RSL AUSTRALIA

NEW AGED CARE ACT

Our Response to Aged Care Bill 2023 – Exposure Draft

March 2024

RSL Australia

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INTRODUCTION

The Returned & Services League of Australia (RSL) appreciates the opportunity to provide feedback in relation to the Aged Care Bill 2023 Exposure Draft.

RSL notes, and supports in full, the Joint Submission[1] which has been lodged by **'**National Organisations Working With Older People and Carers' in response to the opportunity to comment on the Draft Bill. RSL is pleased to advise that we have a member on this forum and appreciate their involvement and the opportunity to have input into the proposed legislation.

RSL is also pleased that we were able to have a representative on the Consultation Forum held on 31 January 2024 regarding the proposed new Aged Care Act. This informative and interactive forum was provided by the Dept of Health and Aged Care.

RSL also wishes to acknowledge and support the work being done by the Department of Veterans Affairs (DVA) and appreciates inclusions at the DVA 11 December 2023 workshop. DVA reported to the ESORT (Ex-Service Organisation Roundtable) on 18 September 2023 and acknowledged the expectations of the veteran community in the aged care space. DVA noted that more and better support is needed for those navigating the aged care sector, whether to access in-home care services or residential aged care. DVA undertook to promote the increased funding for allied health services, and aids and appliances for veterans and war widow(er)s in residential aged care.

Additionally, DVA advised that they had commenced discussions with the Aged Care Regulator to promote DVA entitlements for veteran and war widow(er)s in residential care through residential aged care providers and that they are committed to meeting with a group of residential aged care providers, who are willing to work with DVA to improve communication with veterans, widow(er)s, and families on how access to additional supports can be better facilitated, and how veteran residents can be acknowledged and supported by the ex-service community.

RSL acknowledges the work already undertaken and continued involvement of Ex-Service Organisations (ESOs) in this critical work to help deliver the best outcomes for veterans, widow(er)s, and their families.

RSL does not support so-called 'double dipping'[2], but this submission stresses the importance of eligible veterans and war widow(er)s being able to seamlessly access the high-quality medical and allied health services, aids and appliances provided by DVA as they move into the aged care system. Access to these services needs to be provided as a lifetime entitlement because of enduring need.

RSL is alarmed by the limited reference in the draft legislation about access to DVA entitlements for eligible veterans and widow(er)s. For too long we have seen veterans and widow(er)s fall through the gaps in service provision because of policy and practice failures. These entitlements are provided in recognition of service to our nation, and it is incumbent on government to ensure that legislation that intersects with veterans' entitlements legislation does not prevent, hinder, or complicate access. The New Aged Care Act must include specific provisions to ensure that the government and aged care sector is accountable for making sure that older veterans and widow(er)s have access to their DVA entitlements. This submission sets out the RSL's proposed amendments to the draft legislation to ensure it is consistent with the enduring commitment of support and care that Australia has made to our veterans, their widow(er)s, and families.

[1] Aged Care Act Exposure Draft – Joint Submission
https://media.opan.org.au/uploads/2023/11/230911_Submission_Joint_Consumer_Carer_Foundations_of_the_Act.pdf

[2] 'Double Dipping' defined as "the receipt of substitutable services from multiple program sources of funding." Cited APH 1 March 2024

SUBMISSION

Access to DVA Entitlements in Aged Care

Veteran Care

Recommendation 7 at page 12 of the Aged Care Act Exposure Draft – Joint Submission (the Joint Submission) states the Aged Care Act should[3]:

(7) 'Include the right to access health care services in the Bill to ensure that all individuals entitled to benefits and services outside of the aged care system (such as Medicare subsidised health care services, inpatient and outpatient rehabilitation services, Veteran entitlements to DVA medical services and DVA medical aids) can receive them and cannot have them denied due to receiving aged care services.'

RSL strongly supports this recommendation; access to DVA entitlements for veterans and widow(er)s in aged care is the key ask of this submission.

The Joint Submission highlights barriers preventing aged care participants from accessing entitled health care services, including:

'*at a policy level, (e.g. preventing program 'double-dipping'), at an allocation level, (e.g. people receiving aged care allocated to lower level of priority to health care) and at a systemic level (e.g. aged care residents unable to afford the cost of transport or escort to medical appointments).* These barriers must be removed to enable aging members of our ADF family to have ready access to all entitlements provided under relevant DVA legislation. These entitlements are provided in recognition of service to our nation, and it is incumbent on government to ensure that any legislation that intersects with veterans' entitlements legislation does not prevent, hinder, or complicate access.

Wellbeing Focus

The statement in Joint Submission at pages 11 and 12 is critically important:

'*The new Act must also be framed around reablement, rehabilitation, wellness and quality of life. The benefits of staying active and healthy as individuals get older are well known and include increased wellbeing and ability to participate in social and other activities, recovering from illness more quickly and preventing falls. The new Act must embed these principles more clearly and effectively throughout the Act.*

The new Act also provides the opportunity to fully address recommendation 69 of the Royal Commission into Aged Care Quality and Safety, through clarifying roles and responsibilities for delivery of health care to people receiving aged care. The right to health care is a key human right and receiving aged care services should never preclude older people from receiving health care services. Currently some aged care participants are prevented from accessing health care they would otherwise be entitled to. These access barriers occur at a policy level, (e.g. preventing program 'double-dipping'), at an allocation level, (e.g. people receiving aged care allocated to lower level of priority to health care) and at a systemic level (e.g. aged care residents unable to afford the cost of transport or escort to medical appointments).'

[3] Aged Care Act Exposure Draft – Joint Submission

DVA Treatment Principles

Details of the Treatment Principles supporting the Aged Care Act are included in this document to outline the range of benefits that flow from DVA legislative provisions.

Entitled Persons

The DVA's, 'Notes for Allied Health Providers', [4] state:

An "entitled person" means a person eligible for benefits or treatment from the Commonwealth as represented by the Commissions, in accordance with relevant legislation in the Veterans' Affairs portfolio. Entitled persons will hold a DVA Health Card issued by DVA or have written authorisation on behalf of the Repatriation Commission or the MRCC. The DVA Health Cards entitling treatment are the Gold Card and the White Card."

Veterans Entitlements Act 1986 (VEA) – Sections 85 and 89

Section 85 of the VEA identifies eligible veterans/dependants for treatment. Section 89 empowers the Repatriation Commission to collaborate with hospitals and institutions for treatment provision, extending to various care and welfare settings.

DVA Treatment Principles (No. R52/2013) – Section 90 and Part 7

The legally binding DVA Treatment Principles govern financial responsibility for health care treatment. Section 90 provides key definitions, and Part 7 specifies allied health and adjunct services available to DVA treatment card holders. Under 7.1.2, the Commission may provide, arrange, or accept financial responsibility for audiology, diabetes educator services, dietetics, chiropractic services, community nursing, exercise physiology, occupational therapy, optometry, orthoptics, orthotic services, osteopathic services, home care services, physiotherapy, podiatry, psychology, social work, and speech pathology.

At clause 7.1.3, the Treatment Principles state:

'7.1.3 The Commission will not accept financial responsibility for a service listed in paragraph 7.1.2 for an entitled person receiving residential care if the Commission is satisfied that it is more appropriate that the service is provided by the owner or operator of the residential care facility because, due to assistance (financial or otherwise) received by the owner or operator of the residential care facility under Commonwealth, State or Territory legislation, it is fair for the owner or operator of the residential care facility to bear the cost of supplying the service.

[4] Notes for allied health providers - section one - general (dva.gov.au) accessed 26 February 2024

Recommendation One:

Entitlements covered in Part 7 must be readily available to eligible DVA card holders in aged care facilities.

- *An eligible cardholder can readily access these services prior to entering an aged care facility, but as their care needs increase access to these entitlements can become more complex, hindered, or even hindered when they move to a residential aged care facility because of provider practice or lack of awareness.*

It is unacceptable that eligible veterans and widow(er)s experience a step-down in care during a period of increased vulnerability and higher care needs.

- *While it is stated in the clause above that, 'it is fair for the owner or operator of the residential care facility to bear the cost of supplying the service', we know that this is a disincentive for some providers to ensure veterans and widow(er)s receive the care they need.*

The lived experience of many older veterans in aged care facilities evidence that access to services has been variable because a service provider has not been prepared to bear the additional cost. ***This is not fair for our veterans or their families.*** *DVA clients have a legislated entitlement to receive treatment benefits and both DVA and Aged Care legislation must facilitate their access to these entitlements.*

Residential Care, Home Care and Transition Care Co-Payment

Parts 10 and 11 of the Treatment Principles deal with the provision of treatment to veterans in Residential Care, Home Care and Transition Care Co-payment.[5]

Residential Care Arrangements (10.1.1 - 10.1.3)

Residential care may be provided to Gold Card or White Card holders. The Commission, under the Aged Care Act 1997, arranges and accepts financial responsibility for residential care. However, when the Commonwealth becomes liable, payment is made under the Veterans' Entitlements Act 1986 instead of the Aged Care Act 1997. Importantly, double payments by the Commonwealth under both acts for the same amount are prohibited.

Financial Responsibility Considerations (10.1.4 - 10.1.5)

Clause 10.1.4 clarifies that no double payments are permitted, and Clause 10.1.5 grants the Commission the authority to accept financial liability for incurred amounts if the Treatment Principles provide for it.

[5] DVA CLIK - Treatment Principles (No. R52/2013) (legislation.gov.au)

The Provision of Rehabilitation Appliances

Rehabilitation Appliances Program (11.1 - 11.1.2)

Part 11 focuses on the Rehabilitation Appliances Program, allowing the Commission to provide surgical and self-help appliances to entitled persons, aiming to restore, facilitate, or maintain functional independence and minimise disability.

Qualifications for Appliance Supply (11.3.6 - 11.3.6A)

Qualifications for appliance supply include restrictions in 11.3.6, preventing approval for entitled persons in institutions or specific programs unless certain conditions are met. However, 11.3.6A outlines exceptions, permitting approval if granted before entry and conditions for alterations to the institution structure are met.

Recommendation Two:

Lived experience tells us that our health and health care needs change as we age.

In recognition of this reality, we ask DVA to amend these principles to better reflect changing need and to enable approvals for some appliances to be made ***after*** *admission to an institution for instances where an individual's established condition is deteriorating and the need for an aid or appliance is established.*

This approach would uphold the care and support commitment of DVA and provide our older eligible veterans and widows with dignity and the ability to retain some independence. Aged Care legislation should identify if this support from DVA can be made available.

The Royal Commission into Aged Care Quality and Safety

In the summary of the final report[6], at page 65, this Royal Commission has stated:

> *'The aged care system is difficult to access and navigate. People trying to get aged care have reported the experience as time-consuming, overwhelming, frightening and intimidating. The availability of helpful and comprehensive information is critical to ensuring older people get timely access to the care they need and to empowering them to make choices about their care.'*

Allied Health Services Concerns (Page 65-66)

The report expresses concerns over the limited access to allied health professionals for those in aged care, noting that:

'People in aged care have limited access to services from allied health professionals, including dietitians, exercise physiologists, mental health workers, occupational therapists, physiotherapists, podiatrists, psychologists, speech pathologists and specialist oral and dental health professionals.'

The report reveals 2 percent of Home Care Package funding in 2018-19 was spent on allied health. Additionally, the insufficiency of allied health care in residential aged care raises concerns about potential service compromises due to funding constraints.

Veterans' entitlement legislation means that eligible veterans and their dependents can sometimes access a higher standard of care than the general non-serving population, these provisions recognise that service in Australia's Defence Force impacts the health and wellbeing of veterans and their families. These impacts can be experienced both during and after service, they can be enduring and may cause instances of vulnerability and instances of particular health care needs that are not experienced by those who have never served.

Like the general population, the health and wellbeing need of veterans, war widow(er)s, and their families often increases with age. The current status quo and legislative frameworks are seeing veterans, widow(er)s, and their families experiencing a decreasing level of care and support as they age. Perversely at a time when common sense tells us that an individual will likely need more care, our legislative frameworks are funneling them into spaces that actually provide less care.

[6] Summary of Final Report, Royal Commission into Aged Care Quality and Safety https://www.royalcommission.gov.au/system/files/2021-03/final-report-volume-1.pdf accessed 1 March 2024

Recommendation Three:

The New Aged Care Act must include specific provisions for eligible veterans and widows which provides legislative assurance that they will not receive a lesser standard of care then they are entitled to under veterans' entitlements legislation when a person is covered under Aged Care provisions. The different acts should also address and remove opportunities for so called "double dipping" by ensuring clear alignment across the different legislative instruments.

Rural and Remote Aged Care Services (Page 66)

The RSL shares the concerns of the Royal Commission into Aged Care in relation to the services available in rural and remote areas. The Commission's report and other credible reporting from the Australian Institute of Health and Wellbeing outlines the disadvantage experienced by Australians who live outside of major metropolitan areas, including the lack of age care services and age care providers. On average, people living in inner regional and outer regional areas are older than those in major cities[7]. Over one in four Australians in the aged care target population living in rural or remote communities[8] this gap must be comprehensively addressed, and legislation can and should help to drive tangible action.

Lack of Necessary Health Care (Page 66)

The Royal Commission identifies the inconsistency in health care provision for people in aged care, particularly in residential aged care, emphasising the deficiency in doctor visits, mental health services, oral and dental health care, and holistic care. Factors contributing to this gap include late identification of health care needs and the reluctance of health care providers, especially specialists, to offer services at a person's residence.

Articulating Purpose and Guiding Principles (Page 80)

The report recommends that the new Act should articulate the purpose and guiding principles of the aged care system to enhance its effectiveness.

Legislated Entitlements for Veterans (Page 80)

Highlighting that veterans possess legislated entitlements to high-quality medical and allied health care, the report urges the continuity of these benefits as they transition into supported living, especially in rural and remote areas.

Importance of Community Engagement (Page 81)

Recognising that aged care is only one facet of support needed for successful aging, the report underscores the importance of government strategies and policies, including age-friendly community designs, to facilitate positive aging experiences. The RSL expresses readiness to collaborate with relevant departments to foster supportive environments for eligible veterans and widows outside residential care. The Department of Aged Care and the Department of Veterans Affairs must work together to create and sustain community environments in which veterans and their families can be appropriately supported in community and non-residential settings.

[7] Rural and remote health - Australian Institute of Health and Welfare (aihw.gov.au) accessed 1 March 2024
[8] Aged-care-in-rural-and-remote-areas-factsheet_2020.pdf (gen-agedcaredata.gov.au) accessed 1 March 2024

Guiding Principles and Purpose

The Royal Commission has identified at page 80 of their final report that, *'The new Act should articulate the purpose and guiding principles of the new aged care system.'*

Purpose of the Aged Care System

The purpose of the aged care system must be to ensure that older ***people have an entitlement to high quality aged care and support and that they must receive it.***

Such care and support must be safe and timely and must assist older people to live an active, self-determined and meaningful life in a safe and caring environment that allows for dignified living in old age.

Recommendation Four:

The Department of Aged Care and the Department of Veterans Affairs must work together to create and sustain community environments in which eligible veterans and widows can be appropriately supported in community and non-residential settings.

The new Aged Care Act includes provisions that ensure that eligible veterans and widows continue to access their entitlements to quality and level of medical and allowed health benefits they received prior to entering the aged care space.

CONCLUSION

Veterans and their families make a significant social and economic contribution to our nation. Their contribution endures for the whole of their lives, including as they age. Their service and contribution is acknowledged by the majority of our Australian population who come together in acts of remembrance and commemoration.

The RSL advocates that legislation must also recognise veterans, widow(er)s, and their families, by including specific provisions that best serve their health and wellbeing needs, including as they age. The proposed new aged care act will not operate in isolation from other legislative frameworks, it must interact with DVA and other legislative measures that provide for the particular need of veterans and their families.

The recommendations in this paper are suggestions as to how the new Aged Care Act can appropriately close the care gap that veterans are currently experiencing as they enter the aged care space. The RSL stands ready to support and inform this important work.

Appendix A identifies possible changes that may be made to ensure consistent delivery by all aged care providers.

Appendix A: Recommended Changes to Selected Clauses

The RSL notes and supports the wording changes that have been recommended by the Joint Submission in Appendix A. The RSL has adopted a similar format to that of the Joint Submission for Appendix A and requests that consideration be given to the following:

Section No.	Clause No.	Sub-clause	Current wording	Change	Rationale
5	(b)	(iii)	*ensure equitable access to, and flexible delivery of funded aged care services that put older people first and take into account the needs of individuals, regardless of their location, background and life experience; and*	The legislation should acknowledge the unique nature of veteran needs and the services that are available through DVA	The legislation needs to do more than just state 'take into account the needs of individuals'
5	(b)	(iv)	*support individuals accessing funded aged care services to effectively participate in society on an equal basis with others, thereby promoting positive community attitudes to ageing*; and	As noted in the RSL submission – reference should be made to the availability of services under the DVA treatment provisions.	RSL is of the view that the legislation needs to specifically identify that DVA clients should have access to their DVA entitlements
5	(b)	(v)	*facilitate access to integrated services in other sectors where required; and*	'integrated services' needs to be included in the definitions	It is suggested that Integrated service delivery involves a committed working partnership between two or more organisations and requires significant investment in relationship-building, governance, ongoing management and co-ordination, organisational capabilities, and operational infrastructure across the organisations.

6			Para 4 of the Simplified outline states – '*Eligible individuals undergo an aged care needs assessment which identifies which funded aged care services are needed. Services are delivered in an approved residential care home, or a home or community setting, and are delivered by entities known as registered providers. For certain service groups, there are mechanisms for prioritisation and allocation of limited places.'*	This should acknowledge the need to identify existing entitlements to DVA benefits.	As per the rationale stated above
7				ADD – a definition for Integrated Services. As a suggestion - ***integrated services -*** when multiple organisations work together to help individuals access holistic support and services in a more effective and comprehensive manner. For example – the ability for veterans to access their DVA entitlements in addition to those provided for in this Act.	As per the rationale stated above
8	(1)			ADD- (h) Specify integrated services which may be provided in consultation with integrated service providers (as per 5(b)(v)	Make reference to DVA services

Section No.	Clause No.	Sub-clause	Current wording	Change	Rationale
8	(3)	(g)	any other group prescribed by the rules	It is requested that veterans and war widows be specifically identified as a service group	As per the rationale stated above
339	(2)	(b)	the Department administered by the Minister administering the *Veterans' Entitlements Act 1986*;	For information, it should be noted that the Department (DVA) also administers the *Military Rehabilitation and Compensation Act 2004* and the *Safety Rehabilitations and Compensation (Defence Related Claims Act 1988*	Additionally, it should be noted that DVA is undertaking a legislative reform process which is likely to involve significant restructure of the legislation. This sub clause may wish to make a more generic reference to legislation administered by DVA.
367	(1) (2)			As for s339, these clauses only mention the VEA	As per above
368	(1)				Noted that the delegation to Repatriation Commission powers is still to be drafted. The DVA legislation reform may require that the delegation be to the Military Rehabilitation and Compensation Commission
368	(2)			Reference to VEA only	This may need to be changed