

Veterans' Legislation Reform – Exposure Draft: Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024 (Cth)

Submission to the Department of Veterans' Affairs,
Australian Government

17 April 2024

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal people of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input to the Department of Veterans' Affairs ('Department') on the Exposure Draft of the Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024 (Cth) ('Exposure Draft of the Bill').
2. ALA members across Australia support reforms to improve the rehabilitation and compensation claims processes for veterans, and we support a veterans-centric approach to developing a single, harmonised legislative framework. As the Royal Commission into Defence and Veteran Suicide noted:²

From recruitment to transition to post-service life, we need processes and systems that give each serving and ex-serving ADF member, and the people closest to them, the best opportunity to live satisfying lives during and after service.

3. The consequences of not offering help and support to veterans are significant and devastating.
4. The ALA's submission will focus on:
 - a. the harmonisation of the legislation underpinning veterans' entitlements, rehabilitation and compensation processes;
 - b. timeframes for Department decision-making;
 - c. barriers to veterans having legal representation; and
 - d. broader reforms and required resourcing.

Harmonisation of legislation

5. The ALA notes the Department's intention that this proposed legislation "will simplify and harmonise the existing tri-Act framework of legislation governing veterans' entitlements, rehabilitation and compensation arrangements that has long been in place".³
6. The ALA strongly supports the harmonisation of legislation concerning veterans' entitlements, rehabilitation and compensation claims, with there being a single piece of legislation to cover all compensation claims for Veterans moving forward – that is, the *Military Rehabilitation and*

² *Royal Commission into Defence and Veteran Suicide* (Interim Report, 11 August 2022) 10.

³ Explanatory Memorandum, Exposure Draft: Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024 (Cth) 4.

Compensation Act 2004 (Cth) ('MRCA'). We submit that a single, harmonised scheme will improve access to compensation for veterans and their families, as well as providing an overall better experience for veterans during this simplified claims process.

7. By incorporating parts of the *Veterans' Entitlements Act 1986* (Cth) and the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth), the ALA notes that the MRCA will be a substantial and lengthy piece of legislation.
 - a. Large pieces of legislation can prove complicated and even unwieldy to navigate, especially for those who are also managing the effects of physical and/or psychological injuries.
 - b. To determine their entitlements under the MRCA, veterans will need support from legal representatives in working through the relevant details to line up their service history and injuries with the correct entitlements, rehabilitation and compensation options under the MRCA.
 - c. Improving access to legal representation throughout the veterans compensation claims process will be further addressed later in this submission.
8. The ALA also notes that the proposed harmonisation of veterans compensation claims legislation has not addressed the different standards of proof applicable at various points in the claims process, including when determining the Statement of Principles: 'reasonable hypothesis' and 'on the balance of probabilities'.⁴
 - a. The ALA submits that these two standards of proof complicate matters and are arbitrary discrepancies which should not be transferred to this new, harmonised legislation. We submit that 'on the balance of probabilities' would be an appropriate standard of proof for this legislation.
 - b. ALA members also report significant problems with the operation of the Statement of Principles in claims processes. These Statements of Principles are treated as solely determinative of whether liability ought to be accepted.

⁴ See: Exposure Draft, *Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024* (Cth) cl 335, 338, 340, 370CB, 370CC.

Recommendation: That the Department considers adopting a consistent standard of proof throughout this legislation, and also clarifying that the Statement of Principles should be treated as discretionary and as a guide (rather than determinative).

Timeframes for Department decision-making

9. While timeframes for some parts of the veterans' claims process are outlined in the Exposure Draft of the Bill, the ALA submits that there are still timeframes that should be specified or clarified, including by when the Department needs to make certain decisions.
10. The ALA submits that it is important for veterans and their families to have an idea of timeframes for how long the Department will take to make certain decisions – both for accountability purposes but also for peace of mind and to be able to plan ahead during what can too often be a stressful claims process for veterans and their families.

Recommendation: That the Department ensures the Exposure Draft of this Bill is amended to include set timeframes for decision-making at every stage of the compensation claims process, including for decisions that the Department is required to make.

Barriers to legal representation

11. The ALA notes the following from the Explanatory Memorandum:⁵

The 'single review pathway' removes the internal reconsideration process for DRCA claimants and gives DRCA appellants access to the Veterans' Review Board (VRB) which is a less adversarial, veteran-friendly environment, where matters can be resolved without the involvement of lawyers. A second tier of merits review by the Administrative Appeals Tribunal would remain in place.
12. The ALA is concerned by the barriers to legal representation which are retained in the Exposure Draft of the Bill, including in the 'single review pathway'.
13. Prejudicing the rights of veterans to access legal representation and to receive support from their legal representatives throughout the compensation claims process should not be maintained under this new legislative framework. This would be contrary to the veterans-centric approach underlying these reforms.

⁵ Explanatory Memorandum, Exposure Draft: Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024 (Cth) 58.

14. ALA members report that these barriers to legal representation compromise the experience of veterans throughout the compensation claims process and beyond. Veterans must be able to access representation from those who have legal qualifications, as they are best placed to navigate the relevant legislation and processes.
15. First, lawyers are prohibited from appearing before the Veterans Review Board (VRB), the first appeals mechanism.⁶ Lawyers can assist in preparing documents and drafting submissions, although the veteran must present all the materials to the VRB, and lawyers cannot charge for that preparatory work.
 - a. This clearly limits the access veterans have to legal representation, which can compromise the veterans' experience through the claims process – especially for those veterans who are navigating the daily effects of physical and/or psychological injuries – and can significantly affect the outcomes of the review process.
 - b. The feedback ALA members receive from veterans is that legal assistance during the VRB stage is essential. As such, access to legal representation should, in the ALA's view, not be prohibited or discouraged by the Department.
16. Further, the ALA notes that there are cost restrictions in relation to the second tier of merits review – currently called the Administrative Appeals Tribunal (AAT) but what will soon be known as the Administrative Review Tribunal (ART).
 - a. If there is evidence presented to the AAT/ART that a veteran could theoretically have obtained during the VRB review process (for example, a medical report), then a veteran is not entitled to claim costs for their lawyers' time in managing that evidence.⁷
 - b. ALA members note with concern that if veterans are not allowed to have adequate legal representation at the VRB stage (as detailed above), then veterans are unlikely to be able to present a complete case, including all required evidence, at the VRB in the first place. A prohibition on claiming costs for evidence then presented at the AAT/ART stage is, therefore, unfair and an impediment to access to justice. This

⁶ Veterans' Review Board, 'Can I have someone represent me?', *Frequently Asked Questions* (Web Page) <www.vrb.gov.au/frequently-asked-questions>.

⁷ See: *Military Rehabilitation and Compensation Act 2004* (Cth) s 357, including s 357(6).

underscores the need for legal representation to be permitted in the review process from the outset.

17. ALA members are not proposing that the involvement of lawyers at any stage of the veterans claims process should make those processes take longer – on the contrary, ALA members are committed to facilitating compensation claims in a timely manner.
18. However, the ALA notes that many veterans suffer from primary mental health injury and or secondary mental health injury suffered by those veterans following a physical injury. Lawyers, therefore, play a vital role in advising those clients about the potential rights they have and the relevant legal processes – all of which is harder for veterans suffering mental health injury. Having a right to have legal advice and representations means that veterans are able to seek guidance as to all relevant processes.
19. It is essential, in the interests of fairness and access to justice, that veterans have the option to utilise legal representation and assistance to:
 - a. navigate lengthy and complicated legislation;
 - b. ensure their claims are presented correctly from the outset and during review; and
 - c. have additional support for those veterans and their families through these processes.
20. Lawyers are also able to assist in ensuring that veterans get appropriate financial advice following a settlement.

Recommendation: That the Department amends the Exposure Draft of this Bill to ensure veterans have access to legal representation and support throughout the claims process, including throughout the review process in the VRB and AAT (soon to be the ART), and that legal costs can be claimed by veterans to fund that legal support.

Broader reforms and required resourcing

21. The ALA supports the following broader reforms to support veterans through rehabilitation and claims processes, and we call on the Federal Government and the Department to offer a commitment to appropriate resourcing to support these reforms.

22. First, we note that the Department has announced it has cleared claims backlogs as at 29 February 2024 and that there are now more claims processing staff in the Department “to support the increasing number of claims received”.⁸ With regard to the significant distress felt by veterans and their families when there are delays in processing veterans’ claims for compensation, the ALA supports the continued provision of sufficient numbers of well-trained staff and also adequate support resources so that the Department can process claims efficiently now and into the future.
23. Additionally, ALA members report that the Department has modernised their processes in recent times, including by partially moving away from a reliance on paper documents during the claims process. This enables the faster processing of claims so that veterans can move forward sooner with treatment, support and assistance. The ALA supports the digitisation of veterans’ records and documents, and we urge the Department to continue allocating resources to these modernisation initiatives.
24. Further, the ALA supports the effective auditing of rehabilitation service providers who are providing or who are seeking to provide services and/or programs for veterans.

Conclusion

25. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input to the Department of Veterans' Affairs on the Exposure Draft of the Veterans’ Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024 (Cth).
26. The ALA is available to provide further assistance to the Department on the issues raised in this submission.



Shaun Marcus

National President,

Australian Lawyers Alliance

⁸ Department of Veterans' Affairs, Australian Government, *Claim processing times* (Web Page, 19 March 2024) <www.dva.gov.au/claim-processing>.