



Australian Government
Department of Veterans' Affairs

Veterans' Legislation Reform Consultation Pathway

**Creating a simpler,
easier to use system for
the veteran community**

Message from the Minister



The Australian community has a clear expectation that defence personnel, veterans and their families are well looked after. This is an important task and responsibility of government – a solemn commitment.

The Australian Government recognises that reform is required to simplify and

harmonise legislation governing compensation, rehabilitation and other supports for veterans and families to ensure they get the best support possible.

Currently, the legislation underpinning the compensation system for veterans is overly complicated. It can be difficult to understand, stressful to navigate and complex to administer, resulting in delays, backlogs and confusion for veterans and families.

The Royal Commission into Defence and Veteran Suicide delivered its Interim Report to the Government in August last year. This report found the system is *'so complicated that it adversely affects the mental health of some veterans and can be a contributing factor to suicidality'*.

The Government in its response to the Interim Report has already implemented one recommendation, agreed to nine, agreed in principle to one and noted two.

Acknowledgement of Country

The Department of Veterans' Affairs acknowledges the Traditional Custodians of Country throughout Australia. We pay our respects to Elders past and present.

We recognise and celebrate Aboriginal and Torres Strait Islander people as the First Peoples of Australia and their continuing spiritual and cultural connection to land, sea and community.

The work of the Royal Commission builds on the recommendations made by the Productivity Commission in its 2019 report, *'A Better Way to Support Veterans'*. Following an initial round of consultation on these recommendations, the Government is seeking feedback from the veteran and broader Australian community on a legislative reform pathway to create a simpler system in the future.

This consultation pathway is guided by a set of principles that will ensure legislative changes benefit the entire veteran community. The pathway proposes a future model whereby all claims are considered under one piece of legislation rather than three, creating a simpler system that makes it easier for veterans and families to understand their entitlements and receive the support they need, when they need it.

Importantly, the model also considers critical safeguards, such as grandparenting existing arrangements so there is no reduction in compensation payments currently being received by veterans, and current payment rates are maintained and indexed as they would be under the current system.

I look forward to hearing your views so that we can move towards creating a system that delivers a better future for our veterans and families.

A handwritten signature in blue ink that reads "Matt Keogh".

The Hon Matt Keogh MP

Minister for Veterans' Affairs

Minister for Defence Personnel

Acknowledgement of Service

We respect and give thanks to all who have served in our Defence Force and their families.

We acknowledge the unique nature of military service and the sacrifice demanded of all who commit to defend our nation.

We undertake to preserve the memory and deeds of all who have served and promise to welcome, embrace and support all military veterans as respected and valued members of our community. For what they have done, this we will do.

The need for legislative reform

Veterans' legislation is widely acknowledged as being complex and difficult to navigate and calls to simplify the current arrangements are longstanding. The legislative complexity and confusion impacts veterans, their advocates and families and DVA staff, directly contributing to delayed and inconsistent processing and claims backlogs.

This complexity has developed over decades so there are now three different pieces of veterans' entitlements legislation that can apply to a veteran's circumstances.

On 15 August 2017, a report of the Senate's Foreign Affairs, Defence and Trade References Committee, titled *The Constant Battle: Suicide by Veterans*, was tabled in Parliament. The Committee 'found the legislative framework for the veterans' compensation system to be complex and difficult to navigate' and 'was concerned that inconsistent treatment of claims for compensation and lengthy delays in the processing of claims were key stressors for veterans and their families'.

The 2019 Productivity Commission's Report *A Better Way to Support Veterans* contained the headline recommendation to implement a 'two ongoing schemes' compensation model built largely around the existing legislation. The PC highlighted a number of issues with the current framework and made recommendations to simplify the existing arrangements.

Royal Commission into Defence and Veteran Suicide Interim Report

The Royal Commission into Defence and Veteran Suicide identified 50 previous reports since 2000 that are relevant to the topics of suicide and suicidality among serving and ex-serving ADF members.

In its Interim Report the Royal Commission recommended the Government develop and implement legislation to simplify and harmonise the framework for veterans' compensation, rehabilitation and other entitlements.

The Government, in its response to the Royal Commission into Defence and Veteran Suicide's Interim Report on 26 September 2022 agreed to develop a pathway for simplification and harmonisation of veteran compensation and rehabilitation legislation noting funding would be considered in the context of the budget process and timing would be informed by consultation and legislative processes.

Recommendations also called for the claims backlog to be eliminated, administration of the claims system to be improved and for veterans and family members to access their records and other information more easily. The Government's response to all the recommendations of the Royal Commission's Interim Report was delivered on 26 September 2022 and can be found online at <https://defenceveteransuicide.royalcommission.gov.au/publications/governments-response-interim-report>.

The Royal Commission's final report is due to be handed down in June 2024.

Current Consultation Process

In October 2022, the Government commenced the first round of consultation on reforming veterans' legislation seeking views on the Productivity Commission's recommendations.

The Government is now undertaking consultation on the proposed legislation reform pathway, outlined in this document in line with the Government's response to recommendations of the Royal Commission.



Proposed Veterans' Entitlements Legislation Reform Pathway

Reform principles

The Government is committed to delivering a better future for the veteran community. In developing a Veteran Legislative Reform Pathway for consultation, the Government has been guided by the following principles:



The development and future implementation strategy is created in consultation with the veteran community.



The changes result in a simpler, sustainable legislative framework



There will be no reduction in payments currently or previously received by veterans

Basis of Pathway for consultation

In developing this Veterans' Entitlements Legislation Reform Pathway for consultation, the Government has considered the recommendations made by the Productivity Commission as referred to in Recommendation 1 of the Interim Report of the Royal Commission into Defence and Veteran Suicide, as well as feedback provided through the Department of Veterans' Affairs consultation mechanisms and the public comments sought on the Productivity Commission recommendations at the end of 2022.

In particular, the Royal Commission pointed to recommendations to harmonise the initial liability process, move to a single standard of proof, harmonise the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (DRCA) with the *Military Rehabilitation and Compensation Act 2004* (MRCA), a single rate for permanent impairment, and changing from the current three schemes system to a two schemes system for veterans' entitlements (recommendations 8.1, 8.4, 13.1, 14.1 and 19.1 respectively). The Government has also considered 21 other recommendations made by the Productivity Commission that would require legislative reform, relating to changes to particular entitlements to harmonise various entitlement payments across the three existing pieces of veterans' entitlement legislation and other administrative matters.

Concerns have been raised that the recommendation to move to two ongoing schemes would create a new range of complexities in the veterans' entitlements system, adding to confusion, workloads and delays in claims processing for veterans in a way that would be counter-productive to the overall objectives of simplifying veterans' entitlements legislation.

This is particularly due to the recommendation to allow some veterans to opt for which scheme they may fall into, which would necessitate assessment of claims against both of the two ongoing schemes and consideration of what further claims may be brought later to form a view as to which scheme may be more beneficial for a veteran.

For this reason, the Veterans' Entitlements Legislation Reform Pathway outlined here for consultation instead proposes moving to a single ongoing veterans' entitlement scheme. This approach would mean that for all new claims from a point in the future there would be a single initial liability process, and that significant changes are not required to be made to the DRCA to harmonise it with the improved MRCA, as reform could be focused on the one ongoing scheme. Similarly, the objectives of other recommendations to harmonise or change specific entitlement payments are achieved through a single ongoing scheme. The Pathway outlined for consultation would mean that recommendations 8.1 and 13.1, as well as three others (10.2, 14.3 and 14.10) are fully achieved, four recommendations are partly achieved (15.2, 15.4, 15.5 and 15.6), and 14 recommendations are not progressed (8.4, 14.1, 10.3, 10.4, 13.2, 13.3, 13.4, 14.2, 14.4, 14.5, 14.6, 14.7, 14.8, 14.9 and 15.3) The proposed Pathway also meets the objective of recommendation 19.1 in a simpler way, without adding new complexities. Further consideration may be given to recommendation 13.2 to streamline the interactions between veterans' entitlement payments and superannuation invalidity pensions for veterans.

The Pathway outlined here is subject to the outcomes of these consultations and their consideration in the context of budgetary constraints.

Core elements of the proposed Veterans' Entitlements Legislation Reform Pathway

- Establishing an improved MRCA as the sole ongoing scheme.
- Closing out VEA and DRCA to new compensation related claims.
- Grandparenting all existing arrangements to ensure there is no reduction in entitlements currently being or previously received by veterans. Current payment rates are maintained and indexed normally.
- A single ongoing Act will provide coverage for all future claims for compensation from a future date, irrespective of when and where the veteran served, or when their injury or illness occurred.
- A single Act system will provide greater clarity and consistency around entitlements for veterans and their families, simplifying claims.

Current and proposed legislation pathway

CURRENT SYSTEM

Veterans' Entitlements Act 1986 (VEA)

Pension based scheme

Conditions from operational, peacekeeping and hazardous service before 2004. Covers some other defence service mostly between 1972 and 1994

Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 (DRCA)

Workers' compensation model

Conditions from non-operational service before 2004. Also covers operational service between 1994 and 2004

Military Rehabilitation and Compensation Act 2004 (MRCA)

Conditions from service on or after 1 July 2004

PROPOSED NEW SYSTEM

Legacy VEA and DRCA

Existing claims under the VEA and DRCA before the specified commencement date would remain under grandparented provisions of those Acts

The single ongoing Act

New claims from a specified commencement date irrespective of when and where the veteran served, or when their injury, illness or death occurred

Date of Claim Approach

Currently there are three separate Acts that veterans need to navigate in order to claim compensation:

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

The Act that applies is primarily determined by the period of service which is related to the claimed injury, disease or death as well as the nature of that service. In some cases multiple Acts can apply.

The simplification of the legislation would result in decreased time taken to train staff and would speed up the claims process.

The 'Date of Claim Approach' proposes that from a future date all future claims will be investigated and determined solely under the single Act, regardless of the service that has caused the injury, disease or death.

The single ongoing Act proposal seeks to achieve a contemporary compensation scheme with enhancements that recognise the special nature of military service for future claims.

Further improvements to the Veteran Support System

In addition to the proposal to move to a single Act model, the Government is consulting on a number of further improvements to the veteran support system:

Providing the capacity to prescribe presumptively accepted conditions

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

This is consistent with Productivity Commission recommendation 13.1

Making the existing Veterans' Review Board the first point of administrative appeal for all claims.

Currently veterans with coverage under the DRCA have 30 days to lodge a request for internal review and then 60 days to bring a request to the Administrative Appeals Tribunal (AAT) for further review. Under this proposal, prior to consideration by the AAT, all veterans would have 12 months within which to request a review by the Veterans'

Review Board (VRB). The VRB is a tribunal with specialist expertise in veterans; matters, that provides alternative dispute resolution and reviews of decisions for veterans and families.

This would implement Productivity Commission recommendation 10.2.

Merging the existing Repatriation Commission and the Military Rehabilitation and Compensation Commission

These Commissions oversee Australia's veteran support system and are independent from Government. They play a critical role in administering veteran legislation and providing advice to Government. Combining these Commissions would remove unnecessary duplication and alleviate confusion for the veteran community in relation to administration and policy advice of legislative entitlements for veterans and families.

Establish a Ministerial Advisory Council providing advice direct to the Minister for Veterans' Affairs.

The Ministerial Advisory Council would provide the veteran community and related experts with a mechanism to provide advice directly to the Minister for Veterans' Affairs. This would be in addition to the existing National Consultative Framework (NCF) currently utilised by the Department of Veterans' Affairs to seek input and advice from the veteran community. A new Ministerial Advisory Council would not replace the Ex-Service Organisation Round Table and other elements of the NCF.

This would implement Productivity Commission recommendation 11.4.

Existing programs and support services not affected or impacted by the proposal

The proposal that has been put forward for consultation would only affect prospective claims for compensation and rehabilitation. Many programs and support services would remain unaffected by the proposal. These include programs with a current legislative basis under the *Veterans' Entitlements Act 1986* outside of compensation arrangements provided under that Act, such as:

- The income support system that provides for eligibility and payment of means-tested service pensions and income support supplements to veterans and partners;
- Existing eligibility for Non-Liability Health Care for conditions such as mental health conditions, cancers and tuberculosis; and
- The Defence, Veterans' and Families' Acute Support Package that supports families who are experiencing new and challenging life circumstances that means the family unit needs assistance to get back on track.

Are you keen to learn more?

There are a number of ways you can get involved in the Legislative Reform Consultation Pathway process and provide your feedback.

Webinars

These will provide an opportunity to hear more about the reforms, ask questions of experts in the Department and of course provide your individual feedback.

Further details about the webinars and how to register to attend will be published at

www.dva.gov.au/legislationconsultation2023.

You can also sign up to receive further advice by emailing:

legislation.reform@dva.gov.au.

Ex-Service Organisations

The Department will be engaging with the ex-service community through the Ex-Service Organisation Round Table and other national and state and territory ex-service organisation forums.

Roundtables

A number of in-person roundtables will be held across the country with ex-service organisations and other key stakeholders.

If you'd like to receive further advice on this contact:

legislation.reform@dva.gov.au.

How to provide feedback

We are keen to hear from you about the proposed legislation reform pathway.

Submissions may be made anonymously and will not be published without your permission.

Website

You can submit your feedback via the DVA website during the consultation period. Scan the QR code



or visit www.dva.gov.au/veterans-legislation-reform-consultation-pathway-feedback-form.

Submissions close on 12 May 2023.

Email

You can submit your feedback via email to

legislation.reform@dva.gov.au.

Submissions close on 12 May 2023.

Download

To download a copy of this information booklet visit

www.dva.gov.au/sites/default/files/2023-02/Veterans_Legislation_Reform_Consultation_Pathway_2023.pdf.

Fax

You can submit your feedback via fax:
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Translations

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