RSL AUSTRALIA

VETERANS' ENTITLEMENTS, TREATMENT AND SUPPORT (SIMPLIFICATION AND HARMONISATION) BILL 2024

RSL submission to the Senate Foreign Affairs, Defence and Trade Legislation Committee

July 2024

RSL Australia

SUBMISSION DETAILS

This submission is made on behalf of RSL Australia with the agreement of the State and Territory Branches, which have each undertaken consultation with their membership.

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TABLE OF CONTENTS

INTRODUCTION

The Returned & Services League of Australia (the RSL) was formed in 1916 and has evolved into the nation's largest Ex-Service Organisation (ESO). RSL Australia is a federation of its independent State and Territory Branches, which are comprised by their Sub-Branches, representing the more than 147,000 members of the league. The network of RSL State and Territory and Sub-Branches provides a continuum of services and supports to current and former Australian Defence Force members and their families in metropolitan, regional and rural Australia.

The majority of paid and volunteer ATDP (Advocacy Training and Development Program) accredited advocates are part of the RSL workforce, and we have long advocated for the simplification of veterans' rehabilitation and entitlements legislation to make it simpler and quicker for veterans and eligible family members to access entitlements and benefits to support their health and wellbeing.

The RSL strongly supports the Australian Government's commitment 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.

The Committee will be aware that this reform is a significant undertaking that will impact current and future veterans. As such the RSL strongly supports the 'grandfathering' of existing benefits under the VEA and the DRCA; the aim of which is to ensure that no Department of Veterans' Affairs (DVA) client will lose existing entitlements. We also support the proposed timeframe and are preparing for the 1 July 2026 implementation date.

The RSL is pleased to share with the Committee its positive experiences of engaging with the Department of Veterans' Affairs (DVA) as this significant work has progressed. Although timeframes have been tight, the Department is to be commended for its proactive consultation with the veteran community, and the RSL has also benefitted from the efforts of DVA senior leadership and staff who have made the time to respond to the many specific questions and queries we have put to the department.

The RSL welcomes the Committee's inquiry into the *Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024 [Provisions]* (the Bill) and the opportunity to further inform that work.

This submission builds on the RSL's April 2024 submission to the DVA's consultation on the Exposure Draft of the Veterans' Entitlement, Treatment and Support (Simplification and Harmonisation) Bill 2024. This makes specific recommendations about elements of the Bill before the Committee and has been further informed by the DVA's Consultation Report – Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024 – Exposure Draft (the Consultation Report).

This submission has been developed in consultation with members. Overall members are supportive of the general thrust of the Bill while acknowledging the challenges of contributing to

a complex legislative process. Section 1 of this submission addresses priority issues that the Minister for Veterans' Affairs has identified as being in scope of the legislative reform process. Section 2 identifies issues that RSL has been informed are out of scope for the legislative harmonisation process and that we submit are important to the Committee's inquiry. Appendix A presents information on a small number of issues which members have asked to be included in this submission.

SECTION 1: IN SCOPE ISSUES

This table below lists the items that the Minister for Veterans' Affairs' Consultation Report - Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024 – Exposure Draft) identifies as being within the scope of the legislative reform process. The table identifies those items which RSL supports and indicates when further information has been provided in this submission to inform the Committee's enquiry.

- **Definition of a veteran:** addressed in this submission because of concern as to whether a definition is to be included in the legislation.
- **Differences between amounts of funeral allowances under the different Acts:** supported with no further commentary.
- **Differences in entitlements to Veteran Home Care (VHC) and Household Services and Attendant Care:** supported with additional information.
- **Introduction of presumptive liability provisions to streamline claims processing:** supported with additional information.
- **Addition of Additional Disablement Amount (ADA) that addresses concerns about extremely disabled veterans who reach retirement age:** supported with additional information.
- **Transition from DRCA incapacity payments to MRCA incapacity payments:** supported with no further commentary.
- **Changing offsetting arrangements for MRCA incapacity payments with Disability Compensation Payment (DCP):** supported with additional information.
- **Gold Card eligibility for DRCA veterans:** supported with additional information.
- **Update of incorrect wording used in the legislation, e.g. Victoria Cross for Australia:** supported with no further commentary.
- **Expand MRCA eligibility to include all National Servicemen:** supported with no further commentary.
- **The unique arrangements for ADF Firefighters and F-111 Deseal/Reseal workers will be transferred into the MRCA:** supported with no commentary.
- **Harmonising travel for treatment under the three current Acts:** supported with additional information.
- **Responding to concerns about lump sum payments for vulnerable veterans:** supported with additional information.
- **The MRCA does not sufficiently recognise the various caring arrangements that may apply in regard to section 80 payments:** supported with additional information.

(i) Including the definition of a veteran in the Bill

The RSL's April 2024 submission to the DVA's consultation on the Exposure Draft of the Veterans' Entitlement, Treatment and Support (Simplification and Harmonisation) Bill 2024 advocated for a definition of veteran to be included in the Bill.

In response, DVA advised that consideration would be given to updating the draft legislation accordingly, for example, to include a cross-reference to the definition found in the *Australian Veterans' Recognition (Putting Veterans and Their Families First) Act 2019*. DVA also shared that the definition would have no effect on the operation of the Bill as the term 'veteran' is not used in the MRCA.

The DVA website informs that since consultation was undertaken in early 2024 a number of changes have been made which include that a definition of veteran has been inserted into the MRCA.[1] However, the RSL has been unable to locate a definition of a 'veteran' within the Bill. It appears that the word 'veteran' has been largely removed from the Bill and DVA clients are now referred to as 'a person' or 'the person'.

The RSL expresses its concern that the proposed legislation enabling members and former members of the ADF to access DVA benefits identified the necessary qualifications of various categories of 'persons' who have served in the ADF. It makes no mention of 'veterans'. The view of the RSL is that the word 'veteran' should be visible and should be inclusive, as identified in the definition in Section 4 of the Australian Veterans' Recognition (Putting Veterans and their Families First) Act 2019. The legislation should then be clear on the 'qualifications that these 'veterans' would need to have in order to access the various benefits available.

The RSL notes that including a definition of a veteran is a usual feature of existing Australian legislation and that there are currently two distinct definitions:

- Section 4 of the *Australian Veterans' Recognition (Putting Veterans and their Families First) Act 2019* defines a veteran as
    - *Permanent Forces* has the same meaning as in the *Defence Act 1903*.
    - *Reserves* has the same meaning as in the *Defence Act 1903*.
    - *Veteran* means a person who has served or is serving, as a member of the Permanent Forces or as a member of the Reserves.[2] [3]

- Section 5C of the *Veterans Entitlements Act 1986* (VEA) defines a veteran as
    (a) a person (including a deceased person):
        (i) who is, because of section 7, taken to have rendered eligible war service;
        (ii) (ii) in respect of whom a pension is, or pensions are, payable under subsection 13(6); and
    (b) in Parts III and VIIC also includes a person who is:
        (i) a Commonwealth veteran; or
        (ii) an allied veteran; or

[1] The Bill – what it is and what it will do | Department of Veterans' Affairs (dva.gov.au) accessed 25 July 2024
[2] Federal Register of Legislation - Australian Veterans' Recognition (Putting Veterans and Their Families First) Act 2019 accessed 25 July 2024
[3] To be classified as a veteran under the VEA, a person must have 'eligible war service' as defined in Section 7 of the VEA. Section 7 referred to in s5C(a)(i) (VEA) above describes ADF personnel who were deployed to serve in war or war-like environments. That is, the term veteran was only applicable to those members and former members of the ADF who served in war-like environments.

(iv) an allied mariner.[4]

The RSL asks the Committee to note that the term 'veteran' is defined in legislation in many countries, including all of the five-eyes countries. Although the actual wording of these definitions varies, veterans are recognised as persons who have served in the defence forces of their respective countries:

- **United States of America** – anyone who served in the active military, naval, or air service and was discharged or released under conditions other than dishonorable.[5]

- **Canada** – **a**ny former member of the Canadian Armed Forces who successfully underwent basic training and is honourably discharged.[6]

- **United Kingdom** - anyone who has served for at least one day in His Majesty's Armed Forces (Regular or Reserve) or Merchant Mariners who have seen duty on legally defined military operations.[7]

- **New Zealand** –the current legal definition is restrictive and relates more closely to the current Australian VEA definition. However, it is noted that the Veterans' Advisory Board (NZ) has recommended that all who have served should be considered veterans and should receive services and support on the basis of need if they have been injured or made ill by their service in the armed forces, irrespective of where that service took place.

The RSL advocates that the Bill must necessarily include a definition of 'veteran' to avoid any confusion that may occur when the VEA transitions to the revised MRCA. To be classified as a veteran under the VEA, a person must have 'eligible war service' as defined in Section 7 of the Act. In brief summary, Section 7 referred to in Section 5C (above) describes ADF personnel who were deployed to serve in war or war-like environments. That is, the term 'veteran' is only applicable to those members and former members of the ADF who served in war or war-like environments. The RSL asks the Committee to enquire into the possibility that without an inclusive definition of a veteran in the Bill, then DVA will be conflicted in being able to continue to support the substantial number of current and former members of the Australian Defence Force (ADF) who do not meet the restrictive terms of Section 7 of the VEA.

A potential way forward would be for the Bill to include the same definition of veteran as the *Australian Veterans' Recognition (Putting Veterans and their Families First) Act 2019*, and to also include additional VEA provisions to ensure access to benefits that require 'eligible war service' are retained.

It is recognised that DVA has commendably taken action to make MRCA provisions potentially accessible for all persons who have served in the ADF. And that the benefits provided by the department are not limited to those who had war or war-like service.

It is critical that the contribution and sacrifice of those who did serve in war or war-like environments continues to be recognised. This recognition takes the form of potential eligibility for Income Support benefits, a more beneficial standard of proof when considering compensation claims and the different Permanent Impairment factors that apply to warlike/non-warlike service compared to peacetime service. The definition of the various types of service is found in Part 2 of the Act.

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[4] Federal Register of Legislation - Veterans' Entitlements Act 1986 accessed 27 July 2024
[5] Title 38 Code of Federal Regulations - Web Automated Reference Material System (va.gov) accessed 30 July 2024
[6] Home - Veterans Affairs Canada accessed 30 July 2024
[7] Office for Veterans' Affairs - GOV.UK (www.gov.uk) accessed 30 July 2024

Submission to the Committee – definition of veteran

The RSL submits that the Bill must necessarily include a definition of 'veteran' and provisions for that definition to be included in Section 5 of the revised MRCA as per the definition in the Australian Veterans' Recognition (Putting Veterans and their Families First) Act 2019.
The RSL rejects any action to exclude the word 'veteran/s' from the Bill and any future Australian legislation. The identification, recognition and acknowledgement of the unique nature of military service is central to the health and wellbeing of current and former serving ADF members, to informing defence and veteran policy and action, and it is part of Australia's DNA.

The MRCA must, at a minimum, enable a clear cross reference to Section 4 of the Australian Veterans' Recognition (Putting Veterans and their Families First) Act 2019 to ensure 'Veterans', their families and the community has a clear understanding of DVA's client base.

(ii) Differences in entitlements to Veteran Home Care (VHC) and Household Services and Attendant Care

The Consultation Report (p.10) notes that the Bill provides eligibility for the Household Services and Attendant Care program to all veterans who are unable to manage household tasks due to their service-related conditions from 1 July 2026. It also increases the maximum value of services to $573.61 per week.

The RSL supports the provision for veterans and their families to have access to the more generous Household Services and Attendant Care provisions (Division 3 of the Bill) from 1 July 2026 and that all claims will be determined under the Military Rehabilitation and Compensation Act (MRCA) after that date. It is noted that VHC will remain available to existing VEA clients.

The annotated copy of the revised MRCA legislation, which has been made available to the RSL, states at Section 214(1)(c) that a claim for household services must be made under Section 319:

S214 Compensation for household services

(1) The Commonwealth is liable to pay weekly compensation for household services provided to a person if:

(a) the Commission has accepted liability for a service injury or disease of the person; and

(b) the person obtains household services that he or she reasonably requires because of the injury or disease; and

(c) a claim for compensation in respect of the person has been made under section 319.

The explanatory note at s214 states:

Note: The Commission is taken to have accepted liability for an injury or disease in certain circumstances (see section 24A).

The explanatory note at S24A states:

Note: This means that the person is not required to make a claim under section 319 for acceptance of liability for the injury or disease and the Commission is not required to reassess liability for the injury or disease

The RSL notes that the provisions of Section 217 Compensation for attendant care services are similar in that they require a claim being made under Section 319.

Submission to the Committee – to review wording in the revised MRCA

To provide clarity to these provisions, the RSL submits that the wording of Section 214(1)(c) and Section 217(1)(c) be reviewed with consideration given to revised wording to the following effect:

(c) a claim for compensation in respect of the person has been made under section 319 unless the Commission is taken to have accepted liability under S24A.

The RSL notes that The Veterans Home Care (VHC) program that is available under the VEA provides a small amount of practical help to support eligible veterans and bereaved partners to continue living independently in their homes for longer. Access is based on assessed needs and is not limited to services required due to accepted conditions.

DVA advises that the types of services provided under a Home Care Package depend on the specific needs of the eligible recipient and will be coordinated for them by their home care provider. Services can include personal care, support services such as washing, ironing and gardening, and clinical care such as nursing and podiatry.

The wording of the advisories[8] appears to indicate that after the 1 July 2026 implementation date the VHC program will only be available to those veterans who were already accessing it. Any claims post 1 July 2026 will be considered under Sections 214 and 217.

Alternatively, the DVA's VHC and HHS/AC Benefits Comparison Table[9] suggests that it may be possible for individuals to access both programs. 'Veterans may be eligible under both programs. Both programs can be accessed at the same time however there can be no duplication of services.'

The RSL understands that Legacy Australia has identified that eligible bereaved partners can only qualify for VHC as they cannot satisfy the Household Care and Attendant Care requirement that HHC and AC services are provided in relation to service-related conditions.

Submission to the Committee – continued access to VHC

The RSL advocates that DVA should continue access to the Veterans' Home Care (VHC) Program for those veterans who do not satisfy the provisions of Sections 214 and/or 217 of the revised MRCA in relation to their service-related conditions and hence do not qualify for either Household Services or Attendant Care – but have a demonstrated need for support services in their homes.

Whilst the RSL acknowledges the intention to simplify the arrangements and multiple schemes that exist across the current mix of veterans' legislation, simplification must not be the determinant of veterans and their families. The RSL's concern is that the loss of access to basic home assistance under the VHC for those veterans who do not qualify for Household Services and Attendant Care under the revised MRCA will be detrimental to their independence and will hasten the requirement for residential aged care.

[8] How do the changes impact you? | Department of Veterans' Affairs (dva.gov.au) accessed 30 July 2024
[9] VHC and HHS/AC Benefit Comparison Table (dva.gov.au) accessed 25 July 2024

The RSL also requests that consideration be given to a review and uplift of VHC benefits to reflect the actual cost of service provision more accurately.

(iii) Introduction of presumptive liability provisions to streamline claims processing

The RSL supports the proposed new sections 27A(1) and (2). These set out the substantive provisions to enable the Commission to accept claims for specified injuries and diseases on a presumptive basis, without the need to identify the particular contributing factor to establish a causal link to service on a case-by-case basis.

Section 27A is consistent with the current approach, which is successfully in force through subsections and 7(1) and 7(2) of the current DRCA, which enables the Minister to make determinations which specify diseases that can be presumed to have been contributed to, by the individual's employment. Cohorts covered by the existing provisions include Point Cook ADF firefighters, other ADF firefighters, and aircraft maintenance workers attached to the F-111 Deseal/Reseal Program at RAAF Base Amberley for particular employment periods.

> ***Section 27A Presumption that certain injuries and diseases are attributable to defence service.***
>
> *Injuries taken to be attributable to defence service*
> *(1) If:*
> *(a) a person has sustained an injury; and*
> *(b) the injury is of a kind specified in a determination under subsection (3) to be an injury attributable to defence service of a kind specified in the determination; and*
> *(c) the person was, at the time the injury was sustained, a member rendering defence service of that kind;*
>
> *the injury is, for the purposes of paragraph 27(b), taken to be attributable to defence service rendered by the person while a member, unless the contrary is established.*
>
> *Diseases taken to be attributable to defence service*
>
> *(2) If:*
> *(a) a person has contracted a disease; and*
> *(b) the disease is of a kind specified in a determination under subsection (3) to be a disease attributable to defence service of a kind specified in the determination; and*
> *(c) the person was, at any time before the disease was contracted, a member rendering defence service of that kind;*
>
> *the disease is, for the purposes of paragraph 27(b), taken to be attributable to defence service rendered by the person while a member, unless the contrary is established.*
>
> ***Determination by the Commission***
> *(3) The Commission may, by written determination, specify the following:*
> *(a) one or more kinds of injury that are attributable to one or more kinds of defence service;*
> *(b) one or more kinds of disease that are attributable to one or more kinds of defence service.*
>
> *(4) Without limiting subsection (3), kinds of defence service may be specified by*

reference to the period during which the service was rendered.

(5) To avoid doubt, a determination under subsection (3) may specify a kind of injury, or a kind of disease, irrespective of whether a Statement of Principles is, or has been, determined in respect of that kind of injury or that kind of disease.

Variation or revocation of determination
(6) The Commission may, by written determination, vary or revoke a determination under subsection (3).

Determination etc. must be approved by the Minister
(7) A determination, and any variation or revocation of a determination, under subsection (3) has no effect unless the Minister had approved the determination, variation or revocation in writing.

Legislative instruments
(8) A determination, and any variation or revocation of a determination, under subsection (3) prepared by the Commission and approved by the Minister is a legislative instrument made by the Minister on the day on which the determination, variation or revocation is approved.

The RSL notes that Section 27(3) enables the Commission to make a written determination specifying the types of injuries or diseases and 27(4) makes similar provisions in relation to the period during which service was rendered.

Item 140 of the Bill inserts a new section 340A to provide that in a reconsideration or review of a decision where liability had been accepted on the basis of presumptive liability under subsections 27A(1) or (2), the Commission, the Veteran Review Board (VRB) or the Tribunal must apply such a current presumption determination, but that there is no accrued right or obligation from a determination that is no longer in force.

Item 142 inserts new paragraph 345(2)(aa) to provides that a determination by the Commission under subsection 27A(3), which prescribes the conditions and kinds of defence service for the purposes of a presumptive liability determination, is not an original determination and is therefore not reviewable. Any determination must be approved by the Minister and is subject to disallowance by Parliament.

Submission to the Committee – presumptive liability claims

The RSL submits that the process for making a determination under S27A(3) should be transparent and identify the evidence on which it relies to make such a determination.
It is noted that s345(2)(aa) provides that a determination by the Commission under S27A(3) cannot be reviewed. The RSL submits that this does not accurately or fairly reflect the veteran reality and asks the Committee to consider recommending amendments in the Bill to enable a right of review for these types of decisions.

(iv) Addition of ADA that addresses concerns about extremely disabled veterans who reach retirement age

The RSL supports this amendment as described in the Explanatory Memorandum:

***Part 4** - **Additional disablement amount.** This Part introduces the ADA into the*

MRCA, which is modelled on the EDA and the SRDP. The new payment will ensure there is equivalent coverage for veterans who are prevented from accessing EDA due to implementation of the single-ongoing Act model from 1 July 2026. Dependents of deceased veterans who were ADA-eligible will have access to a Veteran Gold Card, wholly dependent partner payment, and if applicable, compensation and access to MRCAETS assistance for an eligible young person.

The Explanatory Memorandum identifies the offsets that will apply to the payment of ADA:

***Subsection 220C(2**) provides the first offset to be made against the ADA is for permanent impairment compensation under Part 2, excluding payments in respect of eligible young persons, for legal advice, or energy supplement.*
***Subsection 202C(3**) sets out that the ADA is offset dollar for dollar by any periodic permanent impairment payment the person is receiving*
***Subsection 202C(4**) sets out that the ADA is offset by the amount of the periodic payment that the person would be receiving had payment of permanent impairment compensation under this Act not been precluded because the person brought action against the Commonwealth (section 389) or recovers third party damages (section 402).*
***Subsection 202C(5**) provides that the second offset is in respect of Commonwealth-funded superannuation pensions or lump sums the person has received or is receiving for invalidity or retirement.*
***Subsection 202C(6)** provides that the superannuation offset for ADA is 60 cents for each dollar of superannuation, in recognition of the ADA being non-taxable, whereas superannuation payments are taxable.*
***Subsection 202C(7**) and a note at the end of that subsection are inserted to clarify that in addition to the section 202C offsets, ADA may be reduced or further reduced for the purposes of recovering an overpayment, as set out in subsection 415(4).*

The RSL believes that offsetting provisions are consistent with other offsetting provisions within the legislation and the RSL has no submission on this matter. The RSL notes that the existing 3152 EDA recipients (DVA March 2024 Stats) will not be affected by this change.

The RSL welcomes the necessary updates to the Social Security Act 1991 and the Income Tax Assessment Act 1997 to take account of the new payment of ADA and the compensation payments and support schemes that have been shifted from the VEA to the MRCA. '*The consequential amendments will ensure the same policy for the payments (and payments of a similar nature) currently listed is applied to the tax and means test treatment for payments issued under the single ongoing Act.'*

Submission to the Committee – the addition of ADA

The RSL supports the proposed addition to the payments available under the MRCA.

(v) Changing offsetting arrangements for MRCA incapacity payments with Disability Compensation Payment (DCP)

The RSL acknowledges concerns expressed by other stakeholders regarding offsetting arrangements as being:

- Offsetting the full amount of DCP by any incapacity payments received, which amounts to offsetting a compensation payment (DCP) that is effectively made up of both economic loss and non-economic loss compensation payments by incapacity payments, which is purely compensation for economic loss.

- Offsetting Special Rate Disability Pension (SRDP) and ADA by Commonwealth Superannuation as that disadvantages future SRDP/ADA recipients who would have received Totally and Permanently Incapacitated (TPI) / EDA payments under the VEA

The RSL is aware of DVA advice that both SRDP and ADA are modernised versions of TPI and EDA and are designed as a safety net payment. The inclusion of Commonwealth superannuation reflects the level of financial support now available to veterans.

Submission to the Committee – offsetting arrangements for MRCA incapacity payments

The RSL has no further submission to make on this topic.

(vi) Gold Card eligibility for DRCA veterans

The Facts Sheet prepared by DVA - Veterans' Healthcare Cards Factsheet (dva.gov.au) advises:

> *If you are a veteran with high levels of impairment under the DRCA, you may become eligible for the veteran Gold Card, subject to meeting the eligibility criteria under the MRCA.*
>
> *If you are a dependent of a deceased DRCA veteran with a claim lodged after commencement, you may become eligible for a Gold Card. DRCA dependents who have previously received compensation under the DRCA will not receive a Gold Card retrospectively.*
>
> *There will be no change to how treatment is provided for veterans with either White or Gold Veterans' Healthcare cards.*
>
> ***Who will benefit?***
> *DRCA veterans with high levels of impairment may, for the first time, be able to access a MRCA Gold Card under new arrangements. They will, however, require acceptance of a new claim for initial liability under the Act from 1 July 2026 or for a previous impairment to have worsened by at least five impairment points as a trigger for eligibility/assessment under the MRCA.*

The RSL supports the provision of Gold Cards to eligible DRCA veterans and dependents but asks the Committee to address the eligibility requirement concerning ***'to have worsened by at least five impairment points'***. The RSL made submissions in relation to the draft legislation because it does not appropriately reflect the reality of current veterans living with impairment who receive compensation under the DRCA or VEA, nor will it put in place appropriate conditions for their equitable treatment under the reformed MRCA. More detail is provided below under the topic 'A DRCA/VEA clients accessing benefits under MRCA.'

Submission to the Committee – Gold Card eligibility for DRCA veterans

The RSL strongly supports the provision of Gold Card to eligible DRCA veterans and dependents.

The RSL's April 2024 submission to the DVA's consultation on the Exposure Draft of the Veterans' Entitlement, Treatment and Support (Simplification and Harmonisation) Bill 2024

identified that there is a requirement across various sections of the VETs that persons who have existing entitlements under the VEA, DRCA, or both, need to establish liability for another condition or establish a deterioration of existing accepted conditions before they can access the entitlements that are available under MRCA.

Section 281(3) states:

(3) If the person is, or has been, paid compensation under the DRCA in respect of an injury or disease (the original condition), then the person is only entitled to treatment under subsection (1) if:

(a) the Commission has accepted liability for another injury or disease of the person (other than because of the operation of section 24A); or

(b) the Commission is satisfied that:
(i) the person has suffered additional impairment as result of another injury or disease or as a result of a deterioration in the original condition; and
(ii) the increase in the person's overall impairment constitutes at least 5 impairment points.

That is, the increase in the person's overall impairment has to be at least 5 impairment points. This requirement is applied in the following Sections - 80, 212, 220A, 258 and 281.

The Explanatory Memorandum (p.5) to the Bill includes that the MRCA assessment methodology is a 'whole-of-person impairment', with the impairment ratings for all of the person's conditions combined using a legislated formula, rather than each condition being assessed individually. For additional compensation to be paid, there is a requirement for an increase in the overall impairment rating of at least five points from the previous assessment.

Achieving an overall impairment increase is reliant on the GARP M Combined Values Chart. As an example of the inequity, a person on an existing 10 points impairment rating needs a further 10 points to achieve an overall increase of 5. A person on 80 points requires an additional 23 points to reach that overall increase of 5. In simple terms - the more impaired a veteran is, the higher the hurdle he/she has to jump.

The RSL notes the Consultation Report prepared by DVA cites the inequities across the tri-Act system as one of the major causes for concern (46 respondents commented specifically). The submissions called out the need for 'entitlement equity'.

The RSL's April 2024 submission further advocated that in considering 'equity', and that the overall intent of this aspect of the legislation should be to move active clients into the new legislation as seamlessly as possible. The RSL affirms its original submission that this requirement should be reconsidered, and the criteria should be rewritten to state that the increase in the person's overall impairment constitutes at least 5 impairment points or that there is a 5 impairment point increase in the assessment of any single condition which has been accepted under the VEA or DRCA.

Submission to the Committee – DRCA/VEA clients accessing benefits under MRCA

The RSL asks the Committee to review this particular provision in the Bill as it sets out the future treatment of veterans who are experiencing prolonged periods of vulnerability. In undertaking its considerations, the RSL further asks the Committee to be mindful of the intent to move active clients into the new legislation as seamlessly as possible for both the DVA and the

veteran recipient. As such, the RSL submits that the criteria be rewritten to state that the increase in the person's overall impairment constitutes an increase of at least 5 impairment points, or that there is a 5 impairment point increase in the assessment of any single condition which has been accepted under the VEA or DRCA – whichever is the higher.

The RSL notes the absence of legislative guidance in relation to the conversion of historical PIG assessments to GARP M assessments to enable an increase in impairment to be established. The RSL calls on DVA to develop and establish a process within GARP M so that the conversion calculation for VEA/DRCA is both transparent and appealable.

Submission to the Committee – converting VEA/DRCA assessments made under the Permanent Impairment Guide (PIG) to MRCA assessments under GARP M

The RSL asks the Committee to consider making a recommendation that GARP M tables are amended, and a process be developed to support this arrangement.

(vii) Harmonising travel for treatment under the three current Acts

The comparison table provided by DVA is helpful - Private Vehicle Travel for Treatment Arrangements - Benefit Comparison (dva.gov.au)

DVA advise in the Consultation Report that the harmonisation of private vehicle travel for treatment arrangements will include a standard reimbursement amount and the removal of the minimum distance requirement.

Submission to the Committee – *travel for treatment*

The RSL supports the harmonisation of travel for treatment arrangements. The RSL is aware that, because of current gaps in the healthcare workforce across the country, veterans, like other Australians, are facing increasing difficulties in accessing timely supports and services when and where needed. The clarification of travel provision to enable veterans to access treatment are critical supports and harmonisation of these arrangements is long overdue.

(viii) Responding to concerns about lump sum payments for vulnerable veterans

The RSL notes the comments by DVA in the Consultation Report that:

> *Responding to concerns of lump sums for vulnerable veterans Views were mixed in regard to the potential harm caused by providing lump sums to vulnerable veterans. While it is acknowledged that lump sums can be problematic, people were also of the view that there was an entitlement to receive the compensation as a lump sum if so desired, regardless of circumstance. The policy settings around the issue of trusteeship and decision-making support was a regular theme. In their submission, the RSL highlighted "its concern about the known negative health implications for some veterans with a diagnosed addictive condition (or other severe mental health condition) when they*

receive a large lump sum Permanent Impairment compensation payment." DVA is currently reviewing and developing policy in relation to trusteeships and at-risk clients. The trustee provisions from the VEA have been replicated in the proposed enhanced MRCA. Based on feedback received during consultation, the Bill introduces an instrument making power that will enable the commission to determine circumstances where a veteran must receive financial advice. In conjunction with this, policy will be developed to outline the Commission's approach to encouraging vulnerable veterans to seek financial advice when available.

The RSL is pleased to note that this issue is regarded as being within the scope of the legislative harmonisation process. DVA advises that trustee provisions from the VEA have been replicated in the MRCA. DVA also advised the RSL that consideration is being given to amending the Bill to introduce an instrument making power that will enable the Commission to determine circumstances where a veteran must receive financial advice. In conjunction with this, a policy will be developed to outline the Commission's approach to encouraging vulnerable veterans to seek financial advice.

While the RSL supports this proposed action, the experience of the RSL's Compensation and Wellbeing Advocates guides the RSL to ask the Committee to consider further appropriate legislative provisions for very vulnerable veterans who will receive lump sum payments from DVA. The RSL's April 2024 submission to the DVA's consultation on the *Exposure Draft of the Veterans' Entitlement, Treatment and Support (Simplification and Harmonisation) Bill 2024* outlines two potential legislative options.

Submission to the Committee – treatment of lump sum payments for vulnerable veterans

The RSL requests the Committee to note concerns about the support needs of vulnerable veterans who receive lump sum payments and to further consider the options outlined in the RSL's April 2024 submission. (A copy is included in paragraph C of Appendix A)

(ix) Recognising care arrangements in regard to Section 80 payments

The submissions made by Legacy Australia and KCI Lawyers/Vietnam Veterans' Federation are noted.

Submission to the Committee – *Section 80 payments*

The RSL is pleased to note that Section 80 EYP payments will include primary carers.

SECTION 2: FURTHER ISSUES FOR CONSIDERATION

(i) Vocational Rehabilitation

The RSL's April 2024 submission to the DVA's consultation on the *Exposure Draft of the Veterans' Entitlement, Treatment and Support (Simplification and Harmonisation) Bill 2024* (p.10) advocated that '*The new legislation must showcase to the community not all veterans are suffering from complex mental health and physical disability, and that these veterans live in communities all around Australia. The new legislation must work towards building a pre-employment transition program that is a whole of defence community best practice model, allowing veterans and their families a successful and purposeful transition into civilian workforces.'*

While the scope of the Bill to harmonise the three relevant Acts limits opportunities to make meaningful changes to the existing DVA Rehabilitation Program, the RSL asks the Committee to consider opportunities provided through the harmonisation process to leverage the Bill to increase transparency and accountability of the DVA program.

Submission to the Committee – vocational rehabilitation amendments to Section 41(1)

The RSL submits that the definitions contained in Section 41(1) be amended to include wording to the following effect:

(h) provide access to the Employer Incentive Scheme (EIS) as defined in the Veterans' Affairs Legislation Amendment (Omnibus) Act 2016
(i) provide access to work trials to assess their ability to undertake employment and provide them with valuable workplace skills.

The RSL expects that by including reference to these services in the legislation it will enable clear and visible authority to provide the services, where appropriate.

(ii) Aged Care access to treatment and allied health services

The RSL's April 2024 submission to the DVA's consultation on the *Exposure Draft of the Veterans' Entitlement, Treatment and Support (Simplification and Harmonisation) Bill 2024* (p.27) shared information about veterans who experienced a step-down in care because they had entered residential aged care facilities or become recipients of in-home aged care. It is unacceptable that, at times of increased vulnerability, veterans are experiencing a lesser standard of care. The RSL submits that legislation needs to introduce the requirement for all Aged Care providers, residential and in-home carers, to consistently ensure that veterans and other eligible persons have access to the range of treatment services that are available to them, under DVA legislation.

Submission to the Committee – provision of aged care services (Section 284A)

The RSL ask the Committee to consider the merits of a legislative instrument to ensure that all eligible veterans and widow(er)s who are accessing aged care services (residential or home-

based care) are identified as a specific class of person with a specific need (section 284A(1)9d) of the VEA).

The RSL additionally asks the Committee to consider the provisions of Section 287 and to inquire about the measures required to provide consistent access to aged care services.

(iii) Compensation for Dependents – and the use of the term 'wholly dependent partner'

The Consultation Report identifies that the definition of dependents and wholly dependent partners contained within the MRCA is an ongoing legislative and policy issue.

The RSL's April 2024 submission to the DVA's consultation on the *Exposure Draft of the Veterans' Entitlement, Treatment and Support (Simplification and Harmonisation) Bill 2024* (p.29) asked for a review of the use of the term 'wholly dependent partner'. This request was informed by feedback provided by partners of veterans who shared that they considered this to be a deficit labelling of their relationship to a veteran.

The RSL holds the view that the term 'wholly dependent partner' is not consistent with current or likely future societal concepts regarding personal relationships. It also fails to reflect the care and support dynamic that often exists between a veteran and their partner. The RSL supports the call to change the term 'wholly dependent partner'.

The Consultation Report (p.15) includes acknowledgment that DVA has noted that 'there is not firm view in the veteran community as to the preferred language associated with this entitlement. Work is currently underway with the Veteran Family Advocate Commissioner and relevant stakeholders to resolve this matter. However, any changes will be subject to Government agreement'.

Submission to the Committee – use of the term wholly dependent partner

The RSL urges the Committee to consider the terminology used in the Bill to define the eligible partner of a deceased veteran. The RSL asks the Committee to enquire if DVA has consulted with the ESOs that have a major interest in this issue, namely Legacy, War Widows Guild and Partners of Veterans to resolve this concern. RSL suggests that the Committee directly seek the views of those organisations to inform its considerations on this issue.

(iv) Veterans Review Board – the amount payable in connection with obtaining relevant medical documentary evidence

The RSL's April 2024 submission to the DVA's consultation on the *Exposure Draft of the Veterans' Entitlement, Treatment and Support (Simplification and Harmonisation) Bill 2024* (p.30) states:

> *The RSL notes that the provisions of Section 170A of the VEA can now be found in Section 353P of MRCA. S353P(1) states that the Commonwealth may pay – 'an amount to cover the medical expenses incurred by the applicant in respect of relevant*

documentary medical evidence submitted to the Board for the purposes of the review.'

The amount that is payable is found in the Veterans' Entitlements Regulations, Reg 8A (as amended by the Veterans' Entitlements Amendment (Medical Expenses Reimbursement) Regulations 2017 (f2017l00317). The stated amount is $1000.00 and Form D7526 states – maximum amount of $1000 for obtaining such relevant documentary medical evidence for each condition may be reimbursed. The effective date for the increase from $467.50 to $1000.00 was 1 April 2017.

Submission - obtaining relevant medical documentary evidence for the VRB.

Given that the new section 353P will require regulations to be made to prescribe the amount for medical expenses in place of those currently prescribed by the Veterans' Entitlements Regulations, will the opportunity be taken to bring the amount in line with current amounts charged by medical specialists for medico-legal reports? The amount payable under the applicable instrument should be increased to more accurately reflect the current medico-legal costs.

In response to the RSL's submission, DVA advised that where medical advice is required to assist the VRB in its consideration of a matter under review, the VRB can request the necessary evidence from the Repatriation Commission or the Military Rehabilitation and Compensation Commission. This request can be made during the alternative dispute resolution activities by the Board.

The RSL acknowledges the response by DVA and agrees that the improved responsiveness of the VRB via the ADR process makes their proposal the preferred option.

However, S353P has been proposed in the Bill and use of the corresponding S170A under the VEA demonstrates that this is a provision which is a helpful alternative for some appellants.

Submission to the Committee – prescribed amounts for medical expenses

The RSL asks the Committee to consider amendments to the Bill to increase the prescribed amount for medical expenses so that it may continue to be a viable option when seeking evidence to support an appeal.

APPENDIX A

The following information has been provided by RSL members and has not been formally addressed by RSL Australia.

A) Proposal to have the Department of Defence involved in the initial liability process

The submission below is made by an experienced RSL advocate.

The proposed Act certainly addresses the Harmonisation aspect, however, there is more that could be done on the Simplification aspect.
We have experienced an increase in numbers over the past 12 months where service men and women are being discharged due to multitude of various conditions. A large percentage of these are being rejected due to non-compliance with factors of the relevant SOP's. This has been bought up directly with the Minister, he acknowledged the problem and stated, it is a difficult position to train the Defence force doctors.
This situation not only exacerbates the veterans mental Health (if any present) but also builds an ill found mistrust with the Department of Veterans Affairs.
The Productivity Commission Report identified the problem and offered a solution but at that time the Royal Commission into Defence and Veteran Suicide had not started and therefore the Productivity Report never got much support.
The proposal (para phasing) was that if the (Senior Department) Department of Defence identified a condition the (junior Department) Department was to act as their insurance company and pay compensation.
The proposal that was put forward to the Minister was:
If the Department of Defence identify a condition on a discharging member AND THE CONDITION IS CERTIFIED BY THE DEPARTMENT OF DEFENCE AS DEFENCE CAUSED, AND THUS DEFENCE ACCEPT LIABILITY, then any claim goes directly to Permanent Impairment Phase.

A simple question relating to each condition on acceptance of Liability or not. This document would be supplied to the DVA and veteran.
If Defence do not accept Liability the veteran should be offered the reasoning why. Example a member suffers an injury whilst on leave, the Service Chief has the responsibility to take all steps to get that veteran back to pre-injury condition. Subsequent treatment is not accepting liability, and any condition arising out of it would also not necessarily have liability accepted. Should conditions arise after discharge the normal claims process would operate.
The Veteran is aware that claims NOT deemed as liability accepted would be required to go through the DVA claims process and the need to comply with the relevant SOP.

Benefits
To DVA

1. Less primary claims going through the Initial Liability phase,
2. Less frustration and possible exacerbation of mental health conditions
3. Less frustration with the treating professionals dealing with initial liability, less justification of diagnostic protocols.
4. Starts to build a better connection between the DVA and Veterans.
5. Not as costly

To the Veteran

1. Has more information about his conditions and passage forward
2. Acknowledges the responsibility and accountability of the Department of Defence

3. Less frustration with the process
4. Knows the Permanent Impairment will determine the severity and lifestyle effects of their conditions.
5. Hopefully make the claims process far quicker.

This simple procedure change would give great benefit, reduce the angst and frustration to the veteran. Assist the complete claims process to speed up the process. Assist with service being provided to our veterans post service by the local treating professionals.

B) Extension of entitlements to enable a TPI embossed Gold Card to be issued to severely impaired DRCA client

The RSL notes the availability of Gold Cards embossed with the 'TPI' or 'EDA' to indicate that a DVA Gold Card holder falls within a specific category of severely disabled veterans.

The holders of these cards are eligible for additional Government and community concessions. This includes access to GST Tax concessions (for TPI only) and also additional State and Local Government concessions for both types of cards.

The RSL has been contacted by a member who has been assessed as severely disabled under DRCA (80+ points as reassessed under GARP) but is not entitled to the additional concessions that become available to VEA/MRCA veterans who have TPI/EDA embossed Gold Cards.

DVA have advised this veteran that the DRCA Incapacity Payments he was receiving do not qualify under the SRDP wording of the MRCA. The condition, currently accepted, which affects his workability is not a MRCA accepted condition'. Although the veteran did serve post 1 July 2004 and has some MRCA entitlement, his incapacitating conditions are accepted under DRCA.

Access to an SRDP assessment and hence a TPI embossed Gold Card has been denied this veteran. Since the decision was made the veteran has reached retirement age and hence will not satisfy the provisions of S199(ba) (i) or (ii) if the proposed legislation is passed.

S199 Persons who are eligible to make a choice under this Part

(1) A person is eligible to make a choice under this Part if the Commission is satisfied that the person meets the following criteria (the eligibility criteria):

(a) at least one of the following applies:

(i) the person is receiving compensation worked out under Division 2 of Part 4 as a result of one or more service injuries or diseases;

(ii) the amount, under section 126, of the person's compensation for a week, as a result of one or more service injuries or diseases, is nil or a negative amount;

(iii) the person has been paid a lump sum under section 138 in respect of the person's incapacity for work as a result of one or more service injuries or diseases;

(b) as a result of the injuries or diseases, the person has suffered an impairment that is likely to continue indefinitely;

(ba) either:

(i) the person is not pension age or older; or

(ii) the person is pension age or older but section 121 applies to the person; (marked-up)

(c) the Commission has determined under Part 2 that the person's impairment constitutes at least 50 impairment points;
(d) the person is unable to undertake remunerative work for more than 10 hours per week, and rehabilitation is unlikely to increase the person's capacity to undertake remunerative work.

Had the veteran's incapacitating condition been accepted under MRCA at the time of his claim, it is likely that the provisions of S199 would have been satisfied and an assessment would have followed.

This veteran is not seeking any monetary gain except to be able to avail himself of the additional concessions.

This veteran has made a submission to the Committee for consideration. This submission contains more of his personal circumstances.

The RSL holds the view that there is merit in considering ways to further 'harmonise' the benefits available to those veterans who will be able transfer across to MRCA at the proposed implementation date.

The RSL requests that the Committee further explore legislative solutions to enable current DRCA veterans who have been assessed as severely impaired to be given consideration in relation to the additional benefits afforded by having access to a TPI embossed Gold Card.

C) Military Rehabilitation and Compensation Act 2004 Section 432 - Trustees for persons entitled to compensation.

RSL advocates have noted instances where veterans have used all their money to support their addiction – or to 'buy' favour with their friends and that this often leads to very negative outcomes. Similarly, the Royal Commission into Defence and Veteran Suicide has heard evidence of veterans with gambling and drug addiction problems squandering large lump sum compensation payouts, with one veteran detailing how he lost over $500,000 within 12 months of receiving it, including spending $300,000 on illicit drugs.

The concept of protections being in place to protect a vulnerable person's financial affairs is neither new, novel or contentious with courts long having had the power to manage compensation payouts made to persons who by reason of impairment or disability are unable to manage their own affairs or at risk of exploitation.

More specifically, the issue of some veterans being incapable of managing their financial affairs by virtue of their service injuries would appear not to be a new one, with regulation 9 of the *Australian Soldiers' Repatriation Regulations 1920* (Cth) providing for the Repatriation Commission to appoint a trustee to manage the affairs of veteran where the veteran was "of unsound mind" or in such other circumstances where the Commission thinks fit.

Similarly, current veteran legislation contains provisions that provide for a trustee to be appointed to manage a veteran's financial affairs as per below:

- *Veterans' Entitlement Act* - Section 202 and the.
- *Safety, Rehabilitation and Compensation (Defence-Related Claims) Act* 1988

- Section 110.

- *The Military Rehabilitation and Compensation Act 2004 - Section 432 – which states –*

Trustees for persons entitled to compensation.

(1) This section applies if:

(a) a person who is entitled to be paid compensation under Chapter 3, 4, 5 or 6 is under a legal disability; or

(b) if such a person is under 18--there is no person who has the primary responsibility for the daily care of that person.

(2) The Commission may, in writing, appoint the Commonwealth or any other person to be the trustee of the payments of compensation under this Act.

That is, for Section 432 of the MRCA to apply, the person must be under a 'legal disability'.

As 'legal disability' must be determined under State and Territory guardianship legislation by a relevant State court or tribunal, it could easily be a distressing and confronting process for a veteran who is already identified as having mental health issues. Added to this would be the cost of court or tribunal processes and who would be responsible for these costs.

RSL welcomes the potential for consideration of legislation in the proposed MRCA reform package to include safeguards for those veterans who are about to receive large lump sum compensation payments but are deemed to be unfit to manage their financial affairs because of severe, service-related mental health issues.

RSL agrees with the submission of former Chairman of Legacy Australia, Mr Richard Cranna OAM, who, in evidence to the Royal Commission into Defence and Veteran Suicide, recommended that mandatory financial counselling be a precondition of any lump sum payment. Currently DVA policy is that a veteran may receive advice from a legal practitioner or a licensed financial adviser. RSL submits that this policy should be amended to require a veteran who falls within the guidelines which will be detailed further below, to attend mandatory financial counselling as a precondition of any lump sum payment.

The issue of trusteeship is contentious, and following considerable discussion, the RSL is putting forward two options for consideration.

The first option provides for legislative measures that could be enacted to provide a pathway for at risk veterans to have some financial protection without the need for a formal trusteeship.

The second option considers the process to put in place a trusteeship for 'at risk' veterans where there are circumstances in which a trusteeship would be in the best interest of the veteran.

Option 1 – a pathway for financial protection

For a veteran to be considered by DVA as needing 'financial protection', the veteran must meet **all** of the following criteria:

- The veteran is entitled to receive a permanent impairment payment for a service-related serious mental health condition and substance abuse and/or addiction related condition/s.
- The veteran is assessed as having 60 or more impairment points.

- A medical practitioner attests that the veteran is incapable of managing his/her finances.
- The veteran runs the risk of mismanaging the money being paid to the extent that their resultant behavior may become a risk to themselves or their family.

Veterans who meet the above criteria would almost certainly have come to the notice of the DVA Coordinated Client Support Team and they would likely have some history of issues/behaviors etc. Veteran advocates and DVA delegates within the Liability and Permanent Impairment process would also have become aware of the veteran's addictive behavior.

In addition, this process would require that the veteran:

- Has a very clearly diagnosed and accepted addictive disorder and there is concern expressed by delegates/doctors that the person is not capable of managing their money.
- Has both the diagnosis and the assessment made by a psychiatrist.
- Is entitled to receive a large lump sum compensation payment.

It should be noted that any action to limit a person's perceived entitlement to receive a large payment could meet with strong resistance and hence it is important that the decision process is supported by compelling evidence.

If the veteran appears to satisfy the initial criteria for consideration of 'financial protection' then:

- Clinical notes from the treating GP should be sought to establish if the GP has any insights into the addictive condition.
- A contracted, independent psychiatrist should be asked to report on the person's ability to manage their affairs (in the light of existing evidence already available to DVA). Preferably the psych would conduct a face-to-face consultation, but this could also be done online.
- DVA Contracted Medical Advisers Compensation (MAC) should be asked to make a recommendation, having taken into account all of the available medical evidence on the veteran's records.

If the medical consensus is that the veteran is so affected by an addiction that they wouldn't be able to manage their money, the veteran should be given formal notice of DVA's concern that they would not be able to manage their proposed lump sum payment.
To allow for procedural fairness they should be given an option to make a case (and provide financial records to support them), that they are competent to manage their affairs.

The veteran would be advised at this stage that a process is being considered for their compensation to be paid as a fortnightly amount until such time as they are able to establish that they are competent to manage their money.

There would need to be legislation enacted to cover this proposal and it would need to provide for a formal right of review. The legislation could be incorporated into s 432 of the revised MRCA.

For veterans who have been placed under this program there should be:

- Legislative provision should be made for the veteran to be placed on a 'Medical management' rehabilitation program. See brief detail Attach 1, copied from the DVA website.
- Mandatory placement on a 'Medical Management' Rehabilitation program.
- The capacity for the medical management program to be reviewed regularly to consider progress – and the veteran could have a right to request a review or appeal a decision to continue them on fortnightly payments.
- Mandatory requirement (legislated) for the veteran to be placed on a Personal Financial Management Course with their progress being monitored. The right to request a review or appeal a decision to continue them under the described payment arrangement. The arrangement could be discontinued if the behavior warrants it. (verified by the identified psychiatrist)
- The DVA delegation to make a decision to impose a fortnightly payment should be at **no less than EL2 level.**

In Summary

Implementing and managing a trustee process as already provided for in the existing legislation is complex, difficult and expensive – and has its own high level of impact on a person with mental health issues.

This submission suggests that some veterans could gain significant benefit from being involved in a closely supported program which minimises the risk of aberrant financial behavior by the veteran and the possible abusive or violent behavior with family members.

- This could have the same overall effect as a trusteeship – but would avoid the complications.
- The process for calculating fortnightly payments is already established in GARP M
- Once a person is deemed capable of managing their financial affairs, they could request/be offered the opportunity for a lump sum payment.
- The calculation of a lump sum payment would simply involve establishing the amount of pension already paid and deducting it from the original assessment amount.

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Option 2 – considering the process for imposing a trusteeship.

As with the previous option, equally strong concerns are expressed about veterans who are at risk of being unable to manage lump sum payments because of serious mental health, substance abuse or addiction related conditions.

This option calls on DVA to reconsider the reference to 'legal disability' in section 432 of MRCA.

(1) This section applies if:

*(a) a person who is entitled to be paid compensation under Chapter 3, 4, 5 or 6 is under a **legal disability**; or*

(b) if such a person is under 18--there is no person who has the primary

responsibility for the daily care of that person.
(2) The Commission may, in writing, appoint the Commonwealth or any other person to be the trustee of the payments of compensation under this Act.

Whilst s 432 provides that the Commission may appoint or revoke a trustee for a person who is under a legal disability, the Bill is silent on what constitutes a legal disability and how it is to be determined. Accordingly, it appears that an application for an administration order would need to be made to a State Tribunal in order for a trustee to be appointed under s 342.

Furthermore, if the Commission is reliant on a state tribunal to make a finding that a person has a legal disability, the usual practice is that the tribunal appoints an administrator and sets out the terms under which the administrator may act. Importantly, it is also the tribunal that has the power to revoke or vary any order made and so it would seem that the provisions of s 432 as set out in the draft Bill are at odds with the powers of the tribunal i.e. The Commission has no power to determine what constitutes a legal disability and therefore must make an application to a state tribunal for an order appointing an administrator / trustee. Yet the Act purports to give the Commission the power to vary or revoke any trustee appointment without the need to make further application to the originating tribunal. This approach is unworkable and borders on being contemptuous of the tribunal.

This requirement as a prerequisite to any trustee appointment has the potential to be a distressing and confronting process for a veteran who is already struggling with mental health or addition issues. Notwithstanding that most State Tribunals are a no-cost jurisdiction, this would not extend to the cost to a veteran in engaging their own legal adviser which then raises the question as to who would be responsible for bearing these costs.

The term 'legal disability' is not defined in the MRCA and hence must be determined under State and Territory guardianship legislation by a relevant State court or tribunal. This creates uncertainty and may suggest that a person experiencing mental health issues may first need to undertake a State/Territory Guardianship process to enable a trusteeship to be considered.

This proposal puts forward that if one or more of the following circumstances apply, a provision should exist to allow for a trustee to be appointed to manage the veteran's financial affairs if needed:

- The veteran has a diagnosed serious mental health condition or is seeking compensation for a serious mental health condition.

The veteran has substance abuse or addiction issues or is seeking compensation for such issues.

- The veteran has a previous history of financial mismanagement.
- A medical practitioner attests that the veteran will mismanage their finances or is incapable of managing their own affairs.

Any such trusteeship imposed need not be permanent and the veteran should retain the right to periodically seek to have the trusteeship reviewed or revoked where it can be shown that the reason for the trustee being appointed no longer exists or that the risk can be managed via less intrusive and controlling methods. RSL Victoria does not support Ex Service

Organisations being appointed to manage veterans' financial affairs.

Compulsory financial advice

RSL agrees with the submission of former Chairman of Legacy Australia, Mr Richard Cranna OAM who in evidence to the Royal Commission into Defence and Veteran Suicide recommended that mandatory financial counselling be a precondition of any lump sum payment. Currently DVA policy is that a veteran may receive advice from a legal practitioner or a licensed financial adviser. RSL Victoria submits that this policy should be amended to allow a veteran to also obtain advice from a certified practicing or chartered accountant.