

PREFACE

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

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

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

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

EXECUTIVE SUMMARY

This submission to the Scoping Study contends that the unique nature of military service has, over a 100-year history, been respected by the Nation and successive Governments. The depth of this respect has manifested as acceptance by the Nation and successive Governments as justification for entitlements that are '*unusually favourably to claimants, as compared with claims for other Government benefits*' (Heerey J 'Repatriation Legislation and Litigation 1920 to 1994'). ADSO is deeply concerned that the reviews and inquiries resulting from *The Constant Battle* are the end-phase of a 40-year perception by successive governments that DVA has a finite life.

Now, however, the imperatives driving government are far less benign than they were in the post-WWI, WWII, and Vietnam eras. The presumptions that shape many of the questions posed by the Productivity Commission Inquiry's Issue Paper are applied economic rationalism. This should not surprise. The DoF Contestability Programme Guidelines make clear what is happening more widely. Small departments are being combined into mega-departments. Government services that have long-provided a social safety-net are now outsourced to the marketplace. The needs of the less fortunate or less able are disregarded callously by Governments in pursuit of neo-liberal dogma.

ADSO cannot ignore the recommendation from DoF's *Functionality and Efficiency Review* of DVA that is quoted in the ANAO Efficiency Review of DVA. Nor the enthusiasm with which DoF states in its FY2016-17 Annual Report that its FERs in that year saved \$2.7b. If DVA's functions are to be outsourced or transferred to other agencies as DoF recommends, ADSO reminds the Government of the risks it took and the lessons that need to be learned from the Home Insultation, NBN and Murray-Darling water buyback initiatives. The roll-out of NDIS already shows signs of inadequate analysis and poor implementation. The multi-billion costs of these failed programs indict political dogma and leadership.

Through the current reviews and inquiries, the sights are now levelled on another sub-set of society: the Australian youth that Government has sent into harm's way purportedly in defence of the Nation. The further outsourcing and transfer of DVA functions, the creation of a Bureau of Veterans' Advocacy staffed by legally trained public servants, and amendment of legislation to allow legal practitioners funded by Legal Aid to practice at the VRB signify the progressive stripping of DVA's Budget appropriation. With few functions and a grossly reduced budget, the rationale for an independent agency dedicated to veterans, their families and dependents no longer exists. Those that have put their life on the line for the Nation and the families that have supported them have no more rights and entitlements than the most disadvantaged and most disabled in Australian society.

ADSO contends that against this background VCR's structure, systems, processes and culture change activities have changed DVA fundamentally from the critical assessment in the APSC 2013 Capability Review. The highly participatory methodology adopted by Project Lighthouse has set the bar for all future consultative program design. The MyService portal, data mining and back-end processing are changing the claims system fundamentally, yet it is only now emerging from beta trials. In parallel, the Rolfe Review has led to an ASQA-accredited Course in Military Advocacy. ATDP has accredited 646 advocates with another 180 awaiting RPL and 120 committed candidates undertaking a learning pathway. All four levels of Compensation training will have been rolled out by 30 June 2019, as will the third level of Wellbeing training. These achievements the product of a handful of volunteers, a training contractor and a small business unit in DVA.

To ADSO's dismay, however, these advances do not mean that human and systemic failings are not continuing to occur within DVA. Without in any way disparaging the inexcusable individual human cost of these failings, the budgetary cost of the succession of failed Government initiatives is egregious. Regrettably, DVA's failings are very public and grist for the mill for those with an inimical agenda or seek outcomes that are unaware of the strategic consequences of their pressure. Equally

regrettable, the complaints on which the Senate Inquiry's findings were based related to events that, for the most part, had occurred before VCR and ATDP began to take effect. In other words, the premises on which the current reviews and inquiries are being conducted are fallacious. ADSO contends that this presents as a major challenge for the Scoping Study. This deduction also frames ADSO's responses to Questionnaire No 1.

In response to the Scoping Study ToR and Discussion Paper, ADSO contends as follows:

- a. **Wellbeing and Compensation Advocacy Services.**
 - (i) The 2010 Review of DVA-funded ESO Services and the Rolfe Review found that advocacy services were not nationally uniform nor always of high quality. The Course in Military Advocacy built initially on TIP training but through consultations with (especially) younger veterans has significantly broadened and deepened its learnings and skills development.
 - (ii) Regrettably, some very experienced and competent advocates will not migrate into accredited advocacy. Their loss will be felt keenly as the transition towards a profession of advocacy evolves. Analysis indicates that the number of advocates needed to meet current projections of DVA clients will decline from 1,600 to around 1,000 by 2028.
 - (iii) To meet the disparity between the location of accredited advocates and an inevitably widely-dispersed veteran community, ADSO proposes that the Wellbeing Support Officer role be formalised, offered nationally consistent training by ATDP and linked into CoP as the 'eyes and ears' of the ESO/VSC community. They would be recruited in locations proximate to clusters of veterans and provide local 'walk beside' support in electronic contact with (possibly) distant advocates. They would form a third tier of service delivery and be encouraged to see their role as a pathway into accredited advocacy.
- b. **Current Challenges and Barriers.** Research shows that there is an extraordinary volume of comprehensive range of information available on DVA, Defence, CSC, VVCS and ESO/VSC websites. Knowing what is available is a major barrier. ADSO proposes creation of an index of URLs posted in key locations with links to all other sub-indexes. Persistence and ill-health are the major challenges to accessing entitlements and services. Barriers and challenges are interactive. The presence of one exacerbates the effect of the other.
- c. **Veteran's Advocacy Needs.**
 - (i) Despite the complaints reported in The Constant Battle report, most veterans in the 60+ age category have been well-served by their advocacy colleagues. Mates have helped Mates.
 - (ii) The challenge now is to ensure that the cohorts expressing robust disaffection with advocacy services and training have their needs met. To some extent, they are an in-between cohort. The younger cohort have actively sought to resolve their needs, some by undertaking advocacy training and development. The remainder forming organisations or groups that care for their specific needs.
 - (iii) Through workshopping, advocacy training and development is now incorporating the younger groups needs into the Course in Military Advocacy. The Course therefore covers the veteran community's needs from 'cradle to grave'. Younger veterans' engagement provides foundations on which they can adapt and redirect the Course as required.
 - (iv) This leaves the 'in-between' cohort that has been the most condemnatory of DVA and ATDP training. ADSO is seeking to engage with this group.

d. **Models for Professional Advocacy.**

- (i) ADSO contends that the Canadian Bureau of Pension Advocates (like its counterparts elsewhere) is the product of that nation's unique culture, imperatives and experiences.
- (ii) ADSO has proposed incorporation of an Institute of Professional Military Advocates that is built on Australia's military and veterans' traditions and legislative solutions.
- (iii) Currently, around 40-50 advocates of the 1,600 are paid. ADSO accepts, however, that some movement towards a higher proportion of paid advocates is inevitable; however, the tradition of Mates helping Mates is as strong amongst younger veterans as it is for the current cohort of Vietnam-era advocates.
- (iv) The future will involve an amalgam of volunteer and paid advocates

e. **Sustainability, Consistency and Reliability.**

- (i) ADSO contends that the advent of ATDP has set in place the foundations for national consistency advocated in the Rolfe Review.
- (ii) The increasing number of accredited advocates, supported by the experienced and competent TIP-trained advocates that either remain in practice at Levels 3 or 4 until December 2021, will ensure that service delivery is reliable. If their ESO/VSC can encourage the latter to stay on as mentors, the prospects of reliability will be further enhanced.
- (iii) Sustainability has a numerical limb that is, at this stage, perceived widely to be the most problematic. ADSO contends that there are, however, pools of potential candidates that have to date not been tapped. These include veterans that are on INCAP/PI, and spouses of veterans. Clearly, the nature and level of incapacity of the former and the freedom of the latter to find time away from family commitments or work are relevant considerations.
- (iv) ADSO has suggested a concerted recruitment drive and the paying of some advocates to access the latent pools.

f. **Efficiency and Effectiveness.**

- (i) ADSO agrees with the wider view that transition is a particular need that must be attended to collaboratively by Defence, DVA and the ESO/VSC community.
- (ii) The introduction of legally trained public servants or legally qualified professionals, however has the potential to be so disruptive that it would incur inefficiencies.
- (ii) ADSO is frankly concerned that the decision to employ legal professionals would be destructive of voluntary advocacy. Just as the introduction of ATDP has led to the loss of valued volunteers from advocacy, so too would lawyers.
- (iii) ADSO cautions that the ramifications of the proposal be weighed very carefully. At the moment, the cost to Government of veterans' advocacy is the \$4m allocation to BEST. Contrary to the Contestability Programme's cost-saving objective, the Government may find itself with another ill-considered policy initiative that ends up costing many times the current budgetary outlay.

g. **Level of Service.**

- (i) ADSO contends that, as befits those who have been prepared to lay down their life for their fellow citizens, the level of service delivered by DVA is markedly superior to that accessed by society's disadvantaged and disabled.
- (ii) To contemplate transfer of services to a mega-department would render ADF members and veterans' commitment as being of no social value. Australia's national security would be placed in jeopardy.

- (iv) (iii) Again, ADSO cautions Government to consider thoroughly the full range of ramifications of policy driven by dogma.
- h. **Interest-focused Services.**
 - (i) ESOs' role has long been to bring the interests of its veteran members to the attention of Government.
 - (ii) ADSO notes that its efforts are complemented well by the various forums in the National Consultation Framework and by the workshops that have been conducted by Project Lighthouse and ATDP. Indeed, the participatory research methodology adopted by the workshops is the 'gold standard'.
 - (iii) ADSO proposes that the interests of veteran groups will be enhanced if the findings of the various Forums and workshops are integrated into DVA's annual planning cycle. This proposal is consistent with Professor Peter Shergold's recommendations in many reports for and to governments.
- i. **Appeals.** ADSO is trenchantly opposed to amending *VEA 1986* to allow legal practitioners to represent veterans at the VRB. It would make the VRB:
 - (i) a full-cost jurisdiction;
 - (ii) incur unacceptable financial risk for veterans;
 - (iii) divert the focus from the merits of facts and contentions to points of law;
 - (iv) deny veterans the Board's full attention to them and their circumstances;
 - (v) traumatise those already traumatised; and
 - (vi) undermine the veteran community's trust in the fairness of the appeal pathway.
- j. **Governance and Quality.** ADSO draws the Study's attention to the governance and QA features of its proposed Institute of Professional Military Advocates. These include:
 - (i) incorporation with a professional Board;
 - (ii) adoption of a social enterprise model, with social benefit and economic sustainability objectives;
 - (iii) joint ESO-DVA funding and public donations;
 - (iv) responsibility for training, standards, service delivery and quality assurance;
 - (v) independent oversight by ASQA; and
 - (vi) adoption of a 'market stewardship' approach to ensure independent monitoring of service delivery.
- k. **Stakeholders' Roles and Responsibilities.**
 - (i) ADSO submits that one of the consequences of VCR has been to strengthen the partnership between itself and DVA. Amendment of the ESORT agenda to facilitate discussion of concern to ESOs has further strengthened the partnership.
 - (ii) Completion of ESORT's shift of focus to the strategic issues that are relevant to the national leadership will cement collaboration.
 - (iii) Robust but respectful engagement, focused on issues appropriate to the Forum's level can only have benefits for service delivery in general and advocacy services in particular.
- l. **Implementation and Costings.** ADSO would welcome an opportunity to engage with the Study in developing an implementation plan and costings for the models it considers.

GLOSSARY

The following abbreviations are used throughout this Submission:

ACNC	Australian Not-for-Profit and Charity Commission
ADC	Australian Defence Cover
ADF	Australian Defence Force
ADSO	Alliance of Defence Service Organisations
ASQA	Australian Skills Quality Authority
ATDP	Advocacy Training and Development Program
ATO	Australian Taxation Office
BVA	Bureau of Veterans' Advocacy
CBT	Competency-Based Training
CoP	Community of Practice
CPD	Continuing Professional Development
DFRB	Defence Force Retirement Benefits
DFRDB	Defence Force Retirement and Disability Benefits
DoF	Department of Finance
DGR	Deductable Gift Recipient (status)
DRCA	<i>Safety Rehabilitation and Compensation (Defence-related Claims) Act 1988</i>
DVA	Department of Veterans' Affairs
ESO	Ex-Service Organisation
ESORT	ESO Round Table
MECRB	Military Employment Category Review Board
MRCA	<i>Military Rehabilitation and Compensation Act 2004</i>
MRCC	Military Rehabilitation and Compensation Commission
MSB	Military Superannuation Benefits
PI	Permanent Incapacity or Professional Indemnification (depends on context)
QA	Quality Assurance
RC	Repatriation Commission
RPL	Recognition of Prior Learning
RTO	Registered Training Organisation
SME	Subject Matter Expert
SRDP	<i>Safety, Rehabilitation and Compensation Act 1988</i>
SWIIP	Support to Wounded Injured and Ill Program
TIP	Training and Information Program
UoC	Unit of Competency
UoL	Unit of Learning
VET	Vocational Education and Training
VEA	<i>Veterans' Entitlements Act 1986</i>
VSC	Veteran Support Centre

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ADSO SUBMISSION

VETERANS' ADVOCACY AND SUPPORT SERVICE SCOPING STUDY

There are currently around 300,000 veterans who access benefits and payments through DVA... They put their trust in the hands of the Commonwealth and have every right to expect that the Commonwealth will, in turn, provide best practice service... Many are extremely vulnerable. They face physical and mental health challenges that many Australians will fortunately never encounter.
Michael Manthorpe, PSM, Commonwealth Ombudsman, July 2018.

'Repat has been criticised by many people and seen by many people in public administration to be rather a backwater...in fact it has been so far ahead of the rest of public administration for years, it's not funny.'
J. Costello, quoted in 'The Last Shilling', Chapter 19.

'Several systemic or fundamental shortcomings can be identified which are not only capable of repetition... but which might be avoided through diligence and the taking of some additional measures'.
Ian Hanger AM QC
Royal Commission into the Home Insulation Program

INTRODUCTION

The Alliance of Defence Service Organisations (ADSO)¹ is grateful for this opportunity to submit to the Veterans' Advocacy and Support Services Scoping Study. Our Submission complements our earlier submission to the Study,² and is presented in two Parts.

- a. Part A focuses on our concerns about the policies and considerations that underpin the veterans' compensation-rehabilitation system.
- b. Part B combines ADSO Members' responses to Questionnaire No 1.

PART A –CONTEXT OF SUBMISSION

1. Factors to be Reconsidered

Sections 1.1 and 1.2 establish the foundations of this Submission. Sections 1.3 to 1.8 address the factors in the delivery of advocacy and support service that the Discussion Paper at page 4 has identified as needing reconsideration. Section 2 then addresses the policy considerations that underpin this Submission.

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

² Submission No 1: <https://www.dva.gov.au/consultation-and-grants/reviews/veterans-advocacy-and-support-services-scoping-study/submissions>.

1.1 Terminology

Throughout Parts A and B of this Submission:

- a. 'veteran' means:
 - (i) serving ADF personnel that have at least one day of CFTS, or
 - (ii) applying for or receiving DVA support, or
 - (iii) are ex-ADF personnel or their dependents as defined in MRCA 2004, s15(2), or
 - (iv) are war/defence widow(er)s;
- b. 'advocate training and development' means:
 - (i) the broad process of preparing an advocate to deliver, and
 - (ii) assuring advocates deliver high quality advocacy services;¹
- c. 'profession' means:
 - (i) the vocation of volunteer and paid advocacy,
 - (ii) requiring mastery of complex knowledge and practical skills,
 - (iii) acquired through formal learning, mentoring and on-the-job experience,
 - (iv) focused by a shared ethos of service and individual's ethic of care; and
- d. 'professionalisation' means the progressive enhancement of advocate's knowledge and advocacy service delivery through:
 - (i) completion of a training pathway or RPL,
 - (ii) active engagement in CPD,
 - (iii) membership of a Community of Practice (CoP),
 - (iv) assurance of standards service delivery,
 - (v) promulgation of an ethos of professional service to veterans, and
 - (vi) self-directed learning and enhancement of service quality.

1.2 Context

Throughout both Parts of this Submission, ADSO's focus reflects its obligation as an Alliance representing the interests of 18 ESOs. Along with other ESOs, ADSO is a joint custodian of veterans' legislation, entitlements and support. ADSO's focus in Part A is its joint obligation with other ESOs to ensure that advocacy training and service delivery fully meet veteran's future needs.

ADSO's starting point is the Explanatory Memorandums and Second Reading Speeches of the *Veterans Entitlements Bill 1985* and *Military Rehabilitation and Compensation Bill 2003*. ADSO is concerned specifically by the shift from the unambiguous **beneficial intent** of *VEB 1985* to, at best, implied acknowledgement of some level of obligation in *MRCB 2003*. ADSO is deeply concerned that this marks a significant reduction in government and bureaucratic support for veterans' entitlements.

ADSO directs the Study's attention the Alliance's submission to the Scoping Study.² In this

¹ The purpose of advocate training and development is to assure that advocates:

- are competent at the level and the discipline in which they are accredited,
- understand their role and responsibility in the delivery of advocacy services, and
- fulfil their obligations to DVA, DVA clients their authorising ESO/VSC and VITA by providing the highest quality advocacy services.

² http://www.pc.gov.au/data/assets/pdf_file/0005/229433/sub085-veterans.pdf

respect, ADSO contends that DoF's enthusiastic pursuit of Contestability objectives:³

- a. traduces Government's duty of care for as well as the Nation's commitment to veterans' rights, and
- b. undermines DVA's long-standing role as an honest broker in administering veterans' entitlements.

ADSO notes that the Discussion Paper is broadly grounded on the criticisms and proposals in *The Constant Battle*. ADSO acknowledges that the past cannot be changed, that veterans' entitlements and support have evolved continually through history, and that current legislation is the foundation for future veterans' rights and entitlements. ADSO contends that it is responsible, along with other ESOs, for ensuring that veterans' future entitlements and support are no less beneficial than the past and present.

In this respect, ADSO summarises the foundations for its position in sub-para a. directly below. Our detailed responses follow in Part B:

- a. **Foundations of Advocacy.** ADSO's Submission builds on 100-years of extraordinary generosity of spirit, caring, and dedication to the ethos of Mates helping Mates. This tradition aggregates the experiences of ex-service and like-minded personnel since WWI, continued through later conflicts, and ultimately TIP-trained Pension and Welfare Officers and Advocates, and Advocates who undertook tertiary-level veterans' law courses. It includes generations of selfless effort by Welfare Support Officers, for whom there has been no formal training program. Without these cohorts' commitment, and ESOs' dedication in ensuring that veterans' legislation retained the beneficial intent that spurred it, there is little chance that today's veterans and their families could place their faith and future wellbeing in an advocate. The ethic engaged by of these cohorts was self-imposed. It has the respect of Departmental and Commission staff. These cohorts of volunteers embody the Government and Nation's obligation to ensuring that every veteran receives their full, legislated entitlements. *'Not one bit more. But, not one bit less.'*⁴
- b. **Foundations of Current System.** ADSO acknowledges that successive Ministers for Veterans Affairs and the Department have sought review of advocate training and the delivery of advocacy services. Each review has 'lifted the bar'. The latest by the late Brigadier Rolfe AO in 2015 culminated in joint ESO-DVA-TIP workshops that developed a Blueprint⁵ to guide the current stage of advocate training and service delivery. ESORT and the Minister endorsed the Blueprint in September 2016. Implementation of the ATDP began in October 2016. ASQA accredited 10620NAT, the Course in Military Advocacy in April 2017. ADSO notes that current Wellbeing and Compensation Advocates training:
 - (i) has evolved from the TIP-training program,
 - (ii) involves ESO/VSCs' screening their candidates then candidates' completing RPL or a training pathway, accrediting under 10620NAT, undertaking continuing professional development (CPD), and participating in a quality assurance program (QA);
 - (iii) is moving towards a profession of military advocacy; and
 - (iv) the Scoping Study is investigating what must be done.

³ ADSO refers here to the DoF Annual Report FY2016-17 which states that: *'Functional and Efficiency Reviews (FERS) in FY2015-16 delivered administrative and program savings of about \$2.7 billion.'*

⁴ Acknowledging Ted Harrison's invocation at TIP Level 4 Tribunal Courses.

⁵ https://www.dva.gov.au/sites/default/files/files/consultation%20and%20grants/reviews/atdp_blueprint.pdf

1.3 *What are the emerging needs of younger veterans, female veterans and veterans' families?*

Existing Needs. The following sources identify younger veterans' current needs:

- a. the summaries on DVA's website from the Younger Veterans – Contemporary Needs Forum⁶ and the Female Veterans and Veterans' Families Forum,⁷
- b. ADSO advocates' day-to-day contact with younger veterans, and
- c. the findings of workshops with younger veterans convened by TIP in mid-2015 and by ATDP in late 2017 and early 2018.⁸

ADSO has validated the information by cross-referencing with documented evidence from the 2010 Review of DVA-Funder ESO Advocacy and Welfare Services⁹ through to 2018.

Future Needs. ADSO contends that information on younger veterans' future needs should be accessed by:

- a. integrating VCR, DVA's, ESO/VSCs' and ATDP Quality Assurance processes into a comprehensive system; and
- b. formally integrating into DVA's Annual Planning Cycle inputs from:¹⁰
 - (i) proceedings of Forums in DVA's National Consultation Framework;
 - (ii) topic-specific workshops, working parties and forums;
 - (iii) participatory research as conducted by Project Lighthouse; and
 - (iv) any future body charged with governance, management and administration of advocacy training and/or service delivery.

1.4 *How can transition from the Defence Force, particularly in the case of early medical or administrative termination of service, be managed more effectively?*

Prospective Initiatives. ADSO submits that veterans' transition would be managed more effectively if the following actions were taken:

- a. **Hold-in-Abeyance Policy.** Personnel are currently discharged one month after a Commission Delegate has determined a claim for liability. Where the member's claim has been rejected and CSC has not made or has rejected an application for an invalidity entitlement, once discharged the veteran will have no income. This is a major cause of post-discharge homelessness and destitution. Until an application for reconsideration/appeal has been determined by DVA/RC/MRCC or CSC or he/she is employed, the only clear resolutions are for the member to be:
 - (i) held-in-abeyance, or
 - (ii) afforded Extended Rehabilitation or Extended Transition periods; or
 - (iii) granted sick leave, short leave, and/or recreation leave; or

⁶ <https://www.dva.gov.au/consultation-and-grants/consultation-ex-service-community/younger-veterans-contemporary-needs-forum>

⁷ <https://www.dva.gov.au/consultation-and-grants/consultation-female-veterans-and-veterans-families>

⁸ www.atdp.org.au/policy and open sequentially:

- Library No 1/Part A. ATDP Implementation/Vol 3. 10620NAT/MILADW002 Curriculum Workshop, pp3-7.
- Library No 1/Part A. ATDP Implementation/Vol 3. 10620NAT/Younger Veterans Workshop Report Jul15.

⁹ https://www.dva.gov.au/sites/default/files/files/publications/corporate/report_review_of_DVA-funded_ESO_welfare_and_advocacy_services.pdf

¹⁰ *DVA Towards 2020*, 2016 Update, p7:

<https://www.dva.gov.au/sites/default/files/files/publications/corporate/towards2020.pdf>

- (iv) some other option that is outside current policy.¹¹
- b. **ESO/Community Initiatives.** ADSO contends that ESOs and to some extent the wider community¹² have an obligation where possible to support veterans and their families' reintegration into society. A number of ADSO Member organisations have introduced or are introducing transition support programmes. These programmes offer members' experience, skill and wisdom to younger veterans and their families before, during and after transition. Support may take the form of pre/post-discharge advice, preparation for employment, post-discharge reintegration into community, or mentoring, through to family support.
- c. **Future Professional Learnings.** ADSO also notes that advocacy training and development will soon include the full range of transition-related units of learning (Note 8).

1.5 How can the increasing emphasis on rehabilitation and assistance to get a job in the civilian workforce be best supported by advocates and service providers?

ESO/VSC Role. ADSO Member's contact with serving ADF Members who are approaching transition and with veterans after transition, emphasises these cohorts' interest in and need for support. The cohorts have told us frequently that they would like to have someone who has been through the process to discuss options and to learn from their experience. As such discussions may have financial implications, risk is best avoided in an increasingly litigious society. ADSO therefore sees a growing role for accredited and indemnified advocates in undertaking this mentoring role.

Continuing Professional Development. In recognition of the need, accredited advocates who undertook RPL now have access to a CPD Programme which includes four mandatory Update Modules to ensure that they are fully cognisant of the transition-relevant knowledge:

- a. Transition and MECRB,
- b. Restoring Wellbeing: Veterans and Families in Crisis,
- c. Community Reintegration, and
- d. a cross-training module in the other advocacy discipline to develop mutual understanding and teamwork.

These units of learning are being incorporated in advocate's Level 1 and 2 learning pathways.

1.6 Why is the attraction of younger veterans to replace the declining number of ageing volunteer advocates a challenge for ex-service organisations?

ESO Membership. ADSO addresses this issue in paragraph 2.1 of Part B. In brief, younger veterans have stated that they **do** join ESOs, but have made the following comments:

- a. there is an inter-generational gap (understandable, but not unsolvable); and
- b. the pressures of employment, raising a family and paying off a mortgage prevent them from taking up ESO appointments.

Potential Candidacy Pool. ADSO submits at a Section 2.6.e. below that there is a pool of potential candidates that ESO/VSCs have yet to fully explore including:

¹¹ If an ADF member is to be discharged on medical grounds (MEDCAT IV), under current policy they would not be fit to serve in the Active/Specialist Reserve under CFTS or on Reserve Training Days. They may, however, serve in the Standby Reserve although that would entail separation from the active force. The only possible advantage to the ADF is that transfer to the Reserve takes the member off the Permanent/Regular Force manning tables.

¹² ADSO develops this consideration in its Submission to the Productivity Commission Inquiry into Compensation and Rehabilitation for Veterans: http://www.pc.gov.au/data/assets/pdf_file/0005/229433/sub085-veterans.pdf

- a. veterans who have been determined as Permanently Impaired,
- b. (especially) spouses of veterans, and
- c. veterans interested in a career in military advocacy, human or community services or life counselling.

Volunteer and Paid Advocacy. ADSO wishes to make absolutely clear its position on paid and volunteer advocacy.

- a. The Australian ethos of looking after one another is deeply embedded in the community's psyche, more so in those who serve the Nation. After 100 years, the ethos is so deeply ingrained that 'Mates helping Mates' is now a tradition that is honoured community-wide.
- b. ADSO has made clear at ESORT, and reiterates, that:
 - (i) all accredited advocates must be assessed against the ASQA-accredited national standard;
 - (ii) the same competency standard must apply irrespective of whether the advocate is paid or volunteer, and whether male or female;
 - (iii) all advocates at the same accredited level and in the same advocacy discipline are equal irrespective of gender or the nature of engagement by their ESO/VSC.
- c. With respect to paid advocacy, ADSO is aware that a range of conditions of employment issues have yet to be considered. ADSO submits that employment terms and conditions:
 - (i) be nationally consistent, and
 - (ii) be resolved by the ESO/VSC community.
- d. ADSO notes that DVA policy recognises the rehabilitative value of volunteer work. We are aware, however, that Delegates have taken a restrictive view of voluntary activities in the past.¹³ ADSO submits that DVA Team Leaders and advocates must be vigilant so the that application of policy does not revert to past practices.
- e. ADSO is also aware that, where a veteran has been determined entitled to PI or SRDP and accepts employment as a paid advocate the work caps in VEA s.24 and MRCA s.199 and offsetting will apply.

Advocacy Development. ADSO is aware that units of learning from relevant VET courses will be embedded in advocacy learning pathways in the next 12 months. This will facilitate credit transfer for accreditation in advocacy-relevant Cert IV courses. At Section 2.8.c. we extend this activity to the future professional development of Level 3 and 4 Compensation Advocates.

Institute Proposal. ADSO's initial Submission to the Scoping Study¹⁴ addresses the concept of an Institute of Professional Military Advocacy. Although some of the details are developed in Sections 2.3 and 2.4 below, the concept requires significant development. We submit that should the Study recommend creation of an institute or other body,¹⁵ ESO/VSCs and advocates must be deeply involved. ADSO recommends that the Lighthouse Project's participatory approach be the model adopted for planning, development and implementation.

¹³ See ESO Consultative Group Submission to SRDP Review, 24 August 2015, para 100-104.

¹⁴ <https://www.dva.gov.au/sites/default/files/files/consultation%20and%20grants/atdp/Submission%201.pdf>.

¹⁵ ADSO is cognisant of *The Constant Battle* proposed Bureau of Veterans Advocacy and Veterans Ministers in Canberra on 8 November 2017 support for establishment of an advocacy services accreditation body. URL for latter: http://minister.dva.gov.au/media_releases/2017/nov/joint_vmm.htm

1.7 *Despite the complexity of the legislation governing, and wide range of agencies and organisations engaged, how can veterans’ entitlements and services be best delivered into the future?*

Foundations. Incontestably, advocacy services are delivering in a complex and complexly interacting legislative and policy environment. Knowledge and practices evolve constantly in response, necessitating a professional approach to advocacy. These challenges are being met by a wide range of current practitioners, auguring well for further professionalisation. ADSO notes that professionalism requires an organisational ethos and individual ethic. One cannot be achieved without the other. ADSO Members are committed to strengthening the existing ethos and advocates their individual ethic.

Silos or Networks? The delivery of high-quality services to DVA clients engages a multitude of agents each of whom interacts intimately with the other agents. Sometimes, these are long-term relationships, but not uncommonly are episodic or spontaneous.¹⁶ The claims process is a Study-relevant example. A primary claim will engage not only the veteran and advocate, but may also engage multiple agencies/functions including:

- a. **Defence:** Individual Personnel Service Records and Health Records, the MECRB, Mode of Discharge Reclassification administration, Medical/Dental Staff, Unit personnel and Command...
- b. **DVA:** OBAS/VAN staff, Initial Liability Delegate and Team Leader, Prior Approval staff, VCR development team...
- c. **CSC:** invalidity and superannuation Delegates, Reconsideration Committee for Disability Entitlements Classification/Defence Force Case Assessment Panel for Reconsideration...
- d. **ESO/VSC:** Wellbeing Support Officer, Wellbeing Advocate, Mentor, Community of Practice...
- e. **Community:** family and friends, GP, Specialist(s), para-medical clinicians, Centrelink, public/private rehabilitation service providers...

Stakeholders’ joint objective must therefore be to minimise the ‘surprises’ that can - and do arise, with frequently unwanted consequences. ADSO’s strategic plan involves transition into a network organisation, that in turn networks routinely with DVA and other ESOs – especially RSL and Legacy. As discussed in Part B, Question 12, this transition is well underway. ADSO is aware that it must constantly scan the environment, apprehend treats and opportunities, and adapt seamlessly to the new reality. As Professor Peter Shergold AC¹⁷ notes, solutions demand: *new ways of doing things and new forms of leadership behaviour... flexible [organisations that] seize opportunities, learn rapidly and recognise that partners will be needed to deliver long-term goals.*

¹⁶ Conceptually, the advocacy delivery system is best depicted as a complex mega-system of complex sub-systems. These complex interactions can result in totally unexpected outcomes from otherwise routine actions. Or inactions or system errors that have previously gone undetected may erupt with destructive consequences. Or influences may impinge, or outcomes may occur that were completely unsuspected. In such an unpredictable environment, organisations cannot afford to complacent. In complex systems interactions are non-linear

- one unit of input does not create one unit of output;
- rather, for one unit of input there may be no output in some cases, or in others the output may be exponential.;
- interactions seldom engage a single factor or a one-on-one engagement; and
- some factors, interactions and agents may not be identifiable in any specific situation, or even identifiably part of the system.

¹⁷ Professor Peter Shergold, AC, prior Public Service Commissioner, Secretary Department of Prime Minister and Cabinet and now Chair of the Centre for Social Impact. <http://www.csi.edu.au/> and <https://www.themandarin.com.au/90914-back-to-social-impact-another-string-to-peter-shergolds-bow/>

Culture Change. Professor Shergold proposes that *'adaptive government'* is required. ADSO is concerned, however, that a 40-year pattern exists in Government and DoF's approach to veterans' affairs (Section 2.1 and Note 5). ADSO contends that the requisite structural characteristics and organisational behaviours are improbable in a typical public-sector agency. Consequently, ADSO is concerned that, no matter how well we and fellow ESOs collaborate, our endeavours to maximise the effectiveness of advocacy services will be thwarted by the Government imperatives we identify at Section 2.1.d. below. ADSO submits that, as these imperatives are grounded in culture change,¹⁸ it will take fundamental culture change in (at least) the Central Agencies. We note that Professor Shergold has advocated for over two decades the public-private-community sector collaboration that ADSO contends is essential to the delivery of high quality advocacy services.

1.8 *How can advocate training and accreditation cope best with this complexity and provide flexible options for maintaining the number and location of trained or professional advocates to provide a sustainable, consistent and reliable advocacy service that meet demand?*

Overview. From briefings at ESORT and other contact with ATDP volunteers, ADSO is aware that transition of TIP into ATDP is being driven by the three limbs in this topic – competent, qualified and accessible advocates and high-quality service delivery. ADSO notes that ATDP's implementation involves a significant degree of complexity. We are aware, however, that an organic (rather than centrally-directed) process developed during implementation out of which grew the flexibility, responsiveness and adaptability that are critical in responding to the complexity encountered.

Advocacy Professionalisation. ADSO supports the progressive learning and advocate development process embedded in 10620NAT Course in Military Advocacy, further professionalisation through Continuing Professional Development (CPD), and imminent roll-out of a Quality Assurance system. ADSO acknowledges that the QA system ultimately encompass all stakeholders, including DVA, Commission Delegates, VRB and AAT. As noted in Section 2.6.c. development and implementation of the new advocacy system is well under way.

Accessibility. ADSO acknowledges that stakeholders presume that advocacy must be conducted face-to-face. ADSO notes that the challenges of geographic dispersion and the ratio of clients-to-advocates is already being met by electronic contact. Advocates are using laptop and smart phone video functions to 'see' and support veterans in rural or remote locations. Even the most severely impaired veteran may have to be supported electronically by a distant advocate. Wellbeing Advocate's 'walk beside' role clearly presents a challenge that will necessitate innovation. Section 2.7.a.(ii)(e) discusses the potential in the WSO role, the need for national-level training of Wellbeing Support Officer (WSO), and Section 3.7.a.(ii) a three-tiered system of advocacy. ADSO notes that WSOs must have face-to-face interaction with DVA-ESO/VSC clients. WSOs represent a first-instance level of human contact and ready means of bridging location and service needs. They may also hold the key to sustainability if their role is formalised and becomes the means of advocacy entry.

Maintaining Standards. ADSO submits that consistency and reliability can be best assured by starting with formal evaluation of candidates before enrolment, clear pathways of training and development, competency assessment against national standards, accreditation, CPD and QA. The key consideration is how to ensure the delivery of high quality services. ADSO's

¹⁸ ADSO refers here to Prime Minister Thatcher's use of economics to change her nation's *'heart and soul'*. See: <https://www.margaretthatcher.org/document/104475>

proposed, independent Institute of Professional Military Advocacy is the means. The proposal comes, however, with a caution – the need to ensure that a conflict of interest is obviated between training and service delivery. ADSO is proposing the following actions:

- a. ASQA provides independent regulatory oversight of training courses, training delivery, accreditation and competency standards.
- b. With respect to independent oversight of service delivery, ADSO is aware of development in the UK of ‘market stewardship’¹⁹ University of NSW research of the issue,²⁰ and NDIS concern that the delivery of government-funded services by the market-located service providers must be accompanied by ‘*monitoring, evaluation, oversight and where necessary, support and intervention*’.²¹ ADSO proposes to further develop its institute concept as the ‘market stewardship’ practices are developed.

Interim Governance Arrangements. ADSO Members monitor ATDP Updates and Newsletters that are released from time to time. These media create a concern about the extent to which national consistency is being achieved through the current governance arrangement. In this respect, ADSO notes the different approaches that Regional Managers appear to have adopted by. ADSO also notes that the Technical Working Parties, ATDP Blueprint and Scoping Study all focus on nationally consistent advocacy services. ADSO contends that the Study is a key opportunity to review whether ATDP’s current regional structure is effectively:

- a. applying ESO/VSC volunteer’s knowledge and skills to programme development and implementation;
- b. fostering most effectively a nationally consistent, professional ethos;
- c. laying the foundations for:
 - (i) ongoing enhancement of advocacy training and development; and
 - (ii) transition to a new governance, management and administrative structure; and
- d. leading to a nationally consistent system of advocacy service delivery.

2. ADSO Policy Considerations

ADSO’s key policy concerns discussed in this Section are:

- Perceived Government Imperatives.
- Partnership.
- Governance of Advocacy.
- Social Enterprise Approach.
- Funding Advocacy Representation.
- Advocacy Demand.
- Nature of Advocacy Support.
- Further professionalisation.

2.1 Perceived Government Imperatives

ADSO believes it crucial that the Scoping Study is aware of the concerns we have expressed to the Productivity Commission Inquiry into Compensation and Rehabilitation for Veterans.²²

In its Executive Summary to the Productivity Commission Submission, ADSO stated:

¹⁹ <https://www.instituteforgovernment.org.uk/publication/what-market-stewardship>

²⁰ <https://onlinelibrary.wiley.com/doi/pdf/10.1111/spol.12321>

²¹ See NDIS Market Approach: Statement of opportunity and intent – November 2016, p3.

²² URL at Note 8.

- a. *“This submission to the Productivity Commission is premised in the Unique Nature of Military Service. For a century, this uniqueness has predicated beneficial legislation and public policy for the men and women that have served and are serving in the Australian Defence Force (ADF). ADSO submits that no justification exists for any fundamental change.*
- b. *“ADSO submits that:*
 - (i) *the needs of veterans and families will not be properly served by putting them in the hands of departments that are incapable or unwilling to differentiate between them and social welfare recipients; and*
 - (ii) *to pass off veterans, widows and families to departments that do not understand their needs is unconscionable.*
- c. *“We are therefore profoundly concerned to read that the Department of Finance (DoF) May 2016 Functional and Efficiency Review of the Department of Veterans’ Affairs (DVA) recommends that service delivery functions be either outsourced or transferred to other agencies.²³ As DVA has already outsourced its medical and rehabilitation services, ADSO submits that, as it is the Department established to understand veterans’ unique needs and to care for veterans, it has an critical role to continue to monitor the outsourced services provided to veterans.*
- d. *“ADSO’s concerns are exacerbated by subsequent advice that the DoF Review is exempt-in-full under the FOI Act 1982 s 34(2) and 34(3) as it is deemed to be a Cabinet document.²⁴ Our concerns are reinforced by DoF’s statement in its FY2016-17 Annual Report that its “Reviews in FY2015-16 delivered savings of about \$2.7 billion.” This is incontestable evidence of economic rationalism.*
- e. *“ADSO notes the following:*
 - (i) *The Nation’s duty of care, first legislated in the Australian Soldier’s Repatriation Act 1920 and unaltered in the Veterans’ Entitlements Act 1986, has already been weakened in DRCA and MRCA. Comparison of the Explanatory Memorandums and Second Readings of VEA and the Military Rehabilitation and Compensation Act 2004 confirms transition from overt beneficial intent to, at best, implicit acceptance of obligation. Either the Government preserve in veterans’ legislation a commitment to the Nation’s defence, or that 100-year old national value and legislative tradition are broken.*
 - (ii) *The Government may see the downturn from the ADF’s recent, prolonged period of intense operations as an opportunity to resile from the Hughes Government’s commitment to veterans, widows and orphans after WWI. In this respect, we note that the Issue Paper (Question 9.1) invites comment on veterans’ advocacy in the context of the services available to the civilian community. Any such thinking is totally unacceptable to the veteran community. Inevitably, any reduction in entitlements would provoke a vigorous response.*
- f. *“ADSO submits that any deliberate or active pursuit by Government or DoF to transfer DVA’s remaining functions to other agencies would be absolutely unacceptable to the veteran community. We recognise that it would:*

²³ ANAO Report No. 52 2017-18, Performance Audit, Efficiency of Veterans Service Delivery by the Department of Veterans’ Affairs, page 7, para 5, dot point 2. <https://www.anao.gov.au/work/performance-audit/efficiency-veterans-service-delivery-department-veterans-affairs> accessed 19 July 2018.

²⁴ Department of Veterans’ Affairs, Statement of Reasons, FOI Reference Number 23305, dated 30 July 2018.

- (i) *put further downward pressure on DVA's appropriation,*
 - (ii) *progressively reduce DVA to a rump,*
 - (iii) *in time justifying its abolition.*
- The ESO community response would be trenchant.*
- g. *“ADSO submits that the Inquiry is an opportunity for the Nation's century-old social contract to be reinforced and veterans' legislation to be amended to include a Military Covenant. We note that Canada and New Zealand have already done so. Failure to do likewise will perpetuate Australian veterans' legislation as third in terms of world's best practice. Failure to do so undermines the sacrifices of life, health and wellbeing that the Government and Nation have expected, and continue to expect, of ADF personnel and their families in both peace and conflict. The ramifications of economic rationalism for national security and societal values are decidedly perilous.*
- h. *“ADSO recommends that:*
- (i) *the national defence and social consequences of a purely economic approach to veterans' support are unacceptable;*
 - (ii) *a Military Covenant be legislated in VEA, Safety Rehabilitation and Compensation (Defence-related Claims) Act 1988 (DRCA) and MRCA to bring Australian veterans' legislation up to world's best practice;*
 - (iii) *a social enterprise be formed by which:*
 - (a) *DVA, Defence, ESO/VSCs [Veteran Support Centre] and ATDP and the independent VRB and AAT would work in close partnership; and*
 - (b) *an entity be incorporated to deliver legislated wellbeing²⁵ outcomes for veterans and their families; and*
 - (iv) *'warlike' service be redefined so that the Beyond Reasonable Doubt standard of proof is applied to all service including peacetime service where:*
 - (a) *the risk of injury, disease or death is high; and*
 - (b) *'clusters' of conditions occur amongst veterans with toxic or other exposures.”*

ADSO contends that the preceding concerns and recommendations are critical to the Scoping Study's understanding of the issues raised below and the answers to Questionnaire No 1 at Part B. Subsequent research has added further to ADSO's concerns. Chapter 19 of *'The Last Shilling'* suggests that the inquiries and reviews precipitated by *The Constant Battle* culminate a 40-year long prospective erosion of DVA's functions and reason-for-being.²⁶

²⁵ DVA research and younger veterans' needs have transformed the thrust of non-compensation advocacy support from 'welfare' to 'wellbeing', an holistic concept that engages physical and mental health, social integration, stable family, cultural enrichment, meaningful employment, and financial security.

²⁶ C. Lloyd and J. Rees, 1994, *The Last Shilling: A History of Repatriation in Australia*, Chapter 19, *'Change and Innovation'*, accessed online via Kindle 20 July 2018 and excerpted below.

- In 1979, when the Government created the Repatriation Review Tribunal, the 'Attorney-General's Department tried to poach responsibility for the RRT'. Observation: The Discussion Paper, Question 10, proposes that a Bureau of Veterans Advocates would comprise legally trained public servants who assist veterans claim and fund Legal Aid to assist veterans' appeals. Legal Aid is co-funded by the Attorney-General's Department and some States.
- In 1981 the Fraser Government reaffirmed it would maintain Repatriation General Hospitals (RGH) and appointed a geriatric consultant; but on ascertaining that by 2000 frail and aged veterans would treble, leading in 1984 to a review of RGH that found integration of the State and RGH systems was inevitable. In 1988 the Government announced the transfer would occur in 1995, which was then brought back to 1992. The consternation expressed by the veteran community led to the then Government in writing assuring that the transfer 'will not proceed if [there is] reasonable cause for dissatisfaction'.

2.2 Partnership

ADSO submits that Professor Shergold's analyses and envisaged resolutions when he was a senior Public Service official provide directly relevant insights for the Scoping Study. The following extracts are tendered:

- a. **Learning from Failure, 2015.** *'The work of government is hard. Problems do not always have defined boundaries, solutions can (and should) be contested and authority is ambiguous...In response to the pace, complexity and connectedness of modern life, successful organisations are learning to function differently. Their operating environments are becoming increasingly unpredictable. ... The organisations that thrive are flexible. They seize opportunities, learn rapidly and recognise that partners will be needed to deliver long-term goals... Th[e] legislative and regulatory shelter is now under threat: citizens demand better services and greater choice and governments want more flexibility and higher productivity. Without abandoning the traditions of public service, new approaches need to be embraced that acknowledge that the delivery of government programs is increasingly contestable. These propositions can be usefully grouped under the conceptual framework of adaptive government... Adaptive government calls for greater organisational flexibility. It demands more willingness to experiment—starting small, testing what works and (in the worst case) failing quickly. It is premised upon facilitative leadership, in which collaborative partnerships are formed with others to deliver results. It requires much more agility than the traditional structures and workforce systems of public administration allow. It demands whole-hearted acceptance of the virtual world by which government can better engage with citizens.'*²⁷
- b. **Valedictory Speech, February 2008.** *'Over the years I have come to the view that it is the voluntary efforts of hundreds of thousands of individuals, and the support and advocacy of not-for-profit organisations, that gives Australian democracy its vibrancy. To an increasing extent, community-based organisations not only lobby governments for change but contract with governments (and public services) to deliver their program and services...The "third sector" builds the social capital that makes us a nation... On many occasions over the last 20 years I have reflected on the simple truth [in social impact]...to*

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- By 1982 the veterans' legislative system included over 80 separate pieces of legislation prompting recommendations for consolidation of 'unnecessarily complex and cumbersome [provisions] that militat[ed] against public understanding, consistent interpretation and effective administration'.
 - As the result of the Fraser Government's 1983 review of veteran's legislation when the Hawke government was elected, the Minister (Gietzelt) 'played up' the ex-service community's hostility to the mini-Budget as 'unknown to the ex-service community' the Minister 'was fighting off attempts by DoF to convince Cabinet that all veteran's applications, appeals and claims should be determined on the civil standard of proof'.
 - In 1985 DVA was unable to prevent attempts to erode veterans' benefits that had been included in a mini-Budget 'to limit consultation with the ex-service community and to avoid a potentially hostile Senate'. The 'thrust of the mini-Budget came from senior public servants in DPM&C and Finance'. The 'clamorous indignation of the ex-service community [caused Government] to back off. Not only did [the Government] reinstate many diminished entitlements but it was forced into further concessions in ensuing parliamentary battles'.
 - The (then) Secretary successfully fended off an attempt by Cabinet during consideration of the Veterans' Entitlements Bill 1985 (VEB) to vest in the Minister the 'power and direction of all administrative activities and functions of the Repatriation Commission...[except for] determ[in]g pension applications and rates'.
 - On 25 July 1985 Gietzelt wrote to Hawke expressing reluctance to cover new members of the peacetime ADF under the VEB as it would 'unnecessarily prolong the life of DVA' beyond the mid-1990s, and proposed that Defence should compensate its service personnel. In the event, the Government 'had to accept' continuing entitlement but added the proviso that 'it would cease when a new compensation scheme' was implemented.
 - 'Compared with the lacerations inflicted on the welfare system by the proponents of small government, the 'New Right'. Public choice theorists, and libertarians during the 1980s, repatriation escaped virtually unscathed'.

²⁷ <https://www.apsc.gov.au/learning-failure-why-large-government-policy-initiatives-have-gone-so-badly-wrong-past-and-how> Learning from Failure, 2015; pp x-xi; accessed 19 July 2018.

*generate social entrepreneurship, to improve the managerial efficiency and political effectiveness of established not-for-profit organisations and to improve understanding of the role that they play’.*²⁸

- c. **Governing through Collaboration, 2008.** *‘There are new and exciting changes occurring in the processes of governance, which have profound implications for public services ... At the same time—and significantly extending these developments—broader networks of policy influence are emerging. They demand new ways of doing things and new forms of leadership behaviour. At the heart of these changes lies the growing importance of collaboration—across government agencies and jurisdictions and between the public, private and not-for-profit sectors ... Genuine collaboration requires public servants who, with eyes wide open, can exert the qualities of leadership necessary to forsake the simplicity of control for the complexity of influence. More explicitly, they need to operate outside the traditionally narrow framework of government, which they have for so long worked within ... Public Service leadership has always been premised on the ability to influence. The challenge now is to extend that capacity from government structures to governance networks’.*²⁹
- d. ADSO would like to emphasise the extent to which Professor Shergold’s analyses have been realised and proposed in this submission for further adoption.
- (i) Significant achievements to date include the following:
- (a) Absent a partnership approach by ESO/VSCs and DVA, the budgetary cost to government of advocacy training and development since 1992 would have been around \$1.5b.³⁰ The collateral social benefits of veterans and families’ wellbeing are incalculable.
- (b) This budgetary and fiscal savings of accrued social benefits are almost entirely attributable to:
- A. the daily working relationship between most ESO/VSC Advocates and the RC and MRCC’s Delegates and VRB Members; and
- B. the joint development and implementation of initiatives from 1992 by TIP (especially since 2010³¹) and (since September 2015) ATDP volunteers and DVA officers’ that have progressively moved veterans’ advocacy towards a profession.
- (ii) ADSO submits that the following applications render Professor Shergold’s analyses worthy of the Study’s further consideration:
- (a) The unique nature of military service, the unique culture of veterans, and the unique dangers and injuries/diseases that veterans are exposed to, and the

²⁸ Dr Peter Shergold, Valedictory Speech, <https://www.apsc.gov.au/valedictory-speech-dr-peter-shergold>

²⁹ *‘Governing through Collaboration’*; in Collaborative Governance: A new era of public policy in Australia, eds Janine O’Flynn and John Wanna, ANU Press, 2008, pp 13 and 218.

³⁰ The voluntary effort committed by TIP from 1992 to 2015 to develop and conduct TIP courses can be gauged by the effort expended since September 2015 by a handful of volunteers working 50 to 70-hour weeks to develop and implement ATDP. Extrapolating ATDP development effort (around 60,000 hours), well in excess of 750,000 hours will have been expended since 1992 on developing and delivering advocacy training alone. Given the level of education, expertise and experience of the people involved, a typical consultancy charge-out rate of \$2000 per day would have accrued to Government. An outlay by Government of around \$1.5b has been avoided through the commitment of these volunteers.

³¹ Significant progress followed the 2010 *Review of DVA-funded ESO Advocacy and Welfare Services* recommendation that Competency-Based Training be adopted by TIP: <https://www.dva.gov.au/consultation-and-grants/advocacy-training/review-dva-funded-eso-advocacy-and-welfare-services>

challenges presented by veterans' support needs to Government, are complex and interact complexly'.³²

- (b) These challenges cannot be resolved by Government or by ESO/VSCs alone - each must collaborate closely with the other.
 - (c) The geographic dispersion of veterans and advocates, their relative numbers (300,000 DVA clients v 1,600 advocates), and younger veterans' strong preference for using electronic media, necessitate new advocacy strategies. Face-to-face advocacy support is preferred; however, video-conferencing is an increasingly common means of contact and may become more necessary as advocate numbers decline.
 - (d) The last 40 years of repatriation in Australia and DoF's 2015 *Functionality and Efficiency Review* suggest that the 'contestability' of DVA's service delivery is in central agencies' sights. Ongoing culture change within DVA through VCR and ESO/VSCs' continued transition towards partnership are essential.
 - (e) Social impact is unlikely to be achieved by any Government agency operating top-down and in isolation from the community. Veterans and families' unique culture make this particularly true of DVA, which cannot allow itself to be constrained by other departments' typically narrow approach.
 - (f) The preceding considerations argue strongly for veterans' support functions to remain with DVA - the Department that is dedicated and specifically structured and operated to understand veterans' unique culture and meet their unique needs.
- (iii) contends that even if accompanied by a sustained and comprehensive culture change program engaging all stakeholders:
- (a) it is unlikely ESO/VSCs and advocates could interact effectively with a mega-department in which veteran's needs were just one of many other functions; and
 - (b) the preceding observation is applicable to:
 - A. Defence (defence of the Nation and, conflictually, the organisation that commands the personnel to whom it would subsequently deliver support services), or
 - B. DHS (welfare support of the desperately disadvantaged), or
 - C. AG (provision of specialist legal services to Government).

2.3 Governance of Advocacy

ADSO would like to refer the Study to our earlier Submission in which we outline the concept of an 'Institute of Professional Military Advocates'.

- a. We would like to confirm our view that the professional 'institute' must be:
 - (i) independent of Government and ESO/VSCs,
 - (ii) incorporated as a company limited by guarantee (CLG),

³² 'The Australian Public Service (APS) is increasingly being tasked with solving very complex policy problems. Some of these policy issues are so complex they have been called 'wicked' problems [they are] highly resistant to resolution...Solutions usually involve coordinated action by a range of stakeholders, including organisations (government agencies at the federal, state and local levels), nonprofit organisations, private businesses and individuals.' (emphasis added). <https://www.apsc.gov.au/tackling-wicked-problems-public-policy-perspective> accessed 20 July 2018.

- (iii) registered with ACNC as a Public Benevolent Institution (a class of not-for-profit charity),³³
 - (iv) endorsed by the ATO as a Deductible Gift Recipient (DGR),
 - (v) governed by a professional Board,
 - (vi) co-funded by Government, ESOs and private sector donations, and
 - (vii) self-administering.
- b. We reiterate that, irrespective of the model progressed, ADSO is committed to:
- (i) progressive professionalisation of advocacy; and
 - (ii) the functions to be performed by a professional ‘institute’, including the following:
 - (a) professional standards and values;
 - (b) marketing of services;
 - (c) advertising courses;
 - (d) as requested, facilitating advertising of advocacy vacancies;
 - (e) as requested, supporting ESO/VSCs’ recruitment of candidates;
 - (f) as requested, supporting ESO/VSC’s screening of candidates;
 - (g) advocate training and development;
 - (h) assessment and accreditation;
 - (i) supporting continuing professional development (CPD);
 - (j) supporting communities of practice (CoP);
 - (k) coordinating a comprehensive quality assurance system engaging all stakeholders;
 - (l) conducting complaints investigation and administering sanctions;
 - (m) arranging professional indemnification and personal accident insurance; and
 - (n) making appropriate input to DVA’s Planning Cycle.³⁴
- c. ADSO would also like to re-affirm our intention that:
- (i) all advocates (irrespective of their being volunteers, paid advocates or lawyers) must take membership in the ‘Institute’ and comply with its values and standards; and
 - (ii) advocacy services would continue to be delivered through ESO/VSC (initial Submission, pp14-15).

2.4 Social Enterprise Approach

- a. We submit that the envisaged CLG adopt a social enterprise approach,³⁵ and adapt social impact investing³⁶ and social return on investment processes³⁷ to meet veterans and families’ service delivery needs.
- b. We note that the core values of professional military advocacy are self-directed pursuit of excellence in service delivery and veterans’ wellbeing. These values are consistent with

³³ http://www.acnc.gov.au/ACNC/FTS/Fact_PBI.aspx

³⁴ <https://www.dva.gov.au/sites/default/files/files/publications/corporate/towards2020.pdf> page 7.

³⁵ https://en.wikipedia.org/wiki/Social_enterprise accessed 7 July 2018.

³⁶ <https://www.socialventures.com.au/sva-quarterly/how-government-can-grow-social-impact-investing/>

³⁷ <https://www.socialventures.com.au/sva-quarterly/sroi-revolution-or-evolution/>

the objective of a social enterprise: *to promote, encourage, and make social change*' with the objective of creating social wellbeing.

- c. The advantages of the social enterprise approach are:
- (i) It is focused on two equally important outcomes:
 - (a) Social. Assuring veterans receive the full beneficial intent of veterans' legislation.
 - (b) Economic. Ensuring efficient service delivery and cost-effective expenditure of funds.
 - (ii) It uses business strategies to generate revenue and to maximise the effectiveness of its outcomes.
 - (iii) It advances the market improvement objective of the Government' Contestability Programme, including '*partnering with organisations outside government*' and '*fundamental restructuring of how [a] function [in this case, veterans' support] is achieved*'.³⁸
 - (iv) It outsources a core activity within one of DVA's central functions – delivery of high quality advocacy services. In so doing it advances a key DoF contestability objective as revealed in the *Functionality and Efficiency Review* of DVA (2.1.b-d above).
- d. Adoption of social impact investing combines government and ESO funding and private sector donations to achieve intended social and financial returns. The professional institute's intended social return is the wellbeing of (especially vulnerable) veterans. Adequate financial returns assure the sustainability of advocates' interventions. Other benefits of social impact investment include:
- (i) building DVA-ESO/VSC-private sector partnerships to resolve veteran and family challenges;
 - (ii) adoption of commercial accountability, transparency, and performance monitoring practices to improve social outcomes;
 - (iii) ameliorating government risk through shared financial and performance management;
 - (iv) applying government data to identify the opportunity cost of disadvantage and the impact of interventions; and
 - (v) multi-factorial benefit-cost analysis of service delivery.
- e. Adoption of social return on investment would link evaluation of service delivery outcomes with veterans being supported by the DVA-ESO/VSC partnership. Social return on investment:
- (i) is particularly relevant to the problem of veteran and family wellbeing because it is adaptive;
 - (ii) integrates:
 - (a) intended service delivery outcomes, veterans and families/dependents as a unit,
 - (b) progressive measurement of the family unit's resilience and wellbeing, and

³⁸ '*The objective of public sector reform is not merely to replicate the current models of service provision by another organisation, but to streamline delivery models in order to improve performance.*' https://www.finance.gov.au/sites/default/files/Contestability_Programme_Guidelines_March_2015_2.pdf, pp6-7; accessed 7 July 2018.

- (c) redirects service delivery to strengthen resilience and maximise wellbeing for each unit of financial investment; and
- (iii) would be embedded in the institute's quality assurance system by monitoring and measuring veteran wellbeing.

2.5 Funding Advocacy Representation

- a. Irrespective of the advocacy governance structure that emerges from the Study, funding will be a key consideration. ADSO acknowledges that issues that may influence funding include:
 - (i) the review of the *ACNC Act 2012*;
 - (ii) investigations into ESOs' use of members' funds;
 - (iii) the upcoming BEST Grant Review;
 - (iv) the options open to DVA and ESO/VSCs to fund or co-fund the entity;
 - (v) the preparedness of the private sector to donate to a veteran and family support entity; and
 - (vi) the funds management structure decided upon, including the following options:
 - (a) a Trust,
 - (b) a Patriotic Fund,³⁹
 - (c) a 'pooled development fund',⁴⁰ or
 - (d) another structure.
- b. To give an indication of the cost of the options, from a back-of-the-envelope calculation:
 - (i) **Current Volunteer System.** The cost of the current system is around \$8.7m, comprising:
 - (a) \$4m for BEST Grants, and
 - (b) \$3.5m for 45 paid advocates at \$40 per hour,⁴¹ plus
 - (c) \$1.2m on-cost (assuming 30% typical commercial).
 - (ii) **All Volunteers Paid.** The annual cost for Government would be around \$72m; assuming that:
 - (a) 800 of the currently practicing 1600 advocates are Compensation Advocates/Pension Officers and are VITA indemnified;
 - (b) 600 of the currently practicing 1600 advocates are Wellbeing Advocates/Welfare Officers and are VITA indemnified;
 - (c) 400 of the current 1600 are TIP-trained in welfare but provide home/hospital visits;

³⁹ <https://sydneylivingmuseums.com.au/ww1/patriotic-fundraising> ;
<http://guides.slsa.sa.gov.au/c.php?g=410371&p=2794507> ;
<https://www.consumer.vic.gov.au/clubs-and-fundraising/patriotic-funds> ;
<https://nswanzaccentenary.records.nsw.gov.au/on-the-homefront/patriotic-fundraising-introduction/>

⁴⁰ <https://www.business.gov.au/assistance/pooled-development-funds>

⁴¹ We understand that this is around the wage for ESO-employed advocates with leave loading and compulsory superannuation contribution included.

- (d) the 1400 that are VITA indemnified each provides 20 hours of advocacy per week and are employed on \$40 per hour, the annual outlay would comprise:
 - A. \$54m in salaries, plus
 - B. \$18m in on-costs (assuming 30% rate).
 - (iii) **Public Service Lawyers.** The aggregate annual cost would be around \$120m, assuming that to meet future demand (Section 2.6.b.) around 410 full-time public service lawyers and 15 contracted barristers would be needed to undertake the workload of 800 volunteer Compensation Advocates/Pension Officers; with the aggregate outlay comprising:
 - (a) \$61m salary cost per annum (assuming a typical public-sector lawyer salary of \$150,000 including superannuation and leave loading);
 - (b) an annual charge-out of \$6m for 15 barristers;⁴²
 - (c) \$23m for the ongoing employment of Wellbeing Advocates/Welfare Officers; and
 - (d) \$30m in on-costs (30% assumed).
 - (iv) **Relationship with Contestability.** Veterans caring for their own undoubtedly comes at a cost to government; but the cost (\$4m pa. in BEST funding) is miniscule when compared with the options discussed above. The solutions arising from *The Constant Battle* would create a budget expense of up to \$120m for a service that (apart from BEST Grants) is currently provided free of charge to Government. In the context of the Government Contestability Programme, the BVA solution canvassed in *The Constant Battle* is at best curious.
- c. That said, the most compelling argument for advocacy by veterans is the century-old tradition of ‘*Mates helping Mates*’. ADSO’s contact with younger veterans substantiates that the tradition is just as strong now as it was in the gross societal and economic aftermath of WWI. Also, mates support of each other is now facilitated by social media and, therefore, networked widely, unrelated to geography.
- d. Indeed, the minimal outlay on BEST is the Government’s best insurance premium against ongoing suicide and the social and economic cost of mental health treatment for the veteran community. Having put people in harm’s way the Government and the Nation have an obligation to support those impaired by their military experience. This obligation has been accepted for a century. It is now more than a legislated obligation. Community-wide, it is an honoured tradition.

2.6 Advocacy Demand

- a. ADSO notes the Discussion Paper comment ‘if there are fewer appeals to the Veterans’ Review Board, the Administrative Appeals Tribunal and the Federal Court of Australia, it follows that there could be some reduction in the need for advocacy and support services.’ While we agree with the deduction, we are concerned that it:
 - (i) may presume veteran and dependents’ primary claims lodged by them through the On-line and MyService portals without advocacy support will be successful; and
 - (ii) overlooks veterans and dependents’ need for wellbeing advocacy support.

⁴² Indicatively, the average cost to DVA for external legal support over the last two financial years.

- b. Also, ADSO:
- (i) notes DVA's estimate that around 1,600 ESO veterans' advocates⁴³ are currently active;
 - (ii) estimates that not more than 50 of the 1,600 are full-time, employed advocates; and
 - (iii) calculates, by way of comparison, demand for around 1,125 (FTE) Advocates, of whom up to 700 would be Wellbeing Advocates or Wellbeing Support Officers (2.7.b. below) and 425 Compensation Advocates (calculation at Annex A to the ADSO initial submission).
- c. ADSO notes the importance of the number of Statements of Attainment issued (646 at 5 August 2018), the number of TIP-trained practitioners awaiting scheduling to undertake RPL (around 180), and the number of candidates enrolled in an ATDP learning pathway (535) of whom around 120 are currently completing their pathway.⁴⁴ These data indicate that:
- (i) to date, around 50% of the estimated 1,600 TIP-trained welfare and pensions officers that are practicing⁴⁵ have accredited by RPL;
 - (ii) after 18 months, the aggregate number of RPL-ed advocates or candidates under-training (1,300) indicates that implementation of ATDP is progressing well;⁴⁶ and
 - (iii) the disaggregated numbers when compared with projected demand are promising; at 20 July 2018 there were:
 - (a) 384 accredited Compensation Advocates vs estimated demand for 425;
 - (b) 258 accredited Wellbeing Advocates vs estimated demand for 700 (see Note 46); and
 - (c) In future, the demand for Wellbeing Advocates is ameliorated by younger veterans and some ESO/VSCs' intended training value of the Wellbeing Support Officer role (see Section 2.7.b below).
- d. ADSO acknowledges that, were a majority of the remaining TIP-trained welfare and pension officers not to seek accreditation before the VITA cut-off dates,⁴⁷ there would be a potentially significant loss of veterans' advocacy support capacity. We are aware, however, that those who elect not to accredit:
- (i) may continue to practice but, not being accredited, would need to take out professional indemnification independent of VITA;
 - (ii) need not be lost to the veteran and family support system;
 - (iii) can be encouraged to provide mentoring support, applying their experience to candidate and advocates' learning;
 - (iv) may wish to apply their knowledge in the WSO role; and

⁴³ We presume these data include accredited Wellbeing and Compensation Advocates, TIP-trained Welfare and Pension Officers and Welfare Support Officers (TIP-trained, but providing home and hospital visits etc)

⁴⁴ <https://www.atdp.org.au/atdpMain.php>; accessed on 6 July 2018. Of the 614 RPLs, 136 are dual accredited in Wellbeing and Compensation.

⁴⁵ We understand that up to 400 of the 1,600 have completed TIP Level 1 Welfare but are providing Welfare Support Officer services.

⁴⁶ Accepting that the 1,125 requirement is FTE and over 95% of the current cohorts of advocates and welfare/pension officers are part-time volunteers working around ½ FTE averaged across the cohort.

⁴⁷ 30 June 2019 for Level 1 and 2, and 31 December 2021 for Level 3 and Level 4 Compensation practitioners.

- (v) may perform these functions within their ESO/VSC or more widely in a Community of Practice (CoP).
- e. That said, the need to recruit younger veterans into military advocacy is incontestable. In this respect we note that the potential pool of candidates may extend to:
 - (i) veterans that are receiving Permanent Impairment disability benefits and are able psychologically or physically to support others;
 - (ii) veterans' spouses (especially, as they have lived with the consequences of military service for their family); and
 - (iii) veterans that:
 - (a) are seeking a career in military advocacy, or
 - (b) possibly subsequent career progression to human or community services or life counselling.
- f. The ease with which primary claims can be lodged through the On-line and MyService portals is a two-edged sword:
 - (i) veterans with complex medical conditions will lodge primary claims without awareness of the legislative considerations on which a successful claim pivots, potentially increasing the number of reconsiderations and appeals; and
 - (ii) primary claims lodged without advocacy support are a lost advocate learning and development opportunity, with ramifications for preparedness for advocacy training and practice at Levels 3 and 4.
- g. With respect to the possibility that lawyers might be 'parachuted' into advocacy service delivery, we submit that the Scoping Study consider:
 - (i) the complexity of both Wellbeing and Compensation legislation, which necessitates thorough grounding and experience at the Levels 1 and 2 before training at Level 3 and subsequently at Level 4; and
 - (ii) ASQA-accreditation rules, which for 10620NAT Course in Military Advocacy stipulate that competency at a higher level be preceded by demonstrated competency in the same stream at the immediately preceding lower level.

2.7 Nature of Advocacy Support

- a. **Scope of Study.** ADSO notes that the Discussion Paper (understandably reflecting the focus of *The Constant Battle*), focuses **only** on the delivery of compensation advocacy services. We draw to the Study's attention the extent to which ATDP's younger veterans' are refocusing advocacy practice. In their view, Wellbeing is '*whole-of-life*', while compensation is '*episodic*'. Whereas Welfare Officers in the TIP era focused on aged care and '*pointing the way*', Wellbeing Advocates must be focused on '*walking beside*' the veteran from '*cradle to grave*'.⁴⁸ ADSO notes that this evolving concept does not diminish Wellbeing Advocates' care for aging veterans. The new responsibilities are merely added to existing needs. ADSO notes further the relationship between the emerging need and MRCA's wide-ranging definition of '*dependents*' (*MRCA 2004*, s15(2)). Accordingly, ADSO:

⁴⁸ <http://atdp.org.au/policy/> Library No 1/Part A. ATDP Implementation/Vol 3. 10620NAT/MILADW002 Curriculum Workshop Proceedings, pp 6-7.

- (i) acknowledges that:
 - (a) the Study's ToR have been focused by the of evidence heard by the Senate Inquiry, which
 - (b) in turn, is the result of a direct and almost sole⁴⁹ correlation of veteran suicide with compensation entitlements and DVA administration;
 - (ii) is concerned that the Scoping Study's ToR do not require wider consideration of veterans' evolving wellbeing needs, of which compensation is one element;
 - (iii) notes that the ratio of TIP-trained Welfare to Pension Officers was around 3:5, but (on advice at 20 July 2018) the ratio of accredited Wellbeing to Compensation Advocates has reversed to around 5:7;
 - (iv) concludes that, *prima facie*, this indicates that emphasis will need to be placed on recruiting wellbeing candidates.
- b. **Suggested Expansion of ToR.** While we are aware that the Study is bounded by its ToR, ADSO contends that it must consider Wellbeing Advocacy training, development and service delivery.
- (i) In this respect, Recommendation 19 of The Constant Battle states that DVA should 'review the support of partners of veterans to identify further avenues for assistance [which] should include information and advice, counselling, peer support and options for family respite care...'
 - (ii) Reflecting the '*Heathy Veteran. Healthy Family*' model, ADSO submits that Recommendation 19 is too narrow.
 - (a) It is not partners **alone** that need support but the veteran **and** family/dependents as a **unit**.
 - (b) Implementation of Recommendation 19 therefore needs to be expanded.
 - (iii) We propose that the Study seek extension of its ToR (if necessary) to include an expanded Recommendation 19. The additional ToR would:
 - (a) confirm the scope of the '*Heathy Veteran. Healthy Family*' model;
 - (b) compare 10620NAT units of competency with the requirements of that model;
 - (c) identify the relationship between VCR's broad objectives and implementation of ATDP; and
 - (d) consider how, through these programs, DVA can best progress an expanded Recommendation 19 to support the veteran-family unit.
- c. **Tre-level Advocacy System.** ADSO contends that, while the emerging concept of advocacy is complex, resolution is not as daunting as it may appear.
- (i) At sub-Section 2.7.d. below we discuss Wellbeing Support Officer (WSO) training and practice. ADSO notes that not only younger veterans but also a number of ESO/VSCs see as is the preferred entry method into advocacy. Younger veterans, in particular, argue that:
 - (a) WSO training is the mandatory prerequisite to peer-to-peer support;
 - (b) training first in wellbeing avoids having to deal with complex legislation;

⁴⁹ We note at para 3.22 in *The Constant Battle*, the risk factors identified by Phoenix Australia include '*social factors, such as social isolation, loss of relationship, financial difficulty*', discussion at 6.49 to 6.52 and especially 6.77 to 6.80, lead to Recommendation 19 at 6.109. These needs replicate those identified by younger veterans in workshops and now being incorporated into 10620NAT (Note 5).

- (c) compensation training is best undertaken when experience is gained as a Wellbeing Advocate.
- (ii) ADSO is strongly supportive of this progression as the three roles are closely integrated in the ESO/VSC advocacy workplace. ADSO also notes the importance of the WSO role as preparation for Wellbeing Advocacy:
 - (a) Both roles require WSO or Advocate to ‘*walk beside*’ the veteran and family.
 - (b) Neither role involves counselling but requires intimate knowledge of the network of commonwealth/state/local government/private sector support services and providers.
 - (c) The WSO refers the veteran and family (clients) to the Wellbeing Advocate who, in turn, connects them with the service provider.
- (iii) ADSO also submits that, reflecting a continuum of ‘*walk beside*’ responsibility:
 - (a) the WSO will support the clients until the hand-over to the Wellbeing Advocate is complete;
 - (b) having connect clients to service provider(s), the Wellbeing Advocate will monitor the timeliness and quality of the services being provided and advocate on their behalf when shortcomings occur; and
 - (c) the WSO will remain on standby to provide the non-accredited support that clients will need across their lifetime.
- (iv) ADSO submits that the preceding discussion suggests a means of bridging location and service needs and increasing the likelihood of sustainability; namely:
 - (a) WSO must have face-to-face contact with DVA-ESO/VSC clients to perform their functions (see Section 1.8, Accessibility, for discussion of possible flexibility for compensation and wellbeing advocates).
 - (b) Provided they are not generating advice that they are not trained or indemnified to provide (see sub-Section 2.7.c. immediately below) but have an appropriate level of training, they may be safely able to facilitate information transfer provided by accredited advocates. To perform this task, they may:
 - A. arrange video/telephone contact between client and advocate,
 - B. be with the client during the contact to provide a familiar presence,
 - C. monitor responses (client’s body language, prompt clarification by the advocate,
 - D. provide companionship as the client reflects on the contact/information,
 - E. reconnect the client if misunderstandings occur or further information is needed, and
 - F. provide feedback needed by the advocate to more fully understand the client.
 - (c) In reverse, acting as the ‘eyes and ears’ for their ESO/VSC’s Wellbeing and Compensation Advocates, the WSO can take the initiative to link a client-in-need with the relevant advocacy discipline and level; noting that this task and a familiar face are critical for vulnerable clients and crucial for potential suicides.
 - (d) Importantly, the WSO’s knowledge base that younger veterans have identified⁵⁰ mirrors the Wellbeing Advocate’s. It is only the application of that knowledge

⁵⁰ The curriculum is at Annex F to the MILADW002 Curriculum Workshop Report; see URL at Note 4.

- to ‘advise’ (Wellbeing Advocate) versus ‘connect and monitor’ (WSO) that differentiates one role from the other.
- (e) In (especially) rural and remote areas (arguably less so in major population centres), formalisation of the WSO role is potentially a service-delivery multiplier:
 - A. Appropriately trained to understand accredited advocates’ roles and responsibilities,
 - B. monitored by an ESO/VSC’s senior Advocate to assure the role boundary,
 - C. guided to create a local/ regional network of contacts and service providers, and
 - D. furnished with communications media, and mentored as a member of a CoP,
 - E. the WSO is potentially an even more valuable member of the advocacy service delivery system than they were as Welfare Support Officers.
 - (v) ADSO therefore contends that the advocacy model described in the ATDP Blueprint is due for review. The updated model would have three levels of veterans’ support:
 - (a) Entry through Wellbeing Support Officer training and experience, accepting that some ESO/VSC members may wish to remain in this role (see sub-Section c immediately below).
 - (b) Completion of a common 10620NAT Level 1 training and development pathway, that combines the current Wellbeing and Compensation Level 1 UoC.⁵¹
 - (c) On assessment by their ESO/VSC that the Level 1 Advocate is ready for the next level of training and development **and** depending on the advocate’s preferred discipline of practice, the ESO/VSC would enrol the member as a Level 2 Wellbeing or Compensation candidate.
 - d. **WSO Training.** To support the authorised and indemnified TIP-trained Welfare Officers, most ESOs have authorised untrained members to provide ‘*companionship*’ support for their members. This support included home and hospital visits, the eulogy at service funerals, transporting immobile veterans, and the multitude of other wellbeing support roles undertaken by ESO/VSCs. As this support did not require training (many did, however, undertake TIP Welfare 1) and although authorised by ESO/VSC, the role did not have indemnification cover by VITA. ADSO submits that:
 - (i) younger veterans:
 - (a) are emphasising the importance of support for Wellbeing Advocates,
 - (b) are identifying their needs of a WSO,
 - (c) have developed a curriculum covering these needs,³⁴ and
 - (d) proposed the title Wellbeing Support Officer;
 - (ii) a number of ESO/VSCs regard the WSO role as:
 - (a) a very useful way of introducing potential candidates to 10620NAT Course in Military Advocacy, and
 - (b) establishing candidates’ suitability for further development as wellbeing or compensation advocates;

⁵¹ ADSO is aware from ATDP that work is to begin on an amalgamed Level 1 course in FY2018-19. At the time that the RTO submits this UoC to ASQA for accreditation it will also submit the Level 3 Wellbeing UoC.

- (iii) with input from SME a WSO Handbook is currently being prepared based on the knowledge needs identified by younger veterans;
 - (iv) ADSO cautions that:
 - (a) the depth of training cannot exceed the 'awareness' level,
 - (b) training must reinforce the boundaries of the WSO role, and
 - (c) ESO/VSC need to appoint an experienced advocate to support their WSOs;
 - (v) currently:
 - (a) ATDP does not provide training in the role, and
 - (b) ESO/VSC are required to undertake their own WSO training;
 - (vi) as the role is a vital component veteran and family support, the following inadequacies must be remedied:
 - (a) despite the prohibition on giving advice, some welfare support officers are known to have done so, placing their ESO/VSC and themselves at risk;
 - (b) few ESO/VSC have the necessary training capacity to cover a wide-ranging curriculum;
 - (c) delegation of training to ESO/VSC is at variance with the national consistency shortcoming that drove the transition from TIP to ATDP;
 - (d) failure to formally recognise the vital importance of the role undermines the objective of a profession – internalised, ongoing, development of knowledge and service delivery skills;⁵²
 - (e) the lack of formal training and a national approach appear to conflict with the support needs identified in *The Constant Battle* Recommendation 19; and
 - (vii) WSO training should be formal and nationally consistent so that they:
 - (a) are fully aware of the boundaries of their role,
 - (b) know precisely to which advocacy discipline and competency level veterans' queries should be referred,
 - (c) can extend the geographic reach and sustainability of the advocacy service delivery system,
 - (d) act as the 'eyes and ears' of the ESO/VSC and its corps of accredited advocates,
 - (e) undertake the full potential of the WSO within the advocacy system, and
 - (f) become a formal entry point into veterans' advocacy.
 - (viii) ADSO submits that WSO training be conducted formally and nationally consistently by ATDP.
- e. **Military Invalidity and Superannuation.** Our contact with younger veterans confirms that retrospective reclassification of mode of discharge and reconsideration of the class of invalidity pension are significant concern and, if successful, relief from financial and psychological stress.
- (i) ADSO is aware that a number of TIP-trained and ATDP-accredited advocates are:
 - (a) supporting veterans' progression of their applications to ADF for reclassification, and

⁵² The outcomes observed by Elton Mayo during the Hawthorne Experiment are relevant.

- (b) representing veterans during applications for reconsideration by the CSC of decisions against reclassification;
 - (ii) ADSO contends that younger veterans' needs and *The Constant Battle* Recommendation 19 justify inclusion of a UoL in invalidity and superannuation legislation.
 - (iii) ADSO has been advised that the following UoL are covered in the mandatory CPD 'Transition and MECRB' Update Module for RPL-ed advocates and are to be included in 10620NAT Course in Military Advocacy:⁵³
 - (a) CPD Update Module 1: retrospective consideration of invalidity benefits for DFRB, DFRDB, MSBS and ADC members:
 - (b) Level 2 Compensation Consolidation Course:
 - A. retrospective change to the mode of separation (from administrative to medical) through Defence; and
 - B. retrospective consideration for invalidity benefits through DFRB, DFRDB, MSBS and ADC.
 - (iv) ADSO proposes additionally that the following appeal paths be added to 10620NAT:
 - (a) *DFRB Act 1948*:
 - A. s53: request to the Authority for Reclassification of incapacity, and
 - B. s53B(5D): revocation of suspension;
 - (b) *DFRDB Act 1973*:
 - A. s99: application to the Defence Force Case Assessment Panel (DFCAP) for reconsideration, and
 - B. s107: Panel decisions appealed to the AAT;
 - (c) *MSB Act 1991*, s76: application to CSC for Reconsideration Committee for Disability Entitlements Classification change; and
 - (d) *ADC Act 2015*, s57: application to the DFACP for reconsideration.
 - (v) We note that VITA professional indemnification has yet to confirm coverage of these activities, creating risk should a veteran claim negligence.
- f. **Legal Representation.** ADSO:
- (i) notes that *The Constant Battle* Recommendation 23 proposes establishment of a Bureau of Veterans' Advocates (BVA), and para 7.28 includes the following details. The BVA would:
 - (a) comprise a section of legally trained public servants,
 - (b) independently assist and advocate for veterans in making claims,
 - (c) supplement and support the current system of volunteer advocates,
 - (d) be allocated a budget to commission legal aid to assist veterans make appeals, and
 - (e) take over responsibility for grants to ESOs regarding advocacy, training and accreditation of volunteer advocates and insurance issues.
 - (ii) ADSO notes that the rationale for a Bureau includes the following considerations, and submits countervailing argument tabulated overleaf:

⁵³ Request to sight the Update Modules should be directed to DVA.

Recommendation 23	Countervailing Submission
The claim that <i>'some'</i> (generalisation) DVA lawyers adopt an adversarial approach.	This can have occurred only at the AAT. ⁵⁴ Of the 308 AAT decisions in FY2016-17 in the Veterans Appeals Division, 71 ⁵⁵ were decided at a formal Hearing and might have resulted in direct contact between an advocate and a barrister. Level 4 advocates advise that one-in-thirty encounters are adversarial or abrogate model litigant obligations.
The appeals system is <i>'unfairly weighted against veterans'</i> .	The purpose and conduct at each level of appeal is governed by materially different legislative provisions.
The VRB, AAT and Federal Court is treated as if a unified structure.	
Unsupported by analysis, the volunteer advocacy system is under <i>'serious stress'</i> .	See Section 2.6.c.(iii)
Unsupported by projected demographic data with sensitivity analysis, the <i>'volunteer advocacy system is unlikely to meet veterans' future needs'</i> .	
DVA has a <i>'conflict of interest'</i> because it is <i>'responsible for training advocates and then the DVA-trained advocates having to argue the veterans case' against Delegates' decisions'</i> .	Since 1992 unpaid volunteers have conducted advocacy training. If argument occurs, it is at the VRB or AAT, not with Commission Delegates.

2.8 Further Professionalisation

- a. ADSO notes that the professionalisation of advocacy began in 2010 with TIP’s adoption of CBT (See Note 31) and has accelerated following the Rolfe Review:
 - (i) CoP are already active in most large population centres across the country;
 - (ii) CPD is lifting to the next professional level the advances made through accreditation;
 - (iii) as do most professions accredited advocates accrue CPD points, which are used as evidence:
 - (a) to monitor currency, and to the extent possible, assure quality;
 - (b) by ESO/VSCs to authorise advocates to practice; and
 - (c) VITA to extend professional indemnification.

- b. ADSO’s initial submission proposes further professionalisation of compensation advocacy training at the appeals levels (MILADC003 and MILADC004). In our initial submission at pp16-17 we advise our preference that VRB and AAT advocates’ training be deepened so that they are better prepared to apply case law at the VRB and to meet the (sometimes) robust legal argument at the AAT.

⁵⁴ The Constant Battle, 7.80 to 7.81.

⁵⁵ Data obtained from AAT Annual Report FY2016-17, p124, finalisation statistics and email contact with AAT Principal Registry, Melbourne; Strategy, Communications & Governance Division.

- c. To expand upon our earlier Submission, ADSO suggests that, subject to development by ATDP in consultation with SMA (practising Level 3 and Level 4 Advocates), the VRB, AAT and academics with sound reputations in administrative and veterans law:⁵⁶
- (i) the course for advocates to the VRB (MILADC003) include not only basic advocacy skills but also ensure a thorough understanding of appeals advocacy to the VRB by adding units of learning in:
 - (a) introduction to legal reasoning and report writing,
 - (b) introduction to legislation and Government decision-making;
 - (c) interpreting and applying veterans' legislation,
 - (d) introduction to administrative law,⁵⁷
 - (e) introduction to case law,
 - (f) applying the appeal sections in *VEA 1986*, *DRCA 1988* and *MRCA 2004*,
 - (g) applying *DFRBA 1948*, *DFRDBA 1971* s99, *MSBA 1991* s76, and *ADCA 2015* s57; and
 - (ii) the course for advocates to the AAT (MILADC004), include not only advocacy practices in the Tribunal environment but also ensure a thorough understanding of appeals advocacy to the AAT by adding UoL/UoC in:
 - (a) evidence, researching primary legal documents, and writing complex legal documents;⁵⁸
 - (b) selected units of administrative law;⁵⁹
 - (c) advanced interpretation and application of case law;
 - (d) applying relevant sections of *AATA 1975*;
 - (e) applying *DFRDB Act 1973*, s107;
 - (f) appeal to the Federal Court of Australia;
 - (g) understanding the *Acts Interpretation Act 1901* and *Legislative Instruments Act 2003*;

PART B – MEMBERS' RESPONSE TO QUESTIONNAIRE NO. 1

In Part B, ADSO has collated Members returns into a consolidated ADSO response to Questionnaire No. 1.

Each response is headed by the question from the Questionnaire. Where appropriate, multi-part questions have been separated into sub-questions, and answered separately.

⁵⁶ Academics that have well-established credentials include Peter Sutherland, Robin Creyke, Hugh Selby and/or Bruce Topperwein.

⁵⁷ For example: <https://www.ag.gov.au/LegalSystem/AdministrativeLaw/Documents/Australian-administrative-law-policy-guide.pdf>

⁵⁸ We note that Southern Cross University, LAW10069 Veterans' Law 1, sets the prerequisite LAW10157 Australian Legal System or LAW00051 Legal Research and Writing.

⁵⁹ For example: University of Newcastle, LAWS4002 Administrative Law offerings include: The Nature and Functions of Administrative Law, Judicial Review of Administrative Action, (Extra-judicial) Merits Review of Administrative Action (including the Administrative Appeals Tribunal), Delegated legislation, means of investigating administrative action (the Ombudsman); Access to information held by the administration (Freedom of Information and Privacy Law).

1. Question 1

1.1 *Can ex-service organisations please provide statistics showing their current complement of veteran advocates in the following four categories: accredited in compensation advocacy, accredited in welfare advocacy, accredited in both and unaccredited?*

- a. ADSO has encouraged each Member, where applicable, to provide these data in their individual response.
- b. We note that the TIP-trained Welfare Officer stream has transformed into 'Wellbeing Advocacy' discipline, encompassing:
 - (i) physical and psycho-social wellness,
 - (ii) housing,
 - (iii) nutrition and food,
 - (iv) clean water,
 - (v) meaningful employment,
 - (vi) income appropriate to family/personal needs,
 - (vii) satisfying friendships,
 - (viii) intimate relationships, and
 - (ix) broad contentment with situation.

1.2 *How many of that total number of advocates are female?*

ADSO has encouraged each Member, where applicable, to provide these data in their individual response.

1.3 *How many of that total number of advocates are paid advocates?*

ADSO has encouraged each Member, where applicable, to provide these data in their individual response.

1.4 *How do ex-service organisations ensure that their veterans' advocates are sufficiently familiar with the Safety, Rehabilitation and Compensation (Defence-related Claims) Act and the Military Rehabilitation and Compensation Act to provide advice or handle claims arising under those Acts?*

ADSO submits that:

- a. Compensation Advocates accredited through ADTP must be competent in all three Acts;
- b. on the other hand, some TIP-trained Pension Officers and Advocates may have elected not to undertake TIP SRCA and MRCA training courses;
- c. unless:
 - (i) Pension Officers undertake RPL or the ATDP training pathway, they will not be covered by VITA indemnification from 30 June 2019; and
 - (ii) TIP-trained Advocates undertake RPL or the ATDP training pathway at Level 2 and then undertake RPL at Level 3 followed where appropriate at Level 4, they will not be covered by VITA indemnification from 31 December 2021.
 - (iii) Clearly, ADSO's interest is that its Members' TIP-trained pension officers and advocates accredit under ATDP as soon as possible. Our approach is spurred by two key concerns; namely, to maximise:

- (a) the quality of advocacy services delivered by Members’ advocates, and
- (b) the number of practicing compensation and wellbeing advocates.

1.5 *Can ex-service organisations provide estimates of their likely complement of veteran advocates in the four categories in 2024 and 2030?*

- a. ADSO submits that the most appropriate methodology is to apply current data to estimate the ratio of advocates to DVA Income Support recipients (viz. service, disability and war widow pensions) and Treatment recipients (Gold and White Card).
- b. In this respect:
 - (i) FY2016-17 Annual Reports indicate respectively the following annual numbers:

(a) Primary Claims:	10,500
(b) Appeals to the VRB:	2,800
(c) Appeals to the AAT veterans’ jurisdiction:	350
 - (ii) Effort-based demand analysis (see Annex A to ADSO’s initial submission) suggests the following number of FTE advocates are needed to meet current workloads:

(a) Level 1 or 2 Wellbeing Advocates:	700
(b) Level 1 or 2 Compensation Advocates:	198
(c) Level 3 Compensation Advocates:	213
(d) Level 4 Compensation Advocates:	25
(e) Total:	1,136
 - (iii) DVA has advised from BEST Returns that currently around 1,600 advocates are practicing. ADSO understands, however, that as many as 400 of these practitioners have completed TIP Welfare Level 1 but are undertaking Welfare Support Officer functions (home/hospital visits, eulogies, transport).
 - (iv) In the absence of disaggregated DVA data, ADSO assumes that the effort-based analysis is the baseline (viz. current) need.
- c. From DVA’s March 2018 Statistical Summary:
 - (i) the number of:

(a) Income Support recipients:	around 215,000.
(b) Treatment-recipients:	around 190,000.
 - (ii) Of the populations at sub-para (i), the number of younger veterans¹ and widow(er)s/orphans is estimated to be as follows:

(a) Income Support:	around 20,000
(b) Treatment Support:	around 46,000.

¹ The data extracted from DVA Statistical Tables to estimate the younger veteran cohort comprises:

- all pension and treatment recipients from the Gulf War forward and
- all pension and treatment recipients under 60 at March 2018
- all projections of treatment recipients under 70 at 2017.

- (iii) ADSO submits that the reversed ratio of Income Support to Treatment recipients supports an increased number of Wellbeing Advocates.²
- d. Applying DVA Projections, around 78,800 veterans will be Treatment recipients in 2027.³
- e. Assuming that the ratio of Treatment recipients to Income Support recipients will remain the same 2027, the population at sub-para d. becomes the baseline for estimating the number of Wellbeing Advocates required.
- f. The following calculation results:
 - (i) Proportion of future-to-current Treatment population:
 $78,800/190,000 = 0.415$
 - (ii) Estimated number of Wellbeing Advocates needed in 2027 is the current number x the factor at sub-para (i):
 $700 \times 0.415 = 290$ (say 300)
 - (iii) Applying the current ratio of compensation-to-wellbeing advocates from the effort-based analysis, the estimated number of Compensation Advocates in 2027 is:
 $300 \times 436/700 = 186$ (say 200)
- g. DVA states that the latent pool of clients is around twice the number that are current clients.⁴ Assuming that 50% of this cohort or their spouses eventually become income support or treatment recipients, the number of advocates needed to deliver services would double to:
 - (i) Wellbeing Advocates: around 600
 - (ii) Compensation Advocates: around 400
- h. ADSO submits therefore by conservative estimate that:
 - (i) a decline in the number of advocates from the current 1,600 (including those TIP-trained welfare officers that are providing non-advocacy support) to around 1,100 might be accommodated, and
 - (ii) the number needed will then remain reasonably static over the next decade at up to 1,000 advocates.
- i. Against this background, ADSO Members are aware that the majority of their current advocates are unlikely to be practicing beyond 2024. They are therefore including in their strategic development plans the recruitment of younger veterans, spouses and others to train as advocates.⁵

² From Part A, Section 2.7.a.(iii). Wellbeing Advocate's role will include connecting veterans and families/dependents to service providers, and 'walking beside' them (viz. monitoring the timeliness and quality of service and advocating to remedy shortcomings).

³ Table 9: <https://www.dva.gov.au/sites/default/files/files/publications/datastatistical/treatmentpop/TPopMar2018.pdf>

⁴ DVA commentary.

⁵ Part A, Section 2.6.e.

1.6 *If the 2024 and 2030 estimates are unlikely to meet the projected demand for veterans' advocacy services, can ex-service organisations provide details of any current plans or strategies to meet the expected shortfall in advocates?*

- a. ADSO notes that three concepts are being canvassed:
 - (i) The Bureau of Veterans Advocacy proposed by the Senate Inquiry into Suicide by Veterans.
 - (ii) The 2018 Veterans Ministers' Roundtable proposal to establish an association to accredit deliver of advocacy services to veterans⁶ (at Part A, Section 1.5).
 - (iii) ADSO's proposal for incorporation of an Institute of Professional Military Advocates.⁷
 - (iv) ADSO looks forward to participating in the harmonisation of the proposals to create an independent, sustainable veterans' and effective advocacy capability.
- b. ADSO contends that, irrespective of which outcome is progressed, the future body must:
 - (i) be independent;
 - (ii) accredit all advocates, whether volunteer or paid, legally or non-legally trained, to identical national standards;
 - (iii) assure nationally consistent, delivery of high quality advocacy services;
 - (iv) advance the professional development of military advocacy; and
 - (ii) use its best endeavour to develop military advocacy as an alternative career choice for younger veterans.

2. Question 2

2.1 *Why don't younger veterans join ex-service organisations?*

- a. ADSO notes that 'traditional' ESOs constitute the majority of ADSO's current membership;⁸ however, our strategic plan includes a drive to expand membership by inviting younger veterans' organisations to join the Alliance.
- b. ADSO Members have advised the following responses to this question:
 - (i) younger veterans **do** join Ex Service organisations;
 - (ii) issues that younger veterans advise would modernise traditional ESOs' image and enhance their relevance include:
 - (a) greater awareness of issues affecting their wellbeing,

⁶ See: http://minister.dva.gov.au/media_releases/2017/nov/joint_vmm.htm

⁷ <https://www.dva.gov.au/sites/default/files/files/consultation%20and%20grants/atdp/Submission%201.pdf> and Part A to this Submission (see 2.6.e. and 2.7.a.(ii)(e)).

⁸ ADSO represents around 90,000 ex-ADF personnel that are members of the following organisations (at 6 June 2018): Defence Force Welfare Association (DFWA), Naval Association of Australia (NAA), Air Force Association Ltd (AFA), Royal Australian Regiment Corporation (RARC), Australian Special Air Services Association (ASASA), Australian Federation of Totally and Permanently Incapacitated Ex-Service Men and Women (TPI), Fleet Air Arm Association of Australia (FAAA), Partners of Veterans Association of Australia (PVA), Royal Australian Armoured Corps Corporation (RAACC), National Malaya and Borneo Veterans Association Australia (NMBVAA), Defence Reserves Association (DRA), Australian Gulf War Veterans Association (AGWVA), Australian Commando Association (ACA), War Widows Guild of Australia (WWG), Military Police Association Australia (MPAA), Women Veterans Network Australia (WVNA), and Combat Support Association (CSA).

- (b) gender equality and proactive recruitment of female representation at all levels within their organisation,
 - (c) commitment at all levels to support of the veteran and family as a unit, and
 - (d) use of contemporary technology to provide 24/7 access to essential/critical support services.
- (iv) In response to experience or the perception of other younger veterans that the established ESOs have not met their needs:
- (a) a very rapid expansion in numbers of new veterans' associations and organisation based on likeminded needs has occurred, and
 - (b) affinity for social media has led to Facebook groups that provide mutual support, advice and guidance in a virtual world.
- (v) As with previous generations of ex-service members post-discharge, the current cohort of veterans are establishing a life for themselves and their families, resulting in the following:
- (a) both parents employed,
 - (b) young children,
 - (c) prioritising family and new career/new life over membership or any involvement with an established ESO; or
 - (d) no desire or requirement to access ESOs; or
 - (e) psychological or physical inability of veteran to engage with an ESO; or
 - (f) complete lack of interest in engaging with an established ESO.
- j. In summary, younger veterans argue they are:
- (i) they are disinterested in traditional ESOs hierarchical structures, formalised agendas and meetings; and
 - (ii) as they have a strong preference for informality and spontaneity, leading them to:
 - (a) rely on mates' advice rather than first accessing official websites;
 - (b) maintain a watch over their mates' wellbeing on social media;
 - (c) network quickly in response to mates in crisis;
 - (d) prefer activities that involve the whole family;
 - (e) respond spontaneously to posts about:
 - A. an imminent activity, or
 - B. one under way; and
 - (f) gather spontaneously with mates over a coffee for a short meeting rather than a beer in a long session.

2.2 *Do advocacy services need to be modernised to meet younger veterans' expectations and, if so, how?*

- a. The adaption of advocacy services to meet the demands and expectations of a technology-competent cohort of new generation veterans, is fundamental to

ensuring the veterans' support continuum is well-placed to cope. It follows that responses to issues must be facilitated by:

- (i) use of smart technology to enable:
 - (a) social media and other IT applications;
 - (b) virtual meetings, video/tele-conferencing; and
 - (iii) creation of ESO/VSC hubs where veteran/family/dependents can:
 - (a) 'drop in' to meet or 'take time out',
 - (b) access advocacy support, or
 - (c) link with service providers.
- b. At the next level of consideration, the question begs clarification of what else constitutes '*modernised advocacy services*'. ADSO adds three perspectives: DVA, ATDP and ESO/VSC.
- (i) From one perspective DVA is taking significant and positive steps to ensure that it is aware of younger veterans' expectations. The 'gold-standard' participatory research methodology employed by Project Lighthouse and the ongoing Younger Veterans - Contemporary Needs and Female Veterans and Veterans' Families Forums, and younger veterans' participation in the Legislative Forum examples of DVA's efforts to inform itself.
 - (ii) From another perspective, although being progressed by a small group of mature-age ESO volunteers, ATDP has made all endeavours to engage younger veterans in advocacy development and implementation:
 - (a) the volunteers developing and implementing ATDP are, as Compensation and Wellbeing Advocates, interacting daily with younger veteran/DVA clients; and
 - (b) ATDP development has involved workshops with younger veterans since at least 2015.⁹
 - (iii) From a third perspective, the preceding activities have long been mirrored by ESO/VSCs' Pension and Welfare Officers, Advocates and Welfare Support Officers at the point of advocacy service delivery. In this respect:
 - (a) these ESO/VSC volunteers have kept alive the extraordinary generosity of spirit, caring, and dedication to the ethos of *Mates helping Mates* that emerged from carnage of the Great War and the appalling social and economic aftermath in Australia, without which today's veterans and their families could not place their faith and future wellbeing in an advocate; and
 - (b) after 20 months, around 50% of TIP-trained pension and welfare officers have undertaken RPL as Compensation and Wellbeing Advocates, and

⁹ See Reports on: www.atdp.org.au/policy Library 1, Part A, Vol 3. 10620NAT:

- Younger Veterans Workshop Report Jul15.
- MILADVW002, YV Workshop Report; see pages 1-9.

- another 535 are enrolled on a training and development pathway, of whom 120 are actively completing a Workplace Experience Logbook.¹⁰
- (v) ADSO submits that these data attest to the ESO/VSC community's high level of commitment to meeting younger veterans' needs.
- c. That said, ADSO submits that no ESO/VSC can be satisfied with these data. ADSO Members therefore:
- (i) support unreservedly DVA's engagement with younger veterans in various forums,
 - (ii) the further professionalisation of advocate training and advocacy service delivery, and
 - (iii) the formal integration of these activities into VCR and DVA's Annual Planning Cycle.¹¹

2.3 *Apart from training and accreditation, what qualities or experience are younger veterans looking for in advocates that are not currently available to them?*

- a. ADSO's younger veteran members reiterate that advocates must:
 - (i) have had military experience or understand the unique nature of military service;
 - (ii) be qualified to provide advocacy services, competent and current;
 - (iii) be accredited by a peak body to provide the specific advocacy service;
 - (iv) maintain skills through CPD;
 - (v) maintain current knowledge as legislation is amended and policy changes; and
 - (vi) maintain and grow service provider networks.
- b. ADSO is aware that younger veterans have long said that they want support by well-qualified advocates. ADSO contends that this need is being satisfied; however, some experienced and capable advocates will be lost from the system over the next few years. ADSO advocates advise that, before these practitioners leave, the wider ESO/VSC community will need to encourage them to mentor¹² candidates so that their knowledge and skills are not lost entirely. They can also help candidates understand the importance of a profession-wide ethos of high-quality service delivery and help candidates develop a strong personal ethic.

¹⁰ Part A, Section 2.6.c.

¹¹ Part A, Section 1.3, 'Future Needs'.

¹² ADSO is aware that the experienced advocates that are mentoring candidates are concerned about the amount of time that the task consumes and the resulting loss of effort they devote to veterans in need. ADSO contends that ATDP has not explained adequately the mentoring role and effort required. Although advocates have been advised that formal learning is 10% of the candidates learning pathway, mentoring 20%, and on-the-job experience 70%. This is meaningless unless the candidates total anticipated workload per pathway is known. ADSO has recently been advised that 10620NAT identifies the workload identified by ASQA at the time of accreditation. We note from 10620NAT (page 5) that Wellbeing and Compensation Levels 1 and 2 each identify a nominal commitment of 60 hours, suggesting that mentoring is around 12 hours for each of these levels. ADSO also understands that the ATDP Policy and Procedure Manual has a chapter on Mentoring, but the URL to this document is not widely known. ADSO contends that the failure to keep ESO/VSC and advocates aware of intentions and progress is inexcusable in the information age. Noting, however, that when ATDP dispatched 470 email advices about CPD to accredited advocates, 60% of the email addresses advised by the advocates were incorrect. Keeping personal detailed updated is the advocate's responsibility

- c. Professionalisation of advocacy has (implicitly) been a DVA strategic objective (see *DVA Towards 2020*) and (explicitly) a key focus in the creation, development and implementation of ATDP.
 - (i) The genesis lies in younger veterans’ early concerns that pension and welfare officers hold certified credentials which initiated change within ESO/VSCs’ approach to advocacy.
 - (ii) These influences culminated in ESO/VSCs’ acceptance of the FY2015-16 Rolfe Review, the Advocacy Working Party discussions, and the ATDP Blueprint.
 - (iii) The current outcome is the number of accredited advocates, the number that have registered to undertake CPD, and the slowly growing number of posts on social media of mates encouraging ‘Mates’ to consult an advocate.
- d. ADSO’s initial submission to the Study supports the further professionalisation of advocacy. ADSO contends that professionalisation does not mean ‘paid advocacy’. Professional advocacy entails:
 - (i) specialist knowledge and skills,
 - (ii) national standards of service delivery,
 - (iii) continuing professional development,
 - (iv) an ethos of quality service and a code of ethical conduct, and
 - (vi) equal application to volunteer and paid advocate or legal practitioner.
- e. ADSO notes that the culture change task in the ATDP Blueprint has yet to be advanced formally. Whatever culture change has occurred is the fortunate result of self-motivation based in a personal imperative to do the best by veterans.

3. Question 3

3.1 *Are there sufficient female advocates to meet demand and, if not, what should be done to increase their numbers?*

- a. ADSO is aware that historically there has been only a small number of TIP-trained female pension and welfare officers. The number has, however, been increasing in recent years and the proportion of females to males that have undertaken RPL is notably high.¹³ Given that the Chiefs of Service have agreed to the following female participation targets versus current manpower strengths, the increasing proportion of female-to-male advocates is essential for future advocacy.

Service	Permanent Force Target	Permanent Force Actual (Jun16)
Army	15%	12%
Navy	25%	19%
Air Force	25%	20%

- b. ADSO is aware that already some ESO/VSCs are finding that veterans’ spouses are volunteering as advocates and are bringing invaluable insights to the role. ADSO

¹³ ADSO understands that around one in three RPL participants are female.

- is also aware that where female advocates are employed, they have the same rights, pay and conditions as their male counterparts.
- c. As the new advocacy roles become more widely understood and the number of female veterans increases, a greater number of female veterans and spouses may be willing to undertake the training.
 - d. In particular, ADSO notes that volunteer advocacy may be attractive to young mothers because it is a flexible commitment. Some may also see a period of volunteering as the foundation for a subsequent remunerated career in human/community/life counselling or in veterans' law/legal services.
 - e. Another potential cohort (as with male counterparts) may be female veterans who:
 - (i) are permanently impaired,
 - (ii) feel able to cope with others' impairments,
 - (iii) see that this may be therapeutic for their own conditions,
 - (iv) want to help, and
 - (v) have the freedom to be able to accept (at least initially) a volunteer (flexible) commitment.
 - f. The key issue (as for attracting male advocate) is unawareness about advocacy roles within the ADF and veteran community. Interest in the role has also been damaged by instances of Delegates advising compensation recipients that: *'If they can volunteer, they can work'*. ADSO is aware that whilst DVA's current policy on voluntary activities is more client-centric; however, younger veterans have posted the earlier instances on social media and have not forgotten them.
 - g. ADSO has identified the following means by which ESO/VCCs may recruit greater numbers of female advocates:
 - (i) promote the importance of the role through female veteran networks;
 - (ii) the internet and social media to raise awareness;
 - (iii) articles explaining the role in VETAFFAIRS, ESO magazines/newsletters;
 - (iv) build up an evidence base by interviewing female veterans who have been supported by a male advocate to ascertain the issues that would have been more easily, comprehensively or sensitively progressed by a female advocate;
 - (v) invite practicing female advocates to submit articles/post on social media reinforcing:
 - (a) the value of female advocacy for veterans and families, and
 - (b) the importance for service delivery of gender-diverse advocacy;
 - (vi) advertise the role widely, including:
 - (a) identifying 'champions' to canvass the role,
 - (b) word-of-mouth over coffee and at social gatherings, and
 - (c) as an agenda item at Female Veterans and Veterans /Younger Veterans – Contemporary Needs Forums; and

- (vii) encourage ESO/VSCs to:
 - (a) proactively identify potential female candidates and support their candidature with female mentors, and
 - (b) use community announcements on local media.

3.2 *What specific issues affect female veterans that compensation or welfare advocates (or both) need to take into account?*

- a. The deployment of married female ADF personnel with families is challenging the historical perception that a wife and mother is pivotal to the stability of the nuclear family. This suggests that the role of the female within the veteran-family unit may be undergoing fundamental change. ADSO contends that this mirrors a trend in the wider community. Where both partners are employed, the tasks that one took care of in the traditional family are now shared when both are present or undertaken by whomever is there at the time.
- b. ADSO Members have advised that advocates must be alert to and competent to support the following female veterans' issues:
 - (i) The likelihood that female veterans:
 - (a) have experienced sexual harassment or been stigmatised, and
 - (b) may be reluctant to discuss these matters with a male advocate.
 - (ii) The impact of choices between duty and parenthood, and whether those choices remain valid for later life (*Was my service worth the sacrifice?*).
 - (iii) The impact of leaving family, especially children, for long periods of time, and the associated guilt.
 - (iv) Not being at home for important family milestones, illness or death of loved ones.
 - (v) Disabilities that physically or psychologically impact on the female nurturing role.
- c. ADSO Members' male advocates confirm that they have had to cope with many of the preceding issues; and acknowledge that the situation was often less than ideal.

3.3 *What specific issues affect veterans' families that compensation or welfare advocates (or both) need to take into account?*

- a. Research into the mental health challenges experienced by veterans transitioning out of the ADF consistently highlights the paramount importance of:
 - (i) Families need to understand the process and be kept up to date with how the compensation process is tracking, difficulties and frustration encountered and support systems available for their veteran partner and themselves; and
 - (ii) providing integrated support and education not only to the Veteran but also to their family and carers.
- b. The family's resilience is pivotal to the veteran's recovery and rehabilitation, and the stability of the veteran-family/dependent(s) unit. Both factors have a direct effect on the veteran community and wider society. Specifically:
 - (i) the supporting spouse:

- (a) must become the stabilising influence within the family dynamic, and
 - (b) may have to assume the other's roles and responsibilities within the family unit.
 - (ii) In fortunate circumstances, the supporting spouse is thoroughly familiar with bureaucracy and accesses information and services without difficulty.
 - (iii) In the worst case, the additional roles and responsibilities will have to be taken up in an information void - much to the detriment of the spouse providing support.
 - (iv) Irrespective of circumstances, the advocate must be able to:
 - (a) communicate and connect the supporting spouse with the variety of support services needed and available;
 - (b) action plan development;
 - (c) access to service providers; and
 - (d) monitor timeliness and quality of service delivery; and
 - (e) advocate on the veteran-supporting spouse's behalf if shortfalls occur.
- b. From another perspective, the aging of ESO/VSC advocates, and the replacement of their typical older/same-age client base by a new client base of younger veterans with a young family is fundamentally changing veterans' advocacy.
- c. Advocacy's complexity is accelerating. Support for a veteran and/or spouse or a widow(er) is rapidly transitioning into an extended family unit with extended needs. Some of the key changes include:
 - (i) unambiguous inter-generational differences that manifest (generally) as:
 - (a) greater awareness of rights and entitlements,
 - (b) expectations of immediate responses to needs or queries,
 - (c) lower acceptance of human and systemic imperfections;
 - (ii) family's awareness of:
 - (a) mental health,
 - (b) alcohol and substance abuse,
 - (c) abusive relationships.
- c. ADSO Members have advised that advocates must be competent to connect the entire family with service providers that support the following issues:
 - (i) Transition, including support with:
 - (a) Institutionalisation through ADF experience.
 - (b) Financial management.
 - (c) Housing.
 - (d) Employment.
 - (e) Health and wellbeing.
 - (ii) Relationship and community integration, including:
 - (a) The disruption to intimate relationships that comes with separation.

- (b) The adjustments required that the returning parent must make within the family, and how that impacts on parenting roles.
 - (c) The impact of mental health on relationships.
 - (d) Relationship breakdown, divorce, and co-parenting.
 - (e) Disruption of friendships and children's schooling, especially from postings.
 - (f) Separation from traditional support networks (parents and siblings).
 - (g) Dis-orientation when settling into a new situation or community.
 - (h) Respite.
- d. ADSO notes that these specific issues are broadly consistent with:
- (i) those that younger veterans have identified in workshops, and
 - (ii) the curriculum content in advocacy training and development.¹⁴

3.4 *Do advocates dealing with some of the issues referred to in this Section need training in trauma informed care to ensure they do no further harm?*

- a. To ensure that the intent of this question is understood ADSO has consulted the Australian Institute of Family Studies website.
- b. ADSO notes that trauma-informed care is: a framework for human service delivery that is based on knowledge and understanding of how trauma affects people's lives and their service needs...[and] means services are trauma aware, safe, strengths-based and integrated.¹⁵
- c. Against this background, ADSO understands that:
 - (i) veterans and the experiences of many ADSO advocates are mutually supportive. All advocates must be competent to recognise and deal effectively with veterans and veterans' family members in distress;
 - (ii) some ESO/VSCs have voluntarily arranged suicide awareness training for their advocates (ADSO commends their foresight and level of understanding of their advocates' workplace needs.);
 - (iii) ATDP now includes a 1/2-day SafeTALK¹⁶ (suicide risk identification) unit in Level 1 Consolidation Courses and is encouraging Level 2 Advocates to undertake the two-day ASIST¹⁷ (suicide first aid) course;
 - (iv) VVCS' Operation *Life* program includes SafeTALK and ASIST; and.
 - (v) there are therefore adequate opportunities for advocates to be trained in (at least) suicide identification and intervention.
- d. The availability of suicide training notwithstanding, ADSO is unconvinced that the current Defence-DVA-CSC-Advocacy system satisfies the systemic stipulations of trauma-informed care. ADSO therefore submits that the Study find that:
 - (i) trauma-informed care is not currently being provided;

¹⁴ www.atdp.org.au/policy Library 1, Part A, Vol 3, MILADVW002, YV Workshop Report; especially pages 4-5

¹⁵ <https://aifs.gov.au/cfca/publications/trauma-informed-care-child-family-welfare-services/what-trauma-informed-care> accessed 24 July 2018.

¹⁶ <http://www.livingworks.com.au/>

¹⁷ <http://suicidefirstaid.org.au/asist/>

- (ii) the trauma-informed care extends beyond advocate training, and
- (iii) a systems approach be adopted that integrates the DVA client and Defence-DVA-CSC-Advocacy elements.

4. Question 4:

4.1: *What barriers have veterans encountered in making a claim for veterans' benefits?*

- a. ADSO:
 - (i) notes that the term '*barrier*' has specific connotations in the central agency context;¹⁸ and
 - (ii) assumes that the Study's use of the term '*barrier*' suggests that it is seeking to identify the issues that '*prevent*' a veteran from '*making*' ('getting the parts needed') to lodge a claim.
- b. ADSO contends that the barriers must be approached from two perspectives:
 - (i) what prevents veterans from obtaining the evidence needed to claim their condition(s); and
 - (ii) what prevents:
 - (a) DVA from achieving its intended outcome - the provision of high quality advocacy services; and
 - (b) the RC/MRCC from achieving their legislated outcomes (see the Preamble to Questions 5 and 6, Point 2).
- c. ADSO submits that the barriers have two limbs:
 - (i) Mechanical: some physical aspects of the claims system prevent the veteran/family from gaining access to needed information, and
 - (ii) Psychological: some aspects of the claims system dissuade a veteran/family from persevering with the information-gathering process until they are ready to lodge a claim.
- d. ADSO advocates submit that some of the following barriers are known to have either dissuaded veterans from pursuing, or have prevented them from lodging a claim include:
 - (i) comprehending how the rehabilitation and compensation system works;
 - (ii) using the DVA website and knowing what to look for;
 - (iii) interacting with DVA through the Veterans' Access Network;¹⁹
 - (iv) understanding the significance of:
 - (a) the Acts for legislated entitlements, and/or
 - (b) SoPs for the medico-scientifically accepted links between conditions and ADF service, and/or

¹⁸ We note that the term 'barriers' is used in the Department of Finance, Contestability Programme Guidelines, p11: *"Reviews will comprehensively assess the efficiency and effectiveness of all aspects of an entity's operations, programmes and administration and consider: ...any barriers preventing the entity from achieving its current intended outcomes and, where relevant, propose solutions to address these concerns."*

¹⁹ <https://www.dva.gov.au/contact/dva-office-and-client-service-locations>

- (c) GARP V or GARP M for the link between the level of impairment and compensation;
 - (iv) understanding how to go about claiming;
 - (v) accessing and/or working with an advocate;
 - (vi) obtaining Service and/or current medical evidence;
 - (vii) using the On-line Claim, ENGAGE, ESO and MyService portals; and
 - (viii) abbreviated interviews with, and inadequate reports by contracted medico-legal specialists.
- e. At a DVA-systems level, ADSO advocates advise that the following present as barriers to efficient claims lodgement:
- (i) the On-line Claim takes longer than an advocate-initiated application submitted through the ESO Portal.
 - (ii) War Widow(er) Pension applications are still paper-based.
 - (iii) not all Unit commanders are ensuring that serving members complete claims at the time of injury, with the result that some veterans:
 - (a) are confronted by an avoidable stressor at the time of transition, and
 - (b) discharge without rehabilitation and financial security.

4.2: *What challenges have veterans encountered in making a claim for veterans' benefits?*

- a. ADSO assumes that the Study is using the word '*challenge*' in terms of '*something requiring great mental or physical effort*'. The question suggests the Study wants to assess '*how difficult*' it is to get the evidence needed and then to lodge a claim.
- b. ADSO submits that the greatest mental or physical effort is needed when the veteran is in crisis. In this situation the necessary persistence and structured approach may be beyond the veteran. Reasons for crisis will include:
 - (i) medical discharge before claims are determined favourably, leading to financial distress and all the consequences of being penniless;
 - (ii) severe mental and/or physical distress;
 - (ii) death of the veteran (especially if by suicide); and
 - (iii) disorientation on transitioning from an institutionalised to a highly self-reliant environment.
- c. ADSO contends that:
 - (i) the greater the crisis, the more robustly competent the support available to the veteran and family must be;
 - (ii) no one component of the support system alone will be adequate;
 - (iii) a systems approach will be essential;
 - (iv) each component (viz., Defence, DVA-RC/MRRC, CSC, Wellbeing and Compensation Advocates and GP/Specialist) must be:
 - (a) alert to the crisis,
 - (b) alert to the veteran/family's needs, and
 - (c) able to integrate their efforts to facilitate veterans' information gathering and claims lodgement.

- d. In this regard, ADSO submits that DVA, Defence and CSC have a crucial function – communication of the comprehensive information available on their websites.
- e. Be that as it may, ADSO advocates and social media provide substantial evidence that veterans are too frequently:
 - (i) unaware that the websites exist, or
 - (ii) say the websites are difficult to navigate, or
 - (iii) prefer to post a question on social media and rely on their ‘mates’ (often inaccurate) responses.
- f. ADSO is also aware that:
 - (i) some who post on social media sites are very sensitive to the possibility/ presumption that DVA is monitoring their site(s); and
 - (ii) a small number of experienced advocates voluntarily monitor many sites and post authoritative information to correct misinformation.
- g. ADSO submits that:
 - (i) voluntary monitoring could/should be formalised by:
 - (a) the ATDP-planned national e-CoP accepting responsibility for the task, and
 - (b) experienced and competent advocates in both disciplines be scheduled to monitor and correct posts; and
 - (ii) formal liaison be established between cells in DVA, Defence and CSC that:
 - (a) schedule advocates contact to ensure that posted corrections are authoritative,
 - (b) correct posts are quality assured for their timeliness and comprehensiveness; and
 - (iii) correcting posts advise that the information posted has been cleared by DVA/Defence/CSC as appropriate – with collateral benefits for veterans and families’ perceptions of these agencies and advocacy more generally.

4.3: What barriers and challenges have veterans’ families encountered in making a claim for veterans’ benefits?

- a. Although this question addresses veterans’ families, ADSO proposes that the focus be widened to the MRCA definition of dependants (simplifying: partner; child, stepchild, adopted child; and, broadly, parents and some relatives).²⁰ The younger veterans’ Forums and Workshops confirm that advocates’ must be competent to support a veteran’s dependents.
- b. ADSO submits that its responses to paras 4.1 and 4.2 are equally applicable to veterans’ dependents with the following additional considerations:
 - (i) unless the spouse has ADF, Public Service or legal experience, the family will most probably be far less able to understand and deal effectively with the claims system; and
 - (ii) any such difficulties may be compounded enormously if the veteran is suffering a mental health condition.

²⁰ MRCA 2004, s15(2).

4.4: *What impact have these barriers and challenges had on veterans' wellbeing or the wellbeing of their families?*

- a. Wellbeing is the human condition that is influenced by all the interrelated aspects of life (safe environment, balanced diet, intimate relationship with partner, close friends, regular exercise, sufficient sleep, fulfilling career, enough money, sense of belonging, sense of purpose, adaptability to change). Veterans' wellbeing is affected directly by their resilience – viz. their capacity to recover quickly from life's difficulties. Defence' BattleSMART (Self-Management and Resilience Training) and DVA's High Res e-Toolbox attest to the importance of increasing the member/veteran and family's resilience.
- b. ADSO contends that:
 - (i) the more resilience is tested by ill-health or crisis, the greater the impact that barriers and challenges will have on the veteran's wellbeing;
 - (ii) to some varying extent, any barrier or challenge encountered during claims preparation will be at best frustrating; and
 - (iii) whether frustration (or worse) affects wellbeing will depend on the strength of the veteran's resilience.
- c. This reinforces at least three matters that are relevant to the Study:
 - (i) increasing collaboration between Defence and DVA on resilience building;
 - (ii) ensuring that resilience enhancement programs extend to 'dependents'; and
 - (iii) advocates must be:
 - (a) alert during claims and appeals preparation to barrier and challenges,
 - (b) able to mitigate the impact of any barriers/challenges encountered,
 - (c) competent to '*walk beside*' the veteran, and
 - (d) able to support resilience-enhancing activities.

4.5: *What could be done to remove these barriers?*

- a. ADSO notes that this question asks what 'could', not what '**s**hould' be done. It therefore requires the exercise of judgement and pragmatic consideration of what is achievable. To do so, the discussion of the preceding questions needs to be considered as elements within a system.
- b. ADSO contends that this means responses need to:
 - (i) identify what could be done so the issues no longer prevent making a claim; and
 - (ii) what could be done to the interactions between the barriers so that they no longer prevent a claim being made.
- c. ADSO submits by extension from its responses to Paras 4.1, 4.3 and 4.4 above that the following actions will more probably than not mitigate, if not remove the barriers:
 - (i) Individual barriers:
 - (a) Even the most cursory Google search of key words related to Defence personnel health and wellbeing, DVA Factsheets or health and wellbeing

research, VVCS programmes or research or services, and CSC Factsheets identifies an extraordinary volume and diversity of information.

- (b) This suggests that a central index of documents to which each agency contributes and keeps current would simplify veterans' awareness of and access to authoritative information.
- (c) The index should include the URL for each information source.
- (d) Agencies actively canvass the URL that link the veteran and the information source(s).
- (e) As relevant, information dissemination includes:
 - A. an index of URL for in Navy/Army/Air Force News,
 - B. distribution of the index at Transition Seminars,
 - C. providing a brochure to all ESO/VSC for posting in bulletin boards,
 - D. a full list of URL in the on-line DVA Wellbeing Handbook, and
 - E. a 'headline' hyperlink to the index on the Defence, DVA, CSC and ATDP homepages;
- (f) on each homepage:
 - A. provide links to facilitate the search for and the inter-connectedness of information; and
 - B. include simple step-by-step instructions to the detailed information; and
 - C. ensure that the information is expressed in simple plain English.
- (ii) Inter-relationships: To reiterate:
 - (a) the various elements in the claims system are complexly interconnected;
 - (b) very few steps in a claims process can be completed with one component alone;
 - (c) knowledge of the interconnections is therefore as important as knowing each element's role and responsibility;
 - (d) these considerations require that:
 - A. Defence, DVA-RC-MRCC and CSC think systemically (viz., in a way consistent with Whole-of-Government principles),
 - B. advocates be able to engage competently with the compensation and wellbeing **system** (viz., not just each agency individually but also with their interconnecting links), and
 - C. information be available on each agency's homepages that (perhaps by simple diagram) facilitates quick understanding of how the accessed information links with other agencies' roles/responsibilities.

4.6: *What could be done to minimise these challenges?*

- a. As with accessing wellbeing services and the barriers to claims lodgement, ADSO understands that the Study is inviting respondents to address the challenges **and** their interrelationships (viz, as a system). As challenges are difficulties that 'test'

the veteran, it is how the difficulties could (not should) be made *'as small as possible'* that we consider below.

- b. Extrapolating from Paras 4.2 and 4.4 above, ADSO submits that pre- and post-discharge resilience building is crucial to minimising challenges. Accordingly:
 - (i) With respect to individual issues, two approaches are necessary:
 - (a) resilience-building include the veteran and family/dependent unit, and
 - (b) where the mode of discharge is likely to place the veteran-family/dependent unit in crisis, Defence hold the veteran in-abeyance until:
 - A. the Case Conference/Individual Welfare Board²¹ has assessed the veteran-family/dependent unit's wellbeing and post-discharge resilience-support or resilience-building needs; and
 - B. the Assessment has been transferred and accepted by DVA.
 - (ii) With respect to the interconnections between issues, ADSO submits that Defence and DVA's resilience-building programmes be linked closely with the purpose of ensuring that:
 - (a) wellbeing information is transferred from Defence to DVA at the point of discharge;
 - (b) the outcomes of Defence resilience support are integrated seamlessly into DVA post-discharge resilience-building activities; and
 - (c) when the veteran (especially if vulnerable) and family/dependent as a unit (especially if in crisis) authorises an advocate to act on its behalf, resilience information be provided through FOI to ensure that the advocate:
 - A. is adequately informed, and
 - B. able to facilitate ongoing resilience-building.

Questions 5 and 6 - Preamble

Point No. 1. ADSO notes that:

- a. Question 5 relates to the Alternative Dispute Resolution and Hearing before a Board, including how the rights of vulnerable veterans are protected; whereas
- b. Question 6 focuses on whether and how VRB activities might be improved.

Point No 2. ADSO submits that the following matters are common to both questions:

- a. The VRB is legislatively obliged to provide *'fair, just, economical, informal and quick'* review of the Commissions' decisions.
- b. The VRB's Service Charter mandates strict, applicant-focused behaviours by the staff, Conference Registrars and Board Members.
- c. VRB reviews are:

²¹ Joint Health Command, May 2014, 'ADF Health and Recovery: Member and Family Guide', pp7-9
<http://www.defence.gov.au/health/healthportal/docs/sap%20member%20&%20family%20guide.pdf>
accessed 28 July 2018.

- (i) conducted afresh on the basis of:
 - (a) all the evidence considered by the Commission at the primary claim and s31 review/internal reconsideration stages, and
 - (b) all new additional evidence presented by the applicant;
 - (ii) not contested by government at that level if merits review;
 - (iv) by being 'informal'
 - (v) by being inquisitorial (rather than adversarial as at the AAT);
 - (iv) may adjourn proceedings to seek further medical or other evidence;
 - (v) empowered to set aside, vary, or confirm the decision under review; and
 - (vi) varied or set aside for around 55% of applications.
- d. Although responses to Questions 5 and 6 pivot on legislated requirements:
- (i) Few veterans will perceive the focus being legislated provisions.
 - (ii) More probably than not, most veterans will see the issue as whether the VRB gives them the outcome they want.

5. Question 5.

5.1 *Is the Veterans' Review Board's alternative dispute resolution program an effective and fair means of achieving an early settlement of a claim?*

- a. ADSO assesses that the NSW Registry's trial of ADR and subsequent extension to the other States is a significant advance. The ADR process:
- (i) removes for the applicant a source of significant stress from the appeals process;
 - (ii) strengthens the relationship between applicant and advocate, further alleviating the stress for the veteran;
 - (iii) accepts:
 - (a) either verbal or written submissions at the initial Outreach Conference,
 - (b) written submissions using the VRB templates for the final Outreach Conference and Case Appraisal or Neutral Evaluation, but
 - (iv) encourages the advocate to submit to the Registrar for discussion at Outreach Conferences:
 - (a) initially, a Statement of Issues, and
 - (b) subsequently, a Statement of Facts and Contentions; and
 - (v) ensures that the volume and complexity of many appeals is focused to the key matters to be reviewed; and
 - (vi) appears to be significantly reducing the number of matter being heard before the full Board.
- b. ADSO also submits, on the other hand, that the time taken by the Board to respond to an application for review by ADR appears to be increasing. This (albeit anecdotal) evidence will be confirmed/corrected by the VRB's FY2017-18 Annual Report.
- c. If substantiated:

- (i) It may suggest (understandably) that the number of Conference Registrars needed was underestimated.
- (ii) ADSO:
 - (a) contends that the benefits of ADR for applicants justify additional resourcing, and
 - (b) recommends the additional resources required should be provided.

5.2 *Are hearings before the Veterans' Review Board conducted effectively and fairly?*

- a. ADSO notes that:
 - (i) *'effectively'* is defined as *'successfully producing the intended result'*; and
 - (ii) *'fairly'* means that Hearings are *'unbiased and even-handed'*.
- b. Legislated requirements and the VRB Service Charter notwithstanding, ADSO advocates submit that:
 - (i) The inquisitorial nature of a Hearing:
 - (a) may involve probing that creates discomfort for the applicant and advocate;
 - (b) depending on the constituency of the Board, a fair hearing and just outcome can be thwarted by:
 - A. proceedings that are more 'formal' than warranted,
 - B. some Member's condescending attitude or legalistic presumptions, or
 - C. the Service Member not having the specialised knowledge that is relevant to the applicant's service.
 - (ii) Where any of these Board-Member-related human-factors arise, the veteran will almost inevitably claim that the Board process was:
 - (a) adversarial,
 - (b) unfair and unjust,
 - (c) inimical to his/her interests, and
 - (d) did not achieve the outcome he/she *'deserved'*.
 - (iii) If the decision is unfavourable:
 - (a) the applicant is unlikely to understand by the Advocate's (obligatory) explanation of the Board's legislated responsibilities;
 - (b) if the advocate is inexperienced, understandably, he/she is less likely to confidently sustain the legislated responsibility argument; and
 - (c) where an experienced advocate perceives that the Board's manner has been contrary to its legislated obligations,²² he/she is not likely to try to assuage the applicant's criticism; and
 - (d) in each case, any preconceptions of an unfair system will be reinforced.

²² The VRB Service Charter includes a complaints process <http://www.vrb.gov.au/pubs/sc.html> and the Practice Directions and Guidelines include provisions to avoid the possibility of bias and a process in the event of perceived bias <http://www.vrb.gov.au/pubs/bias.pdf>

5.3 *What is your assessment of the competence and professionalism of advocates appearing before the Veterans' Review Board?*

- a. ADSO contends that a response to this question is not straightforward.
- b. In this respect, ADSO is aware that:
 - (i) Some advocates appearing before the Board:
 - (a) are always as well-prepared as the Board expects them to be; or
 - (b) fulfil their responsibility to be objective, respectful and courteous.
 - (ii) Only in the last six months has RPL been available for TIP-trained VRB advocates to accredit as Level 3 Compensation Advocates.
 - (iii) To date, around 30 TIP-trained advocates have been assessed as competent.
 - (iv) From 31 December 2021, to be indemnified by VITA all Level 3 Compensation Advocates will have to be accredited.
- c. ADSO submits therefore that:
 - (i) responses to this question will inevitably be based on past experiences;
 - (ii) in this respect, ADSO refers the Study to the response at Para 5.2.d.; and
 - (iii) it is too early to assess whether accredited Level 3 Compensation Advocates are more competent and professional than their TIP-trained predecessors.
- d. ADSO also notes that advocates that have undertaken RPL at Level 3:
 - (i) confirm that many of the VRB advocates who have indicated they do not intend to RPL would have no difficulty in successfully undertaking RPL;
 - (ii) advise that almost every one of the TIP-trained advocates that underwent RPL-ed with them were professional in their preparations and assiduous in the way in which they researched the Underlying Knowledge Quiz, and
 - (iii) propose that the Study might approach the VRB and the ATDP RTO and Training Team for authoritative user-observed, independent and peer assessments respectively.

5.4A *Do the Veterans' Review Board and the advocates take particular care to ensure vulnerable veterans and their rights are being adequately protected when appearing before the VRB.*

- a. To place our response in context, ADSO:
 - (i) defines a '*vulnerable veteran*' as a person that:
 - (a) has been classified as a SWIIP participant,
 - (b) is being/has been held-in-abeyance,
 - (c) has had an extended rehabilitation or extended transition period,
 - (d) is suffering a debilitating impairment,
 - (e) is at risk of abuse or neglect, and
 - (f) because of their condition(s), their right to a fair, just, economical, informal and quick Hearing may be in jeopardy;
 - (ii) notes that the '*rights*' of all veterans are legislated - the entitlement to a 'fair, just, economical, informal and quick' review by the VRB;

- (iii) submits that the legislated requirements must be met to adequately protect a vulnerable veteran; and
- (iv) proposes that the VRB and advocate's response will have two limbs:
 - (a) Subjective: Whether the vulnerable veteran feels 'safe'
 - (b) Objective: Whether the VRB and advocate protect the vulnerable veteran's rights.
- b. Subjective. ADSO Advocates advise that vulnerable veterans are more likely to:
 - (i) have accepted the criticisms on social media about VRB fairness and justness;
 - (ii) be pessimistic about their own chances of a favourable decision;
 - (iii) require close, regular contact throughout the appeals process; and
 - (iv) need reassurance that the VRB is required by legislation to be fair and just.
- c. Objective. As already responded at Para 5.2.d., ADSO advocates submit that:
 - (i) in almost every case, Boards abide by the VRB's Service Charter;
 - (ii) the occasions are rare in which an experienced advocate will perceive that a Member of the Board, or the Board generally has behaved inappropriately;
 - (iii) where the Advocate has forewarned the Board that the Hearing involves a vulnerable veteran, the Members have been appropriately supportive.

5.4B If the VRB and advocates are taking particular care to protect vulnerable veterans' rights, what do they do?

- a. Understandably, a vulnerable veteran is more likely than resilient veterans who are in full command of their faculties to be:
 - (i) increasingly fearful as the Hearing becomes imminent,
 - (ii) intimidated by the Board during a Hearing, and
 - (iii) badly affected if the VRB affirms the original decision.
- b. An advocate and a Board must therefore address at least each of these situations if they are to take '*particular care*' to protect a vulnerable veteran's rights. ADSO notes again that the veteran's rights are:
 - (i) to a '*fair, just, economical, informal and quick*' review,
 - (ii) not to a favourable outcome irrespective of the facts and contentions.
- c. Advocate Actions. Appropriate preparation of a vulnerable veteran for a VRB Case Conference or Hearing is the pinnacle of advocacy. It engages both science (knowledge of legislation and Board procedure) and art (empathetic interaction with the applicant and high-quality advocacy of the case to the Board). In this respect, ADSO contends as follows:
 - (i) Some VRB Advocates who have advised their intention not to accredit through 10620NAT are nevertheless both knowledgeable and skilled advocates.
 - (ii) Assuming that an Advocate has been accredited for competency (viz. meets national standards of knowledge, advocacy practices and record-keeping), the Advocate's human interactions with a vulnerable veteran is the outstanding variable.

- (iii) The following are considered relevant:
 - (a) only accredited and experienced Level 2 Compensations Advocates are enrolled for training and development as Level 3 Compensation Candidates;
 - (b) before training as a Level 3 Candidate the advocate should have acquired a high level of understanding of the range of predilections, needs, values, and personalities across the veteran and family/dependent community;
 - (c) the accreditation process is summative (viz. does not require observation by the assessor of the full range of interpersonal skills);
 - (d) the assurance that a Candidate possesses the full range of interpersonal skills required to accommodate the needs of a vulnerable veteran and family/dependents unit at the VRB vests in the Mentor;
 - (e) Mentor training does not yet include preparation to facilitate candidates' inter-personal skills and advocacy style; and
 - (f) critical determinants are:
 - A. the ESO/VSC's evaluation of the potential candidate's readiness for enrolment in the Level 3 Compensation training pathway, and
 - B. the Mentor's ability to nurture the range of interpersonal skills required of a Level 3 Compensation Advocate.
- d. VRB Actions. Put simply, the VRB at all stages of the application and appeal process is abiding fully by each of the commitments in its Service Charter.

6. Question 6

6.1A *Are the arrangements presently in place to protect vulnerable veterans appearing before the Veterans' Review Board adequate and effective?*

- a. ADSO submits that the question requires:
 - (i) identification of the '*present arrangements*', and
 - (ii) assessment of whether they are '*adequate*' and '*effective*'.
- b. Present Arrangements. These include:
 - (i) the steps taken by the advocate to prepare a vulnerable veteran for appearance before the Board (see 5.4B above), and
 - (ii) whether Board Members abide fully by the VRB Service Charter when Hearing a vulnerable veteran's case (see 5.2.d. and 5.4A above).
- c. ADSO submits that typical current arrangements include the following:
 - (i) The advocate's preparations include ensuring the vulnerable veteran understands that:
 - (a) the Board is independent of DVA, but will have read all the paperwork around the appeal;
 - (b) there will be three Members and what their names and roles are;
 - (c) the Hearing is not formal and can be recessed or adjourned at any stage if the veteran needs a break;

- (d) the Board is legislatively responsible for ensuring the Hearing is fair and just;
 - (e) VRB Members may ask penetrating questions of an inquisitorial and not adversarial nature to satisfy themselves about the matters before the Board and must not be seen to be trying to trip up a veteran; and
 - (f) the Hearing is an opportunity for the veteran to present facts about the matter and link them with their contentions.
- (ii) During the Hearing, the Board Members will:
- (a) make clear (by word and manner) that they are aware the veteran is vulnerable;
 - (b) outline the purpose and process of the Hearing;
 - (c) encourage the veteran to give of their best;
 - (d) ask questions in a non-confrontational way;
 - (e) summarise the key issues from the proceedings;
 - (f) discuss their decision (current oral findings trial in NSW); or
 - (g) identify how they will convey their decision and when.
- d. Assessment. ADSO submits that, while considerations of:
- (i) *'adequacy'* invite judgement about whether preparations took *'sufficient'* account of a veteran's vulnerability; and
 - (ii) *'effectiveness'* whether preparations allowed a vulnerable veteran to be ready to, and then to give of her/his best at the Hearing;
- (ii) the answers to these considerations are complexly dependent on many variables; eg.:
- (a) The Jesse Bird Review and Ombudsman's investigation of Mr A's experience demonstrate clearly how easily systemic or individual errors of omission and commission can lead to egregious miscarriages of due process.
 - (b) On the other hand, ADSO advocates express justifiable pride in how carefully they prepare a vulnerable veteran for a VRB Hearing.

6.1B How could the arrangements presently in place to protect vulnerable veterans appearing before the VRB be improved?

- a. ADSO submits that, as assessment of adequacy and effectiveness engages profoundly complexly interactive variables, whether the current arrangements can be improved is essentially situation-dependent.
- b. That said, improvements would have to be found in the following areas:
 - (i) The advocate prepare the veteran better for the appearance by:
 - (a) expanding advocacy training and development beyond suicide awareness to include the full scope of trauma-informed care;
 - (b) including in Workplace Experience Logbooks the specific requirement for Mentors to develop Candidates' interpersonal skills so that as Advocates

they are thoroughly prepared to advocate competently for vulnerable veterans; and

- (c) amending VRB procedures to require that before the hearing the Advocate is to brief the senior Board Member about the vulnerable veteran's (and family's) specific circumstances.
- (ii) Board Members be better prepared to conduct a Hearing involving a vulnerable veteran by:
 - (a) including trauma-informed care in Members' training and development;
 - (b) reviewing the VRB Service Charter to ensure that its provisions reflect the principles of trauma-informed care;
 - (c) amending Board Instructions to:
 - A. require the Advocate to brief the senior Board Member before the hearing about the vulnerable veteran's specific circumstances, and
 - B. stipulate a collegial approach by the Board and the Advocate when a vulnerable veteran's appeal is being heard.

6.2 Would legal representation provide better support and assistance for vulnerable veterans appearing before the VRB and, if so, how? What is an appropriate definition of 'vulnerable veteran' for this purpose?

- a. ADSO contends that Government must consider thoroughly the ramifications of applying economic rationalism to veterans' legislation and administration.
 - (i) As highlighted in Part A, Section 2.1, 'ADSO Submission to the Productivity Commission' and 'Additional Research', the direct cost to Budget of two recent failures of bold policy has amounted to many billions of dollars.
 - (ii) In comparison with these failures, the Budgetary cost of permitting legal practitioners to prepare claims and represent veterans at the VRB is miniscule. While this may appear to be a low-risk Budgetary decision for Government, it would incur significant social and national security risk.
 - (iii) Considerations include:
 - (a) Many advocates' commitment to their fellow veterans and their families has given their life a profound sense of meaning and real purpose. To wilfully create a perception that their efforts, and the 100-year old tradition on which their commitment is grounded, have been of no value to Government would be utterly destructive.
 - (b) Trust in the integrity and probity of the claims and appeals system is of paramount concern to veterans. Any decision that allocated claims preparation and claims determination to a public-sector agency would be fatal to trust.
 - (c) Of all the public-sector agencies, DVA alone has (despite failures) developed an understanding of veterans' culture and needs. To lose that level of support or to have functions diluted by transfer to an agency that provides welfare support for disadvantaged or disabled members of the broader community would be unacceptable to the ex-service community.

- (d) The ex-service community is also concerned that the central agencies intend further outsourcing or transfer of DVA functions to other public-sector agencies. Such actions, and the associated loss of Budget appropriation, would place the existence of DVA at risk. This possibility is completely unacceptable.
- b. ADSO notes that the Discussion Paper makes clear the Study's awareness that:
 - (i) legal practitioners:
 - (a) are prohibited in legislation from representing a veteran at the VRB,
 - (b) may assist preparation of the application, the statement of issues, and the statement of facts and contentions for which the veteran is required to pay fees; and
 - (iii) some veterans recommended to the Senate Inquiry into Suicide by Veterans and posts on Facebook that *VEA 1986* should be amended so that lawyers can represent the veteran at the VRB.
- c. ADSO Advocates submit that the presence of legal representation at a VRB Hearing would:
 - (i) transform Hearings from inquisitorial to adversarial;
 - (ii) change the dynamic to the veteran's detriment;
 - (iii) result in the inquisitorial nature of the Hearing:
 - (a) being destroyed by argument over points of law instead of review of the facts before the Board,
 - (b) diverting the Hearing from the issues within the veteran's experience and focus, and
 - (c) confusing a robustly healthy veteran and traumatising a vulnerable veteran;
 - (iv) transform the VRB into a full costs jurisdiction (through legal aid funding under the BVA proposal);
 - (v) with respect to the AAT and by extension to VRB were the prohibition against lawyers to be expunged:
 - (a) lawyers are known to have refused to represent veterans because:
 - A. the likelihood of success did not warrant engagement with the matter, and
 - B. the likely quantum in the event of a successful appeal was inadequate;
 - (b) lawyers appearing on a 'No win-No Fee' basis are known to have invoiced veterans:
 - A. \$10,000 or more for administration (reading, photocopying and filing charged per page), and
 - B. as much as 40% of the lump sum if the veteran's appeal is successful; and
 - (c) if ordered, the veteran would also have to pay the RC/MRCC's costs awarded if the appeal fails.

- d. ADSO contends, not only is the BVA proposal for lawyers to be funded by legal aid contrary to the Government's Contestability Programme (Part A, Section 1.2), but also:
- (i) natural justice is not, and never would be best served were:
 - (a) legal representation to be introduced at the VRB, and
 - (b) a full-costs approach to result;
 - (ii) the question requires a benefit-cost analysis as well as comparison of the capacities of a lawyer and an accredited Advocate to represent a vulnerable veteran;
 - (iii) with respect to benefit-cost analysis:
 - (a) a lawyer's charge-out rate plus expenses would at any level have to compare unfavourably with a volunteer or paid advocate's cost-free service; and
 - (b) in the event of a unsuccessful appeal, having to meet the lawyer's expenses and possibly facing ordered costs is potentially financially disastrous;
 - (iv) with respect to the comparative capacity of lawyers and advocates to represent (especially) a vulnerable veteran:
 - (a) ADSO is concerned that the vulnerable veteran would be at increased risk of trauma from:
 - A. the inevitable adversarial interactions between legally qualified Board Members and the veteran's lawyer, and
 - B. haggling over points of law that veterans would regard as irrelevant to their service experience, medical condition, or level of impairment;
 - (b) representation by an advocate with several years' experience researching and preparing complex primary claims should be more beneficial than representation by a lawyer with no training in/familiarity with veterans' service and culture and veterans' law; and
 - (c) an advocate with an ADF background, sharing veterans' culture and motivated by the tradition of '*Mates helping Mates*' is more likely to devote the time and effort to supporting a vulnerable veteran than a lawyer with no understanding of the veteran and driven by a fee based on time worked plus administrative costs;
 - (iv) were, despite the ramifications discussed at sub-para a. above, a decision made to amend VEA so that legal practitioners could prepare claims and represent veterans at the VRB, ADSO contends that the legal practitioners **must** have:
 - (a) completed a tertiary-level course in veterans' law, and
 - (b) accredited in compensation advocacy by RPL at Levels 1, 2 and 3 successively to ensure they have acquired the requisite understanding of military service and veterans' needs, values and culture.

6.3 *Are there other ways of providing better support and assistance for vulnerable veterans appearing before the VRB?*

- a. ADSO submits that delivery and receipt of better support and assistance pivot on:
 - (i) veterans' expectations;
 - (ii) advocates' ability to harmonise expectation with legislated entitlements, policies and procedures;
 - (iii) advocates' ability to:
 - (a) marshal their knowledge of legislation and legislative instruments, the facts, and veterans' contentions;
 - (b) present a case that provides the Board with the information it needs to ensure the veteran secures their full entitlements ('not one bit more; but not one bit less');
 - (iv) advocates, Registrars and Board Members' ability to jointly:
 - (a) research and enter into effective dialogue about the issues,
 - (b) provide an environment in which the veteran feels safe and to the best of their ability is able to recount the facts, explain contentions, and respond to questions; and
 - (c) lay the foundations for a fair, just and timely outcome.
- b. Advocates need to:
 - (i) be alert to the additional stress that entailed in preparation for and appearance before the Board,²³
 - (ii) encourage the veteran/family to undertake psychological counselling and/or psychiatric support to cope, and
 - (iii) be able to facilitate resilience enhancement and provide trauma-informed support.
- c. As interacting effectively with a vulnerable veteran is profoundly human, ultimately, the highest quality support and assistance will depend on advocates' interpersonal skills.

6.4A *Should the statutory prohibition on legal practitioners appearing before the VRB be removed so a lawyer can represent any veteran before the VRB?*

For the reasons outlined in the Preamble to Question 5 and 6, sub-para c, and Para 6.2.c. and d. above, ADSO submits without reservation that the statutory prohibition on legal practitioners appearing before the VRB should **not** be repealed.

6.4B *What would be the advantages and disadvantages of doing so?*

- a. Noting that para 6.2 invited respondents to consider the practical implications of a vulnerable veteran represented at VRB by a lawyer, ADSO considers that this question invites respondents to identify the legislative advantages and disadvantages.
- b. ADSO contends that:

²³ This caution applies equally to advocates who, themselves are suffering from mental health conditions even where the conditions are under control.

- (i) The only significant advantage might be that a solicitor may be more quickly able to research and apply case law to the veteran's appeal.
- (ii) The disadvantages include:
 - (a) the inevitable adversarial interactions between legally qualified Board Members and the veteran's representative;
 - (b) diversion of the Hearing to points of law and the applicability of case law rather than a focus on the relationship between veteran's service and the conditions, or conflicting medical evidence about the condition or the level of impairment, or the resulting entitlements;
 - (c) the consequential changes of *VEA 1986* s133A:
 - A. from providing a mechanism of review that is fair, just, economical, informal and quick;
 - B. to, in effect, providing a mechanism of review where fairness and justness come into conflict with arguments over points of law and ego, where the economic will be driven by the profit motive, which will be formal and where quickness competes with profitability.
- (iii) In other words, the disadvantages heavily outweigh the advantages of changing the Act.

7. Question 7

7.1 *Are hearings before the Administrative Appeals Tribunal conducted effectively and fairly?*

- a. Part A, section 2.7.e., noted that of the 308 AAT decisions in FY2016-17 in the Veterans Appeals Division,²⁴ only 71 (23%) were decided at a formal Hearing. The remaining 237 (77%) applications were:
 - (i) decided by consent: affirmed (3), varied or set aside (81), or dismissed (3);
 - (ii) withdrawn by the applicant (143);
 - (iii) dismissed by the Tribunal (5); or
 - (iv) were outside the Division's jurisdiction (3).²⁵
- b. ADSO contends that:
 - (i) even though the AAT is governed by specific legislation (*AAT Act 1975*) assessment of AAT Hearings' *effectiveness* and *fairness* can use the same criteria as the VRB (Para 5.2.a. above);
 - (ii) some Level 4 Advocates have expressed concern that contracted barristers representing DVA have:
 - (a) been excessively adversarial, and
 - (b) ignored the Commonwealth's 'model litigant' obligation²⁶ (in this case, the barrister's experience at the Bar).

²⁴ Of the 42,214 decisions handed down by the AAT in 2016-17, 0.7% were in the Veterans Appeals Division.

²⁵ AAT Annual Report FY2016-17, Table A4.3.2, p124

²⁶ The obligation includes:

- Acting honestly and fairly

- c. ADSO submits the following responses from an experienced Level 4 Advocate:
- (i) Effectiveness. Registry staff, Registrars, and Members, Senior Members or Deputy Presidents conduct matters effectively and treat both veteran and advocate with respect and understanding – often providing valuable guidance and advice. This includes ensuring that the advocate clearly understands the proceedings, the process, and the ramifications of the matter.
 - (ii) Efficiency.
 - (a) Very often, lengthy delays occur when, during the ADR process, matters are referred back to a Commission for action; including getting additional medical evidence.
 - (b) Such delays, although vexing, are generally unavoidable as they are usually symptomatic of a less than effective ‘investigation’ on DVA’s part.
 - (c) Another inefficiency is the length of time taken to get matters from ADR to Hearing. This appears to be a matter of resourcing rather than mismanagement.
 - (d) More probably than not, lengthy delays increase applicants’ anxiety and prompt mistrust – especially if they are not in robust mental health.
 - (iii) Fairness. ADSO is aware that AAT proceedings are subject to *AATA 1975*.
 - (a) The ‘Tribunal Objective’ stipulates a ‘review mechanism that is accessible, fair, just, economical, informal, quick, proportionate, and promotes public trust and confidence in the Tribunal’s decision-making’.
 - (b) s33 provides that:

‘...proceedings shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and of every other relevant enactment and a proper consideration of the matters before the Tribunal permit’; and

‘...the Tribunal is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate’.
 - (c) This latitude is however tempered by Federal Court judgements that the rules of evidence and proper procedure cannot be dispensed with entirely without endangering ‘natural justice’.
 - (d) In combination, DVA’s ‘model litigant’ obligation and the provisions of the Act should ensure that veterans appearing before the Tribunal are treated

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- Not causing unnecessary delay in the handling of claims and litigation
 - Paying legitimate claims without litigation
 - Endeavouring to avoid, prevent and limit the scope of legal proceedings wherever possible,
 - Keeping the costs of litigation to a minimum
 - Not taking advantage of a claimant who lacks the resources to litigate a legitimate claim
 - Not relying on technical defences unless the Commonwealth’s or the agency’s interests would be prejudiced by the failure to comply with a particular requirement
 - Not undertaking and pursuing appeals unless the Commonwealth or the agency believes that it has reasonable prospects for success or the appeal is otherwise justified in the public interest, and
 - Apologising where the Commonwealth or the agency is aware that it or its lawyers have acted wrongfully or improperly.

fairly whether they represent themselves, choose to be represented by an ESO/VSC Advocate or by a legal practitioner including Senior Counsel.

- (e) A challenge to fairness arises, however, if an applicant wishes to seek redress because they believe the Tribunal, or the Department have not met their legislated obligations. There is currently no method of redress. Only the Attorney General can 'enforce' the 'Model Litigant Rules' and a party has no 'right' of appeal to the AG. The Commonwealth Ombudsman has no power in this area.
- (f) Finally, as discussed at sub-para d. of the Preamble to Questions 5&6, more probably than not the applicant will judge fairness on whether or not the Tribunal decide in their favour. Understandably, rejection of the appeal is likely to distress an already distressed veteran.

7.2 *What is your assessment of the competence and professionalism of advocates appearing for veterans before the AAT?*

- a. ADSO contends that the variables in a response include the advocate's:
 - (i) experience and the nature of the cases undertaken at the preceding Levels,
 - (ii) ability to research and apply complex information to the matter,
 - (iii) quickness of apprehension when under pressure, and
 - (iv) personal ethic including commitment, persistence and integrity.
- b. ADSO understands that while quality of advocacy varies, most Level 4 advocates are competent when their advocacy is viewed against the variables at sub-para a.
- c. For the future, whether an advocate is:
 - (i) 'competent' can be established through assessment against national VET standards,²⁷ and
 - (ii) 'professional' is not yet formally assessed (although the characteristics of a professional military advocate have been identified).²⁸
- d. ADSO submits that the transition from TIP to ATDP does not of itself assure competent or professional advocacy at the AAT.
 - (i) Some existing advocates are demonstrably competent even though not formally assessed. The formal assessment process will possibly find some current Level 4 practitioners 'not yet competent' against national standards. Universal competency assessment will however assure that all advocates meet a defined minimum standard. Continuing professional development and communities of practice will maximise the likelihood that advocates' competency will grow over time beyond the minimum standard.
 - (ii) On the evidence of other professions, the creation of a body that sets professional standards and monitors service delivery will not, of itself, assure professionalism. Some existing TIP-trained, authorised and indemnified advocates are highly competent and professional their approach to case

²⁷ ADSO understands that the Level 4 Compensation RPL Pilot was conducted in early 2018 and accreditation by RPL will begin in early 2019.

²⁸ See: www.atdp.org.au/policy Library No 3, Chapters 5, 10 and 11.

preparation and representing their clients, even though no formal body monitors their performance. Establishment of that body will however provide the means by which a professional ethos and individual ethic are nurtured, performance is measured, and sustained unprofessional behaviour is sanctioned.

7.3 What is your assessment of the competence and professionalism of lawyers appearing for veterans before the AAT?

- a. ADSO submits the following response from experienced Level 4 advocates:
 - (i) As they are subject to the standards and rules promulgated by their Law Society, solicitors should be capable of competent to undertake discovery and to brief a barrister. Similarly, the standards and rules promulgated by the Bar Associations should ensure that barristers are competent advocates. When preparing for and appearing before the Veterans Appeals Division, the solicitor/barrister's knowledge of veterans' legislation, policy and relevant case law may be problematic unless they have current experience in the jurisdiction and have kept abreast of changes. Indeed, the Discussion Paper acknowledge the significance of this potential failing.
 - (ii) The legal profession is profit driven. ADSO is therefore concerned about the interaction between the profitability of a matter and the competency and professionalism with which it is prosecuted. In this respect, ADSO:
 - (a) directs the Study's attention to Para 6.2.c., noting that while refusal to take a brief might traumatise a vulnerable veteran, it is commercial common sense from the solicitor's perspective; and
 - (b) notes, for example, that a legal practitioner receiving Legal Aid funding can be reasonably expected to:
 - A. only put in effort consistent with what can be billed, and
 - B. match effort to the milestone-based tranches.
- b. As with most professions, the practise of law involves specialisation. In this respect, ADSO contends that very few solicitors or barristers have specialised in or would claim to be fully competent in veterans' law. Again, the Discussion Paper acknowledges this reality.

7.4 What is your assessment of the competence and professionalism of lawyers appearing against veterans before the AAT?

- a. ADSO submits that the following responses are equally applicable to Question 7.3; however, the consequences of these behaviours are far more damaging for a veteran that is representing him/herself.
- b. ADSO Level 4 Advocates advise that the following considerations are pertinent:
 - (i) Barristers briefed by the Australian Government Solicitor (AGS) on behalf of DVA or briefed directly by DVA are generally very competent and often have experience in veterans' law. Often, they will be members of the Defence Reserves and may even be on the Reserve Legal Panel. But, they are hard-nosed. They are focused on getting a favourable outcome for the Commonwealth. The notion of 'beneficial intent' does not enter the

proceedings and therefore the duty on the Commonwealth to act as a model litigant, is compromised.

- (ii) Conflict between the Commonwealth's 'model litigant' obligation and the barrister's imperative to win at all costs is inevitable. Where it occurs, the obligation is compromised. In such cases, the self-representing veteran's (or advocate's) criticisms are justified. The absence of redress compounds the unfairness.

7.5 *Are there any significant behaviours or power imbalances that prejudice veterans on the hearing of their appeals arising from the different types of representation engaged by different parties?*

ADSO directs the Study's attention to its responses to Questions 7.3 to 7.5.

8. Question 8

8.1 *What level of training and expertise do advocates (paid and volunteer) need?*

- a. ADSO submits that the answer to this question depends on where along a time-dependent continuum the response is made.
- b. In that regard it might be said that:
 - (i) from 1992 to 2010, the training offered by TIP and Pension Officers and VRB/AAT Advocates' resulting expertise were deemed adequate by DVA and ESOs;
 - (ii) from 2010 to 2015, TIP-training with the infusion of competency-based training and Pension Officers and VRB/AAT Advocates' resulting expertise were deemed adequate;
 - (iii) in October 2016, the training outcomes identified in the ADTP Blueprint, endorsed by ESORT and approved by the Minister, and subsequently accredited by ASQA as 10620NAT Course in Military Advocacy have been deemed adequate;
 - (i) throughout implementation of the Blueprint:
 - (a) the need for an additional UoC in Wellbeing Advocacy has been identified;
 - (b) UoL have been added as the ramifications of VCR and *The Constant Battle* became clearer;
 - (v) as of the date of this Submission, ADSO contends that:
 - (a) advocacy training and development, and resulting expertise are merely waypoints along a time-related training and development and advocacy performance continuum,
 - (b) advocacy training and development must continue to adapt in response to:
 - A. veterans continually emerging needs,
 - B. the constantly changing environment in which advocates are trained and advocacy is practiced, and
 - C. ongoing refinement of the concept of professional military advocacy.

8.2 *What further training or expertise (if any) do legal professionals need to represent veterans?*

- a. The Discussion Paper advises that veterans' law is a specialisation in which most legal practitioners may have little or no practical experience or understanding of the VEA, DRCA or MRCA.
- b. As previously stated, the practice of law entails specialisation. ADSO contends therefore that para-legals, solicitors and barristers who wish to practice in veterans' law should regard it as a specialisation. They may specialise by:
 - (i) accrediting in military advocacy by completing 1062ONAT, which would provide both requisite knowledge and practical exposure to veterans' needs; or
 - (ii) completing a tertiary-level course in veterans' law and undertake RPL to accredit in military advocacy, noting that RPL would be required at successive Levels to build up experience with veterans' needs.
- c. Whether these options were adequate to represent a veteran-family/dependents unit would ultimately depend on the lawyer's ability to assimilate military culture and veterans' perspectives. Reasonably, a professional with well-developed interpersonal skills should be able to develop the requisite level of understanding.
- d. Whether practice in veterans' law is adequately remunerative is another issue. ADSO's analysis at Paras 1.5.a.(ii)(d) and 7.1.a. indicate that:
 - (i) 25 Level 4 Advocates/Solicitors would share a total workload of around 160 cases (including Hearings, decisions by concession, and dismissed cases); and
 - (ii) 25 Level 4 Advocates and an unknown number of barristers each briefed by a solicitor would share a caseload of 71 Hearings before the AAT.
- e. Whether such caseloads would provide a sufficient professional and financial return on the investment of time and resources invested in gaining accreditation is a fair test for the market. Should the decision be made to proceed along the legal representation pathway, if the market were to fail because the returns were inadequate, it would be the veteran that suffered. ADSO contends that such an outcome would be egregious. As discussed in the Submission to the Productivity Commission (Part A, Section 2.1), it would be an abrogation of the Government and community's century-old commitment to care for those who have and continue to put their life at risk in the Nation's defence.

8.3 *Should veteran advocates be regulated by a single body with authority over professional governance, training, accreditation, insurance, quality standards and compliance?*

- a. ADSO refers the Study back to Para 1.6.a. The discussion there attests to the perceived value of such a body by at least three different parties.
- b. In brief:
 - (i) The Senate Inquiry into Suicide by Veterans has proposed at Recommendation creation of a Bureau of Veterans Advocacy.
 - (ii) In 2018 the Veterans' Ministers Roundtable proposed establishment of an association to accredit the delivery of advocacy services to veterans.

- (iii) ADSO has proposed incorporation of an Institute of Professional Military Advocates.
- c. ADSO Members are committed to working with other ESOs and stakeholders to create an independent and sustainable veterans' advocacy capability.

8.4 Should all ex-service organisations and advocates be accredited for all compensation and welfare services they provide?

- a. ADSO unreservedly endorses accredited service delivery.
- b. While ADSO prefers that all advocates be accredited for all compensation and wellbeing advocacy services they deliver, it respects and supports the decision of Welfare and Pension Officers and Advocates who elect not to do so. ADSO commits to working with these members and their ESO/VSC to minimise the effect of their decision on veterans' wellbeing.

8.5 What are the benefits and consequences of increasing the number of paid advocates, as well as legal professionals, providing advocacy services for veterans and their families?

- a. ADSO accepts that unless its Members as well as other ESOs are able to recruit a cohort of younger advocates to replace the Vietnam-era advocates that will retire over the next decade, the recruitment of paid advocates will have to be accelerated to meet the projected future need (at sub-para 1.5.e.).
- b. Reflecting an optimistic view (at sub-paras 3.1.b. and d.), ADSO submits that a mixture of paid and volunteer advocates is the objective. Underpinning this objective is the emerging importance of Wellbeing Support Officers (Part A, Section 2.7.a.(ii)(e)).
- c. Ultimately, the determinant will be the cost of service delivery and its funding. In this regard ADSO:
 - (i) draws the Study's attention to the funding options discussed in Part A, Section 2.5 and submits that these options are equally applicable to a professional institute or an accreditation association;
 - (ii) endorses the current paid-advocacy model utilised by Legacy, RSL DefenceCare, RSL Queensland, and a small number of Veterans Support Centres, that provides the benefit of accredited advocacy at no cost to the veteran or family; and
 - (iii) submits that veterans' engagement of civilian lawyers is unsupportable on the basis of its effect on the veteran-family financial security (para 6.2.c.).

8.6A Do the current professional indemnity insurance arrangements for advocates provide adequate protection for veterans and their families?

- a. VITA, like other professional indemnification insurance policies, requires that the veteran or family have suffered a financial loss as a result of bad advice, inaction, or negligent action.
- b. ADSO supports the current arrangements with the proviso that should a professional advocacy training and service delivery body be created: it should
 - (i) assume VITA's responsibility for professional indemnification;

- (ii) arrange public liability and professional indemnity insurance on normal terms and conditions for those ESO/VSC's that have advocates who do not seek accreditation; and
- (iii) provide personal accident cover for advocates and staff when undertaking duties consistent with the entity's purpose.

8.6B *If not, what changes should be made?*

ADSO submits that either:

- a. VITA should include personal accident insurance and adjust the annual premium accordingly, or
- b. ESO/VSC's should be required as a condition of Commonwealth funding to take out personal accident insurance for their volunteers.

9. Question 9

9.1 *What aspects (if any) of comparable Australian Government advocacy models could be considered for veterans' advocacy and support?*

- a. ADSO notes that at pages 19 and 20 in the Discussion Paper, respondents are invited to consider the access to services and assistance with appeals provided through the National Disability Insurance Scheme (NDIS) and National Aged Care Advocacy Program (NACAP).
- b. ADSO has discussed in its submission to the Productivity Commission²⁹ profound concerns about further outsourcing or transfer of DVA functions to market-based service providers or other departments. Our concerns are exacerbated by the Government's Contestability Programme and DoF recommendation in a 2015 *Functionality and Efficiency Review* of DVA that out-sourcing and function transfer would be accrue 'administrative efficiencies'.
- c. ADSO submits that:
 - (i) NACAP and NDIS are intended to service civilian client-bases of older persons and people with a disability under 65 years of age.
 - (ii) Placing veterans under these bodies' appeal mechanisms would dilute veterans' specific culture and needs. The civilians that access these service providers comprise a far larger, more culturally diverse and potentially less rehabilitation-focused community. ADSO contends that this proposal would achieve no benefit for the veteran community.
 - (iii) Comparison of the appeal provisions in NACAP and NDIS shows them to be broadly inferior to the current veterans' advocacy model:
 - (a) Aged Care Advocacy.³⁰
 - A. The *Aged Care Act 1997* provides free, independent and confidential advocacy support, and permits a representative to act on the older person's behalf.

²⁹ http://www.pc.gov.au/_data/assets/pdf_file/000the5/229433/sub085-veterans.pdf Section 2.

³⁰ <https://agedcare.health.gov.au/support-services/the-national-aged-care-advocacy-program>

- B. Government has engaged a single national provider – the Older Persons Advocacy Network (OPAN) – to deliver NACAP.³¹
 - C. At the time of submission, having accessed the <Request Information> link on the OPAN website³² and followed up by phone call with a commitment obtained for a response, there has been no response.
- (b) NDIS Appeal.³³ The *NDIS Act 2013* provides that:
- A. Only the participant (s48) or a *person directly affected* by the reviewable decision may request review (s100(2)).
 - B. A three-month time limit is prescribed for a request to be made (s100(2)).
 - C. The CEO must cause a *reviewer* to review the decision (s100(5)) and the Factsheet states that the *reviewer* is an NDIA staff member.³⁴
 - D. If the internal review under s100(6) is unfavourable, the only recourse is an application to the AAT (s103).
- (iii) Ongoing development of veterans’ advocacy training and the introduction of a comprehensive QA system will further widen the gap between veterans’ advocacy and NDIS/OPAN. ADSO can therefore see no benefit for the veteran community of the other appeal models.

9.2 *Are there consistent levels and standards of service provided under these comparable advocacy models in different States and Territories?*

- a. ADSO submits that ongoing media attention to inadequacies in NDIS/NACAP reinforce the challenges in government services that seek to deliver a ‘unitary’ service to a widely varying client-base. Despite its challenges, DVA offers a range of services designed specifically to meet veterans’ needs. Of equal importance, DVA commissions health and well-being research that is directed specifically at veterans’ emerging needs.
- b. ADSO contends that, despite the egregious failures outlined in formal inquiries such as Jesse Bird and Mr A, DVA delivers services that, on balance, meet or exceed veterans’ expectations.
- c. ADSO can see no benefit to veterans (and families/dependents) in the loss of DVA’s veteran-centric ethos and veteran-specific services. To have services provided by mega-agencies that are focused on the mass of community would be an abrogation of the Government’s duty of care to that subset of society that it continues to dispatch into harm’s way.

³¹ <http://www.opan.com.au/information>

³² <http://www.opan.com.au/information>

³³ <https://www.ndis.gov.au/medias/documents/h7a/h60/8800158679070/Factsheet-Internal-Review-of-a-Decision.pdf>

³⁴ <https://www.ndis.gov.au/medias/documents/h7a/h60/8800158679070/Factsheet-Internal-Review-of-a-Decision.pdf>

10. Question 10

10.1A *Should the Government set up and fund a Bureau of Veterans' Advocates (BVA) as proposed by the Foreign Affairs, Defence and Trade References Committee?*

- a. ADSO notes that:
 - (i) the Discussion Paper advice that a BVA would supplement and support volunteer advocates, comprise legally trained public servants who assist veterans claims and fund Legal Aid to assist veterans appeals; and
 - (ii) Legal Aid is funded by the Commonwealth and some State Governments and provides legal representation and support for vulnerable, financially and economically disadvantaged people.³⁵
- b. ADSO submits that trust in the integrity and probity of the claims and appeals system is of paramount concern to veterans. Any proposal, let alone decision, that linked a public-sector agency and the delivery of advocacy services would be detrimental.
- c. ADSO submits further that the person advocating on a veteran's behalf must be actually and demonstrably independent of government. The perception that public service officers were both preparing claims and determining them would be fatal to trust on the basis of perceived conflict of interest, irrespective of whether the agencies providing the services were independent of each other.

10.1B *What would be the advantages and disadvantages in doing so?*

- a. ADSO contends that:
 - (i) the only significant advantage might be that a legally-trained public servant may be to expedite preparation for an appeal to the VRB or AAT by more quickly researching and applying case law;
 - (ii) disadvantages include:
 - (a) the deep level of distrust which the service would elicit in veterans,
 - (b) the limits of '*legal training*' versus accreditation as a legal professional,
 - (c) the 'contestability' of paid public employees delivering a service that:
 - A. is currently provided by ESO/VSC advocates at the minimal cost of the BEST program, and
 - B. when veterans are being encouraged to lodge claims themselves using the Online Claims or MyService portals.

³⁵ See for example:

<https://www.legalaid.nsw.gov.au/about-us/who-we-are/our-clients>

<http://www.legalaidact.org.au/aboutus/whoweare/corporateinformation/clientservicecharter.php>

<https://www.legalaid.vic.gov.au/about-us/research-and-analysis/client-profiles/client-profiles-analysis-of-2006-16-data>

<http://www.legalaid.qld.gov.au/About-us/Policies-and-procedures/Best-practice-guidelines/Guidelines-for-lawyers-working-with-clients-in-the-mental-health-review-tribunal>

<https://www.legalaid.wa.gov.au/get-legal-help>

https://lsc.sa.gov.au/cb_pages/legal_aid.php

10.2 *Are there any features of other overseas veteran advocacy and support services that could be considered for Australian veteran advocacy?*

- a. ADSO has for many years been progressing creation of a Military Covenant. The objective is to ensure that the unique nature of ADF Members and veterans' service is formally recognised and officially documented. While progress is being made following the recent appointment of a new Minister and new Secretary, ADSO and the RSL's earlier approaches to Government have been unrewarding.
- b. ADSO contends that Government's reluctance to consider a Covenant compares unfavourably with the Canadian and New Zealand Governments' approaches. Both have enshrined their Nation's obligation to care for the personnel it has placed in harm's way for their Nation's security.
 - (i) Canada:
 - (a) has promulgated a *Bill of Veterans' Rights*;³⁶
 - (b) the *Veterans Well-being 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* (our emphasis); and
 - (ii) New Zealand's *Veterans Support Act 2014* legislates:³⁷
 - (a) at s32, a *Code of Veterans' Rights*.³⁸
 - (b) at s10, *General Principles*:
Every person who performs any function or exercises any power under this Act must do so...in acknowledgement, on behalf of the community, of the responsibility for the injury, illness, or death of veterans as a result of them being placed in harm's way in the service of New Zealand.
- c. ADSO contends to the Study that the history of the veterans' affairs portfolio over the period covered by Chapter 19 of *The Last Shilling* and the objectives of the current Contestability Programme provide ample evidence that the only way in which the delivery of high quality advocacy service to veterans can be assured in future is for the Government and Nation's obligation to those prepared to make die in its defence to be legislated.

10.3 *What flow-on effects would result from the establishment of a Bureau of Veterans' Advocates that will have to be taken into account?*

- a. ADSO reiterates that trust in the integrity and probity of the claims determining and appeals system is of paramount concern to veterans. Any proposal, let alone

³⁶ <http://www.veterans.gc.ca/eng/about-us/veterans-bill-of-rights/vbor>

³⁷ <http://www.legislation.govt.nz/act/public/2014/0056/60.0/DLM5538053.html>

³⁸ The Code contains similar principles that those in VEA s119 and MRCA s334

decision, that linked public service officers and delivery of advocacy services would be destructive.

- b. ADSO reiterates that the person who advocates on a veteran's behalf must be actually and demonstrably independent of government. The perception that public service officers were preparing as well as determining claims, irrespective of whether the agencies providing the services were independent of each other, would be utterly fatal to trust on the basis of perceived conflict of interest.

10.4 *What transitional arrangements will have to be put in place to ensure the establishment a Bureau of Veterans' Advocates can be managed effectively and with minimum disruption to advocacy and support services for veterans and their families?*

- a. ADSO contends from its Memberships reaction that even proposing that a BVA to be established, for the following reasons, is destructive:
 - (i) For a century, ESO/VSC volunteers and latterly advocates have voluntarily kept alive the tradition of 'Mates helping Mates'.
 - (ii) For many advocates, their commitment to their mates has given their life a sense of meaning and purpose. For some, helping mates and their families in distress has become their lifelong commitment and vocation.
 - (ii) To reiterate, of the estimated 1,600 current practicing advocates, only 40 to 50 are paid.
 - (iv) Against these realities, to invite consideration of a transfer of functions *being managed effectively and with minimum disruption* is at best fanciful.
- b. ADSO contends that, despite the ramifications, were a decision taken to establish the proposed Bureau:
 - (ii) it would take time:
 - (a) to recruit and train public service officers to perform the role, and
 - (b) for funds to be appropriated to the Attorney General to fund Legal Aid and to have such funding quarantined from other funding e.g., Social Security and Immigration appeals funding;
 - (iii) for the reasons advanced at sub-para a., the delivery of advocacy services to veterans would be in jeopardy because of the disaffection of many presently committed advocates;
 - (iv) the lives of those advocates for whom their commitment to their mates is absolute, the perception that their efforts had been and were of no value to Government, would be unpardonable; and
 - (v) as the Government has a firm 'budgetary neutrality' policy in place:
 - (a) the costs of these staff and their office support would presumably have to come from DVA's existing appropriation,
 - (b) suggesting that existing DVA services would have to be cut.
- c. ADSO directs the Study's attention to Part A, 2.5. which concludes that:
 - (i) veterans caring for their own comes at a cost to government; but the cost (\$4m pa. in BEST funding) is miniscule when compared with the option of

lawyers as veterans' advocates (\$120m pa) and the commercial cost of creating and conducting advocacy training (\$1.5b since 1992).

- (ii) This minimal outlay is the Government's best insurance premium against ongoing suicide and the social and economic cost of mental health treatment for the veteran community. Having put people in harm's way the Government and the community have an obligation to support those impaired as a direct consequence of their military service. This obligation has been accepted for over 100 years. It is now more than a legislated obligation. Community-wide, it is an honoured tradition.
- d. ADSO has previously expressed the following contentions to the Productivity Commission:
- (i) Since the early 1980s Governments have predicted that the need for a dedicated Department of Veterans' Affairs would expire.
 - (ii) The progressive dismemberment of DVA through outsourcing and function transfer would ensure the prediction is realised.
 - (iii) The realisation by **all** ESO/VSC volunteers – not just advocates – that the Government regards their efforts as dispensable and replaceable by paid public service officers or outsourced to the market place would collapse the century-old tradition of Mates helping Mates.
 - (iv) The realisation by current service personnel and parents of future ADF members that the Government places economic rationalism ahead of its obligation to care for those who are impaired as a result of risking their lives in the service and defence of the Nation will compromise the Nation's security.

11. Question 11

11.1 *What is your experience (if any) with the early stages of implementation of the Transforming DVA to put Veterans' and their Families First initiatives?*

- a. ADSO submits that:
- (i) the highly participatory approach taken by the Project Lighthouse Team has set a benchmark for government program design;
 - (ii) VCR's veteran-centric objective has evolved into veteran-specific support by 'early-adopter' Delegates;
 - (iii) the concern extended to veterans, and the quality of case facilitation Case Coordinators are providing is exemplary;
 - (iii) the progressive roll-out of MyService through a beta-process and regular briefing of stakeholders has been particularly effective; and
 - (iv) the digitisation of veterans' files appears to be facilitating case progression.
- b. ADSO remains deeply concerned, however, by ongoing administrative and process failings and weaknesses that DVA has yet to resolve.³⁹ In this regard, ADSO contends that the following require immediate attention:

³⁹ See for example Defence Ombudsman's Investigation of the Actions and Decisions of the Department of Veterans' Affairs (DVA) in Relation to Mr A. At 3.21. *DVA's failure to cross check Mr A's status as a current or*

- (i) a passive approach to communication and community engagement;
 - (ii) Departmental monitoring and quality control of rehabilitation service providers;
 - (iii) inadequate training of contracted delegates leading to:
 - (a) ill-considered determinations, and
 - (b) unnecessary trauma for vulnerable veterans; and
 - (iv) occasional direct contact by delegates with veterans rather than through the authorised advocate with invidious consequences for vulnerable veterans.
- c. ADSO contends that, despite recent indefensible and highly public failings, by any objective measure DVA has responded to the APSC Capability Review⁴⁰ and through the auspices of its *Veterans and Families First* initiative is succeeding in moving towards its objective of completely reforming veterans' administration.

11.2 *Do veterans want more self-service options so they can independently make and progress their claim?*

- a. ADSO notes:
- (i) the integration of ICT into veteran activities and the reliance on technology of most self-service options, and
 - (ii) that self-service options are a two-edged sword (Part A, 2.6.f.).
- b. Additionally, ADSO supports the adoption of self-service options, provided that:
- (i) the currently inadequate advice to On-line and MyService to claimants about seeking an advocate's support before lodging be rectified;
 - (ii) disadvantages be identified jointly by the DVA business unit and those affected by the initiative, remedies implemented, and outcomes monitored; and
 - (iii) the training and development of advocates is continually reviewed to ensure it reflects the changing nature of veterans' support needs.

11.3 *Do you wish to comment on any aspects of DVA's management of claims or its response to appeals before the Administrative Appeals Tribunal or the Federal Court of Australia?*

- a. ADSO submits that the following two aspects of claims and appeals management need rectifying.
- (i) Offsetting Methodology.
 - (a) Veterans with eligibility under all three Acts and the advocates supporting them confront an unnecessary opaqueness. The offsetting methodology is accessible on CLIK only by DVA staff.⁴¹

former serving member resulted in the incorrect payment of an entitlement. This included both human error and system deficiencies relating to checking of relevant information.

http://www.ombudsman.gov.au/_data/assets/pdf_file/0022/86305/Investigation-into-the-Actions-and-Decisions-of-DVA-in-Relation-to-Mr-A.pdf

⁴⁰ <https://www.apsc.gov.au/sites/g/files/net4441/f/DVA-Capability-Review.pdf>

⁴¹ The relevant CLIK page advises that the Multi-Act Claims Procedures are contained within the Military Compensation Reference Library, which is available *only to DVA staff*. See <http://clik.dva.gov.au/compensation-and-support-reference-library/multi-act-claims-procedures> accessed 06Jun 18.

- (b) To an already deeply suspicious veteran or vulnerable veteran, inevitably, the inaccessibility of such a crucial guideline develops further suspicion or trauma.
 - (c) ADSO notes that this failing was a key finding in the Ombudsman's investigation of Mr A's complaint.⁴²
- (ii) CSC Invalidity and Superannuation Legislation.
- (a) ADSO has discussed in Part A (Section 2.7.d.) the necessity for military invalidity and superannuation entitlements to be included in advocate training and development. We note that knowledge of this was another issue identified in the Ombudsman's investigation of Mr A's complaint.⁴³
 - (b) Given the currency of these issues and their very public airing, ADSO submits that the Study recommend urgent remedial action.

12. Question 12

12 *Do you want to comment on any other matters raised in the study's Terms of Reference?*

- a. ADSO submits that a robust partnership has developed and continues to strengthen between its Members' National Presidents and DVA. Forthright but respectful discussion of sensitive issues is welcome and now the norm. ADSO Members operate on the same principle, binding their advocates to represent their clients with frankness, honesty and candour. It is this principle that ADSO believes must guide discourse with the Government and DVA.
- b. The recent change of the ESORT Agenda and reinstatement of the Operational Working Party has facilitated this process. ESORT can now focus National Leadership Group and the DVA Leadership Group on strategic matters. This can only be for the delivery of advocacy services amongst veterans' many other rights and entitlements.



Kel Ryan
National Spokesman
Alliance of Defence Service Organisation

⁴² **At 3.3.2.** DVA failed to provide adequate and transparent advice and calculations as to how it determined and varied payment calculations. As an example, DVA failed to correctly calculate Mr A's entitlement to include a Remuneration Loading. **Had DVA provided the basis on which its decisions were made**, Mr A may have been able to identify the missing lump sum payment himself, leading to the earlier identification and rectification of the incorrect entitlements being paid. (emphasis added)

⁴³ **At 3.7.** On multiple occasions, CSC failed to provide complete information to DVA regarding the lump sum payments provided to Mr A. Each failure resulted in the incorrect calculation of the entitlement. DVA also failed to clarify the types of lump sum payments as personal or employer contributions, which impacted the calculation of the entitlement