RSL Australia

RSL AUSTRALIA

LEGISLATION REFORM

CONSULTATION PAPER

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Submission details

This submission is made on behalf of RSL Australia and has been approved by RSL National President, Greg Melick. Both Amy Cooper, CEO, Soldier On, and Defence Reserves Association President, Michael Annett endorse the submission.

The contact address for any enquires is [redacted] [redacted], Head of Veterans Policy and Program Delivery.

Executive Summary

The Returned & Services League Australia (RSL) has long called for legislative reform that make sit simpler for veterans and their families to access the entitlements that are available to them post-service. This paper is necessarily detailed as it outlines what the RSL regards as the Government's most important considerations, what aspects of the current legislation should not be retained, and considerations for inclusion in the single piece of legislation.

In making this submission, the RSL welcomes the Government's action to simplify legislation and meet the 1 July 2025 timeframe as recommended by the Royal Commission into Defence and Veteran Suicide. While the RSL respects the reasoning behind the timing decision, we do not believe that it should in anyway reduce the scope of reform that is required, nor should the timeframe limit consultation with the veteran and ex-service organisation communities at every step of the reform pathway.

This submission is not exhaustive and is intended to be read as a basis for ongoing consultation between the RSL, other ex-service organisations, and Government. The RSL intends to make additional submissions throughout the consultation pathway process examining the topics previously flagged by Department of Veterans' Affairs (DVA) as of interest for further consideration, such as the Extreme Disablement Adjustment and the Veterans Vocational Rehabilitation Scheme. Government should consider additional consultation periods to allow a fuller examination of how these issues will be affected by the proposed reforms.

Additionally, the paper is based on the information currently available, including through the ongoing and valued collaboration with the DVA. The RSL will continue to develop its response as more information becomes available. This includes additional statistics on veteran cohorts making claims to DVA, and the types of claims being made.

The RSL is particularly concerned to note that legislative reform must be matched by Government commitment through Budget processes to deliver the intended outcomes for veterans and their families. The reform may have a significant expansionary impact on DVA's budget allocation in the coming years. Consideration must necessarily be given to demand-driven funding to support veterans' welfare, rather than having to fight for funding each budget year.

The proposed pathway to legislation reform must lead to lasting benefits for veterans and their families. The RSL stands ready to support the Government in this work and to help further a community-wide response to better support the men and women who have served our nation. Further, we advocate that the reform pathway should include an exposure draft to enable broad consultation once available.

The RSL would be pleased to provide further commentary about the information provided in this submission.

Background

Government Announcement

'On 16 February 2023 the Government has announced the commencement of public consultation on a Pathway to simplify veteran compensation and rehabilitation legislation.

It's the next step in responding to the recommendations of the Interim Report by the Royal Commission into Defence and Veteran Suicide.

The Pathway for consultation anticipates:

- *New claims under existing schemes will cease after a transition period, from which point all new veteran claims will be dealt with under an improved Military Rehabilitation and Compensation Act (MRCA) as the sole ongoing Act. The MRCA currently services the majority of claims.*
- *All benefits under existing schemes will continue unaffected, with only new claims or claims relating to deteriorated conditions to instead be covered by the single ongoing Act.*

The consultation process will inform the way forward for the Government to simplify veterans' legislation.

The RSL notes that this announcement was in response to the recommendations made by the Royal Commission into Defence and Veteran Suicide when it released its Interim Report in August 2022.

The Report confirmed that veterans' legislation is complex and difficult. Recommendation 1 states that:

The Australian Government should develop and implement legislation to simplify and harmonise the framework for veterans' compensation, rehabilitation, and other entitlements.

The RSL supports the concept of 'grandparenting' the existing *Veterans' Entitlements Act 1986 (VEA)* and the *Safety Rehabilitation and Compensation (Defence Related Claims) Act 1988 (DRCA*) in general principle, but the RSL notes the detailed consideration which will be required to develop this very significant proposed reform. The RSL is very aware of the complexity of the current interactions between the three relevant Acts when determining veteran entitlements that encompass periods of service with dates ranging from WW1 service to the current date.

The RSL strongly holds the position that all deliberations in relation to the proposed legislation reform should be open and that ex-service organisations should be closely involved. This opportunity to make a submission is appreciated.

Intent

This submission is provided with the intent of affirming that the RSL supports the reform of the current, complex DVA legislative 'soup'. The recommendation by the Productivity Commission is noted (move to two ongoing schemes), but it is agreed that this could create a range of new complexities in the veterans' entitlements system. The DVA reform proposal to move to a single ongoing veterans' entitlement scheme is preferred but will only succeed if there is wide consultation and genuine, flexible consideration of the complexities and budgetary issues which will be identified.

The RSL is very pleased to have consulted with DVA in the preparation of this document and appreciates their guidance and that they have identified some issues where further consideration may be required.

This paper looks to identifying those potential issues, making submissions in relation to our position on many of the topics and also offer to make further contribution to the consideration of the proposed legislation.

This submission is written in the format provided in the online invitation to be involved in the Consultation Pathway.

1. What would the most important considerations be.
2. Should any aspects of the current legislation not be considered for reform.
3. What specific ideas do you have for legislative reform.

Statistics

When considering our approach to the challenges that these changes will present, the RSL has been mindful of the numbers of veterans who may be affected by the changes.

DVA provides statistics concerning the numbers of Compensation recipients. The figures in attachment 1 are taken from DVA Stats at a Glance September 2022 and are included to provide context in relation to the numbers of veterans who may potentially be affected.

Important Considerations

1. **Adequate time** for consideration of every aspect of the introduction of a revised MRCA and the seamless adoption of 'grandparented' existing entitlements under the VEA and DRCA.
2. **Consultation** with a wide variety of stakeholders to ensure the proposed changes are fully considered. Ensure that all aspect of all three legislations are considered in order to be confident that later 'oh we never thought of that' moments are minimised.
3. **Budget for these changes**.
    a. Accept the probability of having to take a 'generous' approach to some benefits which have previously been considered under VEA/DRCA and are now being considered under the revised MRCA. It is important to note that the 'grandparenting' of existing entitlements under both the VEA and DRCA presents the ongoing problem of addressing assessments of entitlements when a person who is covered under those Acts finds that their VEA/DRCA accepted conditions have worsened – or they wish to claim for additional conditions to be accepted as service related.
    b. Accept that there could be an increase in claim numbers both before and immediately after the introduction of the revised MRCA. For example –
        i. pre introduction, DRCA clients may wish to maximise their entitlements under the existing injury based approach to the assessment of PI. This would involve new liability claims leading to new PI assessments.
        ii. Post implementation, VEA clients may wish to have their entitlement to SRDP considered if there is no 'alone test' to be applied. DRCA clients may wish to test their entitlement to a Gold Card. The children of DRCA clients will need to be considered for potential entitlement to educational benefits. Planning for this is essential as a failure to be able to deliver on the benefits of simplified legislation may result in serious reputational damage for DVA.
    c. Revise existing DVA claims management systems (IT updates). This should include capacity to gather relevant data and report on the outcomes of this change.
    d. Revise existing DVA decision correspondence.
    e. Update the DVA RTO so they are able to provide new training modules for all DVA delegates and ESO advocates.
    f. Provide training to all DVA existing and new Delegates.
    g. Provide for amendments to the ATDP training accreditation to ensure all ESO advocates are fully briefed on the new processes (further IT and procedural updates).
4. **Manage change.** This will be a confusing time for veterans, DVA delegates, DVA information officers, Defence Transition cells, DVA Providers, VRB, AAT, RMA and ESO advocates alike. DVA must acknowledge that this will be an unsettling period and devote adequate resources to keeping all parties fully informed. DVA must also enhance its support to ATDP-qualified advocate to ensure veterans and their families are provided with best possible information and service to provide access to the entitlements under the new legislation.
5. **The revised Legislation** must reflect all of the existing definitions that are currently in the VEA and DRCA and will be required under MRCA for ongoing delivery of benefits across the full range of veterans.
6. **Non Liability Health Care** - The revised MRCA should make provision for all Reservists to be entitled to NLHC.

   It is submitted that Non-Liability Health Care (NLHC) entitlement should be extended so that all Reservists, on completion of their initial training, become entitled to receive treatment for

any mental health conditions from which they are suffering. This effectively extends the existing entitlements and removes the current requirement for veterans to have at least one day of continuous full-time service (CFTS) to qualify for NLHC.

What Should Not Be Considered

1. **Allowances - Clothing Allowance, Decoration Allowance and Recreational Transport Allowance**

PART VI--ALLOWANCES AND OTHER BENEFITS

Sect. 97 (Clothing Allowance) – 228 recipients,

Sect 102 (Decoration Allowance) – 176 recipients,

Sect 104 (Recreational Transport Allowance) – 442 recipients; and

Sect 115M (Prisoner of War Recognition Supplement) – 64 recipients.

There appears to be no strong case to carry this legislation across to the revised MRCA. Under the revised MRCA, a veteran suffering the level of incapacity as described in s104 and claiming benefits would expect to be eligible to apply for Household Services and Attendant Care under Division 3 of MRCA - *DIVISION 3--COMPENSATION FOR HOUSEHOLD AND ATTENDANT CARE SERVICES*

Payee numbers quoted in this section are taken from the DVA Annual Report 2021/2022 (extract at attachment A)
The average age of WW2 veterans is 97.6. The average age of **Korea, Malaya and FESR (combined**) veterans is 83 years of age. (Pensioner Summary Statistics Dec. 2022 – table 12). These veterans are the majority of the recipients of the above benefits.
It is submitted that all existing payments to the above allowances should be 'grandparented' and no further consideration be given to reform.

2. **Attendant Allowance - Section 98 VEA**

Existing entitlements for Attendant Allowance under the VEA should be 'grandparented'. - VETERANS' ENTITLEMENTS ACT 1986 - SECT 98 Attendant allowance and future needs for attendant services should be considered under the provisions of the MILITARY REHABILITATION AND COMPENSATION ACT 2004 - SECT 217 Compensation for attendant care services. Noting that s217 of MRCA requires that a person must have lodged a claim for injury or disease under s319 of the MRCA, the legislation would need to be extended to cover those who have Attendant Allowance entitlements under the VEA.
Legislation to cover a veteran whose ('grandparented') Attendant Allowance is paused because of a hospital admission should be able to have the payment re-instated when they are discharged from hospital should be considered.

Statistics taken from the DVA Annual Report 2021/2022 indicate there were 169 veterans in receipt of Attendant Allowance at that time (attachment A)

It is submitted that s98 of the VEA does not need to be considered for reform – with the exception of ensuring that VEA payments that have been paused because of hospitalisation can be re-instated when a veteran is discharged from hospital.

3. **Loss of Earnings**

VETERANS' ENTITLEMENTS ACT 1986 - **SECT 108** Loss of earnings allowance

Loss of Earnings should be able to be covered by Incapacity payments.

It is submitted that there would appear to be no further requirement for Sect 108 provisions.

4. **Veterans' Vocational Rehabilitation Scheme**

VETERANS' ENTITLEMENTS ACT 1986 - **SECT 115B** Veterans' Vocational Rehabilitation Scheme

Provided SRDP assessed veterans are able to access 'voluntary' rehabilitation, there will be no further requirement for Sect 115B. Consideration would need to be given to the assessment of Service Pension (as with VVRS) for veterans who are able to return to employment.

It is noted that section 210 of the MRCA – Return to work scheme provides the Commission with a power to determine a return to work scheme for SRDP recipients, which may do similar work to the VVRS. It is submitted that s210 will require amendment to ensure that existing Above General Rate veterans (VEA) can be considered under this section.

The RSL will be pleased to provide further submissions with a view to ensuring a beneficial outcome for existing AGR veterans and also for those who may have compensation entitlements partly covered under the VEA ('grandparented') with additional entitlements established under the revised MRCA.

5. **Lifestyle Ratings**

The Productivity Commission (PC) stated in Recommendation 14.5

'The permanent impairment guides used by DVA for measuring functional loss and lifestyle impacts of conditions are out of date and do not reflect modern clinical assessment tools and practices. It is timely for this proposed change to modernise the assessment tool(s) and incorporate best practices in the service offering of compensation and rehabilitation for veterans.'

It is noted that assessments involving VEA disability pension rates and MRCA PI can span a client age range of approx. 80 years. Whilst it is acknowledged that the PC has requested that this process be 'modernised', a legislative Instrument which adequately addresses all the lifestyle possibilities over this age range will be impossible to achieve.

The RSL submits that Lifestyle Ratings should no longer be required and GARP assessments should rely on the shaded areas of table 23.1 of GARP M.
The only assessment area where Lifestyle ratings are currently definitely required is in the assessment of EDA. Following implementation of the revised MRCA, it is likely that this will no longer be a requirement.

6. **Amputations and Blindness**

Section 27 - VETERANS' ENTITLEMENTS ACT 1986 - SECT 27 Increased rates of pension in certain cases –

It is submitted that the existing arrangements for payments made under s27 should be 'grandparented'. It is noted that there may be no intention to reflect the provisions of s27 in the revised MRCA, however the RSL wishes to make further submissions regarding 'blindness' as defined in s5D(3).

7. Permanent Impairment Guide (PIG)

There should be no requirement to review the PIG. All future assessments should be conducted under GARP M

8. Severe Injury Adjustment and Additional Death Benefits

Severe Injury Adjustment and Additional Death Benefits are payable under the Defence Act to DRCA recipients (under specific circumstances).

The RSL notes that there should be no ongoing entitlement to these provisions under the revised MRCA.

9. Capacity to Work

Section 28 - VETERANS' ENTITLEMENTS ACT 1986 - SECT 28 Capacity to undertake remunerative work – This section is relevant for the purposes of paragraph 23(1)(b) or 24(1)(b), whether a veteran who is incapacitated from war-caused injury or war-caused disease, or both, is incapable of undertaking remunerative work, and in determining for the purposes of section 24A whether a veteran who is so incapacitated is capable of undertaking remunerative work, the Commission shall have regard to the following matters only: etc

This VEA section may **not** need to be carried across to MRCA as it would appear to have no useful application in the consideration of SRDP.

Specific Ideas for Legislation Reform

VEA to MRCA

1. Definitions

S5A – It
is noted that the intention of the proposal to consolidate the functions of the Repatriation Commission with the Military Rehabilitation and Compensation Commission (MRCC) is to clarify and streamline governance arrangements for veteran's entitlements legislation. It is anticipated that the membership composition of the continuing MRCC will need to be reconsidered as it is currently drawn from the Repatriation Commission.

It is submitted -The RSL agrees in principle with this approach but questions whether the revised MRCC will be responsible for Service Pensions and the legislative change required to achieve this, noting that it would involve a change to the functions and powers of the MRCC.

S5AB – Repatriation Medical Authority and Specialist Medical Review Council definitions.
It is submitted that the full definition needs to be included in MRCA. If it comes under the consideration of the MRCC, this will also involve a change in the functions and powers of this body.

S5B and 5C

It is submitted that these definitions need to be included in the MRCA so that new claims lodged under MRCA can still consider the types of service that was not previously covered under MRCA.

The RSL is pleased to note that DVA is already focussing on this issue and working towards the best legal option to address it.

s5C - The definition of a veteran

veteran" means:
(a) a person (including a deceased person):
(i) who is, because of section 7, taken to have rendered eligible war service; or
(ii) in respect of whom a pension is, or pensions are, payable under subsection 13(6); and
(b) in Parts III and VIIC also includes a person who is:
(i) a Commonwealth veteran; or
(ii) an allied veteran; or
(iv) an allied mariner.
Note: **Commonwealth veteran** , **allied veteran** and **allied mariner** are defined in this subsection.

Section 5 of MRCA does not provide a definition of the word Veteran.

It is noted that that there is a definition included in the Australian Veterans' Recognition (Putting Veterans and Their Families First) Act 2019 No. 96, 2019

4 Definitions (Australian Veterans' Recognition (Putting Veterans and Their Families First) Act 2019 No. 96, 2019)

In this Act:

Permanent Forces has the same meaning as in the Defence Act 1903.

Reserves *has the same meaning as in the Defence Act 1903.*

Veteran *means a person who has served, or is serving, as a member of the Permanent Forces or as a member of the Reserves.*

It is submitted that the RSL notes the complexities involved in changing the definition of a 'veteran' as contained in s5C of the VEA but, for the purposes of clarity, requests that reference be made in MRCA to the definition as contained in the Australian Veterans' Recognition (Putting Veterans and Their Families First) Act 2019 No. 96, 2019 where it is relevant.

2. Peacekeeping Definitions

PART IV--PENSIONS BY WAY OF COMPENSATION TO MEMBERS OF DEFENCE FORCE OR PEACEKEEPING FORCE AND THEIR DEPENDANTS –

It is submitted that all eligibility definitions under PART IV need to be carried across to MRCA.

3. S6 and s7 – service definitions

–

It is submitted that amendments will need to be made to **s6 of the MRCA** to ensure all eligible kinds of service are included. (MILITARY REHABILITATION AND COMPENSATION ACT 2004 - SECT 6 Kinds of service to which this Act applies). There needs to be clarity regarding types of service that can be considered in relation to claims being lodged under the new MRCA by previous VEA veterans and dependants.

4. Blinded

Section 5D (3) includes reference to **'blinded'** under the Injury/disease definitions. Under MRCA 2004 - SECT 27 - Main definitions of service injury and service disease do not have a corresponding provision.

It is noted that the 'blinded' definition is included in the VEA to assist with consideration of the Specific Disability Allowance (SDA) granted under Section 27 of the VEA. Currently there are no equivalent provisions in the MRCA to match SDA or the VEA Blinded Special Rate. Under MRCA, blindness is only assessed in accordance with the GARP M.

It is submitted that the provision for blinded needs to be included in the MRCA to enable subsequent claims (post introduction of the revised MRCA). For example, if a veteran has an Acquired Cataract accepted in accordance with the relevant Statement of Principle (SoP) and is completely blind because of it, the actual definition of 'blinded' needs to be available. The RSL will be pleased to make further submissions in relation to this aspect of s27 of the VEA.

Claims Provisions

5. Applications for Increase (AFIs)

Section 15 of the VEA provides for an **application for increase** in pension - VETERANS' ENTITLEMENTS ACT 1986 - SECT 15 Application for increase in pension.

There will be veterans with 'grandparented' disability compensation rates of pay whose condition may worsen following the implementation date. It is important to have legislative provision for a request for increase to be lodged under MRCA.

It is noted that Section 71 of MRCA deals with additional compensation payable to a person. It is equally important to note that s71(1) states (in part) - The Commonwealth is liable to pay additional compensation to a person who has been paid, or is entitled to be paid, compensation under this Part

The RSL submits that -

- this provision be reflected in MRCA to enable veterans with 'grandparented' VEA entitlements to apply for consideration under MRCA.
- The date of effect – as legislated in s21 of the VEA be reflected in the MRCA, if the veteran opts to receive compensation paid fortnightly.

6. Rate of Payment

Payment rates for both General Rate and Above General Rate are set under the VEA and indexed twice annually. These payments need to be carried across to MRCA – for example –
MILITARY REHABILITATION AND COMPENSATION ACT 2004 - SECT 198 - What is a Special Rate Disability Pension?

(1) A Special Rate Disability Pension *is an ongoing weekly payment (other than a payment under the Return to* Work *Scheme in* section 210) *that can be paid to certain persons instead of* compensation worked *out under Division 2 of Part 4.*

(2) The maximum ***weekly amount of a*** **Special Rate Disability Pension** ***is one half of the fortnightly rate at which a pension is payable from time to time under*** **section 24** ***of the*** **Veterans' Entitlements Act 1986** ***.***

It is submitted that there are provisions within MRCA which refer to pension rates as defined in the VEA. Provision needs to be made (possibly in transitional legislation) to ensure that Special Rate Disability Pension can be indexed twice annually as per the current arrangement. It is also submitted that there must be a legislative provision to enable the actual rate to be reviewed (as opposed to the indexed amount) in future considerations.

7. General Rate Disability Compensation and EDA

Section 22 of the VEA provides for an assessment of pension at the General Rate and also the payment of EDA.
It is understood that -
A VEA veteran who has accepted conditions and lodges an AFI post the implementation date -

i. Requires legislation to pay a ‘top-up’ of Disability Compensation (where relevant). This will need to be payable either by fortnightly pension or as a lump sum.
ii. Additional entitlements for those who meet the criteria for payment of EDA need to be considered. It is submitted - If the claimant were over the retirement age and assessed at 80 or more points there needs to be automatic entitlement to Death benefits and consideration of additional pension/lump sum. (noting that the RSL has submitted that there should be no further need for Lifestyle Ratings).

It is submitted that EDA is an important entitlement under the VEA and the RSL strongly supports that there be an entitlement which is similar in nature under MRCA. Statistics at attachment A indicate a total of 3002 recipients of EDA from WW2, Korea and Vietnam. It should be noted that MRCA recipients on Incapacity Benefits (inability to work) will have their Incapacity Payments ceased at the Retirement Age. We argue that additional consideration for older veterans who are severely impaired and who are unable to work (and not assessed as SRDP, should be considered for an EDA-like assessment. Failure to have a similar benefit will be seen as a significant loss of entitlements (higher rate of pay, concessions and automatic death acceptance) to both veterans and to their war widows/widowers.
The RSL would like the opportunity to consider making further submissions on this topic.

8. Intermediate Rate

Section 23 of the VEA (Intermediate Rate) has no similar benefit under MRCA. The veteran would need to be entitled to claim Incapacity Payments under MRCA until retirement age.

It is submitted that, prior to reaching the retirement age, Intermediate Rate recipients should be identified and there should be an automatic entitlement to SRDP consideration (if they meet the 50 point criteria). Statistics at attachment A indicate there are 682 veterans in receipt of Intermediate rate. Of these only 86 are potentially under the age of 70.

9. Special Rate Pension

Section 24 of the VEA (also s23 and 25) have requirements under ss24(1)(c) and ss24(2)(a) re the ‘alone’ test and establishing a loss of remuneration which are not reflected in the SRDP provisions. Additionally, there is no specific requirement such as s24(2)(b) (genuinely seeking). That is, there are legislative requirement under the VEA that are not reflected in MRCA. This should be left open to ‘VEA’ veterans who are having claims determined under MRCA.

It is submitted by the RSL that no veteran who would potentially be entitled to a Special Rate pension under the VEA be worse off because of their claim being transferred across to the revised MRCA for consideration.

10. Guide to the Assessment of Rates of Veterans Pension – Fifth Edition (GARP)

Section 29 - VETERANS' ENTITLEMENTS ACT 1986 - SECT 29 Approved Guide to the Assessment of Rates of Veterans' Pensions –

It is submitted that all provisions in MILITARY REHABILITATION AND COMPENSATION ACT 2004 - SECT 67 Guide to determining impairment and compensation will need to be reviewed to ensure that GARPM covers all aspects of service identified in S29 VEA.
It is noted that the content of both GARP and GARP M has not been substantially reviewed since 1997 and a full review of GARP M, acknowledging the changed profile of DVA beneficiaries since that date, is strongly recommended.

11. Death of a Veteran - VEA

The death of a veteran can be accepted under the provisions of s8 of the VEA.
Pension can be payable to dependants of a veteran in the following circumstances -

A pension will be granted to a dependant automatically, without the need for further investigation, if the veteran was:

- *an ex-prisoner of war, or*
- *receiving the Extreme Disablement Adjustment, or*
- *receiving a Disability Compensation Payment at the Special Rate (including a veteran who was in receipt of a Special Rate Disability Compensation Payment for blindness in both eyes), or*
- *receiving a Disability Compensation Payment at the Intermediate Rate, or*
- *receiving a Disability Compensation Payment at the Temporary Special Rate, or*
- *receiving a Disability Compensation Payment at an increased rate for a condition specified in any of items 1 to 8 of subsection 27(1) of the VEA (these items relate to double amputees who may also be blind in one eye).*

The provisions of s12 of the MRCA are more restrictive.

'MILITARY REHABILITATION AND COMPENSATION ACT 2004 - SECT 12

Deceased members whose dependants are entitled to benefits under this Act.
Deceased member *whose death was a* service death

(1) This section applies in respect of a deceased member *if the* Commission *has* ***accepted liability for the*** **member'*s death.***

Note: *A* dependant *of a* deceased member *in respect of whom this section applies might be entitled to* compensation *under Chapter 5 or 6.*

Deceased members *eligible for* **Special Rate Disability Pension**

(2) This section applies in respect of a deceased member *if the* member *satisfied the eligibility criteria in* section 199 *(persons who are eligible for* Special Rate Disability Pension*) during some period of his or her life.*

Deceased members *with* ***80*** **impairment points**

(3) This section applies in respect of a deceased member *if the* Commission *has determined under Part 2 of Chapter 4 that the* impairment *suffered by the* deceased member *before the* member*'s death, as a result of one or more service injuries or* diseases*, constituted 80 or more* impairment points*.'*

It is submitted that all existing automatic entitlements to have death accepted under the VEA (s8) should remain. That is, the dependants of veterans who meet any of the above criteria and have had their entitlements 'grandparented' should have an entitlement to pension 'grandparented' following the introduction of the revised MRCA.

12. Internal Review – Section 31 of the VEA

Provisions need to remain for internal review of primary decisions –

VETERANS' ENTITLEMENTS ACT 1986 - SECT 31 Review by Commission
MILITARY REHABILITATION AND COMPENSATION ACT 2004 - SECT 347 Commission or Chief of the Defence Force initiating reconsideration of original determinations.

It is submitted that it is important for s347 to remain as a tool to enable internal reviews of primary decisions.

13. Income and Assets for the purpose of Service Pension assessment

The treatment of lump sum payment of Disability Compensation an asset for Service Pension calculations?
Entitlement to Service Pension is legislated in Part 111 – Service Pensions
Calculation of the amount of Service Pension is found in -
VETERANS' ENTITLEMENTS ACT 1986 - SECT 36N How to work out the rate of a veteran's age service pension and VETERANS' ENTITLEMENTS ACT 1986 - SCHEDULE 6 Calculation of rates of service pension, income support supplement and veteran payment.

This includes provision that Disability Compensation fortnightly payments are not regarded as income for the purposes of calculating Service Pensions. (This is now similar in Centrelink calculations).

It is submitted that all lump sum payments of Disability Compensation under MRCA be excluded as an Asset for the purposes of Service Pension calculation.

14. Medical Treatment under s85(2)

PART V--MEDICAL AND OTHER TREATMENT –

1. Section **85(2)** provides for the treatment of malignant neoplasia or pulmonary tuberculosis. This treatment is provided to all veterans under the VEA – and only to those MRCA veterans

who have warlike and non-warlike service under the VEA or the *Military Rehabilitation and Compensation Act 2004*,

2. Eligibility for treatment for mental health conditions is provided under the *Veterans' Entitlements (Expanded Access to Non-Liability Health Care for Mental Health Treatment) Determination 2017* (Instrument 2017 No. R24) made under section 88A of the *Veterans' Entitlements Act 1986* (VEA). This needs to be transferred across to MRCA.

It is submitted that all entitlements under s85(2) of the VEA should be extended to the MRCA payees. Importantly, those veterans who currently have entitlements under the VEA should have that entitlement to the treatment of malignant neoplasia continued in any transitional legislation.

At this stage it is not clear to the RSL if legislation in s85 of the VEA will be transferred across to MRCA – or if it will remain in the VEA

15. Pharmaceutical Benefits

It is submitted that entitlements under the VEA - PART VA--EXTENSION OF REPATRIATION PHARMACEUTICAL BENEFITS SCHEME will need to transfer across to MRCA - MILITARY REHABILITATION AND COMPENSATION ACT 2004 - SECT 286 Determination for providing treatment or pharmaceutical benefits for all eligible veterans.

16. Bereavement Payments

VETERANS' ENTITLEMENTS ACT 1986 - **SECT 98A** Bereavement payment in respect of veterans receiving pensions by way of compensation.

It is submitted that the calculation of Bereavement payment where a VEA veteran has fortnightly payments which span across both the VEA and the new MRCA will need to be maintained. Transitional legislation to achieve this will need to be considered.

17. Automatic grant of Funeral Benefits

VETERANS' ENTITLEMENTS ACT 1986 - **SECT 98B** Funeral benefits--automatic grant to estate of certain deceased veterans

It is submitted that Section 98B allows for the automatic grant of funeral benefits to pension recipients under s27 and also to POWs. This should be included in the revised MRCA so that 'grandparented' entitlements will lead to the current existing benefits following death.

18. Further Funeral Benefits

VETERANS' ENTITLEMENTS ACT 1986 - **SECT 99** - Further funeral benefits--veterans
There are no corresponding provisions in MRCA for the extended eligibility criteria which are covered in s99 of the VEA.

It is submitted that the current entitlements at the VEA rates be transferred across to MRCA so that the families of **current** VEA veterans could apply for those benefits under the existing provisions. This would ensure that they would not be losing existing benefits. **Alternatively,** the legislation in MRCA could be extended to cover the eligibility criteria from s99 with the benefit being paid at the current VEA rate.'

19. Funeral Benefits - Dependants

VETERANS' ENTITLEMENTS ACT 1986 - **SECT 100** Funeral benefits--dependants of deceased veterans

It is submitted that the VEA entitlement under s100 (In some circumstances, funeral benefits for dependants are payable to the amount of $2000,00) should be carried across to MRCA. Any existing entitlements under MRCA need to be clarified.

20. Victoria Cross Allowance

VETERANS' ENTITLEMENTS ACT 1986 - **SECT 103** Victoria Cross allowance

It is submitted that provision needs to be made for the payment of the Victoria Cross Allowance under the MRCA. (Referred to under Sect 3 of MRCA.) The RSL will be pleased to make a further submission on this issue.

21. Vehicle Assistance Scheme

VETERANS' ENTITLEMENTS ACT 1986 - **SECT 105** Vehicle Assistance Scheme
MILITARY REHABILITATION AND COMPENSATION ACT 2004 - SECT 212 Motor Vehicle Compensation Scheme

It is submitted that the most beneficial aspects of the three schemes (VEA, DRCA, MRCA) should be consolidated into the new legislation.

If Sect 105 is 'grandparented' for existing veterans who have received entitlements under this section of the Act there should be provision for an existing VEA recipient to apply for a new car – or apply for repairs of an existing DVA supplied car under the existing terms of s105.
The RSL will be pleased to make a further submission on this issue.

22. Special Assistance

VETERANS' ENTITLEMENTS ACT 1986 - **SECT 106** Special assistance

Special assistance (Section 106)

(1) Subject to subsection (2), the Commission may, in such circumstances, and subject to such conditions (if any), as are prescribed in a legislative instrument made by the Commission for the purposes of this subsection, in its discretion, grant to a veteran, or to a dependant of a veteran or deceased veteran, assistance or benefits of such a kind, and of such an amount or value, as it deems fit in all the circumstances of the case.

(2) The Commission must not grant assistance or benefits to a person under subsection (1):

(a) in circumstances in which the person is eligible to be granted an allowance or assistance under another provision of this Act; or

(b) to a veteran, or a dependant of a veteran or a deceased veteran, if the veteran is only a veteran because of service rendered after the MRCA commencement date.

***Note: The Military Rehabilitation and Compensation Commission can grant assistance or benefits to veterans who render service after the MRCA commencement date, or to dependants of such veterans (see section 424 of the MRCA**).*

It is submitted that a MRCA legislation amendment will be required for Special Assistance to be considered for veterans who have rendered service prior to the MRCA commencement date.

23. Loss of Earnings

VETERANS' ENTITLEMENTS ACT 1986 - **SECT 108** Loss of earnings allowance

Most aspects of Loss of Earnings should be able to be covered by Incapacity payments. It was noted previously that there does not appear to be an ongoing need for this section. However, Loss of Earnings can also cover payment made in relation to time taken off work for a medical appointment or procedure.

It is submitted that there needs to be an equivalent provision under the MRCA for a person to be granted an allowance for loss of earning for short periods off work. The RSL will be pleased to make further submissions on this issue.

24. Acute Support Package

VETERANS' ENTITLEMENTS ACT 1986 - SECT 115S Acute support package.

It is submitted that it is important to establish whether this entitlement will be provided to current VEA veterans under the VEA or the MRCA.

25. Veterans Childrens Education Scheme and the Military Rehabilitation and Compensation Act Education and Training Scheme (VCES and MRCAETS)

It is submitted that Section 258 of MRCA will need to be amended to ensure that eligible young persons can be transferred seamlessly from VCES to MRCAETS under the MILITARY REHABILITATION AND COMPENSATION ACT 2004 - SECT 258 Education scheme for certain eligible young persons.
The legislation will also need to establish an eligibility definition for existing DRCA children/students and include this in the legislation.

It is additionally submitted that DVA should make every effort to identify potentially eligible 'DRCA' children/students and have them included in the scheme. The eligibility criteria for these existing children/students will need to be established.

The RSL will be pleased to make further submissions on this issue.

26. Veterans Supplement

PART VIIA--VETERANS SUPPLEMENT

It is submitted that payments of the Veterans Supplement need to continue. The RSL accepts that enabling provisions will be made to accommodate this. It is also referred to in DIVISION 4--MRCA SUPPLEMENT FOR MEMBERS AND FORMER MEMBERS.

27. General Provisions

PART VIII--GENERAL PROVISIONS APPLICABLE TO PENSIONS ETC.

It is submitted that particular attention should be paid to S119, s120 s120A and s120B to ensure that all aspects are covered under MILITARY REHABILITATION AND COMPENSATION ACT 2004 - SECT 338 Reasonableness of hypothesis to be assessed by reference to Statement of Principles

28. The Repatriation Medical Authority (RMA)

It is submitted that the functions and powers of the RMA, as described in the VEA - PART XIA--THE REPATRIATION MEDICAL AUTHORITY will require enabling legislation or be carried across to the MRCA. (S338 and 339 of MRCA refer).

VETERANS' ENTITLEMENTS ACT 1986 - SECT 196Y Request for review of contents of Statement of Principles etc. should also be considered as to how it will be enabled.

29. Miscellaneous Provisions

It is submitted that consideration be given to all of the provisions of PART XII—MISCELLANEOUS to establish what needs to be carried over.

30. For Consideration re s353 of the VEA

MILITARY REHABILITATION AND COMPENSATION ACT 2004 - SECT 353 Application of the Veterans' Entitlements Act 1986

(1) Subsections 132(5), (6), (9), (10), (11), (11A), (11B) and (11C), sections 133, 133A, 137, 137A, 138, 138A, 139, 140 and 140A, and Divisions 4, 4A, 5, 6 and 8 of Part IX

(except sections 154 and 157), of the Veterans' Entitlements Act 1986 apply for the purposes of a review by the Board under this Part.

It is submitted that s353 of the MRCA refers specifically to the application of various section in the VEA (detailed above). The revised legislation needs to ensure that all of these VEA sections carry across to the MRCA.

31. Exclusion Provisions

Tobacco Products
Section 36 of MRCA precludes the acceptance of conditions as they relate to a person's use of tobacco products.
MILITARY REHABILITATION AND COMPENSATION ACT 2004 - SECT 36
Exclusion relating to use of tobacco products

The Commission *must not accept liability for:*

(a) an injury *sustained, or a* disease *contracted, by a person, or the death of a person; or*

(b) an injury *or a* disease *that has been aggravated, or materially contributed to; or*

(c) an injury *or* disease*, a sign or symptom of which has been aggravated, or materially contributed to;*

if the injury*,* disease*, death, aggravation or material contribution is related to* defence service *only because of the person's use of tobacco products.*

It is submitted that this issue needs to be dealt with post implementation. There will potentially be claims in relation to both liability and death from veterans and widows/ers who would have had an entitlement under the VEA.

The RSL will be happy to make further submissions on this issue. One option would be to apply an exemption to the exclusion for service-related smoking for relevant periods of eligible service under the DRCA and VEA.

DRCA to MRCA

1. The Legislation

The RSL notes it is intended that the DRCA will remain an operative Act and will not be repealed. This will ensure that provisions relating to indexation of DRCA benefits will be retained for all applicable 'grandparented' payments – s12, s13, s13A

2. Incapacity Payments

It is understood that, under the proposed model DRCA incapacity payments will transfer to MRCA incapacity arrangements. How and when this will occur is an issue that requires further exploration.

Questions which arise are -

Will existing payments being made under DIVISION 3--INJURIES RESULTING IN INCAPACITY FOR work in DRCA be transferred across to MRCA PART 4--COMPENSATION FOR INCAPACITY FOR WORK FOR FORMER MEMBERS automatically?

If so, will any payment variation be effective from the date of implementation?

The RSL will be pleased to make further submissions regarding how this can be achieved and the timing for the changes to occur.

3. The Permanent Impairment Guide (PIG)

It is submitted that there may be instances, such as a sequela claim which relates to a DRCA accepted condition, where the claim will be subjected to liability requirements under MRCA, including the application of the Statements of Principle. It is noted that any condition claimed post implementation will be considered and assessed under MRCA.

The RSL requests that all claimants should be notified prior to the assessment being finalised, in the unlikely event that this action could have a negative effect.

4. Calculation of Permanent Impairment

SAFETY, REHABILITATION AND COMPENSATION (DEFENCE-RELATED CLAIMS) ACT 1988 - SECT 24 Compensation for injuries resulting in permanent impairment.

It is noted that -

'methods by which the extent of that incapacity, as assessed in accordance with those criteria, shall be expressed as a percentage of incapacity from that injury or disease, or both, being a percentage not exceeding one hundred per centum."

Essentially there is a cap placed on VEA/MRCA payments whereas there has been no cap on DRCA. This situation is a result of various legal precedents which require an injury-based approach as compared to the assessments made under the VEA and MRCA which are explained in GARP and GARPM

It is understood by the RSL that, under the proposed model, DRCA clients who have been paid over the maximum MRCA limit will not be required to pay the difference back, however they are unlikely to receive additional PI payments as they have already received the maximum level of compensation payable under MRCA.

It is submitted that all assessments (including those 'grandparented' under VEA and DRCA will be aggregated with the new MRCA assessments to establish entitlement to a Gold Card (MRCA 60+ Impairment Points). The appropriate legislation to enable this will need to be developed. A process to allow veterans to have their aggregated assessments considered for Gold Card purposes will be required (that is, will this be an automatic process – or will an application be required?)

5. Compensation Offsetting

Comment by the RSL
Compensation offsetting has been a contentious process since the legislation was first introduced. The RSL does not dispute the principle behind compensation offsetting which is that a person should not be compensated twice for a veteran's incapacity or death, irrespective of whether they have eligibility from more than one source.
It is submitted that;

- DVA should regard any new legislative arrangements surrounding compensation offsetting as a priority to ensure that calculation procedures are in place and are clearly articulated to affected veterans and to ESO advocates.
- Legislative arrangements need to be put in place to facilitate ongoing indexation of the offsetting amount.
- All possible anomalies to this process should be carefully considered.

The RSL will seek to make further submissions following the release of the draft revised MRCA legislation.

6. The Gold Card extending to current DRCA clients.

Under MRCA 'you are *entitled to a Gold Card if you are a veteran, including reservists and cadets, and you:*

- *have a permanent impairment under* MRCA *of at least 60 points from your service-related injuries or conditions; or*
- *are eligible for the* Special Rate Disability Pension *(SRDP)'*

It is submitted that DVA should clearly articulate the process for a DRCA client to be assessed for Gold Card eligibility under the revised MRCA and that this information should be made available to veterans.
As noted previously, a process for aggregating assessments made under the 'grandparented' Acts needs to be implemented. It is also noted that this process could be time consuming and complex because of the number of cases where conditions are accepted (and assessed) under both the VEA and DRCA.

The RSL will be happy to make further submission on this topic.

7. Gold Card - Death Accepted under MRCA

The RSL understands that, under the current proposal, only prospective claims under MRCA will be eligible for death benefits under MRCA including access to Gold Cards. This means that a dependant who has received compensation under the DRCA will not be entitled to a gold card under the new arrangements.
The RSL seeks the opportunity to make further submissions on this topic.

8. MRCAETS for dependant children of DRCA veterans.

The RSL understands that, under the current proposed model only prospective claims under MRCA will be eligible for death benefits under MRCA including access to gold cards and MRCAETS.
The RSL seeks the opportunity to make further submissions on this topic.

9. Special Rate Disability Pension – DRCA clients

It is noted that –

1. Provision will be made for veterans with DRCA eligibility to be considered for MRCA SRDP.
2. Ordinary MRCA SRDP eligibility requirements will continue to apply for these veterans.
3. Under the proposed model any veteran who meets the SRDP eligibility criteria in the MRCA can be considered for SRDP under current arrangements.

It is submitted that DVA will need to have a process in place to enable veterans with DRCA eligibility to be considered for MRCA SRDP. This process should be widely articulated.

10. Severe Injury Adjustment and Additional Death Benefits (SIA and ADB)

Severe Injury Adjustment and Additional Death Benefits are payable under the Defence Act to DRCA recipients (under specific circumstances).

It is understood that recipients of the Severe Injury Adjustment (SIA) and Additional Death Benefit will retain these benefits. However, under the proposed model these payments will no longer be available. Under MRCA, Section 80 additional benefits are payable for clients who have dependent eligible young people and are paid compensation for 80 or more impairment points. Section 234 provides an additional benefit payable if liability is accepted for the member's death.

It is noted that - Once the new framework commences, dependants will not be able to lodge new claims under the DRCA and subsequently would not be eligible for payments under the Defence Act. All new claims will be assessed, and dependants will have access to benefits, under the MRCA.

The dependent child benefits under DRCA and MRCA are similar, as they both include a weekly benefit and a lump sum payment. The difference in the lump sum payments it is a statutory rate under MRCA as opposed to a portion of an overall statutory rate for all dependants under DRCA and an additional benefit under the Defence Act.

MRCA also provides access to the education scheme benefits as well as a gold treatment card.

The RSL has no submission regarding this issue.

11. Death of a Veteran - DRCA

It is submitted that the revised MRCA should have enabling legislation which will allow any death claim lodged under MRCA by a dependant to take into account all of the deceased veteran's accepted VEA and/or DRCA conditions.

12. Bereavement Payments

It is noted that MRCA currently has coverage for bereavement payments if the veteran is in receipt of MRCA incapacity payments, SRDP fortnightly payments and/or periodic permanent impairment benefits at the time of death.

Under the Government's proposal, to be eligible for bereavement payments post transition, the veteran must be in receipt of one of the entitling benefits under MRCA for the spouse to receive a bereavement payment.

The RSL notes that there is no option for periodic permanent impairment payments under DRCA (lump sum PI payments will have been made) and it is unlikely that there will be high numbers of DRCA veterans who are in receipt of Incapacity payments at the time of their passing (payments cease at retirement age), however, will be pleased to give this topic further consideration.

13. Lodging a claim for compensation after death

SAFETY, REHABILITATION AND COMPENSATION (DEFENCE-RELATED CLAIMS) ACT 1988 - SECT 55

It is noted that s55 of DRCA enables a personal representative of a veteran to lodge a liability claim following the veteran's death (there is no similar provision under the VEA.

MRCA provides a similar provision under section 321 which provides for the survival of claims and right to claim on behalf of deceased veterans.

The RSL has no submission to make on this topic.

14. Treatment of malignant neoplasia or pulmonary tuberculosis – s85(2)

PART V--MEDICAL AND OTHER TREATMENT –

2. Section **85(2)** provides for the treatment of malignant neoplasia or pulmonary tuberculosis. This treatment is provided to all veterans under the VEA – and only to those MRCA veterans who have warlike and non-warlike service under the VEA or the *Military Rehabilitation and Compensation Act 2004*,

3. Eligibility for treatment for mental health conditions is provided under the *Veterans' Entitlements (Expanded Access to Non-Liability Health Care for Mental Health Treatment) Determination 2017* (Instrument 2017 No. R24) made under section 88A of the *Veterans' Entitlements Act 1986* (VEA). This needs to be transferred across to MRCA.

It is submitted that all treatment entitlements covered under s85(2) of the VEA be extended and be reflected in the MRCA to cover both existing VEA veterans and also DRCA veterans.

15. Previous legislation (DRCA)

The RSL notes that the date of claim approach will apply to those claims currently considered under the rules of the 1931 and 1970 Act and questions if the existing transitional provisions applying to the Commonwealth Employees' Compensation Act 1930-1970 and the Compensation (Commonwealth Government Employees) Act 1971 are sufficient to ensure that consideration can be given under the revised MRCA.

The RSL requires further advice on any limitations that will be placed on those veterans who previously had restricted access to compensation (under the Acts mentioned above) should they lodge applications under the revised MRCA.

Miscellaneous Issues

1. Presumptively Accepted Conditions

The Veterans' Legislation Reform document states –

'Providing the capacity to prescribe presumptively accepted conditions'.

'This proposal would provide a legislative mechanism for veterans to have a causal connection to their service presumed for certain commonly claimed and accepted conditions. This means, in many cases, veterans will no longer be requested to provide as much, or any, evidence in order for a claim to be accepted. This would reduce red tape for veterans and families, and speed up decision-making for DVA.

This is consistent with Productivity Commission recommendation 13.1.'

Whilst the Legislation Reform documents quotes 13.1, it is noted that 13.1 deals with the calculation of impairment '*13.1 Compensation for veterans and their families'* – and it is difficult to equate this to any recommendation by the Productivity Commission about 'presumptive' processing.

Issue. It is essential that the intent of the statement 'Providing the capacity to prescribe presumptively accepted conditions' is fully explained.

The RSL will welcome the opportunity to make further submissions on this topic when further information is available

2. Streamlining of conditions

The McKinsey Report [1] makes frequent reference to the Streamlining of conditions with a view to Computer Supported Decision Making (CSDM). It is noted that the list of conditions which could be considered under the Streamlining process could be further extended – '*Expand the number of conditions covered by computer-supported decision making (CBDM) over two waves: (i) to claims for 15 currently streamlined/ STP conditions that have straightforward diagnoses and a clear date of onset, and (ii) 6 additional conditions with historically high acceptance rates'* It is also noted that '*this Initiative assumes only claims submitted via MyService will be subject to CBDM, with MyService determining claims at the same historical acceptance rate on a per condition basis;'*

The RSL has some concerns regarding the concept of 'Computer Supported Decision Making' and will welcome the opportunity to make further submissions if this proposal advances further. There are additional concerns that it is proposed to make

[1] DVA Claims Process Diagnostic Version 1, 14 December 2021

a service available **only** to veterans who lodge claims on MyService (which ESO advocates do not have access to).

3. McKinsey POLI03 – Review SOP diagnostic protocols,

At page 65 of **the McKinsey Report [2]- POLI03 – Review SOP diagnostic protocols -** it is proposed to '*enable delegates to make determinations for Lumber Spondylosis & Osteoarthritis conditions without the need for diagnostic imaging evidence for clients over the age of 45*.'
It is submitted that a claim for pension needs to be accompanied by medical confirmation of a diagnosis. For the ESO portal this involves an Injury or Disease Detail Sheet. A form D9287 is also available for doctors to provide a diagnosis and supporting information. A copy of this form is at attachments B and C. This form clearly indicates that imaging is required in order to diagnose orthopaedic conditions. A copy of Quick Tips for Health Providers for Compensation Claims (DVA product) https://www.dva.gov.au/sites/default/files/2022-08/health-providers-quick-tip-liability-and-diagnoses-15.8.2022.pdf is at attachment A. This document notes that the evidence required to make a diagnosis should align with good clinical practice and refers the reader to the form D9287. The Quick Tips document also describes 'The Date of Onset' as *when the veteran first experienced symptoms or signs that would enable a medical professional to make the diagnosis.* This is consistent with other DVA policy documentation.
It was suggested in the paper that the effective date for the diagnosis could be no earlier than the date on which the veteran first sought medical treatment**. This initiative is at odds with the ESO position which was highlighted by the *Boys* decision. The current DVA Policy, strongly supported by ESOs is that the date of effect should rely on an established 'date of clinical onset' –** which is described in the preceding paragraph.
It should also be noted that existing case law – *Repatriation Commission v Cooke* (1998) 160 ALR 17 establishes that a diagnosis is to be made under the reasonable satisfaction standard of proof -

As stated by the Court – *'The Full Court concluded that the history of the legislation indicated that the reasonable hypothesis standard had been introduced in 1986 when the VE Act was enacted solely for the purpose of determining whether an injury, disease or death was war-caused. All other matters, including questions of **diagnosis**, were to be dealt with by the reasonable satisfaction standard in s 120(4).'*

The suggested approach of not requiring diagnostic imaging for degenerative orthopaedic conditions would not appear to meet the required standard of proof.

It should also be noted that Subsection 7(4) of the DRCA provides that an injury in the form of a disease is taken to have been sustained as at the earlier of either the date of first medical treatment or first incapacity for work or impairment. There is no requirement that the evidence on which this is based be contemporaneous with the first firm diagnosis of the condition, which may occur many years after a disease can be said in retrospect to have existed.

The DRCA does not impose a requirement for a medical opinion providing evidence of an earlier date of injury to be provided by the person who was the client's treating physician at that contended date of injury. As such, a medical opinion from an appropriate practitioner which provides even a retrospective finding as to the presence of the claimed condition at an earlier date can be used to establish the date of injury.

[2] DVA Claims Process Diagnostic Version 1, 14 December 2021

In view of the differing approaches, there needs to be clarity and consistence in the 'new' Act regarding the date of clinical onset.

DVA has identified that a risk to the proposal is that a condition may not be correctly diagnosed (McKinsey report). Failure to correctly diagnose a condition jeopardises both the potential treatment which will be provided (and paid for by DVA, if accepted) and also the assessment of compensation (PI) as it relates to a particular condition.
The RSL is of the view that DVA is failing in its duty of care if it omits to diagnose and assess a condition in accordance with the applicable burden of proof.

To further explore the question of Clinical Onset - the RMA has described it as follows-
'What is a clinical onset?

Clinical onset is determined by a relevant expert or medical practitioner.

Generally, 'clinical onset' of a particular kind of injury or disease occurs when a relevant expert such as a medical practitioner, can conclude that a particular symptom or other feature means that a claimant veteran or member had that injury or disease at a particular time.

The RMA does not define 'clinical onset' for each particular kind of injury or disease under consideration as that determination depends on the nature of that disease or injury and the specific facts of an individual veteran's or member's case.

*In many instances the clinical onset of a disease may be difficult to determine as **the date of diagnosis is not the date of clinical onset, onset preceding diagnosis**. The normal practice is for a medical practitioner to make the diagnosis of the disease, and then work backwards from the date of diagnosis to estimate a date of clinical onset based on the first appearance of a symptom or feature which is indicative of the disease. The medical adviser is likely to be assisted by having access to service related records including medical records*.'

It is submitted that the date of clinical onset should remain as the date *when the veteran first experienced symptoms or signs that would enable a medical professional to make the diagnosis.*

4. Compensation Offsetting

The RSL notes the complexity of the current offsetting process and requests further consultation in relation to existing offsets (will they continue to be indexed and how will the legislation deal with this). It also applies to potential issues where a veteran with an existing offset applies for further benefits which will now be considered under MRCA.
Removal of an offset - In relation to an existing offset which involves DRCA Incapacity payments, once the Incapacity Payment ceases at retirement age, will the legislation exist to enable the removal of the offset.
The RSL will be pleased to make further submissions on this issue if the proposed single Act pathway is legislated.

5. Travel for Treatment

***Travelling for treatment under the VEA* – from the DVA website**

We provide eligible persons and their medically required attendants assistance with their transport when travelling for approved medical treatment.

If you travel for approved medical treatment or in connection with a claim for a Disability Compensation Payment or service pension, you may be eligible to claim travelling expenses under the Repatriation Transport Scheme.

When travelling away from home or if you are on holidays, we recommend that you take out travel insurance.

Find out more about travel for treatment entitlements:

- Reimbursing travel expenses under VEA
- Make a transport booking
- Ambulance transport

***Travel for treatment under the MRCA and DRCA* – from the DVA website**

Under the Military Rehabilitation and Compensation Act 2004 (MRCA) and the Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 (DRCA), you can claim reimbursement for the cost of reasonable travel expenses for treatment of an accepted condition if:

- *the journey exceeds 50km of a return journey when travelling by private vehicle; or*
- *any length of a journey by public transport or ambulance where the accepted condition requires the use of this form of transport.*

Travel by private vehicle is reimbursed based on a set rate per kilometre travelled.

Comment - Transport under the VEA is primarily provided via ‘Booked Car with Driver’. Transport under MRCA and DRCA is done on a re-imbursement of costs basis and is more restrictive in eligibility criteria.

It is submitted that Transport arrangements for the revised MRCA and the ongoing VEA clients should be harmonised. The current process is confusing for veterans and for their providers.

The RSL will be happy to make more detailed submissions on this topic.

6. Commitment to Wellbeing

Department of Veterans Affairs – Annual Report 2021-22

The Annual Report states - *The purpose of DVA is* ***to support the wellbeing of those who serve or have served in the defence of our nation, and families, by:***

1. *partnering with organisations and individuals to help design, implement and deliver effective programs and benefits, which enhance wellbeing of veterans and families.*
2. *providing and maintaining war graves and delivering meaningful commemorative activities to promote community recognition and understanding of the service and sacrifice of veterans.*

DVA Rehabilitation leaflet - Overview

'DVA rehabilitation focuses on all elements of your life which could improve your wellbeing and aims to assist you to adapt to, and recover from, an injury or illness that is related to your ADF service.'

The Royal Commission into Defence and Veteran Suicide, Interim Report mentioned the word 'Wellbeing' 110 times. There has been a strong focus during the Royal Commission on the need to enhance the quality of life of transitioned veterans.

It is submitted by the RSL that DVA must make best use of its legislation and policy capacity in addition to its considerable resources to ensure that veterans are encouraged to access Rehabilitation programmes (of all forms) with a view to enhancing the quality of their lives.

The RSL is of the view that this legislative reform is an opportunity for DVA to demonstrate its commitment to assisting veterans to engage in all available aspects of the DVA Rehabilitation programmes. Advice on how ESOs can support this commitment will be appreciated – noting the Annual Report purpose to - *partnering with organisations and individuals to help design, implement and deliver effective programs and benefits, which enhance wellbeing of veterans and families.*

7. ATDP funding and readiness

The RSL wishes to draw to the attention of DVA that it is imperative that ATDP be resourced and prepared so that training on the legislation changes can be delivered to all ESO advocates in a timely manner. The RSL is of the view that the coming period until implementation will be a time of great uncertainly for the veteran community (and advocates) and every effort must be made by DVA to ensure that ESOs become 'trusted partners' in clarifying the changes and ensuring all veterans and their dependants are able to lodge appropriate claims.

8. Potential for Trusteeship when large lump sum payments are made.

The RSL would like to express its concern regarding the known negative health implications for some veterans with a diagnosed addictive condition (or other severe mental health condition) when they receive a large lump sum Permanent Impairment compensation payment. Advocates have noted instances within their own experience where veterans have used all their money to support their addiction – or to 'buy' favour with their friends and that this often leads to very negative outcomes.

Similarly, the Royal Commission has heard evidence of veterans with gambling and drug addiction problems squandering large lump sum compensation payouts, with one veteran detailing how he lost over $500,000 within 12 months of receiving it, including spending $300,000 on illicit drugs.[3]

The issue of some veterans being incapable of managing their financial affairs by virtue of their service injuries would appear not to be a new one, with regulation 7 of the *Australian Soldiers' Repatriation Regulations 1920* (Cth) providing for a trustee to be appointed to manage the affairs of veteran as set out below:

Australian Soldiers' Repatriation Regulations 1920

Power to appoint trustees.

7. (1) The Commission or a Deputy Commissioner may—

(a) Where a pensioner is under the age of sixteen years;

(b) Where a pensioner is of unsound mind;

(c) Where a pensioner consents to the payment of his pension to some other person; or

(d) In such other cases as it or he thinks fit,

appoint a person to be the trustee of the pensioner.

(2) The pension may be paid to the trustee, and the trustee may collect and disburse the pension for the benefit of the pensioner subject to the directions of the Commission or the Deputy Commissioner.

Similarly, current veteran legislation contains provisions that provide for a trustee to be appointed to manage a veteran's financial affairs as per below:

Veterans' Entitlement Act

Section 202
Appointment of trustees.

(1) Where the Commission is satisfied that, having regard to the age, infirmity, ill health or **improvidence** (Emphasis added) of a person (the primary person), it is desirable that payment of a pension, veteran payment or allowance payable to the primary person be made to another person as trustee for the primary person, the Commission may, by instrument in writing, appoint a person to be the trustee , or itself assume the office of trustee , of instalments of the pension, veteran payment or allowance, upon trust to apply them as provided in this section.

***Safety, Rehabilitation and Compensation (Defence-Related Claims) Act* 1988**

Section 110

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[3] *Royal Commission into Defence and Veteran Suicide*, Transcript of Proceedings, 16 February 2022, 3-1210-12 ('Transcript').

Money paid to relevant authority for benefit of person.

(1) Where any money is payable under this Act to an employee who is under a legal disability, the money shall be paid to, or in accordance with the directions of, the relevant authority for the benefit of the employee and, when so paid, shall, for the purposes of this Act other than this section, be deemed to have been paid to the employee.

(2) Where money is held by a relevant authority under this Act for the benefit of a person, the relevant authority shall, subject to subsections (3) and (4), invest the money in any manner for the time being allowed by an Act, a State Act or an Ordinance of a Territory for the investment of trust money and income resulting from any such investment shall be deemed to form part of the first-mentioned money.

(3) A relevant authority may pay any money referred to in subsection (2) to, or in accordance with the directions of, the person or apply the money in such manner as it thinks fit, for the benefit of the person.

(4) Where money is held by a relevant authority for the benefit of an employee who is under a legal disability, the relevant authority shall, when the employee ceases to be under a legal disability, pay the money to, or in accordance with the directions of, the employee or, if the money has been invested, deal with the investments in accordance with the directions of the employee.

(5) The MRCC may establish trust funds for the purposes of this section.

Military Rehabilitation and Compensation Act 2004

Section 432

Trustees for persons entitled to compensation

(1) This section applies if:

(a) a person who is entitled to be paid compensation under Chapter 3, 4, 5 or 6 is under a legal disability; or

(b) if such a person is under 18--there is no person who has the primary responsibility for the daily care of that person.

(2) The Commission may, in writing, appoint the Commonwealth or any other person to be the trustee of the payments of compensation under this Act.

Whilst the DRCA and MRCA provide that in order for a trustee to appointed to manage a veteran's financial affairs, the veteran must be under a legal disability, the VEA takes a broader approach and allows for a trustee to be appointed where the veteran is suffering from infirmity, ill health or improvidence.

RSL submits that any amendment of s 432 of the MRCA should provide for a trustee to be appointed in circumstances where a veteran eligible to receive a significant lump sum payment is likely to mismanage the payment. As a guide, RSL says that where one or more of the following circumstances apply, a trustee may be able to be appointed to manage the veteran's financial affairs:

- the veteran has a diagnosed serious mental health condition or is seeking compensation for a serious mental health condition.
- the veteran has substance abuse or addiction issues.
- the veteran is aged under 28 and the lump sum compensation figure exceeds $100,000.
- the veteran is assessed as having 60 or more impairment points.
- a medical practitioner attests to the likelihood that the veteran will mismanage their finances.

Compulsory financial advice

RSL **agrees** with the submission of the Chairman of Legacy Australia, Mr Richard Cranna OAM who in evidence to the Royal Commission recommended that mandatory financial counselling be a precondition of any lump sum payment. [4] Currently DVA policy is that a veteran may receive advice from a legal practitioner or a licenced financial adviser. RSL **submits** that this policy should be amended to allow a veteran to also obtain advice from a certified practicing or chartered accountant.

9. Australian Federal Police (AFP)

The RSL is concerned for the entitlements for Australian Federal Police. It was noted that the MRCA does not make any provision for AFP who have been attached to Peacekeeping Forces (as does the VEA).
This concern relates to - If the VEA entitlements for AFP members are 'grandfathered', what will be the situation if their existing accepted conditions worsen. Is there any provision to continue to be assessed under the VEA – or are their entitlements being effectively 'frozen'?

It is submitted that the inclusion of special groups such as members of the AFP be considered and dealt with according to drafting preferences.

10. Permanent Impairment Differential

The RSL understands that the proposed model does not include changes to the Permanent Impairment differential.
The RSL has no submission to make on this approach.

11. Existing Entitlements under DRCA Section 7(2)

RSL requests that DVA note the current entitlements under DRCA 7(2). It is accepted that existing entitlements will be 'grandparented'. Further consideration must be given to enabling legislation to allow for future claims - or worsening of existing accepted conditions. will be appreciated.

12. Determination of Existing Claims

[4] Transcript , 6 December 2021, 6-571-2.

The RSL is pleased to note that DVA has optimistically forecast that the ‘backlog’ will be erased by the implementation date. That is an excellent goal to set! However, the nature of claims processing is that there will always be some undetermined claims at any given date (for example, the claims that were lodged on the previous day)
It is also noted that all claims lodged with DVA prior to the implementation date will be determined under the legislation that is relevant to that claim (even though the actual decision may be made well after the implementation date).

It is also noted that reviews relevant to that decision be made under the legislation which applied to that primary decision will be made under that legislation. The option will be available to submit a new claim under the new MRCA.

If a liability decision is made post implementation date (see above) under the VEA or DRCA, the potential flow-on benefits (PI, Incap, Rehab) all be decided under MRCA.
The RSL has no submission to make on this.

Attachment A

Information from DVA Stats at a Glance, September 2022.

DVA CLIENTS

TOTAL DVA CLIENTS			341,639
DVA CLIENT AGE PROFILES			
	MRCA	**DRCA**	**VEA**
Under 30	19.9%	0.0%	10.4%
30 - 34	19.1%	0.1%	4.8%
35 - 39	17.4%	2.5%	4.3%
40 - 44	12.4%	8.2%	3.7%
45 - 49	9.2%	12.8%	3.9%
50 - 54	8.7%	17.3%	5.7%
55 - 59	6.1%	14.8%	5.7%
60 - 64	4.3%	13.6%	6.5%
65 - 69	2.1%	10.3%	7.6%
70 - 74	0.7%	9.6%	14.3%
75 - 79	0.1%	6.1%	12.7%
80 - 84	0.0%	2.5%	5.5%
85 or over	0.0%	2.2%	14.7%

VEA PENSIONERS*	165,727
DISABILITY COMPENSATION PAYMENT RECIPIENTS	**77,344**
Special Rate	26,627
Intermediate Rate	682
EDA Rate	3,342
General Rate	46,693

The statistics above indicate that there are 46,693 veterans who are in receipt of the General Rate of Disability Pension. The veterans who are not in receipt of Above General Rate payments may wish to have their compensation entitlements reviewed at some stage following the introduction of the revised MRCA.

DRCA CLIENTS

VETERANS	59,763
Permanent Impairment Payees*	19,308
Incapacity Payees	2,730
Open Rehabilitation Cases	875

It will be difficult to estimate how many DRCA clients may wish to have their entitlements reconsidered with a view to Gold Card. Many of these veterans will have dual entitlement (VEA or MRCA) and may already have Gold Cards.

MRCA CLIENTS

VETERANS	**55,174**
Permanent Impairment Payees*	32,873
Incapacity Payees	7,526
Open Rehabilitation Cases	4,565

Table 22: Specific Disability Allowances by Item Number and State - December 2022

		NSW	VIC	QLD	SA	WA	TAS	NT	ACT	O'seas	Total
001	Two arms amputated	0	0	0	0	0	0	0	0	0	0
002	Two legs and one arm amputated	0	0	0	0	0	0	0	0	0	0
003	Two legs amputated above the knee	0	1	3	1	2	0	0	0	0	7
004	Two legs amputated and blinded in one eye	0	0	0	0	0	0	0	0	0	0
005	One arm and one leg amputated and blinded in one eye	0	0	0	0	0	0	0	0	0	0
006	One leg and one arm amputated	1	0	0	0	1	0	0	0	0	2
007	One leg amputated above, and one leg amputated below, the knee	0	0	0	0	0	0	0	0	0	0
008	Two legs amputated below the knee	0	0	1	0	0	0	0	0	0	1
009	One arm amputated and blinded in one eye	0	0	0	0	0	0	0	0	0	0
010	One leg amputated and blinded in one eye	0	0	0	0	0	0	0	0	0	0
011	One leg amputated above the knee	4	2	1	1	0	0	0	0	0	8
012	One leg amputated below the knee	3	3	4	1	1	0	0	1	1	14
013	One arm amputated above the elbow	0	0	0	1	0	0	0	0	0	1
014	One arm amputated below the elbow	1	0	1	0	0	0	0	0	0	2
015	Blinded in one eye	35	16	34	8	5	1	0	0	2	101
	Total	44	22	44	12	9	1	0	1	3	136

Table 12: Disability Compensation Payment Recipients by Age Group and Conflict - December 2022

	Second World War	Korea, Malaya & FESR	Vietnam	Gulf War	East Timor	Afghan-istan	War in Iraq (2003)	Other Operations	Peace-keeping Forces	Non-operational Service	All Wars
Under 25	0	0	0	0	0	0	0	0	0	0	0
25 to 29	0	0	0	0	0	0	0	0	0	0	0
30 to 34	0	0	0	0	0	0	0	0	0	0	0
35 to 39	0	0	0	0	33	7	6	9	0	1	52
40 to 44	0	0	0	0	527	70	49	54	13	20	663
45 to 49	0	0	0	39	927	144	51	184	48	218	1 401
50 to 54	0	0	0	222	1 089	198	83	532	296	3 230	5 172
55 to 59	0	0	0	216	875	159	82	376	348	5 593	7 266
60 to 64	0	0	0	205	623	101	61	305	330	7 579	8 937
65 to 69	0	0	347	116	297	42	36	187	267	7 641	8 781
70 to 74	0	110	10 014	41	127	15	7	96	195	5 818	16 203
75 to 79	0	1 707	15 314	9	35	2	1	11	127	2 218	18 266
80 to 84	0	1 936	2 904	1	4	0	0	5	56	837	4 776
85 to 89	0	1 327	955	0	0	0	0	0	13	315	2 253
90 or over	2 222	867	292	0	0	0	0	0	8	120	3 255
Total	2 222	5 947	29 826	849	4 537	738	376	1 759	1 701	33 590	77 025
Average Age	97.6	83.0	76.1	58.7	53.8	53.6	54.3	56.7	62.7	64.8	70.0

Table 10: Disability Compensation Payment Recipients by Rate and Conflict - December 2022

		Second World War	Korea, Malaya & FESR	Vietnam	Gulf War	East Timor	Afghanistan	War in Iraq (2003)	Other Operations	Peace-keeping Forces	Non-operational Service	All Wars
General Rate	010	127	207	668	42	273	53	24	68	57	3 603	5 008
	015	3	1	2	0	0	0	0	0	0	2	8
	020	143	273	701	37	257	45	23	65	59	3 291	4 753
	025	5	2	2	0	0	0	0	0	0	2	11
	030	173	335	795	56	321	52	24	78	79	3 963	5 696
	035	1	0	0	0	0	0	0	0	0	0	1
	040	224	484	1 090	85	400	74	26	112	122	4 044	6 346
	045	0	0	0	0	0	0	0	0	0	0	0
	050	143	289	734	52	227	48	31	94	82	2 314	3 814
	055	0	0	0	0	0	0	0	0	0	0	0
	060	153	290	919	56	255	36	31	105	90	2 171	3 888
	065	0	0	0	0	0	0	0	0	0	0	0
	070	123	206	612	26	161	30	14	55	71	1 258	2 415
	075	0	0	0	0	0	0	0	0	0	2	2
	080	105	263	808	39	207	49	21	83	75	1 241	2 686
	085	0	0	0	0	0	0	0	0	0	0	0
	090	95	280	890	41	210	31	20	69	68	1 075	2 575
	095	0	0	0	0	0	0	0	0	0	0	0
	100	393	894	2 677	175	784	142	66	329	342	4 369	9 363
	EDA	438	1 003	1 561	5	24	1	1	15	52	648	3 291
	Total	2 126	4 527	11 459	614	3 119	561	281	1 073	1 097	27 983	49 857
Inter-mediate	Inter-mediate	5	33	251	6	35	7	2	17	19	341	679
	Total	5	33	251	6	35	7	2	17	19	341	679
Special Rate	Blind	20	11	16	0	0	0	0	0	1	6	50
	TPI	71	1 376	18 100	229	1 372	170	92	666	583	5 250	26 414
	TTI	0	0	0	0	11	0	1	3	1	10	25
	Total	91	1 387	18 116	229	1 383	170	93	669	585	5 266	26 489
Grand Total		2 222	5 947	29 826	849	4 537	738	376	1 759	1 701	33 590	77 025

DVA Annual Report 2021/2022

POW recognition supplement[1]	217	165	131	107	86	64
Orphan's pension	157	155	148	136	143	155
Attendant allowance	304	273	229	210	193	169
Rent assistance	13,580	12,683	12,256	11,480	10,894	14,949
Remote area allowance	648	648	578	522	466	420
Decoration allowance	289	261	233	219	199	176
Recreation transport allowance	802	716	622	551	492	442
Vehicle Assistance Scheme	52	43	44	49	40	39
Funeral benefit	4,175	3,704	3,302	3,296	2,127	2,380
Veterans' Children Education Scheme	2,243	2,229	2,106	2,073	1,960	1,805
Clothing allowance	348	322	286	265	253	228

RSL AUSTRALIA

ANNEXURE A - MEDICAL TRANSITION

Introduction

The RSL is acutely aware that leaving the military and returning to civilian life brings big changes to the lives of serving members and to their families. The depth of the challenges facing members who are medically transitioning has been highlighted in the lived experience evidence provided to the Royal Commission into Defence and Veteran Suicide (The Royal Commission). The ongoing fractures in what should be a seamless process in the management of these cases has become evident through the evidence provided to the Royal Commission by senior members of both Department of Defence (Defence) and Department of Veterans Affairs (DVA).

The RSL notes the excellent work being done by both (DVA) and the Defence Joint Transition Authority (JTA) to improve the transition process. The RSL is also aware of DVA's intent to create a Transition Branch. A message by the DVA Secretary dated 3 May 2023 to DVA staff states, in part:

> *'In order to increase DVA's focus and ability to work with other agencies, in particular with the Joint Transition Authority within Defence, a* ***Transition Branch*** *led by Alison Hale will be stood up from 22 May 2023.'*

This submission also notes the existing ADFRP Warm Handover process and makes further suggestions for improvements to this process.

The RSL is of the view that the above initiatives are excellent steps towards improvements in medical transitions and we are seeking to have some input into further development of the procedures.

The issues being raised in this submission are:

- The importance of clear guidelines and a seamless interaction between the Dept of Defence, the Commonwealth Superannuation Corporation and DVA
- The transition between ADF Rehabilitation and the DVA Rehabilitation program
- The ability to track and report on outcomes so that 'best practice' methodology can be established.

The RSL notes the submission relates solely to medical transitions for full-time serving members but does not apply to Reservists.

Submission

Guidance to Transitioning Members

The work being done by the Joint Transition Authority to improve both the transition process and the access to information around that process is commendable.

The Defence website – Defence Force Transition Program – provides very detailed information around transitioning from Defence into a civilian environment. The Fact Sheets provide comprehensive information across a wide range of topics which could be of interest to voluntary transitioning members. However, information about medical transition at page 280 of the ADF MEMBER AND FAMILY TRANSITION GUIDE is limited.

Medical transition

> *If you have had a Military Employment Classification Review Board (MECRB) decision to separate from the ADF under medical grounds, our CSC team will be able to support you with the CSC component of the medical transition process.*
>
> *You will be assigned a dedicated case manager once CSC receives notification of your transition date from Defence. This usually occurs 3-4 months prior to transition. Your case manager is there to support you through the process.'*

Information regarding the Commonwealth Superannuation Corporation (CSC) states, in part:

Commonwealth Superannuation Corporation

> ***Resignation and retirement***
> *For members planning to transition from the ADF, your first action should be to contact the CSC Engagement team for your scheme. The CSC Engagement team will be able to provide you with an estimate of your resignation or retirement benefit to assist you in making decisions impacting your future. The team will be able to provide you with information during your initial call or at a time that suits you in the future.*
> *Information on your benefit and scheme rules can be found via factsheets, education content and forms available from the CSC website:*
>
> *Web: www.csc.gov.au/Members/Advice-and-resources'*

DVA's advice re transition can be found at Transition to civilian life | Department of Veterans' Affairs (dva.gov.au). This includes advice to lodge a claim if service may have caused a health problem, as follows:

'Submit a claim'

> *If your service was the cause of any health condition, you should submit a claim as soon as possible.*

Finding out if we cover your conditions will make it easier and faster for you to get the help you need.

You can submit a claim:

- *online with MyService*
- *at one of our offices*
- *through our website*

You do not have to wait for us to approve your claim before you can get help.

If your claim was for a mental health condition, you might qualify to receive the Veteran Payment.

If your claim was for at least 1 of these conditions, we will pay for a professional to treat you.'

Online information regarding medical transition and military superannuation is very limited.

The RSL acknowledges the difficulty in providing specific information because each case is individual, however, the RSL **strongly recommends** that the processes involved in going through a medical transition should be more clearly outlined so that any veteran going through such a transition are able to do their own online research and are able to understand the importance of their 'timely engagement' with the three separate Government Departments.

Early Engagement Model (EEM)

It is noted that:

> ‘*Defence and DVA are working together to improve service delivery and claims processing through an Early Engagement Model that will allow DVA to establish a relationship with members from the time they join the ADF. The departments are also working to establish a flow of basic information to DVA to support this model.*
>
> *Early engagement will allow DVA to make contact at appropriate times during an ADF member's career. This will promote early intervention and ensure that they are fully aware of the care, support and services available to them.*
>
> *It will also greatly assist ADF members if they need to lodge a claim with DVA in the future.*
>
> *While DVA already receives details of members who are involved in a serious incident or are medically separating from the ADF, the first phase of the Early Engagement Model will use technology to expand and streamline the flow of information. A second phase will allow DVA to be more client-focused and adept in engaging ADF members through the use of new technology*.’

In keeping with the intent of the Early Engagement, the Warm Handover has been developed to facilitate the transfer of responsibility for the delivery of Rehabilitation from Defence to DVA where a medical transition is involved.

Warm Handover guidelines

The RSL notes the below Warm Handover guidelines:

‘Referral to DVA to facilitate Transfer of Rehabilitation Authority under section 39 (3) b ADFRP Warm Handover process

> *The warm handover process is for all medically separating members who have a determined claim under the DRCA or MRCA.*
>
> *The process applies to members managed under the* Australian Defence Force Rehabilitation Program *(ADFRP) and R4R* (Rehabilitation for Reservists*)*
>
> *Objectives of the warm handover process*
> *1) Sharing of information, and context, between ADF RC and DVA RC*
> *2) Providing the member with a firm point of contact and focus, for the DVA RC, for post-handover/separation.*
> *3) Identifying urgent and immediate needs post discharge (if any) and sharing information on rehabilitation activities undertaken as part ADF Rehab that will continue/transfer post separation.*

Process

> *Approximately 4 weeks prior to separation date, the ADF RC meets with member and discusses referral to DVA to engage a provider and gets members agreement (member signs Warm Handover member information sheet to acknowledge they understand and want to participate in the process).*

RC completes the warm handover referral and forwards to the RCM with signed member information sheet which includes consent to share information with the DVA appointed rehabilitation provider.

Once received by the RCM they will add their details and forward to DVA via email.

This should occur at least 4 weeks prior to separation date although may vary depending on the specific circumstances of the case. If it is a shorter timeframe, the RCM must provide a brief explanation of the nature/circumstances of the case.

Once the RCM receives confirmation from DVA that they have engaged a provider and have provided the DVA RC contact details, the RCM will forward these to the ADF RC.

RCM provides a copy of the transfer handover report if completed or other relevant reports to the DVA engaged rehabilitation provider (Rehab Assessment and last case review report) and cc DVA.

ADF RC contacts the DVA engaged RC and arranges a time to complete a warm handover conversation.
Topics that will be discussed include:
a. Safety/welfare issues
b. Adding context and detail to information that is shared in transfer report (see below for type of information that would be shared/discussed)
c. Other factors/barriers
d. Discuss requirement for meeting to be had with client.

If the DVA RC is to meet with the member, the ADF RC is responsible for arranging this meeting. The meeting with member can either be in person or over the phone depending on if member is separating in the same or different location.

***Objectives of RC-RC-Member meeting**:*
1) Introduction of DVA consultant, explain to the member when they will transition over, assure them that information has been shared about what has been gleaned and undertaken to date.
2) To identify urgent and immediate needs post discharge
3) To discuss any rehab activities that will be continuing post discharge e.g. T4E

***Note**: ADF RC will initiate and take the lead in this meeting as the 'introducing' consultant.*

ADF RC completes summary email (see template) and provides to the RCM to confirm that the warm handover conversation has occurred and if a RC-RC-member meeting was recommended/has, occurred.

As per the extant process, ADF RC continues to manage the case until date of separation or until the time that the RCM determines that the member should be formally handed over to DVA. The handover will usually be the date of separation from the ADF but this will be determined on a case by case basis.

The ADF RC must complete the DVA handover report at least 10 days prior to the handover date and provide to the RCM.

The RCM will advise the DVA RC and DVA Rehabilitation team of the date of handover via a joint email, which will include a copy of the DVA Transfer Handover Report.

DVA RC case management may occur during overlap period where the client reaches out to the DVA RC. The DVA RC will advise the ADF RC if this occurs.'

The RSL commends this initiative and notes that it has improved the process. The RSL submits that the current handover process, which states:

'***Approximately 4 weeks prior to separation date, the ADF RC meets with member and discusses referral to DVA to engage a provider and gets members agreement***'

does not give sufficient certainty for the commencement of the handover, nor does it give sufficient time for DVA to process any claims which are lodged. The RSL **recommends** further improvements to this procedure, as outlined below.

The RSL Position

Lodging Liability Claims with DVA

There should be clear trigger points for when all relevant processes with DVA should commence for medically transitioning Members. These trigger points should link directly to Medical Employment Classification (MEC) Codes.

MEC 3. Rehabilitation

A veteran who has been assessed under the medical Employment Classification of any of the MEC 3 codes (J31 to J34) should come to the attention of the ADFRP and promptly be referred to a DVA VSO so they can be supported through the lodging of their claim/s. A support team in the proposed DVA Transition Branch would be able to monitor the progress of DVA claim/s and also the health status of all veterans who have reached this classification. The DVA support team could have contact points within ADFRP to establish progress through their program.

MEC 3 is the stage where a veteran has known medical conditions and has been referred to ADFRP for support through an individual rehabilitation program. MEC4 (Codes J40 to J44) is the Classification where a veteran has major limitations on the range of duties he/she is able to perform, with the veteran awaiting MECRB Classification:

> *'MEC 4 is designated as an employment transition category that provides several options for the medium-term employment of Defence members who are no longer fully employable in their current employment group. Individual placement will be determined primarily by workforce planning and management considerations. A placement in a MEC 4 may result in:*
>
> - *Transition to a deployable MEC;*
> - *transition to an alternate employment group;*
> - *or a period of limited employment, based on Service requirements, prior to transition from the ADF.'*

MEC 4. Employment Transition

MEC4 (Codes J40 to J44) is the Classification where a veteran has major limitations on the range of duties he/she is able to perform. The veteran may be waiting MECRB Classification.

> *'MEC 4 is designated as an employment transition category that provides several options for the medium-term employment of Defence members who are no longer fully employable in their current employment group. Individual placement will be determined primarily by workforce planning and management considerations. A placement in a MEC 4 may result in:*
>
> - *Transition to a deployable MEC;*
> - *transition to an alternate employment group;*
> - *or a period of limited employment, based on Service requirements, prior to transition from the ADF.'*

The RSL **recommends** that any members who are classified as MEC3 should have their claims process commenced. A MEC4 classification, Code J40 should be identified at that time to commence the Warm Handover process.

The Warm Handover Proposal

The Warm Handover Guidelines refer to the provisions of Section 39(3)(b) of the MRCA. Section 39 as copied below.

MILITARY REHABILITATION AND COMPENSATION ACT 2004 - SECT 39

Definition of rehabilitation authority

(1) The Chief of the Defence Force is a rehabilitation authority for the purposes of this Chapter.

(2) The Commission is a rehabilitation authority for the purposes of this Chapter.

(3) The rehabilitation authority for a person at a time is:

(a) subject to paragraph (aa), the Chief of the Defence Force for a time when the person:

(i) is a Permanent Forces member, a continuous full-time Reservist or a part-time Reservist; and

(ii) has not been identified by or on behalf of the Chief of the Defence Force as being likely to be discharged from the Defence Force for medical reasons; or

(aa) if the Commission, after considering advice from the Chief of the Defence Force determines, in writing, that the Commission is to be the rehabilitation authority for a specified person at a specified time--the Commission for that time; or

(b) the Commission for any other time.

(4) A determination made under paragraph (3)(aa) is not a legislative instrument.

Suggested Change

Section 39 can be summarised as stating that the Chief of the Defence Force is the Rehabilitation Authority for any Permanent Forces member, continuous full time Reservist or part-time Reservist provided they have not identified for discharge for medical reasons. S39(3)(b) enables the Military Rehabilitation and Compensation Commission (the Commission) to become the rehabilitation authority upon receipt of advice from the Chief of the Defence Force.

The interpretation placed on this section by the Warm Handover process is that DVA should be advised of a medical transition at least four weeks prior to the expected date of discharge, but the ADF RC continues to manage the case until date of separation or until the time that the RCM determines that the member should be formally handed over to DVA. The handover will usually be on the date of separation from the ADF, but this will be determined on a case by case basis.

DVA should seek the maximum possible period to ensure a seamless process in relation to the submission and processing of claims and other entitlements prior to discharge. There should be a clear ‘trigger point’ for this to commence (MEC3)

Consideration for the transfer of the Rehabilitation Authority as per s39 of the MRCA should commence at the time of MEC4 classification. This would require case by case consideration as to whether the member would likely progress to MEC5 Classification.

Any formal arrangement for the handover would be in relation to the provision of rehabilitation services only. The ADF would retain responsibility for all other aspects of military authority.

The RSL **recommends** that consideration for the handover from the ADF RC to DVA Rehabilitation services should occur from the date that the member is formally identified as J4. This allows the process, as identified in the Warm Handover Guidelines, to commence from a clearly defined date. It should also

provide time for DVA Rehabilitation Coordinators to ensure that the member has any DVA claims determined, and they are able to clearly outline a plan for DVA services. The process outlined would enable DVA to facilitate early access to the very extensive rehabilitation services that their Legislation enables them to provide.

Other legislation relevant to a handover is copied below:

MILITARY REHABILITATION AND COMPENSATION ACT 2004 - SECT 64

Transition management

(1) This section applies to a person if:

(a) the person is a Permanent Forces member, a continuous full-time Reservist or a part-time Reservist; and

(b) the person has been identified by or on behalf of the Chief of the Defence Force as being likely to be discharged from the Defence Force for medical reasons.

(2) The Chief of the Defence Force must appoint a case manager for the person.

(3) The role of the case manager is to assist the person in the transition to civilian life, including by advising the person about entitlements and services for which the person may be eligible as a member or former member, and about how to obtain access to such entitlements and services.

MILITARY REHABILITATION AND COMPENSATION ACT 2004 - SECT 438

Delegation by Chief of the Defence Force

*The **Chief of the Defence Force** may, in writing, delegate any of his or her functions or powers under a provision of this Act to:*

(a) a person:

(i) who is engaged under the Public Service Act 1999 and performing duties in the Department administered by the Defence Minister or the Veterans' Affairs Minister; and

(ii) whose duties relate to matters to which the provision relates; or

(b) a member of the Defence Force whose duties relate to matters to which the provision relates.

The existing Transition process

The RSL's understanding is that current provision of transition services in DVA is divided across the Divisions of - Mental Health and Wellbeing Services, Client Engagement and Support Services and Client Benefits. Our observation is that the officers from the different sections work cooperatively on cases but there is no local common management and no synchronised services, no clear communication channels, and poorly coordinated IT systems.

The process requires the client to defend their injuries and to confirm their impairment. This changed status, from member to benefit seeker, is corrosive to their confidence about the future. The lack of clear

process is foreign and confusing to transitioning members – most particularly those who are doing so on mental health grounds. From an RSL perspective we believe this process is confusing and destructive. Providing advice to members who seek RSL support is fraught with concern because of the lack of clear insight into how the process really works.

In summary, the existing transition process through superannuation, compensation and rehabilitation is not clearly enunciated – or co-ordinated. This situation can be detrimental to the mental health of the client and delays in linking transitioning members to appropriate rehabilitation services can have a negative effect over the lifetime of the member.

For the reasons provided above, the RSL is very supportive of DVA's proposal to create a Transition Branch. We believe that a more coordinated approach can be developed and that DVA/Defence should ensure members have access to information material which clearly outlines the process.

The Australian National Audit Office (ANAO) report on DVA Rehabilitation Services

It is noted that the ANAO published a performance audit report on 5 May 2016 - Administration of Rehabilitation Services under the Military Rehabilitation and Compensation Act 2004 **-** Administration of Rehabilitation Services under the Military Rehabilitation and Compensation Act 2004

Whilst this report was published some time ago, it is submitted that some findings remain relevant at this date and the recommendations are of importance. In Section 3, Transition services for injured and ill ADF personnel, the ANAO comments:

Oversight and management of improvements in the coordination and delivery of transition services

> *3.14 The governance structures responsible for managing the Memorandum of Understanding between Defence and Veterans' Affairs are designed to provide oversight and coordination for all relevant aspects of support for ill and injured ADF personnel including during transition. In particular as noted in Chapter 1, the Executive Committee is responsible, amongst other things, for 'ensuring that the delivery of the care and support to eligible persons remains effective and coordinated, is delivered in the most appropriate and respectful manner'. In addition, the Links Steering Committee, responsible to the Executive Committee, receives a range of performance reports on all aspects of rehabilitation from injury prevention to care and support following transition. Initiatives such as the 'single access mechanism' have been implemented to assist in streamlining the flow of information from Defence to Veterans' Affairs, and agreement has been reached to adopt a common identifier to allow the service delivery and outcomes of individuals to be tracked through both departments.*
>
> *3.15 Despite the wide range of services being offered to transitioning members and the governance framework in place to ensure delivery of effective care and support. There are also no measures to provide information on how effective or efficient these initiatives have been and whether they could be streamlined or better coordinated for the future to avoid gaps or overlap in the services. There is no statistically valid information from injured or ill ADF personnel themselves on the effectiveness and value of transition services.*[39]

Recommendation No.3[5]

> *3.17 To improve the effectiveness and efficiency of transition services to support injured and ill ADF personnel to find suitable civilian work, the ANAO recommends that the Departments of Defence and Veterans' Affairs collect and analyse data to identify which transition support*

[5] ANAO Report 5 May 2016

services and coordination approaches are associated with the best and most durable rehabilitation outcomes leading to civilian employment.

Entity responses: Agreed.

The RSL believes the observations and recommendation in this ANAO report is still valid and there still appears to be no reliable system which can collect and analyse data across the scope of the transition process, and hence report on the effectiveness of the process. The RSL **recommends** this should be regarded as a priority in the newly created Transition Branch.

Medical Transition – Military Superannuation benefits (CSC)

The RSL notes that the CSC provides superannuation Invalidity Benefit payments if a veteran is medically transitioned and is deemed to be unable to undertake civilian employment after serving in the ADF.

CSC is responsible for determining if an Invalidity Benefit is payable following transition from the ADF. This is decided through a classification process where medical impairment is classified as Class A, B or C. Members classified as a Class A or B will receive an Invalidity Benefit payment.

The RSL notes that an Invalidity Benefit payment is seldom reviewed, once it has been determined, and vocational rehabilitation is not offered through the CSC. A transitioning veteran may have rehabilitation entitlements through DVA, but entitlements to Incapacity Payments and hence to a Rehabilitation Program may cease if these benefits are totally offset by the payment of Class A Invalidity Superannuation.

The RSL **recommends** that access to rehabilitation in all of its forms should be a priority for medically transitioning veterans.

The RSL **recommends** further consideration should be given to Recommendation 13.4 by the Productivity Commission – A Better Way to Support Veterans, Overview, Page 65 (See below).

Recommendation 13.4 Rehabilitation for invalidity payment recipients

The Australian Government should amend the provisions for invalidity pensions under the Military Superannuation and Benefits Act 1991 to include a requirement for veterans to, if deemed appropriate after an assessment of the veteran, attend rehabilitation to obtain invalidity pensions. This would align with the approach taken to incapacity payments under the Military Rehabilitation and Compensation Act 2004 (MRCA). Invalidity pensions should be made available during the rehabilitation process.

This would not affect those who are already receiving invalidity pensions.

Optional rehabilitation should also be offered to those claiming for invalidity pensions under the Defence Force Retirement and Death Benefits Act 1973.

The rehabilitation services should be administered by the Department of Veterans' Affairs (and then the Veteran Services Commission) as part of the rehabilitation that is offered to those under the Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 and the MRCA.

RSL Recommendations for the Transition Branch

1. Prompt transfer of the Rehabilitation Authority to DVA following notification that a veteran has been classified as J3. This enables DVA to:

    a. Become aware of the veteran and facilitate member contact with the DVA Veteran Support Officer (VSO)
    b. Ensure relevant liability claims are lodged with DVA and the appropriate priority is given to the processing of the claims.
    c. Link the veteran to a DVA Rehabilitation Coordinator and hence to a DVA Rehabilitation Provider. The RSL holds the view that the suggested early commencement of the claims process will enable the best opportunity for all claims to be determined. If claims are not finalised, the transition should be held in abeyance until they are.
    d. The handover from ATDP to a DVA Case Manager could commence immediately the transfer of Authority is effective. A DVA Rehabilitation Provider would then be in a position to inform the veteran of all of the support available and guide him/her through the process.
    e. A veteran going through this process could be fully engaged by the time the transition process is finalised. This allows them to fully understand the process and set clear goals.
    f. NOTE the possibility of CSC also being involved in this process. Class A and Class B payees having access to ongoing rehabilitation would be an excellent initiative.

2. A DVA Case Manager should be assigned:

    a. This officer should be widely skilled and have the training to act as Needs Assessment Delegate, Case Coordinator, Rehabilitation Coordinator and a liaison point with CSC.
    b. Once contact has been established through a VSO, this DVA Case Manager would be a single point of contact through the whole transition phase.
    c. Depending upon the needs of the client, the scale of service will be adjusted accordingly, but every medically separating member should receive the same 'front-end loading' with the provision of holistic information and services.
    d. This DVA Case manager could work closely with the ADFRP Case Manager for the common purpose of a smooth transition.

3. Complex cases will need to be handled accordingly, but approach should be streamlined via direct expert case management through the total process.

    a. There should be maximum usage made of external Rehabilitation providers who will have been engaged with the client, in parallel with the ADFRP from the date the separation.
    b. These rehabilitation providers will be tasked with establishing very comprehensive rehabilitation plans that offer the full range of available services.

4. Both DVA and Defence should work to develop systems which are able to record the progress and effectiveness of every interaction with medically transitioning veterans.

5. Implement the below recommendation from the ANAO report[6]:

   Recommendation No 3 (Paragraph 3.17)

   To improve the effectiveness and efficiency of transition services to support injured and ill ADF personnel to find suitable civilian work, the ANAO recommends that the Departments of Defence and Veterans' Affairs collect and analyse data to identify which transition support services and coordination approaches are associated with the best and most durable rehabilitation outcomes leading to civilian employment.

6. The RSL recommends the online service Go Beyond, established by Gallipoli Medical Research Foundation (GMRF). After six years of research, GMRF found that leaving the Australian Defence Force can have psychological and cultural implications that may hinder a healthy transition to civilian life. This research informed the development of the online program, Go Beyond, which aims to support a veteran's adjustment to civilian life. It's available for all ex-Australian Defence Force (ADF) personnel, to use anywhere, anytime. gobeyond.org.au.

[6] ANAO Report Number 32 of 2015-2016, Administration of Rehabilitation Services under the Military Rehabilitation and Compensation Act 2004