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28 April 2024



Legislative Reform Branch  
Department of Veterans' Affairs  
Via email: legislation.reform@dva.gov.au



Dear Minister,

**Re: *Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024***



**Introduction**

This letter is written on behalf of eighteen ex-service and kindred organisations. Collectively, our membership represents the interests of the vast majority of the veteran population that resides in South Australia.



This response follows our submissions to the 2019 Productivity Commission inquiry and the proposed veterans' legislative reform consultation in 2023, and addresses the exposure draft of the *Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024* released by the government.



**Observations**

We have given careful consideration to the provisions of the proposed legislation, and acknowledge that it creates a "single ongoing Act model" as promised, and will provide greater clarity and consistency around entitlements for veterans and their families. We had hoped that a completely new and harmonised Act would be developed rather than amending the existing MRCA, but accept that the timeframe for such a new Act to be drafted and pass Parliament would not meet the requirements of the pressing need for reform in the light of the outcomes from the Royal Commission into Defence and Veterans Suicide.



We observe that, partly due to the decision to amend the existing MRCA rather than develop an entirely new Act, veterans with more recent service who are covered by the existing MRCA may develop the impression that their entitlements are not as beneficial as those grand-parented under the other Acts. We recommend that, as part of the legislative package, the government develop further example scenarios which clearly demonstrate to members of the veteran community covered by the existing MRCA that the grand-parented VEA and DRCA entitlements, while not identical to those under the existing or new MRCA, are comparable in effect, and where they are not, this should be acknowledged and explained.



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We are broadly positive about the changes proposed, and note that a significant number of the reforms we requested in our earlier submissions have been included in the proposed legislation. These include that:



- recipients of compensation payments on 1 July 2026 under the VEA and the DRCA will have their entitlements grand-parented, and their preserved benefits will continue to be indexed;
- previously determined compensable medical conditions will be recognised under the new MRCA, so there will be no need to re-establish liability for conditions already accepted under the old Acts;
- the statements of principles and two standards of proof will be replicated in the new MRCA;
- the additional disablement amount (ADA, similar to the EDA under the VEA), will be introduced to assist veterans who are age-pension age or older and have high levels of impairment and lifestyle impacts due to their service-related conditions;
- a presumptive liability mechanism will be adopted for the connection between specified medical conditions and ADF service (although see below);
- a single, consistent review pathway will be implemented for all compensation claimants, with access to reviews by the VRB, and appealable to the AAT;
- information sharing provisions between the Department of Defence and DVA will be streamlined (although see below);
- the Repatriation Commission will be re-established under the new MRCA as the single body to administer veterans' compensation legislation, consolidating the powers of the existing two Commissions, and simplifying governance arrangements;
- an exception will be introduced for service prior to 1 January 1998 for the prohibition on the Commonwealth accepting liability where the injury, disease or death, aggravation or material contribution is related to defence service only because of the person's use of tobacco products (carried forward from the VEA); and
- the DRCA provisions for allowing for Commonwealth liability to be accepted for injuries that were sustained while a member was on Defence duty by providing for a temporal connection between service and a medical condition will be integrated into the new MRCA.

A key recommendation we made to the 2019 Productivity Commission inquiry and to the legislative consultation in 2023 was that the new legislation should include a process by which DVA would not only be advised of medical conditions affecting service personnel as has occurred for several years, but DVA should also consider and assess claims from service personnel as soon as they are reported to DVA by the Department of Defence. We consider such a process would greatly enhance the processing of veterans' claims. It would also facilitate a smooth transition and seamless treatment of accepted conditions for service members leaving the ADF on medical grounds, a time when they are at their most vulnerable to suicidality. We consider the omission of such a procedure is a significant deficit in the proposed legislation and strongly urge that it be addressed before it is tabled in Parliament.

We note the adoption of a presumptive liability mechanism, which seeks to achieve equity and consistency with existing DRCA liability mechanisms and to reduce the evidentiary requirements for individual liability claims and the time they take to determine. We consider that this is a key area for continuing reform, as it has the potential to significantly reduce the stress and anxiety of veterans submitting claims for medical conditions arising from their service, especially for veterans separating from the ADF on medical grounds, who are often most vulnerable to suicidality. We look forward to early and continuing progress on the expansion of the number of common medical conditions covered by presumptive liability based on a veteran's trade or employment during service.

We note that under the current MRCA it can take several years for an initial liability claim to be accepted and a permanent impairment claim to be finalised. This requires the veteran to undertake two separate medico-legal examinations, and the time that elapses can often result in the veteran disengaging from the process, with negative impacts on their physical and mental health and financial circumstances. This can contribute to poor outcomes and also lead to suicidality. We urge the government to amend the proposed legislation to allow for combined initial liability and permanent impairment claims, which would also reduce the workload on treating health professionals and medico-legal professionals contracted by DVA.

We also urge the extension of liability for conditions that are common sequelae of an accepted condition, such as osteoarthritis resulting from a joint condition. Currently, an initial liability claim must be submitted, treating this as a new condition, despite the fact it has clearly resulted from an existing and accepted condition.

We note the continuing tension between the general definition of "veteran" - a person who has served, or is serving, as a member of the Permanent Forces or as a member of the Reserves, per the *Australian Veterans' Recognition (Putting Veterans and Their Families First) Act 2019*, and the legal definition of "veteran" under the existing and proposed compensation and rehabilitation legislation. "Veteran" is not defined in the proposed new MRCA, referring instead to the definition in the VEA. It should be acknowledged by DVA that using definitions that reside in a largely superseded Act hardly simplifies the proposed new MRCA, and has significant ongoing potential to confuse veterans. Greater emphasis should be given by DVA and the government generally to explain the different definitions of "veteran" now in use.

Finally, we note the acceptance by the government that there may be policy settings or practices that will need to be appropriately adjusted or exceptions provided, in light of operational experience following commencement of the new model, and we will closely monitor any such aspects and seek to bring any anomalies to light as soon as they become apparent. We also urge the government to task the Ministerial Advisory Council to actively monitor the implementation of the new Act for such anomalies and bring them to the attention of the Minister as they arise.

The Vietnam Veterans' Association SA and the Legacy Club of South Australia & Broken Hill were involved in our consultations on the bill and contributed to the discussions that led to this response, but chose to make separate formal submissions via their national bodies or otherwise.

Thank you for considering our feedback on the draft legislation.

Yours sincerely,



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This submission is also supported by Lee Bowes, President DFWA (SA), John Jarrett, President Korea & SE Asian Forces Association, and John Thorn, President National Servicemen's Association SA.