



Australian Government

Veterans' Advocacy and Support Services Scoping Study

A modern professional sustainable
service for Australian Veterans
and their families

REPORT

December 2018

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Veterans' Advocacy and Support Services Scoping Study

www.dva.gov.au/AdvocacyStudy | Email: advocacy.study@dva.gov.au

12 December 2018

The Hon Darren Chester MP
Minister for Veterans' Affairs
Parliament House
CANBERRA ACT 2600

Dear Minister

I am pleased to present my report on the Veterans' Advocacy and Support Services Scoping Study as required by the Terms of Reference released on 16 April this year.

At all times, the study received willing and valuable assistance from veterans and their families, ex-service organisations, advocates, international counterparts, other community organisations and officers from the Department of Veterans' Affairs, the Veterans' Review Board, the Administrative Appeals Tribunal and other government agencies.

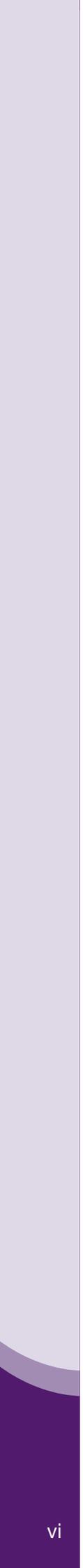
Their contribution is gratefully acknowledged.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'R. Cornall'.

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Terms of Reference

Context

The veterans' advocacy sector is undergoing a period of change. The nature of service and training is evolving, driven by the expectations of younger veterans who seek a more professionalised client centric service than their predecessors in accessing their entitlements. They seek quality services which are underpinned by accreditation frameworks and high standards of governance.

Veterans' advocacy services can encompass assistance with the lodgment of an initial claim through to assistance with the appeals process including internal review, the Veterans' Review Board and the Administrative Appeals Tribunal.

The majority of current services to veterans are delivered by ex-service organisations and their volunteer workforces. However, some ex-service organisations and other professional bodies, such as the legal aid commissions, do employ professional, paid advocates. Overall, service standards are not well defined and differ depending on the organisation providing them.

Younger veterans are seeking a nationally consistent service where the support, at a minimum, is equal to those provided in comparable sectors and have a strong preference for modernised services where they are empowered to act independently.

On 15 August 2017, the Senate Committee on Foreign Affairs, Defence and Trade tabled its report, *The Constant Battle: Suicide by Veterans*, in Parliament. The report found the current advocacy model is unsustainable because ex-service organisations are unable to attract younger veterans into their ranks to replace the aging volunteer workforce. It recommended:

... the Australian Government establish a Bureau of Veterans' Advocates to represent veterans, commission legal representation where required, train advocates for veterans and be responsible for advocate insurance issues. (Recommendation 23)

The report also considered the current legislative provision, which prevents lawyers from appearing at Veterans' Review Board hearings. It recommended:

... the Australian Government establish an independent review of the representation of veterans before the Veterans' Review Board. This review should assess whether the rights of vulnerable veterans are being adequately protected and whether further support mechanisms for veterans appearing before the Veterans' Review Board are required. (Recommendation 24)

On 8 November 2017, at the Veteran Ministers Round Table, Ministers supported the establishment of a body within the sector to define the standards for services provided by ex-service organisations to veterans and establish a formal accreditation process.¹ Whilst the Government provides grant funding to support ex-service organisations in providing services to veterans, there is currently no means of assessing the quality of those services.

On 7 December 2017 the Defence sub-committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade found debriefing on unsuccessful Veterans' Review Board cases may reduce appeals and associated stress for veterans. It recommended the

... Department of Veterans' Affairs investigate options for an independent authority to review all unsuccessful Veterans' Review Board determinations in consultation with the affected veteran or their delegate to alleviate the stress and burden of making their own case to appeal. (Recommendation 10)

From 1 July 2016, prior to these reviews, the *Advocacy Training and Development Program* introduced accredited training for advocates providing compensation and welfare services to veterans. This is a joint initiative between the ex-service community, the Department of Veterans'

¹ VMRT Joint Communique at http://minister.dva.gov.au/media_releases/2017/nov/joint_vmm.htm (December 2018)

Affairs (the Department) and the Department of Defence to improve the quality of advice provided to veterans in accessing their entitlements. The program introduces the first form of accreditation into the sector which provides a solid foundation for advocacy and other reforms to build on.

More broadly, the Department's Veteran Centric Reform is seeking to modernise the claims process by making it simpler and more efficient for the majority of veterans to access their compensation entitlements without assistance.

The Veterans' Review Board has recently introduced an Alternative Dispute Resolution Program to put the veteran at the centre of the appeal process and resolve cases as quickly as possible without the need for a formal hearing. The Board provides active assistance to veterans, both represented and unrepresented, to achieve an acceptable outcome and provides training to educate their representatives. Further, the Board has offered training and support to educate and inform representatives.

Advocacy is an essential part of a modern service that is able to meet the wide range of veterans' needs. A more professionalised service will allow veterans to focus on their rehabilitation and civilian life.

Scope

In response to the several recommendations outlined above, the Department has committed to undertaking this Scoping Study to examine the:

- range of advocacy and welfare services currently provided by both volunteers and paid professionals from the ex-service community, government and the legal sector
- current challenges in and barriers to accessing entitlements and services and the impact they have on veterans' wellbeing
- needs of different veteran cohorts for professionalised advocacy support and the potential benefits to each cohort
- different models for professionalised advocacy both within Australia and overseas to determine the most suitable model so veterans have:
 - » a *sustainable, consistent and reliable* advocacy service which is *scalable* based on demand
 - » an *efficient and effective* service to assist them to access their entitlements so they can focus on more important things, such as rehabilitation and their civilian life
 - » a *level of service*, which at a minimum, is *comparable in quality and value* with other cohorts accessing government entitlements
 - » a service *based on their needs*, irrespective of age, which *adequately protects their interests*, and
 - » *access to advice* on why their claim was unsuccessful and options for appeals
- *governance and quality frameworks* available to deliver performance driven, professionalised advocacy and service models, including recommending the most appropriate frameworks and any partnerships required to achieve this outcome
- *roles and responsibilities* of traditional, new and emerging stakeholders within the veterans' advocacy sector as it stands and under any future model, articulating the value and contribution of those roles and responsibilities in professionalising veterans' advocacy
- *costings* for all models considered, and
- time frames and strategy for implementation including: key milestones, risks, change management and transitional considerations.

Approach

The study will be led by Mr Robert Cornall AO.

Ex-service organisations and their existing volunteer workforce have provided a great service to Australian veterans over many years. The ex-service organisation, veteran and Australian Defence Force communities will be widely consulted as an integral part of this study. In particular, younger veterans, female veterans and veterans' families, who have emerging needs, will be co-contributors to the Scoping Study through consultation and gathering information about user experience.

The study will incorporate various forms of research and include the views of relevant policy and technical stakeholders (here and overseas), including community consultation with the veteran community, appeal bodies including the Veterans' Review Board and the Administrative Appeals Tribunal. It will also include new stakeholders from the legal services, community, health and disability sectors.

Time frame

This study will commence in April 2018 and will be completed by December 2018. Public submissions will be accepted until mid-2018.

Outcome

A report complete with its evaluations and recommendations will be submitted to Government at the end of the year.

Glossary

Abbreviation	Definition
AAT	Administrative Appeals Tribunal
ACAT	Aged Care Assessment Team
Accredited	Accredited by the Advocacy Training and Development Program
ADF	Australian Defence Force
ADR	Alternative dispute resolution
Advocacy	Representing, speaking up for, assisting or finding assistance for a veteran
AFIs	Applications for increase
ANAO	Australian National Audit Office
ANZAC	Australian and New Zealand Army Corps
ASIST	Applied Suicide Intervention Skills Training
ATDP	Advocacy Training and Development Program
BEST	Building Excellence in Support and Training
BPA	Bureau of Pensions Advocates
Cobseo	Confederation of British Service and Ex-Service Organisations
Commissions	Repatriation Commission and the Military Rehabilitation and Compensation Commission
Counselled out	The veteran was advised a claim, review or appeal would not succeed and the veteran accepted that advice and did not go ahead
DCO	Defence Community Organisation
Department	Department of Veterans' Affairs
DRCA	<i>Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988</i>
DFRDB	Defence Force Retirement and Death Benefits
DSS	Department of Social Services
DVA	Department of Veterans' Affairs
ESO	Ex-service organisation
Federation	Vietnam Veterans' Federation of Australia
GARP	Guide to the Assessment of the Rates of Veterans' Pensions
Guild	War Widows' Guild of Australia
LAC	Legal aid commission
Legacy	Legacy Australia
MRC Commission	Military Rehabilitation and Compensation Commission
MRCA	<i>Military, Rehabilitation and Compensation Act 2004</i>
NACAP	National Aged Care Advocacy Program
NDAP	National Disability Advocacy Program
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme

Abbreviation	Definition
NJCA	National Judicial College of Australia
NLA	National Legal Aid
OPAN	Older Persons Advocacy Network
OT	Occupational therapist
PTSD	Post-traumatic stress disorder
RSL	Returned and Services League
SOPs	Statements of Principles
SRCA	<i>Safety, Rehabilitation and Compensation Act 1988</i>
TIP	Training and Information Program
Tribunal	Administrative Appeals Tribunal
TTTP	Time taken to process
VAC	Veterans Affairs Canada
VEA	<i>Veterans' Entitlements Act 1986</i>
Veteran	Any past member of the Australian Defence Force who has served for at least one day and, where appropriate, can be taken to include their families
VNAC	Veterans' National Advocacy Coordination
VNLH	Veterans' National Legal Helpline
VNLS	Veterans' National Legal Service
VOA	Veterans of Australia Association
VRAB	Veterans Review and Appeal Board
VRB	Veterans' Review Board
VVAA	Vietnam Veterans' Association of Australia
VVFA	Vietnam Veterans' Federation of Australia
WVNA	Women Veterans Network Australia

Executive summary

The veterans' advocacy system as presently structured will not provide veterans and their families with a modern professional sustainable advocacy service into the future.

Ex-service organisations have provided an invaluable compensation and wellbeing advocacy service to veterans and the nation since the Returned Sailors and Soldiers Imperial League of Australia was founded over 100 years ago in 1916. As waves of veterans returned from the First World War, the Second World War and the Korean – Vietnam conflicts, each generation has joined or founded ESOs to look after their cohort.

Now, if younger veterans join an ex-service organisation, they are more inclined to join a virtual ESO (such as a Facebook page) or an organisation focused on improving veterans' health and wellbeing rather than compensation.

The existing advocacy model, which relies on an aging cohort of volunteers spread among the branches of the traditional ESOs, is coming to an end. The statistics are compelling: 19% of advocates accredited under the Advocacy Training and Development Program were born before 1946 and a total of 83.8% before 1965. At the other end of the age spectrum, only 3.9% were born after 1980 and a number of them are paid advocates employed by the large ESOs.

There are 538 ATDP accredited advocates: 400 males and 137 females.² In addition, there is an indeterminate number of advocates trained under the Training and Information Program but many of them are expected to cease assisting veterans before or when their professional indemnity insurance expires on 30 June 2019 (levels 1 and 2 advocates) and on 31 December 2021 (levels 3 and 4 advocates).

While these numbers look reasonable, there is no way of knowing at the moment what that mainly volunteer workforce's numbers would be if converted to their full-time equivalent.

Most of the accredited advocates (78.44%) are authorised by the branches of just three ESOs: Returned and Services League (330); Legacy (66); and the Vietnam Veterans' Federation (26).

Over the last forty or more years, veterans' advocacy services have been delivered by volunteers from the Second World War and then from the Vietnam War period who shared a strong bond formed by their common experience. The particular circumstances surrounding that generation of veterans allowed them to volunteer their time to assist their mates but will not recur.

The traditional ESOs are facing challenges of their own, exemplified by aging and falling memberships. Many younger veterans told the study they do not want to join the RSL or seek services from it; Legacy's advocacy is dedicated to veterans' partners and dependants; and the Vietnam Veterans are not seeking new members. The generation and gender gaps between the traditional ESO members and younger veterans create significant barriers for both groups.

The difference can be seen by comparing a traditional RSL clubhouse (with a bar and restaurant) with some of the more modern veterans' facilities (with gymnasium, recreation areas, a coffee bar and outdoor adventure activities).

There is no single clear remedy for these problems and, to some extent, the problems have to be dissected and dealt with one by one. The solution is likely to be found in a combination of measures implemented in concert by DVA and its staff, ex-service organisations (old and new) and veterans themselves. Those measures would have one common objective: to obtain the best outcome for the veteran. To achieve this goal, there will have to be some give and take between the three groups and a willingness to adapt to the needs of younger veterans and a changing environment.

² In one case gender was not recorded

Trust

Three factors regularly affect the relationship between the veteran community and the Department of Veterans' Affairs. These factors are: delays in processing claims; the absence of readily accessible accurate information about entitlements and where to obtain assistance; and a perceived adversarial relationship.

Collectively these factors take us to the heart of the matter – a lack of trust between some parts of the veteran community and the Department. The Secretary, Liz Cosson AM CSC, recognised the need to address this issue when she said to veterans:

Our greatest challenge is to rebuild the trust between us. You are the reason we are here, and the reason we will continue to strive to do better.³

Veterans' entitlements legislation is beneficial legislation. It is reasonable to expect all parties involved to cooperate and work together to achieve the best outcome for the veteran but this is not always the case at present. The report contains several recommendations to deal with, or at least mitigate, the main problems which contribute to that lack of trust.

Ex-service organisations

The established ESOs' membership is spread over hundreds of widely dispersed branches and sub-branches as shown by the Aspen Foundation's *Ex-Service Organisation Mapping Project Final Report*.

While individual ESOs and advocates are still doing good work, they have an isolated impact limited to their own sphere of operation and influence and some veterans are missing out. A dispersed network of branches cannot deal with the totality of a complex systemic problem, can overlap with similar projects in different places and leave unaddressed gaps.

The ESOs have assets, resources and income for the sole purpose of assisting veterans. It is important that they adapt to changing veteran needs and preferences so they can continue to do so.

Proposed national structure

No one Australian ESO can match the national organisation, financial strength and reach of the Royal Canadian Legion⁴ and the Royal British Legion.⁵ In these circumstances, the study considers the most effective way to deliver advocacy services in future will be to consolidate provision of the available services through a coordinated national framework.

To that end, the study considers the Australian advocacy sector needs a national body to coordinate access to, and provision of, the services of those ESOs and accredited advocates who wish to participate. The proposed body would be incorporated as a company limited by guarantee and could be called Veterans' National Advocacy Coordination (VNAC) or similar name. ESOs and advocates who want to take part in the national advocacy program would apply to join.

Within that framework, each organisation or individual advocate will still do what they do best but they will do it as their contribution to an agreed collective outcome.

VNAC would not be a peak body (that is, a representative body established to set standards, lobby government and promote the interests of its members). It would be a backbone body which can plan, manage and support the delivery of advocacy services through: facilitation; technology and communication support; data collection and reporting; and handling the logistical and administrative details needed to deliver a coordinated, timely and efficient national advocacy service using all the available resources as effectively as possible.

³ Department of Veterans' Affairs Annual Report 2017-18, page 5

⁴ See Section 9

⁵ See Section 10

Veterans would not have to search for an ESO that might have a suitable advocate to help. All they would have to do is contact Veterans' National Advocacy Coordination and it would refer an advocate to them (possibly using an approach based on the UK's Veterans' Gateway which sources assistance from its participating members through an electronic application). VNAC would be professionally managed and its Board would comprise a mix of government, ESO, military, financial management and legal experience and expertise.

Two important aspects of this recommendation are that:

- participating advocates could be nominated and authorised by an ESO or by VNAC, and
- VNAC and participating advocates would maximise the use of modern technology.

Veterans' National Advocacy Coordination would also be the appropriate body to negotiate improved responses to veterans' wellbeing problems that cross sector boundaries (for example, where an effective solution requires participation from legal, medical, disability or community sectors).

Advocate training

The Advocacy Training and Development Program has been steadily progressing towards higher educational standards and greater quality assurance. The study supports that direction but makes several suggestions about the course structure and duration that may better suit future participants.

In particular, the study suggests the training should include: intensive courses more suitable for younger veterans; instruction in veterans' entitlements law at the appropriate level; and a level 3 wellbeing unit of competency leading to a Certificate IV qualification (similar to the Certificate IV in Community Services).

The study proposes the ATDP should:

- be incorporated as the Veterans' Advocates Board (a company limited by guarantee) to end its ill-defined legal status, and
- take on a fully developed role as the training and licensing authority for all accredited advocates including: continuing professional development; insurance; ethical standards; codes of conduct; complaints and disciplinary procedures.

Its Board could be comprised of an ESO and a DVA representative, a professional trainer and an expert in veterans' entitlements law under an independent Chair.

Veterans' Review Board

The study has looked closely at the Veterans' Review Board and considers it is operating very effectively. Its alternative dispute resolution processes are working well and 65.1% of cases were decided without a hearing in 2017-18. That percentage should go up when the Board's ADR program comes into full operation in Queensland next year.

Only 6.7% of VRB decisions were appealed to the Administrative Appeals Tribunal in 2017-18.

Those statistics suggest the VRB is meeting its statutory objective to deliver reviews which are: accessible; fair, just, economical, informal and quick; proportionate to the importance and complexity of the matter; and promote public trust and confidence. This conclusion is supported by the general tenor of comments the study received in consultations and submissions.

There is no appearance for the Repatriation Commission or the Military Rehabilitation and Compensation Commission at a VRB hearing.⁶ The VRB conducts an inquisitorial, not an adversarial, process. Hearings generally take around half an hour. In regard to vulnerable veterans, the study also took note of the VRB's established protocols for veterans at risk of harm.

⁶ The Commissions do take part in the VRB's ADR program

The study paid particular attention to the question of lawyers' participation at the Veterans' Review Board given the concerns expressed by the Foreign Affairs, Defence and Trade References Committee in its report, *The Constant Battle: Suicide by Veterans*.

The statutory prohibition against lawyers appearing before the VRB or its equivalent has been in place since 1929. It was strengthened in the mid-1980s to include a person with a legal qualification notwithstanding a number of reports recommending that the prohibition be removed. Successive governments have retained the prohibition and a number of ESOs supported the status quo in their submissions to the study.

The prohibition only applies to lawyers or persons with a legal qualification appearing at a Board hearing. They can prepare a veteran's primary claim, take part in the VRB's ADR processes and write submissions to be handed up to the Board at a hearing. If the VRB case is unsuccessful, lawyers can appear for the veteran at the Administrative Appeals Tribunal.

The study carefully assessed the arguments for and against the prohibition but concluded it should remain. In regard to vulnerable veterans, the study particularly noted:

- the support provided through DVA case management and the VRB protocols, and
- the legal assistance which will be available to them from the Veterans' National Legal Helpline and the Veterans' National Legal Service.⁷

A further consideration was that removing the prohibition would be another step towards a more adversarial culture which the study is keen to reverse.

Administrative Appeals Tribunal

The AAT has the same statutory objective as the Veterans' Review Board and again resolves the majority of its cases without the need for a hearing. In 2017-18, only 80 cases were heard and decided out of 480 cases finalised.

The AAT has a more legalistic and adversarial character when cases go to a hearing. Those cases are a contest and can take one or two days. Witnesses (including medical specialists) are called and cross-examined and the lawyers or advocates base their case on the evidence and legal argument about the Acts and the case law. In 2017-18 AAT hearings:

- 47% of veterans were represented by a private lawyer
- 27% were self-represented, and
- 25% were represented by a non-legal advocate.

The veterans' lawyers would be retained on a fee for service or a no win-no fee basis and could come at a considerable cost even though, in some circumstances, successful veterans can recover part of their legal costs from the relevant Commission.

The Commissions are represented at the AAT by one of three law firms⁸ and, in some cases, a barrister. In total, the Commissions spent \$7,328,609 on their AAT representation in 2017-2018 made up as follows: solicitors \$5,792,699; counsel \$473,830; and disbursements (mainly medical specialists' fees) \$1,062,080.⁹

The unevenness of the level of representation is a significant factor in veterans' perception that DVA is adversarial and the system is weighted against them.

One of the study's recommendations is for DVA to engage a small number of additional advocates and allocate more AAT matters to a strengthened inhouse advocacy team at a lower cost (which was the previous arrangement until the early 2000s).

7 See Section 8

8 With the exception of a small number of cases handled by DVA's inhouse advocates

9 These figures relate to AAT external legal expenditure only which is part of the total expenditure reported to the Attorney-General's Department for 2017-18

Free legal representation for veterans at the AAT

While some veterans are represented by advocates at the AAT,¹⁰ too many of them are unrepresented.

The study thoroughly investigated the Canadian system and the role of the Bureau of Pensions Advocates.¹¹ That system is impressive and works well in the Canadian appeal structure (which is quite different to the Australian system in significant aspects). Veterans' legal representation is provided free of charge at public cost.

The study proposes that the Government should establish a Veterans' National Legal Service and fund Australia's eight legal aid commissions to represent, or engage private lawyers to represent, any veterans appealing from a VRB decision or a DRCA reconsideration free of charge. The legal assistance would be subject to a merit test (which is a standard and sensible legal aid requirement) but no means test. One of the legal aid commissions' several advantages is that they have a large network of offices around Australia (in central, metropolitan and regional locations in each state and territory) and established practices in similar advocacy schemes.

If that recommendation is accepted, every veteran appealing to the AAT will have the opportunity of free legal representation but could, of course, still engage an advocate or a lawyer at their own cost or appear on their own behalf.

Comparable Government advocacy models

The study has investigated three comparable advocacy models in addition to the Canadian system:¹²

- the National Disability Advocacy Program and NDIS Appeals
- the National Aged Care Advocacy Program, and
- the advocacy arrangements for veterans in the United Kingdom.

The first two are professional advocacy services funded by the Australian Government with no reliance on volunteers. There is a stark contrast between the funding of those programs and the very limited government financial support for the veterans' advocacy service.

In 2018-19, the National Disability Advocacy Program and the National Disability Insurance Scheme Appeals Program have received multi-million dollar funding. The Older Persons Advocacy Network (OPAN) received a government grant of \$25.7 million to administer the National Aged Care Advocacy Program from 1 July 2017 to 30 June 2020.

The terms of reference require the study to examine *the level of service* provided by the veterans' advocacy program *which at a minimum is comparable in quality and value with other cohorts accessing government entitlements*. The disparity in funding for those two comparable Australian programs provides a sound basis for additional government funding for a veterans' advocacy service which can no longer rely almost entirely on volunteers and ex-service organisations.

While the study recognises the need for volunteers to be involved in veterans' advocacy in future, increased funding will be needed to achieve a modern professional sustainable advocacy service for veterans and their families.

Female veterans and families

The study makes recommendations arising out of its consultations with female veterans and with veterans' families including that:

10 There are only seven level 4 accredited ATDP compensation advocates (that is, trained to a standard to represent veterans at the AAT)

11 See Section 9

12 Canadian Government funding for the Bureau of Pensions Advocates is discussed in Section 9

- DVA request the Repatriation Medical Authority to review the Statements of Principles around female-specific health conditions to ensure they are adequately recognised, and
- the Defence Community Organisation's support for a veteran's partner and family be extended for a period of two years after the veteran transitions from Defence.

Conclusion

The majority of current advocates are accredited in compensation advocacy and many of the issues raised with the study revolved around compensation rather than wellbeing advocacy and support.

If the recommendations in this report result in compensation advocacy being managed more effectively through Veterans' National Advocacy Coordination and better use of modern technology, the balance in accredited advocates should tilt in future in favour of wellbeing advocacy. If that occurs, younger veterans may become more involved.

Wellbeing advocacy requires direct and ongoing contact and a good local knowledge of nearby medical, rehabilitation, financial and other services. This form of advocacy will always be an area where existing or yet to be established ESOs can provide invaluable assistance to veterans and veterans' families.

Findings

Finding 1

The study found:

- 1.1 ex-service organisations were established to meet the needs of the first three waves of veterans returning from successive wars. In particular, the Special Rate Disability Pension received by a lot of Vietnam veterans gave them available time to provide advocacy assistance. That situation will not recur.
- 1.2 while the existing ESOs have continued to assist their members, they also have made efforts to attract, and accommodate the requirements of, the fourth wave of veterans.
- 1.3 the study's investigations confirmed it is not easy to make this adjustment for several reasons:
 - the type of service experienced by each successive wave of veterans is different to the one before and requires different responses
 - there is a disconnection between veteran generations due to their different age groups, interests, lifestyle and expectations, and
 - change can disturb an ESO's existing arrangements and that may not suit its current members.
- 1.4 on present indications, fourth wave veterans:
 - are not interested in joining the major, long-established ESOs
 - are unlikely to establish an ESO to assist their cohort which is in any way comparable to the major ESOs established by the three preceding waves
 - have a considerable interest in wellbeing advocacy and support, and
 - are not interested in compensation advocacy as they consider that the system should be sufficiently well-designed to allow them to lodge their own claims or, if not, that it is the Government's responsibility.

Finding 2

The study found:

- 2.1 due to their age, a significant number of accredited volunteer advocates will retire in the next five years.
- 2.2 the submissions did not disclose any present strategy for replacing advocates.
- 2.3 only 3.9% of accredited advocates are under 39 years of age.
- 2.4 the age and gender of an advocate are important considerations for younger veterans who want to deal with advocates of similar age and experience.
- 2.5 the Transforming DVA reforms are resulting in increasing numbers of primary claims being lodged electronically through MyService.

Finding 3

The study found:

- 3.1 compensation advocates need to be trained in the provisions of VEA, DRCA and MRCA and understand the interaction between them to handle claims competently or, at a minimum, have their work closely supervised by an advocate with that expertise.
- 3.2 compensation advocates work within a well-defined process with reasonably predictable time frames and a definite end point.
- 3.3 wellbeing advocates work within a more complex and fluid environment which can involve addressing multiple issues over an indefinite period.
- 3.4 by fully utilising modern technology, compensation advocacy services can be largely provided at a distance (by telephone, skype and email). However, wellbeing advocacy needs direct and ongoing contact with the veteran and good local knowledge of nearby medical, rehabilitation, financial and other government, professional, not-for-profit and community services which may be able to assist the veteran.
- 3.5 if the administration of compensation claims can be simplified and sped up through Transforming DVA and other initiatives, the main focus for advocates in future will be on veterans' wellbeing.

Finding 4

The study found:

- 4.1 the Department is aware of the complexities and shortcomings in its administration of primary claims. DVA is undertaking a range of initiatives under the banner of Transforming DVA to make the claims process more efficient and easier to manage. The improvements made to date received positive responses from veterans, advocates and ESOs who were aware of DVA's reform program.
- 4.2 the Australian National Audit Office's independent performance audit titled *Efficiency of Veterans' Service Delivery by the Department of Veterans' Affairs* made six sound recommendations to improve administrative efficiency and DVA accepted and agreed with all of them.
- 4.3 the study supports DVA's reform initiatives which will be strengthened by the implementation of the ANAO recommendations and, taken together, should considerably improve DVA's claims handling efficiency.
- 4.4 ex-service organisations and veterans' advocates provide a very valuable service assisting veterans and their families to lodge primary claims with DVA and it is important that they continue to do so.

Finding 5

The study found:

- 5.1 the Veterans' Review Board is doing its job and discharging its statutory functions effectively and with general support from veterans and advocates.
- 5.2 the recently introduced alternative dispute resolution procedures allow many cases to be resolved by agreement more quickly with less cost and inconvenience.
- 5.3 the VRB has protocols to support vulnerable veterans.
- 5.4 when a matter does go to a hearing, the Board treats the veteran with care and respect and decides the case in a way that reflects the spirit of beneficial legislation. Accordingly, the study does not make any recommendation for change to the VRB's current arrangements or processes.

Finding 6

The study found the veterans' advocacy service is not meeting veterans' needs for competent representation at the Administrative Appeals Tribunal.

Finding 7

The study found:

- 7.1 veterans and advocates perceive AAT appeals to be adversarial and that they are at a significant disadvantage.
- 7.2 that disadvantage is a major barrier to veterans accessing their entitlements.
- 7.3 the establishment of a Veterans' National Legal Service and Veterans' National Legal Helpline will meet the issues raised by parliamentary committees which are set out in the terms of reference.

Finding 8

The study found:

- 8.1 Veterans Affairs Canada and the veteran community work cooperatively to assist veterans gain their full entitlements.
- 8.2 Canada has a long history of using government administrative officers and lawyers to assist veterans making claims for entitlements.
- 8.3 the Bureau of Pensions Advocates conducts an independent legal practice for veterans even though its lawyers are public servants employed by Veterans' Affairs Canada and its offices are in VAC premises.
- 8.4 the BPA lawyers are clearly trusted by veterans to act only on their behalf and their independence is supported by legislation.
- 8.5 the Canadian Review Board is very similar to the Veterans' Review Board in its role and procedure.
- 8.6 the Canadian appeal process is dealt with by written submission from the BPA lawyer and could not be implemented in Australia without extensive legislative and cultural change.
- 8.7 Veterans Affairs Canada does not take any part in reviews or appeals.
- 8.8 the Canadian system makes far less use of independent medical evidence than the Australian system and often relies on the medical report obtained by the veteran.
- 8.9 evidence from doctors and medical specialists is confined to their written reports – they do not give oral evidence at a review hearing.

Finding 9

The study found:

- 9.1 in Canada and the United Kingdom, the advocacy and support services for veterans reflect their history and the governmental, legal and administrative frameworks within which they work. Neither system could be simply uplifted and transferred to Australia but lessons can be learnt from the way they are structured and operate.
- 9.2 as large, national organisations, the Royal Canadian Legion and the Royal British Legion are able to fund and deliver a range and consistent level of services across their country.
- 9.3 the National Disability Advocacy Program and NDIS Appeals are government-funded programs providing people with disability with, first, access to disability advocacy and, second, assistance with internal reviews and AAT appeals. These programs are delivered by paid employees, not volunteers.
- 9.4 the National Aged Care Advocacy Program is a government-funded program providing older persons with advocacy services through a national network of nine service delivery agencies. This program is delivered by paid employees, not volunteers.

Finding 10

The study found:

- 10.1 under the current ATDP training model, it takes a long time for trainees to achieve accreditation.
- 10.2 as 83.8% of accredited advocates were born before 1965 and only 3.9% after 1979, there is a pressing need (particularly at compensation level 3) for younger advocates to be trained to take their place.
- 10.3 younger veterans are unlikely to have the time or patience to undertake advocacy training unless the courses are shorter and more intensive.
- 10.4 as the ATDP progressively moves towards higher educational standards and greater quality assurance, it needs a more formalised structure and better defined role as the training and licensing authority for veterans' advocates.

Finding 11

The study found:

- 11.1 there is a disconnection between female veterans on the one hand and ESOs and older male advocates on the other which is a significant barrier to them accessing their entitlements.
- 11.2 there is a lack of recognition of female-specific health conditions.
- 11.3 most female veterans expressed a preference for a female advocate.

Finding 12

The study found:

- 12.1 family support for veterans—particularly badly injured or vulnerable veterans—is essential for their wellbeing.
- 12.2 veterans' families give up a lot to support veterans throughout their career in Defence and yet they are cut off almost immediately a veteran transitions out.
- 12.3 the study has seen the strong support the partners of Vietnam veterans have given them for decades.
- 12.4 in recognition of their invaluable contribution, veterans' partners and families should be able to access transition benefits that meet their needs in their own right.

Finding 13

The study found:

- 13.1 the veterans' advocacy system as presently structured is coming to an end and will not provide veterans and their families with a modern professional sustainable advocacy service into the future.
- 13.2 advocacy services are unevenly spread around Australia with significant variation in the number, availability and quality of those services in different states and territories.
- 13.3 veterans' advocacy can be more effectively and efficiently delivered through the consolidation and central coordination of the existing advocacy services provided by ESOs and individual advocates to achieve a collective impact.
- 13.4 the proposed future model of advocacy service delivery will only work if it attracts and accommodates the needs and preferences of younger advocates and maximises the use of modern technology.
- 13.5 there is no short term fix for the problems confronting veterans' advocacy and support services. Reforms need to be properly implemented and well-funded in line with the funding provided to advocacy services for other comparable cohorts to achieve their desired outcomes.

Recommendations

Recommendation 1

That:

- 1.1 DVA set up a direct-line help desk for veterans' advocates, claims advisors and support workers to have direct access to departmental delegates who can answer technical questions.
- 1.2 in each internal review or reconsideration where the reviewer is minded to reach a negative decision, the reviewer should contact the veteran's advocate or the claimant (as appropriate), explain the reason for the tentative decision and give the advocate or claimant the opportunity to clarify any outstanding questions, rectify any remediable problems and advance any final contentions in support of the claim before the reviewer makes a determination.
- 1.3 primary claim delegates keep applicants or their advocates (as appropriate) fully informed about any significant delay in progressing their claim and the reasons for it.
- 1.4 the Department of Veterans' Affairs reverse its current approach of declining to help veterans lodge primary claims, encourage veterans to come to DVA for assistance and widely publicise that service. The officers assisting them should receive training in veterans' entitlements, client service and dealing with vulnerable veterans.

Recommendation 2

That the study supports the retention of the statutory prohibition on legal practitioners and persons holding a legal qualification representing veterans at hearings before the Veterans' Review Board.

Recommendation 3

That the DVA Legal Services Branch investigate ways to manage the Commissions' AAT cases more effectively and reduce legal costs (including medical specialists' fees) and report its findings to the Commissions.

Recommendation 4

That the Department increase the size of the inhouse advocacy team (including lawyers, advocates and administrative assistants), increase its workload and include MRCA and DRCA as well as VEA cases.

Recommendation 5

That the Australian Government establish, fund and promote a free Veterans' National Legal Service and a Veterans' National Legal Helpline.

Recommendation 6

That the Advocacy Training and Development Program:

- 6.1 give consideration to the course structure and duration that will be most suitable for future applicants.
- 6.2 develop intensive, short accreditation courses at each level in both compensation and wellbeing advocacy in conjunction with ESOs capable of providing the practical experience component.
- 6.3 develop a course component on veterans' entitlements law for each of the four levels of compensation advocacy accreditation.
- 6.4 introduce a level 3 wellbeing unit of competency leading to a Certificate IV qualification (similar to the Certificate IV in Community Services).
- 6.5 be incorporated as the Veterans' Advocates Board, a company limited by guarantee.
- 6.6 take on a fully developed role as the training and licensing authority for all accredited veterans' advocates (both compensation and welfare) including continuing professional development, insurance, ethical standards, codes of conduct, complaints and disciplinary procedures.

Recommendation 7

That the Department of Veterans' Affairs:

- 7.1 engage more actively with female veterans to ensure that advocacy services are accessible to, and meet the needs of women and, in particular, that women who are medically discharged from the ADF are able to access competent advocacy and other support services irrespective of location or ESO affiliation.
- 7.2 encourage younger female veterans to undertake advocacy training.
- 7.3 request the Repatriation Medical Authority to review the Statements of Principles around female-specific health conditions to ensure they are adequately recognised.

Recommendation 8

That:

- 8.1 The Defence Community Organisation's support for a veteran's partner and family be extended for a period of two years after the veteran transitions from Defence.
- 8.2 DVA and ex-service organisations consider how they can best assist veterans' families, particularly those committed to the long-term care of a veteran.
- 8.3 DVA and ex-service organisations take note of the five underlying issues that confront veterans' families confirmed or identified by this study and consider if more can be done to respond to them.

Recommendation 9

That DVA review its client communication strategy and processes following consultation with largely younger veterans and veterans' advocates including several professionally conducted focus groups in different regions.

Recommendation 10

That the Department consider, in consultation with ESOs and veterans' advocates, establishing a body to plan, implement and deliver a consolidated, coordinated approach to the national delivery of veterans' advocacy and support services resulting in a modern professional sustainable advocacy service.

Recommendation 11

That the Department note the study is of the view that the long term focus for veterans' advocacy services will principally be wellbeing advocacy which will have a direct bearing on the number and type of advocates required over time as well as the skills, experience and qualifications they will need.

Recommendation 12

That the implementation of these recommendations be monitored by the Commissions and annual progress reports made to the Minister and the Secretary with a thorough evaluation of the outcomes at the end of three years.

Introduction

The Minister for Veterans' Affairs, the Hon Darren Chester MP, announced this Scoping Study on 16 April 2018. The study commenced immediately and the Terms of Reference require this report to be delivered by December 2018.

The Australian Government provides a wide range of benefits and entitlements to veterans who have served in the Australian Defence Force and to members of their families.

The law relating to veterans' benefits and entitlements is complex and many veterans need, or at least prefer, to gain assistance in making their claims on the Department of Veterans' Affairs (DVA).

In the main, for the 100 years since the First World War, that assistance has been provided by other veterans who volunteer their help through ex-service organisations. This extraordinary, dedicated voluntary service is, and always has been, founded on the military ethos of mates helping mates.

However, the advocacy arrangements have to adapt to meet new demands, as noted in the terms of reference:

The veterans' advocacy sector is undergoing a period of change. The nature of service and training is evolving, driven by expectations of younger veterans who seek a more professional client centric service than their predecessors in accessing their entitlements. They seek quality services which are underpinned by accreditation frameworks and high standards of governance.

In short, this study is to recommend a model for a modern professional sustainable advocacy service that will meet the needs of Australian veterans and their families now and into the future.

Before proceeding further, it may be useful to explain or clarify several matters which are central to the issues considered in this report.

Careers in the Australian Defence Force

Many members of the ADF have successful careers both in Defence and in later civilian employment. Their military training and service gives them experience, skills and personal development that stands them in good stead throughout their life. Apart from a helping hand with transition from the ADF, they require little assistance from Defence, the Department of Veterans' Affairs or ex-service organisations after their discharge.

This study is not about them.

This study is about advocacy and welfare or wellbeing¹³ support for veterans and their families who do need assistance in adjusting to post-military life, obtaining their just entitlements and coping with injuries, disease or medical conditions they have sustained during service and the compounding personal, domestic and social problems they may cause.

As a result, this report looks closely at those needs and how best to meet them, but it is only part of the bigger Defence career picture.

Who is a 'veteran'?

Historically, the term 'war veteran' or the abbreviated 'veteran' only applied to members of the Australian Defence Force who had served in wars or conflicts overseas but that is no longer the case.

The *Ministerial Statement on Veterans and Their Families* delivered in August 2017 by the then Minister for Veterans' Affairs said:

There are currently around 58,000 Australians serving in our Defence Forces. Some will serve overseas. Others will serve in barracks and bases around the country ...

13 This terminology has changed over time and 'wellbeing' is now preferred to 'welfare'

*In the Australian community, there are an estimated 320,000 veterans who have been deployed. Many thousands more have not seen service outside Australia. These men and women have worn their uniforms in both peace time and in conflict.*¹⁴

The Statement concluded that, no matter who they are, all of them are or will become veterans but that expanded definition is not always understood or accepted.

To be clear, in this report ‘veteran’ includes any past member of the Australian Defence Force who has served for at least one day and, where appropriate, can be taken to include their families.

Fourth wave of veterans

Looking back over the last 100 years, there have been distinct waves of veterans returning from three overseas conflicts: the First World War, the Second World War and the Korean – Vietnam War conflicts.

The Australian Government recognised its responsibility to provide pensions and other support upon the death or incapacity of members of the Defence Force at the beginning of the First World War. Those entitlements were set out in the *War Pensions Act 1914* and later in the *Australian Soldiers’ Repatriation Act 1917*. That commitment to war veterans continued through the Second World War and the Vietnam War.

From 1975, there was a long period without any warlike military engagements but peacekeeping and humanitarian operations continued to be conducted with the United Nations and other partners. Renewed engagement in warlike operations began with the First Gulf War followed by East Timor, Iraq and Afghanistan and continues in the Middle East today in what has become Australia’s longest engagement in international conflict.

Australia is now assisting its fourth wave of veterans and the Minister acknowledged this categorisation in the Foreword to *Repat: A Concise History of Repatriation in Australia*. The Minister said:

*More recently military operations in East Timor, Afghanistan, Iraq and elsewhere have led to a ‘fourth wave’ of veterans, different in many ways from those who had gone before.*¹⁵

Assisting and supporting fourth wave veterans and their families for the next four, five or six decades goes to the core of the Department’s purpose.

What do we mean by ‘advocacy’ and ‘advocate’?

In this study, ‘advocacy’ means representing, speaking up for, assisting or finding assistance for a veteran. It does not mean legal representation by practising lawyers.

There are two types of veterans’ advocates and some advocates are accredited¹⁶ in both categories. Compensation advocates assist veterans to access their benefits and entitlements. They can prepare, or assist in preparing, primary claims and obtaining supporting information to be lodged with DVA.

If a claim is not accepted, compensation advocates can represent the veteran at the Veterans’ Review Board (depending on their level of training) and some may also appear for a veteran in a further appeal to the Administrative Appeals Tribunal.

Wellbeing advocates provide support and assistance for veterans dealing with health, personal and family problems including: rehabilitation; medical treatment; accommodation; employment; addiction; financial difficulties; and domestic dysfunction.

14 Page 2

15 Department of Veterans’ Affairs, 2018, page vii

16 ‘Accredited’ means accredited under the Advocacy Training and Development Program – see Section 11

The great majority of accredited advocates are volunteers and many of them are Vietnam War veterans. A small number of paid advocates are engaged by the large ex-service organisations, principally the Returned and Services League and Legacy.

Veterans' entitlements legislation

There are three principal Acts¹⁷ of the Australian Parliament governing veterans' entitlements which are referred to throughout this report:

- the *Veterans' Entitlements Act 1986* (known as VEA)
- the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (DRCA) which replaced the *Safety, Rehabilitation and Compensation Act 1988* (SRCA) for claims related to Defence service in October 2017 but with effect from 1988, and
- the *Military, Rehabilitation and Compensation Act 2004* (MRCA).

Veterans' entitlements have evolved over the last 100 years. As the nature and purpose of entitlements has changed, the legislation has changed as well with an increasing focus on rehabilitation.

However, the legislative changes did not affect already accrued entitlements and each of the three Acts continues to have application for specific time periods (see **Appendix 1**). As a result, a long-serving Defence member may have claims under each of the three Acts depending on the date of the injury or onset of the disease. All claims which arose on or after 1 July 2004 or will arise in future fall under MRCA.

The Repatriation Commission and the Military Rehabilitation and Compensation Commission

When veterans' entitlements were first introduced during the First World War, they were known as 'repatriation' benefits¹⁸ and administered by the Repatriation Department. That peculiarly Australian use of this term continues today.

The Repatriation Commission is the statutory authority which administers the VEA. The functions of the Commission¹⁹ include:

- to grant pensions, allowances and other benefits to veterans and dependants of veterans, and
- to arrange for the provision of treatment and other services for veterans and dependants of veterans.

MRCA and DRCA are administered by the Military Rehabilitation and Compensation Commission. Its functions include:²⁰

- to make determinations about acceptance of liability, the payment or provision of compensation and the provision of services for treatment and rehabilitation
- to minimise the duration and severity of service injuries and service diseases by arranging quickly for the rehabilitation of members and former members who suffered those injuries and diseases, and

17 There are a number of other Acts which can have some application to veterans' benefits including Defence superannuation legislation

18 'Repatriation' means return to one's native land and, at the end of the First World War, 135,005 men were brought home from Europe and 16,733 from Egypt between 3 December 1918 and 22 September 1919. However, repatriation (and the abbreviation 'repat') took on a second, singularly Australian meaning covering veterans' benefits and entitlements that is still in use 100 years later: see *The Last Shilling – A History of Repatriation in Australia* by Clem Lloyd and Jacqui Rees, pages 1 and 120-121, Melbourne University Press, 1994

19 VEA, section 180

20 MRCA, section 362

- to promote the return to suitable work (defence or civilian) by persons who suffered a service injury or disease.

The Commissions have given delegations to DVA officers to conduct the day to day administration of all veterans' claims and appeals under their respective Acts.

Beneficial legislation

Veterans' entitlements legislation is often described as 'beneficial' legislation but it is important to understand the effect and the limitations of those beneficial aspects.

Where there are two equally likely interpretations of a provision in beneficial legislation, the interpretation that is more likely to assist the claimant to receive benefits is to be adopted. The Report of the *Independent Enquiry into the Repatriation System*, June 1975²¹ conducted by Justice Toose put it this way:

Compensation and other benefits should be available as a matter of right and not as a welfare handout and, in cases of doubt, the doubt should be resolved in favour of those claiming to be entitled.

The beneficial nature of veterans' legislation can also be seen in their procedural provisions. For example, for claims under the VEA,²² the Repatriation Commission:

- is not bound to act in a formal manner and is not bound by any rules of evidence, but may inform itself on any matter in such manner as it thinks just
- shall act according to the substantial justice and the substantial merits of the case, without regard to legal form and technicalities, and
- shall take into account the effects of the passage of time (including on the availability of witnesses) and the absence of, or a deficiency in, official records.

Another beneficial element of the legislation is found in the standards of proof applied in determining a veteran's claim (known as the 'reasonable hypothesis' and the 'reasonable satisfaction' tests for operational and non-operational service respectively).

21 Pages 40-41

22 VEA, section 119 (1) and note that MRCA has a similar provision (section 334) but DRCA does not

Section 1: The Conduct of this Scoping Study

When the Minister announced this major study, he said the study:

... will talk to younger veterans, female veterans, veterans' families, ex-service organisations and the broader Defence community in coming months.

The latest research will be reviewed, veterans' advocacy services in other countries will be examined, and advocacy models in other areas, such as legal services, community and disability sectors will be looked at.

I hope many individuals and organisations will contribute their experiences and ideas to the study.

The first step in meeting these requirements for broad consultation was to prepare a discussion paper which was released on 31 May 2018. In his accompanying media release, the Minister said:

The independent study being led by Robert Cornall AO will aim to provide nationally consistent service where the support for veterans is at least equal to those provided in comparable sectors.

Currently, the majority of advocacy services to veterans are delivered by ex-service organisations and their volunteers.

This study will help inform how we can provide a sustainable service in the future and set the quality standards for advocacy services to veterans and their families in accessing their entitlements.

The discussion paper was accompanied by two questionnaires to assist in preparation of submissions and facilitate electronic lodgment. The first questionnaire followed the format of the discussion paper and contained the same questions. The second questionnaire was designed so veterans and their families could respond to questions about their personal experiences and in accessing their entitlements from DVA. Although use of the questionnaires was optional, they were widely adopted by organisations and individuals.

The discussion paper initially requested submissions by 31 July 2018 but this date was extended to 31 August 2018 due to strong interest from individuals and organisations needing more time to contribute to the study.

The majority of submissions were lodged electronically through the study's website or emailed directly to the study. A small number were submitted by mail or in person. The study received a total of 227²³ submissions comprising 174 submissions from individuals and 53 from organisations.

Submissions were classified as open, name withheld or confidential. Open submissions were published on the study's website. Name withheld submissions were also published but with the submitter's name removed. Confidential submissions were noted on the website without any further information. Of the 227 submissions received, 54 were classified as open, 79 were name withheld and 94 were confidential (see **Appendix 2**).

The study consulted extensively with veterans, family members, ex-service organisations, advocates, advocacy trainers, the Veterans' Review Board, the Administrative Appeals Tribunal, the Defence community, interested individuals and representatives of legal, health, disability and community sectors.

Public consultations were conducted around Australia from 30 May to 6 September 2018. The study visited each capital city (some more than once), a regional centre in each State and Alice Springs in

23 Note: Submission numbers go up to number 231. Three submission numbers were allocated in error and one submission was withdrawn by the author. The total number of submissions is 227

the Northern Territory. The regional centres were selected on the basis of having the highest regional veteran population within a 200 kilometre radius. Details of the locations and dates of the formal domestic consultations are in **Appendix 3**.

The public consultations were widely advertised and promoted by the study secretariat:

- by email to advocates and ex-service organisations on the release of the discussion paper and during the consultation period
- through social media and regular postings of information as consultations proceeded
- advertising in both city and regional newspapers to promote the study and consultation dates for each location shortly ahead of time, and
- contacting local ESOs and other organisations by telephone and email and requesting them to advise their members of the opportunity to take part in the study.

Individuals could book a time for a face-to-face meeting through an online calendar.

During the public consultations, the study met with over 400 people in one-on-one or small group meetings. For mutual convenience, a few consultations were conducted by telephone or video conference. The people interviewed spoke very openly about their views and personal experience.

Table 1: Consultation numbers

Category	Male	Female	Total
Veteran	45	26	71
ESO	59	18	77
Advocate	51	14	65
Health and Disability	11	30	41
Legal Sector	35	18	53
Defence	15	10	25
DVA	29	26	55
Government	17	4	21
Other	3	8	11
Total	265	154	419

The study undertook international consultations in Canada from 17 to 22 September 2018. The Bureau of Pensions Advocates provided a very detailed briefing over three days which included observing two lower tier appeal hearings (similar to our hearings before the Veterans' Review Board) and two upper tier appeals (which are completely different to appeals to the Administrative Appeals Tribunal²⁴).

The study also consulted with members of the Veterans Review and Appeal Board, Veterans Affairs Canada, the Veterans Ombudsman and, by telephone after return to Australia, the Royal Canadian Legion.

Following on from Canada, the study held consultations in the United Kingdom from 22 to 27 September 2018 to obtain another comparison with the Australian system. The study met with Veterans UK (in Norcross) and, in London, with the Ministry of Defence, the London Veterans

24 See Section 7

Advisory and Pensions Committee, the Royal British Legion, the Forces in Mind Trust and Cobseo – the Confederation of British Service and Ex-Service Organisations.

Locations and dates of consultations in Canada and the United Kingdom are set out in **Appendix 4**.

Finally, the study sought out and considered earlier reviews, inquiries, commentaries, reference texts, articles and other material relevant to the terms of reference. The study secretariat prepared research papers on issues that had attracted attention as work progressed.

The study is confident that, as a result of the consultations, research and enquiries outlined in this Section, it is well informed about the issues to be dealt with in this report.

Section 2: Ex-Service Organisations

As most veterans' advocacy services are delivered through ex-service organisations, it is important to have a clear picture of their history, purpose, structure, location and activities.

In 2015, the Aspen Foundation²⁵ was approached by individual ex-service organisations to assist ESOs planning for the future. The Final Report of the *Ex-Service Organisations Mapping Project* was released at the Australian War Memorial on 26 May 2016.

This research made many interesting findings about ESOs and service-related charities and trusts, including:²⁶

- ESOs and their branches and sub-branches were in 2,780 locations across Australia²⁷
- 3,474 charities nominated veterans and veterans' families as a beneficiary and 519 (most of which would be ESOs) nominated veterans as the sole beneficiary, and
- the research identified 69 non-member based veterans' service organisations and 19 veterans' trusts supporting veterans and their families across Australia.

Despite these large numbers, five ex-service organisations stand out as iconic Australian institutions. Between them, they have voluntarily assisted and cared for veterans and their families since the First World War and have provided invaluable service to the veteran community and the nation.

Returned and Services League

The first and the biggest of them is the Returned and Services League (RSL) which was founded by returning soldiers in 1916 as the Returned Sailors and Soldiers Imperial League of Australia. Their aim was to continue the camaraderie, concern and mateship shown among the Australian troops while they were at war. In doing so, they established the ethos of mates helping mates that has been the essential hallmark of all ESOs ever since.

The RSL was instrumental in creating the Commonwealth repatriation system; service, disability and war widows' pensions; and employment and retraining programs.

The RSL is structured as a national federation of its state and Australian Capital Territory branches. While different branches and sub-branches have their own mission statements, the national body's mission is expressed this way:

Our purpose is to help veterans and their families by offering care, financial assistance and advocacy, along with commemorative services that help all Australians remember the Fallen.

By way of comparison, RSL New South Wales' mission is: *Respecting, supporting and remembering our veterans and their families*; and its vision is: *To be recognised and respected as the preeminent association within the Defence Family in New South Wales.*

Each branch has districts and sub-branches that bring together the interests of members in their local area. The RSL has a long and distinguished record of assisting veterans and veterans' families in many ways, including advocating on their behalf to ensure they receive their full benefits and entitlements.

Today, the RSL also helps serving members of the ADF and their families. It partners with Defence, for example, in the Invictus Games and in providing comfort packs through the Australian Forces Overseas Fund to servicemen and women serving on operations.

25 The Aspen Foundation is an independent philanthropic organisation that has a history of funding research projects to address health and wellness in the Australian community (see Final Report Executive Summary, page 1)

26 Ibid, pages 6-7

27 The spread of ESO locations by state and territory is: New South Wales 28%; Victoria 25%; Queensland 21%; South Australia 10%; Western Australia 10%; Tasmania 4%; ACT 1%; Northern Territory 1% - see Final Report Executive Summary, page 6. Also see map on page 25 of the Final Report

The RSL's international counterparts include the Royal British Legion and the Royal Canadian Legion. As at November 2018, the RSL had 330 accredited advocates.

Legacy

Legacy arose from the promise diggers made to each other in the First World War trenches that, if they didn't come home, those who did would look after their families.

Legacy was conceived in 1923 in Melbourne as a luncheon club but it found its real purpose in 1926 when a group of legatees (that is, members) persuaded their colleagues to adopt the care of deceased soldiers' dependants as the organisation's main objective.

In his Introduction to *Legacy – the First Fifty Years*, which was published in 1978, Mark Lyons said:

Legacy's help took many forms. It assisted new widows coping with bereavement; for example, by taking care of heavy hire purchase debts and by ensuring they obtained all government benefits for which they were eligible. It gave young children holidays ... Legacy helped pay for the schooling and tertiary education of numerous children, and found many others jobs. To families with incomes below a certain level, Legacy paid regular grants. Where a family's house was dilapidated, Legacy repaired it, or, if it was rented, a Legacy subsidy allowed the family to rent better accommodation than could otherwise be afforded.

Legacy is a unique organisation. Nowhere else in the world is there an organisation of ex-service men devoted solely to helping the dependants of their deceased comrades. In no other welfare organisation is such a wide range of services, including family advising, provided solely by volunteers.²⁸

That work continues today. Legacy clubs provide services to Australian families suffering after the injury or death of a spouse or parent, during or after their Defence Force service. We currently care for around 60,000 beneficiaries, with 96% of them being elderly widows throughout Australia.²⁹

Legacy has 48 member Clubs found in each state and territory and one Club in London.

As at November 2018, Legacy had 66 accredited advocates.

War Widows' Guild of Australia

At the end of the Second World War, thousands of war widows faced an uncertain future. Although Prime Minister John Curtin had dealt with war widow pensions, the pension was well below the basic wage. Many war widows, especially those with small children, were living in near poverty.

In response to these circumstances, the War Widows' Craft Guild was established in Victoria on 22 November 1945 by Jessie May Vasey, widow of Major General George Vasey who had been killed while travelling to New Guinea on active service.

The Guild began teaching members weaving and other handicrafts to supplement their inadequate pensions. As guilds were set up in all states, the war widows became a powerful lobby group influencing governments on all matters concerning war widows' pensions, educational benefits and health care. They fought to have the pensions seen as compensation for their husbands' lives rather than a government handout.

Each state made its own arrangements to cater for members' needs but all made housing a priority. In 1954, the Guild was able to take advantage of the *Aged Persons Homes Act* and make provision for housing for its members.

In 1985 the Guild had 65,000 members but that number has steadily declined to around 8,500 today. Its website displays this banner:

²⁸ Page xiii, Lothian Publishing Company Pty Ltd

²⁹ See Legacy Australia Official website: www.legacy.com.au

We all belong to each other. We all need each other. It is in serving each other and in sacrificing for our common good that we are finding our true life.

The Guild's mission now is to support and advocate for all war widows (not just members) from all conflicts through its guilds in all Australian jurisdictions except Victoria and the Northern Territory.

This assessment has been made of the Guild:

The Guild is perhaps unique in the world for the manner in which women themselves have been the makers of their own destiny. It is clear that the sisterhood ethic has won through; the Guild has provided the kind of relationship between its members that is the counterpart of the mateship of men in the trenches. It is an organisation of great compassion.³⁰

As at November 2018, the War Widows' Guild had one accredited advocate.

Vietnam Veterans' Association of Australia

Several factors contributed to the establishment of the VVAA under the motto: *Honour the dead but fight like hell for the living.*

Due to the unpopularity of the Vietnam War, the Australian public had, most unfairly, turned against the Vietnam veterans for a time. The Government was slow to acknowledge their service and there was a lack of support from the RSL. They were not accepted as 'real veterans' and their war was 'not a real war'.

These factors were summarised in *The Last Shilling* in these terms:

The creation of the Vietnam Veterans' Association in the late 1970s was ... a reaction by a number of Vietnam veterans ... to what they perceived as official indifference and dislike. These veterans rejected the established ex-service movement, they were hostile to the government, and they were 'angrily dissatisfied' with the conduct of DVA.³¹

Another factor arose from the veterans becoming aware through the media that they were suffering the same adverse effects from exposure to herbicides as farmers and their children.

The Association battled against that government indifference but had to accept bitter disappointment when the findings of the 1983 *Royal Commission on the Use and Effects of Chemical Agents on Australian Personnel in Vietnam* were released. Although now discredited, the Commission found that no veteran had suffered due to exposure to chemicals in Vietnam.

The VVAA successfully lobbied for the Vietnam Veterans' Counselling Service (which later became the Veterans and Veterans Families Counselling Service and now Open Arms – Veterans & Families Counselling) to deal with their mental health conditions. Similar counselling is now an integral part of treatment regimes for survivors of other traumatic events.

That achievement was followed by the establishment of the Post Traumatic Stress Disorder Clinic at Heidelberg Repatriation Hospital in Melbourne where courses assisted veterans to contribute to their own wellbeing, cope with problems and adapt their lifestyle to best suit themselves.

The VVAA's philosophy is to identify and coordinate services for the holistic needs of veterans and their families and it supports veterans of all conflicts, their partners and children.

The Association's structure comprises a national executive with branches and sub-branches in each state and territory. Sub-branches provide local assistance in wellbeing matters and compensation or pension claims. Their advocates appear for veterans at the Veterans' Review Board and, on occasion, at the Administrative Appeals Tribunal.

As at November 2018, the Vietnam Veterans' Association had 3 accredited advocates.

30 *No Mean Destiny: the Story of the War Widows' Guild of Australia 1945 – 1985* by Mavis Thorpe Clark, Hyland House Publishing, 1986, page 276

31 *The Last Shilling – A History of Repatriation in Australia* by Clem Lloyd and Jacqui Rees, page 359

Vietnam Veterans' Federation of Australia

In February 1995, the VVAA's New South Wales Branch chose to dissociate itself from the Association. At a further meeting in July 1995, some interstate organisations agreed to join with New South Wales and form the Vietnam Veterans' Federation of Australia. As there was a perception that Vietnam veterans were not being properly represented, over half the membership of the Association joined the Federation.

The Federation's mission today is to represent former and current members of the Defence forces and their families. It does so for veterans of all conflicts from the Second World War to Afghanistan, including peacekeeping and peacemaking missions.

VVFA advocates provide a full range of wellbeing and compensation services for veterans. The Federation's advocates also appear at the Veterans' Review Board and, on occasion, at the Administrative Appeals Tribunal.

As with the Vietnam Veterans' Association, the Federation's structure comprises a national executive with branches and sub-branches in each state and the ACT and representation in the Northern Territory.

As at November 2018, the Vietnam Veterans' Federation had 26 accredited advocates.

Other ex-service organisations

In addition to those five organisations, the following ESOs were also included in the Ex-Service Organisations Mapping Project:³²

- Australian Peacekeeper & Peacemaker Veterans Association
- Australian Special Air Service Association
- Defence Force Welfare Association
- Extreme Disability War Veterans Association
- National Servicemen's Association
- Naval Association of Australia
- Partners of Veterans Association of Australia
- Royal Australian Regiment Association
- TPI Federation of Australia, and
- Women Veterans Network Australia.

Different types of ESOs

While all ESOs do good work, the structure, activities and objectives of different ESOs are largely dictated by their history and their membership as the following three examples illustrate.

First, the Woden Valley RSL Sub-branch explained in its submission that its *volunteers are aged from their forties to late eighties, with a few in their nineties*.³³ The sub-branch also advised:

*Many older clients have difficulty accessing essential services because of their limited mobility, age-related mental illnesses, poor vision and/or hearing, and having few friends or family members to assist with transport or administration. Thus, we are developing some limited but critical capabilities relating to ACAT and OT assessments, to secure services such as home care, house and garden cleaning, and transport.*³⁴

³² See Aspen Foundation Final Report: *Ex-Service Organisations Mapping Project*, page 25

³³ Submission 214, page 6

³⁴ Ibid, page 11

Second, these support activities can be contrasted to those undertaken by some of the recently established ESOs.

In early 2014 an informal group of younger veterans and their families formed the Veterans of Australia Association under the guidance of the Hervey Bay City Sub-branch of the Vietnam Veterans' Association. In its submission, the VOA said:

Much current focus within the younger veteran community revolves around specific events, activities and other programs such as surfing, motor car racing, battle field bike rides, etc. There is definitely a place for this sort of work and the organisations responsible do a fantastic job significantly improving the wellbeing of those veterans involved.³⁵

Mates4Mates is one such organisation. Its website advertises rehabilitation adventure challenges that are:

... difficult but realistic. They provide participants with a goal to work towards and a reason to get out of bed in the morning. They build motivation, teamwork and trust and have a profound effect on participants.

The challenges are collected in three groups: trekking (Kokoda and Dawson River Retreat); adventures (Dawson River Retreat, Tassie Adventure and Blue Mountains Multi-Adventure); and horse riding (Snowy Mountain Horse Trek).

Soldier On Australia³⁶ is another recently established and very successful ESO meeting the needs of fourth wave veterans and their family members. It was launched on 24 April 2014 to support younger veterans injured physically and psychologically in war who have come home to a very different life. Soldier On also assists those who have been injured or harmed by their service during peacekeeping operations, training exercises and general duties.

During the first couple of years, Soldier On raised awareness about the experiences of modern-day veterans and the issues they face through a range of high-profile events, including the Walking with the Wounded South Pole Allied Challenge in 2013 and Trois Etapes in France in 2014.

Today the organisation has centres in Sydney, Melbourne and Canberra as well as offices in Adelaide, Albury, Brisbane, Newcastle and Perth. The centres and the offices in Brisbane and Perth have inhouse psychologists who specialise in trauma-related mental health conditions and Employment Officers and Social Program Officers to provide employment and education support and social activities and programs.

The third example is the Women Veterans Network Australia. The WVNA is a virtual ESO that began with a community Facebook page sharing posts of general interest to women veterans. Discussions at the RSL funded Women Veterans' Symposium held in Brisbane in July 2015 led to the establishment of the Women Veterans Network Australia on 25 July 2015 as a network of closed Facebook groups.

The WVNA is open to women of all ranks who are serving or have served in the Australian Defence Force and provides a safe, cohesive and engaging environment for them to connect and share information and resources through social media.

The Network operates on the premise that women have unique transitional challenges because of their role in the military and society and they experience deployment and reintegration differently to men.

Its website contains information about: health and wellness services (with links); non-liability health care; forms and fact sheets; online programs; helplines; and topical news.

35 Submission, point 2.1

36 See Soldier On Australia website: www.soldieron.org.au

The WVNA holds an annual National Forum (this year in Townsville and Brisbane in 2019) and the Network's regional groups (such as Hunter Valley, Gold Coast and Alice Springs) have monthly coffee get-togethers.

The WVNA does not have any accredited advocates.

Finding 1

The study found:

- 1.1 ex-service organisations were established to meet the needs of the first three waves of veterans returning from successive wars. In particular, the Special Rate Disability Pension received by a lot of Vietnam veterans gave them available time to provide advocacy assistance. That situation will not recur.
- 1.2 while the existing ESOs have continued to assist their members, they also have made efforts to attract, and accommodate the requirements of, the fourth wave of veterans.
- 1.3 the study's investigations confirmed it is not easy to make this adjustment for several reasons:
 - the type of service experienced by each successive wave of veterans is different to the one before and requires different responses
 - there is a disconnection between veteran generations due to their different age groups, interests, lifestyle and expectations, and
 - change can disturb an ESO's existing arrangements and that may not suit its current members.
- 1.4 on present indications, fourth wave veterans:
 - are not interested in joining the major, long-established ESOs
 - are unlikely to establish an ESO to assist their cohort which is in any way comparable to the major ESOs established by the three preceding waves
 - have a considerable interest in wellbeing advocacy and support, and
 - are not interested in compensation advocacy as they consider that the system should be sufficiently well-designed to allow them to lodge their own claims or, if not, that it is the Government's responsibility.

Section 3: The Present Situation

The mission of the Department of Veterans' Affairs is *to support those who serve or have served in the defence of our nation and commemorate their service and sacrifice*. Its vision is *to be a responsive and flexible organisation, efficiently delivering high quality, connected services to all generations of veterans and the wider veteran community*.

The following statistics indicate the size of the task involved in meeting those objectives.

The Permanent Defence Force totals around 57,954³⁷ members in the three Services comprising 47,571 men and 10,383 women. Around 5,200 of them will separate from the ADF each year and all of them will become veterans.

DVA estimates over half the veterans in Australia are DVA clients. The Department can only provide an estimate of this total figure because, historically, veterans only came to DVA's attention when they made a claim for an injury or disease arising from their service. This information gap will become progressively less of a problem in future following the recent decision to issue a non-liability health card (known as the White Card) to all separating ADF members.

As at 30 June 2018, DVA had 282,314 clients (made up by 165,824 veterans and 117,156 dependants³⁸) who were in receipt of pensions, allowances and health care benefits.

Although the Department's actuarial projections estimate these figures will be further reduced by 30 June 2030 to a total of 231,900 clients, the Department will still be providing pensions, allowances and health care benefits to a large number of veterans and their families well into the future.

Details of the categories of recipients and types of payments are set out in **Appendix 5**.

When veterans make a claim for entitlements, they do so under one or more of the three principal Acts: VEA, MRCA or DRCA or a combination of them. The 2017 Ministerial Statement contains a succinct explanation of the entitlements and benefits under each Act as follows:³⁹

The Veterans' Entitlements Act provides coverage for those who served in wartime and certain operational deployments, including certain peacetime service, between 7 December 1972 and 30 June 2004.

The VEA provides for a means-tested service pension for certain eligible veterans and their partners. There is also an income support supplement paid to eligible war widows and widowers. Compensation for veterans and their dependants is provided by a disability pension, war widow's and widower's pension and orphan's pension.

The Safety Rehabilitation and Compensation (Defence-related Claims) Act (formerly the Safety Rehabilitation and Compensation Act) covers similar rehabilitation and compensation to that provided under the MRCA for injuries and diseases suffered as a result of peacetime and peacekeeping service up to and including 30 June 2004 and operational service between 7 April 1994 and 30 June 2004.

The Military Rehabilitation and Compensation Act provides rehabilitation and compensation coverage for members of the ADF who served on or after 1 July 2004, including permanent impairment compensation, incapacity payments, Special Rate Disability Pension and compensation to eligible dependants following the death of the member.

All payments under these Acts are compensation payments with the exception of the service pension and income support supplement paid under the VEA which are categorised as income support.

37 These figures are taken from the Department of Defence Annual Report 2017-18

38 There is a small deduction from the addition of those two figures to allow for beneficiaries who fall into both categories

39 Ministerial Statement on Veterans and Their Families, page 24

The compensation payments under the VEA comprise the Disability Pension (including Totally and Permanently Incapacitated, Temporarily Totally Incapacitated, Intermediate Rate and Extreme Disablement Adjustment), War Widow's and Widower's Pension and Orphan's Pension.⁴⁰

Under the other Acts, the compensation payments comprise incapacity payments, permanent impairment and compensation following death.⁴¹

The move from the VEA to the SRCA in 1988 shifted veterans' claims from legislation dealing specifically with veterans' entitlements into a worker's compensation scheme which covered Commonwealth public servants.

In the parliamentary debate on the *Veterans Entitlements Bill* on 16 October 1985, the then Minister for Aboriginal Affairs (Mr Holding) said:

*While it is considered that in general there is no basis for maintaining repatriation entitlements for peacetime service, the Government accepts that there is a case for continuing repatriation entitlements for new enlistees in respect of any hazardous defence service in which they have been engaged.*⁴²

This change introduced a welcome emphasis on rehabilitation, recovery and return to work (where possible) rather than the previous focus under the VEA on a lifetime Special Rate Disability Pension and the Gold Card. However, in the study's view, it moved veteran entitlements claims into a more adversarial and legalistic jurisdiction.

Whether that observation is correct or not, the change has resulted in two outcomes:

- DVA moved from being represented in Administrative Appeals Tribunal cases by its own inhouse legal team to more expensive private practitioners,⁴³ and
- it created a perception among some advocates that DVA is, in effect, just another insurance company bent on rejecting claims and cutting costs.

This perception indicates a misunderstanding of the way DVA is funded. DVA receives departmental funding to cover the cost of its staff and administration. That funding attracts the same efficiency dividend, average staffing levels and other constraints which apply to all Australian Public Service departments and agencies.

Veterans' benefits and entitlements are paid from administered funds which are not subject to those limitations. In the Ministerial Statement made in 2017, the Minister pointed out:

*Over 95% of the Department's budget comprises payments that are legislated, fully-funded and uncapped. If there is a need, it will be funded and the Department will provide assistance. For example, in the 2017-18 Budget, DVA is estimated to spend \$11.3 billion but if more veterans present with eligible claims, this figure may be higher.*⁴⁴

In 2017-18, DVA expended a total of \$13 billion made up of \$7.4 billion on income support and compensation and \$5.3 billion on health and wellbeing.

Veterans' advocacy is – and always has been – undertaken mainly by volunteer advocates through their ex-service organisations. The Ex-Service Organisations Mapping Project shows how diverse and widely dispersed the ESOs' branches and sub-branches are. It raises obvious questions about the most efficient way to utilise the ESOs' combined strength and resources in future.

At the same time, most current advocates are from the Vietnam War generation and, at their age, they will not want, or be able, to continue the extraordinary dedicated volunteer assistance they

40 Ibid, page 25

41 Ibid, page 25

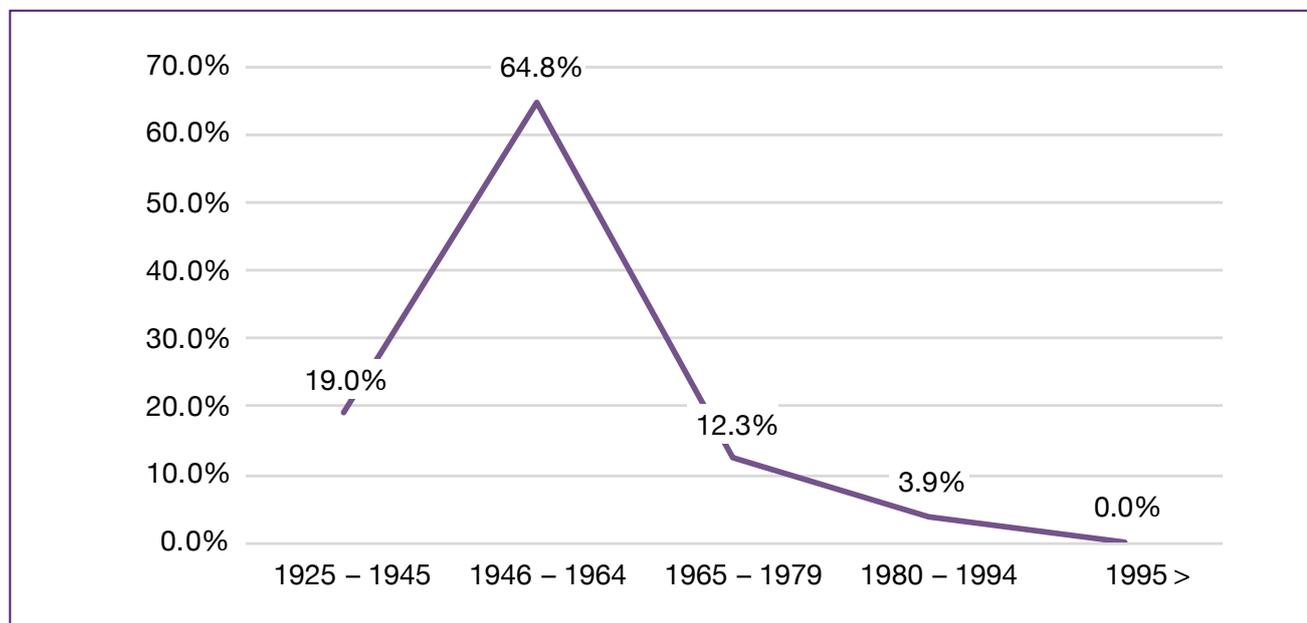
42 See Hansard, page 2,178

43 See Section 8

44 Page 5

have provided for so many years. The following Chart shows that 19.0% of the advocates were born before 1946 and a total of 83.8% were born before 1965. These statistics highlight the gap they will leave.

Chart 1: ATDP accredited advocates by year of birth



In addition, there is the increased complexity of the more recent veterans' entitlements legislation which must be squarely confronted to ensure veterans receive competent and accurate advice. The claims veterans make are too important to their future to entrust them to inadequately trained advocates.

Up until now, many current advocates have handled only VEA cases but the Tables in subsequent Sections illustrate the growth in claims under MRCA and DRCA over the last three years. This trend will become more marked over the next few years. Compensation advocates will have to have a sound knowledge of all three Acts and the interaction between them.

The final element of the present situation that needs to be taken into account is *Transforming DVA to Put Veterans and Their Families First*. Within that broad umbrella, the Department of Veterans' Affairs is undertaking some far-reaching administrative initiatives to improve its client service.

One example is MyService which allows any veteran with a PMKeyS number to lodge a claim online. As at 22 November 2018, DVA has received 14,572 claims through MyService which can be processed in about one quarter of the time it takes to process paper-based claims.

A second example is the development of MyService system rules, based on departmental research, of 40 commonly approved conditions that can be approved quickly with streamlined or straight through processing on receipt of the claim, a diagnosis and a doctor's certificate or advice.

In submissions and consultations, the study has received general approval of these reforms.

These issues form the background to the matters dealt with in more detail in the following Sections of this report.

Finding 2

The study found:

- 2.1 due to their age, a significant number of accredited volunteer advocates will retire in the next five years.
- 2.2 the submissions did not disclose any present strategy for replacing advocates.
- 2.3 only 3.9% of accredited advocates are under 39 years of age.
- 2.4 the age and gender of an advocate are important considerations for younger veterans who want to deal with advocates of similar age and experience.
- 2.5 the Transforming DVA reforms are resulting in increasing numbers of primary claims being lodged electronically through MyService.

Section 4: Advocates

Ex-service organisations were formed to assist and support their members and veterans' advocacy services are still delivered through the ESOs or affiliated veterans' centres. Advocates are nominated and authorised by their ex-service organisation and accountable to it.

Advocates have trained under either the former Training and Information Program (TIP) or the more recent Advocacy Training and Development Program (ATDP).⁴⁵

There is no central register of compensation and wellbeing advocates and, therefore, no accurate record of the number and location of all advocates presently assisting veterans.

There is no available record of TIP-trained advocates but the ATDP keeps a record of the advocates accredited under that program. **Appendix 6** contains ATDP statistics broken down by category, level, gender, age and location as at 11 October 2018 which show:

- since it commenced on 1 July 2016, the ATDP has issued a total of 696 certificates of accreditation at one of its six levels⁴⁶ of competence (noting that an advocate may have received more than one accreditation certificate)
- there are 417 ATDP-trained compensation advocates comprising: 40 at level 1; 322 at level 2; 48 at level 3; and 7 at level 4
- there are 279 ATDP-trained wellbeing advocates comprising: 34 at level 1 and 245 at level 2
- a total of 538 advocates have been accredited in compensation, wellbeing or both
- 400 accredited advocates are male and 137 female accredited advocates⁴⁷
- the largest numbers of advocates are in Queensland (191), New South Wales (145) and Victoria (109), and
- as previously noted, 19% of advocates were born before 1946 and a total of 83.8% before 1965 while only 3.9% of advocates were born after 1979.

There is also an indeterminate number of TIP-trained advocates who have continued to assist veterans since 2016 without seeking accreditation under the ATDP through recognition of prior learning.

Most of the currently practising advocates receive the benefit of professional indemnity insurance cover issued to their ESO through the Veterans' Indemnity and Training Association. In an open letter dated 7 December 2017, VITA advised that, after 30 June 2019, TIP-trained advocates at levels 1 and 2 and, after 31 December 2021, advocates at levels 3 and 4 will not be covered unless they become accredited under the Advocacy Training and Development Program.

That decision was based on the premise that advocates are required to maintain currency but, as TIP refresher training is no longer available, TIP trained advocates cannot update their training without ATDP accreditation. It was also assessed that, by those dates, enough advocates would have become accredited under the ATDP to meet the anticipated workload.

This change in insurance arrangements will result in a loss of TIP-trained advocates. In consultations with this study, quite a few of them said they have decided not to transfer to the ATDP.

The discussion paper asked ESOs about their projected advocate numbers in 2024 and 2030 but there were few responses.

The study received a comprehensive submission from RSL Queensland. On the date the figures were collated, RSL Queensland had 172 advocates accredited or seeking accreditation under the ATDP. That figure includes 34 paid staff undertaking pension and wellbeing roles. In addition, the

45 The training programs are dealt with in Section 11

46 Four levels in compensation advocacy and two levels in welfare (now wellbeing) advocacy

47 In one case, gender was not recorded

submission estimates that some RSL Queensland sub-branches employ between them a further 10 advocates on a full-time basis.

As for future numbers of advocates, the submission said:

It is not possible to make this estimate with regard to volunteer advocates. RSL Queensland has noted a substantial decrease in the number of volunteer advocates within Queensland. Anecdotally, one reason given for this decline by volunteers is a significantly sub-optimal transition process from TIP to ATDP. RSL Queensland believes there are two further sociological factors at play:

a) access to the DFRDB⁴⁸ pension scheme by service personnel closed in 1991, with all subsequent service personnel accessing superannuation like schemes. This has substantially reduced the number of ex-service personnel aged in their 40s and 50s who are not in full-time second careers, and

b) the rate of volunteer effort by individuals decreases sharply after the age of 70 ... (and so) ... the number of veterans in the peak volunteering age cohort of 55 – 69 is sharply contracting...

RSL Queensland ... will continue to employ advocates within our financial capacity to do so ...⁴⁹

The RSL Queensland submission was accepted and supported by RSL National subject to the reservation that the smaller states and territories will continue to rely on volunteers as they do not have the financial resources to employ full-time paid advocates.

The Veterans' Centre Sydney Northern Beaches submitted that it:

... has for the last three years been evolving its service delivery model from purely volunteerism to a hybrid of paid employees with volunteers providing appropriate wrap around support. This was necessary to engage effectively with younger veterans and for an effective succession plan.

It is important to acknowledge the majority of our volunteers are retired Vietnam veterans. These volunteers are extremely valuable and dedicated due to their lived experiences and wanting to give back. However, whilst most have training in compensation, or very low-level welfare, this training does not adequately prepare them for the complexities of some clients ...⁵⁰

The Northern Beaches Centre limits the workload of volunteer compensation advocates to three hours a week and volunteer wellbeing advocates to two hours.

Volunteers

The study supports the view that volunteer advocates are extremely valuable and dedicated, but a largely volunteer workforce has certain limitations.

While the ATDP can provide the numbers of accredited compensation advocates, there is no way of knowing how many hours or days a week, or a fortnight or a month individual volunteer advocates set aside to assist veterans.

The study met with one advocate whose excellent reputation has resulted in him managing over 100 compensation cases at a time (including for veterans from other states) and working five days a week to do so. Others might work specific hours on a set day or days each week or month or take a break in Queensland in mid-winter. Some advocates only provide assistance at their home ESO while others provide services at other ESOs or veterans' centres as well.

These observations are not a criticism. They are made to reinforce the fact that no one knows the total number of advocates currently providing services to veterans, how much time they devote to that task, where they provide those services and how long they intend to do so.

48 Defence Force Retirement and Death Benefits

49 Submission 158, page 8

50 Submission 163, point 6

Veterans' centres

Veterans' centres have been developed progressively through the cooperative efforts of the RSL and other ESOs over the last 20 years. Their principal objective is to provide a better use of available resources resulting in coordinated and comprehensive compensation and wellbeing advocacy support for veterans in one location.

Establishing an independent centre open to all veterans also mitigates any personal reservations a veteran may have towards joining a particular ESO (or any of them) to gain compensation or wellbeing assistance.

The Victorian Regional Veterans Centres Project commenced in the 1990s as a joint project involving the RSL, the Vietnam Veterans' Association and DVA with the cooperation of other ESOs. At its peak, there were about 30 veterans' centres in Victoria but some have closed and today they number around nineteen.

Similar veterans' centres have grown up in other parts of Australia. One example is the Veterans' Centre Mid North Coast in Coffs Harbour which began as a coordination centre for the allocation of work to associated ESOs but is now the main provider of advocacy services in the region.

The study met with advocates from several veterans' centres and visited the Veterans' Centre Sydney Northern Beaches, the RSL Veterans' Centre East Sydney, the Plympton Veterans' Centre in Adelaide and the Frankston Veterans' Centre in Melbourne.

DVA provides financial support for some veterans' centres through the Building Excellence in Support and Training Grants Program.

The Veterans Centre Network in New South Wales has taken a different approach to Victoria. Each veterans centre in the Network will coordinate established ESOs, government (including Defence) and community-based organisations and services to jointly provide young veterans (among others) with information, support and meaningful engagement. The intention is to develop 12 centres across NSW and the ACT with seven centres already established in Alstonville, Newcastle, Port Stephens, Central Coast, Dubbo, Bathurst and Penrith.

The distinctive features of the Network's centres are that they employ full-time, tertiary qualified professional advocacy and counselling staff; operate five days a week; and provide a 24-hour telephone hotline service for veterans experiencing personal crises. The veterans' centre case manages the coordination of all services, support, training and engagement that the ex-service client requires.

The NSW Veterans Centre Network has not received any funding from DVA.

Compensation advocates

Compensation advocates assist veterans to claim their entitlements from DVA and pursue their claims on appeal. Most compensation advocates are volunteers but a few of the larger ESOs (principally the RSL and Legacy) employ paid advocates.

Both TIP and the ATDP recognise four progressively higher levels of competence to undertake the following tasks:

- Level 1: prepare a primary claim for a veteran under supervision
- Level 2: prepare a primary claim without supervision
- Level 3: represent a veteran before the Veterans' Review Board, and
- Level 4: represent a veteran at the Administrative Appeals Tribunal.

Compensation advocates help veterans prepare their primary claim, collate the supporting documents and, where necessary, search for evidence to substantiate the claim. For example, evidence may be sought to establish the veteran was in a particular place at a particular time if the relevant Defence records are incomplete or lost.

Compensation advocates also assist veterans in an appeal to the Veterans' Review Board including participation in the Board's alternative dispute resolution processes and, if the matter is not resolved, a hearing before a three member panel.

VRB hearings are informal, inquisitorial proceedings which seek to establish the facts and the factors set out in the Statement of Principles that support the claim. The advocate's role is to assist the veteran and the Board to reach the correct or preferred decision in the spirit of beneficial legislation. The Repatriation Commission and the Military Rehabilitation and Compensation Commission do not take part in VRB hearings.

The Commissions are represented at hearings before the Administrative Appeals Tribunal. AAT hearings are more legalistic and adversarial and require the advocate to have a much greater level of expertise.

As Vietnam veterans received their entitlements under the Veterans' Entitlements Act, they are personally familiar with it. Many compensation advocates from that generation have concentrated on claims under that Act (seeking in particular the Special Rate Disability Pension and Gold Card) and much less on SRCA/DRCA and MRCA claims. However, a failure to have a solid understanding of all three Acts and the interaction between them can lead to mistakes which can prove costly – even very costly – for the veteran, as the following case study demonstrates.

Case study

The Department has recently noted a small number of claims in which the Veterans' Review Board has accepted conditions under the Veterans' Entitlements Act where the same condition has previously been accepted under the Military Rehabilitation and Compensation Act. The cases often relate to mental health conditions.

On the basis of new medical evidence, the Veterans' Review Board has overturned the Department's earlier decision, accepting liability for PTSD under the VEA and revoking liability for the veteran's condition under MRCA.

The motivation behind these claims appears to be an expectation that, if the condition is accepted under the VEA, then the veteran would receive a Special Rate Disability Pension and Gold Card (covering lifelong medical treatment).

Such claims can have significant flow-on effects, particularly where the veteran has already received benefits, such as a Permanent Impairment Lump Sum and Incapacity Payments, for their MRCA condition or conditions. Those effects can include the recovery of the MRCA entitlements (that is, repayment of the pension and lump sum) as MRCA liability has been revoked and the inability to receive a Special Rate Disability Pension under the VEA because of lifetime offsetting provisions from the entitlements received under MRCA.

Other complications can arise when, as has been the case, the VEA rate of pension is subsequently assessed at below the Special Rate threshold meaning that the client is not entitled to a Special Rate Disability Pension or a Gold Card.

Cases such as these can result in a very significant, adverse financial outcome for the veteran.

Wellbeing advocates⁵¹

In a meeting at their Men's Shed in Canberra, a group of Vietnam veterans pointed out that, although compensation advocacy is very important, it is only about 20% of the task in advocating for and supporting veterans. In other words, compensation advocacy is the tip of the iceberg and wellbeing advocacy is the hidden mass.

⁵¹ The title 'welfare advocate' has previously been applied to advocates providing wellbeing support and is the term used in the documentation supporting the 10620NAT Course in Military Advocacy

As the study progressed, it became increasingly apparent that obtaining compensation entitlements is often only one of several issues confronting some veterans. They need support from wellbeing advocates to deal with the others.

An obvious example of dedicated, long term wellbeing support is the commitment made by Legacy and the War Widows' Guild to deceased veterans' partners and families. But the study came across many other instances of assistance being delivered quietly by wellbeing advocates or veterans' benefactors in their local area. The fact that this work can go largely unnoticed is understandable because much of the wellbeing support the study observed around Australia is not funded by the Department so it has no record of it.

Wellbeing advocates need to have a good understanding of the types of wellbeing problems veterans will confront. They also need knowledge about the location, competence and effectiveness of available practitioners and services. Some wellbeing advocates who provide this assistance described it as a referral service and firmly emphasised they did not give advice.

At one end of the spectrum, wellbeing assistance can comprise simple but useful tasks such as home visits or driving veterans to medical appointments. At the other end, it can involve assistance in managing complex problems where wellbeing advocates need skills or qualifications in social work or similar disciplines or to involve independent practitioners who do.

Even when the veteran is referred on to specialist assistance, the ethos of mates helping mates is still important in two ways.

The first way is in getting veterans to acknowledge they have a problem and need to seek help. The experience of the Vietnam generation illustrates the point. A significant number of Vietnam veterans went bush or otherwise isolated themselves from as much social contact as possible and some fourth wave veterans may do the same. Advocates told the study it can take a long time for them to develop the trust to share their story, even with another veteran.

One advocate recalled when he finally persuaded a veteran to come into his ESO's clubrooms. On the first visit, the veteran thoroughly scanned the room, looked under each table and sat facing the door with his back to the wall. It took four or five visits before he could enter the room without displaying this anxiety.

During a consultation, the veteran was clearly discomforted by the study's note-taker sitting at a table behind him and was only able to concentrate on the discussion after she shifted to a position in his direct line of vision.

The second way is to provide constant support as the veterans work through their issues with different service providers.

The advocate also has to have regard to the wellbeing of the veteran's partner and children. They can be seriously affected by the veteran's condition and behaviour and can suffer secondary post-traumatic stress or other adverse effects as a result.

At the end of her consultation, the wife of one Vietnam veteran said she intended to make a written submission because she and her daughter *did not want other families to go through what they had gone through*.

In providing assistance, advocates have to take careful account of veterans' mental health. Many currently practising advocates have participated in ASIST and safeTALK suicide prevention training.

The submissions to the study strongly supported the suggestion that advocates must have training in trauma informed care which has now been included in Advocacy Training and Development Program level 1 training from July 2018 for both wellbeing and compensation advocates.

Both the Training and Information Program and ATDP recognise two levels of competence:

- Level 1: provide wellbeing advocacy services under supervision, and
- Level 2: provide wellbeing advocacy services.

Under the ATDP, only accredited advocates can give information, options and advice to veterans about accessing entitlements, benefits and services. However, as wellbeing assistance includes valuable support services for veterans and their families that do not involve giving information, options or advice, the ATDP recognises that those services can be provided by wellbeing support officers without accreditation.

The types of services they can provide are listed in the *Wellbeing Support Officer's Handbook*⁵² and include: visits to home, hospital and aged care facilities; simple services such as driving and shopping trips; arranging simple domestic or home maintenance; organising and conducting social, family and sporting activities; providing support to a veteran's family during time of grief, loss or bereavement; and assisting with administrative duties (such as within an ESO office) in a non-paid position.

Wellbeing support officers must have a current national police certificate and, in some circumstances, a state specific check for tasks that may involve children or vulnerable people.

Some wellbeing examples

Some examples that illustrate the range of wellbeing assistance the study has observed are set out below.

1. Remembrance House

Remembrance House is a modern building on seven acres at Burpengary on the outskirts of Brisbane. The acquisition of the property and the renovation costs were financed mainly by proceeds from the sale of a property the Diggers Association left to the Vietnam Veterans' Association. In part, the surrounds were built with materials and labour contributed in kind (such as the big deck area; its insulated roof; and the surrounding balustrade) by local businesses and benefactors.

The front three acres are largely cleared and there is a barbeque area and some other facilities. The rear four acres are native bush. The setting is quiet, peaceful and very calming.

Five homeless veterans can live in the House while they sort out new accommodation and other problems and get their lives back on track.

A Vietnam veteran who lives nearby manages the House and he and his wife take a close interest in the veterans' wellbeing and recovery.

There are clear rules governing behavior and they are fairly but firmly enforced. Drunkenness and drugs are not allowed and veterans will be ejected if they break the rules. The manager explained that the rules were made to ensure the effective operation of the House in the interests of all residents and damaging, prejudicial behavior cannot be tolerated.

The House only receives male veterans after an attempt to include female veterans was unsuccessful. The VVAA Queensland is hoping to find the funds to build a second, eight bedroom house on the property for female veterans.

Remembrance House does not receive funding from any government department.

2. The ADF Welfare Team

When the study visited Launceston, it heard about the good work of the ADF Welfare Team. The Team is part of the Launceston RSL but the more generic name gives it a broader appeal for younger veterans.

The study was told the Team had just found a home unit for another homeless veteran – the sixth this year. The Team works with a couple of estate agents to locate a suitable property and then finds and donates furniture to fit it out.

The Team pays the bond and initial rent from RSL funds. Once the veteran's personal problems have settled down, they should be in a position to take over the rent payments and may, at some

time in the future, be able repay part or all of the money outlaid by the RSL. In the interim, the RSL guarantees payment of the rent to the agent.

The ADF Welfare Team won the Tasmanian Volunteer Award 2018.

3. Camp Gregory Veterans' Retreat Inc

Camp Gregory is a 40 acre property on the Gregory River between Hervey Bay and Bundaberg. The land, barbeques and camping facilities have been made available to the Retreat by the founder of Camp Gregory, a Vietnam veteran who has lived with PTSD and knows how much a peaceful bushland setting can contribute to recovery.

The founder often recognises visiting veterans who are suffering from PTSD, particularly if they arrive alone on a motor bike with a small dog.

Camp Gregory's brochure proclaims: *Veterans' Retreat now available. Fishing and crabbing. Open fires allowed. Campers need to be fully self-sufficient.*

Veterans can become members of Camp Gregory for one dollar and can stay for up to two weeks without any further charge. Recently 150 veterans and their families visited the Retreat in a six-week period.

For the first time, Camp Gregory received some DVA funding this year. The \$20,800 grant from the Veterans and Community Grant Program will be used to build a ramp for disability access to the Retreat's bathrooms and purchase a defibrillator.

4. The William Kibby VC Veterans' Shed

The William Kibby VC Veterans Shed and Memorial Garden was the first veterans' shed registered with the Australian Men's Shed Association and is set up on the established model of wood and sheet metal work. However, this Shed is specifically intended for veterans of any gender, of all conflicts, and anyone who served in the Australian uniform regardless of whether or not they saw operational service.

A small group of veterans, including the Shed coordinator, decided to join the Men's Shed movement in 2010. Following publicity about their initiative on ABC Radio, another Vietnam veteran provided the funds for the very substantial shed they erected in Kibby Avenue, Glenelg North in South Australia.

Apart from his responsibilities at the Shed, the coordinator is an activist who lobbies strongly seeking better outcomes for veterans. He is presently engaged in supporting veterans in gaol and has assisted one of them to commence a tertiary education course with the cooperation of prison authorities.

The inclusion of women has given the Shed a great resource to support women veterans, particularly those who have been physically or sexually abused in Defence.

The Shed does not receive any funding from DVA.

Finding 3

The study found:

- 3.1 compensation advocates need to be trained in the provisions of VEA, DRCA and MRCA and understand the interaction between them to handle claims competently or, at a minimum, have their work closely supervised by an advocate with that expertise.
- 3.2 compensation advocates work within a well-defined process with reasonably predictable time frames and a definite end point.
- 3.3 wellbeing advocates work within a more complex and fluid environment which can involve addressing multiple issues over an indefinite period.
- 3.4 by fully utilising modern technology, compensation advocacy services can be largely provided at a distance (by telephone, skype and email). However, wellbeing advocacy needs direct and ongoing contact with the veteran and good local knowledge of nearby medical, rehabilitation, financial and other government, professional, not-for-profit and community services which may be able to assist the veteran.
- 3.5 if the administration of compensation claims can be simplified and sped up through Transforming DVA and other initiatives, the main focus for advocates in future will be on veterans' wellbeing.

Section 5: Primary Claims

When veterans seek their entitlements for a defence-related injury or disease, the first step is to lodge a primary claim with DVA which may include one or more conditions.⁵³ Depending on the date of injury or onset of the disease, the claim may fall under the VEA, DRCA, MRCA or a combination of those Acts.

Primary claims

As at 30 June 2018, DVA had 282,314 clients in receipt of pensions, allowances and health care payments. That figure comprised 165,824 veterans and 117, 156 dependants.⁵⁴

The Department's actuarial projections estimate these figures will be 231,900, 172,400 and 59,900 respectively by 30 June 2030. Nonetheless, the Department will be providing pensions, allowances and health care payments to a large number of veterans and their dependants well into the future.⁵⁵

In 2017-18, DVA received 53,568 claims. By way of comparison, Veterans UK received 16,516 claims and Veterans Affairs Canada received 31,480 in that financial year. The Table below highlights the strong growth in MRCA claims and, to a lesser extent, DRCA claims over the last three years.

Table 2: Intake of claims by Act and financial year

Claim type	Act	2015-16	2016-17	2017-18
Initial Liability	VEA *	10,819	12,083	10,280
	MRCA	8,472	9,316	13,185
	SRCA/DRCA	7,343	7,139	10,122
	Sub-total	26,634	28,538	33,587
Application for pension increase	VEA	4,459	3,911	3,303
Permanent Impairment	MRCA	4,231	6,155	7,295
	SRCA/DRCA	4,385	5,934	6,423
	Sub-total	8,616	12,089	13,718
Incapacity	MRCA	1,545	2,075	2,427
	SRCA/DRCA	454	651	533
	Sub-total	1,999	2,726	2,960
Total		41,708	47,264	53,568

* This figure for Initial Liability VEA claims does not include VEA applications for increase which are set out separately

The categories of claims are more fully explained as follows:

- VEA initial liability claims also involve an assessment of incapacity arising from service-related conditions
- VEA applications for increase of disability pension involve assessments of incapacity arising from conditions previously accepted as service-related

53 A MRCA claim lodged electronically through MyService can only include one condition

54 There is a small deduction from the addition of those two figures to allow for beneficiaries who fall into both categories

55 Details of the categories of recipients and types of payments are set out in Appendix 5

- MRCA and DRCA permanent impairment compensation claims are assessments arising from conditions previously accepted as service-related, and
- MRCA and DRCA incapacity payment claims are for loss of earnings due to incapacity arising from conditions previously accepted as service-related.

These benefits attract different payment arrangements. For example, Permanent Impairment benefits under MRCA are a weekly entitlement, paid fortnightly, which can be converted to a lump sum. Under DRCA, the same entitlement is paid only as a lump sum.

The decision on initial liability is only the first step in the assessment process. Depending on the nature of the claim, assessments will also have to be made about the level of the veteran's impairment or incapacity. **Appendix 7** contains details of determinations and assessments for the last three financial years.

To undertake this significant body of work, the DVA Primary Claims Division is staffed by a team of 116 officers comprising 68 ongoing employees in Melbourne and contractors. Eleven ongoing officers process some of the MRCA claims in Sydney.

Claims under the VEA and MRCA are assessed in accordance with the Statements of Principles determined by the Repatriation Medical Authority. The SOPs specify the factors which can, if the evidence supports it, establish that a condition resulted from military service.

The SOPs are legislative instruments and have the same legal effect as legislation. Where a SOP has been made, it exclusively states the factors which can establish a causal connection between the particular disease, injury or death and the veterans' military service.

In VEA and MRCA claims for a condition that does not have a SOP – and in all claims made under DRCA – the assessment of the connection between the injury or disease and military service is made on the basis of the evidence presented.

These three Acts are complex and lengthy. In addition, in some claims there are considerations about the interaction between the three principal Acts and possibly several other enactments that may have to be taken into account.

It is, therefore, not surprising veterans seek assistance from advocates (or, in some cases, lawyers) in preparing and lodging their claims. In either case, it is important they have access to competent advice because significant compensation or pension payments depend on a successful outcome.

This point can be illustrated by looking at the different tax-free rates of the disability pension. Using the rates which apply from 20 March 2018, the rates per fortnight are:

- the 100 percent general rate is \$495.70
- the intermediate rate is \$946.60, and
- the Total and Permanent Incapacity (Special) rate is \$1,394.20.

If a veteran's claim to move from the general rate to the Special Rate is accepted, the fortnightly payment increases by \$898.50 or \$23,361 per year.

While only a relatively small number of claims decisions are varied on internal review or reconsideration or set aside by the Veterans' Review Board⁵⁶ or the Administrative Appeals Tribunal, getting the decision right the first time is the best outcome.

RSL New South Wales made a recommendation in its submission that goes straight to this point:

26. DVA should set up a direct-line help desk for professional⁵⁷ advocates, claims advisors and support workers to have direct access to DVA delegates who can answer technical questions.⁵⁸

56 Further details about the VRB's operations are set out in Section 6

57 In this recommendation, 'professional' means a person who is paid and supported by an ESO to provide claims advice, advocacy or support services to veterans and their families

58 Submission 229

The study agrees with this recommendation but would not limit it to ‘professional’ advocates, claims advisers and support workers.

Internal reviews and reconsiderations

DVA has the responsibility to ensure decisions on claims for entitlements and benefits are made both in the spirit of beneficial legislation and in accordance with the law. It follows that some claims have to be rejected. In VEA and MRCA cases, the veteran may ask for an internal review or appeal to the Veterans’ Review Board or both, if the internal review is unsuccessful. In DRCA cases, the applicant may seek a reconsideration and, if unsuccessful, appeal to the Administrative Appeals Tribunal.

Table 3: Reviews and reconsiderations

Section 31 VEA reviews	2014-15	2015-16	2016-17	2017-18
Affirmed	817	837	769	750
Varied	362	255	212	222
Withdrawn	23	24	18	28
DRCA reconsiderations				
Affirmed	520	682	898	458
Revoked	135	130	261	118
Varied	46	41	81	36
Withdrawn	149	123	267	102
MRCA reconsiderations / reviews under section s347 *				
Affirmed	178	222	283	1094
Set Aside	85	66	94	107
Varied	31	76	34	49
Withdrawn	224	205	88	4

* The Single Appeal Pathway was introduced under MRCA on 1 January 2017 and removed the option to request a reconsideration, but the Commission maintained the option for the client to request internal review under section 347 in line with the VEA appeal process

The observation about getting it right also raises a question about how DVA handles negative decisions either on initial assessment of a claim, on a VEA or MRCA internal review or on a DRCA reconsideration.

DVA’s policy is set out in its *Guidelines for contacting clients regarding negative decisions*. The guidelines cover *handling situations where negative decisions may negatively affect a client’s wellbeing*. Negative decisions include denial of the claim; notification of an overpayment; and suspension of a rehabilitation program.

The policy requires an officer to telephone the client or client’s representative and advise that a negative decision has been made and the reasons for it. After that call, the claim will be determined and sent out.

Based on comments made during consultations, the study is of the view that the policy should be altered to apply to all negative internal review and reconsideration decisions. The study was told the internal review or reconsideration can appear to be perfunctory and the response is often expressed

in general terms without any further explanation along the lines: *The decision was open to the delegate.*

The Canadian Bureau of Pensions Advocates counsels out (or resolves) half the appeals that come to it each year by carefully explaining how the decision accords with the legislation governing veterans' benefits and the veteran accepts the advice that an appeal is highly unlikely to succeed.

Learning from that Canadian experience, the study proposes that, in each case⁵⁹ where a delegate is minded to reach a negative decision on an internal review or reconsideration, the delegate should contact the claimant or the veteran's advocate and explain the reason for that tentative decision. The claimant or advocate would then have the opportunity to clarify any outstanding questions, rectify any remediable problems and advance any final contentions in support of the claim. It is possible that some matters could be resolved in that way without having to appeal to the Veterans' Review Board.

This process potentially has four advantages which would make the extra effort worthwhile because it:

- accords with good administrative decision making practice
- may reduce the error rate in delegates' primary decisions
- could resolve some claims more quickly and at less cost, and
- may contribute to a more cooperative relationship between delegates and DVA clients and veterans' advocates.

Delays in processing primary claims

One constant complaint to the study was the length of time taken to process primary claims. Inefficient handling by DVA is responsible for a significant proportion of the delays. However, the Australian National Audit Office's independent performance audit titled *Efficiency of Veterans' Service Delivery by the Department of Veterans' Affairs*, June 2018, found that is only part of a bigger picture.

It analysed and based its findings on a sample of 53 high (or long) Time Taken To Process (TTTP) claims disposed between 1 October and 31 December 2017.

The ANAO divided the time taken to complete a primary claim into three categories:

- *active time* where DVA was engaged in progressing the claim
- *waiting time* where a request had been sent to the Department of Defence, a medical specialist or the client and no further action could be taken until a reply was received, and
- *inactive time* where there was no evidence of activity on the file for a continuous period of 14 days or more (with the 14 days being allocated to offline activities such as reading documents and preparing submissions).⁶⁰

In its high TTTP sample, the Audit Office found that DVA's combined active and inactive time accounted for the following percentages of the total TTTP for different types of claims:⁶¹

- VEA disability pension: 40%
- MRCA initial liability: 66%
- DRCA initial liability: 38%
- MRCA permanent impairment: 18%, and
- DRCA permanent impairment: 40%.

59 The study understands this or a similar procedure is followed informally on some occasions but it is not a prescribed requirement and not done in all cases

60 Efficiency of Veterans' Service Delivery by the Department of Veterans' Affairs, ANAO, June 2018, pages 43 – 44

61 Ibid, page 45

For the remainder of the time, DVA is waiting on responses from other people.

The ANAO found:

3.7 Analysis indicates that in the high TTTP claims reviewed, more than half of the processing time comprised waiting for responses from Department of Defence, medical specialists, Contracted Medical Advisors or the client. The average time spent ‘waiting’ across the sample was 221 days out of a total average processing time of 371 days or 60% of the TTTP.⁶²

It also observed:

- *Analysis indicates that approximately two thirds of waiting time in the ANAO reviewed claims was attributable to obtaining information and/or advice from medical specialists. A particular contributor to long waiting times was where clients had a preference for the use of their own treating medical specialist rather than the use of a DVA referred independent medical specialist. Treating medical specialists may be unable or unwilling to provide the necessary advice and, in this situation, the time waiting for a response from the client’s treating medical specialist is wasted as further medical advice must be sought from an independent medical specialist,⁶³ and*
- *... the time spent waiting for responses from medical specialists is on average 10 times greater than for information requests to the Department of Defence.⁶⁴*

In relation to DVA’s workload, the ANAO noted:

2.32 Typically, the assessment of an R&C claim⁶⁵ involves collection and review of several thousand pages of documentation.⁶⁶

The study is not suggesting that DVA’s inactive time delays are acceptable or that DVA does not have responsibility for improving primary claim processing times across the board. However, any improvement in processing times will have to take account of:

- the volume of claims
- the complexity of the legislation, and
- all of the parties and factors that contribute to the delays (including, in some cases, whether DVA requests Defence records or further medical reports when they are not required).

In the study’s opinion, the regular criticism about DVA delays is evidence of a failure by DVA to better communicate⁶⁷ the requirements of its role and the factors involved in progressing and determining primary claims.

One simple improvement would be for primary claim delegates to keep applicants or their advocates (as appropriate) fully informed about any significant delay in progressing their claim and the reasons for it.

Assisting with primary claims

When assistance is required, DVA has relied on ex-service organisations to handle all aspects of compensation advocacy for veterans, beginning with the primary claim. When veterans have approached DVA directly for assistance, they are usually told to go to an ESO. The rationale for this apparently informal departmental policy is a concern about the risk of giving incorrect advice if a DVA officer assists a veteran to fill in a claim form.

62 Ibid, page 45

63 Ibid, page 46

64 Ibid, page 46

65 Rehabilitation and compensation claim

66 Efficiency of Veterans’ Service Delivery by the Department of Veterans’ Affairs, ANAO, June 2018, page 31

67 See Section 14

In one regional office, the study met an officer who had claims experience and did assist veterans in lodging their claims but was almost apologetic that the Department was taking work away from an ESO.

Some younger veterans take the view they have a right to claim benefits directly from DVA without going through an ESO and therefore the Department should provide whatever assistance they need to do so. Some of them consider the suggestion they should approach an ESO of which they are not a member is offensive and equivalent to seeking charity.

The study is of the view that DVA has the responsibility to help veterans make claims for their entitlements through the Veterans' Access Network or some other means.

This service is provided by other agencies comparable to the Department of Veterans' Affairs.

In Australia, the National Disability Insurance Scheme and the Department of Health⁶⁸ contract agencies to provide advocacy assistance to their clients at a multi-million dollar, government funded annual cost.

The situation is the same in the United Kingdom and Canada⁶⁹ where Veterans UK and Veterans Affairs Canada provide a considerable amount of assistance to veterans lodging primary claims. In Britain, the Veterans' Welfare Service provided the following assistance over the last three years.

Table 4: Veterans' Welfare Service UK – veteran assistance statistics

Year	Clients assisted	Claim forms completed
2015-16	20,141	6,315
2016-17	20,410	6,178
2017-18 *	17,598	5,341

* The drop in 2017-18 is attributed to staff shortages during the year.

While the Canadian department does not keep a record of this assistance, frontline staff often support veterans to complete their applications.

If the volunteer ESO-based system broke down, DVA would have to step in. In any event, the study suggests DVA should reconsider its officers' current approach, encourage veterans to come to DVA for assistance with their primary claims and widely publicise that departmental service. The officers providing this assistance should receive training in veterans' entitlements, client service and dealing with vulnerable veterans.

68 See Section 10

69 In Canada, there is a statutory duty to do so: see Section 9

Finding 4

The study found:

- 4.1 the Department is aware of the complexities and shortcomings in its administration of primary claims. DVA is undertaking a range of initiatives under the banner of Transforming DVA to make the claims process more efficient and easier to manage. The improvements made to date received positive responses from veterans, advocates and ESOs who were aware of DVA's reform program.
- 4.2 the Australian National Audit Office's independent performance audit titled *Efficiency of Veterans' Service Delivery by the Department of Veterans' Affairs* made six sound recommendations to improve administrative efficiency and DVA accepted and agreed with all of them.
- 4.3 the study supports DVA's reform initiatives which will be strengthened by the implementation of the ANAO recommendations and, taken together, should considerably improve DVA's claims handling efficiency.
- 4.4 ex-service organisations and veterans' advocates provide a very valuable service assisting veterans and their families to lodge primary claims with DVA and it is important that they continue to do so.

Recommendation 1

That:

- 1.1 DVA set up a direct-line help desk for veterans' advocates, claims advisors and support workers to have direct access to departmental delegates who can answer technical questions.
- 1.2 in each internal review or reconsideration where the reviewer is minded to reach a negative decision, the reviewer should contact the veteran's advocate or the claimant (as appropriate), explain the reason for the tentative decision and give the advocate or claimant the opportunity to clarify any outstanding questions, rectify any remediable problems and advance any final contentions in support of the claim before the reviewer makes a determination.
- 1.3 primary claim delegates keep applicants or their advocates (as appropriate) fully informed about any significant delay in progressing their claim and the reasons for it.
- 1.4 the Department of Veterans' Affairs reverse its current approach of declining to help veterans lodge primary claims, encourage veterans to come to DVA for assistance and widely publicise that service. The officers assisting them should receive training in veterans' entitlements, client service and dealing with vulnerable veterans.

Section 6: Veterans' Review Board

The Veterans' Review Board commenced operations on 1 January 1985.⁷⁰

If a veteran's claim for entitlements is rejected by the Department acting on behalf of the Repatriation Commission (under the VEA) or the Military Rehabilitation and Compensation Commission (under MRCA), the veteran may appeal to the VRB.

The VRB does not hear appeals against adverse decisions made under SRCA/DRCA. Appeals in those cases are taken straight to the Administrative Appeals Tribunal.

The Board is not a court. It is a tribunal which reviews administrative decisions made by the Commissions through an inquisitorial—not an adversarial—process.

The VRB's objectives require it to provide a mechanism of review that is accessible; fair, just, economical, informal and quick; proportionate to the importance and complexity of the matter; and promotes public trust and confidence in the decision-making of the Board.⁷¹

To facilitate achieving these objectives, the VRB is not bound by technicalities, legal forms or rules of evidence and it is required to act according to substantial justice and the merits and all the circumstances of the case.⁷²

In line with the beneficial nature of this legislation, the Board is to take into account difficulties that *lie in the way of ascertaining the existence of any fact, matter, cause or circumstance, including any reason attributable to ... the passage of time (including the effect of the passage of time on the availability of witnesses) or the absence of, or a deficiency in, relevant official records including a deficiency resulting from the fact that an occurrence ... was not reported to the appropriate authorities.*⁷³

To improve prompt resolution of appeals, the Veterans' Review Board introduced a range of alternative dispute resolution processes which apply to all applications for review received after 1 January 2015.⁷⁴ The ADR program aims to resolve matters without a Board hearing and is now established around Australia except Queensland where it is expected to be fully operational by early 2019.

The program includes an initial conversation with the applicant to consider if the matter can be resolved quickly. If not, the program has flexible options for seeking a resolution without a hearing: seeking further evidence; a case appraisal; neutral evaluation; and two party conferencing. Unlike VRB hearings, the relevant Commission is represented in some of the ADR processes as resolution of the matter at that stage requires the Commission's agreement.

The following comments about the Board's alternative dispute resolution procedures are fairly representative of the general support ADR received in submissions and in comments made in the study's consultations:

- *I have been involved in over 50 ADRs and find them professional whilst saving time and a waste of government's money attending the VRB Board (Submission 29)*
- *It is so much better than everything going to the Board (Submission 98)*
- *From the level 4 advocate in the Community of Practice, the ADR program appears to have been very successful so far (Submission 124)*
- *Have noticed a significant improvement in turnaround times since the introduction of ADR (Submission 142), and*

70 The VRB was established by the *Repatriation Legislation Amendment Act 1984*

71 Section 133A, *Veterans' Entitlement Act 1986*

72 Section 138, VEA

73 Ibid

74 ADR was introduced by the *Veterans' Affairs Legislation Amendment (Mental Health and Other Measures) Act 2014*

- *We have used this service and find the delegates⁷⁵ helpful and supportive* (Submission 187).

While the majority of matters are resolved one way or another through ADR, those that are not go on to a hearing before the Veterans' Review Board.

Hearings are conducted by a three member Board comprising the Principal or a Senior Member (Chair), another Member and a Service Member appointed from a panel of Service Members chosen by the Minister from a list of names submitted by organisations representing veterans.⁷⁶ Cases are decided by a majority vote.

The Repatriation or MRC Commission is not a party to VRB hearings and does not contest the case put forward by the veteran or the veteran's advocate.⁷⁷ Veterans can be represented at a VRB hearing by a representative, usually an ESO compensation advocate, but not by a lawyer. This prohibition is discussed in more detail later in this Section.

The VRB reconsiders the applicant's claim afresh and, if it sets aside the delegate's decision, substitutes a new decision in its place. The following statistics provide a snapshot of the VRB in 2017-18.

Table 5: Veterans' Review Board statistics for 2017-18

Veterans' Review Board 2017-18	
Applications lodged	2,923
Applications decided	2,780
Applications on hand	2,480
% of matters set aside	59.8%
% of matters affirmed	40.2%
Average time taken to decide an application (weeks)	50
% of decided cases where applicant represented	80.2%
Hearings arranged	1,108
Directions hearings arranged	211
% of decided cases where hearing held	34.9%
% of applications appealed to the AAT	6.7%
Members	32
Staff (FTE)	28.5
Cost	\$6.03m

While those statistics indicate a generally steady workload and output when compared to 2016-17, the study noted the following variations:

- percentage of matters set aside: 59.8% (up from 53.3% in 2016-17)
- percentage of matters affirmed: 40.2% (down from 46.7%)

⁷⁵ That is, the Commission's ADR representative

⁷⁶ Section 158, VEA

⁷⁷ The Repatriation Commission and the Military Rehabilitation and Compensation Commission and the Service Chiefs may, but very rarely, appear at Veterans' Review Board hearings: see VRB Annual Report 2016-17, page 38

- average time to decide an application: 50 weeks (down from 52)
- percentage of decided cases where applicant represented: 80.2% (down from 86.0%)
- percentage of decided cases where hearing held: 34.9% (down from 38.4%), and
- percentage of applications appealed to the AAT: 6.7% (up from 5.8%).

The fact that the primary decision-maker's decision was varied or set aside does not necessarily mean it was an incorrect decision on the information then available.

Reasons for setting aside a delegate's decision include: the adequacy of the information presented to the primary decision-maker; the nature and extent of new material presented on review; changes to Statements of Principles between the date of the primary decision by the delegate and the VRB's decision; a shift in focus by the applicant to a different SOP factor relating the injury or disease to military service; and changes in the applicant's degree of incapacity or impairment between the date of the primary decision and the VRB's final hearing.⁷⁸

Veterans and the advocates whose case is rejected by the VRB will necessarily be disappointed. That disappointment was expressed in submissions and consultations along with other criticisms of the Board. The following comments provide a sample of the opinions the study received in answer to the question: Are hearings before the Veterans' Review Board conducted effectively and fairly?

- *Yes, on most occasions. Communication can on occasions be a barrier* (Submission 5.1)
- *They always attempt to leave an individual feeling inadequate during the process where someone with minimal exposure to these types of processes often becomes flustered and unable to present their best case* (Submission 11)
- *I never had a problem. I find them very open and professional* (Submission 29)
- *Sometimes, yes. Other times, from the outset, it is clear that certain Senior Members are determined to deny the applicant* (Submission 79)
- *In my own experience, yes, the people on the Review Board provided a good cross-section of autonomous representatives to explore my case* (Submission 110.1), and
- *The panel and advocates have the veteran's best interests in mind and take care to put the veteran at ease. Hearings are conducted in a fair and reasonable manner* (Submission 187).

The study observed two hearings at the VRB in Sydney. In each case, the veteran was represented by a paid advocate from RSL Defence Care but the veteran did not attend in person. Each hearing lasted over half an hour but less than an hour.

In the first case, the Board wanted to clarify details of events that supported the veteran's claim. With the advocate's agreement, the Board telephoned the veteran and discussed the circumstances with him. The Commission was, of course, not represented and no objection was made to the veteran's further evidence. The Board's decision was reserved but the later published decision was in the veteran's favour. The study is confident that the clarifying evidence sought by the Board of its own volition made a significant contribution to that outcome.

The second was a weight lifting case and, again, the Board rang the veteran to obtain more evidence. At that point, the available evidence was not enough to support the Board overturning the delegate's decision. During the phone call, the Board obtained new evidence about the weights the veteran had lifted which brought his claim within an applicable Statement of Principles factor for his injury. After a few minutes break, the Senior Member delivered an oral decision in the veteran's favour.

Both cases clearly illustrated the difference between inquisitorial and adversarial tribunals.

Based on the study's investigations and consultations taken together with the opinions expressed in submissions, the study is of the view that the Veterans' Review Board is doing its job and discharging

⁷⁸ AAT Annual Report 2016-17, pages 23-24

its statutory functions effectively and with general support from veterans and advocates. The recently introduced ADR procedures allow many cases to be resolved by agreement more quickly with less cost and inconvenience. When a matter does go to a hearing, the most common view – and the study’s observation – is that the Board treats the veteran with care and respect and decides the case fairly in a way that reflects the spirit of beneficial legislation.

Accordingly, the study does not make any recommendations for change to the VRB’s current arrangements or processes.

While unnecessary, there is another argument in support of this conclusion. Some significant changes need to be made to ensure the provision of a modern professional sustainable advocacy service for Australian veterans and their families.⁷⁹ This is not the time to disrupt a key component of that service which is working well.

Lawyers at the Veterans’ Review Board

There is a statutory prohibition on lawyers appearing for veterans at Veterans’ Review Board hearings. This prohibition has recently been called into question by the Foreign Affairs, Defence and Trade References Committee.

In its *Constant Battle Report*, the Committee noted that:

*A universal prohibition on legal representation may not reflect the range of circumstances of veterans before the VRB, nor can it be described as ‘veteran centric’. In the view of the committee, it is time that representation before the VRB is independently reviewed to assess if it is still appropriate for all veterans. There may need to be additional supports put in place to ensure veterans are appropriately represented before the VRB or criteria may need to be developed to allow classes of vulnerable veterans to be legally represented.*⁸⁰

The Committee recommended:

*...that the Australian Government establish an independent review of the representation of veterans before the Veterans’ Review Board. This review should assess whether the rights of vulnerable witnesses are being adequately protected and whether further support mechanisms for veterans appearing before the Veterans’ Review Board are required.*⁸¹

That recommendation is included in the terms of reference for this study.

The prohibition on lawyers has a long history.

Section 45R(3) of the *Australian Soldiers’ Repatriation Act* (No 14 of 1929) provided that any appellant to an Appeal Tribunal or an Assessment Appeal Tribunal ... *shall be entitled ... (b) to be represented, at his own expense, at a hearing by a person other than a legal practitioner.*

In the 1975 *Independent Enquiry into the Repatriation System*, Justice Toose concluded that legal representation should be permitted before a tribunal.

The issue was also considered by the Administrative Review Council in its *Review of Pension Decisions under Repatriation Legislation* (Report No 20) 16 September 1983. The Council was of the view that a claimant should be free to choose his own representative, including the right to choose a legal practitioner.

Despite these recommendations, the Government has declined to remove the prohibition. Removal has been strongly opposed by the RSL since 1929. The Advisory Committee on Repatriation Legislation Review concluded in November 1983 that *the introduction of legal representation at the early stage would not be in the interests of the determining system or the great majority of claimants*

79 See Section 8 regarding the Veterans’ National Legal Helpline and the Veterans’ National Legal Service

80 *The Constant Battle: Suicide by Veterans*, August 2017 Report, page 153, paragraph 7.86

81 Recommendation 24

or applicants. In reaching that view, the Committee noted that legal representation would be permitted at the Administrative Appeals Tribunal if a matter was taken to the next level of appeal. At that time, the Government in fact strengthened the prohibition by extending the definition of 'legal practitioner' to include any person who:

- holds a degree of Bachelor of Laws, Master of Laws or Doctor of Laws or Bachelor of Legal Studies, or
- is otherwise qualified for admission as a barrister, solicitor or barrister and solicitor, of the High Court or the Supreme Court of a State or Territory.⁸²

It is important to note that the prohibition in the Veterans' Entitlements Act provides that a party to a review by the Board *may appear in person, or be represented at the party's own expense by a person other than a legal practitioner, at any hearing of the review.*⁸³

A 'hearing' is a Board hearing chaired by the Principal or a Senior Member together with a Service Member and another Member. Therefore, the statutory prohibition does not prevent a legal practitioner:

- drafting the veteran's primary claim to be lodged with DVA
- representing the veteran in the VRB's alternative dispute resolution processes, or
- preparing written submissions which the veteran or the veteran's advocate can hand up to the Board at the final hearing.

The arguments in favour of removing the prohibition on lawyers are largely based on concerns about freedom of choice, a more professional service and the lack of competence of some non-legally qualified advocates to properly represent veterans. The submission from the Law Council of Australia said:

The Law Council submits that it is unreasonable that a lawyer can assist a veteran in the preparation of their documents, at ADR hearings and directions hearings, but is prevented from appearing at the VRB hearing. The lawyer would be well briefed in their client's circumstances and limitations, and therefore the appropriate person to present their case at the at the VRB hearing.

*Lawyers frequently appear before authorities and tribunals all over Australia where hearings are conducted informally and without the application of the rules of evidence. Representation by lawyers can, in many cases, assist the efficient operation of a judicial body.*⁸⁴

The study understands from anecdotal information that very few lawyers represent veterans in the Board's ADR processes.

The arguments against removal include:

- the VRB is an inquisitorial system conducted informally without technicalities, legal forms or rules of evidence
- no one representing the relevant Commission appears at a VRB hearing to oppose the claimant's case
- it is a worthwhile objective to keep the cost of a VRB appeal for the veteran as low as possible⁸⁵
- the prohibition is limited to hearings of the Board and does not bar lawyers from other engagement in VRB proceedings

82 See VEA, Section 147(3)

83 Section 147(2)(a)

84 Submission 226

85 One veteran commented they were paying their lawyer \$450 per hour

- lawyers may be engaged by the veteran or provided free of charge by the Veterans' National Legal Service⁸⁶ if an unsuccessful VRB case is appealed to the AAT, and
- the real issue is competence in the law of veterans' entitlements and, as this is a narrow area of legal practice, only a few lawyers have developed expertise in it.

The Legacy Club of Brisbane summarised views against removing the prohibition in these two comments:⁸⁷

Legal representation is not the way forward. Paid advocates through ESOs have worked with the client and built trust and rapport to be able to run the case. Legal representation comes at a cost and vulnerable veterans may not be in a position to understand the costs or get the support (including welfare etc) from a legal representative versus an ESO advocate.

Advantages – none. Disadvantages – costs involved to the veteran or their families; not appropriate knowledge of veteran specific law; no or little understanding of veterans or their family's needs, especially on the welfare side.

The RSL Queensland Branch summed up the situation in these terms: *It is difficult to see how legal representation could improve this process. As a general observation, a process becomes slower and more adversarial once legal practitioners are involved. ... the overall merits of having legal representation as opposed to a competent, experienced advocate at the VRB level are not clear.*⁸⁸

The parliamentary committee's interest in reviewing the prohibition on lawyers was largely based on its particular concern for vulnerable veterans coming before the VRB. The study notes the Board has established protocols for veterans at risk of harm which are set out at **Appendix 8**.

The protocols include processes for identifying vulnerable veterans; conducting an immediate review of the veteran's claim; if the claim cannot be resolved forthwith, arranging an urgent directions or full panel hearing, depending on the circumstances; making specific and appropriate arrangements for the conduct of the matter; and giving careful consideration as to how the decision will be delivered.

At a hearing, if one is held, the support persons could include the veteran's advocate, treating health professional, family members and other supports such as an assistance dog.

Following on from the Legacy comments, the one addition the study would suggest to this list is a wellbeing advocate. It is likely that a vulnerable veteran is receiving assistance from both a compensation advocate and a wellbeing advocate. In dealing with the veteran's broader range of issues (apart from compensation), the wellbeing advocate will most likely have formed a strong bond of trust with the veteran.

Finally, many experienced advocates have had training in trauma informed care or participated in ASIST and safeTALK suicide prevention training and the ATDP is including trauma informed care in all level I training programs from 1 July this year.

The study is of the view that, on balance, the arguments against removing the prohibition on lawyers or legally qualified persons representing veterans at VRB hearings outweigh the arguments in support.

The study is also of the view that removing the prohibition could be seen as another step towards a more adversarial culture surrounding compensation claims. It would be much better to turn back towards a more cooperative approach, if possible, where the Commissions, DVA and advocates work together to obtain just and fair results for veterans.

86 See Section 8

87 Submission 165

88 Submission 158, point 6.2, page 23

Finding 5

The study found:

- 5.1 the Veterans' Review Board is doing its job and discharging its statutory functions effectively and with general support from veterans and advocates.
- 5.2 the recently introduced alternative dispute resolution procedures allow many cases to be resolved by agreement more quickly with less cost and inconvenience.
- 5.3 the VRB has protocols to support vulnerable veterans.
- 5.4 when a matter does go to a hearing, the Board treats the veteran with care and respect and decides the case in a way that reflects the spirit of beneficial legislation. Accordingly, the study does not make any recommendation for change to the VRB's current arrangements or processes.

Recommendation 2

That the study supports the retention of the statutory prohibition on legal practitioners and persons holding a legal qualification representing veterans at hearings before the Veterans' Review Board.

Section 7: Administrative Appeals Tribunal

Veterans who are dissatisfied with a decision of the Veterans' Review Board on a VEA or MRCA claim can lodge a further appeal to the Administrative Appeals Tribunal. Veterans who are dissatisfied with the decision on reconsideration of a DRCA claim can also appeal to the AAT.

The AAT is a merits review tribunal and it has the same objective as the VRB.⁸⁹

The AAT is to provide a mechanism of review that is accessible; is fair, just, economical, informal and quick; is proportionate to the importance and complexity of the matter; and promotes public trust and confidence in the decision-making of the Tribunal.

Justice David Thomas was appointed President of the AAT on 27 June 2017. In the Tribunal's 2016-17 Annual Report, he explained the AAT's role in these terms:

I am committed to ensuring that the AAT continues to provide an independent, accessible, fair and quick way to have decisions made by the Australian Government reviewed on their merits. This important task requires us to stand in the shoes of the original decision-maker and remake the decision. In most cases, we have new or additional information that was not available to the original decision-maker. Having regard to all the facts and circumstances of a case, the Tribunal must reach the correct decision according to the law. In cases where there is a discretion, we must make the preferable decision, not on the basis of personal preference, but taking into account factors set out in the law and relevant policy.⁹⁰

While the objectives and some processes⁹¹ of the AAT are the same or very similar to the VRB, there are three important differences between the two tribunals:

- the Repatriation Commission or the Military Rehabilitation and Compensation Commission (depending on which Act is involved) is a party to AAT proceedings
- the parties can be represented by lawyers, and
- if the matter goes to a hearing, the AAT will appear to the veteran to be much more like a court than the VRB. The hearings take longer, witnesses are examined and cross-examined and the lawyers or advocates argue their case for the correct or preferable decision and make a closing address.

The AAT sits in specialist divisions and a veteran's appeal will be allocated to the Veterans' Appeals Division. The Table below shows the number of applications finalised in the Veterans' Appeals Division by state or territory registry for the three years to 2017-18.

As with the Veterans' Review Board, the majority of AAT cases are finalised without a hearing and decision by the Tribunal, most commonly because they are resolved through the AAT's alternative dispute resolution process or withdrawn. For example, while a total of 480 cases were finalised last year, only 80 of them were heard and decided in a final hearing.

89 See section 2A of the *Administrative Appeals Tribunal Act 1975*

90 AAT Annual Report, page 2

91 Such as the strong focus on alternative dispute resolution

Table 6: Veterans' Appeals Division - applications finalised (including applications heard and decided) by registry^a

Registry	2015–16 ^b		2016–17 ^b		2017–18	
	Total finalised	Heard and decided ^c	Total finalised	Heard and decided ^c	Total finalised	Heard and decided ^c
Adelaide	37	8	25	4	37	4
Brisbane	155	29	168	26	204	37
Canberra	24	4	27	3	29	2
Darwin	5	2	0	0	3	1
Hobart	11	4	9	2	14	2
Melbourne	85	24	71	20	86	17
Perth	34	10	45	7	42	5
Sydney	126	38	103	25	65	12
Total	477	119	448	87	480	80

Notes:

- These figures include applications relating to decisions under the VEA, SRC/DRCA, MRCA and related Acts and regulations
- The figures may slightly differ from other published reports due to the difference in the date the data was obtained
- These figures include applications finalised by a decision of the AAT under section 43 of the AAT Act. They do not include applications in which a hearing may have started but did not finish and which were finalised by consent, by dismissal or by withdrawal

The number of cases heard and decided has steadily come down from 132 in 2013-14 and 147 in 2014-15 to 119, 87 and 80 in the last three years respectively. At the same time, the total number of matters finalised since 2013-14 has remained reasonably constant at around 480 appeals.

The following comments are taken from submissions responding to the question: Are hearings before the Administrative Appeals Tribunal conducted effectively and fairly?

- *In favour of DVA* (Submission 18)
- *It needs to be more on the lines of ADR and less adversarial* (Submission 68.2)
- *I believe so, though my most recent experience was very hostile* (Submission 98)
- *In the majority of cases they are* (Submission 158), and
- *Not always. A veteran's advocate may go up against a lawyer with years of experience and not have the experience or training to go up against someone of that calibre* (Submission 165).

AAT representation for the Repatriation and Military Rehabilitation and Compensation Commissions

The Commissions are always represented at the AAT by private lawyers or one of DVA's three remaining inhouse advocates (only two of whom appear at hearings).

The next Section of this report contains a detailed examination of all aspects of legal representation at the Administrative Appeals Tribunal.

AAT representation for veterans

The AAT provided the study with an analysis of the type of representation individual parties had in matters finalised by the Veterans' Appeals Division in 2017-18 which is set out in the Table below.

The representation statistics cover all applications however they were finalised, including applications heard and determined by the AAT, by consent, withdrawn, dismissed by the AAT or where the AAT did not have power to review the decision.

The statistics show that in all cases:

- 47% of applicants were represented by a private lawyer
- 28% were self-represented or represented by a friend or relative, and
- 25% were represented by a non-legal advocate.

Two applicants were represented by legal aid and in two cases representation was unknown but, at less than 1% of the total, those four cases have been absorbed in the above percentages.

The legal aid statistics do not show the actual level of legal aid involvement because the AAT's case management system does not record when private lawyers are being funded by legal aid.

Nationally, legal aid commissions approved 125 grants for assistance in AAT cases in 2016-17 (120 of which were assigned to private lawyers and 5 were handled inhouse). For 2017-18, 82 grants were approved for AAT matters (78 briefed to private lawyers and 4 dealt with inhouse). Not all of those cases would have been finalised in the year the grant was made.

The data has been broken down to show the type of representation under each of the three principal Acts.

Table 7: Veterans' Appeals Division – representation in finalised applications 2017-18

Case type	Legal aid		Non-legal advocate		Private lawyer		Self-represented		Friend or relative		Unknown		Total
	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage	
MRCA ^a	1	2%	6	11%	43	77%	5	9%	1	2%	0	0%	56
MRCA ^b	0	0%	6	25%	9	38%	9	38%	0	0%	0	0%	24
SRCA/DRCA	0	0%	41	23%	71	40%	65	36%	2	1%	0	0%	179
VEA and related Acts and Regulations ^c	0	0%	5	16%	1	3%	24	77%	1	3%	0	0%	31
VEA ^d	1	1%	62	31%	105	53%	27	14%	1	1%	2	1%	198
Total	2	<1%	120	25%	229	47%	130	27%	5	1%	2	<1%	488^e

a. Decisions subject to internal review by Military Rehabilitation and Compensation Commission

b. Decisions subject to review by the Veterans' Review Board

c. Decisions subject to internal review by the Repatriation Commission (for example, allowances, income support supplement, service pension)

d. Decisions subject to review by the Veterans' Review Board (for example, disability pension and widows/widower/orphans pension)

e. This total figure is eight higher than cases heard and decided because a party may have more than one representative recorded in the AAT's case management system

In summary, the statistics show:

- overall, veterans receive more assistance at the AAT from private lawyers⁹² (229 cases or 47%) or are self-represented (130 cases or 27%) than from non-lawyer advocates (120 or 25%)
- veterans are engaging private lawyers (at their own expense or supported by legal aid) in the majority of MRCA cases
- veterans are self-represented in more MRCA cases than they obtain assistance from a non-legal advocate
- veterans are self-represented in 36% of SRCA/DRCA cases, nearly as many as cases in which they receive assistance from private lawyers (40%) and assistance from non-lawyer advocates is the least used type of representation (23%), and
- while assistance from advocates is higher for VEA cases, it is a long way behind the percentage of cases in which the veterans are self-represented in the first type of VEA cases and behind private lawyers in the second type of VEA cases.

It is a fair assumption that most veterans who represent themselves at the AAT would prefer professional assistance if they could afford it, obtain legal aid or find a competent compensation advocate. It is unrealistic to expect veterans to represent themselves effectively at the AAT. That situation is compounded when they are confronted by the expert legal representatives engaged by the Repatriation Commission or the Military Compensation and Rehabilitation Commission.

Finding 6

The study found the veterans' advocacy service is not meeting veterans' needs for competent representation at the Administrative Appeals Tribunal.

92 Including lawyers provided by legal aid

Section 8: Legal Representation

This Section examines the legal representation arrangements at the Administrative Appeals Tribunal and the Federal Court for, first, the Repatriation Commission and the Military Rehabilitation and Compensation Commission and, second, for veterans.

The Commissions are represented by three firms selected from a government panel. They told the study they conduct the cases with respect for the veteran and in compliance with the Australian Government's model litigant requirements.⁹³

On the other hand, the study received critical comments from veterans and advocates about the Commissions' perceived adversarial approach in appeals to the AAT. A regular comment was that DVA is 'just another insurer' looking to discount their evidence, dismiss their claims and reduce costs.

The study considers these divergent views can be seen, at least in part, as a consequence of changes to veterans' entitlements legislation. *The Veterans' Entitlements Act 1986* reflected the then Government's view that:

- there was *no basis for maintaining repatriation entitlements for peace time service*⁹⁴ other than hazardous defence service, and
- it was appropriate that veterans' entitlements were provided through a workers' compensation scheme for Commonwealth public servants.

The study's view is that workers compensation is a legalistic and contentious jurisdiction and that has contributed to the negative views held by some veterans and compensation advocates.

Private legal practitioners acting for the Commissions

The study considers another important factor is the imbalance between the level and cost of the Commissions' legal representation at the AAT and the assistance available to the veteran.

In 2017-18, the Commissions received 328 new AAT matters, 296 of which were allocated to the three firms and 34 (VEA cases only) to DVA's inhouse counsel.

The study analysed 29 recent cases conducted by those firms and noted that the veteran withdrew in 38% of them. The veteran is not required to give a reason for withdrawing but some possibilities are that the veteran has come to the view during the pre-hearing conferences that their case will not succeed; cannot find a suitable advocate for an AAT hearing; cannot afford to pay a lawyer to go on; or just gives up.

The Commissions' total AAT external legal expenditure in 2017-18⁹⁵ was \$7,328,609 of which \$5,792,699 was paid to the three firms. Barrister's fees were \$473,830 and the disbursements of \$1,062,080 were mainly made up of medical specialists' fees.

The imbalance in representation contributes to the opinion strongly held by some veterans and advocates that the system itself is adversarial and they are at a significant disadvantage.

By way of international comparison, Veterans Affairs Canada takes no part in any veterans' appeal proceedings.⁹⁶

93 See the Commonwealth Legal Services Directions 2017

94 Hansard 16 October 1985, page 2178 et seq

95 These figures relate to AAT external legal expenditure only which is part of the total expenditure reported to the Attorney-General's Department for 2017-18

96 See Section 9

Inhouse advocates acting for the Commissions

Towards the end of the 1990s, DVA had a substantial inhouse legal team (including advocates and administrative assistants) which conducted the Commissions' VEA cases at the AAT without any involvement of external lawyers.

In 1999, Mary Perrett conducted a Review of the *Advocacy Function of the Department of Veterans' Affairs*. She concluded that:

Contracting out the whole advocacy function to a firm of solicitors or the Australian Government Solicitor would be very expensive. It would also not resolve the main problems (identified by the review).⁹⁷

As a result, the review made 24 recommendations for improvement in the inhouse advocacy function, most of which were agreed by the Department.

However, since sometime in the early 2000s, only external lawyers have been engaged for SRCA/ DRCA and MRCA cases and that is the situation today. Since the Perrett Review, inhouse advocates have continued to handle VEA cases but, as they resigned or retired, they were not replaced. The advocacy team is now reduced to three inhouse advocates, only two whom conduct cases at AAT hearings.

The inhouse advocates received 12% of the new cases allocated last year but carried a slightly higher proportion (approximately 13%) of the Commissions' total caseload.

The debate about the respective value and cost of internal legal practices compared to the services of the private profession never goes away. The choice is not just between one and the other. The decision is about the most effective way to utilise all available legal services.

The study considers several factors weigh in favour of at least increasing the size of the inhouse advocacy group, increasing their workload and including MRCA and DRCA cases. They are:

- inhouse lawyers cost less
- a small inhouse practice would become a centre of excellence in the narrow legal specialty of veterans' entitlements law encompassing the three principal Acts and all related legislation
- that expertise could be of use to the Commissions and DVA across the whole range of their activities (including assisting the Primary Claims Division and internal reviewers with difficult cases)
- by working full time in a department devoted to supporting veterans and their families, the internal advocates should have or acquire a thorough understanding of military service and the spirit of beneficial legislation, and
- external lawyers can always be engaged on a case by case basis when the need arises.

Private legal representation for veterans

Detailed information about the different types of representation for veterans at various types of AAT hearings is set out in Section 7.

Private lawyers can act on a fee for service basis agreed with the veteran at fees up to \$450 an hour. Some lawyers charge less than their standard rate as a concession to veterans. Other lawyers provide their services on a no win-no fee basis but their conditional legal costs or contingency fee agreements will take a significant part or percentage of any lump sum payment awarded to the veteran.

The study met one veteran who is planning to draw down \$7,000 on his credit card at a high rate of interest as that is the only way he can pay his lawyer to represent him in an AAT appeal early next year.

In MRCA and DRCA (but not VEA) claims, the AAT can order the Commission to pay successful veterans' legal costs provided they meet certain statutory conditions. In 2017-18, the Commissions paid costs to veterans in 56 cases totalling \$686,596.32. These payments are not included in the Commissions' total AAT external legal services expenditure set out above.

Some veterans have been able to get legal aid. Legal Aid NSW has the biggest practice in veterans' entitlements claims. Fewer grants of legal assistance for veterans' matters are made in other jurisdictions and they may be limited to certain types of military service.

In Canada, the Bureau of Pensions Advocates provides free legal assistance to veterans in about 98% of Veterans Review and Appeal Board proceedings.⁹⁸

Veterans' National Legal Service and Veterans' National Legal Helpline

The lack of legal representation for veterans at the Administrative Appeals Tribunal is a major barrier to veterans accessing their entitlements.

There are only seven accredited level 4 compensation advocates and, in any event, it is expecting a great deal of them to effectively match the legal teams that represent the Repatriation and Military Rehabilitation and Compensation Commissions at the AAT.

The study has consulted with National Legal Aid to find a solution to this problem. NLA is the national legal aid consultative committee and its members are the directors of Australia's eight legal aid commissions.

NLA and the study have agreed on a tentative proposal which draws on the Canadian example but utilises the existing legal aid structure and capabilities. Subject to funding, legal aid commissions will provide free legal assistance through a *Veterans' National Legal Service* to any veteran wishing to appeal from:

- a reconsideration of a primary claims decision under DRCA to the AAT
- a decision of the VRB to the AAT, or
- a decision of the AAT to the Federal Court.

In each case, the decision to provide assistance will be subject to a merit test but no means test. The merit test is a standard legal aid requirement as there is no good purpose to be served in undertaking an appeal that is most likely doomed to fail, creating false hope and subjecting the veteran to the stress of an AAT hearing. However, any veteran who disagreed with that merit assessment could still pursue the appeal but without assistance from the VNLS.

The proposed free service will include a *Veterans' National Legal Helpline* to answer questions and provide advice to veterans and their advocates over the telephone.

This proposal will give veterans a new option for legal assistance at the AAT and the Federal Court but it will not interfere with their right to engage an advocate or a private lawyer or to represent themselves if they wish to do so. All veterans coming to the Veterans' Review Board will be told about the VNLS and the Helpline so they are aware of the assistance available to them if they are dissatisfied with the outcome at the VRB.

The legal aid commissions offer the most effective means of providing a free national legal service for veterans. The commissions can deliver legal assistance through staff lawyers and private practitioners which makes the provision of their services flexible and scalable. They have an established network of central, metropolitan and regional offices in every state and territory. For example, Legal Aid NSW has a total of 24 offices, Victoria 15, Western Australia 9 and Northern Territory 5. While not all of those offices will be directly involved in providing VNLS' services, they will be valuable entry points and provide opportunities for promoting the Veterans' National Legal Service and Helpline in their local area.

98 A full description of the Canadian system is set out in Section 9

Legal Aid NSW will be the lead agency with responsibility for the overall development and management of the legal aid commissions' combined delivery of the VNLS including:

- all dealings with the Australian Government about the Veterans' National Legal Service (including the Attorney-General's Department and DVA)
- receiving all Commonwealth VNLS funding from the government and accounting for its expenditure
- training staff from all LACs in veterans' law including initial and ongoing training, quality control, panel and practitioner regulation and prompt circulation of information about significant cases and changes to DVA policies or procedures
- back up and assistance for smaller commissions with fewer staff (including in assessing the merit of particular claims when asked)
- establishing panels of private practitioners suitable for VNLS grants in each state and territory
- establishing protocols and procedures for the VNLS in consultation with the other LACs (including establishing appropriate fees for legal services obtained from the private profession but having regard to the local availability of practitioners with experience in veterans' entitlements law)
- making payments from the Commonwealth fund to individual commissions to cover the cost of delivery of assistance to veterans in their state or territory
- organising, in conjunction with the local commission, for lawyers from one jurisdiction to travel to another to take part in AAT hearings when required and paying travel and accommodation costs
- promoting the VNLS to veterans and ex-service organisations (including specifically to any veteran who has received an adverse decision at the Veterans' Review Board and may still be within the period in which an appeal to the AAT can be lodged)⁹⁹
- providing the Veterans' National Legal Helpline to respond to veterans' and advocates' enquiries, and
- reporting on the delivery of VNLS services and outcomes in accordance with government reporting requirements.

As the VNLS will use the legal aid commissions' existing premises, facilities, IT and other resources, there will be a modest initial establishment cost and a small number of extra staff will be required. The startup costs will include training, setting up practitioner panels, establishing national protocols and procedures, promotion of the service, data recording and reporting obligations and other administrative requirements.

The total costs of this proposal are estimated to be:

- in year one, \$2.784 million including initial set up and legal, administrative and Helpline costs based on the assumption that the VNLS will take on 250 new AAT matters in the year (which could include some older reconsiderations or VRB decisions which still fall within the period for lodging an appeal to the AAT)
- in year two and beyond, \$2.754 million including legal, administrative and Helpline costs based on the assumption that the VNLS will take on 98% of the around 500 appeals in that year (this percentage is based on the Canadian Bureau of Pensions Advocates statistics), and
- from year two and beyond an ongoing funding formula will be applied to ensure adequate funding each year, particularly if the number of applications to the AAT increases compared to 2017-18 figures.

This Australian Government funding can only be applied for the VNLS and the Veterans' National Legal Helpline and will be acquitted in accordance with standard government procedure.

⁹⁹ Veterans' Entitlements Act, section 135(4) allows 12 months

Legal aid grants are often expended over more than one financial year. For example, a grant made in the third or fourth quarter of a financial year is unlikely to be fully expended before 30 June. So in considering any underspends, regard has to be had to the liability carried forward to complete the grant.

The study is firmly of the view that DVA should establish the Veterans' National Legal Service and the Veterans' National Legal Helpline and notes that these services will directly respond to the parliamentary committee concerns set out in the terms of reference.

Finally, the study notes the proposed services will be comparable to the government-funded legal representation the Department of Social Services provides for people with disability in NDIS Appeals to the AAT.

Finding 7

The study found:

- 7.1 veterans and advocates perceive AAT appeals to be adversarial and that they are at a significant disadvantage.
- 7.2 that disadvantage is a major barrier to veterans accessing their entitlements.
- 7.3 the establishment of a Veterans' National Legal Service and Veterans' National Legal Helpline will meet the issues raised by parliamentary committees which are set out in the terms of reference.

Recommendation 3

That the DVA Legal Services Branch investigate ways to manage the Commissions' AAT cases more effectively and reduce legal costs (including medical specialists' fees) and report its findings to the Commissions.

Recommendation 4

That the Department increase the size of the inhouse advocacy team (including lawyers, advocates and administrative assistants), increase its workload and include MRCA and DRCA as well as VEA cases.

Recommendation 5

That the Australian Government establish, fund and promote a free Veterans' National Legal Service and a Veterans' National Legal Helpline.

Section 9: The Canadian System

In 2017, the Senate Foreign Affairs, Defence and Trade Committee made the following recommendation in its report, *The Constant Battle: Suicide by Veterans*:

Recommendation 23: The Committee recommends that the Australian Government establish a Bureau of Veterans' Advocates to represent veterans, commission legal representation where required, train advocates for veterans and be responsible for advocate insurance issues.

The study spent several days with the Bureau of Pensions Advocates in Charlottetown and received a very thorough briefing on the Canadian system and its interaction with Veterans Affairs Canada. The visit included attending both review and appeal hearings of the Veterans Review and Appeals Board. Later, the study also received a helpful telephone briefing from the Royal Canadian Legion.

This Section reports on the study's findings starting with the handling of primary claims.

Primary claims

The Canadian Minister for Veterans Affairs (through delegates) makes from 30,000 to 37,000 appealable decisions a year (which is substantially less than the number of claims processed by DVA)¹⁰⁰.

In making a decision, the Minister for Veterans Affairs has to:¹⁰¹

- draw every reasonable inference in favour of the applicant or pensioner
- accept any uncontradicted evidence presented by the applicant or pensioner the Minister considers credible in the circumstances, and
- resolve in favour of the applicant or pensioner any doubt, in the weighing of evidence, as to whether the applicant or pensioner has established a case.

Veterans may lodge their own claims with Veterans Affairs Canada (including electronically through a My VAC Account). However, many veterans receive assistance with their claims from the Royal Canadian Legion or from VAC itself.

Royal Canadian Legion

The Royal Canadian Legion is the main ex-service organisation assisting veterans to lodge claims with Veterans Affairs Canada and the two organisations work cooperatively together.

The Legion's representation role is mandated through legislation. To assist it in this task, the Legion has legislated electronic access to all veterans' files with the veteran's consent and access is managed under a memorandum of understanding with Veterans Affairs.

While the Legion is the Canadian counterpart of the RSL, its structure is quite different.

The RSL is a federation of state and territory branches which operate as independent ESOs gathered together under the umbrella of the national body. The key strength of the Legion is that it is a national body headed by Dominion Command with Provincial Commands, Provincial Districts, Provincial Zones and Branches beneath it.

The consolidation of members, finances and resources in one body gives the Legion the capacity to deliver coordinated and consistent nationwide services for veterans.

The Dominion Command Veterans Services Network has an office in each Province and its Professional Command Service Officers provide assistance free of charge, whether or not the veteran is a Legion member.

100 See Section 5

101 Section 5(3), Pension Act, Canada

The Service Officers assist at the provincial and national level providing, among other things:

- information and advice on available Veterans Affairs Canada programs and benefits
- assistance with preparation and submission of disability claims
- assistance with the claims process from the first application up to and including a Request for Reconsideration with the Veterans Review and Appeal Board (VRAB), and
- professional advice and assistance in accessing other programs and benefits.

The Legion employs 25 Command Service Officers and 12 Command Service Officer Assistants to undertake this work. In 2017 the Legion provided assistance as follows:

- 2,815 first applications and 152 departmental reviews were sent to VAC for adjudication
- 159 entitlement reviews and 55 entitlement appeals were sent to the Veterans Review and Appeal Board, and
- 858 matters were counselled out¹⁰² or withdrawn.

The Legion has over 1,400 branches and a mixture of professional and volunteer staff. Each branch has a volunteer service officer who can commence preparation of a claim which can be referred to professional staff as necessary.

The Legion does not receive any government funding for these services.

The study was told that a claim may be able to be lodged on the day of the first consultation. It can take 30 to 60 days to access medical records; 60 days to complete a medical questionnaire; and 16 to 30 weeks to receive VAC's decision on the application. As in Australia, some claims can take significantly longer for various reasons.

While the determination of the claim is the point at which the veteran will seek assistance from the Bureau of Pensions Advocates, the Legion can on occasion act as a co-representative for the veteran.

In regard to wellbeing support, the study noted the Legion gave C\$19.5 million to veterans last year to assist with bills, home modifications, housing costs, groceries and so on.

Veterans Affairs Canada

Veterans Affairs Canada has very similar functions to DVA under four veteran programs: illness or injury; income support; health and wellbeing; and transition to civilian life. One important difference is that the Minister for Veterans Affairs has a statutory obligation to assist veterans making claims for their entitlements. Section 81(3) of the Pension Act requires the Minister to:

- provide a counselling service to applicants and pensioners with respect to the application of this Act to them; and*
- assist applicants and pensioners in the preparation of applications.*

Veterans Affairs Canada does not capture the number of veterans it assists with applications. However, frontline staff (telephone analysts, Veteran Service Agents and case managers) often help veterans and their families to complete their applications, either in person or over the telephone.

102 'Counselled out' means the Legion advised the veterans their claims would not succeed and the veterans accepted that advice. The main reasons for counselling out are that there is no diagnosis of a condition or the condition is not chronic

Bureau of Pensions Advocates¹⁰³

Canada's recognition of its obligation to support wounded or disabled veterans and the widows and children of those killed in battle or lost their lives from actual service in the field goes back to the Fenian Raids in 1866.¹⁰⁴

After the First World War, the *Pension Act 1919* created a new pension scheme for veterans which was, at that time, unique to the military. In 1923, Canada appointed Official Soldiers' Advisers to assist veterans in matters related to re-establishment, treatment and pension. Ten years later, the government established the Veterans Bureau managed by the Chief Pensions Advocate with public service lawyers providing counselling services to veterans.

The Bureau has been through several structural changes since 1933 to arrive at this situation today:

- the Bureau is—and has since 1971—been called the Bureau of Pensions Advocates
- since 1995, the BPA has been a part of Veterans Affairs Canada
- BPA has 14 offices in VAC premises
- the BPA's advocates are lawyers who have to be members of the Bar of a province of Canada¹⁰⁵
- the advocates' duties are to assist applicants and pensioners to prepare for, and to represent them at, a review or appeal under the *Department of Veterans Affairs Act*¹⁰⁶
- under section 6.2(2) of the Act, the relationship between the Bureau and the person requesting its assistance is that of solicitor and client, and
- if there is any inconsistency between section 6.2(2) and any other provision of the Act, sub-section (2) prevails to the extent of the inconsistency.

The effect of these provisions is that independent representation of veterans and strictly protecting their solicitor-client relationship is the BPA's paramount duty and objective.

The Bureau's services are free of charge (including the cost of any further medical reports). The BPA deals with reviews and appeals involving claims for the following benefits: the critical injury benefit, exceptional incapacity allowance, disability pension, disability award, survivor's pension and war veteran's allowance.

Canadian veterans have no common law right to compensation and, as in Australia, veterans' entitlements law is a specialised, unique and narrow area of legal practice.

The BPA's review and appeal statistics for the last three years are set out below.

103 Note that the BPA and the Veterans Review and Appeal Board also deal with Royal Canadian Mounted Police claims which are a small percentage of their total workload

104 The Fenian Raids were attempts by the Irish militia (Fenians) and American Civil War mercenaries to capture Canadian territory in 1866 and 1870

105 *Department of Veterans Affairs Act 1985*, section 6(2), Canada

106 Section 6.2(1)

Table 8: Bureau of Veterans Advocates – claims by year

Year	Claims completed (DRs and VRAB)*	Claims counselled out	Total
2015-16	5,486	4,763	10,249
2016-17	5,423	5,210	10,633
2017-18	4,825	5,212	10,037
Average	5,245	5,062	10,178

* Departmental reviews and Veterans' Review and Appeal Board reviews

BPA officers stressed the importance of the claims counselled out in managing their workload. On receipt, a BPA advocate makes an assessment of each matter. If the advocate's assessment is that the decision on the primary claim appears to be correct, the veteran may well be satisfied with that independent explanation and expert advice and take no further action. A similar assessment can be made at any stage of a case, including after a partially successful or unsuccessful review. The applicant is advised accordingly and given reasons for that advice.

It is to BPA's credit that its advice is so trusted by veterans and their families. Even in cases where the advocate assesses a review has limited prospects, the BPA will take the matter to the Review Board if requested to do so. That is always the applicant's decision.

The 10,340 files completed in 2017-18 were resolved as follows: counselled out: 50% (5,200); departmental review: 21% (2,222); VRAB review: 20% (2,038); VRAB appeal: 7% (722); and VRAB application for reconsideration: 2% (158).

The BPA does not represent an applicant in any subsequent appeal to the Federal Court of Canada except in matters of interpretation of the Pension Act.

Before proceeding to looking at the review and appeal procedures, it is worth recording some of the Bureau's administrative details:

- BPA has a total staff of 98 officers plus 15 short-term employees and casuals
- the permanent staff is made up of: a four person management team; 31 lawyers; 48 legal assistants; five area directors; and 10 officers in finance and administration
- BPA's budget is C\$11.2 million for salaries and C\$600,000 for operations and maintenance, noting that accommodation, IT and back office costs are borne by VAC
- BPA's 14 offices are distributed along Canada's southern border with nine clustered on the east coast, Winnipeg in the centre and four close to or on the west coast, and
- given Canada's geography, demographics and the BPA's office locations, most discussions with clients are by mail, email and telephone and the applicants may only meet their BPA lawyer face-to-face shortly before the hearing of their review.¹⁰⁷

As in the Australian system, the BPA is facing four current challenges:

- difficulty in obtaining medico-legal opinions of reports from Defence and civilian doctors as additional evidence
- the increasing complexity of cases (particularly mental health as opposed to musculoskeletal claims)
- a growing evidentiary burden (described as evidence creep), and
- modern day veterans have higher expectations and are more demanding than their predecessors.

107 See Table 9

Review hearings

The Veterans Review and Appeal Board has not more than 25 permanent members.¹⁰⁸ Temporary members may be appointed when the Board's workload so requires.¹⁰⁹

Review hearings – the veterans' first level of redress – are conducted by a two member Review Board in hearing venues around Canada. Hearings are open to the public (unless the Board determines otherwise).

An applicant can be represented by a pensions advocate from BPA, by a veterans' organisation or, at the person's own expense, by any other representative of the person's choice. The study was told the Bureau of Pensions Advocates provides free representation in 98% of reviews.

Veterans Affairs Canada does not take any part in the review.

The veteran is the principal witness at the hearing. Doctors can be called to give oral evidence at a Board hearing but, as a matter of practice, they are not. In nearly all cases, the Board relies on the medical evidence obtained by the applicant.

The Board has the statutory power to require an independent medical opinion for the purposes of any proceeding under the VRAB Act but it rarely does so. If it did, VAC would pay for the report.

The study observed two reviews held in Charlottetown and they were very similar to hearings of the Australian Veterans' Review Board. The proceedings were informal and the veteran was treated with courtesy and respect. Questions from the advocate were directed to assisting the veteran (and, in one case, the veteran's partner) to tell their story and questions from the Board were seeking some additional detail or clarification. The hearings lasted a little more than half an hour.

One difference to the Australian VRB hearings the study observed in Sydney was that the veterans attended and answered questions in person. The BPA places strong emphasis on the importance of the veterans attending the hearing (not on the telephone or by videoconference) so they can tell their stories to the Board in their own words and the Board will be in a better position to assess the veterans and the information they provide.

In both cases, no other witnesses were called and the Board relied on the material filed before the hearing.

In 2016-17, the Review Board finalised 2,219 review decisions with favourable outcomes in 42% of applications.

The most important difference to the Australian system is that the hearing before a Review Board is the only hearing where new evidence can be presented.

Appeal hearings

Appeal hearings – the veterans' second level of redress – are conducted by an Appeal Board made up of three permanent members who were not involved in the review hearing. All appeals are heard in Charlottetown.

Once again, the decision to appeal rests solely with the veteran but veterans do not attend the appeal because of the nature of the hearing. The BPA advocate prepares and files a written submission in support of the appeal but no new evidence can be introduced at this stage. The hearing is brief and the short discussion is confined to the issues raised in the advocate's submission. An appeal hearing will likely conclude in less than half an hour with the decision reserved. In 2016-17, the Appeal Board finalised 937 appeal decisions with favourable outcomes in 26% of applications.

108 VRAB Act, section 4

109 Ibid, section 6(1)

Veterans Affairs Canada is not represented at the appeal and there is no opposition to the applicants' case. This situation is totally different to veterans' appeals to the Administrative Appeals Tribunal in Australia which can be strongly contested and take one or two days to be heard.

In summary, the important differences between a Canadian Appeal Board hearing and an AAT appeal in Australia are:

- there is no appearance on behalf of Veterans Affairs Canada to contest the appeal
- the veteran does not attend
- no new evidence can be presented
- as the appeal is based on the veteran's submission and the other material on the case file, the hearings are over in half an hour, and
- the BPA advocate conducts the appeal at no cost to the veteran.

Finding 8

The study found:

- 8.1 Veterans Affairs Canada and the veteran community work cooperatively to assist veterans gain their full entitlements.
- 8.2 Canada has a long history of using government administrative officers and lawyers to assist veterans making claims for entitlements.
- 8.3 the Bureau of Pensions Advocates conducts an independent legal practice for veterans even though its lawyers are public servants employed by Veterans' Affairs Canada and its offices are in VAC premises.
- 8.4 the BPA lawyers are clearly trusted by veterans to act only on their behalf and their independence is supported by legislation.
- 8.5 the Canadian Review Board is very similar to the Veterans' Review Board in its role and procedure.
- 8.6 the Canadian appeal process is dealt with by written submission from the BPA lawyer and could not be implemented in Australia without extensive legislative and cultural change.
- 8.7 Veterans Affairs Canada does not take any part in reviews or appeals.
- 8.8 the Canadian system makes far less use of independent medical evidence than the Australian system and often relies on the medical report obtained by the veteran.
- 8.9 evidence from doctors and medical specialists is confined to their written reports – they do not give oral evidence at a review hearing.

Section 10: Other Comparable Government Advocacy Services

The terms of reference require the study to examine different models for professionalised advocacy both within Australia and overseas to determine the most suitable model so veterans have a level of service which, at a minimum, is comparable in quality and value with other cohorts accessing government entitlements.

The study's examination of veterans' advocacy in Canada is reported separately in the previous Section. In addition, the study has investigated and considered:

- veterans' advocacy in the United Kingdom
- the National Disability Insurance Scheme and the National Disability Advocacy Program, and
- the National Aged Care Advocacy Program.

To assist in comparing the Canadian and UK advocacy and support services, some relevant statistics are set out below.

Table 9: Three country comparison

	Australia	Canada	United Kingdom
Total population	25.1 million	37.1 million	66 million
Geographic area	7.7 million km ²	9.9 million km ²	0.25 million km ²
Number of current serving members	58,475 permanent force members	71,500 regular force members	136,310 full-time military personnel
Estimated size of veteran population	641,300	649,300	2.6 million
Number of veterans and family members receiving disability support or with an accepted disability *	171,557	159,236	157,229

* Note: The Australian and UK numbers include individuals who have entitlements under more than one Act, in which case they are counted more than once.

Veterans' advocacy in the United Kingdom

In the United Kingdom, functions are shared between public and non-public sector agencies which have a long history of collaboration and common goals.

Military compensation is provided under two programs. The War Pensions Scheme covers military personnel injured before 6 April 2005 and the Armed Forces Compensation Scheme covers injuries occurring on or after that date. Both schemes are subject to the *Pensions Appeal Tribunals Act 1943*.¹¹⁰

Veterans UK, which is part of the Ministry of Defence, is responsible for the armed forces pension schemes (which are equivalent to the Australian military superannuation schemes), compensation payments and welfare services.

Claims under both schemes are assessed by approximately 200 caseworkers who have face-to-face access to medical advisers and more senior decision makers if required. There are no formal

110 <http://www.infolaw.co.uk/mod/afcsandspo.htm> (December 2018)

qualifications required to become a caseworker but training is thorough and takes a minimum of three months. In complex cases, they consult with inhouse lawyers and policy advisers.

In February 2018, Veterans UK had 3,174 claims on hand. The target processing time is 90 days and the average is 86.5 days.

Veterans UK appeals

The first option for review of a compensation decision is a reconsideration by Veterans UK. The appeals team has approximately 30 caseworkers and 10 support staff. If veterans are not satisfied by the reconsideration, they can appeal to the First-tier Tribunal (War Pensions and Armed Forces Compensation). Tribunals are administered by the Courts and Tribunals Service, an agency of the Ministry of Justice. About 20% of veterans whose claims are rejected lodge an appeal. Veterans can also go straight to the tribunal within specified time frames without first seeking a reconsideration.

Veterans UK provides a Statement of Case to all parties before the hearing that explains the initial decision. Veterans and their advocate or solicitor can attend a first-tier hearing. A Veterans UK staff member also attends. These officers are experienced caseworkers and do not require legal training.

The appeal panel is made up of three or four independent decision-makers including a judge and medical and Service representatives. The decision of the panel is only binding on the particular case and does not set a precedent.

If the claimant is still dissatisfied on a point of law, there is a second tier of appeal to the Upper Tribunal. The Administrative Appeals Chamber is part of the Upper Tribunal and decides appeals on a point of law from decisions of the First-tier Tribunal. Approximately 13% of cases go to the second tier appeal. Veterans UK will only take part in the second tier appeal if the integrity of the compensation schemes are at risk.

Compensation advocacy through the Third Sector

The United Kingdom third (or not-for-profit) sector has over 2,200 military charities with approximately 400 focused on advocacy and welfare. The Confederation of British Service and Ex-service Organisations (Cobseo) coordinates the efforts of a large number of those charities and associations.¹¹¹

Some charities assist with appeals against compensation decisions. The Royal British Legion is the largest military charity in the UK, with 235,000 members, 110,000 volunteers and 1500 paid staff. In 2016-17, the Legion spent £57 million on welfare services.

Legion advocates are paid employees called War Pensions Representatives (even though they provide assistance under both compensation schemes). Representatives undergo formal inhouse training and a mentoring program but are not legally trained. The Legion does not provide advocacy assistance at the Upper Tribunal but it can arrange for pro bono lawyers to help claimants.

The Legion says attracting new members is difficult as the newer charities, such as Help for Heroes, have more appeal for younger veterans.

Veterans Welfare Service

The Veterans Welfare Service is part of Veterans UK. This government funded service provides care, support and information to assist with the transition from service to civilian life, for bereaved families, and for ill, injured or vulnerable veterans and their families. It facilitates access to all appropriate services including government entitlements and benefits, military charities and national, local government and community services. It does not provide compensation advocacy but welfare managers assist veterans in completing compensation claim forms.¹¹²

111 See Section 15

112 See Table 4

The service has 82 staff located in the four regional Veterans Welfare Centres; on Defence sites; co-located in 20 Royal British Legion shopfronts; or working from home. As a result of the spread of locations, the service is responsive to local needs and aware of locally available services. There are 59 welfare managers who provide one-on-one help and guidance by telephone or home visits. Their support continues for at least two years after separation and longer if required.

In 2016-17, the Veterans Welfare Service assisted 20,410 veterans and family members. Funding is approximately £15 million per annum.

Some welfare managers are also part of the Defence Recovery Capability Team, working alongside Defence support services and two military charities: the Royal British Legion and Help for Heroes. This team provides coordinated support to injured or ill service personnel. Veterans who are identified as seriously injured or with ongoing welfare needs have a three-month handover with a welfare manager before they discharge. Welfare managers do not require specific qualifications but they receive six to nine months in-service training and mentoring as well as ongoing refresher training.

National Disability Insurance Scheme and National Disability Advocacy Program

The *National Disability Insurance Scheme Act 2013* empowers the NDIS to define eligibility criteria, age requirements, what constitutes reasonable and necessary support for people with a disability and a review mechanism for decisions made by the National Disability Insurance Agency. When seeking review of an NDIA decision, an internal review must be conducted as a first step. If the outcome of the internal review is not satisfactory, an external review can be requested through the Administrative Appeals Tribunal.

National Disability Advocacy Program

The National Disability Advocacy Program (NDAP) provides people with disability with access to effective disability advocacy that promotes, protects, and ensures their full and equal enjoyment of all human rights, enabling community participation.¹¹³ The Department of Social Services provides those services through contracted advocacy agencies.

The only service providers which can receive funding under the Operational Guidelines for NDIS Appeals are: incorporated associations; incorporated cooperatives; not for profit companies; Aboriginal corporations; and statutory corporations.¹¹⁴

Individual (including legal) advocacy and systemic advocacy are defined in the NDAP's Operational Guidelines and are funded under the *Disability Services Act 1986*. The definition includes Family Advocacy, Legal Advocacy and Citizen Advocacy to provide for the mobilisation, training, and coordination of volunteer citizen advocates to support people with disability. Systemic advocacy seeks to influence or secure positive long-term changes that remove barriers and address discriminatory practices to ensure the collective rights and interests of people with disability are upheld.

Grants of NDAP financial assistance to advocacy agencies are made by delegates appointed by the Minister for Social Services. Any organisation providing advocacy services as defined by section 7 of the *Disability Services Act 1986* can seek a grant to provide advocacy services to applicants within a designated service area.

Funded advocacy services have to comply with: the terms of the grant agreement (including schedule and work plan); the Disability Services Act including legislated standards and certification requirements; all other relevant legislation and performance requirements; providing services free of charge; and the Operational Guidelines for the NDAP.

¹¹³ Department of Social Services, *Operational Guidelines for the National Disability Advocacy Program*

¹¹⁴ Ibid, paragraph 1.5

Advocacy agencies provide services to all applicants within their service area or a referral where specialist requirements or capacity constraints prevent them from addressing the applicants' needs in a timely manner.

Advocates have to report their activity to the Department regularly. The Operational Guidelines require that advocacy agencies provide data and service delivery information twice a year in accordance with Data Exchange protocols¹¹⁵ and information to the annual Disability Services Data Collection conducted by the DSS. Individual reporting targets are negotiated with each NDAP agency which has to maintain information technology systems capable of meeting these reporting obligations.

Advocacy services must adhere to the quality standards for support for disabled people as defined by the *National Standards for Disability Services*. All funded advocacy agencies are independently audited and certified as compliant with the National Standards within 18 months of the initial grant and every three years thereafter for re-certification.

Agencies are required to have their own internal complaints management process. Complaints that are not resolved by the parties are managed independently by the Complaints Resolution and Referral Service.

National Disability Insurance Scheme Appeals Program

The National Disability Insurance Scheme Appeals Program provides people with disability and others (such as parents and carers) access to advocacy services to ensure those affected by NDIA reviewable decisions have access to support at the Administrative Appeals Tribunal.

Under NDIS Appeals, *support persons* assist applicants in making claims. In practice, these advocates are funded through the NDAP and the grant agreements are managed by the DSS.

Claimants can be assisted by a support person (that is, an advocate) in understanding and navigating the process, developing and preparing submissions, education and coaching on self-advocacy or by appearing on the claimant's behalf at hearings in instances where self-advocacy is not possible.¹¹⁶

In any internal review of an NDIA decision, NDAP service providers can provide *support person services* which are funded through NDIS Appeals.¹¹⁷

In any internal review of an NDIA decision, NDAP advocacy agencies accessible to applicants can provide *support person services* which are funded through NDIS Appeals.¹¹⁸

Legal advice and representation in AAT matters

The second stage in the appeal process is external review at the AAT. The support person advocate is funded through the NDIS Appeals program.

Where an appeal to the AAT potentially involves a question of law or the matter is novel or complex, the claimant (or advocate) may refer the matter to the legal aid commission in the relevant state or territory. If the legal aid Assessment Officer assesses that the matter does raise a question of law or a complex or novel matter, funding for legal support services can be approved.

Legal services are funded by NDIS Appeals and delivered by either the relevant legal aid commission or legal experts engaged by it.¹¹⁹

115 Ibid, section 5

116 Ibid, section 1.2

117 Department of Social Services, *Operational Guidelines NDIS Appeals*

118 Ibid

119 Ibid, sections 1.7 and 2.2

Funding provided to the legal aid commissions is separate from their other Commonwealth funding. It must be used to meet the costs of employing legal experts (and other eligible costs) and delivering legal services in NDIS Appeals cases.

National Aged Care Advocacy Program

Since 1 July 2017, the Department of Health has funded advocacy support for individuals through the National Aged Care Advocacy Program. The program is a free, confidential and independent service for older people, their families and representatives.

Previously, advocacy services were funded by the department on a state-by-state basis. A review of aged care advocacy services in 2015¹²⁰ recommended introducing a national framework for aged care advocacy to promote national consistency and to set out clear principles, priorities and outcomes. The national framework is expected to be finalised in 2018 and will also cover competencies for advocates and reporting and quality assurance standards.

The 2015 review also recommended a formal alliance of advocacy providers be established to facilitate sharing information and resources, coordinate feedback to government and to manage professional development and training. In response, nine service delivery agencies signed a memorandum of understanding in 2016 to form the Older Persons Advocacy Network which went on to win a grant of \$25.7 million (1 July 2017 to 30 June 2020) to administer the National Aged Care Advocacy Program.¹²¹

OPAN aims to be the national body for older person advocacy. In November 2018, it had 65 paid advocates (with a full-time equivalent of 30 advocates) within its network of nine service delivery agencies. Together they provided services to 6,912 older persons in the six month period from January to June 2018. There are no volunteer advocates within the network. However, OPAN says this number is insufficient to meet current demand.

The role of the advocate is to assist older persons in accessing government-funded aged care services and resolving concerns and complaints. Advocates provide clients with information and education and can speak to service providers on their behalf. They can also refer clients to other services such as healthcare, transport, housing and financial services.

In addition, OPAN provides systemic advocacy. Systemic advocacy seeks to influence or secure positive long-term changes that remove barriers and address discriminatory practices to ensure the collective rights and interests of older persons are upheld. If there are issues of concern that affect the aged care sector in general, OPAN brings them to the attention of the Minister for Aged Care.

Aged Care Complaints Commissioner

The Aged Care Complaints Commissioner is an independent statutory officer whose actions and decisions can be reviewed by the Commonwealth Ombudsman.

The Commissioner provides a free service to resolve issues between aged care clients and a government subsidised service provider. Aged care clients or their representatives (which broadly includes family members, volunteers, advocates or health professionals) may complain to the Commissioner directly. OPAN works closely with the Commissioner to resolve clients' issues.

120 Department of Social Services *Review of Commonwealth Aged Care Advocacy Services Final Report*, December 2015

121 The advocacy program is to provide a nationally consistent service and also be flexible enough to deliver tailored services to meet the diverse needs of individual clients. The principles, priorities and outcomes of the advocacy program are set out in the National Aged Care Advocacy Framework, Program Guidelines and the grant agreement with OPAN

Finding 9

The study found:

- 9.1 in Canada and the United Kingdom, the advocacy and support services for veterans reflect their history and the governmental, legal and administrative frameworks within which they work. Neither system could be simply uplifted and transferred to Australia but lessons can be learnt from the way they are structured and operate.
- 9.2 as large, national organisations, the Royal Canadian Legion and the Royal British Legion are able to fund and deliver a range and consistent level of services across their country.
- 9.3 the National Disability Advocacy Program and NDIS Appeals are government-funded programs providing people with disability with, first, access to disability advocacy and, second, assistance with internal reviews and AAT appeals. These programs are delivered by paid employees, not volunteers.
- 9.4 the National Aged Care Advocacy Program is a government-funded program providing older persons with advocacy services through a national network of nine service delivery agencies. This program is delivered by paid employees, not volunteers.

Section 11: Advocacy Training and Accreditation

The training and accreditation of veterans' advocates has evolved after lengthy consideration by ex-service organisations and the Department of Veterans' Affairs. Over time, the training has progressively moved toward higher educational standards and greater quality assurance.

Today's advocates (both compensation and wellbeing) have been trained under the Training and Information Program or, since 1 July 2016, the Advocacy Training and Development Program. Many of the advocates have also undertaken other occasional courses relevant to their roles and interests.

TIP provided specific training courses for pension and welfare officers (as they were then called) and participants received a certificate of attendance. Since 2016, a large number of the experienced advocates trained under TIP have become accredited under the ATDP through recognition of their prior learning.

The ATDP Course in Military Advocacy is nationally recognised as part of the Vocational Education and Training sector and the course materials have been accredited by the Australian Skills Quality Authority.

There are two pathways to become an accredited ATDP advocate.

The first is through recognition of prior learning. TIP-trained welfare advocates have their knowledge and experience assessed through an open book examination, an interview and by providing examples of real case work (with personal details redacted) to determine whether they meet the ATDP required standards.

The second is through a formal learning course comprising: face to face training; online and on-the-job-training; submitting a formal log book of their work: and undertaking a formal assessment.

From 1 July 2018, in a further important enhancement to the ATDP, accredited advocates are now required to undertake continuing professional development to maintain currency.

Governance of the ATDP is vested in its Strategic Governance Board, Capability Framework Management Group and three Regional Implementation Groups. Collectively, the controlling committees recognise that the ATDP needs to continue to develop and is expected to investigate options for offering Certificate IV units of competency. It is thought that younger veterans trained to that higher qualification may be suitable for post-Defence careers as paid full-time ESO advocates.¹²²

Given the increasing emphasis on veterans' wellbeing, the further development of the ATDP should include a stronger focus on wellbeing advocacy. The study understands the ATDP has given some consideration to a level 3 wellbeing unit of competency leading to a Certificate IV qualification (similar to the Certificate IV in Community Services). This competency (if it goes ahead) will better meet the need for a holistic approach to the wellbeing of veterans and their families.

While the study supports these developments and future direction, there are a number of current and impending issues identified in submissions and consultations that need to be taken into account, particularly in regard to compensation advocacy.

First, the current generation of advocates is aging, will not continue to assist veterans indefinitely and is unlikely to be replaced by a significant cohort of younger volunteers.

Second, membership of ESOs is falling. Younger veterans are not joining ex-service organisations or, at least, not the large and well-established ESOs such as the RSL.

Third, the law of veterans' entitlements is complicated. Many of the Vietnam War veterans' advocates have confined themselves to claims under the Veterans' Entitlements Act. The statistics about the type of claims received by DVA and appealed to the VRB or the AAT mean that:

¹²² Trained advocates could also possibly work as paralegals at legal aid or with law firms acting for veterans

- a compensation advocate must have a sound knowledge of all three principal Acts and the interaction between them and some familiarity with other relevant legislation (such as Defence superannuation legislation), and
- inadequately trained or out of their depth advocates, despite the best intentions, can—and in some cases do—give poor advice to veterans which can prejudice their claim on DVA or adversely affect its financial outcome.

As the first duty of advocates is to assist the veteran, then it follows they have to be well-trained, experienced and competent. The evidence provided to the study suggests there is too much variation in the levels of training, experience and expertise amongst advocates for veterans to be assured that all advocates meet these benchmarks.

The study suggests that the ATDP as presently structured and delivered needs to consider the following five issues:

- under the current training program, it can take a long time to progress through the several levels of accreditation. Future volunteers may be more impatient than in the past and, in any event, may not be able to undertake training on the same basis due to family and employment commitments. Consideration should be given to the course structure and duration that will be most suitable for future applicants
- a large part of the ATDP training is dependent on mentoring over an extended period. The study has been told there is a shortage of mentors, particularly in regional areas, and some mentors have found their administrative obligations impinge too much on their time, including the time they set aside to act as an advocate
- the ATDP as presently conducted may not meet the possibly pressing need for new advocates to replace retirees over the next few years, in particular advocates with level 3 compensation accreditation so they can appear at the VRB. In addition to the current courses, the ATDP should consider developing intensive, short courses at each level in both compensation and wellbeing advocacy in conjunction with ESOs capable of providing the practical experience component. This fast-track suggestion will be especially relevant for veterans (and any other applicants) seeking training and accreditation so they can take up a paid advocacy position in an ESO or elsewhere (including legal aid and private law firms)
- the current compensation training does not include adequate instruction in veterans' entitlements law. The study suggests the ATDP should involve professional trainers to teach veterans' entitlements law including: a thorough understanding of the principal Acts and the interaction between them; relevant case law; the Statements of Principles; applicable policies and procedures (including GARP¹²³); and specific difficult issues (such as the alone test and offsetting). This course should be included at an appropriate standard of detail and complexity for each of the four levels of compensation accreditation, and
- the ATDP needs a more permanent structure than the present collection of committees.

The fourth point is a major problem. The ATDP cannot properly prepare advocates for appearances at the Veterans' Review Board, let alone the AAT, without a sound knowledge of veterans' law. The Veterans' Law courses previously conducted by Southern Cross University could provide some guidance.

The fifth point goes to the ATDP's ill-defined legal status. It needs a more permanent structure, particularly if it is to take on greater responsibilities. The study's suggestion in this regard is set out below.

The study considers the ATDP should take on a fully developed role as the training and licensing authority for all accredited veterans' advocates, including continuing professional development,

123 Guide to the Assessment of the Rates of Veterans' Pensions

insurance, setting ethical standards, codes of conduct and disciplinary procedures. A more formal regulatory regime is consistent with the educational standards the ATDP is seeking to achieve and will sit easily within the new structure proposed below.

The suggestion is also in line with the support given at the Veterans' Ministers meeting held on 8 November 2017 which in its Joint Communiqué:

... supported the establishment of a Veterans' Support Services Accreditation Association that would enable ex-service organisations delivering services to veterans to obtain formal accreditation.

Proposed new advocacy training and licensing structure

Given the proposed expansion of the ATDP's role and function, the study suggests it should be incorporated as the Veterans' Advocates Board, a company limited by guarantee.

It will be important that this body is – and is seen to be – independent of government.

The National Judicial College of Australia is the model for the body the study has in mind. A judicial training college has to have the highest levels of independence from government to be acceptable to Australian judges and the NJCA has done so through incorporation and its governance arrangements.

The Judicial College:

... is Australia's national judicial educator. Our purpose is to provide national leadership in judicial education, support the rule of law and strengthen judicial capacity and independence.

Its objects include for judges to:

- *share lessons learned from experience, leading to identification and adoption of best professional practices*
- *broaden and enhance their general and legal educational standards, and*
- *develop their skills in management (including case management), conduct of trials and appeals, and judgment writing.*

The Council of the Judicial College includes four judges from different state and federal courts and two government representatives. Their method and terms of appointment and so on are set out in the College's constitution.

The NJCA is hosted by the College of Law at the Australian National University which provides accommodation, computers and IT support. The Judicial College has six staff: a CEO, two program managers, an office manager and two administrative officers.

The College's operating costs are met by annual contributions from Commonwealth, state and territory Governments which totalled \$724,000 in 2017-18. The NJCA charges registration fees to cover the cost of delivering programs.

There are a number of bodies that could be a suitable host for the Veterans' Advocates Board, including a university or a government agency (such as the Attorney-General's Department).

Given its objectives, the directors and staff of the Veterans' Advocates Board will need experience and skills in education, training, professional regulation and organisational management together with an understanding of military service and veterans' issues. For these reasons, the company should be established and maintained as a separate entity devoted to its clear and specific purpose.

Finding 10

The study found:

- 10.1 under the current ATDP training model, it takes a long time for trainees to achieve accreditation.
- 10.2 as 83.8% of accredited advocates were born before 1965 and only 3.9% after 1979, there is a pressing need (particularly at compensation level 3) for younger advocates to be trained to take their place.
- 10.3 younger veterans are unlikely to have the time or patience to undertake advocacy training unless the courses are shorter and more intensive.
- 10.4 as the ATDP progressively moves towards higher educational standards and greater quality assurance, it needs a more formalised structure and better defined role as the training and licensing authority for veterans' advocates.

Recommendation 6

That the Advocacy Training and Development Program:

- 6.1 give consideration to the course structure and duration that will be most suitable for future applicants.
- 6.2 develop intensive, short accreditation courses at each level in both compensation and wellbeing advocacy in conjunction with ESOs capable of providing the practical experience component.
- 6.3 develop a course component on veterans' entitlements law for each of the four levels of compensation advocacy accreditation.
- 6.4 introduce a level 3 wellbeing unit of competency leading to a Certificate IV qualification (similar to the Certificate IV in Community Services).
- 6.5 be incorporated as the Veterans' Advocates Board, a company limited by guarantee.
- 6.6 take on a fully developed role as the training and licensing authority for all accredited veterans' advocates (both compensation and welfare) including continuing professional development, insurance, ethical standards, codes of conduct, complaints and disciplinary procedures.

Section 12: Female Veterans

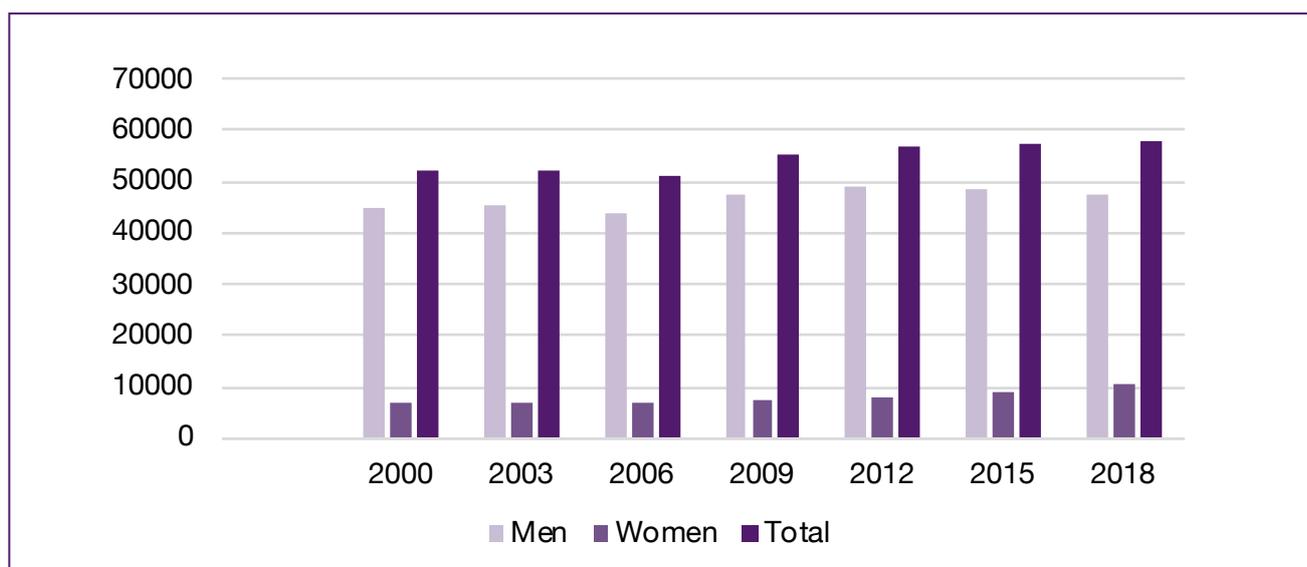
Female veterans were prepared to share their very personal stories with the study and to offer frank opinions on their experiences in Defence and in seeking their entitlements or obtaining support after discharge. Many of their comments were critical of Defence, DVA or ex-service organisations.

Women have served in the armed forces as Army nurses since 1899 and generally in nursing, training and support roles in subsequent conflicts. There were female branches of the military in the Second World War and, by 1945, over 66,000 women had served in the military and several thousand more had joined the Australian Women's Land Army.

The full integration of women into the Australian Defence Force has been comparatively slow. By 1979, women were granted equal pay and restrictions against women in combat-related positions were dropped in 1990. Women have formed part of ADF deployments since the early 1990s and women made up 440 of the 5,500 ADF members deployed to East Timor in 1999.¹²⁴ Women have been able to apply for frontline combat roles since 1 January 2013.

As at 30 June 2018, the Permanent Force of 57,954 members comprised 47,571 men and 10,383 women (17.9%).

Chart 2: Permanent ADF personnel by gender



Many of the challenges facing veterans who have been medically or otherwise involuntarily discharged apply equally to men and women. However, there were four themes raised by female veterans throughout the study's consultations and submissions that warrant specific attention.

Negative experiences

The negative experiences of some women in Defence has been well documented in other studies. Women have experienced harassment, vilification and systemic diminution of the value of their contribution.

Pathways to Change and *Women in Leadership* are two significant Defence programs to improve the culture towards women. After separation from Defence, like other veterans, women may need assistance from an advocate to obtain their entitlements. While some women find comfort in peers who understand their situation, others have walked away from ex-service organisations not willing to engage with men who hold outdated views on the role of women in Defence.

¹²⁴ *Making the Australian Defence Force* by David Horner, page 326. Oxford University Press, 2001

A number of men who made a submission asserted that it did not matter if the advocate was a man or a woman – and in a lot of cases that is no doubt correct. But in other cases, one wonders if they would hold the same view if their positions were reversed.

Lack of recognition of female-specific health conditions

While in Defence, there is a lack of recognition of female-specific health conditions and the different impact service has on a female body. There was also a lack of choice regarding medical specialists for gynaecological issues.

While it was acknowledged that the same standards need to apply, many spoke of the challenge of carrying a pack that is half their body weight on a long march and other physical challenges. Some reported being harassed and diminished by male superiors for being injured and unable to complete an exercise.

Female veterans told the study:

- *Young girls have hurt themselves on training with amount of weight they have to carry – they have hip and knee complaints*
- *I pushed through the pack training and collapsed out in the field. They wouldn't let me seek medical assistance from the roaming doctor or medical team*
- *I'm 155 cm and 66 kg I had to lift 22 kg weight above my head. They've changed it now... But it is a height and weight issue*
- *I was on a pack march with my platoon – no one seemed to care that I had hurt myself. I asked to see a doctor and wasn't allowed to - I was told I wasn't sick enough to see the doctor. But I was in mind numbing pain. When I finally got medical attention I was hospitalised straight away, and*
- *Another health issue is endometriosis. Getting posted and not having same specialist or you don't have a choice. I was told one thing, then the next specialist said something else ... I could have sorted this out earlier. It stopped me from having children.*

Against that background, female veterans reported that some older male advocates either did not acknowledge their contribution, were dismissive of their claims or did not provide adequate support. Female veterans were keen to acknowledge the positive attributes of their engagement with volunteer advocates – and some women received great assistance. However, too many reported unsatisfactory experiences with ESO advocates.

Acceptance as a veteran

A related issue is that the broader definition of 'veteran' is not universally accepted by the veteran community. Some older veterans believe the term should be limited to those who had warlike service and, unfortunately, female veterans reported feeling unwelcome in some ESOs.¹²⁵

Despite recent efforts by Defence and DVA, there is still more to be done to improve national recognition of female veterans. Many female veterans shared stories of being told on ANZAC Day they were wearing their medal on the wrong side or going to an ESO and it being assumed they were a daughter of a veteran, not a veteran themselves.

A strong female veteran identity and appropriate support for female veterans are essential to recognition and respect for their service. At one end of the spectrum, a medically discharged female veteran said:

I don't want to be held up by some old guy on ANZAC Day saying that I am wearing my Dad's medals on the wrong side of my chest. I'm not comparing my service and I willingly did my time. I don't ever want to go to another ANZAC Day March. I am tired of being challenged for my service.

125 Some younger male veterans reported they were treated the same way

In contrast, a female veteran in Townsville described her positive experience of ANZAC Day in these terms:

The mayor of Townsville is female veteran. We have 22 branches, a mix of three forces; serving and ex-service. We've had women leading ANZAC parades.

Isolation

Female veterans said they felt isolated and found navigating complex systems and support services challenging, even those with a tertiary education.

I am an intelligent senior officer, but it was too much for me to get the stuff together. I was lost, newly widowed. Older veterans don't get this. Younger vets can look alright but can be mentally incapacitated.

Without a social or veteran identity connection to an ESO, one female veteran saw going to an ESO for help like seeking charity from strangers:

It's humiliating for me to go to charities to ask for help with advocacy. The volunteers, they are lovely people but...I don't want to go to a charity to get assistance with my lawful entitlements. The government should employ them.

As women veterans are not connecting with traditional ESOs, that disconnection creates a barrier to advocacy services and advocacy training.

The ATDP is far better training than TIP but the fact that it is channelled through ESOs makes it difficult for women and younger veterans to access.

Women veterans prefer a female advocate

Most female veterans who participated in the study expressed a preference for a female advocate. Although women make up a quarter of the 538 ATDP accredited advocates, over the past 30 years compensation advocates have been predominantly male. At present, there are 137 female advocates among the total of 538 ATDP accredited advocates (both compensation and wellbeing).

It is also instructive to note that 83.8% of all accredited advocates were born before 1965.

Many female veterans want to be recognised as a separate veteran cohort rather than being grouped together with veterans' families. They are also seeking more peer networking opportunities and forums to interact as female veterans. The Australian Women's Veterans Network is a significant organisation for current serving women and veterans. It is almost exclusively an online virtual ESO with no accredited advocates.¹²⁶

An online organisation works because the dynamic of young service women is different. They are more likely to connect with information online. The RSL is not the only place you can get information. You can get the SOPs up online.

At a local level, younger female veterans reported that they did not know much about advocates and, when they did, they found it difficult to locate one. If DVA referred them to a local ESO, they did not feel that they had a choice of advocate. As one young female veteran described:

The ESO advocates were old school guys and it felt like an army office. It was confronting for me and made me nervous just to talk to them. They were full on and wanted things their way. They really didn't take account of my mental health issues.

Some female veterans do not want to be singled out or treated differently to any other veteran. However, if female veterans are not joining ESOs or are uncomfortable engaging with them, then they

126 See Section 2

have insufficient access to advocacy services. Women need advocates who can model the idea of hope and recovery and:

...walk alongside you, help you navigate the system, and help advocate for you.

Case study

Veteran X was a member of the ADF from 2006 until 2015 when she was medically discharged with physical and psychological injuries.

She went to a well-known ESO for assistance with her claims. Unfortunately, she found the advocates there very difficult to relate to and, even though she gave them her medical file, she never heard back from them. In this difficult situation, she submitted her claims online herself. When she needed to make further claims, she tried another well-known ESO in her local area. The advocate assisting her in that ESO went on a long holiday and did not contact her or progress her claim. Given her mental health issues, she again progressed her claims alone. Finally Veteran X tried a third ESO with an online presence. She emailed them for assistance but they never responded.

Her preference for an advocate would be someone who was contactable, approachable and knows the system. She has found that older advocates can be judgmental about young women in Defence. While they are aware of veterans' issues, they did not connect with her. She wanted to build a relationship of trust with someone.

On 11 September 2018, Rach Ranton, the Prime Minister's Veteran Employee of the Year 2018, gave a speech on the women who are united by Defence service. In her speech, she spoke for many female veterans when she said:

Women play so many roles in service to Defence. They are veterans. They are wives. They are daughters. They are mothers. They are friends, mentors, sisters, aunts, grandmothers, leaders, colleagues and role models. In terms of support for our women, there is much more to do.

And I don't know if we've ever been more ready to do it well than we are right now. Tonight, DVA, Legacy, the RSL, War Widows, TPI Federation, the Australian Defence Force and the Australian Women's Veterans Network are all in this room together for the first time ever. We are united by the women we are, the women that support us, and the women that we support.

Finding 11

The study found:

- 11.1 there is a disconnection between female veterans on the one hand and ESOs and older male advocates on the other which is a significant barrier to them accessing their entitlements.
- 11.2 there is a lack of recognition of female-specific health conditions.
- 11.3 most female veterans expressed a preference for a female advocate.

Recommendation 7

That the Department of Veterans' Affairs:

- 7.1 engage more actively with female veterans to ensure that advocacy services are accessible to, and meet the needs of women and, in particular, that women who are medically discharged from the ADF are able to access competent advocacy and other support services irrespective of location or ESO affiliation.
- 7.2 encourage younger female veterans to undertake advocacy training.
- 7.3 request the Repatriation Medical Authority to review the Statements of Principles around female-specific health conditions to ensure they are adequately recognised.

Section 13: Supporting Veterans' Families

The study commenced not long after the second Veterans' Families Policy Forum was convened at the Department of Veterans' Affairs in Canberra on 11 October 2017. In her welcome, the Secretary, Liz Cosson, quoted this comment from the previous Forum held in 2016:

*Veterans' families are an extension of the veteran and you experience what the veteran experiences.*¹²⁷

The study met with members of veterans' families who confirmed the truth of that observation. Some of them have supported—possibly for decades—veteran partners or their children with little recognition and limited assistance. They have adapted their work, personal and social lives to accommodate those family responsibilities.

Their motivation for sharing their stories was not to complain but to prevent or minimise a repetition of their experience for future Defence families.

If there was ever any doubt about the importance of family support for veterans, that was put to rest at the 2018 Invictus Games in Sydney. Veterans' children held up posters proclaiming *My hero* and *Go mum!* and family members presented medals instead of visiting dignitaries.

In recent years, Defence, DVA and ex-service organisations have worked in an increasingly integrated way to effectively support veterans and their families. However, a comparison of family support before and after separation from the Defence Force highlights some clear differences.

While in the ADF, Defence meets the member's and the family's needs for housing, health care, social support and career and professional development.

Defence families receive a great deal of assistance from the Defence Community Organisation. To determine who is eligible for its services, DCO defines a family as including *spouses and cohabiting partners, children who ordinarily live with the ADF member and the parents of single ADF members*. The families of reservists on continuous full-time service can also access DCO's full range of services.

Key DCO facilities and programs for Defence families include:

- Defence Community Centres at most major military bases across Australia
- the Partner Employment Assistance Program
- the Single Access Mechanism which dealt with 30,925 requests for information in 2017-18
- childcare through Australia's largest corporate childcare program
- education support comprising Defence school mentors in 230 schools assisting approximately 13,000 students, and
- the Family Support Funding Program assisting community groups to enhance resilience and community capacity building such as the Australian Military Wives Choir and Kookaburra Kids (a program to develop resilience and coping strategies in Defence children so they can look after themselves).

DCO also has:

- the 24/7 Defence Family Helpline with professional staff including social workers and psychologists who can assist and assess family members and refer them to local Defence social workers or other community service providers. The Helpline received over 16,000 calls and 32,000 emails in 2017-18, and

127 Forum Report, page 6

- a range of practical and emotional support programs for families facing an emergency or crisis (including practical assistance when the ADF member is away from home, injured or ill; safe house accommodation in cases of domestic crisis; and bereavement support).

In addition, Defence and DCO are doing very good work in improving a member's transition from the ADF and in involving the member's family in the preparation for the shift back to civilian life.

However, most DCO support for the family stops on the day the ADF member transitions from Defence although the ADF member is able to receive some support for up to 12 months.

After transition:

- the veteran receives medical support and rehabilitation for accepted service related injuries or health conditions, some transitional assistance for the following year and social support from an ESO (if sought and available)
- family support is available through the Veterans and Veteran's Families Counselling Service and possibly some support from an ESO, and
- DVA provides some family and support services such as financial support for education and childcare services.

Defence and DVA realise the importance of assisting veterans and their families to return to civilian life and are working hard to improve the effectiveness of their transition programs. However, the fact is that, after separation from the Defence Force, nearly all support from Defence is provided to the veteran in the expectation that the family will benefit indirectly.

There are some problems with that expectation. Two of them are:

- veterans can be so angry with the ADF or so unwell that they do not want, or are unable to cope with, seeking assistance from DVA or, if they are not well received, an ESO, and
- their family might be undergoing a crisis or domestic dysfunction.

In those circumstances, how can the family obtain assistance from DVA or an ex-service organisation?

The study's consultations also confirmed or identified five underlying issues which can confront veterans' families. They are recorded in this report for future consideration by DVA and Defence.

First, families of veterans suffering physical disabilities or mental health issues restructure and often limit their work, domestic and social life to accommodate those conditions and take on a long-term commitment to care for the veteran to the extent that is required.

The study met with Carers Australia whose purpose is to improve the health, wellbeing, resilience and financial security of carers and to ensure that caring is a shared responsibility of family, community and government. That consultation raised the question whether Defence, DVA or ESOs are doing enough to support family carers or to help them to find the assistance they need.

Second, one lesson learnt by the Vietnam War generation is that PTSD can stay with the veteran and affect the veteran's family indefinitely. For example, in 2014, DVA found:

*The sons and daughters of Vietnam veterans were almost twice as likely as the sons and daughters of Vietnam-era personnel (who were not deployed to the Vietnam combat zone) to report being diagnosed with or treated for depression, being diagnosed with or treated for anxiety, or making plans for or attempting suicide.*¹²⁸

Serious PTSD problems will continue with some fourth wave veterans and their families but its impact may be reduced through earlier and more effective treatment than in the past.

Third, some family members who came to consultations said they were not sure why they had come. Most times, it became clear their lives were in some sort of turmoil and they needed assistance but

128 *Vietnam Veterans' Family Study*, Department of Veterans' Affairs, 2014

did not know where to go. One woman described her situation as *like watching her whole family sliding off a cliff and not being able to do anything to save them*. Another was trying to cope with the suicide of two sons. A third was trying to help her partner finalise his nine year struggle to obtain DVA benefits. One couple was desperate to find support for their young daughter who had been raped in the Army.

Those consultations indicated how difficult it can be for distressed families to obtain timely information and assistance.

Fourth, the final underlying problem is that most of the people who came to consultations were in older age brackets, particularly the Vietnam War generation. The study had little direct input from veterans' or veterans' families in their 20s or 30s.

The study's investigations suggest that younger veterans are disengaged from Defence, have not formed any connection with DVA and are not interested in joining an established ex-service organisation or, if they have approached an ESO, the approach has not uncovered any areas of mutual interest.

As a result, members of veterans' families are likely to have little knowledge of or contact with possible sources of assistance and no basis for seeking it with the exception of:

- Open Arms – Veterans & Families Counselling, and
- in appropriate cases, Legacy and the War Widows' Guild.

The final issue which came to the study's attention was whether the structure of veteran entitlements and the way they are delivered matches the needs of the 21st century family.

Today, in many families, both partners work and often have tertiary, trade or other training and qualifications. When members and families are shifted from base to base, the partner will have to leave a professional position and may not be able to find similar – or even any – employment in the new locations. After transition to civilian life, the partner may have trouble resuscitating a career that has been on hold, missing out on promotion and career advancement and creating a six, eight or more years' gap in their employment history.

It raises the question whether sufficient recognition is given to the fact that, in many ways, the partner of a member of the Defence Force virtually joins the ADF as well and can pay a price for doing so.

One practical way that situation could be improved would be to extend the Defence Community Organisation's support to ex-Defence family members for two years after the veteran transitions out. Defence could provide all of its standard family assistance and any specific benefits DVA may add for veterans' partners and children to assist them to settle back into civilian life (including employment) during that period.

Defence's assistance would include:

- finding accommodation at the family's post-Defence location (in conjunction with Defence Housing Australia)
- developing a career resume and support in gaining employment (including any necessary updating of qualifications or experience)
- child care
- education mentoring and support for school age children, and
- assistance to cope with any domestic dysfunction (including safe housing if needed).

Local ESOs could contribute to the DCO assistance as an important part of their welfare support for veterans and their families.

As this proposal involves the extension of established programs, the study suggests Defence should carry the cost if the recommendation is accepted.

Finding 12

The study found:

- 12.1 family support for veterans—particularly badly injured or vulnerable veterans—is essential for their wellbeing.
- 12.2 veterans’ families give up a lot to support veterans throughout their career in Defence and yet they are cut off almost immediately a veteran transitions out.
- 12.3 the study has seen the strong support the partners of Vietnam veterans have given them for decades.
- 12.4 in recognition of their invaluable contribution, veterans’ partners and families should be able to access transition benefits that meet their needs in their own right.

Recommendation 8

That:

- 8.1 The Defence Community Organisation’s support for a veteran’s partner and family be extended for a period of two years after the veteran transitions from Defence.
- 8.2 DVA and ex-service organisations consider how they can best assist veterans’ families, particularly those committed to the long-term care of a veteran.
- 8.3 DVA and ex-service organisations take note of the five underlying issues that confront veterans’ families confirmed or identified by this study and consider if more can be done to respond to them.

Section 14: The DVA-Client Relationship

The relationship between the Department of Veterans' Affairs and many of its long-standing clients appears to go very smoothly. Pensions are paid, regular adjustments are made and clients are advised of the details of the varied payments. A range of small but important services (such as taxis to medical appointments) are delivered with a minimum of fuss.

Problems arise, for example, when there are lengthy and unexplained delays in determining primary claims or what is perceived to be an uneven contest at the Administrative Appeals Tribunal. Those issues have already been noted in this report and some of the recommendations are directed to dealing with them.

But there are some other underlying issues which affect the DVA-client relationship.

In any relationship between a service provider and a client, there can be an accumulation of minor irritants that collectively assume just as much importance as major problems. In his book, *Moments of Truth*¹²⁹, Jan Carlzon pointed out that clients judge the quality of the service based on their direct but often very small interactions with the service provider and its staff.

It follows that what, from the service provider's perspective, appears to be not overly important can look quite different to the client. That observation may seem so obvious it is not worth mentioning but it encapsulates many of the frustrations and criticisms heard in the study's consultations. The sorts of things veterans and family members mentioned are not new but they still have to be dealt with. For example:

- unanswered telephone calls
- not knowing who to contact to obtain advice, and
- being turned away by DVA and told to go to an ESO.

Other instances that came to the study's attention include:

- difficulty in navigating the otherwise very useful Consolidated Library of Information and Knowledge (CLIK)
- lengthy, legalistic and, for some veterans, intimidating letters. While DVA's correspondence deals with some complex legal matters and clients need to be fully informed, the study considers that can be achieved in plainer language and a more client friendly tone accompanied by an offer of further explanation from DVA if required, and
- DVA outbound calls do not show a caller ID but the veteran may be hesitant to answer an unknown caller which could be overcome by calling from say the 1800 RESPECT number or sending a text message.

Those examples are enough to make the point that these are moments of truth that create barriers between DVA and its clients and contribute to some veterans' perception that their relationship with DVA can be an adversarial one.

Another area where some improved communication could help is in managing client expectations so they match what DVA can deliver in substance and in time. If, for example, DVA tells a client they will be contacted again without any time specified, a client might expect to hear within say two weeks but DVA may have meant a month or more. The period between the client's expectation and DVA's intention is likely to be irritating or even stressful while the client waits for what is to them an overdue response.

There is likely to be considerable mutual advantage in DVA reviewing its client communication strategy and processes in consultation with largely younger veterans and veterans' advocates including several professionally conducted focus groups in different regions. The aim should be

for DVA to communicate with younger veterans in the same way as they communicate among themselves and could, for example, include a range of DVA YouTube videos (such as How to Make a Claim; Which Act Applies; and Understanding the Statements of Principles).

Recommendation 9

That DVA review its client communication strategy and processes following consultation with largely younger veterans and veterans' advocates including several professionally conducted focus groups in different regions.

Section 15: Future Direction and Collective Impact

The veterans advocacy system as presently structured will not provide veterans and their families with a modern professional sustainable advocacy service into the future. The existing model, which relies on an aging cohort of volunteers based in branches of the traditional ex-service organisations, is coming to an end.

As previously noted, the statistics are compelling: 19% of ATDP accredited advocates were born before 1946 and a total of 83.8% before 1965. At the other end of the age spectrum, only 3.9% were born after 1980 and they are likely to be paid advocates employed by the large ESOs.

There are 538 ATDP accredited advocates: 400 male and 137 female.¹³⁰ In addition, there is an indeterminate number of advocates trained under the Training and Information Program but many of them are expected to cease assisting veterans before or when their professional indemnity insurance expires on 30 June 2019 (levels 1 and 2 advocates) and on 31 December 2021 (levels 3 and 4 advocates).

Most of the accredited advocates (85.87%) are authorised by just four entities:

- Returned and Services League: 330
- Legacy: 66
- Veterans Centre (Victorian Regional Veteran Centre Project): 40, and
- Vietnam Veterans' Federation: 26.

These numbers will decrease over the next five years or so and they will not be replaced by younger advocates under the current arrangements (except as advocates employed by the large ESOs). Many younger veterans told the study they do not want to join the RSL or seek services from it and the Vietnam Veterans are not taking new members. In any event, younger veterans appear to be more inclined to join virtual ESOs or organisations focused on improving veterans' health and wellbeing than forming new ESOs along traditional lines.

Within the present structure, there are inconsistencies in the available advocacy and support services depending on where veterans live and some veterans are missing out. The inconsistencies are partly caused by Australia's size and demographics but another significant factor is the varying financial strength of ESOs in different states and territories. The major ESOs are federations of autonomous branches with limited sharing of resources across state borders.

As the advocates are members of a state or territory branch, their numbers reflect the branch's decision about how many advocates are needed in their jurisdiction. They also reflect the branch's financial strength (which is directly related to their capacity to employ paid advocates).

Inconsistencies are also apparent within state boundaries. The Ex-Service Organisation Mapping Project conducted by the Aspen Foundation highlighted the huge dispersal of ESOs resulting in a lack of coordinated activities. Veterans' centres have partially addressed this problem but it has not been solved.

These factors stood out when the study compared the Australian situation with the national organisation, financial strength and reach of the Royal Canadian Legion¹³¹ and the Royal British Legion.¹³²

The Department of Veterans' Affairs makes grants to ESOs under the Building Excellence in Support and Training Grants Program to fund advocacy services. DVA made 144 BEST grants in each of the last two financial years totalling \$3.84 million and \$3.96 million respectively. In 2017-18, the smallest grant was \$805 (RSL Queensland Banyo Sub-branch) and the highest was \$256,227 (RSL

130 In one case, gender was not recorded

131 See Section 9

132 See Section 10

Queensland). As the funding formula is largely based on past performance in delivering services, the BEST grants reinforce the present disconnected and highly variable network of advocacy assistance for veterans.

There are some well-tried ways to improve service delivery through consolidation, central direction and the use of modern technology to better effect. In the study's opinion, there is a pressing need to:

- restructure the framework, organisation and management for the delivery of veterans' advocacy services, and
- maximise the use of modern technology to deliver advocacy services effectively and efficiently anywhere in Australia.

The continued participation of ex-service organisations in both compensation and wellbeing advocacy is essential because they have been doing it for 100 years, they have available resources and it is their core purpose. It follows that the restructure proposed in this Section will have to be the subject of detailed consultation between DVA and those ESOs which wish to participate.

The consultation will need to cover issues such as current numbers of advocates, projected future numbers required, recruiting strategies to attract younger advocates, placement of advocates around Australia, the mix of paid and volunteer advocates, and funding and cost sharing.

The study puts forward the suggestions below as a starting point for those discussions.

Collective impact

The current fragmented approach involves ESOs developing and, in some cases, DVA supporting independent solutions to one or more aspects of a common problem. While those solutions may be successful, they have an isolated impact limited to their own sphere of operation and influence. They do not deal with the totality of a complex problem, can overlap with similar projects elsewhere and leave unaddressed gaps.

By consolidating access to the available advocacy services and working to a common agenda, ESOs and DVA can create a collective impact.

The collective impact approach is based on the premise that large scale change dealing with a complex mix of problems requires broad coordination between the sectors that are able to implement a combined solution rather than the isolated intervention of individual organisations.

In a 2011 article titled *Collective Impact*, John Kania and Mark Kramer gave an example of a collective impact program called Strive to improve the Cincinnati education system. They said:

*Strive didn't try to create a new educational program or attempt to convince donors to spend more money. Instead, through a carefully structured process, Strive focused the entire educational community on a single set of goals, measured in the same way.*¹³³

*Shifting from isolated impact to collective impact is not merely a matter of encouraging more collaboration or public-private partnerships. It requires a systemic approach to social impact that focuses on the relationships between organisations and the progress towards shared objectives. And it requires the creation of a new set of non-profit management organisations that have the skills and resources to assemble and coordinate the specific elements necessary for collective action to succeed.*¹³⁴

*Funders can play an important role in getting organisations to act in concert. In the case of Strive, rather than fueling hundreds of strategies and non-profits, many funders have aligned to support Strive's central goals.*¹³⁵

133 Stanford Social Innovation Review Winter 2011, page 36

134 Ibid, page 39

135 Ibid

The authors say the five conditions that together produce true alignment and lead to powerful collective impact results are:

- a shared vision (in this case, possibly *Advocacy services for all veterans*)
- shared measurement systems
- mutually reinforcing activities
- continuous communication, and
- backbone support organisations.

Individual participating organisations still do what they do best but they do it as their contribution to the agreed collective outcome.

A backbone organisation

Much of what Kania and Kramer say can apply to the problems and possible solutions confronting veterans' advocacy and support services. The starting point would be to establish a backbone body which, importantly, is not to be confused with a peak body. Peak bodies are representative bodies generally established to set standards, lobby government and promote the interests of members.

A backbone organisation, on the other hand, is an independent operational body which:

*... requires a dedicated staff separate from the participating organisations who can plan, manage and support the initiative through ongoing facilitation, technology and communication support, data collection and reporting, and handling the myriad logistical and administrative details needed for the initiative to function smoothly.*¹³⁶

Strive simplified staffing requirements to three roles: project manager, data manager and facilitator.

While it was conceived as a peak body, the Confederation of British Service and Ex-Service Organisations provides some indication of how a consolidated and better coordinated national service could work.

136 Ibid, page 40

Confederation of British Service and Ex-Service Organisations

Cobseo was established in 1984 as a company limited by guarantee. Its mission is to *maximise the effectiveness, efficiency and influence of the Service Charity Sector in order to positively enhance the lives of Armed Forces Community beneficiaries*. Cobseo has a small working executive office of six staff and its patron is the Prince of Wales.

Its strategic objectives include to represent, promote and further the interests of the Armed Forces Community; promote the highest standards of governance; enhance the efficiency and effectiveness of the sector by encouraging greater cooperation and collaboration; and advocate for the Service Charity Sector.

In the United Kingdom, the service charity sector has a combined income of approximately £850 million of which 80% is earned by the 15 largest military charities. Membership of Cobseo is made up of 185 registered charities, 62 regimental associations and 44 associate members. Associate members are charities that provide services to the wider community, not just veterans.

Cobseo encourages and facilitates the sharing of information between members, identifies common issues, coordinates action and provides a central point of contact for the sector. Its Strategic Framework 2018 is at **Appendix 9**.

One of Cobseo's most significant achievements is its casework management system, a single online database used by over 100 military charities. One charity can enter the details of a person who needs assistance and any charity that can provide that type of help in the specific location can nominate to be involved. A number of different organisations can step in and provide a wrap-around service for a veteran or family in need. This system has been very effective in extending the reach and efficiency of the military charity sector. Funding for the case management system came from *Poppies in the Tower* – a major fundraising event at the Tower of London to mark the Centenary of the First World War.

Cobseo identifies the major challenges for the sector as: significant changes in the size and demographics of the Armed Forces Community; reduced government funding; increased regulation; the public misconception that veterans are mad, bad or sad; and the impact on public trust in the charity sector by scandals in some high-profile organisations.

The backbone body (possibly called Veterans' National Advocacy Coordination or VNAC) would be incorporated as a company limited by guarantee to give it an independent legal status and formal governance structure. It could have three levels of membership:

- ex-service organisations
- individual accredited advocates (including advocates nominated and authorised by VNAC), and
- associate members being government bodies, charities that support veterans and not-for-profit organisations which assist veterans with wellbeing services and can contribute to collective impact.

The authorisation of advocates by VNAC and the inclusion of individual members will remove the barriers that stand in the way of younger veterans—particularly women—who may want to become advocates but do not want to join a traditional ESO.

The membership of the board of directors, the rights attaching to the different categories of membership, funding and other organisational details will have to be the subject of ESO-DVA consultations. However, the following points will need to be kept firmly in mind:

- a clear focus on engaging younger veterans is required at every level as they will be the ones to carry VNAC and its objectives forward into the future
- a strong emphasis on the effective use of modern technology in a more flexible advocacy service should attract the interest of some younger veterans, and

- the study has proposed changes to the ATDP so younger veterans interested in becoming advocates can be trained more quickly and take up duty sooner, but they will need financial support to do so.

Central register

The first priority of VNAC would be to prepare a central register of all ESOs and compensation and wellbeing advocates who wish to join VNAC and participate in a nationally coordinated advocacy service. The register would contain sufficient information to identify where and to what extent advocacy services are available around Australia.

In particular, the register could include the following details for participating ATDP accredited advocates and levels 3 and 4 TIP trained advocates¹³⁷ :

- their letter of authority
- their gender and type and level of qualification
- whether they are a paid or volunteer compensation or wellbeing advocate
- their work location, type of work (for example, VEA claims only), working hours or times, their back up support when they are unavailable and contact and other relevant details
- whether they work in or are associated with a veterans' centre
- whether they conduct cases at the VRB or the AAT
- a summary of their current workload and anticipated workload for the coming year
- if they cannot take on a new matter, who they refer the veteran to
- how and where they get advice when dealing with a complex claim or problem
- details of the information technology available for their work and the file storage and privacy protection arrangements for veterans' personal information, and
- whether they intend to continue as an advocate indefinitely or have a planned date for retirement.

For the first time, DVA and participating ESOs would have a quantified picture of the available advocacy services across the country indicating where more advocates and support services are required and when.

The United Kingdom provides a useful example of how that information can be used to deliver a national advocacy service which would fit comfortably within Veterans' National Advocacy Coordination.

¹³⁷ The limitation to TIP levels 3 and 4 recognises that professional indemnity insurance through VITA for levels 1 and 2 ceases on 1 July 2019

Veterans' Gateway (United Kingdom)

The Veterans' Gateway was established by the charities sector in 2017 as the first point of contact for veterans seeking support. Veterans and their family members receive a one-on-one service to connect them with the support they require. It was designed to meet the needs of younger veterans who prefer to seek services online and are less likely to join traditional military organisations.

Advisors are available on the telephone 24 hours a day and seven days a week and many of them are former military personnel. There is an extensive online self-help service so veterans can search independently on a range of issues such as housing, employment and finances. In its first year, the Veterans' Gateway fielded 10,000 telephone enquiries and there were 183,420 website users.

The Gateway is funded by the Armed Forces Covenant Fund and run by a consortium led by the Royal British Legion and including SSAFA – the Armed Forces Charity, Poppyscotland, Combat Stress and Connect Assist. Support services are provided by military charities, community partners and information organisations.

If VNAC provided a similar service (but not necessarily 24 hours a day seven days a week), it would become a central point for veterans to seek advocacy services without any concern that they were approaching an organisation of which they were not a member or, for some Australian veterans, feeling they were asking for charity.

A diagram of the proposed veterans' advocacy model is set out in **Appendix 10**.

Modern technology

The second priority for VNAC would be to set in place operational procedures that maximise the use of modern technology. There are plenty of examples of more efficient processes to draw on using everyday items such as: smart phones; iPads; internet access; Skype; home computers; combined printers, photocopiers and scanners; and applications that can securely connect an advocate's personal computer into (and temporarily become part of) another organisation's IT network.

This priority is especially important for compensation advocacy which has quasi-legal, document based processes. It would enable younger veterans who become accredited advocates to work from home at any time using their own equipment and they could do so on a paid or volunteer basis. They would have no difficulty interviewing clients, lodging primary claims, preparing for VRB conferences, drafting submissions for VRB hearings and storing all of the relevant notes and documents securely on a VNAC database.

Accredited advocates (including advocates authorised by VNAC) could be assigned to deal with particular compensation matters and undertake the work wherever it suited them. Apart from appearances at the Veterans' Review Board, location and distance would be irrelevant.

The study was interested to note that:

- some compensation advocates have assisted veterans to lodge their claims from Indonesia, Thailand, the United Kingdom, the USA and elsewhere and did so without difficulty, and
- in Canada, the Bureau of Pensions Advocates lawyers often do not meet their veteran clients until the day of their hearing, having done all of the preparation over the telephone and by email.

The amount of work for compensation advocates will also be lessened by increasing use of MyService to lodge claims and the introduction of the free Veterans' National Legal Service to assist veterans appealing to the Administrative Appeals Tribunal and the Veterans' National Legal Helpline.

Once compensation advocacy has been brought into the new framework, it should mainly require regular attention and steady management.

Wellbeing advocacy

It is the study's view that, in future, the principal focus for ESOs and veterans' advocacy services will increasingly be on wellbeing services and assistance. That shift will have a direct bearing on the number and type of advocates required over time as well as the skills, experience and qualifications they will need.

Wellbeing advocacy is a complex area and requires advocates to provide more assistance to veterans and their families for longer because:

- veterans and their families have diverse wellbeing needs which can arise at any time, take a long while to resolve or last indefinitely (such as coping with PTSD)
- finding veterans in need of wellbeing services (such as homeless veterans or veterans in prison) and delivering services for them has to be done at a local level, and
- an important part of wellbeing advocacy involves ESOs and advocates acting in concert with government, medical and other community service providers in their local area.

DVA has no involvement in some important wellbeing services as they fall outside its statutory responsibilities and budget authority. It follows that ESOs will continue to have a central and essential role in wellbeing advocacy provided they can adapt to meet the needs of younger veterans and their families and the demands of a changing environment.

The study considers Veterans' National Advocacy Coordination would be a suitable body to combine, liaise and work with health, disability, community and government sectors to share data sets and to develop improved cross-sector services for veterans' wellbeing over the long term.

Finding 13

The study found:

- 13.1 the veterans' advocacy system as presently structured is coming to an end and will not provide veterans and their families with a modern professional sustainable advocacy service into the future.
- 13.2 advocacy services are unevenly spread around Australia with significant variation in the number, availability and quality of those services in different states and territories.
- 13.3 veterans' advocacy can be more effectively and efficiently delivered through the consolidation and central coordination of the existing advocacy services provided by ESOs and individual advocates to achieve a collective impact.
- 13.4 the proposed future model of advocacy service delivery will only work if it attracts and accommodates the needs and preferences of younger advocates and maximises the use of modern technology.
- 13.5 there is no short term fix for the problems confronting veterans' advocacy and support services. Reforms need to be properly implemented and well-funded in line with the funding provided to advocacy services for other comparable cohorts to achieve their desired outcomes.

Recommendation 10

That the Department consider, in consultation with ESOs and veterans' advocates, establishing a body to plan, implement and deliver a consolidated, coordinated approach to the national delivery of veterans' advocacy and support services resulting in a modern professional sustainable advocacy service.

Recommendation 11:

That the Department note the study is of the view that the long term focus for veterans' advocacy services will principally be wellbeing advocacy which will have a direct bearing on the number and type of advocates required over time as well as the skills, experience and qualifications they will need.

Conclusion

The study has been greatly assisted by the submissions received and the advice provided in consultations. Veterans and members of their families have spoken openly about their experience in dealing with the Department of Veterans' Affairs and with the advocates assisting them – both good and not so good. Advocates and ex-service organisations have freely contributed their views and assistance as well.

The study has received very useful information from organisations in the legal services, community, health and disability sectors. Their input has placed veterans' advocacy in a broader context and emphasised the need for combined action to achieve a collective impact to address all of the problems confronting veterans.

The Veterans' Review Board and the Administrative Appeals Tribunal provided detailed statistics and other information about their work and the Departments of Health and Social Services gave the study useful data about their comparable government funded advocacy schemes. National Legal Aid was instrumental in formulating the proposal for the introduction of a free Veterans' National Legal Service at the AAT and the Veterans' National Legal Helpline.

Internationally, the Bureau of Pensions Advocates and the Veterans Review and Appeal Board gave the study an excellent briefing over three days which was supplemented by input from Veterans Affairs Canada and the Royal Canadian Legion. Veterans UK, the Ministry of Defence, the Royal British Legion and associated organisations gave the study valuable insights into the assistance offered to veterans and their families in the United Kingdom.

DVA officers were very generous in answering a long list of questions about their roles and departmental procedures as were individuals closely involved in various aspects of veteran advocacy. Finally, the Senior Consultant to the study and the DVA Secretariat provided a great deal of detailed research, advice and daily assistance.

As a result, the study is hopeful that the information, discussion, findings and recommendations in this report form a sound basis for the development of a modern professional sustainable advocacy service for veterans and their families into the future.

However, the proposed recommendations will have to be monitored to ensure they achieve their objectives. The study recommends their implementation should be monitored by the Commissions and annual progress reports made to the Minister for Veterans' Affairs and the Secretary. At the end of three years a thorough evaluation should be made and, if the outcomes have not met expectations or unanticipated complications have arisen, further changes will have to be considered.

Recommendation 12

That the implementation of these recommendations be monitored by the Commissions and annual progress reports made to the Minister and the Secretary with a thorough evaluation of the outcomes at the end of three years.

Acknowledgements

The following personnel participated in and made valuable contributions throughout the conduct of the study:

Kerrie-Anne Luscombe, Senior Consultant

DVA Secretariat participants:

Amber Vardos, Executive Director

Sharon Ruehmkorff

Caroline Quinn

Sandra Dickin

Kathy Francki

Darinka Zubovic

Shannon Hewett

Josie Antioch

Appendix 1: Periods of operation of legislation for service after 7 December 1972

Full-time peacetime service						
Enlistment date	Key date	Covered by			Key Date	Covered by
Before 22 May 1986	7 Dec 1972 (start of peacetime service under VEA)	VEA & DRCA			1 Jul 2004 (MRCA enactment)	MRCA (any service on or after 1 Jul 2004)
On or after 22 May 1986 with <i>less</i> than 3 years CFTS ^a before 7 Apr 1994	22 May 1986 (VEA enactment)	DRCA			1 Jul 2004	MRCA
On or after 22 May 1986 with <i>more</i> than 3 years CFTS ^a before 7 Apr 1994	22 May 1986	DRCA & VEA	7 Apr 1994 (peacetime service under VEA ceased) ^b	DRCA	1 Jul 2004	MRCA
On or after 7 Apr 1994			7 Apr 1994 (Military Compensation Act commenced)	DRCA	1 Jul 2004	MRCA

a. CFTS = Continuous Full-Time Service

b. With the commencement of the Military Compensation Act on 7 April 1994, peacetime service was no longer covered under the VEA

Operational service (including warlike and non-warlike)						
Enlistment date	Key date	Covered by			Key Date	Covered by
On or after 7 December 1972 and before 22 May 1986	7 Dec 1972	VEA	7 Apr 1994	DRCA & VEA	1 Jul 2004	MRCA

Peacekeeping service or Hazardous service ^c				
Enlistment date	Key date	Covered by	Key Date	Covered by
On or after 7 Dec 1972 to 30 June 2004	7 Dec 1972	DRCA & VEA	1 Jul 2004	MRCA

c. Both of these types of service were service classifications under the VEA which did not continue into the MRCA. Because they were not excluded from coverage under DRCA (as was operational service) dual coverage applies. Under MRCA, the types of service previously classified as peacekeeping and hazardous would now be classified as non-warlike

Part-time (i.e. Reserve) service

Enlistment date	Key date	Covered by	Key Date	Covered by
On or after 7 Dec 72 and before 7 April 94	7 Dec 1972	DRCA	1 Jul 2004	MRCA

Appendix 2: List of open submissions

Number	Submitter	Number	Submitter
1	Alliance of Defence Service Organisations	124	Veterans Australia NT Inc.
6	Richard Stone	142	David MacLean
7	Greg Hoving	144	Advocacy Law Alliance
20	Geebung Zillmere Bald Hills Aspley RSL Sub-Branch	146	Central Victorian Veterans Support Centre
23	Graeme Hill	147	Marion Bateman
25	RSL Seven Hills Sub-Branch	151	Peter Sutherland
26	Bob Sheppard	152	RSL WA
28	RSL Marion Sub-Branch	155	Combat Support Association
29	Rodney Kenneth (Ken) Parnell	161	Sussex Inlet RSL Sub-Branch
32	Robin Harold Johnson	164	Dr Julie Simes-Phillipps
47	Craig Thomas	165	The Legacy Club of Brisbane Limited
59	Peter Stewart	174	Redcliffe Sub Branch - Returned Services League of Australia
63	Peter Williams	178	Kev Swatten
68	Donald Dawson	182	Kevin Hall
79	Claude Palmer	187	Swan Hill & District Veterans Information Centre
85	Max O'Dea	190	Veterans Care Association Inc.
86	David Austin	197	Allan Farquhar
89	Vietnam Veterans and Veterans ACT Inc. and Belconnen RSL Sub Branch	200	Royal Australian Armoured Corps Corporation
93	Phil Zillmann	204	TPI Association Townsville Inc.
101	RSL Veterans' Centre East Sydney	207	Brian Briggs, Practice Group Leader, Military Compensation, Slater + Gordon Lawyers
103	Andrew Armes	214	Woden Valley RSL-Sub Branch & Veterans Support Centre
104	G Turner	222	Veterans of Australia Association Inc.
110	Jody Letts	226	Law Council of Australia
111	Paul Blackwell	228	John Simmons
119	Darryl Lex Proud	229	RSL NSW
120	Goulburn Valley Veterans Service	231	Defence Force Welfare Association

Appendix 3: Locations and dates of domestic consultations in 2018

Location	State	Dates	Location	State	Dates
Canberra	ACT	Wednesday 30 May	Melbourne	Vic	Thursday 26 July
Sydney	NSW	Thursday 31 May Friday 1 June	Perth	WA	Monday 30 July Tuesday 31 July Wednesday 1 August
Sydney	NSW	Tuesday 12 June	Albany	WA	Thursday 2 August
Canberra	ACT	Wednesday 13 June	Townsville	Qld	Tuesday 7 August Wednesday 8 August Thursday 9 August (am)
Melbourne	Vic	Thursday 14 June	Brisbane	Qld	Thursday 9 August (pm) Friday 10 August
Canberra	ACT	Monday 18 June Tuesday 19 June	Melbourne	Vic	Tuesday 14 August Wednesday 15 August Thursday 16 August
Melbourne	Vic	Wednesday 20 June Thursday 21 June	Ballarat	Vic	Monday 20 August Tuesday 21 August
Sydney	NSW	Monday 25 June Tuesday 26 June Wednesday 27 June (am)	Canberra	ACT	Wednesday 22 August Thursday 23 August
Canberra	ACT	Wednesday 27 June (pm) Thursday 28 June	Hobart	Tas	Monday 27 August Tuesday 28 August Wednesday 29 August
Wagga Wagga	NSW	Monday 2 July Tuesday 3 July	Launceston	Tas	Thursday 30 August
Whyalla	SA	Wednesday 4 July	Darwin	NT	Monday 3 September Tuesday 4 September Wednesday 5 September
Adelaide	SA	Monday 9 July Tuesday 10 July Wednesday 11 July	Alice Springs	NT	Thursday 6 September (am)
Melbourne	Vic	Thursday 12 July	Adelaide	SA	Thursday 6 September (pm)
Brisbane	Qld	Monday 16 July Tuesday 17 July Wednesday 18 July Thursday 19 July	Canberra	ACT	Monday 8 October Tuesday 9 October
Canberra	ACT	Tuesday 24 July Wednesday 25 July	Sydney	NSW	Wednesday 10 October

Appendix 4: Locations and dates of international consultations

Location	Organisation	Date
Charlottetown, Canada	Bureau of Pensions Advocates	19 September 2018
Charlottetown, Canada	Veterans Affairs Canada	19 September 2018
Charlottetown, Canada	Office of the Veterans Ombudsman	20 September 2018
Charlottetown, Canada	Veterans Review and Appeal Board	21 September 2018
Blackpool, England	Veterans UK	24 September 2018
London, England	Forces in Mind Trust	25 September 2018
London, England	Confederation of Service Charities	25 September 2018
London, England	Royal British Legion	25 September 2018
London, England	Ministry of Defence	26 September 2018
London, England	London Veteran Advisory and Pensions Committee	26 September 2018

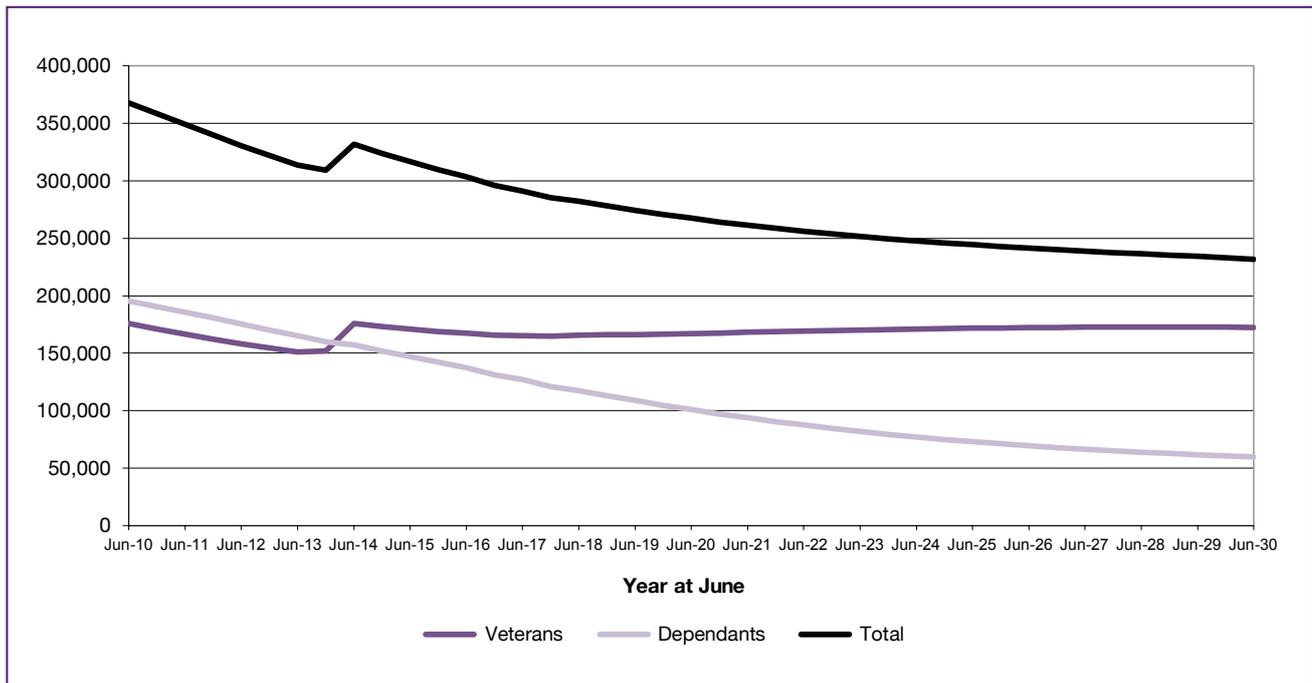
Appendix 5: Categories of recipients and types of payments

DVA projected beneficiary numbers (with actuals to 30 June 2018)

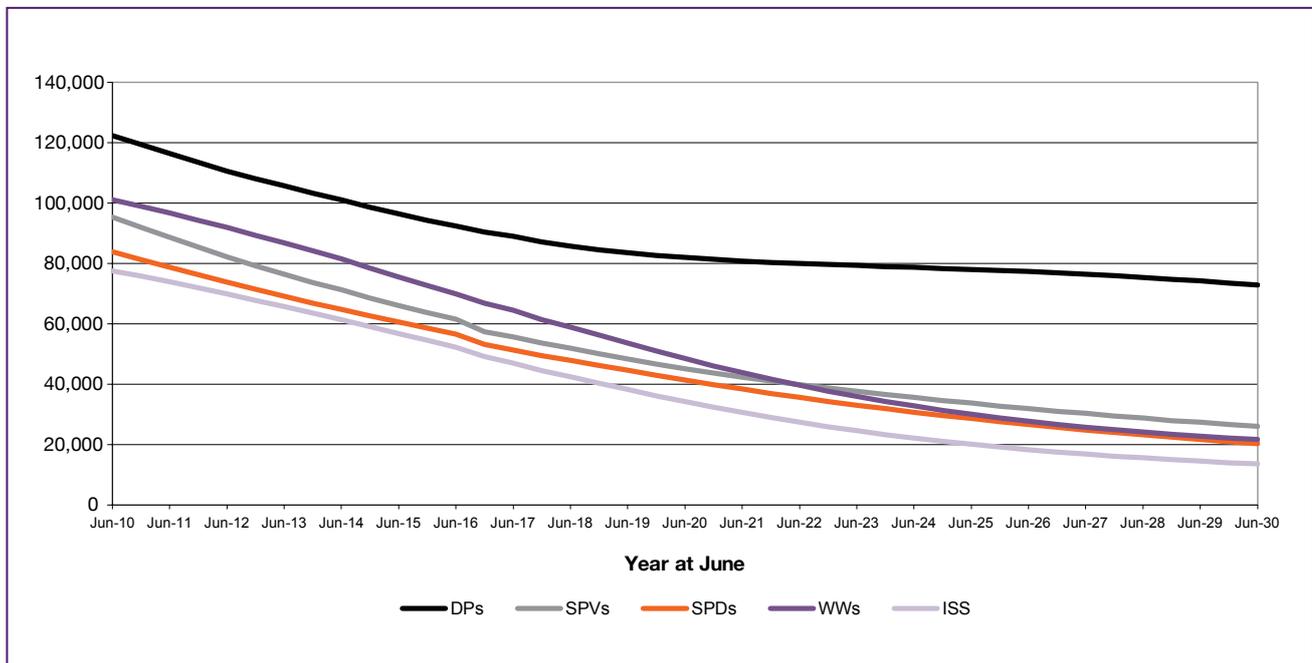
Beneficiary category	Actual data																		Forecast data											
	June 2010	June 2011	June 2012	June 2013	June 2014	June 2015	June 2016	June 2017	June 2018	June 2019	June 2020	June 2021	June 2022	June 2023	June 2024	June 2025	June 2026	June 2027	June 2028	June 2029	June 2030									
Veterans :																														
Disability Pensioners in Payment	122,355	116,498	110,644	105,705	101,059	96,493	92,374	88,974	85,811	83,600	82,000	80,900	80,000	79,300	78,700	78,100	77,300	76,500	75,400	74,200	72,900									
Age Pension Veterans (Included Above)	3,006	2,771	2,562	2,405	2,244	2,151	2,097	2,026	1,940	1,900	1,900	2,000	2,100	2,300	2,400	2,600	2,800	3,000	3,200	3,400	3,600									
Service Pension Veterans	95,363	88,652	82,229	76,523	71,266	66,016	61,504	55,641	52,011	48,400	45,200	42,400	39,900	37,700	35,700	33,800	32,000	30,400	28,800	27,400	26,100									
Disability Pensioner & Service Pension Veteran Overlap	62,077	58,300	54,638	51,371	48,307	45,206	42,542	38,738	36,604	34,300	32,200	30,300	28,600	27,000	25,400	24,000	22,500	21,100	19,700	18,400	17,100									
Treatment Cards, Allowances or Accepted Disabilities Only	20,353	19,803	19,974	20,383	51,867	53,713	55,968	59,194	64,606	68,600	72,100	75,200	77,800	80,200	82,200	84,000	85,600	87,100	88,400	89,600	90,600									
MIRCA Veterans	n/a	n/a	n/a	n/a	16,732	19,561	22,337	25,596	29,612	33,600	36,900	40,000	42,800	45,500	48,000	50,300	52,600	54,800	56,900	59,000	61,000									
SRCA Veterans	n/a	n/a	n/a	n/a	50,223	50,757	51,388	52,019	52,588	53,800	55,000	56,200	57,300	58,400	59,300	60,100	60,800	61,300	61,800	62,100	62,300									
Total Veterans	175,994	166,653	158,209	151,240	175,984	171,016	167,304	165,071	165,824	166,300	167,200	168,200	169,200	170,200	171,100	171,900	172,400	172,800	173,000	172,900	172,400									
Dependants :																														
Service Pension Dependents	83,879	78,716	73,827	69,174	64,902	60,631	56,670	51,329	47,928	44,600	41,400	38,400	35,600	33,100	30,800	28,600	26,700	24,900	23,200	21,700	20,300									
War Widow(er)s	101,090	96,761	91,925	86,865	81,531	75,536	69,960	64,500	59,001	53,700	48,600	44,000	39,700	36,000	32,800	30,100	27,700	25,800	24,200	22,800	21,700									
Orphans	190	187	179	171	177	173	150	157	155	160	170	170	180	180	180	180	180	170	170	170	170									
Adequate Means of Support (a)	449	431	419	408	398	382	367	355	331	330	320	320	310	310	300	300	290	290	280	270	260									
Age Pension Partners	2,161	2,008	1,850	1,716	1,545	1,470	1,408	1,324	1,257	1,200	1,200	1,200	1,200	1,200	1,200	1,300	1,300	1,300	1,400	1,400	1,400									
Commonwealth Seniors Health Cards Dependents	4,163	4,100	3,849	3,694	3,214	3,055	2,835	4,449	2,660	2,300	2,000	1,800	1,600	1,500	1,400	1,300	1,200	1,100	1,100	1,000	1,000									
Defence Force Income Support Supplement Dependents	7,282	6,974	6,567	6,228	5,879	5,811	5,711	5,460	5,404	5,600	6,000	6,600	7,100	7,700	8,200	8,800	9,400	9,900	10,400	10,900	11,400									
MIRCA Dependents	n/a	n/a	n/a	n/a	158	177	188	219	252	260	260	260	260	260	260	250	240	240	230	220	220									
Other Dependents	411	425	530	590	2,607	2,513	2,526	2,477	2,671	2,600	2,700	2,800	2,900	3,100	3,400	3,600	3,900	4,100	4,400	4,600	4,900									
Total Overlap Between Dependant Categories	4,230	4,036	3,766	3,513	3,028	2,827	2,659	3,050	2,301	2,000	1,700	1,600	1,500	1,400	1,400	1,400	1,400	1,300	1,300	1,300	1,300									
Total Dependents	195,385	185,566	175,380	165,333	157,383	146,921	137,156	127,220	117,358	108,900	101,000	93,900	87,600	81,900	77,100	73,000	69,500	66,500	63,900	61,800	59,900									
Total Veterans and Total Dependents Overlap	3,564	3,290	2,968	2,693	1,590	1,366	1,172	1,006	894	800	700	600	500	500	500	500	500	500	500	500	500									
Net Total Clients*	367,815	348,929	330,621	313,880	331,727	316,571	308,288	291,285	282,314	274,400	267,500	261,500	256,300	251,700	247,800	244,500	241,500	238,900	236,500	234,200	231,900									

* From June 2014 this report contains a more complete count of total DVA clients. The previous count, Net Total Beneficiaries; included all persons receiving a VEA pension/allowance or holding a treatment or pharmaceutical entitlement card. In contrast, the Net Total Clients count also includes any veteran with one or more service related disabilities accepted under the SRCA

DVA Veterans and Dependents – Actuarial Projections



DVA Major Pension Categories in Payment



Date of Most Recent Actual Data: 29 June 2018; Date When This Version is Current: 1 Aug 2018.

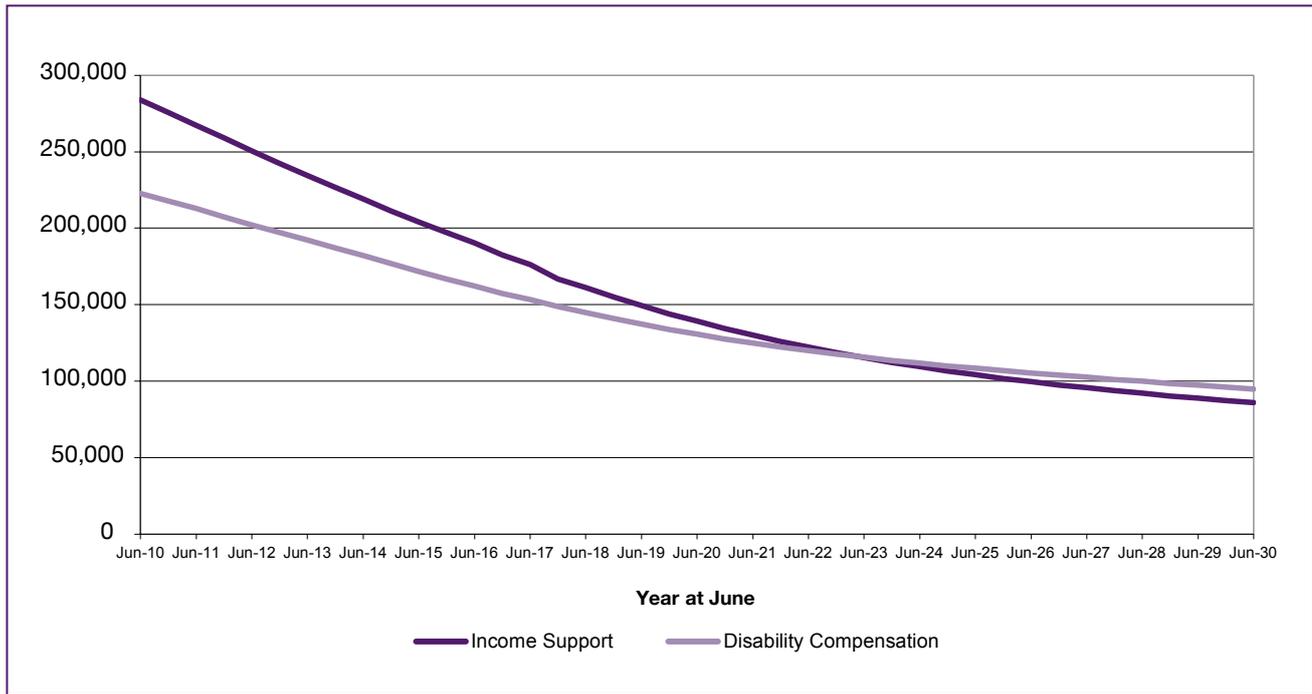
Summary of DVA beneficiaries in receipt of pensions, allowances or health care

Beneficiary category (Subsets of Net Total Beneficiaries on Previous Page)	Actual data										Forecast data										
	June 2010	June 2011	June 2012	June 2013	June 2014	June 2015	June 2016	June 2017	June 2018	June 2019	June 2020	June 2021	June 2022	June 2023	June 2024	June 2025	June 2026	June 2027	June 2028	June 2029	June 2030
Health Treatment Card Holders :																					
Gold Cards	207,945	196,619	185,031	174,168	163,578	153,033	143,635	135,263	128,517	120,300	113,000	106,500	100,700	95,800	91,600	88,000	84,800	82,200	80,000	78,000	76,000
White Cards	49,621	48,986	48,769	49,013	53,984	55,148	56,610	58,705	62,450	67,200	71,500	75,500	79,100	82,200	85,000	87,400	89,500	91,300	92,700	93,900	94,800
Total Health Treatment Cards	257,566	245,605	233,800	223,181	217,562	208,181	200,245	193,968	190,967	187,500	184,500	181,900	179,800	178,000	176,600	175,400	174,300	173,500	172,700	171,900	170,900
Repatriation																					
Pharmaceutical Benefits Cards (Orange Cards)	10,614	9,293	7,996	6,817	5,744	4,709	3,799	3,024	2,315	1,800	1,300	900	700	500	300	200	100	100	0	0	0
Other Income Support Categories:																					
Income Support Supplement	77,584	73,970	69,989	65,730	61,463	56,725	52,292	47,036	42,464	38,300	34,300	30,700	27,500	24,700	22,200	20,100	18,400	16,900	15,600	14,500	13,600
Age Pensioners	5,167	4,779	4,412	4,121	3,833	3,658	3,538	3,380	3,225	3,100	3,100	3,200	3,400	3,500	3,700	3,900	4,200	4,400	4,600	4,800	5,000
Commonwealth Seniors Health Cards	7,269	7,014	6,428	6,069	5,150	4,698	4,321	7,222	4,098	3,600	3,200	2,800	2,600	2,400	2,300	2,100	2,000	2,000	1,900	1,800	1,800
Defence Force Income Support Supplement (DFISA)	18,678	17,941	17,050	16,159	15,447	15,192	14,784	14,174	13,933	14,000	14,400	15,100	15,900	16,800	17,700	18,700	19,600	20,600	21,400	22,200	23,000
Total Income Support Beneficiaries ^(a)	283,823	267,297	250,472	234,603	219,153	204,180	190,423	176,232	161,184	149,600	139,200	130,300	122,400	115,500	109,600	104,400	99,800	95,900	92,300	89,100	86,200
Total Disability Compensation Beneficiaries ^(b)	222,876	212,749	202,154	192,236	182,345	171,874	162,247	153,463	144,843	137,400	130,800	125,100	120,100	115,700	111,900	108,500	105,500	102,700	100,000	97,400	94,900

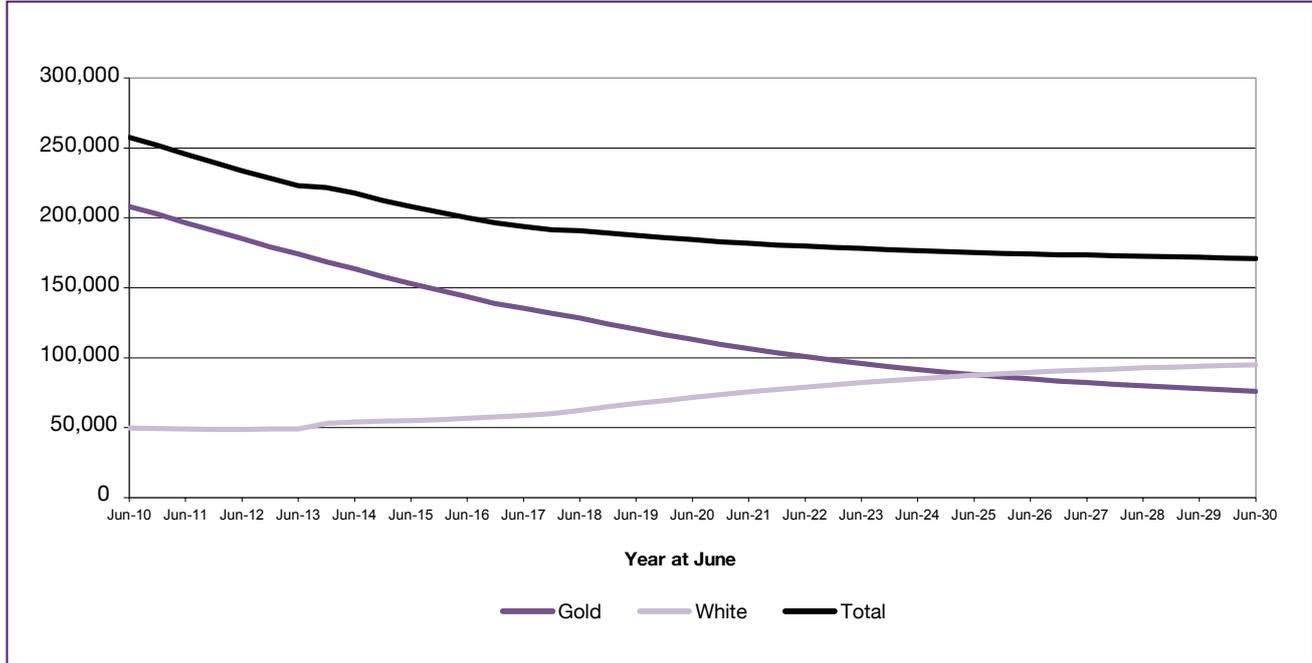
a. Includes veteran service pensions, dependant service pensions, income support supplement, age pensions, commonwealth seniors health cards and DFISA recipients.

b. Includes disability, war widow, orphan and adequate means of support pensions.

DVA Income Support & Disability Compensation – Projections



DVA Gold & White Cards – Projections



Date of Most Recent Actual Data: 29 June 2018; Date When This Version is Current: 1 Aug 2018.

Appendix 6: Details of accredited advocates as at October 2018

Number of ATDP accreditation certificates issued by state and territory*

State	Compensation Level 1	Compensation Level 2	Compensation Level 3	Compensation Level 4	Welfare Level 1	Welfare Level 2
ACT	1	14	1	-	-	1
NSW	9	93	6	1	7	61
NT	2	2	-	-	3	-
QLD	22	106	23	5	19	93
SA	-	16	6	-	3	8
TAS	-	8	1	-	-	13
VIC	6	59	8	1	1	55
WA	-	24	3	-	1	14

* Some advocates hold more than one qualification so the total number of accredited advocates in each state or territory may not equal the total number of qualified advocates in that state or territory

Number of ATDP accredited advocates in each state and territory by gender

State	Male	Female	Not stated	Total
ACT	13	3	-	16
NSW	109	36	-	145
NT	3	3	-	6
QLD	139	52	-	191
SA	19	4	-	23
TAS	11	7	-	18
VIC	83	25	1	109
WA	23	7	-	30
Total	400	137	1	538

Appendix 7: Determinations and accepted conditions

Claim type	Act	Outcome	2015-16	2016-17	2017-18	
Initial liability	VEA	Determined	14,355	17,041	15,402	
		Accepted	8,902	10,258	9,508	
	MRCA	Determined	14,526	19,683	23,222	
		Accepted	10,378	14,420	18,404	
	SRCA/DRCA	Determined	5,920	6,462	6,917	
		Accepted	3,603	3,553	3,871	
	Sub-total Determined			34,801	43,186	45,541
Sub-total Accepted			22,883	28,231	31,783	
VEA AFIs (Applications For Increase)	VEA	Determined	1,467	1,615	1,517	
		Accepted	850	952	1,004	
	Sub-total Determined			1,467	1,615	1,517
	Sub-total Accepted			850	952	1,004
Permanent impairment	MRCA	Determined	3,629	4,895	6,088	
		Accepted	2,137	2,924	4,550	
	SRCA/DRCA	Determined	3,222	5,265	5,453	
		Accepted	1,001	1,578	1,850	
	Sub-total Determined			6,851	10,160	11,541
Sub-total Accepted			3,138	4,502	6,400	
Incapacity	MRCA	Determined	1,168	859	1,866	
		Accepted	1,013	711	1,731	
	SRCA/DRCA	Determined	365	247	406	
		Accepted	260	169	334	
	Sub-total Determined			1,533	1,106	2,272
Sub-total Accepted			1,273	880	2,065	
Total Determined:			44,652	56,067	60,871	
Total Accepted:			28,144	34,565	41,252	

Appendix 8: Veterans' Review Board Protocols for Veterans at Risk of Harm

1. After musculoskeletal conditions, mental health conditions are the most claimed conditions amongst veterans who lodge applications for review by the Board. Some veterans with mental health concerns may not be well during their appeal process and require specialised support.
2. There are various ways in which the Board can identify a veteran who may be vulnerable, or at risk of self-harm or harm to others. These sources include:
 - a. the veteran or his/her family member
 - b. the veteran's advocate
 - c. treating health professionals
 - d. agencies including the Veterans' Affairs and Defence Departments, and
 - e. law enforcement agencies
 - f. Board members, Conference Registrars or staff.
3. Where the Board identifies a vulnerable or at risk veteran, their appeal is immediately triaged for an on-papers review by one of the Board's subject matter experts and managed by the Registrar. If the appeal cannot be resolved on the papers, consideration will be given to arranging an urgent hearing with a full panel, or directions hearing, depending on the particular circumstances. If a veteran is unrepresented, the Board will assist them to appoint an advocate.
4. In listing a hearing, the Board will liaise with the veteran's advocate, treating health professional and/or Departmental Liaison Officer. Consideration of a range of factors include:
 - a. the most convenient/appropriate time for the veteran and whether the veteran attends in person, by phone or video conference;
 - b. the attendance of support persons including the veteran's advocate, treating health professional or others such as family members or assistance dogs etc.;
 - c. the panel composition (e.g. an all-female or male panel or members with specialist expertise;
 - d. any security presence required.
5. For example, a hearing was recently arranged which enabled a vulnerable veteran to attend the hearing from their home by telephone, with their chosen support person, health professional and advocate in attendance.
6. In addition, at the conclusion of the hearing, careful consideration will be given as to how the decision should be delivered i.e. orally on the day of the hearing, or in writing following the hearing. The presiding Senior Member will make this decision in consultation with the advocate, treating health professional or other support person.
7. If a decision is to be given in writing, either following a hearing or on-papers review, Registry staff will contact the veteran's advocate, treating health professional and/or Departmental Liaison Officer to make arrangements for the decision to be conveyed to the veteran. For example, a written decision can be delivered to the office of the veteran's advocate or treating health professional. The aim is to ensure that the veteran has appropriate support persons available and accessible to discuss the Board's decision, whether favourable or unfavourable.
8. Generally, Registry staff will seek to ensure that decisions are not delivered on a Friday, or prior to a public holiday (or commemorative events such as ANZAC Day), or any other date that may be significant to the veteran. Similarly, the Board will ensure that hearings for vulnerable veterans are not listed on or around these days.

9. If there is an imminent threat at any point in the appeal process, Registry staff may contact the relevant arm of emergency services in order that a welfare check be undertaken. Additionally, Registry staff will also notify the Department's Security team with a view to an incident assessment being undertaken by relevant officers of that team.

Appendix 9: Cobseo Strategic Framework 2018

Introduction

1. The Service Charity Sector is a very diverse group of organisations designed to serve the Armed Forces Community in all its forms including:
 - serving servicemen and women and their families including those engaged in transition to civilian life;
 - veterans and their families, especially those that have fallen on hard times; and
 - wounded, injured and sick, including those suffering from mental illness, who need support to enable them to live as normal a life as possible.
2. The Government has committed to support the Armed Forces Community, through the Armed Forces Covenant, which provides that no member of the Armed Forces Community should be disadvantaged in the provision of public and commercial services as a consequence of their Service and acknowledges that increased levels of support will be justified in some circumstances. The Covenant has been embraced by every Local Authority in Great Britain through the Community Covenant and by many commercial companies, which have committed to support the Armed Forces Community through a Corporate Covenant.
3. While the Government has the lead in delivering support to the Armed Forces Community, there remains a key role for Service charities in supporting the diverse needs of the Armed Forces Community. Cobseo exists to play a leading role in ensuring the effective and efficient delivery of this support.

Mission

4. Cobseo will maximise the effectiveness, efficiency and influence of the Service Charity Sector in order to positively enhance the lives of Armed Forces Community beneficiaries.

Strategic Objectives

5. **Strengthening the Confederation.** Cobseo will promote the highest standards of governance across the Sector in order to retain the trust of the nation.
6. **Working Efficiently and Effectively.** Cobseo will work to enhance the efficiency and effectiveness of the Sector by encouraging greater cooperation and collaboration, utilising the cluster structure and ensuring all member organisations have the opportunity to link with each other. This will enable members to share information and address common issues, in order to deliver greater support to beneficiaries from available resources.
7. **Collaboration.** Cobseo will discourage and reduce duplication of effort through actively encouraging and promoting collaborative effort between like-minded members. Examples of good practice will be identified and promulgated and Cobseo will make itself available to act as a broker if required.
8. **Engagement.** Cobseo will, working with its members, develop further a proactive internal and external communications and engagement strategy ensuring that the voice of the Service Charity Sector is heard and understood by all members and stakeholders.
9. **Influencing.** In order to influence key stakeholders and fulfill its role as an advocate for the Service Charity Sector, Cobseo will represent and promote the interests of the Armed Forces Community at all relevant high-level coordination groups involving interaction with the MOD, other government departments and appropriate regulatory bodies. Cobseo will work to ensure that its members are able to play a full part in all relevant decision making regarding the Service Charity Sector.

10. **Structure and resilience of the Confederation.** Cobseo will encourage full and associate membership of the Confederation by suitably qualified Service Charities and other organisations that work to positively enhance the lives of Armed Forces Community beneficiaries. In order to deliver its mission, Cobseo will have a strong and resilient central team operating to high standards of governance and service delivery to its members. Central costs will be transparent, and enduring funding solutions will be established to ensure the Confederation is sustainable in the long term.

Operating Principles

11. In delivering these objectives Cobseo will:

- recognise the absolute independence of the membership organisations and their need to respond to their individual charitable objects and the wishes of their trustees;
- welcome the interaction and advocacy activities of the individual membership organisations with Government and the private sector;
- recognise the need for membership organisations to conduct their own separate and independent fundraising activities;
- encourage all membership organisations to observe the highest standards of corporate governance.

Operational Methods

12. Cobseo will achieve the objectives by:

- working together effectively;
- using the power of collaboration;
- engaging with the Armed Forces Community;
- influencing stakeholders;
- strengthening and delivering value to our membership;
- developing the structure and resilience of the Confederation;
- setting an annual business plan.

