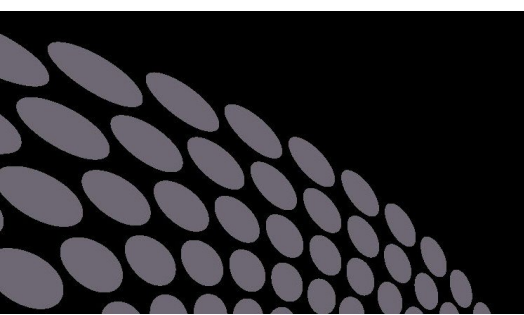


Department of Veterans' Affairs

***Veterans' Legislation Reform  
Consultation Pathway***

Occupational Therapy Australia submission

May 2023



## Introduction

Occupational Therapy Australia (OTA) welcomes the opportunity to respond to the consultation process on the proposed pathway to reform the current suite of veterans' legislation, which includes the following Federal Acts:

- the Veterans' Entitlements Act 1986 (VEA Act);
- the Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 (SRC Act); and
- the Military Rehabilitation and Compensation Act 2004 (MRCA Act).

OTA is the professional association and peak representative body for occupational therapists in Australia. As of March 2023, there were more than 26,900 registered occupational therapists working across the government, non-government, private and community sectors in Australia. Occupational therapists are a member of the allied health profession and are required to maintain a current registration with the Australian Health Practitioner Regulation Agency.

### What is occupational therapy?

Occupational therapists provide services such as physical and mental health therapy, vocational rehabilitation, chronic disease management, assessments for functional impairment, assistive technology and home modifications, and key disability supports and services.

Occupational therapists play a critical role in providing services across the Australian health system, supporting people affected by physical, intellectual, acute and chronic conditions, and mental health issues. Occupational therapists work in a diverse range of practice settings including hospitals, rehabilitation settings, private practice, aged care facilities, community services, primary health settings, in the home, and under government schemes including the Department of Veteran Affairs (DVA) scheme and National Disability Insurance Scheme (NDIS).

Occupational therapists provide important interventions, supports and services to current and former military personal. Services include assessment of functional impairment, physical therapeutic supports to identify barriers and set goals towards independence and fulfilment, and prescription of assistive aides, equipment, and modifications of vehicles and the home. Occupational therapists with specialisation in mental health also support veterans by providing evidence-based mental health interventions across the spectrum of mental illness, including early intervention, prevention, and treatment services for people with mild, moderate and severe mental health conditions.

The 2019 Productivity Commission Inquiry Report *A Better Way to Support Veterans*, found "a future veteran support system needs to have a focus on the lifetime wellbeing of veterans."<sup>1</sup> Occupational therapists play an important role in promoting and positively influencing client wellbeing by taking a holistic approach to identify and prescribe physical and behavioural solutions for clients to participate in occupations and daily activities that create satisfaction and enhance their quality of life. Occupational therapists also play a role in ensuring that clients maintain or improve their current levels of function and reduce the incidence of functional decline or development of secondary complications from disease or injury. For this reason, OTA is of the view that occupational therapists must continue to play a key role in the treatment and support of Australia's veterans now and into the future.

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<sup>1</sup> Productivity Commission 2019, *A Better Way to Support Veterans*, Overview and Recommendations, Report no. 93, Canberra. Page 2

The 2022 Skills Priority List prepared by the National Skills Commission shows there is a shortage of occupational therapists in every state and territory across Australia<sup>2</sup>. This workforce shortage is likely to become more pronounced as the NDIS continues to support more Australians with disability, and more occupational therapists are recruited to roles under this scheme. In addition, demand for OTs will increase across the health sector, including in the aged care and mental health system, due to Australia's ageing population and the increasing burden of mental illness and chronic disease.

Future workforce shortages are also expected as occupational therapists continue to exit service provision in certain Federal Government schemes, including the DVA scheme, due to fee structures that do not adequately remunerate therapists, burnout experienced by therapists due to significant demand for services, and challenges working within systems that are overly bureaucratic.

OTA has identified a number of shortcomings in the current DVA compensation scheme, particularly in relation to eligibility and access of treatments (including mental health treatment) and equipment, which are negatively impacting veterans and defence personnel. OTA's advocacy to improve the treatments, interventions and supports for veterans has included a submission to the Royal Commission into Defence and Veteran Suicide<sup>3</sup>, and the 2018 Productivity Commission Inquiry into Veterans<sup>4</sup>.

OTA welcomes commitments by the Federal Government to address issues identified in the Royal Commission's Interim Report and would welcome the opportunity to provide support, input, and collaboration to ensure that scheme improvements can be adopted quickly, efficiently, and for the benefit of Australian veterans and the families, carers and service providers who support them.

OTA welcomes the opportunity to review and respond to the Reform Consultation Paper and has provided some comments and recommendations which are summarised below, to ensure that any future legislation enables veterans to access required therapies and supports and maximise personal wellbeing.

## OTA response to Consultation Paper

### Engagement with reform process

OTA would like to be consulted throughout the legislative review process as policy proposals are defined and specific legislation is drafted (including subordinate instruments), to ensure that there are no unintended consequences for veterans receiving occupational therapy supports into the future.

**Recommendation 1:** OTA is consulted as the reform progresses and can view and respond to an exposure draft at an appropriate stage.

### Simpler system

OTA understands from the consultation paper that the review principle includes the commitment that *"The changes result in a simpler, sustainable legislative framework"*. OTA supports the simplification of the current veterans' compensation scheme. OTA has heard from our members that the complexity of the system, and bureaucratic hurdles that veterans must navigate to access compensation entitlements can create stress, frustration, and anxiety. The review must ensure that any new legislative arrangements enable current and former defence personnel and military staff (and their families) to receive quality, accessible and timely compensation payments and medical and allied health therapeutic supports that

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<sup>2</sup> Commonwealth of Australia, National Skills Commission 2022 Skills Priority List, Skill <https://www.nationalskillscommission.gov.au/topics/skills-priority-list>

<sup>3</sup> OTA Submission to the Royal Commission into Defence and Veteran Suicide, October 2022: <https://otaus.com.au/publicassets/66a56aca-17c2-ed11-947a-05056be13b5/OTA%20Submission%20to%20Royal%20Commission%20into%20Defence%20and%20Veteran%20Suicide.pdf>

<sup>4</sup> OTA Submission to Productivity Commission Inquiry into compensation and rehabilitation for veterans, July 2028 [https://www.pc.gov.au/\\_data/assets/pdf\\_file/0008/229391/sub071-veterans.pdf](https://www.pc.gov.au/_data/assets/pdf_file/0008/229391/sub071-veterans.pdf)

support wellness and enable them to live a fulfilled life that includes connection with family and community, and engagement in occupations and activities that create meaning and personal fulfilment.

### **Maintenance of medical and allied health therapeutic supports**

OTA understands from the consultation paper that the review principle includes the commitment that “*There will be no reduction in payments currently or previously received by veterans*”. OTA supports this and urges the review team to also expand this commitment to ensure it reflects the broader quantum of compensation entitlements extended to veterans and defence personnel, which includes medical and allied health therapeutic supports, aides and equipment and home modifications. The review must not result in any diminution in access to and payment of these services and supports.

**Recommendation 2:** The reform process adopts a further policy principle that “*There will be no reduction in the amount or scope of medical and therapeutic treatments, aides, equipment and supports currently or previously received by veterans.*”

### **Definitions**

OTA has reviewed the existing legislation instruments including the VEA Act, SRC Act and MRCA Act. Within each of these Acts, OTA has identified varying definitions for the term ‘treatment’ which cover the kinds of medical and allied health treatment that may be accessed under each compensation scheme. OTA is of the view that any new legislation must contain appropriate definitions and wording that will not preclude access to the full scope of occupational therapy supports and services which includes therapeutic services (including mental health services), assessment of function, treatment, and prescription of aides, equipment and vehicle and home modifications.

**Recommendation 3:** Any new legislation includes in its definition section, that occupational therapy services are a form of ‘treatment’ and ‘therapeutic support’ provided by the allied health profession. That any definition or prescriptive wording regarding ‘treatments’ and ‘therapeutic services’ includes the full scope of occupational therapy services (including mental health occupational therapy services).

**Recommendation 4:** References to occupational therapy under definitions of ‘rehabilitation program’ are retained.

### **Maintenance of legislative instruments**

The various pieces of veterans’ legislation contain references to a number of notes, schedules and other legislative instruments, including the ‘Treatment Principles’ and ‘Repatriation Private Patient Principles’, as set out under section 90 of the VEA Act, which set out the arrangements for the Repatriation Commission and DVA to issue instructions to treating health professionals for the treatment of veterans. These Principles provide important information for treating clinicians about the provision of services, and their scope, approval and billing. Any harmonisation of legislation must ensure that legislative instruments are maintained so that the effective and timely access to treatment supports and services is preserved under any new system.

**Recommendation 5:** The Review team ensures that the harmonisation process does not impact or devolve or frustrate the effect of schedules, guidance documents and legislative instruments, including the Treatment Principles and Repatriation Private Patient Principles, so as to enable injured veterans the ability to continue to access free and enhanced medical, allied health and therapeutic entitlements, and assist allied health practitioners to provide required services to their full scope, without delays or administrative barriers.

### **New Ministerial Advisory Council**

The consultation paper proposes that the DVA establishes a Ministerial Advisory Council providing advice direct to the Minister for Veterans' Affairs. OTA supports this as a means to better represent the interests of veterans to decision makers. In addition to members of the veteran community and lived experience advocates and experts, OTA recommends that at least two roles on this council represent the medical and allied health profession. These roles can provide information on the administration of the scheme from a service provider perspective, to ensure that issues with administration and access to medical and allied health treatments are identified and resolved in a timely way.

**Recommendation 6:** That the Ministerial Council includes two representatives from peak bodies representing the health and allied health profession (one each) to ensure that issues about timely and accessible treatments and supports can be brought to the attention of the Minister without delay.

### **Issues accessing non-Liability health care entitlements**

The consultation paper states that existing eligibility for Non-Liability Health Care for conditions such as mental health conditions, cancers and tuberculosis will not be impacted. OTA supports this, but notes that currently the fee rates that are provided under the DVA scheme are set at levels well below market rate and are creating barriers to access quality and sustainable health services for veterans and defence personnel who are seeking treatment for both liability and non-liability treatments. Current DVA fee rates act as a disincentive for providers to service DVA clients as it means they operate at a loss, and the administrative barriers presented by DVA to get acceptance for treatment cycles and equipment and aides (for liability entitlements) can be frustrating and time consuming, taking up provider's unpaid time to resolve. Providers also cannot receive adequate compensation for travel time, or indirect consultations with other treating clinicians.

OTA also notes that the types of mental health treatment that can be approved by DVA is also limited, with certain kinds of treatment, including trauma-focussed therapy treatments, including Eye Movement Desensitisation and Reprocessing (EMDR) and trauma focussed exposure therapy (psychologists are permitted to deliver these) are not included. In other contexts, mental health occupational therapists are able to perform these therapies including under the Better Access Medicare scheme. These low fee rates and restricted arrangements adversely impact the ability for veterans to access sustainable and quality services and supports.

The pathway to receive treatment for accepted (liability conditions) is also inefficient, as currently a veteran must visit their General Practitioner to receive a referral for allied health services like occupational therapy, taking up important resources from the primary health system, and creating an imbalance where one provider is the gatekeeper for services from a separate allied health discipline.

While the review team may consider these matters to be a policy issues outside of the scope of the legislative review, OTA believes it is important that they are raised as they relate to the current subject matter under examination by the Royal Commission into Defence and Veteran Suicide including ease of access to mental health supports. OTA considers that there may be opportunities to consider ease of access and appropriateness of fee rates as a policy principle within the scope of the review.

### **Indexation for medical and allied health treatment cost rates**

Currently, veterans' legislation contains provisions for the indexation of payment rates for income support payments. The review presents an opportunity for the legislation to also ensure that indexation is applied to other compensation entitlements including medical and allied health treatment costs. Currently, the fee rates that exist for occupational therapy supports under the DVA scheme are well below market rates and the rates provided under a range of other compensation schemes, including the NDIS. OTA has heard from our members that it is unsustainable to operate as a provider for DVA clients due to this low rate and many are considering exiting service provision due to the financial impact and

opportunity cost of servicing DVA clients (when they could see clients via private practice or funded through alternative schemes which provide more sustainable rates).

OTA notes that OTs are unable to charge a gap fee to address this shortfall in fee rates, and additionally they would be unwilling to charge a gap fee, even if this was permitted, due to the often-challenging financial circumstances of DVA clients, and care and concern for clients' financial wellbeing. Indexation and rising business and living costs impact service providers through increased costs for travel, rent, general services, salaries and more. DVA has been unwilling to increase fee rate to ensure they reflect current market rates and failure to index fees further impacts providers who are increasingly offering services at a loss or significant financial impost, when impacted by broader inflationary market pressures.

The Review could ensure that these fee rates are indexed annually via an independent process or decisionmaker who sits outside of the Department of Veterans Affairs, to ensure that these decisions are independent, transparent, and accountable, and that veterans can access quality and sustainable supports and services.

**Recommendation 7:** Any proposed legislation includes provision for the independent indexation of fees for medical and allied health therapeutic supports and services, to ensure that current economic factors including rising cost of living and indexation are taken into account and regularly applied to treatment rates.

### **Ensuring continued access for treatments and therapeutic services**

The review must ensure that any harmonised or new legislation preserves choice and control for veterans and defence personnel and their family members when seeking medical and allied health services and treatments. OTA understands that the drafting of the legislation will primarily seek to use the provisions of the MRCA as the basis for future claims for injured or deceased veterans.

Currently, both the SRC and MRCA are prescriptive in the types of providers that veterans can utilise to access rehabilitation services. Under both acts these services can only be provided by an "Approved program provider" as defined in section 41 of the MRCA, and section 34, 36 and 37 of the SRC, respectively. Typically, an 'approved program provider' has speciality in rehabilitation services and has obtained approval as a service provider under the Comcare scheme (allowing them to operate across DVA and Comcare). To obtain Comcare accreditation, providers must undergo a complex and costly registration process. OTA understands that most sole practitioner occupational therapists have not pursued registration as a Comcare provider due to the financial and administrative cost of registration, and ongoing administrative impacts required to meet Comcare's ongoing registration requirements.

Currently approved providers are permitted to assess a veteran for their need for household supports, and some aides and equipment, where they relate to rehabilitation needs and goals. OTA is aware of situations where a veteran who is currently accessing treatment under an SRC or MRCA claim from their chosen occupational therapy provider (non Comcare approved) for non-rehabilitation related needs, must then obtain a separate assessment from a Comcare provider to access household services or specific equipment. This creates additional administrative barriers for the veteran.

OTA is concerned that the adoption of MRCA arrangements may lead to prescriptive legislation or a policy decision to only enable medical and allied health treatment from an approved panel of providers. If this was to occur, this would severely limit veterans' choice and control over their own treatment needs and may result in barriers to accessing services like occupational therapy.

The review panel must ensure there are no direct or unintended consequences that arise through the drafting process which result in the reduction in veterans' choice of medical and allied health service providers.

**Recommendation 8:** The legislative review process ensures that harmonisation of arrangements continues to allow ease of access to treatments and choice and control of medical and allied health treatment providers by veterans and defence personnel and does not result in prescriptive registration processes for treatment providers, which may indirectly reduce the number of providers offering services under the revised scheme.

### **Harmonisation of arrangements for treatments and support services**

OTA understands that the drafting of the legislation will primarily seek to use the provisions of the MRCA as the basis for decision making about entitlements for future claims for injured or deceased veterans. In the case studies provided, it appears that more family members and veterans will be entitled to a Veterans Gold Card, enabling a wider range of medical and allied health treatments, which will support recovery and wellbeing. OTA welcomes any approach that would see the extension of medical and allied health services to members of veteran's families and dependants, and make a wider range of equipment, aides and household services available for veterans who require them.

The MRCA and SRC enables the provision of services and supports for veterans who need help with household tasks due to accepted service-related injuries and conditions. Currently, this is not provided for veterans with a claim under the VEA, although this would be a welcome and necessary support for many who require additional supports to live comfortably at home.

### **Access to vehicle modifications**

OTA attended a DVA webinar on 26 April 2023 which included comments from presenters that the review had not yet determined whether the new legislation would preserve VEA arrangements for medical and allied health services, or if MRCA arrangements would be adopted for new claims going forward. It also noted that comments from stakeholders were welcomed about which arrangements should be preserved, including the Vehicle Assistance Scheme under the VEA, and the Motor Vehicle Compensation Scheme available under the MRCA.

OTA would like to receive more information on the proposed options to enable us to consult specifically with our affected members, especially in relation to vehicle modifications arrangements. OTA represents driver trained occupational therapists who have specific skills in assessing functional driving capabilities and barriers, and prescribing training, equipment, and vehicle modifications to enable veterans to drive or be driven as a passenger in a motor vehicle. The Vehicle Assistance Scheme and Motor Vehicle Compensation Scheme have different application pathways, different access criteria, and offer different types of assistance (for example the VEA can assist with vehicle registration costs whereas the MRCA cannot).

Broadly, and without examination of the specific implications, OTA notes that it would be favourable to broaden access to vehicle modifications to any veteran that requires it as a result of any illness or condition or any secondary or aggravated condition, arising from current or former military service, that impacts the ability to operate a vehicle or be transported in one. OTA would prefer adoption of a system that favours a quick and efficient assessment process for occupational therapists, and their clients, and the provision of additional supports and costs such as registration, insurance, and maintenance, in recognition that operation and maintenance of a personal vehicle enables independence in a way that taxi travel and public transport does not.

**Recommendation 9:** That the Review Panel engage with OTA further on the proposed future arrangements for accessing vehicle modifications to ensure there are no direct or unintended consequences on entitlement or access, that result from the legislative reforms.