e](#) ]
  - f. System governance. [ [f](#) ]
  - g. The role of the Australian Defence Force — minimising risk. [ [g](#) ]
  - h. Providing financial compensation for an impairment. [ [h](#) ]
  - i. Helping people to transition from the ADF. [ [i](#) ]
  - j. Income support and health care. [ [j](#) ]

## a - ASSESSING THE VETERANS' COMPENSATION AND REHABILITATION SYSTEM

1. Unfortunately, this section and consequently the questions asked are based on a false assumption that there is "a system". Generally a system is regarded as a regularly interacting or interdependent group of items forming an integrated whole and that does not describe the elements contributing to Veteran compensation and rehabilitation. There is no "system", there are several systems involved in rehabilitation and compensation and there is no overarching governance of these. This issue has been addressed by DFWA in Part 2 – Complexity, and it is not intended to revisit it in this section. The responses to this section are largely addressed with the narrow DVA focus of the questions.

### 2. Question a1. What should the priority objectives for veterans' support be?

3. **Rehabilitation.** Without in any way diminishing our support for Veterans' entitlements under VEA 1986, DFWA supports DVA's adoption of the rehabilitation objective in MRCA 2004, s37:

*To 'maximise the potential to restore a person who has an impairment, or an incapacity for service or work, as a result of an injury or disease to at least the same physical and psychological state, and at least the same social, vocational and educational status, as he or she had before the injury or disease.'*

4. **Financial.** At the Dawn Service at Villers-Brettonneux this year, the Prime Minister publicly committed the nation to continuing its obligation as established in the War Pensions Act 1914:

*a 'grant of Pensions upon the death or incapacity of members of the Defence Force whose death or incapacity results from their employment in connexion with warlike operations.'*

5. The DFWA supports this objective however believes should be broadened to take into the changes in the nature of conflict and in the ADF since that time, to:

*Where incapacity or death is due to military service to the Nation, the Nation has a reciprocal obligation to provide financial support to the Veteran or surviving family, to the level that the Veteran could reasonably have provided, except for that incapacity or death.*

It is noted that these objectives address DVA administered legislation only. The CSC administers military superannuation which includes invalidity and death payments and associated literature refers to the Unique Nature of Military Service.

### Question a2. Why?

6. DFWA submits that there is a very simple basic premise. If the member was broken due to military service to the Nation, then the Nation has a moral obligation to restore and financially support the person to an "as new" condition as possible. In no other occupation can a person be deliberately put in harm's way. Whether the person was initially a volunteer or conscript for that service in the ADF is irrelevant. Both rendered the service, and in death or wounding, that service to the Nation is equal. Apart from the moral obligation, the words of George Washington are also relevant.

*"The willingness of future generations to serve in our military will be directly dependent upon how we have treated those who have served in the past."*

### Question a3. What principles should underpin the legislation and administration of the system?



7. The first Minister for Repatriation, Senator Hon E.D. Millen, referred to national obligation' when addressing the Senate on 18 July 1917, regarding introduction of repatriation legislation regarding Veterans. This was reflected in legislation with procedural provisions for the resolution of disputed claims requiring less burden of proof, as compared with claims for other Government benefits. Almost all Australians had family members or friends in military service. These procedural advantages indicated broad understanding within the community at the time of the nature of military service and the horrors of that environment under which an injury may have occurred. This understanding brought natural acceptance that volunteering to put life and health at risk for the Nation demanded special recognition when that risk eventuates.
8. The principles of "national obligation" and beneficial administration requiring lesser burden of proof are also recognised in other Commonwealth nations:
  - a. **Canada.** *Veterans' Wellbeing Act 2005, s2.1, provides that: The purpose of this Act is to recognize and fulfil the obligation of the people and Government of Canada to show just and due appreciation to members and Veterans for their service to Canada. This obligation includes providing services, assistance and compensation to members and Veterans who have been injured or have died as a result of military service and extends to their spouses or common-law partners or survivors and orphans. This Act shall be liberally interpreted so that the recognized obligation may be fulfilled.*
  - b. **New Zealand.** Veterans Support Act 2014 at s10, General Principles provides that. *Every person who performs any function or exercises any power under this Act must do so...in acknowledgement, on behalf of the community, of the responsibility for the injury, illness, or death of Veterans as a result of them being placed in harm's way in the service of New Zealand.*
9. In Part 2, DFWA argued that the Unique Nature of Military Service must be recognised and understood.
  - a. The consequences of that Military Service need to be taken into account in legislation affecting Veterans and in the administration of the system.
  - b. The starting point has to be the Veteran.
10. **Recommendation.** It is recommended that following principles be accepted as underpinning legislation and administration:
  - a. There is a national obligation to appreciate and provide appropriate care and compensation to Veterans and their families suffering incapacity or death as result of military service; and
  - b. To fulfil the national obligation, the administration of access to and provision of care, support and compensation shall be interpreted to the benefit of the Veteran.

#### 11. Question a4. Is the current system upholding these priority objectives?

12. As a general observation, DFWA asserts that most Advocates and pension officers would agree, and it seems to be borne out by DVA statistics, that the greatest majority of Veteran cases for treatment and financial claims are processed satisfactorily and fulfilled to the satisfaction of the Veteran. However when things go wrong, they go wrong in a spectacular and often tragic fashion. When this occurs, there seems to be a lack of an appropriate early identification and escalation system to address the issue

with appropriate urgency. DFWA considers this as more of an operational issue rather than a legislative failing.

13. **CSC System.** There is a general and widespread concern that CSC does not administer the various military superannuation schemes in the best interest of members of the schemes. See Part 2.

14. **Question a5. Where are the key deficiencies in the system?**

15. All organisations, no matter how successful, have deficiencies. These can develop over time due to many reasons, both self-creating organisational internal and internal failing to adjust to the external. The more successful organisations, enterprises or businesses have in place continual process improvement policies and mechanisms. DVA has an embryonic system – Veteran-Centric Reform – which is a start.

16. Key Deficiencies include:

- a. Inadequate Definition of “the system” affecting Veterans.
- b. Lack of Statistics.
- c. Eligibility Rules for Reserves.
- d. Duty of Care.
- e. Escalation Criteria for Veterans at Risk.

17. **Inadequate Definition.** The umbrella deficiency of the system is that the “system” is not defined. This is illustrated over the last few years when external issues arose, especially through social media, resulting in political pressure on “the system” to do something. There are probably well over 50 government projects, studies, inquiries, task forces, and new organisations that had their genesis in the public alarm and political pressure concerning Veteran suicides, mental health and Transition. This in turn has created new Ex-Service Organisations, Veteran support groups, as well as new businesses assisted by government funding for Transition and mental health support. There are lots of overlap, little co-ordination, a dearth of statistics to know what the real problems are and to measure success of any endeavours. This Inquiry is no exception. There are two other concurrent inquiries (Transition and Veteran Advocacy and Support), each requiring responses on overlapping issues from the volunteer ESO community all within weeks of each other.

18. The key elements of this umbrella deficiency stem from the focus on DVA. This has been addressed in Part 2 - Failure to Address Complexity Impacting on Veterans.

19. **Statistics.** Before one can fix a problem, one has to be able to quantify the problem. To measure the success or otherwise of service delivery, or an intervention, the definition of success must be identified and ways of measuring it decided. There is a dearth of statistics in many areas. It is suspected that many actions taken in recent years, especially related to mental health issues, Veteran suicides and Transition, have fallen into the category of

*“We must do something, or be seen to be doing something. This is something. Let’s do it.”*

and the evidence presented is one of input – how much is being spent, rather than measurable targets.

Particular areas that have been identified are shown below:

- a. **State Delivered Services.** The major issue is that most of the services provided to Veterans, whilst they may be indirectly funded federally, the delivery of the service/s is the responsibility of each State, e.g., Health, Homelessness, Incarceration, and Coroner. The understanding that there is already a checkbox on most State and Federal Government forms asking if a person is an Aboriginal or Torres Strait Islander. The recommendation is that a similar box asking if a person has served in the ADF is mandated for all public and private hospital admission forms to allow the collection of statistics and to be able to target support to Veterans in the areas of greatest need.
- b. **Cost of Disabilities Due To Operations.** When government is considering deployment of the ADF on operations, estimates are made of costs involved in mounting and sustaining the particular operation. Such estimates do not include long term rehabilitation and compensation costs relating to deaths or incapacities incurred as a result of that operation. Given the longevity and nature of operations over the last 15 years, and the support and compensation paid through MRCA, it should be possible to gather statistics from the DVA claims information of the current costs of a particular completed operation and trends for future costs. At a gross level, DVA already estimates future costs of providing DVA support and compensation. It should be possible to analyse data already gathered to provide greater granularity. It is accepted that many assumption may need to be made as occurs in any cost estimate process and modelling. Such analysis would:
  - i. Inform future costing of operations and government decision making regarding ADF interventions.
  - ii. Ensure that need for future Veteran support and compensation is fully recognised as meeting an obligation to Veterans due to a deliberate decision of government to put Veterans into harm's way, and importantly is not regarded as form of welfare.

A similar process could be undertaken to address such costs for different peacetime activities, especially related to Exercises and preparations for active service. Both activities would require closer working between the ADF and DVA.

- c. **Other Statistics.** Other areas where statistics were required include the following. There is no doubt that there are overheads in collecting statistics and that, unless carefully considered, the information put together may not be effective measures. This should however, not stop attempts to define what success would look like when committing funds to Veteran support:
  - i. Relative Effectiveness of Advocates vs Lawyers vs No Advocate Representation.
  - ii. Effectiveness and Efficiency of out-sourced rehabilitation services. Areas of concern are unreasonable demands or brusqueness by the service provider, poor levels of contact between the Veteran and service provider, and the distance between the client and service provider especially in country areas.

## iii. Effectiveness of Transition Services.

**20. Eligibility Rules for Reserves.** Reserves are eligible for Non-Liability Health Care only if they contract to render at least one day of continuous fulltime service (CFTS), however, they:

- a. typically undergo the same training courses as fulltime personnel,
- b. are exposed to same physiological and psychological stressors as fulltime personnel,
- c. may train in readiness to deploy and have deployed on operational service with fulltime personnel,
- d. have been engaged in disaster relief with fulltime personnel and
- e. have pulled refugees' bodies out of the water on border protection operations with fulltime personnel.

DFWA submits there is no justification for this discrimination. (It is noted that the latest budget now includes Reservists involved in disaster relief or border protection service or who have been involved in a serious training accident.)

**21. Duty of Care.** Despite MRCA provision that require Veterans to obtain financial advice, the offer of (often) very significant compensation lump sum payments to younger Veterans and dependants is poor social policy and an abrogation of duty of care to provide life-long support for those whose service results in serious injury, illness or death. The same also applies to Veterans with mental health issues and substance abuse. Giving a Veteran with a drug addiction, a \$300,000 Permanent Impairment lump sum payment, does nothing for rehabilitation of the Veteran and is a complete waste of money for all concerned. That lump sum, appropriately quarantined against misuse and predators, could provide a better future for the benefit of the Veteran, Veteran family and the community, once the addiction is under control. The only existing means at present is to counsel the Veteran to put any payment into a Trust Fund, however current rules do not allow direct payment of benefits to Trusts without a laborious process.

**22. Escalation Criteria for Veterans at Risk.** Although timelines for the processing of claims and resolution are not set by legislation, it is understood that DVA sets internal targets. While most claims are settled to the satisfaction of most Veterans in a reasonable amount of time, some claims can take many months. These are generally complex claims or claims delayed through lack of response from medical practitioners or Veteran delays. These are the claims which are likely to involve Veterans with complex problems, probably mental health issues, and consequently, the most vulnerable. These cases need to be identified early. When cases pass certain deadlines, there need to be a process for review to identify the cause and to initiate appropriate action. The review process needs to be triggered by defined time lines, complaints by the Veteran or by an agreed mechanism where the Advocate can trigger formal review. Similarly, where a review has been triggered by an internal DVA timeline mechanism, the Advocate should be informed as well. Action may be required by the Advocate to assist the Veteran where delays have been caused by Veteran inaction. Where the Veteran does not have an Advocate, and the review indicates mental health problems, a policy needs to be developed, in conjunction with ESOs, so that pro-active preventative/remedial action can be taken where it is suspected that the Veteran is at risk.

## **b - A SYSTEM TO MEET THE NEEDS OF FUTURE VETERANS**

### **23. Question b1. What should the system of veterans' support seek to achieve in the longer term?**

24. Provision of a best in class system of support for the rehabilitation, compensation and transition of Veterans and, where appropriate, Veterans' dependents and carers, which:

- a. recognises the Unique Nature of Military Service and its impact on design and effective delivery of services to Veterans;
- b. is flexible to meet changing Veteran and service needs; and
- c. is sustainable in event of urgent expansion of the .ADF

### **25. Question b2. What factors should be considered when examining what is in the best interest of veterans?**

26. The factors to be considered will change with time, they will also vary depending on the particular view of Veterans and groups of Veterans. There are over 3000 organisations that list "Veteran" support in their role, and each organisation has a particular interest. The loudest voice, the one gaining most exposure in today's media and social media, is generally not best place to determine what is in Veterans' best interest

27. The different primary aims and the current spans of responsibility of the ADF, DVA and CSC, mean that none of these organisations has "end to end" responsibility for the Veteran (from enlistment til death of the Veteran or surviving dependent) and therefore none is an authority in determining and assessing what is in the best interests of Veterans.

28. The main factors to be considered are as follows:

- a. The need to ensure appropriate representation of the Veteran is provided in the examination of Veterans best interest.
- b. The need for a regular review of Veterans' interests as Veterans' needs will change.
- c. Each individual Veteran should have the ultimate responsibility of deciding what is in his or best interest.

29. While each individual Veteran should have the ultimate responsibility of deciding what is in his or best interest, this does not assist in making overall Veteran policy in this area. At the present time, no one organisation exists that can claim authority to speak for all or even the majority of Veterans. There are many ESOs and other Veteran support organisations which support particular groups of Veterans. Most of these came into existence because concerned people did not consider existing organisations were addressing the best interests of particular groups of Veterans. While some ex-serving members of the ADF may be vocal in their criticism of these older ESOs, it is fact that these older ESOs provide the majority of advocacy support to younger Veterans and therefore are well aware of their needs and have greater and broader visibility of these than either of DVA or CSC The plethora of ESOs and

charities may try to address support needs, but does not assist in deciding best interests of “Veterans” or the priorities.

30. DVA have tried to address this through the ESO Round Table (ESORT) where ESO representatives are supposedly consulted on many issues. Although improving, early experience was that DVA told ESOs what was happening based on DVA decisions regarding Veterans’ best interests.
31. There are some ESO which have statements indicating their role is to serve the interests of current and former members of the ADF and their families. Both DFWA and the RSL are formally recognised in these roles. Both are on Veteran forums. The RSL and DFWA have official recognition as “Authorised Interveners” at the Defence Force Remuneration Tribunal determining pay and allowances for current serving ADF members. The DFWA also has formal role as the “ADF members’ representative on the Australian Industry and Skills Committee (AISC) which is the organisation set up by the Commonwealth Government to allow Australia-wide recognition of training, including training of ADF members. This government industry organisation addresses issues relevant to Veteran Transition.
32. Additionally, approximately 19 ESOs have grouped to form an Alliance of Defence Service Organisations (ADSO) to present a unified consensual view on Veteran issues. There have also been attempts from other working parties to form coalitions of ESOs and veteran support organisations to work together, e.g., Australian Veterans’ Alliance. At present, there are several groups trying to address “unified” voice requirement for Veteran interests. Many ESO are in all groups, e.g., the “compact” of collaboration being pursued by ESORT, and a National Collaboration Project, instigated by “Soldier On” and chaired by Sir Angus Houston. Rationalisation of disparate, overlapping collaboration entities is required. There is a need for improved governance and organisation in the world of ESO, Veteran support organisations and the newer “micro-ESO”. This is necessary to provide a more unified Veteran voice and to provide a channel for the changing veteran interests to be heard.
33. **Question b3. How have Veterans’ needs and preferences changed over time?**
34. The DFRDB scheme provided an incentive for ADF members to serve 20 years and become eligible for a pension. When MSBS was introduced the incentive to serve 20 years was removed. This has meant that more Veterans now Transition earlier into civilian life. More recently, the employment arrangements for Reserve Service have changed markedly from the traditional attendance at weekly parades and annual camps. The different options for Reserve service, e.g., permanent part-time, short-term full-time, plus the ease of returning to full-time service, has brought a new meaning to “Transition” and provided some complications:
  - a. The ceasing, suspension, contribution and default membership issues, decisions and administration regarding Superannuation Pensions;
  - b. Complications where a Veteran was medically discharged on CSC Invalidity Benefits and now fit to serve.
  - c. Veteran discharging at own request wanting to retain option of serving on the Reserve or returning to full-time service.
  - d. Impacts of reporting a disability to the “system” and its impacts on future employment options vs benefit payments.

35. **Question b4. How can the system better cater for the changing Veteran population and the changing needs of veterans?**

36. There are many aspects which can be addressed at the micro-level, but are too numerous to address in this response, however, at the macro-level, there are two areas that need to be addressed, so the "system" is more capable of delivering services able to adjust to changing needs.

- a. **Definition and governance of the "system"**. This has been addressed on Part 2 - Failure to Address Complexity Impacting on Veterans. This is a long recognised issue (2011) which has been totally neglected. "The Committee recommends that the scope for streamlining the administration of superannuation and compensation invalidity and death benefits, by aligning legislative definitions and consolidating service delivery, should be further considered across government." (Review of Military Compensation Arrangements Report - Volume 2 18 Mar 2011.)
- b. Adopt formal Continuous Process Improvement regime (Refer to Section 3 – Complexity of Veterans' Support.



**c - HOW SHOULD THE NATURE OF MILITARY SERVICE BE RECOGNISED?**

37. **Question c1. What are the key characteristics of military service that mean veterans need different services or ways of accessing services to those available to the general population?**
38. See response at Part 2 – Unique Nature of Military Service.
39. **Question c2. How should these characteristics be recognised in the system of veterans’ support?**
40. These defining characteristics of the Veteran means that for service delivery to be effective, the service and the access to it must be tailored to the Veteran. Any attempt to adopt a generic industry standard model and force the Veteran to use that based on notions of best practice elsewhere, in the interests of efficiency, is doomed to failure. The Veteran’s culture, ways of thinking, ethos were developed and inculcated by the ADF to meet the Nation’s need. Even though DVA is set up to deliver services specifically for Veterans and has been trying to inculcate a Veteran-Centric empathetic culture to deliver Services, there have been tragic failures. To even consider using best practice service delivery from elsewhere, especially by organisations without any Veteran focus, totally ignores the reason for this Inquiry.
41. **Question c3. What is the rationale for providing different levels of compensation to veterans to that offered for other occupations, including people in other high risk occupations such as emergency services workers?**
42. The comparison of ADF members to emergency services workers in this question indicates a lack of understanding by the Productivity Commission of the Unique Nature of Military Service and what the difference is between emergency services personnel and ADF members. However, to amplify one area related to this:
- a. Emergency service workers and other occupations that can be hazardous, such as professional divers, enjoy the protection of industrial processes. That is, they enjoy the benefits of unions, various pieces of state and federal legislation and the ability to negotiate their conditions of service and to access arbitration processes. Members of the ADF are denied these protections. They are dependent upon, ultimately, government or ministerial decisions as to changes in pay and allowances and other conditions of service, and, in the case of Veterans, such matters as disability pensions administered by DVA.
  - b. An example of this is that while disability pensions may be indexed, the indexation policies may be subject to change by government, such as was proposed in the 2014 Federal Budget. Further indexation may not always result in maintaining the purchasing power of these pensions when structural changes occur to the economy.
43. This response in no way denigrates the service of emergency service personnel and the hazards and dangers they face in rendering service.
44. **Question c4 Are there implications for better policy design?**
45. DFWA submits that the way services are designed and delivered need to take into account the Unique Nature of Military Service and the impact that has on Veterans’ ethos, cultural values, and ways of thinking. This is the result of deliberate training by the ADF for members to be effective in the defence



of the Nation. The effect of such training is deeply ingrained, cannot suddenly be “switched off” in Transition and cannot be ignored. Refer to Part 2.

46. At present the Veteran rehabilitation and compensation is addressed by several systems covered by different legislation administered by separate organisations, DVA, Defence and CSC. There is no cohesion, no overall governance. The organisations are united by one thing. Defence created, developed and maintained the Unique Nature of Military Service. Both DVA and CSC have a formal requirement to deliver tailored services recognising the Unique Nature of Military Service. It is not just a phrase. It must shape policy.

47. See Part 2 on Failure To Address Complexity Impacting On Veterans.

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

49. As most support available depends on many individual-Veteran-specific variables, not just type of service, it is not possible to make a categorical statement about justification. However, DFWA has identified that:

- a. there is no justification for excluding Reserves from eligibility for Non-Liability Health Care based on the current definition of CFTS (Qa5); and
- b. peacetime training for operations can be just as dangerous as or more dangerous than actual operations. (Qe10 and Part 2, paras 37-38).

#### **d. THE COMPLEXITY OF VETERANS' SUPPORT**

##### **50. Question d1. What are the sources of complexity in the system of veterans' support?**

51. DFWA submits the major source of complexity is the disjointed systems of Defence, DVA and CSC. This has been addressed in Part 2 - Failure to Address Complexity Impacting on Veterans.

52. However in this section DFWA will address the narrow DVA focus of the questions.

53. **Three Acts.** DFWA submits that the complexity associated with three different Acts is a challenge only where the Veteran has eligibility under more than one Act. We accept that this affects the significant number of Veterans who either enlisted before or after 22 May 86 and served beyond 7 Apr 94 (dual VEA/DRCA eligibility) and also served beyond 1 Jul 04 (eligibility under VEA/SRCA/MRCA).

54. **Scoring Systems and Assessments of Incapacity.** Where a Veteran has multiple Incapacities, some may take longer to resolve than others. The Veteran sometimes has the option of agreeing to progress those Incapacities for which liability has been accepted, so that payments can start as soon as possible based on the scoring of those Incapacities. If, subsequently, liability is accepted for the outstanding Incapacity (submitted at the same time as the others), its scores get added to the previous assessment. Under the current system, even though the Incapacities are the same in both situations, the scoring calculations mean that the Incapacity score for all Injuries, if assessed at the one time, is greater than if assessed in two or more tranches progressively. This is manifestly unfair. The outcome for the Veteran should be the same in both cases.

##### **55. Question d2. What are the reasons and consequences (costs) of this complexity?**

56. See Part 2 Response on Failure To Address Complexity Impacting On Veterans.

57. This complexity is compounded by the unavailability of the policy and processes DVA applies in assessing multi-Act claims. This is a source of substantive disquiet amongst Advocates, Veterans and families. This a particular problem during preparation for reconsideration or review. If a volunteer or ESO-paid Advocate is the representative, there is no cost to the Veteran or family irrespective of the time taken to prepare even the most complex claim or appeal. Where the Veteran engages a lawyer, the costs may however be significant. It is understood that the Fee Agreement typically required by 'No win-No fee' solicitors will incur administrative expenses of between \$10, 000 and \$15,000 and an invoice on-success of 40% of the determination. Clearly, where the appeal is unsuccessful the Veteran can be left in dire financial straits and, where the appeal is successful, a significant erosion of compensation entitlement. Such losses have life-long social and economic consequences for the Veteran and family.

##### **58. Question d3. What changes could be made to make the system of veterans' support less complex and easier for veterans to navigate?**

59. See Part 2 Response on Failure To Address Complexity Impacting On Veterans.

60. At the operational level, DVA could provide Veterans and Advocates access to the policy and processes that DVA itself applies in assessing multi-Act claims. This would aid understanding of process and reasons for decisions and remove an unnecessary complexity for Veterans and Advocates in preparing

for reviews. This would improve the likelihood of better prepared submissions leading to faster resolution times and less likelihood of further appeals.

**61. Question d4. Can you point to any features or examples in other workers' Occupational compensation arrangements and military compensation frameworks (in Australia or overseas), that may be relevant to improving the system of veterans' support? Examples in Other Occupational compensation arrangements.** (Issues with this question were outlined in Part 2)

62. The following features are suggested:

- a. There should be time limits set for Decision times for various stages of a claim and for the resolution.
- b. Time limits should cater for single and multiple incapacities and for single Act claims and multiple Act claims.
- c. Most other schemes rely on proving cause and effect of particular incapacities, rather than SOPs. While SOPs should be retained, Veterans should also be able to pursue a claim outside of the SOP system as is the standard way in other schemes. Providing for this alternative pathway recognises that creation of a new SOP or amendment to an existing SOP, is a long process and may considerably delay appropriate medical treatment and compensation.

**63. Question d5. Is it possible to consolidate the entitlements into one Act?**

64. Yes, but that doesn't mean it is a good idea. DFWA considers that only looking at a One Act option, "situates the appreciation" and does not consider properly all of the factors causing difficulties in the current situation.

#### **Background.**

65. When MRCA was mooted, the expectation of the ESO community was that it would combine the best aspects of VEA and SCRA with greater benefits and ease of administration for Veterans. There is no doubt that there were improved benefits however:

- a. MRCA introduced complexities in administration, many aspects of which related to the "rehabilitation" aspects not experienced in the VEA administration.
- b. VEA and SCRA already had their own business processes, supported in many instances by IT designed to support those processes.
- c. DVA staff were trained in SCRA and/or VEA, the silo processes and the silo IT supporting those processes and DVA structured accordingly.
- d. MRCA required a third set of silo business processes to be introduced, together with silo IT systems to support those processes and training, and staff and organisation.
- e. Then, another set of policies and processes had to be developed to cater for the complexities introduced when a Veteran's incapacity spanned 2 or 3 Acts. This area remains

a mystery to Veterans and Advocates as applicable policies and processes are not available to them. There are probably still more complexities being discovered.

- f. The training of volunteer Advocates needed to cater for 3 Acts. Considerable difficulties were experienced, especially with older Advocates comfortable with VEA, which was “settled in” and generally working smoothly. SCRA was difficult. The expectations that MRCA would be as simple and straight forward as VEA to support were not met.

66. It would be fair to conclude that history indicates that consolidation of entitlements into one Act, while sounding good in theory, is fraught with numerous practical implementation difficulties, which would compound the problems that DVA is already experiencing. It would involve a major change programme involving business processes, IT, training, re-organisation of DVA, their contracted out service providers as well as advocacy and welfare support from the ESO community, which would also require a change management programme. This would need to occur at the same time as providing continuity of service to Veterans. This does not even factor legal difficulties regarding different entitlements under the different Acts with grandfathering issues and cut-off eligibility dates if a new regime was implemented.

67. For these reasons, DFWA does not support consolidation of entitlements into one Act as a “big bang” approach.

68. DFWA supports the incremental approach to harmonise entitlements and processes across the 3 Acts.

**69. Question d6. If so, how would it be done?**

70. It is generally agreed that:

- a. the complexities causing hardship delays arise mainly where a Veteran has entitlements under all 3 Acts;
- b. removing inconsistencies in the benefits and process of the three Acts would have benefits in producing a more effective and equitable support for all Veterans and greater administrative efficiencies;
- c. the Veteran-Centric Reform (VCR) initiative has proved to be an effective mechanism for producing efficiencies in service delivery; and
- d. the Legislative Workshop involving ESOs has brought in new ways of addressing Veteran community priorities.

71. DFWA suggests that a formal Continual Process Improvement approach to implementing change would provide more effective services and service delivery for Veterans and would facilitate introduction of more efficient delivery of services while maintaining continuity of services to Veterans.

72. **Continual Process Improvement (CPI).** CPI is generally defined as an ongoing effort to improve products, services, or processes. It is accepted business best practice and there are several recognised methodologies supporting its implementation by organisations seeking to survive and thrive in an ever-changing world where demands for new products and services and more efficient delivery mechanisms are needed to contain costs.

**73. DFWA Suggestion.** DFWA suggests that the current VCR is an embryonic CPI mechanism that has shown success and could be grown into a fully-fledged ongoing CPI programme, supported by Legislation and appropriate resourcing. It would involve Introduction of new legislation that could include the following:

- a. Has a goal of harmonising the existing Acts, (benefits, entitlements, processes and governance) to maximise benefit effectiveness for all Veterans and introduce efficiencies in processes and their overhead.
- b. In the interim, where a Veteran has complex case spanning more than one Act, allows the Act that best meets a member's needs as decided by the Veteran, to be used regardless of qualifying periods or service (the 3 Acts would remain);
- c. Facilitates phased amendments of all Acts that transferred the most appropriate beneficial aspects into all Acts. This could be product or process that provides a more effective benefit to the Veteran or facilitates a more efficient process supported by IT. This would be supported by formal Change Management processes and cost-benefits analysis.
- d. Options should be developed in the Legislative Forum. Legislation would require formal, ESO representation in the governance of the Change process. ESO are key stakeholders representing both the Veteran and the Advocacy service assisting Veterans.
- e. Provides flexibility for government in providing more equitable and effective benefits to Veterans, based on formal Veteran community advice and when budgetary priorities permit.

**74. Question d7. What transitional arrangements would be required?**

75. Transitional arrangements would be addressed in Change Management planning and the CPI programme.

**76. Question d8. How might these be managed?**

77. Transitional arrangements would be addressed in Change Management planning and the CPI programme.

**78. Question d9. Are there approaches, other than grandfathering entitlements, that can preserve outcomes for veterans receiving benefits or who may lodge a claim in the future?**

79. See DFWA Suggestion in response to Question d6.

## e. THE CLAIMS AND APPEALS PROCESS

80. The Issues Paper discussion and questions in this section are focussed on DVA claims and appeals process which are very different to those of CSC. The question Responses are focussed on DVA claims and appeals.

81. **CSC and ADF.** The big gap in this Issues Paper and the focus of this Inquiry is that it is “DVA centric” not “Veteran-Centric”. The Veteran has no single expert source on Veteran issues to get advice on things that are all inter-related, where a decision on one area will impact opportunities, benefits and/or entitlements and liabilities in other areas, e.g. Impacts of declaring injuries, including mental health issues on:

- a. ADF Regular and Reserve Employment options.
- b. DVA Incapacity Claims,
- c. CSC Invalidity Benefits,
- d. Family Court access/custody children
- e. Family Court Asset/Income splits
- f. Child Support Payment
- g. Lump Sum decisions,
- h. Income Support,
- i. Various Centrelink Payments,
- j. Transition.

82. While silo advice is available, and it would be difficult to say, train an Advocate to assist in all areas, the fact remains that this is an area of extreme complexity. This often affects the most vulnerable of our Veterans. If it is difficult for the Inquiry to attempt to address, it is even more difficult for the Veteran, with mental health issues, being compulsorily discharged from the ADF and being so stressed out experiences relationship breakdown. And is faced with complex decisions with long term consequences.

83. **CSC Appeals Process.** Issues with the CSC Invalidity Benefits claims process and medical assessments have been addressed in Part 2- Failure to Address Complexity in Veteran Impacts. There are aspects of the appeals process showing little regard for the Veteran, who being compulsorily medically discharged is at least deserving of some empathy and beneficial administration.

- a. There is a time limit of 30 days set for a Veteran to request an appeal against a CSC decision, including one related to Medical Classification. DFWA submits that this time limit is for CSC administrative efficiency benefit, but does not provide an effective service to the Veteran. In its literature, CSC claims that its approach to military superannuation takes into account, the unique nature of Military Service. Given the possible mental state of a Veteran

transitioning and the complexities and stresses experienced by the Veteran at this stage, and the lack of advice available to the Veteran on the complex issues, DFWA submits that 30 days is insufficient time for the Veteran to comprehend the situation and make a decision regarding an appeal. There are many Veterans who get totally confused about which organisation they are dealing with (CSC or DVA) when it comes to payments received for invalidity and which organisation is arranging medical assessments. The time for appeal should be at least the same as that DVA applies to VRB appeals. (12 months).

- b. If a Veteran disagrees with a CSC decision, an appeal can be lodged with the Superannuation Complaints Tribunal (SCT). In a recent issue, some 226 Veteran Beneficiaries lodged complaints with the SCT in an attempt to clarify and resolve the issue. As part of the complaint process, the CSC directed Veteran Beneficiaries to the SCT. Once a complaint had been lodged, CSC advised the SCT they do not have the jurisdiction to handle the complaint. This is clearly not an efficient or effective dispute resolution process, nor is it Veteran-Centric. Literature does not give a clear indication of what body had the appropriate jurisdiction. It may be the AAT or the Administrative Decisions Tribunal (ADT). It is noted that Advocate training under ATDP does not cover appeals to the ADT as governed by the Administrative Decisions (Judicial Review ) Act, yet that avenue of appeal is open for DVA appellants for some decisions. .

**84. Question e1. How could the administration of the claims and appeals process be improved to deliver more effective and timely services to veterans in the future?**

- a. There should be time limits set for Decision times for various stages of a claim and for the resolution. Time limits should cater for single and multiple incapacities and for single Act claims and multiple Act claims.
- b. More flexibility in claim and appeal time limits imposed by DVA on the Veteran... While this may not help deliver more timely services, it will make the delivery of services more effective, aligned with the needs of the Veteran, especially those with mental health issues. There are many cases where Veterans find dealing with DVA too stressful. They may or may not have an Advocate. However, for whatever reason, some Veterans just give up dealing with the claims and the demands the claims process puts on them. They just do not follow up claims. They retreat. In doing so, they may miss appointments, deadlines and various time limits imposed by the bureaucracy – in the interests of the efficiency of the organisation, not the Veteran. When a Veteran disappears from the DVA Claims process, there should be a mechanism to “stop the clock” and not be penalised by failure to meet bureaucratic organisational needs. A mechanism for “stopping the Clock” could be used to identify “at risk” Veterans, and could also be used in a way that internal DVA KPI measures are not affected by a disrupted claim.
- c. Provision of access to the policy and processes that DVA applies in assessing multi-Act claims, would aid understanding of process and reasons for decisions and remove an unnecessary complexity for Veterans and Advocates in preparing for reviews. This would improve the likelihood of better prepared submissions leading to faster resolution times and less likelihood of further appeals.



85. **Recommendation.** It is recommended that DVA provide Veterans and Advocates access to the policy and processes that DVA applies in assessing multi-Act claims.
86. **Question e2. Are there diverging areas of the claims and appeals process under the different Acts that could be harmonised?**
87. There appears to be for DVA legislation. A review should reveal where harmonisation is possible and this should be implemented along with other measures in a formal legislated CPI regime outlined in response to Question d6...
88. The appeals process for CSC Invalidity Benefit issues should be changed to reflect the time limits that apply for DVA appeals.
89. **Question e3. Are there aspects of the claims and appeals process that result in inequitable outcomes for veterans, such as limitations on legal representation?**
90. It is suspected that there are inequitable outcomes for Veterans for VRB, however this is not able to be assessed. The process should be more transparent with findings of the VRB and VRB reasoning to be made published (suitably redacted or anonymised) and available to Veterans and Advocates. This would improve the quality of claims and appeals and assist in achieving, and be seen to achieving equitable outcomes.
91. **Legal Representation.** Legal representatives may be directly involved in all parts of the claims process, preparation of appeals, and representing the Veteran at appeals, except attendance at a VRB. At present the VRB is inquisitorial by nature, and provides an economical means of Veterans to appeal, with or without Advocate assistance. While it may be stressful for a Veteran, it is certainly less stressful than the adversarial hearing at an AAT where the Veteran may be cross-examined by the respondent's lawyer and have costs awarded. Even the setting of an AAT is court-like. The VRB is a less formal, less stressful review step before introducing the stress of AAT and its court-like legal processes.
92. There is no doubt that most Veterans find the prospect of attending and the actual attendance at a VRB stressful. This increases risk for those Veterans with mental health issues. The arguments for legal representation of Veterans at the VRB are usually based on the stress caused by the quizzing of a Veterans and the thought, that having a legal representative would provide more protection for the Veteran especially if quizzed by a Member who was a lawyer. However, there are also cases of Veterans' being stressed by quizzing by Service Members, most of whom are not lawyers. There are avenues of recourse for representatives of Veterans at VRB to raise examples of less than appropriate performance by board members now, and Advocates have the right to defend their applicant as may be required if such matters impact a hearing. This includes where overly assertive questioning adversely affects the health of the applicant. A representative of a Veteran applicant at a hearing of a review before the VRB has the same protection and immunity as a lawyer has in appearing for a party in proceedings in the AAT or higher courts. That said, over the last 3 or 4 years, there are more frequent reports of less empathetic approach generally by VRB members towards Veterans, and reports of a tendency to not to give weight to the beneficial nature of Veteran legislation. There also seems a tendency for legally trained members to question as they would in the familiar adversarial court.
93. While DVA introduced training related to Veterans in response to need to create a more empathetic culture, it is uncertain whether the same was conducted for VRB members. Due to their crucial role in the compensation aspects of Veteran support, It is suggested that VRB members should receive



training – Continual Professional Development (CPD) – in art of inquisitorial empathetic questioning and on the rationale and employment of the beneficial interpretation of Veteran legislation,

94. Advocates currently can represent Veterans at the VRB. To get to that stage an Advocate must have had significant training and experience. Also, the introduction of ADR by the VRB, and the professionalization of advocacy through ATDP, is likely to improve the standard of representation by Advocates. It has been observed that the standard of some legal representation of Veteran issues at AAT, does not guarantee greater protection of the Veteran.

**95. Question e4. Will the Veteran-Centric Reform program address the problems with the administration of the veterans' support system?**

96. DFWA believes that the VCR program has been successful in making incremental improvements in the efficiency of service delivery to Veterans, however the changes necessary have not proceeded quickly enough, nor can they be guaranteed. The VCR program should adopt a formal CPI approach, should be reinforced by stronger legislative backing and be resourced appropriately. See DFWA response to Question d6, Part 3 on Complexity of Veterans' Support – Continual Process Improvement.

**97. Question e5. Are advocates effective?**

98. The quality and standard of Advocates has in the past been a bit of a lottery. However, overall, Advocates are effective. The demand for Advocates is high amongst Veterans. While statistics don't exist, it is a fact that they are much sought after and there are waiting lists for Veterans to see Advocates. DFWA has attended Transition seminars at Enoggera for the last 5 years. The most common question was advice on where to get an Advocate, how to choose, how do you know if they are any good. Veteran support websites have daily queries from Veterans seeking Advocates.

99. There is no doubt that their effectiveness can be improved. ATDP is attempting to do this, with introduction of mentoring and continual professional development (CPD) requirements.

**100. Question e6. How could their use be improved?**

101. This question is too big to be answered as part of this study. Refer to the DFWA response in the Veterans Advocacy and Support System Scoping Study (VASSSS).

**102. Question e7. Are there any lessons that can be drawn from advocates about how individualised support could be best provided to veterans?**

103. With current training under ATDP, Advocates will be capable of providing individualised support to Veterans of DVA related services and benefits. However, there are areas where Advocates are not always able to provide individualised support and have had to call of support for elsewhere. These are:

- a. Support related to dealing with Invalidity Benefits by CSC. This issue has been raised in Part 2 - Issues with Complexity with Invalidity Benefit Payments by CSC – Veteran Needs.
- b. During the claims process supported by Advocates, there is a need for Veterans to attend medical Examinations arranged by DVA. With some distraught Veterans, attending such examinations is problematical. While Advocates have a remit to check Veterans are aware of and are reminded to attend, in some cases, the Veteran requires a person to accompany them to the examination and escort them back to a safe place after the examination. Many

Advocates are reluctant or unable to undertake this “extra” role which is integral to the claims process. There needs to be the Welfare Officer/Welfare Support Officer roles recognised and be available to assist Advocates in this support.

**104. Question e8. Have the Statements of Principles helped to create a more equitable, efficient and consistent system of support for veterans?**

105. This would generally be true, for those conditions which have been recognised by SOPs. However, the nature of SOPs inevitably mean that effective support is denied or delayed to some Veterans in need. Efficiency has come at a cost to effectiveness. Consider:

- a. SOPs are amended frequently, indicating the replaced SOP required correction for some reason. This logically means some Veterans were denied effective support when assessed against the former replaced SOP.
- b. Some SOPs require documented proof of factors stretching back to operational periods and covering many years. This is clearly impracticable given the nature of military service. This has been recognised by recent initiatives coming from CP, however it needs legislative change to be more effective.
- c. Most other schemes rely on proving cause and effect of particular incapacities, rather than SOPs. While SOPs should be retained, Veterans should also be able to pursue a claim outside of the SOP system as is the standard way in other schemes. Providing for this alternative pathway recognises that creation of a new SOP or amendment to an existing SOP, is a long process and may considerably delay appropriate medical treatment and compensation.

**106. Question e9. Are there ways to improve their use?**

107. This is part of ATDP training, mentoring and CPD.

**108. Question e10. What is the rationale for having two different standards of proof for veterans with different types of service?**

109. Having the “balance of probabilities” standard for ADF peacetime activities in environment similar to that of the civilian working world puts Veterans on a par with normal standards. Having the “reasonable hypothesis” standard is justified when considering a war-like environment. However, DFWA considers that this standard should be extended to those peacetime activities that carry risks similar to war, e.g., exercises (HMAS Voyager and Blackhawk disasters), and the prevailing risk is the same as in war-like condition or incidents which later prove to have been high enough to entail casualties.

**110. Question e11. Are there alternatives to recognise different groups of veterans?**

111. See previous response.

**112. Question e12. 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)?**

113. The question implies purely economic considerations, and is focused on efficiency with the pretence that this might benefit the Veteran. It ignores the effectiveness of the benefit to the Veteran and requirement for a Veteran focus, the original justification for this Inquiry.

## f - SYSTEM GOVERNANCE

### Future of Department Of Veterans Affairs.

115. The Productivity Commission Issues Paper identified the DVA client base and showed that of the approximately 300K clients, 220k are over 60. As a result of this decreasing client base, it is reasonable to assume the way Veteran services will be provided will change over the next decade.
116. From DFWA's perspective, the non-negotiable point is that there must be a single organisation dedicated to delivery of support for Veterans and it must have ministerial representation to ensure that Veteran issues can be raised in cabinet. The portfolio arrangements and structure are separate matters. Centrelink or NDIS may seem logical options however, because of the Unique Nature of Military Service and military culture issues described earlier, both options would fall well short in being able to guarantee the level of tailored effective Veteran support required. Furthermore, no other organisation provides the full gamut of services to its clients similar to the services and support DVA provides to the Veteran community. If Veterans' support was subsumed within another organisation there is also the concern that there would be inevitable pressure to confuse and normalise Veteran support with the delivery of welfare and other social services provided to the general population.
117. The DFWA position is that a stand-alone Department of Veteran Affairs with Cabinet position for the Minister as at present should remain in place as this provides the most effective way of delivering the tailored support required. However, DFWA also recommends that Minister for Veteran Affairs continues to also hold the Defence Personnel portfolio under the Minister for Defence appropriately resourced to deliver expanded Veteran support functions and support end-to-end governance of Veteran support. Potential advantages would be:
- a. Defence understand the Unique Nature of Military Service and military culture.
  - b. It would provide "a Cradle to Grave" management of defence personnel and Veterans.
  - c. It could facilitate the rotation of personnel (trained in Veteran-Centric approach) through positions supporting end-to-end Veteran support, whether that position was in Defence/ADF or DVA, thereby promoting greater understanding of the E2E support and of the different departments involved.
118. **Question f1. Do the governance arrangements for the veterans' support system encourage good decision making — from initial policy development to its administration and review?**
119. **No.** As an example, take the reason that this Inquiry, along with several others, was initiated. It started with the issue of Veteran suicide and mental health.
120. **Suicide Rates.** It has been shown by studies commissioned by DVA<sup>7</sup> that the suicide rate among those young Veterans discharged from the ADF are twice as high as those still serving. Ex-serving men aged 18–24 were at particular risk—2 times more likely to die from suicide than Australian men of the same age.

---

<sup>7</sup> Australian Institute of Health and Welfare 2017. Incidence of suicide in serving and ex-serving Australian Defence Force personnel: detailed analysis 2001–2015. P36.

121. **Rehabilitation.** Studies have also shown that rehabilitation is more effective and proceeds faster if those with mental health problems can continue working productively, contributing to team goals, being mutually supported and being regarded as a valuable member of the team.
122. **Preventative.** Studies have also shown that mental health issues are likely to be contained and prevented if there are periods of “normal” life with routine work and family interaction, away from stressful operational environment. i.e., a break from the “front line” or the possibility of the front line. . UK MOD studies show that the frequency of deployment is a cause of mental health issues; many ADF Special Forces members have exceeded the number of deployments recommended by the study, as quoted in the Vietnam Veterans Family Study 2014 Volume 2 page xvii.
123. **ADF Policy – Fitness.** . The ADF is focussed on the mission, and units have to be “operationally ready”. It is important therefore that all members in a unit that could deploy, are operationally ready, mentally and physically so that unit missions can be undertaken with a degree of certainty. That all members are capable of supporting the team, are capable, if put in harm’s way. Any members who are at risk of not being operationally and medically (physically and mentally) ready in the required time, are likely to jeopardise a mission, and put themselves and others at risk. For this reason, the ADF, moves members in the medical at risk category, out of “ready” units and, if the fitness condition is not fixed within a prescribed period, the member is medically discharged. The prescribed period varies, but is rarely more than a year. A member with mental health problems generally requires more than a year to restore to acceptable level of fitness.
124. **Outcome.** The member is medically discharged, out of the team, out of ADF family supportive environment, and unwillingly transitioned. This adds to stress and exacerbates the mental health issue, which then needs longer term treatment to effect recovery. Far longer than that required if the member had stayed as a valued member of the ADF team. This cost is passed from the ADF to DVA. It is the cost of treatment. There are new DVA costs related to compensation for extended period. There are CSC incurred costs related to Invalidity Benefit payments. The cost of salary for the member’s position in the ADF continues. The ADF then incurs further costs of training the discharged member’s replacement. There are probably other costs not identified here.
125. **Economic Rationalism by ADF/Defence.** Since the mid-1980s and later, there has been a steady program of “civilianisation” of the ADF. Virtually every uniformed ADF position had had to be justified as requiring an ADF uniformed member. Unless the role required a “deployable” capability, it was a candidate for civilianisation and/or contractorisation. Typically, administrative posts in deployable units came under scrutiny, the role and function taken out and replaced by a corporatized geographically centralised organisation staffed by allegedly cheaper public servants and contractors. Non-deployable logistic and administrative units were virtually all civilianised. ADF trade training units were also targeted with many technical training courses out-sourced to TAFE and military training units closed and the former uniformed ADF instructor positions removed.
126. The arguments put forward to retain these positions as uniformed posts were based many factors including:
- a. The positions provided a “surge” capability able to provide a nucleus to expand the army when the deployable units were deployed in an emergency.
  - b. The positions provided a “normalisation” capability for ADF members to have a 9 to 5 type of job for two or three years, rotated out of the “ready” units for a period. This allowed

time for individual training and education and a normal family life. It provided a preventative measure for mental health issues, aided in retention thereby reducing training costs.

- c. The positions provided a rehabilitation capability for Veterans with medical issues. This was especially true for those with mental health issues where the member could continue in a supportive environment and be a valued, contributing member of the team.

127. These arguments fell on deaf ears as the ADF main purpose was to prepare for operations and was not responsible financially for preventative “normalisation” or rehabilitation.

128. **Conclusion.** If the ADF had full visibility of the costs for rehabilitation and compensation of Veterans by DVA and CSC, and there was an overall governance regime able to identify the through life cost of a Veteran (enlistment to grave), these could have been considered in the cost-benefit analyses of civilianisation of uniformed posts. With consideration of these costs and benefits, it is likely that the wholesale ADF civilianisation program may have had a different outcome and that many of those lost ADF positions would have been retained, overall financial costs reduced and the rehabilitation of Veterans been more effective and efficient.

129. **Question f2. If not, what changes could be made.**

130. The example provided illustrates that there is an argument for the rehabilitation and compensation costs incurred by DVA and CSC for those medically discharged from the ADF should be as captured and recognised as arising due to operational decisions of the ADF. Further, visibility of such costs in a whole system cost benefits analysis, would lead to better and more informed policy development. It does not mean that the ADF should be responsible for the administration of DVA functions.

131. Suggestions for other changes related to Governance issues are addressed in Part 2 – Failure to Address Complexity, Impacting on Veterans and Part 3 – ADF- Minimising Risk.

132. **Recommendation.** It is recommended that:

- a. the rehabilitation and compensation costs incurred by DVA and CSC for those medically discharged from the ADF should be identified as incurred due to operational decisions of the ADF; and
- b. The average rehabilitation costs incurred by DVA and CSC for a member discharged with a Class A or B Invalidity Benefit be included in any cost-benefit analysis when the ADF considers uniformed ADF positions for civilianisation.

133. **Question f3. Are incentives sufficiently aligned between agencies, or are there areas of conflict that could be better managed?**

134. There are areas that could be better managed to provide a more Veteran-Centric approach;, including the following:

- a. **Medical Examinations at Discharge.** This is addressed at Question a5 in Key Deficiencies.

- b. **Transition.** Transition requires a long term plan that starts almost as soon as a member is enlisted in the ADF, continues after discharge and involves the ADF, CSC, DVA and ESOs and there is no end-to-end management. Every ADF member, every year has to have mandatory briefings on subjects such as OHS, EEO, ethics and fraud awareness at their induction days. A briefing on post-ADF support should be mandated and programmed each year. While personnel will unlikely remember the detail they will know there is help and who they could go to. See Part 3 – Helping People Transition from Defence.
- c. **ESO Advocate Assistance to Serving ADF Members.** There is general support for ESOs' providing advocacy and welfare support for Veterans, including those serving. With increased focus on Transition, there is also an increased need for engaging with serving members. Current security requirements for Advocates to access ADF facilities to engage with ADF members, means that:
  - i. Advocates have to be met and escorted to on-base facilities each visit, causing complications if there are several people to be supported on the one visit; or
  - ii. Advocates gaining a Security Pass, requiring
  - iii. A annual or five year police check costing the ESO (\$50 - \$400),
  - iv. An on-base sponsor for each base where clients are posted;
  - v. Application for a Pass on 1 or 5 year basis.
  - vi. Visit to Pass Office for photo.

Given that Advocates are usually Veterans who held higher security clearances in the past, and that their visit is to provide voluntary support to serving ADF members, this process could be better managed by the ADF.

135. **Recommendation.** It is recommended that the ADF review current processes for issuing Security Passes for Advocates with the aim of providing a simplified system providing on-base access for Advocates at no cost to the ESO.

136. **Question f4. If there are any incentive problems how can they be resolved?**

137. See:

- a. Response to Part 3 – Helping People Transition from Defence; and
- b. Recommendation at Question f2

138. **Question f5. Is the veterans' support system sufficiently transparent and accountable for both veterans and the community?**

139. **Veterans.** This response has previously identified the lack of appropriate governance across the end-to-end systems involved in Veteran support (Question a2). Without appropriate governance, there

will not be sufficient transparency or accountability so that efficiency and effectiveness issues can be addressed.

140. **Community.** Veteran support is thought by some as just a special sort of welfare and costs associated and compared with expenditure by Centrelink and possibly in the future, NDIS. This approach falsely attributes costs, as Veteran services are NOT welfare. DFWA makes the following conclusion and recommendation.
141. **Conclusion.** In the interests of transparency to the community and accountability by the Government, the cost of Veteran support should be clearly identified as costs attributed to:
- a. the past operational deployments of ADF, i.e., the costs of committing the ADF to missions in defence of the Nation; and
  - b. training and support for operational deployments.
142. **Recommendation.** It is recommended that:
- a. governance arrangements be put in place to provide overall transparency of the end-to-end cost of Veteran support; and
  - b. costs of Veteran support be presented to the community showing costs attributed to previous and current operational deployments and costs associated with training and support of operations.
143. **Question f6. What role should ESOs play?**
144. ESOs have an obvious role in the provision of advocacy support and in assisting in promoting greater alignment and co-ordination among the stakeholder in the end-to-end Veteran support system.
145. While government agencies are keen to acknowledge the need to consult with ESO and be seen to be consulting with ESOs, it is quite clear there is a wariness of letting ESO have too much say. The government organisations have the legislative responsibilities, ESO do not. There is also the never-ending problem of trying to get a unified voice from the ESO community. However, as stated elsewhere there are concerted efforts by DVA and ESOs to improve consultation and a Veteran consensus view. This is a work-in-progress issue.
146. **Question f7. Are there systemic areas for improvement in the ESO sector that would enhance veterans' wellbeing?**
147. See ADSO submission.



## **g - THE ROLE OF THE AUSTRALIAN DEFENCE FORCE — MINIMISING RISK**

149. The Issues Paper identifies the need to minimise risk and suggests that commanders are obliged to prevent injuries and record incidences of injuries when they occur.
150. **General.** This does not recognise the Unique Nature of Military Service nor the fact that defence of our country, society and way of life must take precedence over the rights of the individual. The ADF must train as they are to fight and that will mean that they are going to be required to perform activities that would normally not be acceptable in the civilian peace time environment (killing people being the major one in operations). In combat zones compliance with civilian law and regulations can put people at significant risk. There will inevitably be a clash of culture within the ADF between those responsible for ensuring combat readiness and those aware of the wider consequences of risk. Many ADF members have been placed in situations during their ADF service where they had to weigh the balance between the risk of injury and ensuring combat readiness. However, there should be a mandatory requirement though for commanders to report incidents to ensure that personnel involved are able to attain the appropriate treatment and compensation for any injuries on their return.
151. **Question g1. What obligations should be placed on the ADF and individual unit commanders to prevent service related injuries and record incidents and injuries when they occur?**
152. **Injury in Battle.** Without any caveats, the question implies that unit commanders can prevent injuries in battle. This indicates a very basic misunderstanding. The nature of military service is that ADF members may be required (ordered) to undertake actions where there is a high probability of injury or even death - unlike any other "calling".
153. **Injury in Training.** This high probability risk can also apply to some training in peacetime settings. ADF members need to be able to operate with confidence on a hostile battleground where the enemy is trying to kill them. The training has to prepare them for that. This includes undertaking tasks in training with some risk of physical injury, but also generating a "fear factor" which they must handle on the battlefield. As a very simple example. Much weapon training on the range is conducted with ADF members using ear protection. On exercises, simulating combat, use of ear protection would limit awareness and hinder communication. It would also not prepare the member for the loud noise of battle and how to operate with it. This is a simple example, however there are numerous others which place the member at higher risk training in Australia than would be acceptable in other occupations. Not to train with some deliberate risk, would mean inadequate preparation for the battlefield, thus endangering not only the individual, but also others relying on the individual. It would also put at risk success in missions related to the defence of the Nation. Training without some risk would be negligent.
154. **Battle Recording of Deaths, Wounds and Injuries.** There also seems to be an expectation that commanders and the military organisation, in the heat of battle should be recording wounds "when they occur". That is, change the focus from the whole purpose of the ADF, winning the battle, completing the mission, with as few as casualties as possible to one of doing paperwork to satisfy some bureaucratic requirement possibly many years later. Inability to deal with this sort of bureaucratic mind-set, is exactly what has driven many vulnerable Veterans just give up, and tragically for some, to suicide.
155. **Appreciation of Battle and Exercise Environment.** The tempo of battle precludes recording injuries when they occur. Even on training exercises, there are also limitations on time available to record

injuries “when they occur”, especially minor injuries treatable “on the go” and not requiring medical evacuation. All deployed ADF members nowadays are trained in rather advanced first-aid that would once have been the province of trained medical specialists. The tempo of activities on exercises is sometimes greater than on operations. This often precludes the recording when injuries or incidents occur. On exercises, there is an economic need to complete as many training activities (battle simulation) in as short a period as possible. This tempo is sometimes greater than experienced in operational situations where there is a lot of “alert” time spent waiting for something to happen (Hurry up and wait).

156. **Time for Recording.** There is an obvious requirement for the ADF and chain of command to allocate time, after battlefield and training priorities have been met, for administrative tasks. This includes catching up on injury and incident recording not done during the operation or training exercise. But even this will not catch everything. ADF members who have just experienced traumatic events in operations may be reluctant to talk. The same applies to traumatic events experienced in “peace-time”, e.g., Blackhawk incident and the sinking of HMAS Voyager where there were numerous deaths and injuries. Having seen terrible injuries to others, they will make light of their own relatively light injuries and not report them. After exercises, ADF members are reluctant to spend time on return from exercise addressing administrative tasks which would impinge on getting home to the family.
157. **Recommendation.** The command chain continues to ensure adequate time is allocated post-operation and post-exercise:
- a. For members to ensure any personal injuries are recorded (however, for reasons stated, this is not always successful); and
  - b. For the command chain to ensure that all incidents where injury could have happened to individuals under command are recorded, especially where individuals may not have self-reported.
158. **Recognition of Risk.** For risk to be minimised it must first be recognised. There are numerous examples where the command chain has not recognised risk, or perhaps how high the probability of the risk occurring and the extent of the impact. The following are historical examples, together with some where there is still some contention:
- a. Agent Orange.
  - b. FIII De-seal-Re-seal Programme.
  - c. Load Lifting in training and combat and musculo-skeletal injuries.
  - d. Mefloquine.
  - e. Inappropriate spraying of residual insecticide in ADF bases in South Vietnam.
159. These incidents suggest an ongoing low level of systemic alertness to risk and a failure of the chain of command.
160. **Question g2. To what extent do cultural or other issues create a barrier within the ADF to injury prevention or record keeping?**

161. Some issues have been addressed in response to the previous question.
162. For some Veterans and for different circumstances, the Veteran is unwilling to report injuries and hence they are not recorded:
- a. Many Veterans are unwilling to complain, admit a possible weakness due to the culture imbued by the Unique Nature of Military Service. The individual must not be a drag on the team or have any weakness that detracts from the team's goal. This applies especially to mental health issues. This is illustrated in "Exit Wounds, one man's war on terror" by ex-General John Cantwell.
  - b. While the ADF encourages reporting, the fact remains that reporting of some issues, especially those which take time to fix, may result in:
    - i. eventual compulsory discharge,
    - ii. a loss of a Security Clearance,
    - iii. reduced promotion chances, and
    - iv. reduced career opportunities, to name a few.
  - c. Additionally, even if considering discharge at own request, the Veteran may be unwilling to declare any conditions at the ADF medical or make any DVA claims because it may limit future employment options, e.g., serving on the Reserves or returning to ADF service full-time.
163. There is a conflict of interest for the ADF regarding the primacy of its role and the need for care of the Veteran. Inevitably, the Veteran must lose. However, previously, there had been more flexibility which no longer exists. See response to next question.
- 164. Question g3. The ADF is not financially accountable for the cost of compensation or for the cost of treating service related injuries and illnesses after a Veteran leaves the ADF. Is this a barrier to the ADF having an adequate focus on preventing injury and illnesses and providing early intervention and rehabilitation support?**
- 165. Question g4. If so, how might this be remedied?**
166. The bean-counter focus on financial accountability regarding preventing injury is inappropriate. The purpose of the ADF is to defend Australia's interests. That undertaking involves deliberately putting ADF members in "harm's way", sometimes with a high risk of injury or death.
167. The assessment of risk involves balancing the risk to mission failure and its impacts against the risk of harm to the ADF member.
- 168. *The financial considerations injected into this question are an insult to the ADF and its values and have no place in the assessment of risk. Read Part 2 on the Unique Nature of Military Service.***

169. The risk is matter of judgement and proof of “adequate focus” can only be made if combat occurs. It is more appropriate for the ADF command chain to make that assessment of risk and adequate focus than a bean-counters sitting in an office far removed from such real life and death assessments.

170. However, the question regarding “adequate focus” on providing early intervention and rehabilitation support is relevant and reference is made to the answer to the earlier Question f1:

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

171. **Governance Arrangements.** An example was provided that illustrated that there is an argument for the rehabilitation and compensation costs incurred by DVA and CSC for those medically discharged from the ADF to be attributed to Defence and the ADF, as these costs are incurred due to operational decisions of the ADF. Further, visibility of such costs in a whole system cost benefits analysis, would lead to better and more informed policy development.

172. The example provided at Question f1, illustrated that the ADF previously had the capacity (uniformed positions) to reduce the risk of mental health problems and to provide medium and longer term rehabilitation. This capacity was lost through the civilianisation of military positions justified by flawed costings. These flawed costings did not consider the rehabilitation and compensation costs incurred by DVA in taking on a medically discharged member who could have been more effectively treated by remaining in one of these posts.

173. It was recommended that the rehabilitation and compensation costs incurred by DVA and CSC for those medically discharged from the ADF should be attributed to Defence and the ADF. In doing so the costs incurred further down in the Veteran support chain can be assessed against the cost of retaining uniformed ADF positions and treating the Veteran whilst still in the ADF.

## **h - PROVIDING FINANCIAL COMPENSATION FOR AN IMPAIRMENT**

### **175. Question h1. Is the package of compensation received by veterans adequate, fair and efficient?**

176. This is a large question and addressing it involves many factors, including the fact that each compensation package under the different Acts, was a product of the time. The fact that there are 3 Acts indicates that notions of adequacy and fairness change with time, and on that basis alone, the criteria for adequacy and fairness have changes. Efficiency is not helped by having multiple compensation packages, all of which have to be considered when determining a particular award. The answer therefore to the question is “No”.

### **177. Question h2. If not, where are the key shortcomings, and how should these be addressed?**

178. There have been numerous complaints regarding the adequacy of certain pensions, e.g., TPI, where purchasing power has declined due to inappropriate indexing of payment increases to the CPI which is recognised by the National Audit Office (NAO) as an invalid measure for purchasing power. It is also recognised by the government, as other more appropriate index arrangements are made for welfare payments. However, these need be addressed separately. Two Issues are identified:

- a. Lack of Clarity –Economic and Non-Economic Loss; and
- b. Lack of Transparency – Offsetting.

#### **Lack of Clarity – Economic and Non-Economic Loss.**

179. There is a lack of clarity in DVA as to whether or not the concept of economic and non-economic loss underpins the design of disability pensions and payments by DVA. Despite public statements by a former Minister for Veterans Affairs and a former Secretary of the Department that Disability Pensions consist of these two components, the Department has refuted that view. This is despite factsheet MRC09 that clearly refers to these components in the case of the SRDP paid under MRCA:

- a. Compensation for pain and suffering (disability payments and pensions up to the general rate), is compensation for non-economic loss, while:
- b. The Above General Rate component of the SRDP represents compensation for non-economic loss.

180. The mixed and changing explanations seem to be situational depending on what argument the Veteran community is making for a fairer compensation package and what counter-argument the government of the day finds most convenient to employ. In terms of the design of future compensation payments these concepts need clarification. For example, if a disabled Veteran is unable to be employed because of his/her disabilities, is the compensation for economic loss based upon a common rate for all Veterans or is it based upon the future earnings foregone by the Veteran for the length of their previously expected working life?

181. **Conclusion.** It is concluded that the lack of clarity regarding the role of “the concept of economic and non-economic loss” has in the design of the disability payments, causes confusion regarding assessment of fairness.

182. **Recommendation.** It is recommended that the basis for design of compensation package in terms of economic and non-economic loss, and/or other factors be stated clearly in a policy document.

**Offsetting Anomalies.**

183. The complexities of multiple entitlement for an incapacity spreading over the 3 DVA Acts has been discussed earlier, as has the lack of visibility by Veterans and Advocates of the DVA policies and processes involved in calculating payments and offsets. The Acts were products of different times and perceptions of fairness differ. Greater visibility would assist in perceptions of fairness, or at least the logic of calculations. However, the logic of offsetting between DVA Incapacity Payments and CSC Military Superannuation Invalidity Benefits on a dollar for dollar basis requires justification, considering

- a. The CSC Invalidity Benefit is assessed on all incapacities, including those “not service caused”.
- b. The DVA Incapacity Payment is only for those Incapacity Payments that are “service caused” and may be a small sub-set of the Veteran medical problems.
- c. The DVA Incapacity Payments are reduced dollar for dollar by the Invalidity Benefit payment provided for all Incapacities, including the “not service caused” incapacities not covered by DVA.
- d. The different assessment purposes and methods of the DVA and CSC assessments, make comparisons difficult, however, no more difficult than with other offset calculations, and no attempts have been made to even address this unfairness.

184. **Conclusion.** It is concluded that the lack of transparency regarding policy and processes regarding offsetting and the principles on which offsetting is based among DVA and CSC payments for the same disability/ies hinders accountability, creates unnecessary suspicions of inequitable outcomes and creates distrust of DVA and CSC by the Veteran community.

185. **Recommendation.** It is recommended that DVA publish policy document clearly explaining policy and processes applied in calculating payments and offsets between:

- a. Payments under the 3 DVA Acts for the same disability; and
- b. The Invalidity Benefits paid by CSC for All Incapacities and the DVA Incapacity Payments for those accepted as Service caused.

**186. Question h3. Is access to compensation benefits fair and timely?**

187. Yes, for the majority of claims. However, there are instances where the outcomes have not been fair and have taken an unacceptable time to resolve. Some were not resolved and had tragic outcomes. Earlier in this response DFWA called for improved escalation and setting of resolution times:

- a. **Escalation Action.** It was concluded that when cases pass certain deadlines, there needed to be a process for review to identify the cause and to initiate appropriate action. The review process needs to be triggered by defined time lines, complaints by the Veteran or by an agreed mechanism where the Advocate can trigger formal review. Action may be

required by DVA and the appropriate stakeholder so that pro-active preventative/remedial action can be taken where it is suspected that the Veteran is at risk.

- b. **Time limits.** It was concluded that there should be time limits set for Decision times for various stages of a claim and for the resolution and time limits should cater for single and multiple incapacities and for single Act claims and multiple Act claims.

188. **Timely – SOP Issue.** Most other non-military compensation schemes rely on proving cause and effect of particular incapacities, rather than SOPs. SOPs do assist in timely access to benefits for those conditions recognised as being potentially as “service caused”. An Incapacity not recognised under an SOP faces difficulties in acceptance. While SOPs should be retained, Veterans should also be able to pursue a claim outside of the SOP system as is the standard way in other schemes. Providing for this alternative pathway recognises that creation of a new SOP or amendment to an existing SOP, is a long process and may considerably delay appropriate medical treatment and compensation.

189. **Question h4. In particular, are there challenges associated with the requirements in the MRCA and DRCA that impairments be permanent and stable to receive permanent impairment compensation?**

190. The difficulties encountered by Delegates and medical specialists in applying the terms ‘permanent’ and ‘stable’ are well known. In 2015 DVA convened a Consultative Group to enable ESO input to the SRDP Review Steering Committee. Documents circulated at the time provide evidence of DVA’s awareness of the problems and endeavours to resolve them.<sup>8</sup>

191. **Question h5. How could these provisions be improved?**

192. DFWA proposes that the terms ‘permanent’ and ‘stable’ be placed in legislative context. With MRCA where:

- a. ‘stable’ is defined in terms of ‘the likelihood of improvement’<sup>9</sup>, and
- b. ‘permanent’ is defined in terms of ‘impairment is likely to continue indefinitely’<sup>10</sup>—.

193. **Conclusion.** It is considered that the terms ‘likely’ and ‘likelihood’ are consistent with the ‘reasonable satisfaction’ standard of proof.

194. **Recommendation.** It is recommended that the terms be clarified in policy to mean ‘more probably than not’.

195. **Question h6. Is there scope to better align the compensation received under the VEA, MRCA and DRCA?**

---

<sup>8</sup> See: Review of the Special Rate Disability Pension; ESO Consultative Group Meeting, February 2014, Review of Military Compensation Arrangements Background, and DVA Discussion Paper: Matters to be considered by the Review of the Special Rate Disability Pension.

<sup>9</sup>(MRCA. s73(b))

<sup>10</sup> (MRCA s68(1)(b)(i) and s199(b))



196. See DFWA response to Question d6, Part 3 on Complexity of Veterans' Support – Continual Process Improvement.

**197. Question h7. In particular, could the provisions for permanent impairment compensation and incapacity payments in the MRCA and DRCA be made consistent?**

198. See DFWA response to Question d6, Part 3 on Complexity of Veterans' Support – Continual Process Improvement.

**199. Question h8. Are there complications caused by the interaction of compensation with military superannuation?**

200. Yes. This is covered in detail in Part 2 – Failure to Address Complexity Impacting on Veterans. It was also addressed in Review of Military Compensation Arrangements Report - Volume 2 18 Mar 2011.

**201. Question h9. How could these be addressed?**

202. See Part 2 – Failure to Address Complexity where the following Conclusion and Recommendation were made:

- a. **Conclusion.** There is a case for responsibility for military superannuation to be transferred to the Minister responsible for delivery of services to current and ex-members of the ADF. This is the current dual-hatted role of the Minister for Defence Personnel and Minister for Veteran Affairs. This would assist the addressing of the governance issue with an initial focus on compensation, inefficiencies regarding medical administration, offsetting payment problems and support timely sharing of information as outlined in Part 2 regarding complexity [[Part2d](#)]. Effective delivery of joined up service to Veterans would be more likely than at present. It would also assist in the development of a more Veteran-Centric culture as is being progressed in DVA and essential for delivering effective service to Veterans.
- b. **Recommendation.** It is recommended that responsibility for military superannuation schemes should be transferred to the Minister for Veteran Affairs.

**203. Question h10. What is the rationale for different levels of compensation to veterans with different types of service in the MRCA?**

204. No response.

**205. Question h11. Should these differences continue?**

206. No response.

**207. Question h12. For those veterans who receive compensation, are there adequate incentives to rehabilitate or return to work?**

208. DFWA submits that, while there will be exceptions, the younger Veterans are self-incentivised to rehabilitate and return to work. The question implies that Veterans in receipt of compensation need



more incentives to return to work. There is already a carrot and stick approach, (increase in payments above the 75% mark, but an offset of income received) which provides some incentive. There is also the threat of losing Incapacity Payments generally if the Veteran does not participate in the rehabilitation regime determined by the contract provider.

209. Feedback from Veterans advise that the current incentives would probably work more effectively with some operational changes:

- a. There have been difficulties with rehabilitation services provided in remote areas and in the manner the service deliverers deal with Veterans, the stick appearing to be the favoured mechanism for contract provider administrators to employ rather than Veteran-Centric empathetic encouragement. If there is a dispute, DVA seems to support the contractor rather than the Veteran and Payments can be cut, placing the Veteran in financial difficulties. In some instances, better use could be made of ESO provided Welfare/Welfare Support staff to support Veteran attendance at rehabilitation sessions.
  - i. **Conclusion.** At present, the rehabilitation services contracts do not appear to require a Veteran-Centric approach or require appreciation of Veteran issues. The model used is that for the general community and the Veteran is expected to fit in.
  - ii. **Recommendation.** DVA review the rehabilitation service provider contract to ensure inclusion of appropriate Veteran-Centric approach to support attendance at tailored rehabilitation sessions.
- b. Returning to work is a challenging period for a Veteran. Apart from fact it is a new non-military unfamiliar workplace, there is particular uncertainty regarding whether the incapacity is sufficiently reduced so that it will not adversely impact on the job. The steps back to work are likely to be tentative. The hours worked may vary from day to day. There may be periods of no work, then return to work. All requiring an understanding employer. For most, it appears to proceed without major issues with DVA. However, for a few, particularly those who have mental health issues and/or have had a bad experience previously dealing with DVA. Reporting hours worked, explaining the uncertain and irregular nature of the employment involves further dealing with DVA which is after neat regular figures and evidence of employment payment in order to manage changes to Incapacity Payments. The Veteran knows if a mistake is made, it will have further stress-inducing repercussions.
  - i. **Conclusion.** The stress induced by thought of dealing with DVA can dis-incentivise some Veterans' to return to work.
  - ii. **Recommendation.** DVA review processes of a Veteran returning to work to adopt a flexible administrative reporting process agreed with the Veteran and/or Advocate.

210. **Question 13. Are there examples of other compensation schemes that provide support for injured workers and successfully create incentives to rehabilitate or return to work?**

211. No response.

## i - HELPING PEOPLE TO TRANSITION FROM THE ADF

212. As can be seen from the description of the 'Unique Nature of Military Service' in Part 2, personnel transitioning from Defence to the civilian environment cannot be equated to a normal person changing jobs. It is a huge cultural change going from an organisation where the members are generally supportive to one where it is every man/woman for themselves. Currently the perception is that Defence does not prepare its members very well for Transition.
213. There are four entities that fill the Transition space:
- a. **Defence.** Defence's prime role is the defence of the country and one may argue they are not resourced to have extensive programs to prepare personnel for Transition to civilian life. Defence currently run the ADF Transition Seminars and programmes for ADF members. However, it is the final stage in the administration of an ADF member and the main purpose seems to be to pass responsibility for the Veteran from Defence.
  - b. **Department of Veterans Affairs (DVA).** Provide support (not just rehabilitation and compensation) to qualifying personnel who have served their country and for whom DVA have acknowledged liability for service caused incapacities. Of note, only about 20% of ADF members transition as DVA clients; the rest attempt to integrate back into society with little or no support; However, many of the 80% are qualified for various levels DVA support but they do not know about it. An example is DVA's Non Liability Health Care where one only has to serve one day full time service to be entitled to treatment for, but not necessarily compensation for, any mental health condition for the rest of their lives. It is noted that it is only recently that DVA has taken on responsibilities for Transition, mainly in response to political direction and fallout from Veteran suicides.
  - c. **CSC.** CSC administers the military superannuation schemes, DFRDB, MSBS and ADF Super. It also administers the Invalidity Benefits payable under DFRDB and MSBS and the ADF Cover scheme associated with ADF Super. CSC is involved in Transition as eligible Veterans members become recipients of superannuation payments and when ADF members are medically discharged and become eligible for Invalidly Benefits for any incapacity whether service caused or not. CSC historically has had little to do in co-ordinating its activities with the other organisations with Transition responsibilities.
  - d. **Ex Service Organisations (ESOs).** These comprise organisations mainly focussed on the interests of former members of the ADF. Some ESOs also have objectives supporting currently serving ADF members. These are mainly volunteer organisations that work within the Defence Community and pick up those Veterans who have not yet had any support from DVA, and are having difficulties. Advocates in these organisations assist with preparation of claims on DVA if there are any entitlements. Some also provide direct financial, rehabilitation and Transition support for Veterans, including serving members, and their families.
214. CSC gives presentations to ADF members at Transition Seminars and has regular briefings on bases. One-to-One interviews providing financial advice are also provided to serving members. Both Defence and DVA have issues with identifying an ESO to deal with. ADF deals largely with the RSL, due to its scale and involvement in commemorative events, e.g., Anzac Day. DVA is better as they have State based Consultation Forums with the more active ESOs but Defence simply has no group ongoing

engagement. The capability and capacity of the ESOs will vary from State to State and location to location.

215. There is a chasm between these organisations and their focus in the Transition space is not on post ADF support. Recently there was a DVA initiated Transition Task Force (as at April 2018 the outcomes have not been released); the task force comprised staff from Defence and DVA and a small input from CSC. Input from ESOs, the only organisations which historically had accepted end-to-end responsibility for supporting Veterans from enlistment to death, was cursory and limited to 180 words on line answer to a question. Defence may claim that they are fulfilling the function by running Transition Seminars but there are issues:
- a. The seminars are not compulsory and are only run three times a year.
  - b. Of the two day seminar the main focus is on job hunting. Post ADF support is only addressed for about two hours over the period.
  - c. Defence will brief personnel on Transition but often it is too late and issues on post ADF support are not given the attention they deserve due to a member's immediate priorities such as relocation, new jobs, wives' jobs and children's schools to mention a few.
216. ESOs are the organisations that pick up the pieces after a messy Transition or who engage with the 80% of people who transitioned from the ADF without being a DVA client and have a need for some assistance in later life. Limited exposure to ESOs is provided at Transition seminars through a 10 minute video.
217. Every Defence member, every year has to have mandatory briefings on subjects such as OHS, EEO, ethics and fraud awareness at their induction days. A briefing on post-ADF support should be mandated and programmed each year. While personnel will unlikely remember the detail they will know there is help and who they could go to.
- 218. Question i1. Are transition and rehabilitation services meeting the needs of veterans and their families?**
219. No.
- 220. Question i2. Are veterans getting access to the services they need when they need them?**
221. DFWA attends Transition seminars, engaging with those being discharged. DFWA also conducts Veteran briefing sessions for DFWA members and to which currently serving ADF members are invited and attend. DFWA also engages with and follows Veteran discussions on social media sites set up for Veterans, including:
- a. Australia Defence Community Group "Prevention through Connection".
  - b. Comsuper-Military Entitlements
  - c. DVA Claims, Cards and Payments Veterans Information Group
  - d. DVA Complaints, Recognition Q & A Forum

- e. DVA Entitlement;
- f. Veteran Clawback.

222. It is clear that Veterans, serving members and former members of the ADF are largely unaware of the services are available to them. Many of those in receipt of payments from CSC and DVA are totally confused as to what the payments are and from which organisation they originate. It follows from this that Veterans are not getting access to services because they don't know what services are available or what they may be eligible for.

**223. Question i3. What could be done to improve the timeliness of transition and rehabilitation services, and the coordination of services?**

224. The mass of information available from many silo sources is overwhelming, unco-ordinated, often duplicated, with many gaps and frequently dated. For example, DVA, Defence, and some ESOs websites and some Facebook Sites present information purporting to provide Transition support such as locating Advocacy Services. Much depends on organisations to initially provide the information and then keep it up to date. Most organisations perform poorly in this area and volunteer organisations are no exception. Why contribute something that will have little use because it is ineffective? It does not work. All sites have large gaps in information and all are out-of-date.

225. The primary need is to provide effective governance across the three government entities with responsibilities for Veterans, i.e., Defence/ADF, DVA and CSC, and with an ESO representative body. This does not just apply to Transition, it also applies to rehabilitation and compensation and has been raised elsewhere in this response. See:

- a. Part 2 - Failure To Address Complexity Impacting on Veterans
- b. Part 3 - System Governance

226. Until adequate governance is established it is likely that efforts will continue to be un-coordinated, inefficient and ineffective and definitely not meeting the needs of or providing an effective service to Veterans.

**227. Question i4. What changes could be made to make it easier for ADF personnel to transition to civilian life and to find civilian employment that matches their skills and potential?**

228. **ADF Training.** The Australian Vocation Education and Training (VET) system has the aim of providing individuals with work-ready skills for the labour market. It is based on nationally consistent qualifications and statements of attainment. The Australian Industry and Skills Committee (AISC) is the organisation set up by the Commonwealth Government to allow Australia-wide recognition of training by various organisations. ASIC is supported by various Industry Reference Committees.

229. **Recognition.** ADF Training is addressed in the Public Safety Industry Advisory Committee. This comprises employer and employee representative from various sectors, e.g.,

- a. Australian Council of State and Territory Emergency Services (Employer)

- b. Police Federation of Australia with the United Firefighters Union of Australia (Employee Representatives)
- c. The ADF is represented by Department of Defence as employer and the DFWA as ADF Member representative.

230. A key role is to press Defence to ensure ADF training courses and qualifications are compatible with the Australian Vocation Education and Training (VET) system so that ADF acquired qualifications are recognised by civilian authorities.

231. **ADF Cost Cutting Adversely Impacting Transition.** ADF focus is on meeting the operational role and any expenditure which is not aimed at that is a target for reduction. (An instance was described in the civilianisation programme at Question f1 - *Economic Rationalism by ADF/Defence*.) As a result, all elements of training not directly related to the ADF role are pruned from the ADF in-house and ADF out-sourced training. This means that ADF members do not receive the full civilian qualification and certificate because some modules of the training are not covered. This presents certain difficulties:

- a. It can be difficult for the ADF member to gain the qualification in service due to:
  - i. time and attendance requirements;
  - ii. lack of funding;
  - iii. initial training may have been in different state or institution to Veteran current location;
- b. Trying to get the training modules required close to Transition has similar difficulties as earlier, plus:
  - i. Certification requirements may have changed;
  - ii. The missing modules of training may no longer be available.
  - iii. The allowance provided for such resettlement training has restrictions on it which limits accessibility for members with requirements for several training courses even if the total cost is below the allowance limit. The allowance is for one course only.

232. It is noted that “join the ADF and get a trade” was once a recruiting incentive which helped contribute to the prime operational role of the ADF. Now, once recruited, the ADF seems to be reneging on the promise. (Note: It is understood a class action was initiated against the RAN in 2017, for false advertising and promises to recruits for civilian recognised training which did not eventuate.) Additionally, looking at best practice overseas, Germany Armed Forces regard training provided by the military as have a contribution to the “National Good” so that it is not just narrowly focussed on the immediate role of the armed forces.

233. **Recommendation.** It is recommended that the current ADF policy on training and civilian recognition of training be reviewed with an aim of providing a simplified and more easily accessible training for ADF members to gain civilian recognition of qualifications whilst still serving.

- 234. Question i5. Veterans who are medically discharged are generally in higher needs categories than people who access other rehabilitation and compensation schemes, and have exhausted options for return to work in the ADF. How should this be reflected in the design of rehabilitation services for veterans?**
235. Since Transition became a new concern of the government there have been various initiatives to address issues involved, both Federal and state governments and industry have been involved in some high profile Transition and employment activities. Funds and grants have become available. All of the support has been directed at rather standard issues employed decades ago, e.g., assisting with CV preparation and equating ADF occupations to public service equivalents. There has been little focus on those with disabilities. (There has been some concern by some employers that as Veterans all qualify for Non-Liability Health Care for mental problems after just a day's service, that they risk employing "nutters"). Some 3 years ago, before the current interest, there was a DVA initiative to encourage industry to employ disabled Veterans. The initiative died out.
236. Rehabilitation and employment of disabled Veterans are areas of neglect and should be subject to a detailed study to determine the best ways forward. In doing so, there are some obvious options that must be considered:
- a. Industry and business should be encouraged to employ disabled Veterans
  - b. Federal, state and local government should also be encouraged to employ disabled Veterans.
  - c. DVA must set an example. Part of every Job Description in DVA should have the Essential Requirement of an appreciation of the Unique Nature of Military Service and the impacts that has on the delivery of Veteran services. It is suggested that prior ADF service would meet this requirement, more so than a non-Veteran who attended an afternoon's lecture or a visit to an ADF base.
- 237. Question i6. How should the effectiveness of transition and rehabilitation services be measured?**
238. This is a large and very important question. Without valid measures, the extent of a problem is unknown and the success or otherwise of any intervention cannot be assessed. One of the key deficiencies identified Question a5 was the absence of statistics. Grouping Transition and Rehabilitation as one subject to be measured is confusing. They are two separate but related things:
239. **Rehabilitation.** Rehabilitation of the Veteran physically and mentally can be gauged by medical assessment, and the effectiveness measured by before and after assessments. Success is a relative term and may for some merely mean maintaining a status quo and no deterioration in a condition.
240. **Transition.** Numerous studies on Transition have been undertaken in the last few years where different measures have been made. There have been several high profile studies and initiatives aided by government funding provided when linkages between suicide and failures in Transition became a public concern. However well-meaning, the initiatives and activities in this area have been totally un-coordinated due to a complete lack of governance across the three government organisations involved with responsibility intermittent and spasmodic.
241. With new employment terms, ADF members may :

- a. serve Fulltime ADF for a period,
- b. go onto part-time Reserves and work a civilian job,
- c. serve full time ADF for a defined period, then return to a civilian job;
- d. go onto permanent part-time ADF service and also work as a permanent part-time civilian;
- e. various permutations of these throughout an employed life; before
- f. finally leaving the ADF and ceasing work.

This makes definition of Transition and measures of effectiveness a challenge. More so when responsibility is not defined.

242. The measures of success of Transition are complex and far too complex to define anything here. Suffice to say that various factors and measures should be considered , including the following:

- a. Engaging and coordinating data from Defence, DVA, the Department of Education and Training and the Department of Industry, Innovation and Science, ESOs and Veterans;
- b. Longitudinal research involving statistical data gathering and surveys;
- c. Identification of military skills that are comparable to civilian employment needs;
- d. Ascertain pre-discharge Veterans' post-discharge job preferences;
- e. Defining Transition in view of complexities in employment patterns,
- f. Defining the end-of-Transition period or periods so that post-discharge surveying is bounded;
- g. Surveying employment attainment post-discharge;
- h. Surveying satisfaction with employment secured;
- i. Measuring unemployment data, and disaggregating by category of discharge:
  - i. medically,
  - ii. administratively,
  - iii. disciplinarily, and
  - iv. voluntarily discharge.

**243. Question i7. What evidence is currently available on the effectiveness of transition and rehabilitation services?**



244. As stated previously, numerous studies on Transition have been undertaken in the last few years where different measures have been made. There is no consistency or agreed standards and measures.

**245. Question i8. How can the service system be improved?**

246. The introduction of measures of effectiveness and various initiatives requires ownership and governance of the end-to-end system providing a co-ordinated service. The issue of governance has been addressed on Part 3 – System Governance Questions f) and the methodology of improvement by introduction of a Continual Process Improvement program addressed a Question d6.

**247. Question i9. In some countries, rehabilitation services are provided to the families of severely injured and deceased veterans. Is there a rationale for providing such services in Australia?**

248. Yes. The rationale for providing such services is that families of Veterans:

- a. provide support to the ADF member throughout the Veteran's service;
- b. sacrifice personal careers and education by moving with the ADF member when posted to different locations;
- c. support the family when the member is deployed on war-like operations and training;
- d. provide a haven and some semblance of a normal family life; and
- e. acting as a carer when the Veteran is wounded and requires help.

249. The role of a military member's family in supporting the Veteran and thereby the defence forces and interests of the nation has been formally recognised in many countries around the world. For example, the Australian government was represented by the Minister for Defence and the Minister for Foreign Affairs at the NATO Heads of Government Meeting in Wales in 2014 when the Armed Forces Declaration was signed by the NATO Heads of State and Government. It stated:

*The skill and dedication of the men and women serving in our Armed Forces are essential to collective security. These brave men and women serve our nations, facing danger and risking injury and death in the course of their duty. **Their families also play a vital role**, coping with relocation and separation, and enduring the consequences of injury and bereavement.*

*In putting the needs of their nation and their service above all else, the members of the Armed Forces of the nations of the North Atlantic Alliance make immense sacrifices. **In return, we reaffirm our support to them and their families, during and after their service, now and in the future.***

*We value the service and respect the commitment of each nation's Armed Forces personnel and their **families**. They must know that their sacrifices are not forgotten when they return home, that they will continue to be looked after if they are wounded and when they retire, and **that their families will continue to be supported if they are killed**. We affirm the importance we collectively attach to this, and commend the efforts being made across the Alliance to maintain and strengthen the bonds between our Armed Forces and the societies from which they come. We will seek to **enhance the sharing of best***



***practices and lessons learned in support of our Armed Forces personnel and their families, including on our national approaches to providing medical care to injured personnel and support to families.***

*As we mark the 65th Anniversary of NATO and two decades of operations on land, sea and air, including in Afghanistan and in the Balkans, we pay tribute and express our profound gratitude on behalf of our nations and peoples to all the brave men and women who stood ready to defend the Alliance and our values as well as to those, **including from partner nations, who served in NATO-led operations and missions.** We honour these courageous men and women, and **their families**, and place our trust in those who will follow them in years to come.*

250. Similar provision is made in the UK Military Covenant and is planned to be included in the Australian Defence Force Covenant. The Minister for Veteran Affairs has advised that legislation for the Covenant is planned for the August session of Parliament with introduction planned for 11 November 2018.

251. **Question i10. If so, what evidence is there on the effectiveness of these services?**

252. Yes. An Annual Report is presented to the UK Parliament on the achievements under the UK Armed Forces Covenant.

## j - INCOME SUPPORT AND HEALTH CARE

**253. Question j1. Is health care for veterans, including through the gold and white cards, provided in an effective and efficient manner?**

254. This is a big question with an obvious answer. Yes in parts. No in parts. There is always room for improvement. The gold and white cards are just one aspect of the Veteran services across a range of organisations providing health care. The lack of overall governance and the many deficiencies indicate that there is a need for improvement, but industry and business best practice mandates that this should be a continual process. The Inquiry may make recommendations and identify key areas and perhaps priorities, however implementation requires a Change Management Programme and involves more than DVA. There is the requirement of Continuity of Service throughout the change that also needs to be addressed. The recommendation of the introduction of a formal Continual Process Improvement Programme has been proposed at Question d6.

**255. Question j2. Has the non-liability coverage of mental health through the white card been beneficial?**

256. The experience of our Advocates and the feedback from Veterans on social media has all been positive, especially the speed with which the approval is given and the White Card is issued. It has facilitated quick arrangement of treatment without administrative and delay stress which exacerbated the mental condition.

257. The only negative reaction has been from some prospective employers who expressed concern that the eligibility criteria of one day indicated that it was likely that any Veteran employed may have mental health issues that could adversely affect performance.

**258. Question j3. Is there scope to simplify the range of benefits available, and how they are administered?**

259. An approach to simplify the range of benefits is usually initiated for efficiency, essentially cost reduction purposes. The risk is always that the service provided becomes less effective either in service or in delivery to the recipient. Bearing in mind that the reason this Inquiry was initiated was because the service provided did not have the Veteran as its focus and consequently was ineffective. If a problem exists in Veterans' accessing the range of services because of complexity, simplification of access criteria and decisions should also be considered.

260. **Conclusion.** It is concluded that any changes to simplify access to benefits are likely to be driven by cost reduction efficiency measures which may cause changes to benefits rendering them less effective for the Veteran and introduce increased risk to the Veteran.

261. **Recommendation.** It is recommended that any proposals to simplify the range of benefits or access to the range of benefits should be subject to formal Continual Process Improvement, including Risk Assessments to ensure that effectiveness of service to the Veteran is enhanced and Veteran focussed.

**262. Question j4. Are all of the payments available necessary and beneficial?**

**263. Question j5. Are they achieving value for money outcomes?**

264. The question asked refers to a range of unnamed benefits and cannot be answered factually. These sort of questions tend to suggest a mind-set for assessments that only look at direct costs and benefits and neglect consequential costs and value of the benefit to the Veteran.

265. Assessments of “value for money” has connotations of a welfare benefit and a social value to society. This sort of assessment is totally rejected. Any benefit provided to Veterans is a consequence of the Unique Nature of Military Service and are provided based on the obligation of the Nation to rehabilitate the Veteran to the state he or she would have been had the Veteran not been damaged due to deliberate decisions of the Nation. Or, when that is not possible, to provide appropriate compensation.

266. Perhaps a better question would be:

***Are causing wounds and death to ADF members by sending them into operations on behalf of the Nation achieving value for money outcomes?***

267. **Conclusion.** All benefits were introduced to meet specific Veteran needs identified at a particular time. As such, all benefits should be subject to periodic review for utility and effectiveness and efficiency of delivery.

268. **Recommendation.** It is recommended that all benefits should be subject to periodic review as part of a Continual Process Improvement program, including Risk Assessments to ensure that effectiveness of service to the Veteran is enhanced (on a no detriment basis), is Veteran focussed and delivered efficiently.

269. **Question j6. What are the benefits of having generally available income support payments also available to veterans through DVA?**

270. Generally there have been no issues with the effectiveness of the delivery of these services by DVA. The interactions of these with the unique Veteran benefits are well known and well managed by DVA

271. Delivery through DVA provides a Veteran-Centric service.

272. This response has previously proposed that all services for Veterans should be delivered by the one Veteran focussed organisation, due to the complexities and interactions of the Veteran services provided and with those mainstream income support payments. Those complexities have not been addressed and are given negligible attention by this Inquiry so far. The genesis of this Inquiry was a Veteran suicide. The contributing factors was the stress induced by a bureaucratic approach that showed insufficient awareness of the impact of the Unique Nature of Military Service had on the Veteran’s mental state.

273. It is of concern that the Inquiry seems to focus more attention on considerations of moving services to other agencies e.g., Centrelink, rather than addressing the complexities and governance of interactions of services delivered by DVA, CSC and Defence but which are currently unco-ordinated and are not efficiently delivered.

274. **Conclusion.** Moving elements of Veteran services to other non-Veteran organisations, e.g., Centrelink, will only exacerbate the problems which initiated this Inquiry in the first place.

275. **Recommendation.** It is recommended that:

- a. All Veteran services, including superannuation be delivered through DVA; and
- b. DVA continue with a Veteran-Centric programme including education and training of staff of the impact of military service on Veterans.

276. **Question j7. What are the costs?**

277. The costs of DVA continuing with delivery of generally available income support and other benefits through DVA have to be measured against the costs of having them delivered by another organisation. This cost must include a costing of the risk that another organisation is more likely than DVA not to be Veteran-Centric with potential impacts on the mental health of more vulnerable Veterans.

278. It has been noted that where some DVA VAN services are now delivered by Centrelink staff in some locations, the standard of service has dropped, inquiry times increased and the decisions more frequently challenged. (Feedback from ESO Advocate in Toowoomba Qld, June 2018.)

**Annexes:**

- A. CSC Complexity Issues.

**Attachment:**

1. Hearing Aids DVA Supplies Are to a Lower Standard than Comcare

**ANNEX A TO  
DFWA RESPONSE****CSC COMPLEXITY ISSUES**

1. CSC Complexity Issues are covered in the following sub-paras:
  - a. The DVA regime is recognised in the Inquiry as complex, indeed the whole focus of the Inquiry seems to be on DVA services. Military superannuation, especially related to Invalidity Benefits is also highly complex. It is more complex than civilian superannuation schemes. This was recognised and described as being a “technical nightmare” by His Honour Justice Logan at the Administrative Appeals Tribunal (Burns Vs Commissioner of Taxation) on 28 May 2017 and acknowledged by the government QC and also by the Department of Finance (Meeting of 21 Feb 2017, in the Office of the Hon Dan Tehan MP, with the Minister’s Advisor on DFRDB, with a senior serving member representing the Department of Defence and a representative from the Department of Finance).
  - b. On discharge, there are requirements for different medical assessments, usually by different medical professionals, of the same condition, but for different purposes. There are different classifications and assessments of severity and impacts on Veteran capability to meet different criteria for the different schemes. While attempts have been made recently to address issues, the long standing practice is that in transitioning, a Veteran may be required to have a three different medical examinations with assessments of the same condition, for different purposes, by the ADF, by CSC and by DVA.
  - c. In the high stress period approaching discharge, the Veteran is faced with uncertainty if he/she will qualify for Invalidity Payments and at what rate. Class A - approximately 76% of Salary for DFRDB, Class B – 50% of Class A and Class C no payments. The calculation of the rate for MSBS is more complicated and takes into account current pay, length of service, and age to determine payments. The date when payments will commence is also uncertain at a time when the Veteran is probably relocating, trying to find a job, accommodation. This adds to stress.
  - d. DVA Incapacity Payments are offset (reduced) by the Invalidity Benefit payment the Veteran receives from CSC. This is to prevent the Veteran from “double-dipping”, by receiving two payments to compensate for the same condition. However, CSC assessments of disability assess “all impairments” not just those attributed to “service caused” as is the case for DVA payments. DVA does not assess the severity of a condition not accepted as service caused. CSC examinations use different criteria and assessment to DVA. The comparison and offset is between apples and oranges, and the Veteran is stuck in the middle.
  - e. Veterans are penalised when communication between CSC and DVA breaks down. When CSC fails to notify DVA regarding changes to CSC payments, the error may not be picked up for years. Veterans generally may not even be aware of changes and many do not understand the difference between DVA and CSC and the payments from each. This is not surprising. The result is, the Veteran:
    - i. May receive a large bill relating to offsets not being taken from Incapacity Payments;  
or

- ii. A large refund of representing several years underpayments, of Incapacity Payments; and
  - iii. In both cases, tax complications requiring amendment to previous years' Tax Returns and co-operation from CSC and DVA to provide required information. Often delayed.
- f. After ADF has decided that a medical discharge is required, in theory, it is the CSC that is actually the first organization that must make determinations about the Veteran's medical status regarding disability. This is because DVA must "offset" dollar for dollar any compensation paid by the CSC against any payments determined by DVA. Also, much depends on the Classification of disability decided by CSC with regard to future DVA considerations. This sequence does not always happen and DVA payments sometimes start before CSC payments. This causes complexities in CSC providing lump sum back payments, which then involve DVA requiring refund of overpayments, then further confusion if Centrelink Income and Child support payments are involved.
- g. There are also cases reported in which the CSC do not provide the Veteran's entire medical file to the medical assessor resulting in an incorrect CSC medical assessment. This also results in long delays (more than a year or two) because the Veteran (if they are lucky enough to discover the exclusion of medical evidence, e.g., though an FOI request) has to appeal the decision.
- h. Veterans often voluntarily discharge from the ADF in haste. They later realise that they could/should have been discharged on medical grounds and been entitled to Invalidity Benefits from the time of discharge. A retrospective medical discharge can be granted if the medical evidence is accepted and approval given by the CDF. This then becomes very complicated, because granting Invalidity Benefits usually requires repayment of offset from Incapacity Payments extending over several Tax years. Also, the back payments of Invalidity Benefits in a lump sum may be taxed at high marginal rates on year of receipt, and complicated adjustments are required. In some cases, Veterans are being taxed twice on the same income, and then are having to make repayments of tax using resources on which tax has already been paid. Again, resolution between CSC, DVA, the Veteran and ATO requires provision of full accurate information from both DVA and CSC. This is not always forthcoming in the time frames required by the ATO or the Family Court. When issues arise and conflicting information is provided, there is no ownership of the problem. The Veteran is seen as an inconvenience, as these issues are not priority tasks for the bodies concerned. The Veteran is not the focus of their concerns.
- i. Invalidity Benefits may be split by Family Court actions between the Veteran and the ex-partner. Until recently, Veterans had the full offset applied to Incapacity Payments he or she received. It was found that this was incorrect. Offsets should have only been applied based for the Veteran's share of the split Invalidity Benefit Payment. When the error was discovered, DVA decided to make the correction from an arbitrary date 16 Dec 2016. A Veteran appeal through the Ombudsman, resulted in a refund of over-payment of offset backdated to when the incorrect offsets were initiated, not the arbitrary date set by DVA. Many other appeals were in the pipeline, for something which wasted DVA and ESO Advocate resources and placed an unnecessary workload on the overloaded appeals process. Following representation by DFWA in early 2017, DVA agreed appeals were

unnecessary and administrative action would be initiated to backdate correctly and to be proactive in notifying affected Veterans. Further DVA agreed to make necessary notifications to ATO, CSA and Centrelink where other payments and benefits might be affected – it affected child support payments as well. It took well over 6 months to get formal approval through DVA governance to handle this administratively. Now, over a year later, all aspects of the administrative actions required have still not been fully implemented. This is hardly an agile organisation.

- j. Invalidity Benefits (Class A and Class B) are subject to review for life for DFRDB recipients, and until age 55 for MSBS recipients. Review takes into account medical re-assessments and any ability to undertake civilian employment. The review is impersonal and notifications take no account of the Veteran's medical condition. For a Veteran with mental health problems to receive a mailed notification of a review, with a requirement to submit to a medical examination by a doctor of CSC choice, at a date decided by CSC, with a warning that failure to comply may result in suspension of payments, generally cause huge stress in the Veteran. At least with DVA, DVA can direct all correspondence to the Veteran's Advocate or Authorised Representative, so that the Advocate can assist with the Veteran being informed and dealing better with the situation. The adversarial approach of CSC dealings with Veterans actively dissuades them from appealing any decision or requesting a higher classification, because of the warnings that such a review may lead to loss of all payments. This is no attempt to be Veteran-Centric.
2. The Issues Paper addresses DVA compensation, administration and governance of Veteran support delivered by DVA and to lesser extent Defence. CSC rates hardly a mention in compensation and administration issues and nothing as far as Governance. Both are also key entities in Transition. DVA rates a mention. CSC is ignored. Complex decisions have to be made by Veterans concerning both, especially during Transition. This interactive area is complex and affects mainly the most vulnerable group of Veterans, those kicked out of the ADF on medical grounds and therefore regarded as not being good enough for the "team" and "defence family".
3. **Deficiency.** The areas not being addressed are related to CSC and to the interworking of CSC with Defence and DVA include , but are not limited to the following:
- a. Medical record sharing, medical assessments and administration.
  - b. Timely offsetting information sharing between agencies.
  - c. Timely provision of information to other agencies and the Veteran.
  - d. Transition.
  - e. Governance.
  - f. Lack of established expertise, ownership, governance in the "interworking" area within government agencies involved.

**ATTACHMENT 1 TO  
DFWA SUBMISSION****HEARING AIDS DVA SUPPLIES ARE TO A LOWER STANDARD THAN COMCARE**

The following has been extracted from the DFWA Supplement Newsletter, Vic Branch, Dec 2015.  
Written by Ted Radford, President of the Victorian Branch.

I have been involved for some time in a campaign to find a solution to what is blatant discrimination against veterans regarding the provision by DVA of hearing aids, to those veterans with hearing disabilities, to meet their clinical need.

The crux of the matter is that the Office of Hearing Services, who handle the hearing program on behalf of DVA, are refusing to provide to veterans anything other than basic level devices, free to client, when so called "injured workers" and also public servants have access to top-up hearing aids, when and if clinically justified, that is recommended as being required by audiologists and other specialists.

As I gained increased knowledge of this very complex issue, I wrote in quick succession three letters to DVA in Canberra on the issue (dated 6 Jul 15, 15 Jul 15 and 7 Sep 15). Therefore, rather than ramble on, I have included at Page 2 the text of the last of the three, which, in effect, summarizes the situation.

However, I would add that, at the time of writing, I have not received any replies to my letters.

Ted Radford  
**President**  
**DFWA**  
**7 September 2015**

TO;  
Letitia Hope  
Assistant Secretary  
Primary Health Care  
Department of Veterans' Affairs PO Box 9998  
CANBERRA ACT 2601

Dear Ms Hope

Further to my letters of 6 July 2015 and 15 July 2015, this letter attempts to summarize DFWA's position, particularly in the context of the paper prepared for the ESORT meeting of 27 Aug 15 (Item 13).

This Item 13 paper, in discussing the hearing services provided to DVA clients under the Australian Government Hearing Services Program, operated through the Department of Health, makes the unequivocal statement that "the program does not pay for top-up devices".

In contrast, the same paper states: Comcare has provided DVA with the following advice: "Each individual claim has to be assessed on its own merits, so the type of hearing aid injured workers receive should be based on appropriate evidence from an audiologist and consideration of all the facts by the claims manager." And may I suggest concedes: "It is possible for injured workers supported through Comcare to receive hearing aids that are not on the fully-subsidised list of the Office of Hearing Services".



By making these statements, DVA is, in effect, admitting that **veterans are categorically restricted to receive only basic level hearing devices, 'free to client', while 'injured workers' can receive 'top-up devices', also free to client, if clinically justified. In my view, this is admitting to blatant discrimination against veterans in comparison with the availability of devices to the general public; clearly an unconscionable situation.**

Indeed, I would submit, the more detailed Comcare policy in this regard, as provided to DFWA, makes this discrimination even clearer by saying as follows:

"Comcare requires clinical justification for any hearing aids recommended that are more expensive than those on the schedule of free to-client devices.

"It may be reasonable for employees with more complex hearing needs, such as the need to work in an open plan office or participate in meetings, to benefit from hearing aids with more sophisticated noise eliminating features.

"If a treating practitioner indicates that there is not a device on the free-to-client schedule that could meet an employee's needs and recommends more sophisticated hearing aids, the Claims Services Officer (CSO) should assess whether the recommended aids are reasonable based on whether any extra features are necessary to meet the employee's reasonable hearing goals."

Veterans, in contrast, are restricted to basic level devices, free to client, regardless of detailed reports submitted by 'treating practitioners', which in a current specific case were by an ENT surgeon and two independent, highly qualified audiologists.

Of course, the simple question must be asked as to why the difference in policy application between DVA and Comcare, especially because a fundamental responsibility of DVA is to ensure veterans are not disadvantaged because of their service to the nation in comparison with the general community and, if they are, to ensure they are adequately compensated. This is surely an essential element in the very ethos and 'reason for being' of DVA.

As dealt with in my previous letter of 15 July, I would further submit that the difference in client access to hearing devices between DVA and Comcare is at best contrary to the intent of Section 142 of SRCA (the Act).

In this Section, the MRCC, in determining Defence related claims should maintain contact "with Comcare to ensure that, as far as practicable, there is equity of outcomes....". However, the current situation is certainly not producing "equity of outcomes". Furthermore, the action being taken should be consistent with what "would be required of Comcare if Comcare had responsibility for the performance of that function". As argued in the preceding paragraphs, there is no consistency whatsoever in approach or outcomes. There is also no 'equity of outcomes' in comparison to public servants under SRCA in regard to access to top-up hearing devices, free to client

Further, the Act goes on to say: in "determining Defence-related claims .... the MRCC: ... is to be guided by equity, good conscience and the substantial merits of the case, without regard to technicalities;". And I must admit I find it hard to understand why the MRCC has not intervened, if for no other reason than to protect their integrity of function?

All I am asking for on behalf of DFWA is for veterans to be provided with the same access to hearing aids as is provided to the general public under Comcare. So that there is no misunderstanding, this means access to top-up hearing devices, free to client, if clinically justified, that is, to meet the clinical need. Is this too much to ask?

**DFWA**

Click to Return to: [Part3QuestionsList](#) [Part2Content](#) [Part1Recommendations](#)

Yours sincerely  
E A Radford  
Air Vice-Marshal (Ret)  
President