



## DEFENCE FORCE WELFARE ASSOCIATION NATIONAL OFFICE

12 August 2024

### **Committee Secretary**

### **Senate Defence, Foreign Affairs and Trade Reference Committee**

Parliament House  
CANBERRA ACT 2600

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### **SUBMISSION TO THE SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCE (FADT) COMMITTEE INQUIRY INTO THE VETERANS' ENTITLEMENTS, TREATMENT AND SUPPORT (SIMPLIFICATION AND HARMONISATION) BILL 2024 – THE VETS BILL**

Thank you for the invitation to make a submission to this Inquiry. We welcome the Committee's inquiry into the VETS legislation and the opportunity to further inform that work

DFWA was formed in 1959 as the Regular Defence Force Welfare Association. This was at the instigation of veteran MPs who were concerned that there was no organisation representing the interests of serving defence force members at the time of great change affecting pay, and conditions of service. In 2010, we dropped the "Regular" from our name, in recognition of the changed role of the Reserves.

DFWA primary purpose is to foster *"the interests and welfare of current and former members of the Australian Defence Force and their families in any matter likely to affect them during or after their period of service."*

Like many ESOs, we provide individual support to veterans and families. But our major focus is on areas where we can provide tangible benefits for most serving and former ADF members and for their families. These include court cases where the outcome sets a precedent, submissions to inquiries and lobbying to influence government policy, legislation and bureaucratic practices

### **Extensive Consultation**

DFWA has had face to face meetings with the Minister and staff when the initiative was announced and when the Exposure Draft was issued. We made an initial submission to the proposed Pathway and responded to the Exposure Draft. We have participated in ESO Community reviews in most states, and our members have been involved in various working groups and workshops. DVA is commended for facilitating these and for its high level participation.

### **Overall**

DFWA supports action to harmonise the existing Veterans Entitlements Act 1986 (VEA) and the Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 (DRCA) with the Military Rehabilitation and Compensation Act 2004 (MRCA) into a single Act.

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In summary:

- We support simplifying DVA administration by providing a single track for claims processing with less administrative overheads than with three tracks which should result in faster claims settlement times for the benefit of veterans, only if human resources are maintained at appropriate levels to meet demand.
- We support harmonising some compensation benefits to the benefit of some veterans and addressing equal treatment issues.
- We support retaining access to “grandparented” benefits available, but do not support the time limitations planned.
- We note that some benefits available from current legislation – and previously “earned” in the period of service of the veteran – will be lost permanently to that veteran after 1 July 2026. It is a loss of a de facto condition of service.
- We accept its focus is on reducing complexity of DVA legislation. We note that, while there are some minor enhancements, major enhancements and addressing bigger issue, some of which will be addressed by the Royal Commission, are out of scope. From a defence readiness view, it is noted that this is a peacetime scheme of compensation and rehabilitation. Medical treatment commenced in service should be continued seamlessly when the veteran is medically discharged from ADF service and medical care and financial support are passed to DVA. The new MRCA, like the previous Acts, do not achieve this basic requirement. In times of high conflict, this will be a necessity.
- The VETS Bill is regarded as the start of a continuous review and improvement cycle.

## **Submission**

This submission comprises:

Part 1. Major Concerns – Grandparenting and time to implement.

Part 2. Specific Concerns

Part 3, Summary of Recommendations

I offer myself and my advisory staff to appear personally, via video conference if appropriate, at any time to answer questions about this Submission, or other questions that may be deemed relevant to the Inquiry.

Yours sincerely,

**Del Gaudry CSC**

National President

Defence Force Welfare Association

## **DFWA SUBMISSION TO THE SENATE FADT COMMITTEE INQUIRY INTO THE VETERANS' ENTITLEMENTS, TREATMENT AND SUPPORT (SIMPLIFICATION AND HARMONISATION) BILL 2024 – THE VETS BILL**

### **PART 1 - MAJOR CONCERNS - GRANDPARENTING AND TIME TO IMPLEMENT**

1. **Previous Consultations** DFWA previously submitted the criteria how we intended to assess the harmonised legislation. The criteria were:
  - a. The “No Disadvantage” Principle, and
  - b. The Better Off Overall Test (BOOT) Test.

#### **“No Disadvantage” Principle**

2. This principle is consistent with the spirit of Veteran and Family Covenant which recognises the unique nature of military service and acknowledges the adverse impacts of military service on veterans and their families. Those adverse impact should be ameliorated as far as possible. Coupled with this is the principle that” veterans and their families should suffer “No Disadvantage” compared with other Australians in their access to, and the provision of services and benefits, that are made available to other Australians” - noting that such services and benefits are provided by the Commonwealth, state, territory and local levels of government, and commercial and community entities.
3. In this case, DFWA contends that compensation and rehabilitation services and benefits resulting from the harmonised legislation should not be less than is generally available to other Australians.
4. **Assessment by DFWA.** The breadth of benefits covered by the affected legislation is large and comparisons with similar benefits provided by other rehabilitation schemes available to other Australians is beyond the current resources of DFWA.
5. However, several areas have been identified warranting further examination<sup>1</sup>but are considered beyond the scope of VETS legislation aimed at harmonising and simplifying existing legislation. It is likely some of those areas will be addressed by the Royal Commission.

#### **BOOT Principle and Grandparenting**

6. The BOOT principle is used under the Fair Work Act and applies to Workplace Remuneration Agreements (WRA). While rehabilitation and compensation are not conventionally part of a WRA, it does affect incapacitated veterans’ remuneration and are sourced and provided by the same “employer”. DFWA contends it is a de facto condition of service.
7. In the consultation process, DVA have created various scenarios comparing the outcomes of a new claim under the old legislations and the proposed legislation. This is helpful regarding the BOOT test, but it is also clear that each veteran’s case is unique and, while the scenarios are a guide, exact comparisons need to address fully the individual’s unique circumstances.

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<sup>1</sup> E.g., automatic availability of higher capability hearing aids to public servants under Safety, Rehabilitation and Compensation Act (SRCA) 1988, compared with those available to veterans under DVA legislation.

8. The proposed legislation provides access to some MRCA benefits not previously available under VEA and DRCA. It also provides some improvements to the existing MRCA. These are to be available for all new claims from the Commencement date of 1 July 2026. After Royal Assent of the new legislation and up to the Commencement Date, veterans will have the opportunity to submit new claims under existing VEA and DRCA legislation – grandparenting their current entitlement.

### **GRANDPARENTING**

9. By introducing grandparenting, the veteran has the choice of making a new claim under the existing legislation – or waiting to claim under the new MRCA, essentially applying a BOOT assessment to the options available, considering the unique circumstances. However, the “grandparenting” capability only exists for a limited period of time - up to Commencement date.
  - a. Where a condition worsens after Commencement date, there is no choice to grandparent.
  - b. Where a new condition is diagnosed after Commencement date, even if it existed prior to Commencement date, there is no choice to grandparent.
  - c. Veterans who have served and been covered by VEA and DRCA for all their service can no longer make a claim under that legislation after Commencement date even if it is more beneficial than the new MRCA. There is no ability to grandparent.

### **LOSS OF A CONDITION OF SERVICE.**

10. The loss of the ability to claim after 30 June 2024 under the old legislation where it would be more beneficial of the veteran to do so, is the loss of a de facto condition of service.
  - a. Veterans rendered their service under the grandparented legislation.
  - b. Veterans do not have a choice of when a new medical condition appears or when it worsens or when they die.
  - c. In some cases, veterans are better off under the grandparented legislation against which the veteran can no longer claim.
  - d. Without the cut-off date, it would be possible grandparent all benefits and give the Veteran a choice, to the overall benefit of the veteran.
  - e. Time-limiting the grandparenting access makes claim processing simpler and easier for the DVA bureaucratic processes and IT, removes access to more costly benefits, and reduces Commonwealth costs. The Commonwealth is better-off overall.
11. DFWA does not support the loss of a condition of service – the grandparenting limited by time fails the BOOT test.

12. **Recommendation.** That grandparenting option be continued indefinitely. This could be incorporated in the new MRCA various ways, e.g.,
- a. Similar to funeral benefits approach which retains some VEA benefits (improved) and extends eligibility of MRCA benefits.
  - b. MRCA already has provision for veterans to choose between options, e.g., between retaining periodic payments or to convert them to a one lump sum –payment and funds financial advice to assist veteran decision-making and allows six months for this. Similar provision could be incorporated in the new MRCA by allowing a choice of the currently grandparented alternative.
  - c. The only argument against this recommendation is the administrative cost. That administrative cost was caused by Government legislation and the bureaucracy, not the veteran who is being penalised. Part of the overall administrative saving of simplification – a major aim of this legislation – could be used to offset costs of retaining access to grandparented entitlements.
13. Extending the grandparenting was raised by DFWA in the initial consultation on the “Pathway” to simplified and harmonised legislation. It was made very clear by the Minister and DVA that any grandparenting would remain time limited.

#### **VETERAN ASSESSMENT OF THE TIME-LIMITED GRANDPARENTING OPTION**

14. At the start of consultation, it was stated:

15. *“Allowing sufficient time to inform the veteran community on what the changes mean is also an important factor when determining the Commencement date. We want to ensure that veterans have time to consider their individual circumstances, including allowing them to determine whether claims should be made under the current arrangements or when the new model commences. It is also important to allow sufficient time to train veteran advocates and delegates appropriately.”*

16. In our submission to the Exposure Draft, DFWA raised concerns that there was a significant risk that the time would be insufficient for the Veteran to make a fully informed decision.

*The Consultation Report - Veterans’ Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024* gives the appearance that such concerns were addressed.

*A small number of people expressed views on the timing of implementation. Some were concerned about the impact of the deferral to 2026 on veterans and others questioned why the legislation would be finalised before the final Report is handed down from the Royal Commission.*

*The Australian Special Air Service Association recommended “that the date for submissions and suggestions for the Draft Legislation be moved to 30 September 2024. Changing this date will allow for issues that are raised through the current Exposure draft feedback process and in the final RC Report, to be addressed in a widespread and considered manner.”*

*There were also questions about the training for delegates and advocates and there were some concerns expressed about a claims surge prior to or just after commencement. The proposed commencement date of 1 July 2026 takes these concerns into account by providing enough time for DVA to ensure appropriate supports for advocates and claims processing staff are in place.*

*It is important that we get this right and that veterans and their families have enough time to understand the impacts on their circumstance. DVA delegates and advocates will receive training in advance of the commencement date to ensure they can support veterans and their families through the transition.*

**17. Inadequate Explanation by DVA.** DFWA agrees it is important to get this right, but challenges the DVA bland assertion that training requirements had been considered and therefore the Commencement date was correct. There was no identification by DVA that the other concerns raised had been considered.

**18. Illogical Statement.** The actual time available for training and support is going to be that between the date legislation receives Royal Assent and the immoveable Commencement date.

- a. The date legislation receives Royal Assent is not known.
- b. Therefore, the time available is not known.

To claim that this not-yet-known time available is the same as the time required to address training and provide support is not logical. It goes against business change management principles, let alone best practice, and common sense.

**19. Conclusion.** There are many factors concerning the administration and implementation of the VETS legislation which can only be dealt with at the operational level. From the feedback in the consultation process, and DVA history concerning change management, DFWA remains unconvinced about assertions that adequate support will be available to veterans to enable them to consider, decide and make any grandparenting claims prior to Commencement date.

**20.** Other factors leading to this conclusion are outlined below and expanded on in Annex A.

21. **HISTORY AND LEARN FROM EXPERIENCE.** This is a major change with many risks. DVA has the opportunity to learn from previous change instances where change and risk management were challenges.
22. **Advocate Training and Development Program (ATDP).** The introduction of ATDP by edicts from above without a proper change management plan, consultation or risk management resulted in a large loss of experienced volunteer Advocates (from well over 2000 to 400 current today) and exacerbated the claims processing debacle. There is an assumption that the remaining and any newly qualified overworked volunteers will be available for compulsory training and support in the time available. This assumption, coupled with a dictated compulsion, indicates that lessons have not been learned.
23. **Recommendation.** Veterans, who have not reasonably been able to get qualified Advocate support and advice in time to submit a grandparenting claim before 1 July 2026, be:
- Granted an extension of time to make a grandparented claim.
  - Provided with assistance from DVA to find an Advocate able provide support, or failing that
  - Provided with funding for a claimant to obtain legal support in submitting a claim.
24. **On-Line Claims and Backlog.** DVA's introduction of the ability for veterans to submit claims On-line created a surge of claims, many deficient in required information. The concurrent push for ADF members to submit claims while still serving following recommendations from the Productivity Commission Report, resulted a large volume of claims from that previously very small cohort. There was evidence of an increase in proportion of these claims needing re-working adding to the processing workload and reviews. This totally overwhelmed DVA capacity resulting in large backlogs of claims and unacceptable waiting times, adding to stress and risk of suicide.

**Current Situation - ATDP Update June 24.**

While the claims backlog – the number of claims awaiting allocation to a Delegate – has reduced, “*the number of claims still ‘awaiting decision’*” by the Delegate is presently around 75,000, this will still take some time while new claims continue to be submitted at a rate of around 7,000 a month”

25. To this current situation, we add:
- Increased Number of Applications – New Cohort.** About 50,000 National Servicemen from the second National Service (NS) scheme, and who did not deploy Vietnam, will now become eligible to claim under the new MRCA. A large number from the first NS scheme, will also be eligible. All are in the “aged category” and interested in pursuing a Gold Card and eligibility for Medicare levy reductions as soon as possible – before they die.
  - Increased Number of Applications by Existing Claimants.**

- i. Not all the 75,000 existing claimants awaiting determinations will have a decision by 30 June 2026. They may not be able to make an assessment whether to appeal an adverse determination of the still pending claim or submit a new revised claim, under grandparenting provisions before the 1 July 2024.
- ii. Many existing clients will be trying to decide whether to claim under grandparented rules or wait. Many may be delaying submission due to low availability of Advocates, not being able to get a financial advisor with expertise in the new legislation, or personal reasons. Many will hold off until the last moment in the thought that if they manage to get professional advice after Commencement date that indicates a claim under new MRCA is a better option, they can withdraw the earlier claim before a determination is made, then proceed with a new claim.
- iii. Many existing clients will have decided to apply under the new MRCA. They will hold off making claims until Commencement Date, when it is presumed, on-line claims will be accepted.

## **RISK OF DEFECTIVE ADMINISTRATION**

26. **History - Again.** Attention is drawn to DFRDB commutation issue where in two reviews it was shown that the legislation was highly complex and difficult for veterans to understand. This situation was compounded by many veterans being given incomplete, misleading and sometimes inaccurate information by Defence and/or CSC. Consequently, veterans had very poor understanding of the legislative provisions. This was detailed in:

- a. **The Commonwealth Ombudsman Report** on the Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) scheme dated December 2019, identified poor administration in the provision of information and indicated claims could be made under the Scheme for Compensation for Detriment caused by Defective Administration (CDDA scheme).
- b. **Foreign Affairs, Defence and Trade References (FADT) Committee Report** on the Accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) members dated July 2021 reinforced the Ombudsman findings, including complexity of DFRDB provisions. It recommended that misunderstanding should be addressed by Defence and CSC and that, in future circumstance, ADF members should be provided with regular updates.

27. **CDDA Scheme Claim.** With the current VETS legislation, a veteran could show financial detriment in unable to submit a claim under grandparenting provisions. Additionally, DVA has claimed there would be sufficient time and/or trained Advocates for veterans to be properly informed and supported to make a claim before Commencement date; if it can be shown that the administration did not ensure that there was adequate provision of the information support to a veteran, as claimed - there is a good chance that a Claim for defective administration would succeed.

**28. Veteran Understanding.** Both DFRDB reports highlight the complexity of DFRDB and difficulty in understanding. There is ample evidence that DVA legislation is more complex and even more difficult to understand. There has been very good consultation with the ESO community, and it has highlighted the scarcity of knowledge of the three Acts and various interactions, even amongst Advocates. However, the general population of DVA clients, particularly those most affected by grandparenting losses - VEA and DRCA - have little understanding based on social media interactions on these subjects.

29. While there have been general consultations with the veteran community, DVA have not yet contacted each DVA client covered by the affected legislation individually and advised where their current benefits are possibly affected, grandfathering provisions and where they will be able to find further information.

**30. Recommendations.** It is recommended that:

- a. DVA contact all affected clients as soon as possible after Royal Assent, advising them of the situation and provide regular updates throughout the transition period.
- b. DVA be funded sufficiently to provide a VETS Help Desk, available at least 12 months before Commencement Day, where:
  - i. Veterans can be provided with information specific to the grandparenting options available to their individual situation; and
  - ii. Advocates and ESOs can refer any issues regarding interpretation of the legislation.

### **UNFORESEEN CIRCUMSTANCES**

31. In any change programme, unforeseen circumstance always arise. The “bathtub curve” a characteristic from engineering disciplines, indicates most problems arise in early stages. resulting in the requirement to have the capability to react quickly to effect speedy resolution. Previous recommendations regarding a help desk supports this problem resolution.

32. Flexibility Provision. DFWA has identified factors which could impact on the administration of transition to the detriment of veterans and are provided at Annex A. DFWA recognises that some of the administrative difficulties adversely impacting on veterans may be addressed by the flexibility provided in Division 8 -Unforeseen circumstances of the Act as outlined in the Explanatory Memorandum[Page 50] – “It is anticipated that there may be a need to fine-tune the transition arrangements and retaining those limits in the legislation may hamper DVA’s ability to provide relevant and effective support. This modification removes the preclusion on assistance being granted to a person who has entitlement to compensation or another benefit (or would have if a claim was made) under this Act or the VEA. The intent is to afford the Commission the necessary flexibility to grant reasonable benefits to a person, including in unforeseen

circumstances upon the transition to the single ongoing Act, where they fall outside the ambit of the liability and compensation provisions under that model.”

33. **Assumption.** This flexibility provision [Explanatory Memorandum Page 50] refers to “a person” only. It is assumed it also applies to instances where a group of people may all be adversely impacted by unforeseen circumstance related to transition arrangements in the same unintended manner. In which case, there would be justification in having the capability of to make provisional changes to transition arrangement in clearly defined circumstances.
34. **Recommendation.** It is recommended that the current provisions providing flexibility to resolve instances applicable to “a person” be expanded to include circumstances where an issue identified as common to a “group of persons” and more efficiently resolve by having capability to make provisional changes to transition arrangements within defined boundaries.

### **TIME AND SUPPORT REQUIRED TO MAKE DECISIONS**

35. **Greater Complexity.** For existing MRCA claims, decisions often involve a choice regarding a lump sum rather than periodic payments options available within the extant single MRCA. The VETS grandparenting options are more complex, because they involve a comparison between:
- a. the options (lump sum or periodic payments) provided in new MRCA options, and
  - b. the alternative options in the grandparented legislation.
36. Under extant MRCA provisions, which just address the MRCA lump sum versus periodic payment options, the veteran is given:
- a. support to obtain financial advice, and
  - b. six months to make a decision.
37. Given the greater complexity of VETS options, to make a fully informed decision:
- a. Financial advice will just as necessary, probably more so, as that provided for under the extant simpler MRCA.
  - b.
  - c. The time needed to make the decision will be at least the six months regarded as sufficient for the single, simpler extant MCRA.
38. **Financial Advice.** Financial advice can only be provided once the options are identified. The need for Advocates to be trained in time to be available to provide support on options has been recognised and DVA has plans to address this. However, it should be noted that:

- a. Advocates receive no training on finance and are not able to provide financial advice.
- b. DVA staff should be cautious about giving advice on claims and finance to veterans, due to conflict of interest issues.
- c. The legislation makes no provision to support (fund) financial advice in this complex matter as is deemed necessary and provided for simpler current MRCA claims.

**39. Time Required.** The decision to make a grandparenting Claim has to be made to meet the Commencement Date 1 July 2026 deadline. To put veterans on a par with those covered by the current MRCA, veterans will require:

- a. the option information from DVA information sites and/or Advocates (new Act qualified) or from specialist law firms,
- b. financial advice from a professional Financial Advisor, and
- c. all to be available, at least six months before the Commencement Date, i.e., 01 February 2026.

**40. Recommendations.** Legislation should:

- a. Provide funding for financial advice the same as that provided by extant MRCA for less complex financial decisions.
- b. Ensure that sufficient trained Advocates can be available by 1 Feb 2026 to meet the demand;  
or
- c. the date for ceasing grandparented claims be adjusted until Advocacy support is available; or
- d. other arrangements are established to ensure the support required by veterans can be provided by other means, e.g., funding for legal advice.

## PART 2 – SPECIFIC CONCERNS

### DEFINITIONS AND TITLE

#### Veteran

1. DFWA, along with other ESO, has made previous submissions about inclusion of a definition of a Veteran. In the Consultation Report on the Exposure Draft dated June 2024, it was stated, *“Following feedback on this matter, the Australian Government has decided to insert a definition of veteran into the MRCA.”*
  - a. However, the definition was not included in the tabled legislation.
  - b. DFWA believes it should be included, noting the reasoning was supported by the Minister’s response.
2. There already exists criteria in the old VEA for the attributes to qualify as a veteran. Concepts and usage have moved on since then and a veteran is now defined in the *“Australian Veterans’ Recognition (Putting Veterans and Their Families First) Act 2019 “* at Section 4 – the basis for the Veterans’ Covenant. This definition is in common use and has been accepted by the Veteran Ministers’ Council with representatives from all states. A change to that Definition is not supported and would add confusion.
3. **Recommendation.** For consistency, it is recommended that definition of a veteran should be the same as defined in “Australian Veterans’ Recognition (Putting Veterans and Their Families First) Act 2019 at Section 4.”

#### Wholly Dependent Partner.

4. The draft legislation does away with the term “War Widows” (VEA origin) replacing it with “wholly dependent partners”. This change in terminology, ostensibly to reflect modern social situations, has drawn ire from the War Widows association in that many were not “dependent” but were carers and often the bread-winner – the new term does not reflect the actuality of the vast number of that stakeholder group. Many female Veterans have also objected to the term.
5. The Report on the Exposure Draft consultation indicates ESO main stakeholders have been consulted and diverging views exist. The Veteran Family Advocate Commissioner has charge of resolution action with veteran stakeholders but it is indicated that any change would require Government Agreement.
6. **Recommendation.** DFWA recommends that the terminology and definition, related to Wholly Dependent Partner, be decided to reflect the affected stakeholders’ views.

## **Title of the Harmonising Act.**

7. The retention of MRCA Title for the new harmonised Act is likely to cause confusion with references to the “old MRCA” and the “new MRCA”. The current convention is quite confusing for those unfamiliar the law, and is a barrier to veteran understanding. Doubtless there will be future amendments to the “new MRCA” where the changes may be more substantial and specific in time to their effect, and address some currently out of scope issues, e.g., addressing different treatments regarding “operational” and “non-operational.”
8. **Options.** Various options have been canvassed including:
  - a. Veterans Compensation Act.
  - b. Veterans Rehabilitation and Compensation Act .
  - c. MRCA 2, MRCA 3 etc .
  - d. Veterans’ Entitlements and Treatments Act (VETS), VETS 2, VETS 3 , etc.
9. **Recommendation.** It is recommended that a new title be adopted which is easily understood and provides for easier recognition of the version and date of Royal Assent.

## **Differences In Entitlements to Veteran Home Care (VHC) and Household Services and Attendant Care**

10. **Concern.** DFWA has received reports of inconsistent access to aged care services both residential and home-based in spite of existing policy. With the expansion of eligibility of these services to include VEA veterans, a review should be undertaken to determine the extent of the problem, if any.
11. **Recommendation.** It is recommended that the Committee inquires whether a legislative instrument would be more effective in ensuring that eligible veterans and widow(er)s can access aged care services and what measures are needed to ensure providers provide consistent access to eligible veterans and widow(er)s.

## **Introduction of Presumptive Liability Provisions to Streamline Claims Processing**

12. **Support.** DFWA supports introduction of a legislative mechanism for veterans to have a causal connection to their service presumed for certain commonly claimed and accepted conditions and the introduction of presumptive acceptance of diagnosed conditions based on the veteran’s employment. There will need to be clear mechanism for the addition and removal of conditions from the list and cohorts of employments addressed.
13. **Concerns.** DFWA has concerns about:
  - a. the governance of the mechanisms,

- b. stakeholders involved (ESO representation), and
- c. provision of review and appeals mechanisms concerning decisions to remove or add conditions and cohorts to the list.
- d. Potential for presumptive liability to be regarded as the authority for allowing or disallowing claims rather than a tool to speed decision-making.

**14. Recommendation.** That the legislation should provide:

- a. a review and appeals mechanism concerning decisions to add and remove conditions and employment cohorts,
- b. the governance arrangements for the mechanism,
- c. stakeholder representation including ESO, and
- d. clarity that presumptive liability is a tool for allowing a claim but not an authority for disallowing a claim.

**Gold Card Eligibility for DRCA Veterans**

15. The new legislation expands eligibility for a Gold Card to DRCA veterans who previously were not eligible. This was in response to calls to harmonise this access to all veteran with a high level of disability. Under the new MRCA, access to the Gold Card requires:

- a. the acceptance of a new claim for initial liability for a new condition from 1 July 2026, or
- b. for a previous overall impairment to have worsened by at least five impairment points, as a trigger for eligibility/assessment under the MRCA.

16. The aim of the legislation is to harmonise legislation, including the eligibility criteria for benefits and to make the process as simple as possible.

- a. If DRCA Veteran is so badly injured that they would have qualified for a Gold Card, why should they need to go through a process (and stress of it) of making claims for new injuries or worsened existing injuries?
- b. Many DRCA veterans a five point disability increase will be an unresolvable issue as they have already maximized their entitlements under the current system.
- c. Why is not a reassessment of existing conditions under new MRCA sufficient to determine eligibility?

17. The proposed approach will create situations where some ex-DRCA Veterans more severely incapacitated than others will not qualify for a Gold Card while others, less incapacitated, will qualify. This is plainly wrong.
18. **Recommendation.** It is recommended that the criteria be re-written to include the existing criteria, with an addition of “*or a review involving a reassessment of the veteran’s accepted DRCA incapacities under new MRCA criteria qualifies for access to a Gold Card.*”

### **Uncertainty Regarding Standard of Proof**

19. Sect 120 of the VEA states, in part:

*“Where a claim under Part II for a pension in respect of the incapacity from injury or disease of a veteran, or of the death of a veteran, relates to the operational service rendered by the veteran, the Commission shall determine that the injury was a war-caused injury, that the disease was a war-caused disease or that the death of the veteran was war-caused, as the case may be, unless it is satisfied, beyond reasonable doubt, that there is no sufficient ground for making that determination.”*

20. This is commonly referred to as the “reverse standard of proof” - where the Commission is required to make a decision in favour of a veteran’s claim, unless the evidence before the Commission proves beyond reasonable doubt that that incapacity or death was not war-caused. Similar standard of proof also applies peacekeeping, hazardous service, and nuclear test service situations.

21. For incapacity or death related just to the service of the member, “*.. the Commission shall be satisfied, beyond reasonable doubt, that there is no sufficient ground for determining:*  
*a. that the injury was a war-caused injury or a defence-caused injury;*  
*b. that the disease was a war-caused disease or a defence-caused disease; or*  
*c. that the death was war-caused or defence-caused;*  
*as the case may be, if the Commission, after consideration of the whole of the material before it, is of the opinion that the material before it does not raise a reasonable hypothesis connecting the injury, disease or death with the circumstances of the particular service rendered by the person.”*

22. In the new MRCA, “reasonable hypotheses” instances are addressed; however, the “Standard of Proof” included in the VEA Section 120, does not seem to be included. Within resource constraints, DFWA has not able to be ascertain the situation independently. As the clause is the cornerstone of beneficial Veteran legislation and concepts such as reasonable hypothesis, there is an argument for its inclusion in the new MRCA.

23. **Request and Recommendation.** The Committee is requested to ascertain if this clause has been carried forward into the New MRCA, and if not, recommend that it is included.

## Need for Review of Legislation

24. Given the large scale of this legislation, it is inevitable that deficiencies will be identified during implementation which will require rectification, e.g., those escalated by the proposed Help Desk (See Part 1). Some may be fixable within existing operational or delegated flexibility or arrangement, but others may require legislative change. Additionally, the Royal Commission report is due in September 2024 and may make recommendations which may be best addressed by changes or additions to this legislation.
25. In meeting with the Minister Keogh (Brisbane and Qld ESO on 11 March 2024) in response to DFWA question concerning this, he made the point that *legislation change is difficult and can take considerable time to prepare, consult and schedule with all other government and parliamentary business. This current consultation period aims to get things right with the legislation. While getting things right a laudable aim for the legislation, inevitably some issues arise and will hopefully be resolvable by use of the existing clause providing for operational flexibility and management. There will clearly be a need for changes to the legislation, where the existing clause providing some operational flexibility is not sufficient.*
26. **Recommendation.** DFWA recommends that the legislation include a requirement for a review to be conducted, with input from all stakeholders, within six months of Commencement date or 18 months after legislation receives Royal Assent, whichever is earliest. This review and resulting Amending Legislation requirement shall include an appropriate “sunset clause”. The review should include, but not be limited to:
- governance arrangements,
  - benefit improvement and clarification,
  - operational process improvement,
  - Royal Commission recommended changes, and
  - the need for complementary new or amended legislation.

## Definition - On Duty

27. **Defence Duty.** The Explanatory Memorandum states that “A new liability pathway will be introduced into the Military Rehabilitation and Compensation Act to allow claims to be accepted simply on the basis that the member was **on duty when** the injury was sustained as is presently the case under Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988.” “On Duty” is frequently mentioned in the legislation.
28. DFWA supports this change, but notes that:
- Issues often currently arise concerning what constitutes “Defence Duty”, for purposes of attributing an incapacity as “service-caused”. There is often contention regarding injuries where the activities involved would not necessarily be regarded as work caused in other non-military occupations, often only resolved on review. E.g., injuries sustained:
    - playing sport, both in service teams and in civilian organisations;

- ii. at an ADF social function a member is “obliged” to attend (pay for) and at which alcoholic drinks were provided- but were not attributable to the cause of the injury;
  - (1). in the normal barracks place of work,
  - (2). deployed on an exercise,
  - (3). in operational areas;
- iii. at a social function (paid for by the member) held by a non-ADF entity or person at which the member attends for representational or goodwill purposes, because they are an ADF member and which alcoholic beverages are consumed but not attributable to the incapacity; and
- iv. off-duty, (Not on duty.)
  - (1). being assaulted because of his/her known ADF identity, or
  - (2). becoming involved in countering a terrorist or criminal activity against others.

In most of the above, rehabilitation of a serving member’s injury would be provided by Defence, and if the injury required a medical discharge, it would be expected that medical treatment would continue under DVA cover, i.e., be recognised as service-caused incapacity.

29. Greater clarity is required to recognise that the unique nature of military service involves obligations for active participation in many team activities for both physical benefits and team working and bonding – mutual support and trust – purposes, not required in most civilian occupations or included in duty statements. That the team – mutual support and trust – dependency has been recognised as key factor in veteran mental health throughout the Royal Commission lived experience. Social events reinforce “team” and “group task” ethic and priority. Military service and training is geared towards ADF members automatically as a drill, being prepared to go into harm’s way to defend other people from harm. Medical studies have shown that such “conditioning” manifests itself in measurable physical changes in the brain. Such actions are the result of conditioning by service.

30. **Recommendation.** It is recommended that this legislation:

- a. provides a definition of ADF Duty that recognises and reflects the reality of the nature of military service, and
- b. where defence attributes an incapacity as being caused as a result of the veteran’s identity as ADF Member, that attribution is accepted by DVA as evidence of being a service caused incapacity.

### PART 3 - SUMMARY OF RECOMMENDATIONS

Ser	Recommendation	Page
1.	For consistency, it is recommended that definition of a veteran should be the same as defined in “Australian Veterans’ Recognition (Putting Veterans and Their Families First) Act 2019 at Section 4.”	11
2.	DFWA recommends that the terminology and definition {[Wholly Dependent Partner] decided reflects the affected stakeholders’ views.	11
3.	It is recommended that a new title be adopted which is easily understood and provides for easier recognition of the version and date of Royal Assent.	12
4.	It is recommended that the Committee inquires whether a legislative instrument would be more effective in ensuring that eligible veterans and widow(er)s can access aged care services and what measures are needed to ensure providers provide consistent access to eligible veterans and widow(er)s.	12
5.	That the legislation should provide: <ul style="list-style-type: none"> <li>o a review and appeals mechanism concerning [presumptive liability] decisions to add and remove conditions and employment cohorts,</li> <li>o the governance arrangements for the mechanism,</li> <li>o stakeholder representation including ESO, and</li> <li>o clarity that presumptive liability is a tool for allowing a claim but not an authority for disallowing a claim.</li> </ul>	13
6.	It is recommended that the criteria be re-written to include the existing criteria, with an addition of “ <i>or a review involving a reassessment of the veteran’s accepted [DRCA] incapacities under new MRCA criteria qualifies for access to a Gold Card.</i> ”	14
7.	<b>Request and Recommendation.</b> The Committee is requested to ascertain if this clause [Standard of Proof – VEA Sect 120] has been carried forward into the New MRCA, and if not, recommend that it is included.	14
8.	DFWA recommends that the legislation include a requirement for a review to be conducted, with input from all stakeholders, within six months of Commencement date or 18 months after legislation receives Royal Assent, whichever is earliest. This review and resulting Amending Legislation requirement shall include an appropriate “sunset clause”. The review should include, but not be limited to: <ul style="list-style-type: none"> <li>a. governance arrangements,</li> <li>b. benefit improvement and clarification,</li> <li>c. operational process improvement,</li> <li>d. Royal Commission recommended changes, and</li> <li>e. the need for complementary new or amended legislation.</li> </ul>	15
9.	It is recommended that this legislation: <ul style="list-style-type: none"> <li>a. provides a definition of ADF Duty that recognises and reflects the reality of the nature of military service, and</li> <li>b. Where defence attributes an incapacity as being caused as a result of the veteran’s identity as ADF Member, that attribution is accepted by DVA as evidence of being a service caused incapacity,</li> </ul>	16

Ser	Recommendation	Page
10.	<p>That grandparenting option be continued indefinitely. This could be incorporated in the new MRCA various ways, e.g.,</p> <ul style="list-style-type: none"> <li>○ Similar to funeral benefits approach which retains some VEA benefits (improved) and extends eligibility of MRCA benefits.</li> <li>○ MRCA already has provision for veterans to choose between options, e.g., between treating periodic payments or to convert them to a lump sum – and funds financial advice to make this decision and allows six months for this. Similar provision could be incorporated in the new MRCA by allowing a choice of the currently grandfathered alternative.</li> </ul>	4
11.	<p>Veterans, who have not reasonably been able to get qualified Advocate support and advice in time to submit a grandparenting claim before 30 June 2026, be:</p> <ul style="list-style-type: none"> <li>● Granted an extension of time to make a grandparented claim.</li> <li>● Provided with assistance from DVA to find an Advocate able provide support, or failing that</li> <li>● Provided with funding for a claimant to obtain legal support in submitting a claim.</li> </ul>	7
12.	<ul style="list-style-type: none"> <li>● DVA should contact all affected clients as soon as possible after Royal Assent, advising then of the situation and provide regular updates throughout the transition period.</li> <li>● DVA should be funded provide a VETS Help Desk, available at least 12 months before Commencement Day, where: <ul style="list-style-type: none"> <li>● Veterans can be provided with information specific to the grandfathering options available to their individual situation; and</li> <li>● Advocates and ESOs can refer any issues regarding interpretation of the legislation.</li> </ul> </li> </ul>	9
13.	<p>34. Recommendation. It is recommended that the current provisions providing flexibility to resolve instances applicable to “a person” be expanded to include circumstances where an issue identified as common to a “group of persons” and more efficiently resolve by having capability to make provisional changes to transition arrangements within defined boundaries.</p>	10
14.	<p>37 Legislation should:</p> <ol style="list-style-type: none"> <li>a. Provide funding for financial advice the same as that provided by extant MRCA for less complex financial decisions.</li> <li>b. Ensure that sufficient trained Advocates can be available by 1 Feb 2026 to meet the demand; or</li> <li>c, the date for ceasing grandfathered claims be adjusted until Advocacy support is available; or</li> <li>d. other arrangements are established to ensure the support required by veterans can be provided by other means, e.g., funding for legal advice.</li> </ol>	10

Annex.

A. Factors affecting Timeline and Transition.

## ANNEX A.

### FACTORS AFFECTING TIMELINE AND TRANSITION

#### ADVOCATE ADVICE.

1. Before an Advocate can provide advice on the new MRCA, the following needs to occur:
  - a. **Procedures, Instructions and IT Support.** Procedures, instructions for new MRCA and implementation arrangements will need to be drafted and supporting IT systems developed and tested, while continuing with the existing legislation training. However, some elements of existing legislation elements are being changed and implemented (review) in advance of commencement date.
  - b. **Training Course Developed.** Training will need to be developed based on the new MRCA, and its supporting IT, and how the implementation will be managed.
  - c. **Training Accreditation.** The new training package will need to go through the accreditation process (typically several months) and training and mentoring in the old continued. The latter involves utilisation of the existing training and mentoring resources.
  - d. **ATDP Trainers and Mentors – Training Developed and Trainers Trained.** These trainers and mentors need to be trained.
  - e. **Training of DVA Staff and Advocates.** Training of DVA processing staff, Delegates and VRB staff and Advocates will need to be trained in entitlements and procedures for new legislation and any IT support resulting from the new regime. Training will also be required in the management of transition treatment and resolution of transition disputes.
  - f. **Priority.** Advocates will be the first people engaged in providing detailed advice to veterans. Advocate training in new MRCA needs to take priority over the training of DVA staff involved in the later processing and determining of claims prepared by the veteran and Advocate.

While doubtless, some of these activities will be in progress before Royal Assent, possibly even now, but some cannot be finalised until after legislation has passed.

2. **Advocate Numbers and Availability.** There is a shortage of Compensation Advocates available for the current workload – there are about 300 of whom, 169 are trained to Level 2, i.e., able to operate with minimal supervision, with an average age of 66. The number of nominations for training of new Level 2 Advocates has been falling annually from 855 in 2017 to 239 in 2024. This reduces availability for supporting existing claims and the expected rush on grand-parented benefits.
3. **ESO Support.** There has been a lot of effort by DVA to inform the veteran community and with commendable results. This effort has been aided by increases to DVA staff dedicated to the task. The response task undertaken by ESO is also huge. The expertise and experience required to respond to the proposed changes is largely held by Advocate stakeholders who were already fully committed to providing day to day support. There are unacceptably long queues for Advocacy support. The numbers of Advocates has reduced significantly from several years ago. Resulting in increased waiting lists for support and a lot of experience has been lost. There has been no real increase in ESO resources needed to continue support and provide new extra resources to respond to the proposed legislation consultations. Unlike other sectors, advocacy support is largely volunteers.

- a. ESO requests for extensions of time for ESO to respond to the Exposure Draft were ignored. There has not been sufficient time for the limited resources of ESO to review the Exposure Draft and the tabled legislation in the detail required and respond appropriately.
- b. This increases the risk that Veterans may not have information available to them in time to make informed decisions by the Commencement date, increasing stress and likelihood of mental health issues including suicidal thoughts.