



**RSL**  
Victoria

15 October 2024

Mr Michael Harper  
Deputy Commissioner Victoria  
Department of Veterans' Affairs  
300 Latrobe Street, Melbourne VIC 3000  
Via email: michael.harper@dva.gov.au

**RE: Proposed Institute of Veterans' Advocates**

Dear Mr Harper,

I refer to the proposed establishment of an "Institute of Veterans' Advocates" (the Institute) in the ESORT consultation paper recently disseminated by DVA and your kind invitation to act as a conduit should parties wish to make further submissions as to its proposed structure. I also note the submission of RSL Australia (RSL-A) with regard to this matter which is enclosed for your reference.

In this instance, whilst RSL Victoria agrees with and endorses most of the RSL-A submission, there are a number of issues where we take an alternate position to both the views of the ESORT consultation paper and RSL-A submission, namely the proposed voluntary/optional membership nature of the Institute and the eligibility of fee for service providers to be members of it.

This divergence of views is a result of extensive consultation with RSL Victoria members, our inhouse advocacy team and our veteran clients and it is incumbent on RSL Victoria to advocate on behalf of those individuals to achieve what we believe to be the best outcome for our veterans.

**Inclusion of fee for service operators**

Notwithstanding the RSL-A position of "supporting the inclusion of fee for service providers as members of the Institute", RSL Victoria remains opposed to the very concept of allowing fee for service providers to provide advocacy services at all and says that a primary objective of any legislative or administrative reform should be to drive such operators out of business.

RSL Victoria has long been opposed to for profit operators being able to provide military compensation services on a fee for service basis. In our submission to the Royal Commission into Defence and Veteran Suicide dated 22 June 2022, we raised concerns about the emergence of the fee for service advocacy business model and recommended to the Royal Commission that private fee for service advocacy services be prohibited from lodging compensation claims for veterans.

Our opposition to these operators arises from the completely unregulated nature of the sector, which permits anyone, regardless of their qualifications, competence, integrity, or ethical standards to offer military compensation services on a fee for service basis, free to set fees at their discretion, without any oversight or accountability. RSL Victoria is aware of some businesses that charge up to 20% of any lump sum payment a veteran receives. Such practices are not only unethical but also predatory. Veterans seeking assistance are often already struggling with financial, physical, and psychological challenges, and these operators prey on that vulnerability by promising to secure compensation in exchange for unjustifiable fees. This behaviour not only exploits veterans but also undermines the very principles of fairness and respect that should be inherent in our system of veteran care.

Additionally, we are aware of instances where veterans, dissatisfied with the level of service provided by these advocacy businesses, attempt to terminate their agreements, only to be charged exit or retainer termination fees as high as \$2,500 regardless of the actual work performed. This lack of regulation again leaves veterans vulnerable to financial exploitation by unscrupulous operators.

In contrast, we note that members of both the legal and financial services professions governed by their respective regulatory schemes must not only be fit and proper persons of good fame and character suitably licenced and qualified but are also prohibited from overcharging clients for work performed and may face disciplinary sanctions including being prohibited from engaging in their profession.

We understand that some within the ESO community have adopted the view that as it is not unlawful to operate a fee for service advocacy business, there is nothing that can be done to prevent their operation. This view is shortsighted and fails to take into consideration numerous instances where the Australian Government has taken legislative action to protect the community by outlawing harmful business practices. For example, the government has banned unsolicited door-to-door sales under Australian Consumer Law, shielding consumers from aggressive and manipulative tactics. This measure was particularly aimed at protecting vulnerable individuals who might be pressured into making decisions against their best interests.

Another example is the regulation of payday lending with the *National Consumer Credit Protection Act* amended to curb predatory lending practices, such as excessive fees and interest rates, which often trapped financially distressed individuals in cycles of debt. We also note that in 2022, the Queensland Government banned “claim farming”, a practice where unscrupulous operators make unsolicited contact with survivors of abuse or personal injury in an attempt to earn a commission from referring them to a personal injury law firm. We understand that other State Governments are considering following suit.

These protections ensure that individuals who are particularly vulnerable due to financial hardship, are not exploited by unscrupulous operators. Veterans can often be similarly vulnerable when seeking compensation. Many are also dealing with physical and psychological trauma while trying to navigate a complex legal and bureaucratic system.

We also note that Governments have previously shown a willingness to intervene to regulate or prohibit products, services and business practices that were regarded as being harmful to society including flavoured e-cigarettes and vaping products, single use plastic bags, plastic cutlery and synthetic cannabis to name a few. To adopt the approach of “it’s legal so there is nothing we can do about it” is in our submission unacceptably defeatist.

RSL Victoria proposes that the simplest way to address this issue and irradiate the burgeoning fee for service advocacy sector would be to amend section 320 of the *Military Rehabilitation and Compensation Act 2004* (‘MRCA’) to include a new sub-section 4 that reads:

*No person other than a practising lawyer shall charge or receive any fee or other compensation for making a claim on behalf of another person or assisting a person to make a claim under this section other than as provided for in the regulations or prescribed by the Institute of Veterans' Advocates .<sup>1</sup>*

This would allow for free advocacy services to recover reasonable administration costs as already exists under the existing ATDP-VITA arrangements and provide government with flexibility to alter the regulations if needed with a minimum of fuss and effort. More importantly, it would provide a mechanism to end the predatory practices of some fee for service operators.

## **Hybrid Operators**

We also note the emergence of hybrid advocacy / medical practitioner operators who offer “free advocacy services” based on a business model of providing bulk billed DVA diagnoses followed up by billing DVA for expensive specialist referrals and reports. This raises the question as to how should such an operator be regarded: as a medical practitioner who offers free DVA report writing or as an advocacy service who offers free (as in free to the veteran but bulk billed to DVA) in-house medical diagnosis services?

Whilst the consultation paper and model constitution is silent on how such hybrid business models should be regarded we make the point that should such hybrid operators be permitted to join the Institute, one of the membership benefits proposed is to allow Institute members to order medical tests paid by DVA prior to a claim being lodged. This arrangement is a potential river of gold for any hybrid style operator.

The hybrid business model carries risk in that it incentivises initial over diagnosis in order to profit from ordering a number of medical tests, which often prove to be unnecessary and ultimately clog up the system further contributing to delays in processing veteran claims.

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<sup>1</sup> practising lawyer is defined in s 5 of the MRCA as a person who is admitted to the legal profession by a federal court or a Supreme Court of a State or Territory and who holds a practising certificate (however described) entitling the person to practise that profession.

In a recent discussion with Secretary Frame, she disclosed to an RSL Victoria manager that DVA has seen an explosion in claims submitted by such hybrid advocacy providers with many of them having more than 50 conditions being claimed for, the highest being 119 separate conditions. This approach will inevitably result in claims for non-service related conditions being either withdrawn at a later stage or denied by DVA due to a lack of supporting evidence, but not before DVA had paid the hybrid operator for a pointless diagnosis.

Even if the denial for these conditions is entirely reasonable, it can inculcate in the veteran a perception that DVA has unfairly denied a number of their claims, potentially adversely affecting their mental health and further undermining veteran confidence in the DVA process.

We also note another troubling emerging business practice amongst some fee for service providers whereby veterans who seek assistance find themselves commoditised and targeted by other third parties offering everything from allied health care services through to veteran themed back packs and promises of free gym memberships, yoga and mindfulness programs all ostensibly paid for by DVA. So blatant and concerning is this conduct that we note that DVA have recently placed warnings on their website advising veterans to be wary and suspicious of such approaches.<sup>2</sup>

RSL Victoria's views on fee for service advocates would seem to be congruent with those expressed by the Minister for Veterans' Affairs in radio interview with journalist Neil Mitchell on 19 July 2023:<sup>3</sup>

**NEIL MITCHELL:** *I know you need to get away from the press conference. Just a quick thing, I was reading the – I saw an RSL submission to the Royal Commission, and there was some of this in the paper the other day, that some vulnerable veterans seeking compensation are effectively being conned by private operators. They might take 10 per cent of the compensation for these veterans. You across that?*

**MATT KEOGH:** *I am across it, and it's something that's been raised with me since I became the Minister just over a year ago. We've got a very clear message which we continue to try and push out to our veteran community, which is use the free, accredited, well-trained advocates that are available. And you can find them on the website that we operate, [www.advocateregister.org.au](http://www.advocateregister.org.au). That's where the accredited, trained advocates that provide that voluntary free service are able to be located. And for those people, unscrupulous operators that are trying to take a big chunk of benefit and charging a huge fee to veterans and then leaving them high and dry, that is outrageous. And it is something that in the process of the veterans entitlement legislation reform program we're looking at at the moment, that we're aware of this issue and looking at what are the things that we may need to tighten up in the regime so that we don't have people taking unfair advantage of vulnerable veterans.*

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<sup>2</sup> [dva.gov.au/news/latest-stories/dont-believe-everything-you-see-or-read-online](https://dva.gov.au/news/latest-stories/dont-believe-everything-you-see-or-read-online).

[dva.gov.au/news/latest-stories/be-watch-false-or-misleading-representations](https://dva.gov.au/news/latest-stories/be-watch-false-or-misleading-representations).

<sup>3</sup> <https://www.minister.defence.gov.au/transcripts/2023-07-19/radio-interview-mornings-neil-mitchell>.

**NEIL MITCHELL:** *Like try to make it illegal or similar?*

**MATT KEOGH:** *Yeah, so we've got to look at how that regulatory model would work. We regulate migration agents, for example. We regulate other areas where people provide assistance to people with government services. We want to make sure we've got people that are well trained, that they're supported in the assistance they provide veterans, and that people who are not doing the right thing are not able to operate in this space.*

**NEIL MITCHELL:** *Well, no, the Victorian RSL is very fired up about it, so I'm sure they'll be -*

**MATT KEOGH:** *Very understandably.*

Given the Minister's stance on this issue and his stated commitment to tightening up the regime to prevent veterans from being taken unfair advantage of, we suggest that outlawing fee for service operators would be a decisive and effective way of achieving this government ambition.

### **Voluntary Membership Model**

We also disagree with the proposed voluntary membership model of the Institute which by its very nature provides that any Advocate Code of Conduct would be a voluntary compliance scheme.

Recent evidence suggests that voluntary regulatory schemes often fall short in terms of effectiveness. For instance, the 2017 Royal Commission into Misconduct in the Banking, Superannuation, and Financial Services Industry revealed that voluntary codes of conduct in the financial services sector frequently failed to deliver the desired outcomes. Similarly, the Federal Government has recently indicated plans to replace the voluntary Food & Grocery Code of Conduct with a mandatory model, citing concerns about the current code's ineffectiveness. A comparable situation is unfolding in the aviation industry, where the voluntary Airline Customer Advocate service is set to be replaced by a mandatory airline and aviation ombudsman scheme.

### **Mandatory Institute Membership for all advocates**

Whilst our preferred position is that fee for service providers other than practicing lawyers be banned from operating at all, if they are going to be permitted to operate and be eligible to be admitted as Institute members it should be on the basis that membership of the Institute is mandatory for all advocates, irrespective of whether they are paid, volunteer or operate under a fee for service arrangement. This is consistent with the approach taken with other sectors including the legal, financial services, migration agents and allied health professions.

One of the principle aims of the creation of the Institute should be to drive unscrupulous operators out of the DVA Compensation sector via the enforcement of mandatory professional standards. The opt-in model voluntary compliance model currently proposed will do nothing to deter the more unscrupulous or opportunistic operators from continuing to prey upon vulnerable veterans. Whilst the DVA consultation paper refers to Institute members being able to promote themselves as "DVA approved advocates", this in of itself is not a panacea that will ensure that unscrupulous operators reform their ways and throng to join a voluntary body who has the power to curtail their actions and earnings. Nor will it have any influence

on some of the more militant individuals and veteran advocacy services who seem to delight in taking a confrontational approach with both DVA and other ESOs. Some of these operators proudly wear this “anti DVA / anti-establishment” label as a badge of honour, using their supposed outsider status to somehow claim that they are the authentic or real supporters of the veteran community as opposed to those organisations who seek to work collaboratively and productively with DVA.

To address this, irrespective as to whether fee for service operators are banished from the veteran sector or not, RSL Victoria maintains that membership of the Institute should be mandatory for any person or organisation who wishes to provide advocacy services as this would operate as a safeguard to ensure that veterans and their families are not preyed upon, only fit and proper persons are allowed to operate as an advocate and that professional standards are upheld across the sector. We note with irony that DVA has an approval process and criteria in order to become an approved home help or attendant care provider but yet anyone can call themselves a veteran advocate without the need to satisfy any qualification or probity requirements.

In addition to the current system having no prerequisites to practice as an advocate, we note that there are no regulatory or disciplinary sanctions that can be applied to prohibit an advocate. We make the point that in the previous two years, as part of our organisational commitment to improving and upholding advocacy standards, RSL Victoria has dismissed a number of RSL volunteer advocates for unacceptable or unprofessional conduct only to see some of those individuals later reemerge as advocates aligned to other organisations, including advocates with serious criminal convictions who continue to operate with impunity.

Additionally, we note an instance involving a compensation advocate who obtained an unaccredited “life experience” PhD from an “diploma mill” on line university, which was later shut down by U.S. courts for selling fake degrees. This advocate went on to secure an advisory position at a private hospital dealing with mentally ill veterans, where he was referred to as “Doctor.” The risks associated with convicted individuals serving as advocates, or unqualified persons interacting with mentally ill veterans in a medical setting while being referred to as “doctor” and functioning as a veteran advocate are clear. The proposed voluntary Institute model fails to address these critical concerns, as it does not address criminal or unethical behaviour by advocates who choose not to join the Institute.

It is alarming that in such an important sector; one dealing with the well-being of veterans who have served their country there is no mechanism in place to ensure that only qualified, ethical, and trustworthy individuals or organisations are permitted to operate. Without regulation, it is entirely possible for unethical individuals, and even criminals, to infiltrate the system, taking advantage of veterans at one of the most vulnerable times in their lives.

Thank you for taking the time to consider our views regarding the proposed Institute of Veterans' Advocates. We urge you to reflect on the concerns we have raised, particularly with regard to ensuring the highest standards of professionalism and accountability in veteran advocacy. The well-being of our veterans is paramount, and we believe that effective, mandatory regulation is essential to protect those who have served our country from exploitation and harm. We trust that our feedback will contribute to meaningful improvements in the final model. We appreciate your ongoing efforts and look forward to continuing our dialogue on this critical issue.

Sincerely,

A handwritten signature in dark ink, appearing to read 'R Webster', with a stylized, cursive script.

Dr Robert Webster OAM  
State President  
RSL Victoria