



Australian Government

Department of Veterans' Affairs

Consultation Report

Veterans' Legislation Reform Consultation
Pathway

Acknowledgements

As Minister for Veterans' Affairs I would like to extend my thanks on behalf of the Australian Government to all those who participated in the Legislation Reform Pathway consultation.

I would particularly like to express my appreciation to the serving and ex-serving members of the Australian Defence Force, families, carers and organisations from all over Australia who took the time to share their feedback and provide submissions to inform this most important work.

Your feedback is imperative to the Australian Government achieving timely and optimal outcomes for improving legislation to better meet the needs of our veteran community.



The Hon Matt Keogh MP

Minister for Veterans' Affairs
Minister for Defence Personnel

Acknowledgement of Country

We acknowledge 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.

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.

Scope of this report

This report provides an analysis of the feedback received during the consultation period between 16 February and 12 May 2023.

It summarises the information that the veteran community submitted to DVA during the process, and identifies some specific ideas and matters that participants recommended for consideration in the legislation improvement process.

Direct quotes from those who sent in correspondence and submissions during consultation have been included throughout the report, where consent to publish has been given.

This report is not intended to present policy recommendations or provide evidence on specific issues. This report simply represents the views that were expressed by organisations and individuals regarding the proposed changes to veterans' legislation.

Summary of findings

There was significant interest in the proposed pathway and more widely in veterans' legislation reform. There was broad qualified support for legislative simplification and harmonisation, as well as some concerns expressed that legislative changes could result in detriment to veterans.

Major themes raised during consultation

- Gold Card eligibility
- Entitlement inequity across the tri-Act system
- Statements of Principle (SOPs) and Repatriation Medical Authority (RMA)
- Spouse and dependant benefits
- No detriment to veterans under new legislation
- Presumptive Liability
- Grandparenting of benefits
- Police and Civilian coverage
- Remote operations
- Support of single ongoing Act
- Increased wellbeing focus
- Concerns regarding *Veterans' Entitlements Act 1986* (VEA) benefits transitioning to the *Military Rehabilitation and Compensation Act 2004* (MRCA).

Proposed pathway

The core elements of the proposed legislative pathway are:

- Establishing an improved version of the MRCA as the sole ongoing scheme
- This single ongoing Act that will provide coverage for all future claims for compensation from a future date, irrespective of when and where the veteran serves, or when their wound, injury or illness occurred
- Closing out the VEA and *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (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 will be maintained and indexed normally
- A single Act system will provide greater clarity and consistency around entitlements for veterans and families, simplifying claims.

Under the proposed new system, any benefits currently being received will be grandparented and transitioned to the new framework. All claims – including permanent impairment claims submitted after the commencement date – will be considered under the amended MRCA, regardless of when and where the veteran served, or when their death, injury, wound or illness occurred.

In addition to the single Act model, the Government consulted on a number of further improvements to the veteran support system:

- providing the capacity to automatically approve presumptively-accepted conditions
- making the Veterans' Review Board the first point of administrative appeal for all claims
- merging the Repatriation Commission and the Military Rehabilitation and Compensation Commission
- establishing an independent Ministerial Advisory Council to provide advice directly to the Minister for Veterans' Affairs.

Consultation process

DVA in collaboration with the Minister and Assistant Minister conducted 17 face to face consultations over various metropolitan and regional locations across Australia, in Brisbane, Perth, Townsville, Sydney, Melbourne, Canberra, and Darwin. A total of 266 individuals, including veterans, families, advocates and ex-service organisations attended. DVA engaged with a total of 57 organisations nationally, regarding the proposed legislative pathway during the consultation period.

In addition to supporting those meetings with briefings, presentation aids and administrative arrangements, DVA received and responded to submissions, correspondence and emails on the proposed pathway; convened a series of webinars with veterans, advocates and ADF members; and facilitated advice to Government from a group of legal and academic experts.

DVA met with other stakeholders, such as the Ex-Service Organisation Round Table (ESORT) Multi-Act Claims Working Group, the Veterans' Review Board and Repatriation Medical Authority (RMA), along with other Australian Government agencies. DVA Deputy Commissioners also briefed local ex-service communities at a state level.

The following communication platforms were established to ensure reach across Australia and ensure the veteran community was kept informed of the consultation process:

- a dedicated email channel established so that people could contact DVA
- a dedicated page on the DVA website to provide information and facilitate consultation, including dedicated questions and answers from stakeholder engagements and the option to give anonymous feedback
- six webinars delivered nationally with open registration to attend and participate. A webinar was also recorded and published on the DVA website
- regular updates and posts on DVA's social media platforms.

DVA also received written and verbal feedback from veterans, veteran families, advocates, ex-service organisations, academics and legal experts.

Figure 1 - Participation numbers across different consultation activity.



Online submissions process

An online form for providing submissions on the proposed legislation reforms provided the opportunity for stakeholders to participate in the consultation process regardless of their location. The web portal on DVA's website was open for submissions from 16 February to 12 May 2023. Two hundred and forty six submissions were received.

Social media

DVA also used its social media platforms to communicate to all Australians, and provided the opportunity for people to participate in the consultation process.

Over the course of the consultation period, DVA's social media posted 37 times and received:

- 260,329 total reach (how many users saw the posts)
- 3,569 total engagements (how many reactions, comments, shares or link clicks were received).

The Minister for Veterans' Affairs also posted regularly on his personal social media (Facebook, Instagram and Twitter) encouraging the veteran community to participate in the consultation process.

Webinars

Six online webinars were delivered nationally via GovTeams between 26 April 2023 and 8 May 2023, with 300 participants. The Minister for Veterans' Affairs Matt Keogh as well as two Assistant Secretaries from DVA presented on the proposed pathway and answered questions from participants. A list of questions and answers was published on the DVA website on 29 June 2023. The first general webinar session (26 April 2023) was recorded and made available for viewing on the DVA website along with a transcript.

Submissions

The Government received **642** pieces of feedback. These were classified as a submission if they were in the scope of the legislative reform work. Feedback received relating to a veteran's personal circumstances were forwarded to the appropriate business area in DVA to reply.

A total of **246** submissions were received. 226 of these were from individuals, 16 were from organisations representing veterans (generally ex-service organisations) and 4 were from other organisations.

Major themes from submissions

Support for the Pathway

A total of **27** written submissions were received that explicitly supported the proposal, although some with qualifications.

On the other hand, **three** submissions clearly articulated that they did not support the proposal, stating that the current compensation and rehabilitation focus of the current schemes should be broadened to address wider issues faced by veterans.

Gold Cards

The Veteran Gold Card is a treatment card that provides individuals with clinically required treatment for all medical conditions, whether or not they're related to service. Currently, there are approximately 105,000 Gold Card holders.

DVA received **26** written submissions directly relating to the Gold Card.

Many respondents said that eligibility for Gold Cards should be expanded under any new scheme. Currently veterans with coverage solely under the DRCA are not eligible for Gold Cards while those with the requisite impairment ratings under the VEA or MRCA are eligible. This is a major policy issue for consideration.

A key point is that MRCA dependants would receive Gold Cards if they are a wholly dependent partner, eligible young person or other dependant who is eligible for compensation for the veteran's death under the Act.

Issues raised in submissions relating to the topic of expanded Gold Card eligibility included:

- DRCA veterans are currently not eligible for Gold Cards. Assessments, including those 'grandparented' under the VEA and DRCA, should be aggregated with the new MRCA assessments to establish entitlement to a Gold Card. A process to allow veterans to have their aggregated assessments considered for Gold Card purposes will be required. But will this be an automatic process, or will an application be required?
- Expand Gold Card eligibility for veterans. It was suggested that Gold Cards should be issued automatically after 20 years of service.
- Greater eligibility for Gold Cards for partners and dependants and a review of the criteria necessary to obtain a Gold Card.

Entitlement inequity across the tri-Act system

During the consultation process, **46** respondents commented specifically on inequities of benefits available under the existing respective Acts and made reference to the need for 'entitlement equity'.

For example, DRCA incapacity payment recipients expressed concerns that if their payments are grandfathered under the new system they would not be eligible to receive payments under the more beneficial MRCA scheme, which applies a remuneration loading and does not deduct a notional 5 per cent employee contribution to superannuation.

Submissions also raised the following issues:

- Differences in the way permanent impairment is assessed under the MRCA and DRCA (impairment ratings are calculated using a whole of person impairment methodology under the MRCA while impairments caused by individual injuries and conditions are aggregated under the DRCA).
- Transport arrangements should be harmonised and consolidated so one system applies to all veterans.
- Harmonising the rules regarding the differing respective amounts of remunerative work able to be undertaken in order to qualify for the Special Rate Disability Pension under the MRCA and Disability Compensation Payment at the Special Rate under the VEA.

Statements of Principles and Repatriation Medical Authority

The pathway put forward for consultation by the Government did not propose any changes to the current SOPs regime or the role of the RMA. **23** submissions expressed views on these issues. There was general support to retain the SOPs system, with **four** submissions explicitly supporting its retention. **One** submission recommended that SOPs be abolished.

Single or dual standards of proof

There was a range of views about whether the current SOPs regime with its dual standards of proof should be retained. Currently, the SOP to be applied differs according to the type of service that is claimed to have caused the injury or condition. There is a view in parts of the ex-service community that SOPs should operate with a single standard of proof, on the basis that ‘an injury is an injury’ regardless of the circumstances under which it occurred.

The current differential between the SOPs was supported explicitly by the Consortium of South Australian Ex-Service Organisations. Four submissions from organisations supported a single standard of proof SOP regime. Three of those submissions supported retention of the reasonable hypothesis standard for all claims,¹ and one supported the retention of the balance of probabilities standard for all claims.²

Should SOPs remain binding?

There were several submissions that noted the SOP regime sometimes resulted in claims not being accepted when the claimed condition was related to service. Several submissions called for SOPs to be used as guidance only, with the ASASA suggesting this could be achieved through a comment or note in the SOPs’ explanatory memoranda. Two submissions recommended that an enhanced MRCA should retain the ability of former DRCA claimants to have the claims assessed under the balance of probabilities standard, outside of the SOPs.

Proposed changes to SOPs

Several submissions suggested changes to the coverage of SOPs, including the extension or removal of strict timeframes and coverage of parts of the body rather than conditions.

Application of SOPs

Several submissions suggested that a claimant should be able to rely on the SOP that existed at the time of a claim, rather than a potentially less beneficial revised SOP in force at the time of decision.

¹ Royal Australian Armoured Corps Corporation; Naval Association of Australia, ACT; Australian Special Air Service Association

² Australian Lawyers Alliance

Criticism of SOP regime/language/use

There were a number of submissions that criticised the SOP regime, including a view that they are not lawful or fit for purpose, and that there is a lack of procedural fairness in determining SOPs. The Royal Australian Armoured Corps Corporation supported a culling of SOPs, claiming that the system is “onerous and oppressive”, imposes an “unacceptably heavy evidentiary burden”, “hampers efficient decision-making” and is “a fetter to veterans obtaining natural justice”.³ Others criticised the factors determined by the RMA in some SOPs, including not listing all of the causal factors for a condition that are listed in other Government health advisory websites.

Education/awareness of SOPs

There was support to enhance awareness of SOPs and to educate potential claimants as part of the implementation of any changes. One submission noted that there is a lack of awareness among claimants of the role and importance of SOPs in having a claim accepted. Others noted that the closure of the DRCA and consideration of new claims under the MRCA might lead to less beneficial outcomes for some claimants, including dependants, and suggested that an education campaign should be undertaken prior to the implementation of a single scheme.

Constitution of RMA

There was concern about the potential effect of the closure of the VEA on the constitution of the RMA.

Spouse and dependant benefits

DVA offers support for eligible family members of veterans through pensions, education schemes and payments. Responses covering the theme of spouse and dependant benefits were received from **82** respondents.

A total of **52** submissions were received raising concerns regarding the 2019 Productivity Commission recommendation to remove automatic eligibility for benefits for those dependants whose partner died while they had permanent impairments of more than 80 points or who were eligible for the MRCA Special Rate Disability Pension.

The Government is not proposing to implement this recommendation as part of its proposed legislative reforms. This was communicated to respondents during the consultation process.

Some of these submissions also outlined personal experiences of spouses who have supported their veteran partner through relocations, foregone careers to raise children and have lived experience of living with and supporting trauma affected partners.

An additional **15** respondents outlined concerns about the War Widow(er)’s Pension, particularly whether it will still be automatically granted under a grandparented VEA.

The proposed reforms include the continuation of automatic granting of the War Widow/ers pension.

Of the **15** respondents, a small number of veterans wanted to ensure their families would be looked after in the future.

³ Royal Australian Armoured Corps Corporation

15 respondents outlined the disparity of funeral benefits payable under the three Acts. A funeral benefit is a one-off payment to help with the funeral costs of an eligible veteran or dependant. The current maximum VEA amount is \$2,000, compared to a maximum of \$14,062.53 under MRCA or DRCA.

A small number of submission spoke to the difference in the education schemes available to children of veterans. The education schemes provide financial assistance, special assistance, student support services and arrange for guidance and counselling for eligible children. DVA currently administers the Veterans' Children Education Schemes (VCES), established under the VEA and the Military Rehabilitation and Compensation Act Education and Training Scheme (MRCAETS), established under the MRCA.

No detriment to veterans under new legislation

42 respondents said it was important to ensure there is no detriment to veterans under the proposed legislative pathway. This theme has captured any submission that spoke to ensuring veterans will not be disadvantaged financially or non-tangibly (e.g. DVA services and supports).

Other respondents also support that there should be no loss of entitlements under the proposed pathway.

A number of submissions also spoke to the sub-theme that the most beneficial aspects of the three current Acts (VEA, MRCA and DRCA) be synthesised into the single ongoing Act.

Presumptive liability

The proposal put forward by the Government for consultation included further improvements to the veteran support system. One of these improvements was to provide 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 required to provide as much, or any, evidence for a claim to be accepted. This would reduce red tape for veterans and families, and speed up DVA's decision-making. This is consistent with Productivity Commission recommendation 13.1.

A total of **35** respondents spoke to the proposal to expand presumptive liability. Of these, **32** spoke specifically to the assumption that common injuries, wounds or health conditions should be accepted based on Defence employment.

While overly positive, there were also some rejections of the presumptive liability proposal. A veteran explained a first-hand account of seeing people being dishonest in order to achieve a higher impairment score and payout.

Three respondents suggested that all conditions currently covered under the Provisional Access to Medical Treatment (PAMT) program should have presumed liability. PAMT enables veterans to access treatment for the 20 most commonly accepted conditions without DVA having accepted liability for them.

Grandparenting of benefits

The proposal put forward by the Government for consultation included a grandparenting clause, which would see existing programs and support services with a legislative basis under the VEA and DRCA not affected or impacted by the proposed pathway. This ensures that there will be no reduction in entitlements

currently being or previously received by veterans. Current payments would continue to be maintained and indexed normally.

A total of **22** respondents explicitly stated if they were in support of or against grandparenting the VEA and DRCA legislative authority. Of these, **12** submissions were **in support** of grandparenting.

Seven submissions **were not** supportive of grandparenting. VEA and DRCA cohorts expressed concerns that veterans covered under the grandparented Acts may be viewed unfavourably by DVA.

Submissions also stated the inequity of entitlements under DRCA compared to MRCA or VEA as reasons for not supporting grandparenting. Veterans with non-operational service before 2004 and operational service between 1994 and 2004 may have their conditions claimed under DRCA. Under the current DRCA legislation, clients are not eligible for a DVA Gold Card, and Incapacity Payments are paid at a different rate.

Police and civilian coverage

The theme of police and civilian legislative coverage was apparent in **11** submissions. Historically, service by police members as part of certain designated international peacekeeping forces has been covered under the Veterans' Entitlements Act 1986 (VEA). In some cases, this coverage for police members continued even after the VEA was closed in relation to ADF service from 1 July 2004. All of the operations covered by the VEA have now concluded.

Service by members of the territory, state and Australian Federal Police on overseas activities that are not designated under the VEA is covered under the Safety, Rehabilitation and Compensation Act 1988 (SRCA), administered by Comcare. It is understood that these overseas deployments not covered under the VEA may also attract additional compensation entitlements under 'top-up' provisions administered by the Australian Federal Police. Separately, Australians who were United Nations Organisation employees or the employees of private or government welfare organisations during the time of a peacekeeping mission do not meet the definition of members of a peacekeeping force. As such, they do not have eligibility under the VEA.

Four submissions spoke to the topic of police peacekeepers. Submissions outlined concerns about how the current entitlements may not be included in the grandparenting clause, and how future legislation should include a provision for civilian and police deployment, and compensation.

Remote Operations

Three respondents spoke to the inclusion of civilian personnel in compensation, including remote warfare officers. Submissions suggested that instead of a division between Defence and civilian personnel in legislation, there should be inclusivity of everyone deployed and instead base compensation on active deployment. Concerns were also raised about remote warfare officers, including cyber security and drone officers, who remain in Australia but are actively deployed.

A veteran commented specifically on cases of drone and weapons operators who are commonly based outside of a declared theatre of war at the time of engagement, and struggled to have their claims accepted. The veteran also commented on the unique nature of remotely controlled drone operations and how such operations can have lasting mental health effects, particularly when done repeatedly.

Increased wellbeing focus

A number of submissions raised the theme of wellbeing in different contexts. These contexts include:

- future-proofing legislation to cover emerging holistic therapies
- having legislation that focuses on the health and wellbeing of veterans rather than monetary compensation
- increased DVA recognition and funding of natural and alternative remedies.

Other suggestions referred to the wellbeing of current serving members and recommended improved monitoring of serving members' compensation claims to ensure better health outcomes both while serving and transitioning out of the ADF.

Concerns regarding VEA benefits transitioning to MRCA

A number of submissions outlined concerns around the lack of provision under the MRCA for Above General Rate payments available under the VEA (Extreme Disability Adjustment, Intermediate Rate, and Special Rate). Respondents raised the issue in the context of a mechanism for applying for an increase in pension should their conditions worsen.