



## DEFENCE FORCE WELFARE ASSOCIATION

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## **SUBMISSION TO VETERANS' LEGISLATION REFORM CONSULTATION PATHWAY PROCESS**

### **Introduction**

Thank you for the opportunity to provide feedback in relation to the Veterans' Legislation Reform Consultation Pathway

While DFWA support some aspects of the proposed changes, we believe that material currently provided for consideration is minimal in nature, and more commentary will be provided as the legislation is further developed in detail. DFWA has provided both general feedback on the positives and negatives associated with the proposed harmonisation, as well as commentary on important considerations, and ideas for additional legislative reform.

## **KEY ISSUES - PROPOSED LEGISLATION REFORM PROCESS**

### **Reforms Supported by DFWA**

- Implementing a recommendation from the Royal Commission (RC)
  - it is positive to see the government moving ahead with the RC recommendation in a timely manner
  - Complexity of existing DVA legislation provides an unnecessary burden on injured veterans and their families. Harmonisation of this legislation provides many advantages, provided this harmonisation is completed in a thoughtful and equitable way.
- Simplification of process and (hopefully) reduction in assessment time for claims:
  - Reduces complexity associated in claim application process,
  - improves administration and approval burdens,
  - ensures the same financial and medical treatment outcomes for veterans under a single legislation moving forward.
- The implementation process (grandparenting of previous schemes) will protect some veterans and may ensure that no one is financially worse off (no payments reduced for prior claims).

## Reforms Not Supported by DFWA

- Grandparenting of schemes will mean veterans receive different financial outcomes depending on when their claims were submitted. MRCA is generally a more generous scheme than DRCA. VEA is very different in its inclusions. Those who have already had claims approved under DRCA will have a different outcome from those who submit claims in the future.
  - DFWA contends the veteran legislation harmonisation process is a form of workplace bargaining. It follows that the principle of the “Better off overall test” (BOOT) should be applied when comparing the new legislative scheme to the old scheme, to ensure that veterans are not unfairly disadvantaged. Full transparency is required in this process.
  - DFWA also believes that the administrative burden of transitioning between schemes should sit with DVA and not with the individual member. Veterans should not have to provide prior medical history or assessment documentation (which has been previously provided to DVA). Paperwork requirements should be minimal in nature.
- The government has previously advised it aims to close out all open claims by the end of 2023 (eliminated by 31 March 2024). This may result in DVA approving claims under a lower cost scheme (DRCA), before veterans can assess whether it would be beneficial to withdraw their claim and resubmit when new legislation is available. It may also result in claims being disallowed in the required timeframe and may preclude appealing/objecting to the decision in the allowed timeframe.
  - Some veterans (who are currently only eligible under DRCA) may be better off withdrawing their open claim and resubmitting after this legislation goes through to get better outcomes. Provision must be made to allow veterans to withdraw open claims where it may be beneficial to do this. DVA must be proactive in this and inform the veteran of this situation and their options.
  - The process for managing outstanding unresolved claims during the transition period must be clearly explained to all veterans, with sufficient time (and information) for veterans to make informed decision.
  - The financial impacts to individuals under the harmonised legislation must be communicated to the veteran community, with detail on the changes applicable under new legislation.

## Reforms Where Further Detail is Requested by DFWA

- DVA needs to provide detail of the proposed legislation, and how existing legislation will be affected.
  - Which support arrangements will be grand parented?
  - What constitutes a ‘new’ claim?
  - How will transitory conditions be treated?
  - What level of proof will be retained by DVA for conditions transitioning between schemes?
  - What level of new medical assessments and paperwork will be required from veterans? (This should be kept to the absolute minimum).
- Where veterans are currently receiving a benefit (i.e. attendant care), at what point does it transition to a new scheme/constitute a new claim?
  - How will the tax implications of each of these benefits be considered in the harmonisation approach (and the determination of which benefits will move between schemes)? For example, attendance care and funeral benefits are counted as income under DRCA but not under MRCA.
  - What is the effect on veterans under existing and new legislation?
  - How will this be communicated to veterans so they can adequately assess under their circumstances?

- Will veterans with ‘undecided’ claims have the option to ‘choose’ their scheme? At what point will the transition occur? What happens to the claims in progress which have not been determined at the date of transition?

*In addition to the points provided above, DFWA has also provided detailed analysis addressing each of DVA’s aims under the harmonised legislation.*

## Establishing an Improved MCRA as the Sole Ongoing Scheme

- DFWA has long called for rationalisation of the various Acts impacting on veteran care. This is the first step to simplify veteran care.
  - Any harmonisation of legislation also needs to ensure ‘no detriment’ to veterans. How has DVA assessed that veterans will meet BOOT under proposed changes?
  - The Case Study examples provided by DVA show some detail on when claims will transition between schemes. For example, they indicate that partners are automatically granted compensation (on death of their spouse) under VEA without the need for a claim. This means that the existing legislation (and the requirement for a team to continue to support) will have a significantly extended support timeframe.
    - Has DVA assessed the support period for how long existing acts will need to be supported?
    - How will DVA maintain support for existing acts whilst also transitioning to simplified legislation and (potentially) reducing staff levels?

## Closing Out VEA and DRCA to New Compensation Related Claims

- DVA needs to clarify what constitutes a new ‘claim’.
  - Where a veteran has an existing accepted condition, when do claims associated with this condition become ‘new’ claims, and under what circumstances are they treated as existing claims.
  - DFWA understands that change in severity of a condition would automatically transition to the new harmonised legislation. How is a transitory condition treated?
  - Where claims were previously wrongly rejected, e.g., the delegate of VRB wrongly identifying when clinical onset date has occurred in the ‘Boys Case’, then remediation action should be undertaken to correct this, including backdating the payments to the date of the original VEA claim. How will this be managed under grandparenting arrangements? Veterans should not lose out because of DVA mistakes, nor should they be required to go through extra stressful work to get their proper entitlement.

**Grandparenting Existing Arrangements** - to ensure there is no reduction in entitlements currently in-being or previously received by veterans. Current payment rates are maintained and indexed normally.

- DFWA is concerned that this point highlights that a reduction in benefits will be seen by some veterans under a new Harmonised act. This allows government the benefit of dealing with a simplified system at the expense of some veterans, injured in their support of our country.
  - DVA needs to identify the existing entitlements which will be lost under this proposal.
  - These need to be reviewed to determine if they can be included under the new act (i.e. VEA/DRCA sub-clauses in relevant entitlement section).
  - There should be an open and transparent review process, including visibility from ESOs and other voluntary organisations with sufficient time for consideration.
- The Case studies deal with discrete one-time events, and fail to account for the complex and varying natures of many service-caused medical conditions. When will sporadic or varying arrangements (i.e. household services, education support, medical treatment) be counted as existing arrangement as opposed to a new claim?

- The case studies indicate the funeral support for an existing condition will transition under the new harmonised act. How is this not covered in the ‘grandparenting’ of existing arrangements?
- If a claim for entitlement is submitted on the basis of a previous entitlement (i.e. household services, education assistance, MRI), will this be assessed under the previous legislation (i.e. grand parented) or will they all go under the new legislation? How will these arrangements be made clear to veterans, advocates and DVA personnel? There is a level of complexity proposed in this harmonisation that has not been described to date.
- DVA should highlight for each aspect of DVA medical support, benefits and services.
  - When will these continue to be assessed under previous legislation (and under what conditions (i.e. previously received benefit)?
  - When will they transition to the new harmonised legislation?
  - How will the government show that this change will not undermine existing benefits received by veterans?
- What level of reassessment will be required to transition a condition from one act to the next?
  - Will all conditions be accepted based on previous medical documentation at time of initial condition assessment?
    - Will veterans require new medical assessments (and further delays) prior to receiving required treatment or services?
    - How will DVA ensure that the harmonised legislation does not result in an increased administrative burden for veterans?
- DVA will need to continue to maintain staff trained in all three acts whilst veterans remain with arrangements under previous acts. Overhead numbers will need to ensure that this is appropriately resourced, and the long tail of these entitlements are managed.

**Single on-Going Act** - will provide coverage for all future claims for compensation from a future date, irrespective of when and where the veteran served, or when their injury or illness occurred.

- As per previous comments. If the ‘improved’ MRCA provides ‘no disadvantage’ to veterans this is supported.
  - Transition arrangements and cut-off dates need to be carefully considered so veterans can assess the best option for submission of claims.
  - DVA should also address all outstanding claims during this period, and clarify arrangements for any claims not approved at the transition date.
  - DFWA recommends a transition period where both the new legislation and previous legislation operate together. This should be for a period of at least 12 months. This allows for the training of delegates and advocates, and ensures that upgrades required to DVA systems can be implemented.

**Single on-Going Act** - will provide greater clarity and consistency around entitlements for veterans and their families, simplifying claims.

- There is a significant difference between the acts in terms of the application or not of existing Statement of Principles (SOPs).
- Advice provided by DVA in consultation has indicated that conditions will stay with the act of origin but move to the new harmonised act when a condition worsens.
  - Will the initial proportion of incapacity determined by previous legislation be retained?
  - Or will incapacity percentages be fully reassessed under MRCA definitions?
  - MRCA uses whole of person impairment.
  - DRCA does not use whole of person impairment.
  - Where a condition transitions between the acts, how will calculations be completed for new claims?

- MRCA should be improved to provide the same DRCA ability to argue for ‘service caused’ conditions to be assessed by the balance of probabilities, and not be constrained by existing SOP regime.
  - ‘Sometimes none of these will apply to your situation. This may be because there is no Statement of Principle in force for your condition. When this is the case, we consider if the claim is
    - More than a possibility
    - Consistent with the known facts, and
    - Proven by medical knowledge’.
  - MRCA should not diminish a veterans’ ability to have their claim assessed on its medical-scientific merits and under a balance of probabilities regime.

## Further Improvements to the Veteran Support System Proposed by DVA

Providing the capacity to prescribe presumptively accepted conditions.

- DFWA supports this position.

Making the existing Veterans’ Review Board the first point of administrative appeal for all claims

- DFWA supports this position.
- The VRB needs to be adequately resourced for its increased workload, and additional appeal mechanisms need to be maintained for existing acts where entitlements remain.

Merging the existing Repatriation Commission and the Military Rehabilitation and Compensation Commission

- DFWA supports this position.

Establish a Ministerial Advisory Council providing advice direct to the Minister of Veterans’ Affairs

- DFWA supports the establishment of the Ministerial Advisory Council (MAC) providing direct advice to the Minister.
- The MAC should be separate from the consultative forums established by DVA to consult with specific stakeholder groups.
- The composition of the MAC, and the mechanism of appointment, and Terms of Reference, should be decided after a broad consultation across the veteran support community.
- The MAC terms of reference should include oversight of the change management programme continuing forward to the steady state and support continuous improvement.
- The MAC should be established as a priority and be operational to provide oversight and support of the changes being implemented in this large change programme.

## Further Improvements to the Veteran Support System Proposed by DFWA

DFWA supports the recommendation of the Productivity Commission inquiry into the system of Compensation and Rehabilitation for Veterans – A Better Way to Support Veterans

- 13.2 Simplify Invalidity Pensions Admin.
- 13.4 Rehabilitation for Invalidity Payment Recipients.
- 14.5 Improve lifestyle ratings.
- The legislation reform has missed the opportunity to include these recommendations. DFWA believes there is a significant opportunity for these items to be included in any changes to legislation proposed as part of harmonisation.

## Conclusion

We submit that whilst we see benefit in harmonising the legislation, there is significant detail to be worked through in developing this legislation and understanding of its application. There is also significant work to be developed to ensure that the proposed legislation does not diminish existing veteran benefits.

Sufficient time must be allowed for members of the veterans' community to provide input to any proposed legislation in detail, before it is presented to parliament.

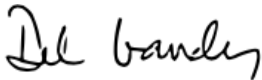
As background, DFWA is an independent voice for Australian Defence Force members, veterans, and their families.

We advocate to government on matters affecting the welfare of this group of Australians. We have a particular interest in ensuring that government policy representing the veteran community is fair and represents no disadvantage. We advocate for good policy.

DFWA has been running since 1959, and has branches across Australia, with the National Office located in Canberra at Royal Military College of Australia, Duntroon.

If you have any concerns or questions, please contact Kate Bowden by email at [kate.bowden@dfwa.org.au](mailto:kate.bowden@dfwa.org.au).

Yours Sincerely



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