THE ROYAL AUSTRALIAN ARMOURED CORPS CORPORATION RESPONSE TO THE PRODUCTIVITY COMMISSION INQUIRY INTO THE DEPARTMENT OF VETERANS' AFFAIRS 2018

…We say the care of the returned soldier is one of the functions of the Commonwealth Government. Our soldiers do not fight for Queensland, New South Wales or Tasmania, but for Australia. They enlisted under the Commonwealth banner. They go out to fight our battles. We say to them: 'When you come back we will look after you'…
The soldiers will say to the Commonwealth Government: 'You made us a promise. We will look to you to carry it out.
PM Billy Hughes, 1917 Premiers' Conference.

I tell the senate quite candidly that I am not at this juncture concerned about finance. I have put before the honourable senators a proposition representing the duty we owe to these returned soldiers, and whether it is going to cost more or less for the discharge of that duty, we have to shoulder it.
Senator Millen, Second Reading Speech Australian Soldiers' Repatriation Bill 1917

Noel Mc Laughlin OAM MBA
Chairman
RAAC Corporation
31 January, 2019

THE RAAC CORPORATION
(ACN 156 250 958)

The Veterans' Compensation and Rehabilitation Inquiry
Productivity Commission
GPO Box 1428
Canberra City
ACT 2604

SUBJECT: RESPONSE TO THE PRODUCTIVITY COMMISSION INQUIRY DRAFT REPORT *"A BETTER WAY TO SUPPORT VETERANS"* INTO THE EFFICIENCY AND EFFECTIVENESS OF SERVICE DELIVERY TO VETERANS BY THE DEPARTMENT OF VETERANS' AFFAIRS.

PURPOSE

To put before the Productivity Commission (the Commission), the RAAC Corporation's response to the recently released Draft Overview (73pp) and Draft Report (704pp)

The response attempts to address in particular, the issues raised by the Commission in the Draft Overview (DO) and Draft Report.

The Corporation also notes the following comment by the Minister in his media release on 14 December, 2018; *"A number of significant recommendations have been proposed - none of these have been accepted or rejected at this stage."*[1]

[1] http://minister.dva.gov.au/media_releases/2018/dec/va123.htm [accessed 17/12/18].

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STATEMENT OF FACT – WITH HONOUR AND COURAGE THEY SERVE

The privilege of donning the uniform and rendering military service in defence of and on behalf of the nation is a privilege accorded to very few Australians.

Those who are selected and who are enlisted into the service of their nation are, from that moment in time on, removed from their civilian counterparts for the duration of their service. They occupy a privileged and special status in Australian society during and after that service.

Military personnel undertake to serve the nation in a profession in which they agree to a term and condition of service that requiring them to be prepared to die in that service.

It is this undertaking that is the fundamental plank of the uniqueness of military service. No other occupation in Australia asks that of its personnel. None.

In addition, the acknowledgment of being required to apply lethal force to an enemy, sometimes up close and very personal, adds to that uniqueness of service which puts them a clear step well above all other occupations.

In recognising the unique nature of military service, Anderson (1997)[2] cites in his report to Parliament, Cross (1988), who argued:

> ***A Unique Institution***
> *The question of the unique nature of the military is an important one, and was well expressed in the 'Cross Report', the Joint Committee report in 1988:*
> *'Defence Force members are required to serve when, where and as required,* ***often in the most hazardous circumstances****.* ***They must follow without question the directions of government,*** *while at the same time demonstrating initiative and originality of thought in the execution of their duties. Hours can be long and irregular. There is no recourse to industrial action, and compensation for overtime is limited to a small, fixed-sum 'disability' allowance. Family moves are regular, sometimes seemingly random and frequently stressful. Demands made on members of the ADF are not limited to the contribution the Force makes to regional stability, the law and order of the nation and the maintenance of national prosperity and trade. During emergencies such as bushfires, cyclones and similar national disasters, it is the ADF to whom the community turns for a vital proportion of the support effort.* ***The ethos of service remains paramount'.****(2)*[3] (This writer's bold emphasis).

It is expected by the nation that its Defence Force members could well be killed as a consequence of them serving and defending the nation.

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[2] Anderson, D., *The Challenge of Military Service: Defence Personnel Conditions in a Changing Social Context*, Foreign Affairs, Defence and Trade Group 10 November 1997 online at https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/Background_Papers/bp9798/98bp06#1 [accessed 21/9/19].

[3] The Cross Report cited in Australia Parliament. Joint Committee on Foreign Affairs, Defence and Trade. *Personnel wastage in the Australian Defence Force-Report and Recommendations.* November, 1988, p. 5

Additionally, Glenn (1995) also emphasised very strongly, other aspects of the uniqueness of military service, when he wrote:

> ***Those who join the Services make a professional commitment quite unlike any other***. *They undertake to maintain the security, values and standards of the nation against external threat.* ***They train for the application of extreme violence*** *in a controlled and humane fashion,* ***whilst accepting the risk of serious injury or death*** *in achievement of the mission....****In short they undertake to train for and, if required, undertake duty beyond the bounds of normal human behaviour****(3).*[4] (This writer's bold emphasis).

From enlistment onward and throughout their military careers, military personnel are subject to numerous factors that place significant demands on them; ranging from multiple operational deployments, disaster relief, training exercises to constant disruptions through numerous postings and lengthy absences from home and family. The nation owes those who serve and those who have served, a huge debt of gratitude.

Veterans who serve in accordance with these demands and pressures, are entitled to believe the Government will look after them should they suffer physical or mental harm as a direct consequence of their very unique service. The nation should expect no less from its Government and will hold the Government to account if it fails in its reciprocal duty of care in honouring and looking after those whose service keeps Australians safe.

According to Anderson:[5]

> *…this uniqueness tends to lose its sharpness, at least in society's mind, during a long spell of peace, and some would claim that the major threat to Service life is the steady move towards conditions which fail to reflect and properly compensate this uniqueness, and tend to place military personnel gradually closer to the public servant.*

That uniqueness must never be blunted.

The concerns expressed by Anderson (*supra*) are disturbingly paralleled by the Productivity Commission in mooting civilianising compensation and support to veterans.
Such a proposal must never be allowed to occur, given the demands and expectations placed by the nation on its Defence Force members.

That duty owed by the Government on behalf of the Australian people is provided by the Department of Veterans' Affairs (DVA) which it has done, continuously, without let or hindrance, since 1916.

The provision of support and welfare services to veterans and their families during and post-service in peace and war, is an article of faith by the Government as represented by DVA, to honour the service and sacrifices of those who served and to recognise the uniqueness of that military service and the sacrifices such unique military service entails.

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[4] Glenn, G., ***Serving Australia: the Australian Defence Force in the Twenty First Century***. Canberra, 1995, p. 61, in Anderson, D., *The Challenge of Military Service: Defence Personnel Conditions in a Changing Social Context,* Foreign Affairs, Defence and Trade Group 10 November 1997 online at https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/Background_Papers/bp9798/98bp06#1 [accessed 21/9/19]

[5] Anderson, above, n.2.

EXECUTIVE SUMMARY

The Commonwealth Department of Veterans' Affairs (DVA) is a Department of State owned and paid for by Australian taxpayers, including veterans.

DVA is a 102-year old niche, specialist pioneer Department of State, delivering an enormous suite of pension and support services, to veterans and their families.
It is considered to be a market leader in the veterans' support sphere, with a durability and dominant brand awareness level throughout Australia and internationally, giving it a strategic competitive edge. It is considered world's best practice it the veterans support sphere.

As DVA's primary shareholders, taxpayers and veterans have a right and an interest to protect in ensuring their taxes are put to good use by the Commonwealth.
Public scrutiny of Commonwealth expenditure of public monies though various avenues including audits, inquiries and reviews, all operate to ensure transparency and integrity of operation in budgetary expenditure. DVA is currently enduring trial by fire in respect of a continuing procession of inquiries commencing in 2013 with the PSC Capability Review into DVA, culminating in this review.

The genesis for this level of scrutiny falls rightly, at the feet of DVA through its failure since the enactment of the VEA 1986, to grow and engage with, the ex-service community. The enactment of MRCA 2004 exacerbated that failure. DVA's inability to adapt its practices and processes to be more responsive to veterans, in particular today's generation of veterans, led to the situation in which DVA now finds itself in, and which it is working hard and successfully, to rectify.

The Draft Report of the Review by the Productivity Commission (the Commission) into DVA, contains a raft of recommendations, some of which are tendentious and challenging on many fronts to say the least, and should be rigorously and vigorously challenged on the basis the Report pre-ordains and prejudges that all its recommendations will be accepted and actioned. The Draft Report's tenor suggests that the Commission (non-veterans), has taken an economic rationalist approach to DVA, failing completely to demonstrate any appreciation of veterans' needs and the unique nature of military service, to which it pays lip service.

The Draft Report is on its face, dangerous. It is an anti-DVA and anti-veteran document focusing, including abolition, on cutting costs. This is evidenced by its direct attack on DVA in Key Points (Draft Report p.2) where there is scant acknowledgement of the wider successes of the VCR/transformation process and a passing acknowledgment of the improvements in NLHC coverage.

It is attempting to achieve this by harmonising certain functions under the guise of generating operating and fiscal efficiencies, while advocating for DVA's abolition by creating a new agency within Department of Defence (Defence), a Department that is clearly not fit for purpose. DVA faces the greatest existential threat to its survival if the recommendation for its abolition is accepted by Government. Sacrificing DVA on the twin altars of political and financial expediency is unconscionable and indefensible.
The assertion that DVA is not fit for purpose is not supported and cannot go unchallenged.

The proposal to see DVA gutted and filleted, and devolved to a Department that is not fit for purpose, is dangerous. The IR implications through union intervention by the CPSU and possibly the ACTU, in concert with the Parliamentary Labor Party, are significant on both on an IR and political level, not to mention the veterans' and public's backlash.

Abolition will result in a truncated organisation being subsumed into an entity that has a capped budget a with no fiscal flexibility as opposed to DVA's budget, which not capped with inbuilt fiscal flexibility. Similarly, DVA's abolition could very well see pension functions devolved by stealth to NDIS for rehabilitation any personal homecare assistance up to 65 years of age, and My Aged Care for over 65 years of age and a market-based compensation and insurance scheme established, also.

DVA's fitness for purpose has suffered damage though mistakes made over time, but not fatal enough to warrant abolition and destruction of 102 years of major and very hard-won learned experience in the field of veterans' support, treatment and welfare. Confusing legislative processes, a fragmented and risk/decision-averse public sector culture that was purely adversarial, processes-obsessed and not outcomes-focused coupled with statutes which clashed in their approach to veterans' support and management, created an atmosphere of such toxicity, that throughout the 1980s and 1990s, ESOs would not communicate with DVA.

The acknowledgment by the Secretary DVA at a forum at RSL on 21 November 2018, that the Department had failed its stakeholder group, is a brutally frank admission of the three sins of omission and failure to act, committed by the Department over a long period of time. These sins do not warrant any consideration of the abolition of DVA.
The transformation (rebirth) of DVA through Project Lighthouse and the VCR process, has been profound, positive and far-reaching. DVA are to be commended for the rapid and positive change it has embraced in approach and development of initiatives currently in operation, involving budget, staffing, training, IT, political, legislative and policy elements.

Notwithstanding the changes made and objectives achieved, DVA still has along way to go to repair the damage to its fitness for purpose and it is incumbent on ESOs as DVA's end-user cohort, to accompany it on that journey, through consultation, collaboration and cooperation. The change process under way must not be derailed on the basis of nothing less than a cost-cutting exercise, by destroying a task-specific Department.

DVA must be allowed to continue doing what it needs to do to modernise.
The analysis of the literature in respect of DVA's strategic management, suggests its transformation process accords with a number of Strategic Management Models, demonstrating that DVA is well-placed to survive as a standalone niche pioneer Department. DVA has confirmed its fitness for purpose, rebutting the Commission's assertions and re-establishing itself as the leading pioneer Department in the veterans' support sphere. The changes wrought by DVA's approach to its ongoing transformation, are profound and demonstrably positive. The evidence clearly establishes DVA's entitlement to survive as a standalone Department.

It begs the question, is DVA fit for purpose?
The unequivocal answer to that is, ***yes it is.***
DVA must not be abolished.

1 ISSUES RAISED

The Overview contains a comment by the Minister for Veteran's Affairs as to what he believes constitutes a veteran and states:

> *… when we think of the word veteran, we tend to think of someone in their sixties or seventies. But from an ADF perspective, our veterans are often in their late twenties or early thirties, so they have another career after they've been in the military."*[6]

That is an astonishing comment to make, in that everything stated by the Minister applies equally and precisely to veterans who have served in earlier historical and conflict cohorts – i.e. older veterans. It follows that, the Overview and Draft Report proper, appear on their face to place a significant emphasis on younger veterans, to the detriment of older veterans.

Veterans of previous conflict cohorts served in the Australian Military Forces (later re-branded ADF) at a young age, and on taking discharge and did precisely what the Minister alluded to above. This begs the question why make an issue of this particular matter at all? It is an ongoing regenerative process within the ADF.

There is nothing startling in respect of this fact of life, as it occurs regardless of what cohort of veterans is being discussed. It is common ground that current and future generation of veterans will get older and require aged care support, in due course.

The Corporation also notes a failure by the Minister to acknowledge long-serving career ADF members who achieve rank and remain serving for periods in excess of 20 years, are also veterans and are known respectfully as "lifers." They too remain part of the historical cohort with whom they enlisted. The mere fact they remain serving, should not exclude them from being part of this discussion.

1.1 A Veteran Support Model (Overview p.14)

The Corporations notes the Commission proposes a veteran support model based on the following principles[7]:

- *wellness focused (ability not disability)*
- *equitable*
- *veteran centric (including recognising the unique needs of veterans resulting from*
- *military service)*
- *needs based*
- *evidence based*
- *administratively efficient (easy to navigate and achieves timely and consistent*
- *assessments and decision making)*
- *financially sustainable and affordable.*

[6] Productivity Commission 2018, ***A Better Way to Support Veterans***, Draft Report, Canberra, at p.8.
[7] Above, n.6, at p.14.

The proposal has merit but will not come to fruition without significant reform in the legislative area. Without major and far-reaching legislative reform to enable DVA and its staff to implement the proposed support model, nothing will be achieved.

1.2 Legislative Complexity

The Corporation's stated view is that the current legislative landscape within which DVA works is the single greatest impediment to successfully implementing any change to improve the delivery of support to veterans and their families. This is also the view of the Alliance of Defence Service Organisations (ADSO).[8]

As it stands, three different Acts, all with distinct and inconsistent levels of beneficial provisions, create an environment for veterans attempting to negotiate a claims and determination process that can best be described as lethal. It has been described in previous years and at recent Senate Inquiries as a minefield which grinds people up, as they attempt to battle through the claims process.

The legislative complexity is perfectly summed up in the Senate Mental Health Report (2016)[9] which noted an earlier review of DVA undertaken by the APS Commission in which the Commission found:

> *This complexity has partially been shaped by the combination of multi-act eligibility and an increase in claims made under the MRCA which is more challenging to administer, but primarily through the division of responsibility for staff, policy and service delivery, all of which can be split across two or three divisions and two or more locations. This complex structure lacks scale and has contributed to the development of fiefdoms in state locations and functional silos to the detriment of consistency and efficiency of performance across key business outcomes, particularly compensation claims processing*[10]

Notwithstanding the tremendous advances and improvements made since 2016, by the Secretary DVA under Project Lighthouse and the Veteran Centric (VCR) reform processes currently under way such as straight-through electronic claims and assessments, the immutable fact remains that reform can go only so far.

It is not possible in fact or in law to speed up a process which has no legislative basis to enable DVA to operate more effectively. Continuous legislative amendments to all three Acts is now reaching the stage where it is akin to trying to stop a leaky boat from sinking, by applying band-aids.

Without the legislative tools needed to streamline the process, and to enable DVA to exercise its powers and functions more effectively for veterans, any such attempts at introducing the proposed veterans support model will be condemned to fail.

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[8] The RAAC Corporation is a Partner Organisation of ADSO.

[9] Senate Foreign Affairs Defence and Trade Standing Committee, ***Mental Health of Australian Defence Members and Veterans,*** 16 March 2016, 177pp, at p 104 at para 5.32.

[10] ***Australian Public Service Commission, Capability Review***: Department of Veterans' Affairs, November 2013, p. 38, cited in n.9.

The Corporation notes the Commission's acknowledgement that the three current Acts are "*one source of complexity'* (p.17). This is without doubt, the primary fact in issue for consideration of a complete root and branch overhaul of veterans' legislation abolishing all three Acts and have them replaced by a single-path legislation through the development and enactment of an Omnibus Act.

The development of a single-path Omnibus Act which the Corporation continues to champion, will need to incorporate all beneficial provisions from all three Acts under one legislative roof which will do away with three separate legislative silos incapable of talking to each other, as is presently the case.

The RAAC Corporation's stated position remains unchanged and that is, a compete repeal of all three Acts –a position also adopted by ADSO and the VVFA, and which is desperately needed.

It is needed to enhance lawfully-mandated improvements to service delivery for veterans to help veterans move towards successful rehabilitation and improved wellness.
Nothing less will suffice, in the Corporation's view.

In its 63-page submission to the Commission dated 30 May 2018, the RAAC Corporation set out in some detail the need for an Omnibus Bill and urges the Commission to revisit its submission in that regard. The Corporation also supports harmonsing all three current Acts should an Omnibus Bill not be considered by Government.

Notwithstanding its strong position and support for an Omnibus Bill, the Corporation recommends that should DVA not agree to any Omnibus legislation, that Government consider harmonising all three Acts to cross-vest where possible, all beneficial provisions across all three Acts, to ensure and enhance uniformity of equitable tradesmen of veterans.

The primary challenge for ESOs in any exercise involving drafting Omnibus legislation will be to do it without *"affecting some veterans' entitlements"* (Draft Report, p. 499). This was also acknowledged by DVA; viz

> *In previous decades, the avoidance of apparent or actual loss of benefits to any group of existing veterans has meant that reforms to legislation have built on existing entitlements, rather than revoking or altering them to align with new arrangements. (sub. 125, p. vii)*
>
> (Draft report, p. 499).

According to the Commission:

> ***Some reductions or increases in future entitlements is the byproduct of reform in this area*** *— nonetheless, the Commission's reform package has been designed such that, with the exception of some very small payments, veterans currently receiving benefits will not lose access to these benefits.* (Draft Report, pp 1 499-500). (This writer's bold emphasis).

Given the Commission's economic rationalist DNA, and its intent to see DVA abolished, such a comment should be viewed and treated with caution and suspicion to ensure that any drafting or cross-vesting exercise, veterans' entitlements and benefits are not prejudiced in any way. It follows that, a drafting exercise will present some challenges for ESOs and DVA, alike.

The Corporation acknowledges that drafting an Omnibus Bill may incur significant costs and potential legislative impediments. The Consequential and Transitional provisions (C&TP) affecting other legislation in either an Omnibus drafting or cross-vesting exercise, are considered to be significant.

1.3 Inconsistent Treatment of Claims (Overview pp.17-18)

This is an issue which requires very urgent attention.
The Commission's contention that the current system creates inequities (p.18) is noted and supported. It is clear on the facts a system of compensation support which results in a cohort of haves and have-nots, is soul-destroying and is on any view, completely inconsistent with natural justice principles and equitable treatment and support.
It offends the public sector's access and equity ethos.

It is well settled that a broken leg regardless of category of service is a broken leg, with its attendant physical damage and pain and suffering. The only difference arises in the aggravating circumstances in which the injury occurred either eligible Defence service or operational service. The injury remains the same.

It follows that, a uniform process for the treatment of claims for injuries, illnesses or diseases needs to be considered and again an Omnibus Act or legislative harmonising is seen to be the tool to address this inequity. Until action is taken along these lines, legislative and procedural inequities as discussed, will in the Corporation's view, continue to infect and damage the veterans' support continuum.

The current legislative regime is not fit for purpose and drafting an Omnibus Bill or harmonising all three Acts should commence as a matter of priority. ESOs should work in tandem and in consultation with DVA in this process.

1.4 Positives and Potential Negatives

The Corporation understands DVA see positives flowing from the Commission's Draft Report. This is encouraging as it demonstrates a willingness by DVA to look at what is a damning document, designed to disband DVA completely and remove it from the Departmental Order of Battle.

This positive approach by DVA is significant but must be tempered with caution.
That caution extends to the distinct possibility that any positive identified by DVA towards enhancing its operational efficiency, may potentially also represent a negative for veterans and their families and the wider Defence community, with its attendant threats and risks to veterans' entitlements.

To that end, the Corporation considers it is of the utmost importance, that ESOs as the representatives of the veteran and Defence communities, engage with DVA at the highest levels and on equal footing as strategic partners, to debate and discuss with DVA, any positives which may impact negatively on the veteran and Defence community.

It is contended that ESOs should join with DVA in committee, to examine and discuss all positives identified by DVA, to ensure there are no negative and damaging impacts on current and future veterans' entitlements. Conversely, examination of any negatives identified by DVA as impacting adversely on veterans, their families and the Defence community, must also be examined and discussed.

2 GOVERNANCE AND FUNDING - (Draft Report p.54)

2.1 Vesting DVA Functions in Defence - Draft Recommendation 11.1 (Draft Report p.55)

A new 'Veteran Policy Group', headed by a Deputy Secretary, should be created in Defence with responsibility for veteran support policies and strategic planning. Ministerial responsibility for veterans' affairs should be vested in a single Minister for Defence Personnel and Veterans within the Defence portfolio.

The Corporation notes DVA have already established a Policy Committee and considers this recommendation to be moot. It now falls to that Committee to review current policies and undertake planning and development of new policies.

Consistent with DVA's current approach, the Corporation is of the view policy review and development will be undertaken in consultation with ESOs through representative groups who have membership of ESORT, other Operational Working Groups and the Departmental Secretary's Ginger Group.

The latter group of which the Corporation is a member, consults with DVA on matters of legislative reform and is a very effective group of ESO representatives.
Similarly, direct involvement by ESOs in the Lighthouse Project is continuing.
The level of consultation and engagement between DVA and the ex-service community is very high and will be enhanced by liaising with the new Policy Committee.

The Corporation does not support in any form, the vesting of the Veterans Affairs portfolio to any Minister, other than the Minister for Veterans' Affairs. DVA is a Department of State and the mere suggestion of such an action is dangerous and could well result the destruction of a niche highly specialised Department, caring for veterans and their families, that has been in continuous existence and operation, since 1916.

Such a move is on every level, dangerous and potentially fatal to the way in which DVA operates. The Defence budget is capped and in that, a significant risk to future DVA viability under a new Ministerial overlord, exists.

The vesting of Ministerial responsibility caries with it a risk of reduced budget coverage and potential consequential reduction in human resources, consequences which have arisen for other organisational amalgamations by Government in the past.

These suggestions are not without considerable pain for those directly affected.
The Corporation contends that organisational shrinkage both human and financial, will have a cascading detrimental effect on veterans' support and entitlements.

This could well prove to be catastrophic in terms of veterans' support such as the continued move to forcibly outsource more DVA support initiatives to other super-sized departments (Whole of Government). Such forced outsourcing will result in veterans being reduced to being mere ciphers, stuck for hours on end on a telephone, waiting for support and advice, as are Centrelink customers.

Veterans and their families and current and future ADF members will lose completely their unique status in the Australian community and will be reduced to being beggars, supplicants and mendicants, completely at the mercy of people who have no appreciation for veterans and their unique requirements/circumstances flowing for the unique nature of their service to he nation.

It will result in veterans and their families being relegated to another class of dole recipient, in terms of treatment and attitude.

The Corporation does not support Draft Recommendation 11.1 and contends that any attempt to have DVA subsumed into a Department that is not fit for purpose, will be viewed with considerable suspicion by the ex-service community and will be rigorously challenged.

It is contended that ESOs must engage in a strategic partnership with DVA as a member of its Policy Committee to address veterans' support initiatives.

2.2 The Failure of Defence

In its Draft Report, the Commission has not adduced any compelling evidence to support its proposal to destroy DVA and move its functions to Defence.

Defence has an unfortunate and unsuccessful history in the past in looking after damaged veterans. Since MRCA 2004 came into force, the default position of Defence has been to view ill and injured defence veterans as squeaky wheels and automatically compulsorily discharge any member with a mental or physical impairment.

This contention finds support by the Commission's contention at Draft Finding 6.1 (p.226), where the Commission found that other than those members who had a high probability of being rehabilitated back into full-time pre-injury duty, Defence displayed *"a weaker incentive to rehabilitate members who are likely to be transitioning out of the ADF."*

Defence was unprepared then to manage compensation matters concerning personnel within its own jurisdiction and in essence failed those members a failure that has led to lingering bitterness and a deep sense of betrayal, by those members involuntarily forced out.

There is no confidence Defence has improved to the extent that it is now capable of duplicating DVA's capacity in managing any form of veterans' support and welfare processes.

The unwanted and unwelcome discharge of veterans by an organisation clearly unable to cope with the added burden of caring for its own, saw DVA thrust into the spotlight and tasked to respond to the purge of less than fit Defence members.

The Commission has failed to provide direct evidence attesting to the advantages of undertaking such action, other than to imply it will save money.

That is not in the Corporation's view, a sufficient justification for such a dangerous proposal. Simply put, there is no direct evidence other than cost savings and consequently no factual basis for this proposal. There are no positive points raised in the Draft report to support such a dangerous proposal.

The Commission has ignored completely throughout the Draft Report, the opportunity to asses and report in greater detail on the DVA's achievements in the veterans' support and welfare space thus far, stemming from DVA's VCR/Transformation process.
Such a failure is on any analysis, indefensible.

To propose sending veterans, current and future, into a system within a Department not fit for purpose, lacks any form of rationality, reasonableness, and equity and is not supported.

2.3 Creation of a VSC - Draft Recommendation 11.2 (Draft Report p.56)

The Australian Government should establish a new independent Commonwealth statutory authority, the Veteran Services Commission (VSC), to administer the veteran support system. It should report to the Minister for Defence Personnel and Veterans and sit within the Defence portfolio (but not within the Department of Defence).

An independent board should oversee the VSC. The board should be made up of part-time Commissioners appointed by the Minister who have a mixture of skills in relevant civilian fields, such as insurance, civilian workers' compensation and project management, as well as some with an understanding of military life and veteran issues. The board should have the power to appoint the Chief Executive Officer (responsible for the day-to-day administration).

The functions of the VSC should be to:

- *achieve the objectives of the veteran support system (draft recommendation 4.1)*
- *through the efficient and effective administration of all aspects of that system*
- *manage, advise and report on outcomes and the financial sustainability of the*
- *system, in particular, the compensation and rehabilitation schemes*
- *make claims determinations under all veteran support legislation*
- *enable opportunities for social integration*
- *fund, commission or provide services to veterans and their families.*

The Australian Government should amend the Veterans' Entitlements Act 1986 and the Military Rehabilitation and Compensation Act 2004 to abolish the Repatriation Commission and Military Rehabilitation and Compensation Commission upon the commencement of the VSC.

The threat posed by Draft Recommendation 11.2 to DVA and its future survivability is clear from the Commission's following comment:

> *Given that the Veteran Services Commission (VSC) (draft recommendation 11.2)* ***will replace DVA****, recommendations in this and subsequent chapters directed at DVA should also be read as referring to the VSC.* (p.45, this writer's bold emphasis).

This statement clearly and unambiguously prejudges the fact that abolition of DVA and the creation of a new entity the VSC, within a Department that is not fit for purpose, will occur. The Commission's approach in making such a bald statement in a Draft (non-substantive) document, assumes a very dangerous arrogance in that it presupposes the abolition of DVA is a foregone conclusion, basically a done deal.

The establishment of a separate VSC is not supported on any level and reeks of another Government-driven change, for change's sake. Similarly, any proposal to have any new entity established under MRCA should be vigorously resisted.

The comments and contention by the Corporation in respect of Recommendation11.1 apply equally to this recommendation.

That is also the position (supported by the Corporation), of the National President of the TPI Federation thus[11]:

> *The TPI Federation rejects outright the PC's unfounded recommendation for the closure of our DVA – in favour of some quasi Agency or Statutory Authority being created within the Department of Defence. As history will attest, Defence failed in the administration and provision of care for Veterans through the much-maligned old Military Compensation & Rehabilitation Service (MCRS) – a scheme underpinned by the SCRA. In part, this is why the function and responsibility was transferred from Defence to the DVA in late 1999.*

The risks to continued veterans' support are too great to remotely consider dismantling a 102-year-old Department that is now actively working to improve its service delivery and business mode to remain specifically geared to cater for the veteran community.

The comments in this recommendation suggest that little or no acknowledgment has been made by the Productivity Commission as to the extraordinary progress made by DVA since 2016. The Commission has failed manifestly to have regard to the commitment by the DVA leadership to modernising the Department and the change champion approach that the Secretary has brought to the Department.

The fact the Productivity Commission has not acknowledged this in its recommendation is beyond comprehension. To suggest that in 231 words, massive upheaval to the portfolio should occur, is denying the reality that DVA have changed and are on a journey to enhance that change through a vigorous BPR process.

The potential for the reduction and destruction of services and support to the veteran community including all serving ADF members, by remotely considering this proposal, is too fraught with risk and should be strenuously and vigorously resisted by the ex-service and Defence community.

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[11] ***TPI Federation Comment – PC Draft Report –Dec 18,*** email Mc Cabe – Mc Laughlin *et al*, Friday 21/12/18 at 1754hrs.

Nothing in the recommendation pays homage to the huge steps DVA have taken and objectives achieved in modernising and changing from being inwards-looking and reactive to a more dynamic, responsive and transparent entity. Nothing.

To maintain a degree of trust with ESOs, a review into DVA's current practices and processes was considered to be a critical exercise that must be given serious consideration. The Corporation and its kindred ESOs recognise and acknowledge that fact, noting the Public Service Commission's review into DVA in 2013, was considered to be the catalyst for what followed.

The subsequent development by DVA of Project Lighthouse and the VCR process in consultation with all stakeholders, is seen to be the game-changer to enable DVA to undergo significant cultural and operational change and in fact represents a rebirth of the Department.

Major change to DVA's business model is considered essential to ensure future effectiveness, acceptance by veterans and its own survival. Limerick *et al's*[12] description of the banking industry's strategic weakness being the age of its culture (Limerick *et al* 1998, p. 171), applies to DVA.

This weakness and DVA's previous and unhelpful adversarial approach to all claims and applications, was in the Corporation's view, contrary to the duty of the Department to act as an honest broker and offended the remedial and beneficial nature of the three Acts governing the care and support of veterans and their families.

As such, the previous attitude of mind frustrated any attempts to improve the system and, based on the experience of the veteran community to date, reinforced Limerick *et al's* argument that:

> *…it is the organisational system as a whole and the human resource system within it that must change* (Limerick et al 1998, p. 135).

This change as argued by Limerick *et al*, is now well under way, and must be allowed to come to fruition and not be derailed by any attempt to abolish the Department and create another unwanted Commission and to devolve DVA's functions across to Defence - a Department that is clearly not fit for purpose in the veterans' care and support space.

Defence are in the business of maintaining a viable and operatically effective Defence Force. That Department is on any level a monolithic and overly bureaucratic organisation which lacks the degree of flexibility in its operating processes that DVA currently enjoys and is improving on. It is a classic public service bureaucracy and as such, is infected with the vicissitudes of a large Department trying to be efficient. That particular environment is something that is being left behind by DVA's change and rebirth process, and is something veterans are very cognisant of.

[12] Limerick, D., Cunningham, B & Crowther, F. 1988, ***Managing the New Organisation: Collaboration and Sustainability in the Post-Corporate World,*** 2nd edn. Sydney: Business & Professional Publications, p.135.

It is well settled that veterans do not want to lose their care, administration and support through DVA to devolve to another typical ,monolithic public sector environment, at all.

By way of example, this occurred with the merging in 2015 of the Department of Immigration and Border Protection and the Australian Customs and Border Protection Service, with all its attendant stress, frustration low morale and failure to meet specific core objectives, as was found in an ANAO audit of the new super-department.[13]
The Productivity Commission appears incapable of grasping that reality.

The following extract in an email from a star-ranked former senior officer who is a member of DFWA and copied to this writer[14] is particularly instructive:

> *As for the idea that Defence should encompass the role of a welfare agency and insurer, as one who worked for many years at senior levels of HQ ADF and Department, I would have to proclaim that this is dangerous bullshit, and not the role of Defence in either peace or war. Almost inevitably, Defence would deal with it by establishing a "Veterans Welfare Group" or some such, which would be susceptible to hiving off in some future structural review.*
> *An example of this is the Defence Housing Agency; and on a larger scale the to-ings and fro-ings of the Defence Materiel Organisation, billed as "structural reform". Historically, the same experience applies to DSTO [in and out of the Department] and to Defence Industry [first commercialized as ADI, later fully privatized, and now Thales industry group]. These guys just love shifting deckchairs on the Titanic.*

Defence's core business is in recruiting, training and maintaining a Defence Force capable of going to war (war fighting), engaging in peacekeeping and other support tasks for which it is highly regarded, internationally. That is in the Corporation's view, **the absolute and fundamental priority** for Defence, not looking after veterans to the extent they are looked after now, by DVA.

Persons who enlist in the ADF have one particular term and condition of employment completely unmatched in any other occupation, in Australia. That term and condition requires that an individual must be prepared to die for their country.

It is that exquisite and awful fact of military life that underlines and distinguishes military service from every other occupation or profession, emphasising the unique nature of military service, once a person dons the uniform of this nation. That immutable fact is not appreciated or understood by the Commission.

The basic and brutal bottom line of Defence is to maintain and deploy where necessary, a fighting force that is trained to break things and kill people. That is the brutal reality of the Defence portfolio.

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[13] ***Border Force merger fails to bring savings and beset by problems –report,*** *The Guardian*, Davidson, H., 7 June 2018, online at https://www.theguardian.com/australia-news/2018/jun/07/border-force-merger-fails-to-bring-savings-and-beset-by-problems-report [accessed 7/1/2019]. See also: ***Audit report: Immigration and Customs merger can't prove promised benefits****, Sydney Morning Herald,* Whyte, S., 6 June 2018, online at https://www.smh.com.au/politics/federal/audit-report-immigration-and-customs-merger-can-t-prove-promised-benefits-20180606-p4zjvr.html [accessed 7/1/2019]. ***'Command and control': Immigration staff slam militaristic culture,*** *Sydney Morning Herald,* Towell, N., 11 May 2016, online at https://www.smh.com.au/public-service/command-and-control-immigration-staff-slam-militaristic-culture-20160511-goskdm.html [accessed 7/1/2019].

[14] Email Chitham to Mc Laughlin, Monday17/12/208 at 2239hrs. The email cited above was attached to the Chitham-Mc Laughlin email.

The role of DVA is to look after Defence Force members who suffer from the effects of their service; be it operational service or non-operational service, and which are incurred as a direct consequence of Government policy.

The proposals contained in Draft Recommendations 11.1 and 11.2 are of such a nature, that the Corporation believes the Commission has gone too far and contends that veterans and their families and future ADF members who avail themselves of DVA's support, will potentially leave them worse off.

The proposal also places ESO and individual veterans in the invidious position of exercising massively reduced or even non-existent influence over matters affecting their health and wellbeing.

The disbanding of the Department of Veterans Affairs and the establishment of a Commission with limited independence and fiscal flexibility, is a significant if not drastic measure that gives rise to serious concerns about the long-term priorities than might be given to veterans, by Government.

To disband DVA and the Repatriation Commission and replace it with a smaller entity is counter-productive to what has been achieved and what remains to be achieved.
It operates to truncate and kill any further reforms to be introduced by DVA.

Similarly, the proposed abolition is considered to fly in the face of what have in the Corporation's view, been the introduction a great many reforms that DVA has implemented and is continuing to implement.

It is contended that DVA is and remains, fit for purpose, and that the proposal to abolish DVA is dangerous. Abolition poses significant threats to veterans welfare and support and that of current ADF members. The recommendation to abolish DVA and break it up to come under the Defence portfolio within a proposed VSC, is not supported.

3 DRAFT RECOMMENDATION 11.3 (Draft Report p.56)

The Australian Government should establish a Veterans' Advisory Council to advise the Minister for Defence Personnel and Veterans on veteran issues, including the veteran support system. The Council should consist of part-time members from a diverse range of experiences, including civilians and veterans with experience in insurance, workers' compensation, public policy and legal fields.

In the Corporation's experience this function already being exercised through the operation of a DVA-sponsored entity known as ESORT (Ex-service Organisation Round Table) which consists of leaders from all major ESOs, DVA, serving and civilian Defence representatives and Ministerial staff. It is a significant body and is considered fit for purpose.

The Commission's recommendation for the establishment of yet another body is not supported.

4 DRAFT RECOMMENDATIONS 13.1 and 13.5 (Draft Report, p. 514, 523)

4.1 Draft recommendation 13.1 Harmonising Tables 23.1 and 23.2 GARP 5(M) (Draft Report , p.514)

DRAFT RECOMMENDATION 13.1
The Australian Government should amend the Military Rehabilitation and Compensation Act 2004 to remove the requirement that veterans with impairments relating to warlike and non-warlike service receive different rates of permanent impairment compensation from those with peacetime service. The Department of Veterans' Affairs should amend tables 23.1 and 23.2 of the Guide to Determining Impairment and Compensation to specify one rate of compensation to apply to veterans with warlike, non-warlike and peacetime service.

The provisions of **Recommendation13.1** relate to harmonising the Incapacity Conversion Tables in order to provide a single path process for calculating Lifestyle and Impairment effects for Permanent Incapacity (PI) for both warlike service and non-warlike service. The proposal has merit but must be viewed with great caution by ESOs and veterans alike.

The two rules of evidence required to establish eligibility for compensation, namely the Reasonable Hypothesis Test (RH) and civil standard Balance of Probabilities (BOP), remain extant. This response to Recommendation 13.1 focuses only on the two differing methods of calculating a PI payment regardless of these eligibility tests.

Any attempt to undertake a review of **Tables 23.1** and **23.2** in **GARP 5(M)** must be viewed with suspicion on the basis that previous reviews of VEA-applied GARP 5, have resulted in values and pension calculations being diminished, in effect derating the points allocation for calculation of Disability Pension. It is contended the same applies to the two same Tables under GARP 5(M).

The calculation of PI rates of compensation using the Tables in question, operates on two limbs – for Operational (**warlike and non-warlike**) service and non-operational (**peacetime**) service.

It is disturbing to see these Tables continuously applied in a callous and grievously unjust manner across two separate natures of military service. As such, the application of two discriminatory Tables constitutes an abuse of process, and is an act of procedural bastardry.

This is particularly so in circumstances where these Tables are used to calculate payment of PI compensation eligibility in the case of, for example, an Armoured Corps crewman who on peacetime service, falls off an ASLAV Armoured Fighting Vehicle during a military exercise, suffers a crush fracture at T4 and fracture dislocation at C6 resulting in the development of Thoracic and Cervical Spondylosis L4 and L5 and another Armoured Corps soldier suffers precisely the same injuries on the same vehicle on operational service.

That both can be assessed for an identical injury incurred in different service category circumstances, with differently calculated levels of compensation payment, defies belief.

The use of two Tables has generated significant stress and anger in the veterans' compensation space as it is seen to have created a them and us situation – operational versus non-operational service. Again, the haves and have-nots.
That should never have been allowed to happen and it remains a stain on the Commonwealth Government enacting legislation, allowing it to create a divisive and prejudicial set of Tables. This remains a classic example of the Government again failing to act as an honest broker.

The application of two Tables is seen to be nothing less than a money-saving exercise which generated significant animus by veterans towards DVA.

The application of prejudicial and discriminatory Tables is symptomatic of the Government's economic rationalist mindset, in its attempt to force veterans and their families on to a private-sector civilianised workers' compensation scheme whose ethos is to deny, deny and ultimately refuse to pay.

The continued operation of Tables 23.1 and 23.2 is again a classic example of why MRCA 2004 is nothing less than bad law and serves as another example for its repeal.

The creation of a single-use Table does not *de minimis* service outside Australia. Rather, it harmonises and restores equilibrium and uniformity of application right across the board in terms of calculating a PI payment. It is also seen to deliver efficiencies in that Advocates as well as Departmental Delegates, need only to refer to a single-use Table.

The proposed review of the Tables in question has merit and the Corporation supports the Draft Recommendation 13.1 conditionally, subject to the following caveats:

1. Table 23.2 (**peacetime service**) must be abolished.

2. A single Table incorporating mathematical values to calculate payments at the **higher rate** of PI payment for Defence service **regardless of the nature of that service**, must be developed.

3. The dollar calculation **must not as a minimum, be less than that which now applies to Table 23.1.**

4. Consideration must be given to expanding the shaded area and in Table 23.1 in order to enable a more generous and equitable amount of compensation for a PI to be calculated.

5. Compensation payments which are calculated using the current three decimal place values, must be calculated at the **higher rate** of compensation payment in order that veterans who render peacetime service only, are no do not suffer financial detriment.

6. Nothing less is acceptable

4.2 Draft Recommendation 13.5 - Permanent Impairment (Draft Report, p. 523)

DRAFT RECOMMENDATION 13.5
The Department of Veterans' Affairs should review its administration of lifestyle ratings in the Military Rehabilitation and Compensation Act 2004 (MRCA), to assess whether the use of lifestyle ratings could be improved. If the use of lifestyle ratings cannot be improved, the Australian Government should amend the MRCA and the Guide to Determining Impairment and Compensation to remove the use of lifestyle ratings and provide veterans permanent impairment compensation consistent with the lifestyle ratings that are currently usually assigned for a given level of impairment. Existing recipients of permanent impairment compensation should not have their compensation reassessed.

The issues discussed in addressing **Draft Recommendation13.5** formed part of the Corporation's submission to DVA in November 2017 and also formed part of the Corporation's submission to the Productivity Commission in May 2018.

The provisions of the DVA Guide to the Assessment of Rates of Veterans' Pensions 5th edition (GARP 5), has been cross-vested to MRCA under the guise of GARP5(M).

The ratings for medical impairment are contained in GARP 5 and apply to all Disability Pensions up to and including 100% of the General Rate (GR) and the relevant equivalent in GARP 5(M) for MRCA medical impairment assessments.

The premise for GR pensions is that a veteran's pensionability is assessed on the degree of medical impairment and Lifestyle Effects which assists mathematically in determining the level of pension up to 100% of the General Rate of pension

The Permanent Impairment (PI) mathematical values for Compensation Tables at Chapter 23 in GARP 5(M) for MRCA claims in respect of impairment assessments for compensation payments, are calculated to three decimal places and operate to reduce by mathematics, the impairment rating for calculation of a veteran's compensation sum.

This cheapening of a veteran's service in which they incurred an injury or illness, is further contributed to by the construction of the Tables. Veterans are held to remaining inside the grey shaded area as for VEA-specific GARP5. Being forced to remain inside the shaded area, acts to the detriment of veterans whose lifestyle effects when calculated can in fact come within the ambit of columns outside the shaded area.

Delegates will not assess outside these shaded areas, resulting in a claim for compensation based on Lifestyle being either derated or refused, forcing veterans to lodge an assessment appeal, placing further stress and anxiety on them to validate what they know to be the clear, unvarnished material facts related the effects of an injury or illness on their lifestyle (quality of life).

The calculations in Tables 23.1 and 23.2[15] in GARP 5(M) clearly show in the shaded areas, a clear and deliberate attempt to keep a veteran's permanent impairment rating required to calculate payments, away from the higher and more financially beneficial numerical values which would if applied beneficially, in a non-discriminating and non-punitive manner, allow for a grant of more equitable compensation payments for permanent impairment.

The use of Tables 23.1 and 23.2 are oppressive and manifestly unjust.
A copy of Tables 23.1 and 23.2 in GARP 5(M), is at **Attachment A**.

The Tables act as a fetter to equitable decision-making and place veterans in a situation where litigating through the appeals process and its adverse consequences on their health, is the only option to consider. The use of these Tables as opposed to those in GARP 5 makes it clear on the facts that this is a deliberately created uneven playing field for veterans.

The perception by veterans and ESOs alike that the deck is stacked against a veteran, finds significant credence in examining the use of this iniquitous and egregious set of money-saving Tables.

In advocating strongly for an Omnibus Bill or for legislative harmonising, it is the Corporation's stated position that the entire GARP 5(M) should not be vested in any rewrite as it is considered to operate to the advantage of the Commonwealth and to the detriment of the veteran.

The use of this particular process makes it demonstrably clear that by applying this Guide, veterans will continue to suffer detriment by being disadvantaged and disenfranchised by the application of a policy that is on any analysis, completely unreasonable.

Nothing in these Tables in either GARP 5(M) or GARP 5 remotely demonstrates reasonableness in the application of a deeply flawed Government policy.

To consider that Government values the service and sacrifice of veterans at three decimal places, goes to the unconscionability of the application of this policy.

It makes a complete mockery of and insults, the commitment by Senator Millen President of the Executive Council, during his second reading speech of the 1917 *Australian Soldiers' Repatriation Bill*, when he stated[16]:

> *I tell the senate quite candidly that I am not at this juncture concerned about finance. I have put before the honourable senators a proposition representing the duty we owe to these returned soldiers,* ***and whether it is going to cost more or less for the discharge of that duty, we have to shoulder it.*** (This writer's bold emphasis).

That statement by Senator Millen has stood the test of time. It is on any reading, considered to be the minimum acceptable standard by veterans in respect of their benefits, hard-fought entitlements, and support.

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[15] **GARP 5 (M) Chapter 23 Calculating Permanent Impairment Compensation** pp. 224-227
[16] Toose J., 1975 *Independent Enquiry into the Repatriation System*, AGPS Canberra 1975, at pp. 19 -75, (cited from Hansard Vol. 82, p. 196).

According to Creyke and Sutherland[17], the provisions of s.67(2) in MRCA requires the Commonwealth to use two tables that are not used for VEA veterans under GARP 5; viz

> *Warlike and non-warlike service as distinct from peacetime service, because different compensation factors will apply for the same impairment rating."*[18] (p. 626).

The fact these Tables are used to calculate a bare minimum permanent impairment payment of compensation eligibility to the disadvantage of those who rendered peacetime service only, through the use of a series of convoluted and confusing mathematical values which are clearly designed to deny veterans adequate compensation for permanent impairment, is disturbing, to say the least.

As discussed in the Corporation's response to **Draft Recommendation 13.1**, harmonising Tables 23.1 and 23.2 GARP(5M) into one single Table for the reasons stated, should be considered as a matter of priority and will operate to remove the inequity in calculating compensation for PI.

Additionally, by extending the shaded area in the Tables in both GARP 5(M) and GARP 5, the Corporation contends that access to a more equitable level of PI compensation payment would occur and contends that s.67(2) should be repealed.

A difficulty arises however in the application of the apportionment of permanent impairment to calculate payment of compensation under GARP 5(M), a factor which does not apply to GARP 5.

The Combined Values Chart in at Chapter 18 GARP 5[19] relating to VEA matters, is constructed to enable the use of whole numbers with the capacity to round up or down as required. It is more easily followed and understood by veterans' practitioners.

The most notable aspect of Chapter 18 is that it does not discriminate against veterans as to the nature of their service. It applies equally to operational, peacekeeping and eligible Defence service alike, without fear or favour.

Similarly, the application of the Comcare Permanent Impairment Guide (PIG) should be ceased and substituted by GARP 5 to apply to DRCA, completing a whole-of-package approach, by using one set only of easily understood and applied impairment criteria and Tables.

While also created to mathematically derate medical impairment when calculating combined values, GARP 5 is still considered to be a more effective and less discriminatory tool compared to its cousin in GARP 5(M) due to the lack of permanent impairment tables.

The contention is that any harmonising exercise must include the insertion and application of GARP 5 *in toto* as used in VEA matters, across MRCA and DRCA.

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[17] Creyke, R., and Sutherland, P., ***Veterans' Entitlements and Military Compensation Law*** 3rd edn, 2016, Federation Press, Leichhardt NSW, 870pp.
[18] Above, n.17 at p.627.
[19] GARP 5, Chapter 18, Combined Values Chart, pp.231-236.

Similarly, the application of GARP 5 *in toto* in an Omnibus Bill or legislative harmonising exercise, should apply across all three Acts to ensure consistency of application to all veterans, and in the decision-making process by Departmental Delegates.

Tables 23.1 and 23.2 in GARP 5(M) are without doubt, inherently and unjustly unfair in their application to MRCA claimants. It is aggravated by factors such as the manifestly unfair and discriminatory application of GARP 5(M), particularly Tables 23.1 and 23.2 as discussed.

The alleviation of some of the stress and burden on a veteran by harmonising all three Acts or creating a single Omnibus Act with amore equitable GARP 5, will greatly enhance reduction of stress and anger amongst vulnerable veterans with complex needs, and their families. It remains the Corporation's stated view that abolition of GARP 5(M) should be undertaken as a matter of priority and all MRCA claims should come under the ambit of GARP 5.

It is well settled that previous reviews of GARP by DVA have seen the shaded area in **Scale 23.1** reduced to diminish the area whereby a combined calculation of lifestyle effects and medical impairment operate to assess pension at an inequitable rate.

The effect of reducing the shaded area resulted in an increase in litigation to the VRB in assessment appeals, creating unwarranted and unwanted distress and stress for appellants.

It is contended that:

1. ESOs should view any attempt to amend GARP as an exercise in attempting to cut costs including reducing compensation payments for permanent impairment;

2. ESO s must as a matter of priority, be part of any GARP review process;

3. GARP 5(M) should be abolished and GARP 5 vested across all three Acts and in any proposed Omnibus Bill;

4. Absent abolition of GARP 5(M), Tables 23.1 and 23.2 in that publication should harmonised into one single Table to cover **all classes of service** with an extension of the shaded areas to enable a greater a greater mathematical value to be applied in calculating PI payments;

5. Section 67(2) MRCA should be consequently repealed;

6. Caution must be exercised in any VEA-specific GARP5 review in respect of the shaded area in the Conversion Table (Scale 23.1) used to calculate conversion to degree of incapacity (**Attachment B**); and

7. Any move to review VEA-specific GARP 5 must be viewed with suspicion and caution by the ex-service community, based on the tactic of reducing the shaded footprint in **Scale 23.1**, used to determine the rate of Disability Pension to be granted.

5 SPECIAL RATE OPTION - DRAFT RECOMMENDATION 13.6 (Draft Report p.527)

The Australian Government should amend the Military Rehabilitation and Compensation Act 2004 to remove the option of taking the special rate disability pension. Veterans that have already elected to receive the special rate disability pension should continue to receive the payment.

The import and intent of this recommendation is profoundly disturbing.

Such a proposal flies in the face of Parliament having in place, an Act that is remedial in intent. The grant of a SRDP pension vide s.199 is considered on any analysis to be a remedial provision and intent.

The Act, notwithstanding its many flaws, is remedial in nature as its intent is to provide a level of compensation for veterans who are so severely impaired they are incapable of undertaking remunerative work for more than 10hours per week, due to the effects of their accepted war-caused or eligible Defence-service caused disabilities, of themselves alone.

The Commission's assertion that *"the criteria for the payment runs counter to the rehabilitation focus of the MRCA,"* (p.527) is not supported.

Similarly, the Corporation also disagrees with contention by DVA that it "*also noted that the SRDP 'is complex to administer and can act as a barrier to employment' (sub. 125, p. 32)* (Draft Report p.527).

Regardless of administrative complexities, it is not the pension that is a barrier to employment. It is the **totality** of the effect on a veteran of their accepted disability or disability of itself alone or of themselves alone on a veteran's capacity to undertake remunerative employment of more then either 8 hours per week (TPI s.24 VEA) or 10 hours per week (s. 199(c) DRCA), coupled with the reluctance by employers to employ veterans with service-related disabilities.

The Commission is unable to appreciate that, regardless of the very best efforts at rehabilitating veteran back to an employable level of fitness, instances will occur where a veteran is permanently unfit for any remunerative employment for which a veteran is suited, by education, training or experience.

Additionally, the kinds of remunerative work that a veteran might reasonably undertake by virtue of their skills is no longer possible, due to the catastrophic effects of their accepted disabilities or compensible injuries. That is the stark reality facing some veterans.
To deny otherwise is to deny reality, which the Commission appears to be doing in this instance.

The removal of this level of pension from the MRCA is an insult to the service and sacrifice of veterans who have been rendered incapable of remaining in the workforce. It is also relevant to consider:

1. Younger veterans may not have a Superannuation scheme to fall back on should they end up as a SRDP recipient;

2. The SRDP pension like the TPI, is a level of pension that is subject to the vagaries of twice-yearly pittances known as the CPI increase;

3. The SRDP as with the TPI, is well below the MTAWE and as such keep recipients below al level of financial comfort other members of the community enjoy.

4. Younger veterans who do not have qualifying service are ineligible to receive a Service Pension (Income Supplement) so will be forced to exist on a SRDP or TPI Pension.

The failure by the Commission to not have an appreciation of the physical and psychological effects of service to the nation, resulting in a veteran being granted a SRDP, is unacceptable.

This Draft Recommendation fails completely, any test of reasonableness.
In that regard, the Corporation relies on the decision of the Federal Court in the *Australian Doctors* case[20] in which the Court held that the term *"reasonable"* to be construed as defined in the Concise Oxford Dictionary, that is, *"Agreeable to reason, not irrational, absurd or ridiculous"*.

Nothing in the draft recommendation remotely meets that Common Law test which has not been disturbed by a Court of superior jurisdiction.

The recommendation to abolish the SRDP is on any analysis, an egregious proposal that should never have seen the light of day. The Commission's case to close off access to this level of payment has not been made out.

The Commission should have instead, focused on abolishing the unconscionable 60% offsetting provisions in MRCA and considered a complete repeal of the Act and not engage in disenfranchising veterans who are too impaired to work.

The proposal espoused in this draft recommendation is rejected by the Corporation and is not supported in any way.

[20] ***Australian Doctors' Fund v Commonwealth*** (1994) 34 ALD 459, per Beazely J; (***Department of Industrial Relations v Burchill*** (1991) 33 FCR 122; 105 ALR 327, considered).

5.1 Death of veterans from other than accepted disabilities (Sequelae) (Draft Report, p. 531).

DRAFT RECOMMENDATION 13.7
The Australian Government should amend the Military Rehabilitation and Compensation Act 2004 (MRCA) to remove automatic eligibility for benefits for those dependants whose partner died while they had permanent impairments of more than 80 points or who were eligible for the MRCA Special Rate Disability Pension.

The automatic eligibility of benefits for dependants of veterans with SRDP eligibility requires further comment.

It appears from reading the Draft Report that the Commission is ignorant again, of a fact in issue directly relevant to a veteran dying from other than a direct, service-related disability.

It is well settled that an accepted disability can lead to the development of a further medical condition or conditions, much later. The development of the later medical condition in non-service circumstances occurring directly from the primary (accepted) condition sometimes quite a long time after discharge, is known as a sequela. The following examples are offered.

Example 1

A veteran who was blown off an APC that hit a large mine, suffered from PTSD, an accepted war-caused disability.

His death, some 20 years after that incident from chronic heart disease, was directly linked to his PTSD and was found on appeal by his widow to the VRB to be, according to his cardiologist, a sequela to the original insult to the veteran's system. The nexus between the fatal illness and service was established and death held to be war-caused ,confirming the widow's eligibility for a war widows' pension. The effects of the primary (war-caused) disability led to the development in unconnected non-service circumstances, of the coronary heart disease which ultimately killed him and left a young widow and three children all aged under five years of age with no source of income, is a sequela arising directly from the original insult to his system.

Example 2

A veteran who was shot through the nose suffered breathing difficulties as a consequence of his wounding.

Despite a reconstructed nose his ongoing breathing difficulties cased him to black out while driving his car, crashing his vehicle and suffering critical injuries in an unconnected non-service incident. Although he survived, a medical nexus between his wounding and the development of an apnoea-like medical condition was established, and deemed to be war-caused leading to an eligibility to receive a TPI pension, as it was a sequela arising directly from the original (accepted) insult to his system. Had the veteran been killed, an eligibility for his wife to receive a war widow's pension would have been established.

These are but a small example of different reasons why payment of a lump sum or automatic grant of pension is justified to a dependant is whose spouse/partner died as a direct consequence of an accepted disability or medical condition or, who later in life dies in non-service circumstances, from a sequela arising directly from the original insult to their system.

There are many circumstances in which veterans are killed or die later in life in non-service related incidents or illnesses which arise directly from medical conditions developed directly (sequelae) from the original accepted condition. The contention by the Commission that the case for retaining the war widows pension under the VEA *"is weak"* (p.530), is not made out.

Further, the Corporation disagrees with the Commission's contention that:

> *"less compensation could be provided for a veteran who is killed in service than a veteran with the same circumstances who is impaired in service, and later dies in an unconnected, non-service-related incident"* (Draft report, p.530).

Where a probability exists that a death occurs as a possible sequela to the original service-related insult to a veteran's system, that avenue will and should be, pursued by a deceased veteran's family. To even remotely postulate that a veteran's death occurring due to an unconnected non-service incident should not be contemplated, is to dismiss it as an irrelevancy and in fact to *de minimis* the death of a veteran. That approach by the Commission must never be countenanced.

The Commission is reminded - with the greatest respect - that spouses and partners of deceased veterans become members of a group of people which has on every level, the worst possible membership eligibility criterion - death of a loved one.

The capacity to rely on medical evidence from persons eminent in the relevant field of medical discipline (per *Bushell*) to validate a nexus between an unconnected non-service incident and an insult to a veteran's system during military service resulting in death (the sequela), is made out and will continue to be made out not only under VEA but also MRCA.

What is being demonstrated here is a state of mind by the Commission in proposing to apply a callous and unfeeling approach to denying compensatory eligibility to people whose circumstances have changed catastrophically, due to the death of a loved one arising from their service to the nation.

6 STAFF TRAINING - DRAFT RECOMMENDATION 9.2 (Draft Report p.365)

The Department of Veterans' Affairs should ensure that staff, who are required to interact with veterans and their families, undertake specific training to deal with vulnerable people and in particular those experiencing the impacts of trauma.

Recommendation 9.2 in respect of staff training is strongly supported by the Corporation.

The Lighthouse Project which is the beating heart of the VCR process is leading the way in transforming DVA form being a moribund, process-obsessed public service organisation managed by risk-averse senior staff into a dynamic and responsive veterans' support entity to retain its world's best practice status.

This was in fact acknowledged by DVA in their 36-page Lighthouse briefing document where the Department acknowledged; *"the need to shift our culture to better align with our clients* (p.28). The comments contained therein speak for themselves. DVA's comment under the diagram at the bottom of page 28 is instructive; viz;

> *To create trust, DVA needs to consider changes to its language, processes and behaviour.*

The contents of this self-assessment speak volumes for the position DVA now finds itself in and which it is working very hard to redress through rebuilding lost trust and respect right across the board. Action needs to be undertaken to capitalise on the frank and honest admissions made by DVA.

Suggested steps should include but not be limited to:

6.1 Training of Delegates – training should be at a minimum:

1. Two weeks theory including the law and the beneficial intent of the legislation and introduction to SOPs;

2. One week on-the-job practical exposure;

3. One week continuation training followed by a 12-month period of being mentored which should also include additional competencies to be completed online;

4. Confirmation of assimilation of training must include the use of a quarterly Professional Development Appraisal system (PDA) which is overseen and managed by a Senior Determining Officer at EL1 level; and

5. Specific training in the area of ASIST training or CISM or a related skill should be undertaken to ensure front-of-house staff at first instance, are equipped with skills to deal with vulnerable veterans who present with mental health problems.

The Corporation recommends that DVA consider undertaking research into the development of a staff-specific training module for dealing with vulnerable veterans.

A possible starting point would be to examine the competencies in **CHC 41425 Certificate IV in Career Development**. The competencies which attach to this certificate include as two of its electives:

- **CHCCCS020 Respond effectively to behaviours of concern; and**
- **CHCMHS001 Work with people with mental health issues.**

Both electives or their equivalent is considered by the RAAC Corporation to be an excellent starting point in DVA front of house staff being given the necessary skill sets to deal with vulnerable veterans.

Similarly, the Corporation notes with approval DVA's commitment to having Delegates undergo training to better manage their time when speaking on the phone with veterans or their families or ESO practitioners (Draft Report, p.361).

Communication between Determining Officer/Delegate and the veteran or veteran's family or Advocate is critical and can mean the difference between success of failure of a claim's process particularly in circumstances where the claim is a complex one. Good telephone rapport between DVA and its end-user base, cannot be emphasised enough.

Good communications can also mean the difference in ensuring DVA-veteran communications are conducted in such a manner that no damage by inappropriate comments from staff are made.

The Corporation wholeheartedly endorses this initiative and further recommends that in having staff undergo this training, that DVA consider folding the phone training into the two Certificate IV units previously discussed.

Equally importantly, the upskilling of DVA staff in the relevant topics is consistent with the duty of care at law (WHS Act 2011) owed by DVA to its staff to provide them with a safe and healthy work place.

The acquisition of such skills is vital in enabling DVA staff to cope with the demands of dealing with vulnerable veterans with its attendant medico-legal cost to the Department and its impact on Comcare premiums through untrained and ill-equipped staff burning out.

All training must have as its underlining ethos, the culture of care, gratitude and respect for serving and former Defence personnel and their families, in respect of their service and sacrifice to the nation. Similarly, consideration should be given to introducing a permanent ongoing training regime whereby specific competences could be completed by staff online.

A similar training programme is in operation in the AFP for sworn members where certain training modules, operational and non-operational must be completed online. Failure to do so reflects adversely on a member's Professional Development Assessment (PDA).

The involvement of ESO practitioners as an introduction to what veterans and their families endure and what veterans expect is critical to improving an appreciation of the needs of veterans and improving the culture of support to veterans, must form part of the theory phase.

Successful completion of the 12-month phase should result in a Certificate of Competency being awarded. The Corporation supports Draft Recommendation 9.2

7 TRANSFORMING DVA – ORGANISATIONAL REHABILITATION

The claims assessment process has historically been a process that has received justified and lengthy criticism.

The average time for claims processing in FY 2015-16 was 109 days. Since then, with increased momentum of the VCR process and the introduction of a more streamlined online claims processing system, that time lag between lodgement and determination has been drastically reduced from to 33 days[21] on average under the MyService portal.

The creation of this portal has benefits which the Corporation believes have gone a long way to reducing to a significant degree, the stress, frustration and anger associated with the claims process; viz:

- Free and easy access for all veterans
- Online application for free mental health treatment
- Online claims process for service-related injuries or illnesses which are handled rapidly and efficiently
- The capacity for veterans to upload supporting information
- The capacity for veterans to view their digital DVA health card
- View their accepted conditions; and
- Enable veterans to track the status of their claims.[22]

The Corporation considers this last dot point and the speed at which claims can now be determined via MyService, to be the major game-breaker in eliminating unnecessary delays with this process. It demonstrates a level of responsiveness and efficiency to a claimant's situation that has been lacking for many decades.

[21] ***Transforming DVA***, Presentation by Secretary DVA Ms Liz Cosson AM CSC to ESO leaders, Ringwood RSL, 21 November, 2018.
[22] Above, n.21.

7.1 Provisional Access to Medical Treatment (PAMT)

A further aspect of Transforming DVA is the introduction of PAMT by DVA[23] to allow veterans - with the exception of current serving members and veterans who hold a Gold Card, **access to 40 medical conditions**[24] while their claims under MRCA and DRCA are being assessed.

The introduction the PAMT process on a two-year trial basis to expire in July 2019[25] is a major step forward in maintaining a continuity of health and wellbeing treatment of conditions not yet accepted until all relevant investigations are concluded prior to a formal determination being made.

The Corporation endorses the PAMT as it is an outstanding good-faith initiative that, of itself alone, will operate towards eliminating from the claims process, a great deal of stress and uncertainty and medical expenses, enabling in veterans continuing to receive treatment at public expense for an illness, injury or disease claimed to have been incurred or aggravated by service.

It is clear on the facts that in the entrepreneurial approach taken by the Secretary DVA in driving organisational transformation, the introduction of such an initiative in providing treatment for what are at that juncture are essentially non-accepted conditions is a very bold and decisive move.

The introduction of this initiative is a significant addition to a range of transformation reform initiatives designed to enhance veterans' health and wellbeing. The PAMT initiative supports the contention DVA is on any analysis, very much in the vanguard of applying major change, and is bold enough to trial health and wellness initiatives and, compared to its Western counterparts, continued to be well ahead of the game.

The Corporation notes that the PAMT is not extended to cover veterans under the VEA 1986 and believes there are very good grounds to have PAMT extended to that legislative cohort.

The Corporation contends:

1. The PAMT should be made a permanent part of the veterans claims and assessment continuum to remove the stress, anxiety, medical costs and uncertainty while claims are being assessed; and

2. That the PAMT be extended the VEA veterans' cohort.

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[23] Above, n.21.
[24] Veterans' Entitlements (Provisional Access to Medical Treatment) Determination 2017.
[25] https://www.dva.gov.au/health-and-wellbeing/service-and-support-trials/provisional-access-medical-treatment-trial [accessed 20/12/18].

8 DVA'S FITNESS FOR PURPOSE – THE BURNING QUESTION

The Commission asserts DVA is not fit for purpose. Such an assertion cannot go unchallenged. The Commission's proposition and recommendation for abolition is not supported on the facts as they currently stand.

DVA is a pioneer Government Department specialising in veterans'' support and care which, due to DVA's longevity and accumulated niche expertise developed since 1916, is on any analysis, an entity that has developed a level of expertise which rebuts that assertion.

DVA's performance has been adversely affected by a large range of factors all of which were very effectively identified in the PSC's Capability Review into DVA (2013)[26]. In its report, the PSC identified a fragmented service delivery model which *"inhibits a unified culture"* (p.7) and which operated to leave staff operating in small groups (cells) acting to frustrate DVA's attempts to allocate workloads across all functional areas The resultant blockage of efficient organisational throughput, impacted adversely on its core duty to support and serve DVA's end-users, veterans and their families.

The effect of this organisational malaise resulted in DVA's fitness for purpose has being damaged through its institutional and cultural ability to adapt and be more responsive to, the rapidly changing dynamics of service delivery to its key stakeholders.
This is particularly evident in DVA's inability to meet the demands of a newer cohort of (post-Vietnam) veterans who are of an interconnected (social and other media) generation who demand a level of excellence service delivery previously not seen.

DVA has responded positively and substantially to rectify its shortcomings and deficiencies by undertaking massive and wide-ranging organisational and cultural reform through the VCR/Lighthouse Project as discussed in this submission.

Damage to DVA's fitness for purpose while acknowledged, is not considered to be fatal on any level, and not to the extent the Department should be disbanded – in effect discarded – with its powers and functions taken over by Defence, a Department that is clearly not fit for purpose.

Notwithstanding the damage suffered to its reputation and fitness for purpose, DVA must be allowed to continue to undergo its transformation without being fettered in its attempts to reform its image and revolutionise service delivery.

It is acknowledged however that notwithstanding considerable improvements made in respect of claims processing and the introduction of MyService, there are areas within DVA where a significant amount of improvement needs to be undertaken, such as ridding itself of over 200 different IT systems that have been in operation since the 1980s.

[26] Above, n.6

The inability of DVA affectively monitor its data holdings and also eliminate client data gaps is hampered by the lack of a fit for purpose IT system. This defect in DVA's client data management and monitoring processes was noted by the ANAO in 2009 in 2013 in the PSC's capability Review into the Department. (Draft Report, p.609).

The inability of vendors to support updating DVA's IT systems now mean they are at critical mass.[27] The Corporation notes funding for a new IT system is a Budget priority for the April 2019 Budget and considers the installation of a new dedicated IT system, to be critical in enabling DVA to maintain momentum built up as a consequence of its VCR successes to date.

8.1 A Vision

The Corporation contends that a vision for the veteran community and DVA, should be to engage more closely to ensure DVAs fitness for purpose remains at a level of sufficiency and sustainability to never again pose a threat to the Department's continued existence.

DVA owes a social and moral obligation, in company with the veteran and Defence communities to operate as joint partners in a consultative, cooperative and collaborative role to ensure DVA's fitness for purpose remains at an acceptable level. The veteran community owes a social and moral obligation to ensure no threat of destruction to DVA as proposed by the Commission, ever blights DVA's operation, again.

9 DVA's PROCESSES AND OPERATION

9.1 Improving DVA's Business Model – VCR to Date

DVA has worked relentlessly over a period of 333 days (to 29/5/18) to develop, trial and implement a number of very significant steps addressing the need to improve their business model. DVA's achievements via its Project Lighthouse and VCR process are hugely significant as evidenced below.

[27] Above, n.21.

Box 9.3 **A summary of VCR progress to date**

Specific initiatives and programs introduced as part of Veteran Centric Reform include:

- **Straight-through processing** — using Defence training and service data to identify where the service-related requirements of certain conditions have been automatically satisfied, reducing the information about service activities and exposures that needs to be collected from claimants (discussed further in chapter 8).
- **Digitisation of records** — this has significantly reduced the costly, inefficient and time-consuming movement of paper files between locations during claims processing and other administrative activities. By July 2018, about 33 million pages of client files had been digitised (DVA, sub. 125, p. 80).
- **Rollout of MyService** — providing a way to lodge initial liability claims online, as well as free mental health treatment claims, needs assessments and access to an electronic health card that specifies the conditions it covers (discussed further below). As at June 2018 over 5000 users had lodged claims through MyService, while a link to myGov (the whole-of-government online platform) from 30 July 2018 enables access by many more (p. 79).
- **Client segmentation** — providing DVA with data-driven analyses of veteran characteristics, needs and preferences, including a detailed profile of each client segment.
- **Student Pilot** — piloting a digital channel for veterans and their families to register for, and claim education allowances from July 2018, leveraging off the Department of Human Services' (DHS) Welfare Payment Infrastructure Transformation program.

DVA's priorities for the remainder of 2018-19 include:

- expanding MyService to include permanent impairment and incapacity claims
- expanding the Student Pilot (in partnership with DHS) into other income support payments to 170 000 veterans and their families
- improving DVA's website, letters and factsheets to make access easier
- continuing to embed cultural reform and business process redesign within the department
- streamlining more conditions to improve the timeliness of decisions
- beginning to use data analytics to anticipate veterans' needs and provide help
- providing a single phone number — 1800VETERAN — for access to DVA services, with quicker response times and improved call quality
- reaching out to veterans and their families who are not currently in contact with DVA, such as through Australia Post and mobile service centres (DVA, sub. 125. p. 54).

Source: DVA (sub. 125).

Source: Productivity Commission Draft Report, December 2018, at p.357.

Similarly and significantly, the Corporation notes that changes to DVA's IT systems have been made to include an additional field to enable current and former ADF members who served **before** the introduction of a PMKeyS number, to use their old service number to access **MyService**[28] and view a demonstration of the online claims system and also receive a briefing on other initiatives.

It was noted that **MyService and MyAccount** which were to be folded into **MyGovernemt** in due course have been migrated across and **MyAccount** will now be migrated across to **MyService**.

The ease of operation for current and former ADF members to access the MyService data base and lodge a claim is the most important groundbreaking achievement by DVA in the veterans' claims and support continuum, to date. The value of My Service is best exemplified by the fact that since its inception approximately 6,000 claims have been handled using this portal, with positive feedback from users (Draft Report p.358, citing from DVA 2018f, p. 42).

Similarly the ease of straight-through claims lodged online where specific conditions have automatic acceptance has contributed to a significant degree to the ongoing improvements in the claims and assessment/determination process including markedly reduced time lags between claim and decision. The long hoped-for purchase of a new IT system to replace the current IT system, will further value-add to the effectiveness of My Service.

The evidence adduces thus far clearly demonstrates that DVA's improvements to its business model are well under way and are being aggressively and positively pursued. This approach confirms DVA's entitlement to be retained as a standalone niche pioneer status Department of State.

9.2 White Card

The automatic generation of a White Card on discharge for mental health treatment is considered by the Corporation to be a major factor in enhancing early intervention for vulnerable veterans and contends this measure to be a life-saving initiative.

Similarly, the White Card will be created electronically to enable a veteran to have a copy on their smart phone as well as the actual card itself. Therefore, coverage commences immediately while a veteran is waiting for the hard card to be generated and sent in the mail.

The reduction in time between online claim lodgement and actual receipt of an e-card for smart phone is very fast, ensuring a veteran has no time lag in receiving their actual White (Smart) Card in order to access treatment. Again this is considered by the Corporation to be a significant tress-reducer for a veteran.

The Veteran-Centric Reform (VCR) and transformation process will expand this service for all claims and soon Smart Cards will have all conditions loaded, to streamline service with medical practitioners.

[28] Online at www.dva.gov.au/myservice

The introduction by DVA of a Smart Card is a very significant and positive major paradigm shift, towards improving DVA's business systems and processes as well as enhancing a more efficient and seamless delivery of health services and support to veterans and dependants, post-service.

9.3 DVA Reaching out to the Veteran Community

Other initiatives include the Australia Post Office information kiosk test pilot first rolled out at Woden Post Office in the ACT in December 2017[29]. In April 2018, DVA extended the trial to two other Post Offices in Mt Gambier SA and North Lakes in the Moreton Bay area in Qld.[30] The kiosk service provides advice only. It does not provide any transactional services.

Veterans may access the information from specially trained Post Office staff in situ by way of posters, brochures or by Australia Post computers. Significantly and most crucially, veterans will be able to use the computer to email DVA to request the department contact them.

The outreach potential of using the local Post Office is considered by the Corporation to be a major move in bringing DVA to the veteran community, and not the other way around. That level of first-instance contact improvising basic advice and guidance operates to create a smoother path for veterans to travel when interacting with DVA.

Additionally, DVA has obtained permission to access on a trial basis, two Department of Human Services (DHS) Mobile Service Centres to travel to remote an regional areas providing a one-stop shop support to remote and rural communities.[31]

Suitably trained DHS staff will be able to bring DVA first-line support to veterans living remotely. It is hoped that if the trial is successful, additional vehicles with suitably-trained staff will be added to the fleet and increase DVA's outreach to veterans and their families.

Again , the Corporation considered this to be a very significant improvement in DVA making itself available to veterans and their families.

DVA contends the development of online claims processing and related activities would not have been possible without the enactment of the *Veterans' Affairs Legislation Amendment (Omnibus) Act 2017.*

The Corporation agrees with this contention. The Act is the legislative enabler allowing Primary Decision-makers to be able to make a range of decisions on less complex claims, where the matter is straightforward e.g. Tinnitus or PTSD
The time saved through processing e-claims enables staff to process more complex claims.

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[29] https://www.dva.gov.au/about-dva/publications/vetaffairs/vol-34-no1-autumn-2018/reaching-veterans-australia-post
[30] http://minister.dva.gov.au/media_releases/2018/apr/va020.htm
[31] See also: https://www.dva.gov.au/contact/dva-office-and-client-service-locations/client-service-pilots-through-department-human

As a member of DVA's ESO Ginger Group, the Corporation championed the introduction of the proposed legislation in which it argued:

> *The briefings given by DVA over the past two Legislation Workshop meetings and the issues canvassed, demonstrate a significant effort by DVA to remake itself to be able to better manage its affairs in the digital age.*

The legislative changes enacted thus far most particularly the enactment of the *Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill* 2016 which became law on and from 1 July, 2017,combined with Project Lighthouse as part of the VCR process, are significant and will have long-lasting benefits for veterans and their families in the future.

The task required to bring this entire process to fruition is significant.
It will require considerable courage by the Government and support from ESOs to ensure adequate funding for Lighthouse and the proposed IT solutions *in toto* required to action digital claims management, are in place.

Notwithstanding these very significant and beneficial milestones, there is still a long way to go before complete reform of DVA processes is achieved and it is to legislative reform that this will fall.

9.4 Non-Liability Health Care (NLHC) issues – the need for extended coverage

Access to NLHC treatment is currently capped at seven conditions; viz

- Cancer (Malignant Neoplasm);
- Pulmonary Tuberculosis;
- Posttraumatic Stress Disorder (PTSD)
- Depressive disorder;
- Anxiety disorder;
- Alcohol Use Disorder; and
- Substance Use Disorder.

It is disappointing to note that musculoskeletal trauma has not been added to this NLHC suite for treatment purposes.

Musculoskeletal trauma suffered by RAAC personnel to the weight-bearing joints (spine, knees hips, ankles), attributable to crewing operating and servicing/maintaining Armoured Fighting Vehicles in battleworthy condition is considered to be a long-tail condition in respect of treatment, rehabilitation and return to full pre-injury hours along with its attendant financial costs.

Notwithstanding the new online acknowledgement of, for example, heavy lifting trades, the Corporation contends a need exists, to have coverage for all musculoskeletal conditions extended under the NLHC provisions.

It is the Corporation's contention that, the inclusion of musculoskeletal trauma in NLHC coverage is very important as it will operate to:

- **Reduce** the need for litigation at all levels of the merits review system;
- **Remove** removing the need for legal representation by veterans from the AAT onwards;
- **Eliminate** the requirement at first instance, of veterans being forced to incur additional expenses in obtaining specialist reports;
- **Reduce** expenditure of public monies through a reduction by the Commonwealth as represented by DVA in retaining Counsel and instructing solicitors to litigate against veteran appellants;
- **Reduce** the number of appeals to the VRB and associated ADR process, reducing VRB costs and reducing any backlog of cases in the ADR and VRB appeals chain;
- **Reduce** the workload on DVA and relevant merits review staff; and
- **Eliminate** the stress and anxiety experienced by veterans with musculoskeletal injuries who have a legitimate entitlement to treatment at public expense.

The removal of a series of procedural and bureaucratic firewalls by including musculoskeletal trauma within the NLHC continuum, will significantly improve DVA's service delivery model, and greatly enhance a more efficient and effective delivery of health services and support to veterans and dependants.

It is in the Corporation's view, disappointing that that the non- inclusion of musculoskeletal trauma as part of the NLHC continuum, has not been addressed or redressed.
The Corporation remains of the view that inclusion of musculo-skeletal trauma should be considered by DVA as a matter of priority.

The Corporation notes the commitment by DVA to put veterans and their families first. That is a refreshing approach and is welcomed by the ex-service and Defence community.

9.5 DVA's Transformation – Product Life Cycle, Championing Change and Entrepreneurial Leadership

The Corporation contends that organisational rebirth by transforming DVA is being undertaken through applying of a product life cycle (PLC) approach to the task and estimates this will take between five and seven years to complete, at the end of which will require DVA to review and renew its processes where that is required.
According to Baker *et al*[32], a PLC has having four stages, namely; introduction; growth, maturity and decay.

[32] Baker, M., Graham, P., Harker, D., & Harker, M., 1998, ***Marketing, Managerial Foundations***, Mc Millan Education, South Yarra, Vic, p. 275.

The review and renewal process should take place before the decaying stage is reached. That that can be accomplished through continuous monitoring of all aspects of DVA's operation, by conducting environmental scans of the organisation's operation, in particular focusing on identifying and rectifying identified weaknesses and threats and building on strength and opportunities, as is presently the case. DVA should ideally operate on a three to five-year product life cycle to ensure it remains fit for purpose.

DVA operates in an environment that is driven by several business drivers which are caused by the very nature of the stakeholder group it supports (veterans) and in which it operates (Government), namely:

- It is a constantly evolving department subject to rapid change and market (veterans and Government) demands;
- DVA needs to have constant strategies in place which allow for innovation;
- There is a need to scan the environment for competitors who are attempting to seize DVA's market share through devolving DVA functions to other agencies with a view to abolishing the Department;
- There is a need to ensure strategic alliances (Government and Veterans) continue to enhance DVA's survivability.

The global business drivers cited above will ensure DVA continues to provide its veteran stakeholders including serving ADF members, with ongoing dynamic and transparent and effective support, well into the future. Government rationalisation and market forces (veterans, ESOs and others), demand DVA change in order to survive, through:

- Achieving dynamic fit;
- Undergoing significant and ongoing (not short-term) change;
- Securing commitment from staff and management to adapt to major change and develop in their chosen career paths.

It follows that, major organisational and cultural reform will require unequivocal support from Ministerial, senior and line management and all affected staff.

Senior management's role in this process is to lead by example and act as change champions - to influence employees and to regulate (control) the change process. The impact of such change will require transparency of operation, consultation and the trust of all stakeholders. Robbins *et al*(1997)[33] cite Hornaday (1982) who argued that an entrepreneurial manager must display a number of decision-making attributes in the workplace including;

> *hard work, self-confidence, optimism, determination and a high energy level.*

[33] Hornaday, John A., '***Research about living entrepreneurs'***, in Kent, C.A., Sexton, D.L., & Vesper, K.H., (eds), ***Encyclopaedia of Entrepreneurship*** (Prentice Hall NJ 1982), in, Robbins, S.P., Bergman, I., & Stagg, I., 1997, ***Management***, Prentice Hall Australia, p. 265.

The approach by the Secretary DVA to organisational reform and rebirth is considered in the Corporation's view, to be consistent with that of a committed change champion with a very strong entrepreneurial and transformational change approach to the task.

The Corporation's observation of what has been achieved thus far by DVA demonstrates quite clearly that the approach taken by the Secretary DVA, is consistent with Hornaday's analysis.

9.6 Entrepreneurship and DVA's Survival.

DVA's length of unbroken service to veterans and veterans' widows for over 100 years, places it firmly in the description of a pioneer Government organisation in that it is considered to be a pioneer within the Australian Government in developing and delivering a range of highly specialised services to support veterans. As such, the Corporation considers this pioneer pedigree and lineage gives DVA a significant advantage in being retained rather than abolished.

This assumption finds support from Neary (1998)[34] who wrote that Porter (1985) and Schaars (1994) found that pioneers are well placed to enjoy significant advantages over competitors. Competitors in DVA's case are potentially, Defence, Treasury and Department of Finance. Porter[35] and Schaars[36] found that pioneers' advantages over other later entrants included:

1. *Developing a strong reputation for brand in the absence of competitors.*
2. *The opportunity to develop a loyal customer base.*
3. *The ability to freely position the product and take the most favourable position in the market; and*
4. *To define the product category and set industry standards.*

In being entrepreneurial rather than passive, Bateman and Snell (2002)[37], argue:

> *It involves creating new systems, resources, or processes to produce new goods or services and/or serve new markets.*

The actions undertaken by DVA as part of the VCR process are consistent with the Bateman and Snell's argument.

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[34] Neary, M., 1998, ***The Strategic Edge: Entrepreneurship Within Organisations***, DBA Working Paper, © Southern Cross University, 59 pp, at p.41. N.B. The author of this response to the Commission's Draft Report into DVA commenced studies for a Doctor of Business Administration (DBA), in 2002 and the Neary paper formed part of the study package.

[35] Porter, M.E., 1985, ***Competitive Advantage: Creating and sustaining Superior Performance,*** the Free Press New York, cited in Neary, above, n.31.

[36] Schaars, S.P., 1994, 'Steal This Idea', *Success*, 41(10) Dec 1994, pp.91-111, cited in Neary, above, n.35.

[37] Bateman, T.S., & Snell, S.A. 2002, ***Management: Competing in the New Era***,5th edn, McGraw Hill, New York, p.220.

New markets in a DVA context could well translate into the introduction of digital support services, expanding into current ADF members by direct tracking of their medical and service history from enlistment to discharge, front office (outreach) support services at Post Offies, and Mobile Service Centres set up in partnership with DHS.

The analysis of the literature, support the contention that DVA, as a pioneer Department whose longevity is its greatest strategic advantage; meets all four criteria and, since commencing the VCR process, is starting to improve on these criteria.

The analysis found that there was a link between the DVA's major (VCR) paradigm shift and Bateman and Snell's view of entrepneurship. Similarly,

Consequently, the Corporation contends DVA is well-placed as a pioneer and entrepneurial entity, to continue to remain a force in veterans' support and is well-placed to survive well into the future as a standalone Department.

9.7 DVA and the Strategic Edge

According to Aaker (1991)[38] the key to successfully managing a strategic vision is that an organisation should have four characteristics. A review of Aaker's Model suggests they adapt very readily and easily to the spirit and intent of the VCR process being driven by DVA, and give further weight to the Corporation's contention that any recommendation to abolish DVA should be comprehensively rebutted.

According to Aaker's Strategic Vision Model[39] DVA is operating in a manner consistent with the following criteria:

1. ***A clear future strategy*** *with a core driving idea and a specification of the competitive arena, functional area strategies, and competitive advantage that will support the business.*

2. ***Buy-in throughout the organisation.*** *There should be a belief in the correctness of the strategy, an acceptance that the vision is achievable and worthwhile, and a real commitment to making that vision happen.*

3. ***Assets, competencies and resources to implement*** *the strategy should be in place, or a plan to obtain them should be underway.*

4. ***Patience.*** *There should be a willingness to stick to the strategy in the face of competitive threats or enticing opportunities that would divert resources from the vision.* (Bold emphasis by the book's author).

[38] Aaker, D.A., 1998, ***Strategic Market Management,*** 5th edn, New York, John Wiley & Sons Inc, p.150.
[39] Above, n.39, p.150.

According to Golder and Tellis[40], five factors drive successful performance of pioneer market leaders:

1. *Envisioning the Mass Market;*
2. *Managerial persistence;*
3. *Financial Commitment*
4. *Relentless Innovation*
5. *Asset leverage.*

The Five Factor Model identified by Golder and Tellis dovetails with DVA's transformation process and further solidifies its credentials as a pioneer veterans' support organisation which is prepared to make pre-emptive strikes (such as significant cultural and operational change), in order to maintain viability and operability as a standalone Department.

A key to DVA maintaining its strategic edge and functioning as a standalone organisation, is for the Department to maintain a *"commitment to investing and improving over time, to be a moving target"* (Aaker p.195). The current VCR transformation process suggests DVA is in fact operating long the lines of what Aaker posited.

An analysis of Aaker's Strategic Vision Model and Golder and Tellis's Five Factor Model supports the contention that DVA is working within the template of both Models and, combined with Miles and Snow's Adaptive Strategy Model (Table 1), is well placed to successfully implement VCR *in toto* and remain a standalone Department.

9.8 Adaptive Strategies - a Tool for DVA's Organisational Survival

In examining where DVA sits in the strategic management approach to its function and survivability, an analysis of the literature suggests DVA operates in a manner consistent with the Miles and Snow Model of Adaptive Strategies.

According to Robbins *et al*[41], Miles and Snow[42] identified four strategic types set out in Table 1, below.

Table 1: Miles and Snow Adaptive Strategy Model

STRATEGY TYPE	GOAL(S)	APPROPRIATE ENVIRONMENT	APPROPRIATE STRUCTURE AND PROCESS
Defenders	Stability and efficiency	Stable	Tight control, efficient operation, low overheads
Prospectors	Flexibility	Dynamic	Loose structure, innovative
Analysers	Stability and flexibility	Moderate change	Tight control and flexibility, efficient operation, innovative
Reactors	Not clear	Any conditions	Not clear

Source: Adapted by this writer from Robbins *et al*, at p. 259.

[40] Golder, Peter N., and Tellis, Gerard J., ***"Pioneer Advantage: Marketing Logic or Marketing Legend?" Journal of Marketing Research***, May 1993, pp. 158-170, in Aaker, D.A., 1998, ***Strategic Market Management,*** 5th edn, New York, John Wiley & Sons Inc, pp.198-199.

[41] Robbins, S.P., Bergman, R., & Stagg, I. 1997, ***Management,*** Prentice Hall, Australia, 856pp, at pp.259-260.

[42] Miles, Raymond E., and Snow, Charles C., 178, ***Organizational Strategy: Structure and process***, New York, Mc Graw-Hill, in Robbins, S.P., Bergman, R., & Stagg, I. 1997, ***Management,*** Prentice Hall, Australia, 856pp, at pp.259-260.

The application of the Miles and Snow Model suggests DVA's adaptive strategies operates between Prospectors and Analysers.

The loose structure asserted in the Model, although applying more to a private sector entity does in some ways, apply to DVA in that the VCR transformation process encourages and requires a degree of flexibility which encourages freedom of thought and development of new processes arising from that that thought, while still operating within the Statutes. It eschews the need to retain an outdated and useless siloed structure in favour one operating on a matrix management structure.

The literature suggests there is a strong interrelationship between the strategic management and adaptive strategy models discussed and DVA's transformation and driving the VCR process. These strategic management models can be seen to be reciprocal in terms of DVA's practices and organisational effectiveness being reflected for example, in new online claims assessment and vastly reduced time taken for claims processing.

The models discussed are being used as very effective strategic tools in enabling DVA to drive major and long-lasting change to improve organisational effectiveness and retain its rightful position as a standalone pioneer leader Department in the veterans care and welfare sphere.

A matrix management structure and mindset encourages cross-SBU communication, innovation and change management, as opposed to insular hierarchical silo management processes.

The Corporation contends DVA is well placed to act as a Prospector/Analyser as it continues to implement major and long-lasting organisational reform for the benefit of its key stakeholder group – veterans and their families.

In view of the facts as enunciated, the Corporation contends DVA is eminently capable of surviving as a standalone Department as it has done for102 years and should, due to its longevity as a pioneer Department be accorded cabinet status.

The strategic management and processes and models as discussed clearly advance the proposition that abolition of DVA is dangerously foolhardy, unwarranted and unjustified.

9.9 Playing the Long Game – Retaining the Strategic Edge

In its 2018 report on Australian veterans, the AIHW[43] reported on DVA's forward planning strategies:

> ***Key policies for veterans***
>
> ***Social Health Strategy 2015–2023***
> *This strategy sets out objectives to support the health and wellbeing of the veteran and ex-service community through all life stages, and to encourage greater personal investment in their own health and wellbeing. It includes the core principles of 'prevent, connect and enhance' (DVA 2015).*
>
> ***Veteran Mental Health Strategy 2013–2023***
> *This strategy sets out a 10-year framework and objectives to support the mental health and wellbeing of the veteran and ex-service community. It includes the core principles of 'prevent, recover and optimise', and takes a person-centred approach to mental health and wellbeing (DVA 2013).*
>
> ***Veteran Centric Reform***
> *DVA's Veteran Centric Reform program aims to improve the standard of service for the veteran community by reforming business processes, IT systems, organisational culture and service options (DVA 2017d). In particular, Veteran Centric Reform aims to provide DVA clients with simpler interactions, early intervention and preventative health care, and an improved service delivery platform.* (Box 1.1, p.6).

The forward-planning put in place by DVA supports the contention that the Department is playing the long game and in so doing, as a pioneer Department, is acting pre-emptively to maintain a strategic edge. The above initiatives demonstrate DVA is working in a manner consistent with the adaptive strategies and various strategic management Models discussed in this submission.

As such, this further validates DVA's entitlement to remain as a standalone Department.

9.10 Brand Awareness

The place occupied by DVA in the Australian psyche an d that of veterans in general, is well settled and suggests a very strong level of brand awareness is still present.
Brand awareness is something that can over time be taken for granted but can in fact become a significant asset in a strategic context for DVA and ensures the Department's continued sustainability and survival.

According to Aaker[44], there are three factors which demonstrate the strategic effectiveness of brand awareness; viz

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[43] Markus, L., and Sandison, B., ***Australian Institute of Health and Welfare 2018. A profile of Australia's veterans 2018***, 126pp, at p.6.
[44] Aaker, D.A., 1998, ***Strategic Market Management,*** 5th edn, New York, John Wiley & Sons Inc, pp.174-175.

1. *"Brand awareness can provide a host of competitive advantages. First, awareness provides the brand with a sense of familiarity, and people like the familiar."* (p.174).
   This directly relevant to DVA's situation. After 102 years and several name changes, as a very longstanding pioneer Department, DVA continues through VCR, and organisational transformation, managed to keep its brand awareness positive and high.

2. *"Second, name awareness can signal a presence"* (p.174)
   This entirely true of DVA. The public and political awareness of a Government Department that cares for those who serve the nation is one of considerable respect.

   Notwithstanding the non-fatal damage inflicted on its fitness for purpose, DVA's name awareness continues engender significant respect across the Australian and veteran community and also politically. That respect due to name awareness can and is being harnessed by DVA to ensure its continued survival.

3. *"Brand awareness is an asset that can be remarkably durable and thus sustainable.*
   It can be very difficult to dislodge a brand that has achieved a dominant awareness level" (p. 174).
   Dominant awareness is precisely the case with DVA, given its long history in caring for veterans since 1916. DVA has on any analysis, a strong dominant brand and is more readily identifiable with the Australian community and particular veterans in respect of their care and support. This is the direct opposite of placing through abolition, DVA functions within a completely new and alien entity created within another department that is not fit for purpose.

   DVA's durability and dominant awareness level throughout Australia and internationally gives it a strategic competitive edge that puts its retention as a standalone Department completely beyond doubt.

9.11 Threats to the Organisation's Cultural Change - Career Plateauing

The cultural change embarked on by DVA has far-reaching consequences for the way the Department will operate into the future. The threat of career plateauing is one area the Corporation contends ,DVA must ensure it has processes in place to deal with what can best be described as a threat to effective cultural change.

According to Stone (1998)[45]:

> *A career plateau refers to that point in an employee's career at which the probability of promotion is minimal* (p. 368).

[45] Stone, R.J., 1998, *Human Resource Management*, 3rd edn, Jacaranda Wiley, Brisbane, p. 368-369.

Similarly, Dundas (1998)[46] describes career plateauing occurring:

> *...when an employee is in a position that he/she does well enough not to be dismissed but not so well that promotion is likely* (p. 50)

The career plateauist poses a significant threat to DVA in that a staff member in this category can by virtue of barely working to rule, impede and actually sabotage the transformation process under way.

A staff member who career plateaus and is in a Primary Decision-making position (Delegate) can create a degree of havoc for veterans and their families, through an unreasonable focus on being obstructive, overly bureaucratic and working to their own personal rule.

Additionally, DVA staff members who have successfully transitioned to the new corporate culture, are at risk of their motivation, commitment and productivity being infected and destroyed by staff whose careers have plateaued. This can be very injurious to DVA's attempts to continue with its VCR and internal reform.

A staff member who career plateaus, is a danger that needs to be recognised and addressed by DVA, to ensure no such internal blockage due to an attitudinal and negative approach to veterans, presents itself.

It follows that, where staff are unwilling to embrace cultural and organisational change as part of their career development, DVA will need to have in place a set of strategies for dealing with those who reach a career plateau and are at risk of becoming obsolescent.

10 THREATS TO DVA'S TRANSFORMATION

Notwithstanding the positives in the Draft Report, the Corporation is of the view that the proposal in Recommendation 11.2 by the Productivity Commission to *inter alia;* "*abolish the Repatriation Commission and Military Rehabilitation and Compensation Commission upon the commencement of the VSC."* through devolution of its functions to an organisation that is not on any view fit for purpose (Defence), poses the single greatest threat to DVA's continued survivability.

There is no need for a VSC. The Repatriation Commission is considered sufficiently effective in the exercise of its powers and functions; viz

- The granting of pensions, compensation payments and other benefits and provide treatment for veterans, their dependants and other eligible persons;
- The provision of high-level advice to the Minister on the operation of the three Acts VEA, MRCA and DRCA; and
- Administer the relevant Acts.

[46] Dundas, K., 1998, Topic 10,***'Human Resource Development,***' in *MN 724, Human Resource Management*, pp. 31-54, © Southern Cross University, Lismore, NSW.

The relationship between the Repatriation Commission and DVA[47] is described thus:

> *The Repatriation Commission is responsible for the general administration of the VEA, with administrative support provided by DVA. The Repatriation Commission has no staff of its own but delegates its powers under section 213(1) of the VEA to DVA staff. The responsibilities of the two bodies are therefore inextricably linked and the Repatriation Commission has a vital interest in DVA activities and in the assessment of the appropriateness, effectiveness and efficiency of departmental programs. DVA reports to the Repatriation Commission on the administration of major programs and the progress and outcome of all major reviews, including Australian National Audit Office performance audits.*

Given the role of the Repatriation Commission encompasses basically what is envisioned with the VSC, the Corporation challenges the need to reinvent the wheel.
The Department has in recent years, undergone through constant enquiry and review, the equivalent of death by a thousand cuts. DVA is still evolving, reforming and improving.

With a recent change in top management and strong Ministerial support, the change process is now starting to make its presence felt in the veterans' support space.
The Corporation acknowledges that within DVA, there is still much to do.

Areas of organisational weakness still exist such as, *paying limited attention to the long-term sustainability of the veteran support system* (Draft Finding 6.1, p.226) and DVA will rectify those weaknesses it identifies and, as is the nature of any Government departmental beast, will probably make errors in the way it does business.

However, given the strength and depth of commitment by the Secretary DVA (leadership by example) and all senior staff which is reflected by staff joining in this journey of renewal and change processes as discussed in 9.5, it is critically important that DVA be allowed to continue to drive organisational change, free of the Damoclean sword that hangs over the organisation.

To that end, Governments regardless of political stripe, must have the courage to stay the distance and ensure DVA has the necessary political support and budgetary capability to continue with substantive and substantial change and to review and renew, as part of its ongoing product life cycle.

The consequences of recommendation 11.2 (abolition), can be summed up thus:

- The abolition of DVA will vapourise all that has been done.
- The community and electoral backlash will be lethal;
- It will result in a carve-up of and reduction in, services and support to veterans;
- It will result in forced and voluntary redundancies with a consequential loss of trained, talented and experienced staff.
- The veteran community will suffer grievously if this egregious and indefensible proposition was to be given effect.

The Corporation is very strongly opposed to the abolition of DVA.

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[47] Online at https://www.dva.gov.au/about-dva/accountability-and-reporting/annual-reports/annual-reports-2016-17/repatriation-commissi-4 [accessed 19/12/2018].

11 A NEED FOR DVA TO REBUILD TRUST

Notwithstanding the achievements by DVA, it must be noted the Department has suffered damage to its brand and its reputation as a world leader in veterans' administration and support. This damage has not been fatal.

The pervasiveness of a classic public service culture and mentality with an obsession for process over outcomes that was at best risk-averse and at worst indefensibly incompetent, operated to create an environment that stifled responsiveness. DVA became increasingly adversarial, inward-looking, treating all claimants as malingerers and made an industry out of refusing claims based on the flimsiest of reasons.

This assumption finds support in the PSC Capability Review[48] into DVA in which it found:

> *Such a siloed and rules-bound culture means that opportunities for improvement are lost, agility is forsaken, risks are exaggerated in the absence of a broader perspective, and motivation to support veterans and their families can be hard to sustain* (p.9).

The development of Project Lighthouse and the VCR process along with implementing inter alia, new electronic decision-making and claims determination process and massive cultural change, demonstrate DVA has undergone a positive paradigm shift in attitude, is hugely commendable.

It is worth noting that the former top-down win at all costs, take it to the wire culture, which had in the past become increasingly prevalent, had operated to the detriment of good and equitable decision-making.

The significant advances by DVA in determining claims through the introduction of MyService, advance the proposition that decision-making processes employed by DVA now appear to follow a logical, consistent and systematic process that rationality implies in decision-making. This assumption finds support from Robbins *et al*[49] who identified 10 limits to rationality in decision-making: viz

1. *There are limits to an individual's information-processing capacity.*
2. *Decision-makers tend to intermix solutions with problems.*
3. *Perceptual biases can distort problem identification.*
4. *Many decision-makers select information for its accessibility than for its quality.*
5. *Decision-makers tend to commit themselves prematurely to a specific alternative in the decision process, thus biasing the process towards that alternative.*
6. *Evidence that a previous solution is not working does not always generate a search for new alternatives.*
7. *Prior decision precedents constrain current choices.*
8. *Organisations are made up of divergent interests that make it difficult, even impossible, to create a common effort toward a single goal.*
9. *Organisations place time and cost restraints on decision-makers.*
10. *A strong conservative bias exists in most organisational cultures. Most organisational cultures reinforce the status quo, which discourages risk taking and innovation.*

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[48] ***Australian Public Service Commission, Capability Review***: Department of Veterans' Affairs, November 2013, p.9.

[49] Robbins, S.P., Bergman, R., & Stagg, I. 1997, ***Management***, Prentice Hall, Australia, pp. 183-185.

While not all of the rationality limits cited above apply to DVA's decision-making processes in respect of veterans' claims, it is contended that points 4, 5, 6, 7, 9 and 10 were applied by DVA to the detriment of veterans, in the past.

The work being undertaken by DVA to rebuild trust and reverse these perceptions is highly commendable and has gone a long way to eliminating the biases applied to a Delegate's decision-making process.

The current leadership of the Department are now endeavouring to redress what has acted as a major fetter to rationality, equity, transparency and integrity in administering veterans. According to DVA[50] it has identified three sins it must rectify: viz

- DVA needs to change the organisation and rebuild trust;
- DVA has lost the trust of the veteran community;
- DVA developed an adversarial relationship with the veteran community

This is significant, as Joss (1999)[51] found four elements to successful teamwork missing on assuming the CEO role at Westpac; viz

1. *A common outward focus*
2. *Working with, not against, one another;*
3. *Commitment to superior performance; and*
4. *Integrity, honesty and openness.* (p.200).

Joss's Model addresses and complements DVA's admission relating to creating trust and in particular in respect of point 2, *"working with and not against"* the veteran community which is particularly relevant to improving DVA's corporate and cultural attitude towards veterans and their families.

In order to redress the three sins it has identified, DVA contends it needs to do the following:[52]

- Change from claims to people
- Move from illness to wellbeing
- Move from reactive to proactive
- Move from complex to simple
- Move from paper to digital
- Move from siloed to shared

These waypoints will take some time for them to be achieved and will require significant courage and commitment by Government to ensure DVA remains funded to the level it needs, to implement these measures. It follows that, the veteran community owes a duty to ensure it has its feet under the table in consultation with DVA and support it through ESORT forums to enable veterans to have a say in driving change, in order the three sins enunciated by the Secretary above, are eliminated.

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[50] Above, n.21.
[51] Blount, F., & Joss, B., in association with Mair, D. 1999, ***Managing in Australia,*** Lansdowne, Sydney.
[52] Above, n.21.

Similarly, participation in and consultation with DVA on matters dealing with legislative reform on a regular basis, are also critical and must be actively supported by DVA and attended by ESOs.

The Corporation acknowledges and welcomes the changes and improvements implemented thus far, and urges DVA to continue to consult with ESOs and to maintain the change momentum.

12 SUSTAINABLE FUNDING - DRAFT FINDING 9.2 (Draft Report p.369)

The Department of Veterans' Affairs needs to negotiate a sustainable and predictable funding model with the Department of Finance based on expected claims and existing clients. This should incorporate the likely efficiency savings from the Veteran Centric Reform program via initiatives such as MyService.

The DVA budget is uncapped. The Defence budget is not.

Top-ups by DVA are sought where gaps in legislation/policy occur and the current departmental budget allocations are:[53]

- Healthcare, wellbeing and rehabilitation $4.8bn
- Compensation and income support $5.9bn
- Commemorations $47.8m

The latter part of the Commission's finding is surprising. The basic principle in managing budget allocations is to allocate funding where it is most needed and transfer any operating surplus within the DVA portfolio to a strategic business unit requiring additional funding. It is not beyond the wit of DVA that they do in fact, operate on that principle.

13 GOLD CARD RETENTION (Draft Report p. 557)

The Gold Card is inequitable, inefficient and not needs-based or wellness-focused when provided as a form of compensation. It does not fit with the key principles that should underpin a future system. Eligibility for the Gold Card should not be extended to any new categories of recipients (this will not affect any current Gold Card holder or person who is entitled to a Gold Card under current legislation).

The assertion by the Commission regarding the uselessness and ineffectiveness of the Gold Card is completely rejected by the Corporation. It is clear the Commission has failed manifestly to have regard to the RAAC Corporation's position and submission on the matter of the Gold Card and extended eligibility to that level of card, in certain circumstances.

[53] Above, n.21.

As stated by the TPI Federation's National President[54]:

> *The TPI Federation is also aghast at the recommendation to abolish the 100-year definition and provision of TPI/SR compensation for all future VEA and MRCA claimants, together with the abolition of the Gold (health care) Card. Doing so, completely and wrongly dismisses the TPI/SR classification and duty of care that underpins 28,000 of Australia's current Totally & Permanently Incapacitated/Special Rate Veterans.*

The Corporation endorses the stand taken by the TPI Federation.

It needs to be stated at the output, that Gold Card eligibility has a greater footprint under the VEA 1986, barely any footprint under MRCA 2004 (SRDP only) and nothing under DRCA 1988. The lack of an extended eligibility under MRCA is entirely due the drafters and Parliament.

The Act was designed to mirror a civilian workers' compensation legislation which have a very strong focus on not what it can provide for a claimant, but what it refuses provide, both in financial and material terms.

It is an Act designed purely to save the Government money and is considered to be on every level, an unmitigated disaster that should ever have seen the light of day.

13A GOLD CARD ISSUES - (Draft Report, p.571)

The Corporation notes the following by RSL NSW cited by the Commission:

RSL NSW said DVA's health card system 'encourages a view of the system as a contest to be won, with the Gold Card as the prize'.

> *… The outcome sought for veterans should be rehabilitation, not monetary settlement. The 'gold card' nomenclature utilised by DVA reinforces a negative entitlement culture where success for veterans is the extraction of cash from the government, not their rehabilitation and return to being a productive member of civilian society.*[55] (p. 571).

The assertion by RSL NSW that a Gold Card is seen to be cash grab and a prize akin to winning Lotto, is contemptible in the extreme. It is offensive, on every level.
Such a comment has no place in this debate and fails to acknowledge the fact Gold Card recipients also include widows in receipt of a War or Defence Widow's Pension.

It is an ill-thought-out, completely unnecessary and unwelcome assertion that is on every level, divisive, and displays a woeful lack of appreciation of the vicissitudes of attaining Gold Card eligibility. Such a comment is particularly unhelpful to this debate.

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[54] Above, n.11.
[55] Also in Overview, n.6 at p. 19.

The assumption by RSL NSW was effectively rebutted in an extract cited by the Commission from the 2003 Clarke Review; viz

> *Although no clear rationale is discernible, it would appear that initially, the need to provide generous health care cover for veterans who were severely incapacitated by service-related disabilities was the primary factor in providing full health care benefits. (2003, p. 501)*
> (Draft Report, p. 571)

The intent of Parliament going back to Prime Minister Billy Hughes in 1917, to do the right thing by veterans who found themselves severely incapacitated due to the effects of their accepted service-related disabilities is very succinctly summed up by Clarke (*supra*) and puts the need for the Gold Card, beyond doubt.

Notwithstanding Clarke, any ESO which attacks the integrity of the Gold Card and the processes in place to obtain one, is an ESO which is on any analysis and on any level, completely lacking in integrity, itself. The fact this assertion was made by a State Branch of what is still acknowledged as the premier ESO lobby group in Australia, compounds the offence caused.

Viewed through the prism of over 32 years as an Advocate, the assertion made has not been this writer's experience in representing veterans and from all three Service branches, from the following military service cohorts:

- WW2 (active service)
- WW2 (eligible war service within Australia)
- Korea
- Borneo
- Vietnam
- Sinai
- Rhodesia
- Bougainville
- Lebanon and Golan Heights
- Cambodia
- East Timor Leste
- Australia (non-operational service)

The assertion is without doubt, a terrible insult to the work ethic and integrity of Pensions/Welfare Officers and Advocates, but more particularly, such facile and contemptible comments are demeaning. Such assertions are an insult to veterans who find themselves, as human wreckage and unemployed, surviving on a rate of pension far less than what they earned when in full-time employment.

Such remarks belittle and mock the effects on veterans forced by virtue of their accepted disabilities, to apply for an increase in the level of Disability Pension to that of an above General Rate (Gold Card) Disability Pension.

The remarks are clearly offensive and derogatory and misrepresent the value in benefits available to a veteran who is in receipt of an Above General Rate of Disability Pension. The assertion by RSL NSW should be let fall to fallow ground and remain there.

The comment by RSL NSW has a recent and deeply wounding historical analogy that cannot be ignored. It has in many ways acted to reawaken memories of past indefensible utterances and conduct by the RSL nationally, State and at local Sub-branch level, that Vietnam Veterans are malingerers, had never been in a real war until they had seen blood spilled, and were shunned by that very organisation.

The betrayal and hurt generated by the RSL from that time, still exists and unhelpful comments such as that made by RSL NSW implying Gold Card recipients are in some way, frauds and malingerers, do little to advance the debate on fighting for veterans' rights and entitlements.

In its 2018 report into Australian Veterans, the Australian Institute of Health and Welfare (AIHW)[56] reported:

> *DVA Gold Card holders have previously been found to have a higher rate of hospitalisations than the Australian population, which may be attributed to higher rates of disability (AIHW 2002)* (p.65).

The study further reported that veterans in receipt of the EDA level of Disability Pension "*had almost 3 times as many hospitalisations per person"* (p.65).

The facts speak for themselves. The level and severity of disabilities attracting Gold Card Coverage are of such a nature that, regardless of age or conflict cohort, the deleterious effects of veterans' accepted disabilities are of such a nature that hospitalisation is required and with an increasing frequency as the disabilities worsen. This has a profound and lifelong effect on a veterans' physical and mental wellbeing.

It is clear RSL NSW has failed to appreciate the effects of a Gold Card veteran's accepted disabilities either as an individual disability or the cascading effects of multiple accepted disabilities, culminating in hospitalisation.

Such a contentious assertion by RSL NSW makes it demonstrably clear that organisation has no concept or appreciation of the vicissitudes of accessing a Gold Card. The assertion fails to appreciate the pitfalls and traps which await veterans whose accepted disabilities are such that the only and inevitable outcome for a veteran is to consider access to a Gold Card. The facts as reported by the AIHW clearly rebut any contention that a Gold Card is some sort of prize.

[56] Above, n.44.

The VEA 1986 has a limited application to rehabilitation for veterans who receive a pension under this Act. This is enshrined in s.37 viz:

> ***37AAA Continued eligibility for invalidity service pension if person undertaking a rehabilitation program etc.***
>
> *If:*
>
> *(a) a person is receiving an invalidity service pension; and*
>
> *(b) the person ceases to be permanently incapacitated for work while, or as a result of, undertaking a rehabilitation program under the Veterans' Vocational Rehabilitation Scheme;*
>
> *the person does not cease to be eligible for the invalidity service pension from the time at which the person ceases to be permanently incapacitated for work until the end of the period of 5 years mentioned in subsection 115G(2) (as affected by subsection 115G(2A)).*

The VEA 1986 allows for payment of a compensatory amount in a Disability Pension (DP) paid at the General Rate (GR) in 10% increments up to 100% of the GR, the level at which the Gold Card eligibility comes in. Veterans may work full work hours while receiving a DP paid that the General Rate.

However, where a veteran's accepted disabilities start to impact adversely on their capacity to undertake remunerative work for the full hours required, the Act has provisions for applying for a higher level through access to the Above General Rate of Pension(AGR) is provided for.

It is well settled that the process for veterans to access a Gold Card is fraught process and requires very careful negotiation of what is a legislative minefield contained within the VEA.[57]

A veteran who is in receipt of a DP paid at 100% GR and is considering applying for an increase to an AGR pension, is assessed under different and much stricter legislative and assessment criteria. That this basic fact is not recognised by the Productivity Commission, is surprising an disappointing, and points to a defect in their logic about it being not needs-based and ineffective.

Under the standard process for claiming a DP paid at between 10% and 100%, a veteran is assessed on the **effects on their lifestyle** (quality of life) and **degree of impairment** to which the provisions of GARP 5 apply.

An AGR pension is not tied to that process and focuses primarily on the **capacity of a veteran to undertake remunerative work** of up to 8hrs per week (VEA) and 10hrs per week (MRCA). Additionally, the provisions relating to the Intermediate Rate of pension stipulate up to 20hrs remunerative work per week. Temporary TPI (TTPI) is assessed using the same criteria as for Special (TPI) Rate pensions.

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[57] The author has been a Practising Veterans Advocate before the Veterans' Review Board since June 1986. He is TIP 4-qualified and holds a Practicing Certificate to appear before the Commonwealth AAT, and enjoys a 100% success rate in representing veterans over the past 32½ years, including representing veterans whose accepted disabilities have prevented them from remaining in the workforce.

All AGR Pensions are determined by a very specific and strictly applied legislative tests. The supremacy of these legislative and other tests has been upheld by numerous Common Law decisions.

Undergoing a process to be granted a Gold Card is not an easy path to travel.
The assertion by RSL NSW that a Gold card is some sort of cash-extracting prize is fanciful and completely lacking in merit and credit, on every level. It is not an exaggeration to contend RSL NSW and the Productivity Commission comprehensively failed to have regard to the facts in issue surrounding the matter of Gold Cards, regardless of level.

13A.1 The Brutal Facts of a Gold Card Application Process

The Commission fails comprehensively to appreciate the reality of a veteran being granted a Special Rate Disability (TPI) pension; viz

1. A veteran does not **choose** to attain that rate of pension.

2. A veteran is by virtue of an accepted war or defence service-caused disability of itself alone, **forced** to apply for an increase in pension to that rate as the effects of the disability worsens and impact significantly on their ability to remain in the paid workforce.

3. It is a disheartening and stressful experience for veterans to go through the AGR Disability Pension application process and has been likened to going though Dante's Circles of Hell.

4. It results, on being granted this level of pension, in a veteran feeling they have failed in their ability to remain in remunerative employment providing for their family, and paying taxes.

5. The sense of failure and loss of self-esteem in not being able to contribute in the workforce, is significant and profound.

6. A veteran who is granted a TPI Disability Pension is now in a situation, notwithstanding the benefits that attach to a Gold Card, where a huge gap exists between what was previously earned in full-time remunerative employment, and what is now the reality.

7. The effects which flow from a veteran suffering a loss of income due to an inability to continue to undertake remunerative employment and being granted a TPI pension, are profound and permanent.

8. The effects of becoming a TPI or SRDP Pensioner have consequential whole-of-person-and whole-of-life consequences, particularly in matters where deteriorating health due to the deleterious and cascading effects of accepted disabilities, comprehensively upend veterans' lives, leading to death.

A clear and present danger exists in the Commission's assertion about a Gold Card not being ***needs-based*** and being ***inefficient***. It can be reasonably inferred that a danger lies in the fact there is potential ulterior motive behind this assertion, in that it can be interpreted as being code for a ***means-tested*** Gold Card, similar in operation to the means-tested Service Pension or any Centrelink Pension.

The pension rates applicable to TPI veterans and SRDP veterans are far and away below the minimum wage (MTAWE) prescribed for Australian workers. This is starkly illustrated in a letter from the National President of the TPI Federation to the Prime Minister and others in August 2017, setting out the backward and downward trend in pension survivability in terms of economic loss is now 65% less than the minimum wage trending downwards from **80.28%** of the minimum weekly wage in 1949-1950 to **43%** of the minimum weekly wage in 2013-2014.

According to the TPI Federation:

> *'Economic Loss' is supposed to provide replacement income compensation for Service related disabilities, and therefore it should at least modestly support the Veteran and their family.*

The statistics suggest quite clearly that the economic loss component is anything but modestly supporting families. The data obtained by the TPI Federation from their independent research suggests TPI and SRDP recipients and their families, are in fact being robbed in slow motion, by a supposedly grateful Government.

Such an erosion of a TPI/SRDP pension is on any analysis, an appalling slide for those recipients, into potential financial oblivion, and certainly rebuts the baseless and indefensible assertion by RSL NSW that access to a Gold Card is seen to be some sort of a prize and the insupportable perception by RSL NSW that obtaining a Gold Card is measured in terms "*where success for veterans is the extraction of cash from the government"*. A copy of the TPI Federation letter is at **Attachment C**.

It follows that, the Commission's proposal to cease the Gold Card being available to subsequent veterans is completely rejected as is any move to move needs needs-based Gold Cards and must be vigorously resisted.

13B GOLD CARDS AND REHABILITATION

Background
In its original submission, the Corporation discussed the provisions of DVA Factsheet MRC09 Special Rate Disability Pension (SRDP) accessed 28/5/2918 (sub 29, p.56), in which it was stated by DVA that: *"Those eligible for the SRDP receive a Gold Card. Participation in rehabilitation is* ***a precondition*** *to being assessed as eligible for the SRDP."* (This writer's bold emphasis).

That statement was argued by the Corporation to be inconsistent with the law, specifically the provisions of s.199(1)(d) which provides that where a veteran fails to meet at least one of the legislative criteria in s.199, in this instance where, *"rehabilitation is unlikely to increase the person's capacity to undertake remunerative work"* an offer of either a SRDP pension or periodic payments must be made.

The provisions of s.199(1)(d) are considered to be a beneficial and remedial provision. However on any reading, the precondition in MRC09 was not considered to be a beneficial or remedial provision, instead acting as a significant fetter to a veteran attaining SRDP eligibility, once all avenues of rehabilitation failed, by continuing to insist rehabilitation must be a precondition to receiving that level of disability pension.

The law is unambiguously clear that where an inconsistency exists, the legislation prevails to the extent the inconsistency occurs. This was certainly the case with the governing legislation, in this instance s.199(1)(d) MRCA when compared to MRC09.

The fact is that by imposing a precondition caveat on veterans in MRC09 which was not enshrined in law, the provisions of MRC09 were considered by the Corporation to be *ultra vires* the Statute.

The Corporation notes that since that time, MRC09 has been amended and the term ***"precondition"*** has been excised (effective 8/1/2019). While welcoming this adjustment to bring MRC09 in line with the law and operate in a beneficial and remedial manner for veterans, the Corporation contends that further adjustment needs to be undertaken to smooth the path to a SRDP Pension and remove another legislative tripwire.

Issues
The issue of rehabilitation and when to grant a level of pension to a veteran for the rest of their life due to a complete inability by virtue of their accepted disabilities to return to or remain in the workforce, is an area that is perhaps the most contentious.

This arises due the fact one Act, the VEA 1986, is not rehabilitation-focused and provides for disability pension coverage and health care to veterans for natural life. In contrast, the MRCA 2004 is very strongly focused on rehabilitation and has only one level of lifetime pension coverage the SRDP.

Under the VEA, once veterans are assessed and granted a Disability Pension, they essentially have no further contact with DVA from a purely pension perspective, other than lodgement of an AFI or claim for a new disability. However, under MRCA due the pervasive nature of the legislation related to rehabilitation, it is not an exaggeration to contend that in some instances, veterans are better off under a VEA regime than that of MRCA.

The difference of approach under the VEA and MRCA to veterans with significant and permanent accepted disabilities, is best illustrated by the situation that those unable to work, find themselves in.

Under MRCA (s.199) veterans are entitled to a grant of SRDP pension which is that Act's equivalent of a s.24 VEA Special Rate (TPI) Pension. The grant of SRDP comes with a caveat – either elect for a SRDP pension paid indefinitely (for life) or periodic payment to the age of 65 and then automatically come off MRCA payments and move to the Aged Pension and become a Centrelink dependant.

That is an appalling option on every level, and action should be taken to rid the Act of the Centrelink backstop in respect of any veteran deemed incapable of working more than 10hrs a week and who is granted a SRDP Pension.

The Centrelink option is seen to be an action that is a completely inconsistent factor in an Act that is supposed to look after those who served the nation and who, by virtue of that service are too disabled to work.

Placing them on Centrelink benefits at age 65 destroys that special veteran status through putting them into the huge cohort of an Aged Pensioner cohort and not keeping them as a military veteran under MRCA. It is on any analysis, tantamount to being thrown out of home ((MRCA) and is considered to be one tripwire that needs to be eliminated.

According to DVA's recently amended Fact Sheet MRC09, which removed participation in rehabilitation as being a *"precondition"* to SRDP eligibility; *"If you are assessed as SRDP eligible, **you can still participate** in a rehabilitation program."*[58]

(This writer's bold emphasis)

Again, MRC09 is inconsistent with the provisions of s.199(1)(d) which states *inter alia*, *"rehabilitation is unlikely to increase the person's capacity to undertake remunerative work."*

The argument can be made that, in circumstances where a veteran is granted pension paid at the SRDP level, rehabilitation is not going to work at the higher end of the disability scale, due to the effects on a veteran of the severity at that level, of their accepted disabilities. The level of pension is commensurate with the severity and permanence of the accepted disability or disabilities.

[58] DVA, 'Special Rate Disability Pension (SRDP)', Factsheet MRC09, online at https://www.dva.gov.au/factsheet-mrc09-special-rate-disability-pension-srdp [accessed 9/1/2019].

No evidence of material fact as to the success of rehabilitated SRDP veterans coming off that level of pension, is available to show the derating of a veteran's pension to a PI periodical payment. The suggestion in MRC09 that rehabilitation might work at that level of physical or mental impairment, is not sustainable.

This is supported by the provisions of s.199(b) which state:

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

The operative phrase in this instance is ***"indefinitely."*** It is not an exaggeration to contend that the level of physical and mental damage to a veteran where SRDP eligibility is being considered, is of such a nature that any attempts to become or remain a contributing member of society, will be for naught.

Regardless of the good-faith intent to rehabilitate a veterans as much as is reasonably possible, the reality is that instances will occur where this is just not possible – a fact acknowledged by s.199(b).

It follows that, the provisions of s.199(d) which states:

> *(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.*

should at the first instance, be amended to have the second half of the sentence commencing with ***"and rehabilitation…"*** completely excised from what is a very difficult test for badly damaged veterans at that level of disability, to meet. As it stands, this rehabilitation caveat provision in s.199(d) imposed on the most badly affected veterans, defeats any beneficial intent of this legislation and is another tripwire that needs to be removed.

It is not an exaggeration to contend the provisions of VEA 1986 in respect of TPI veterans are on any analysis, far more beneficial.

The inference gained from the relevant MRCA provisions discussed presupposes a SRDP veteran will recover. This is flawed thinking. The physical damage or mental damage or both, to a veteran at the level of pension eligibility, clearly argues in favour of a veteran being granted a SRDP without any further strings attached.

In trying to claw back from SRDP-category pensioners that level of pension based on a rehabilitation programme which will most likely never succeed, the Government is in fact keeping a SRPD veteran in a twilight zone of stress and uncertainty by placing a SRDP veteran undergoing a rehabilitation programme - never knowing if the SRDP is to be cut, forcing them to go through the review process all over again. The stress that that places SRDP veterans - in particular vulnerable PTSD veterans under, needs no further elaboration.

This is particularly so in circumstances where a veteran who is too ill or too disabled to work, is forced to step on the merry-go-round of constant doctor's visits to obtain doctors' certificates in order to receive disability payments. There is no incentive on the merry-go-round for veterans to seek work, which places them at significant risk of becoming chronically dependent on compensation payments to the extent they are psychologically unable to go job hunting.

Failure to lodge such certificates results in payments being ceased forcing a veteran to start the process over again with its attendant stress and trauma, particularly in circumstances where PTSD is one of the disabling conditions.

Assessment Periods
A failure of MRCA is the complete absence in the Act, of any legislative provisions to enable veterans to be considered for grant of Temporary SRDP status for up to two years in order to see if rehabilitation of a veteran is successful.

The provisions of s.25 of the VEA provides for temporary payment of Special Rate Pension (TTPI) in certain circumstances within a period of time determined by the Repatriation Commission. In general terms this is seen to be between 12 months and two years and in this writer's experience, is considered to be a very effective measure in gauging stabilisation of condition in respect of determining grant of TPI or not, at the end of the specified period.

This level of pension is seen to be what is best described as an *order nisi* whereby after further assessment, a determination granting pension at substantive TPI level is seen to be an *order absolute*.

There is no option of a lump sum or pension, as is the case where interim compensation payments under MRCA are reviewed to assess permanence , once a condition has stabilised. It is noted that throughout the Draft Report's 704 pages, it is silent on discussing a specified time period (assessment period) to assess and determine permanent impairment as part of a stabilising assessment exercise. Similarly, s.75 MRCA and the DVA CLIK database are also silent on a specific stabilisation assessment period.

This suggests an open-ended situation which has its disadvantages.
By applying an open-ended stabilisation assessment period, veterans subject to this process under MRCA and also DRCA, find themselves in a compensation limbo where no substantive final decision on permanent impairment can be made, generating stress and uncertainty in trying to have a final decision made as to their circumstances.

The imposition of a time limit on interim assessment would operate to give veterans a degree of certainty that there is an end date they can work towards, in attempting to have their condition/s stabilised for final assessment.

It is contended that consideration should be given to examining the assessment period applied to s.25 VEA with a view to developing a similar protocol for MRCA and DRCA veterans who are undergoing a stabilisation assessment process.
Certainty and a goal to aim for is a stress reducing process and can only make the compensation process smoother for veterans.

The beneficial intentions of higher-level disability pensions available to VEA veterans before becoming eligible for a grant of pension paid at the Special (TPI) Rate, are an excellent sounding board by which to asses how a veteran is rehabilitating.
If applied to MRCA, it would allow a determining authority to assess the need to grant a full SRDP pension without the detrimental caveat contained in s.199(d).

The inclusion in MRCA of two additional higher-tier pensions similar to the TTPI and Intermediate Rate of pension under VEA will provide veterans with a stable time frame in which to have their conditions assessed for permanent SRDP, and will remove the stress of having to continually chase doctors' certificates for that specified assessment period, while on a Temporary SRDP.

The Corporation contends that a three-tier Hierarchy of AGR pensions, should be considered for MRCA veterans; viz

- **Intermediate level (Tier 1)**
- **Temporary level (Tier 2)**
- **SDRP level (Tier 3).**

Similarly, an Intermediate-equivalent MRCA pension will enable veterans to undertake paid work for greater than 10 hours, albeit on a restricted basis.

The risk to that lies in the offsetting that is enshrined in MRCA. Any salary earned under the restricted work-hour regime of an Intermediate equivalent under MRCA, should apply a different method of offsetting.

Any offsetting should not, under any circumstance, be equivalent to the 60% offsetting penalty in the Act, but should be calculated, based on the weekly disability payments i.e., an amount deducted from the pension, using a formula for VEA Service Pensions where a pro-rata deduction is calculated based on a veteran's after -tax earnings. This contention finds strong support from the National RSL.

It is also significant to note in MRCA the use of the term ***"person"*** instead of ***"veteran"*** which again operates to *de minimis* a veteran's service and deliberately ignoring a claimant as a veteran and reducing a veteran to a mere civilian worker. This again offends the unique nature of a veteran's service by lumping the in with the general community.

13C PROTECTION OF THE GOLD CARD

This level of card is also granted to War and Defence Widows/widowers.

The legislation and Common Law have ensured the process for Gold Card eligibility are not traduced or diluted in any way and with good reason. Allied to that is the mandatory requirement of veterans to have rendered qualifying service which is defined as rendering service where a veteran has incurred danger from hostile forces (s.7A VEA).

This is particularly so in circumstances where veterans reach the age of 70 and may have automatic Gold Card eligibility, **provided** they meet that criterion as for Service Pension where the provisions of s.35B VEA operate to establish eligibility based on qualifying service.

The black-letter law is well settled and the Courts continue to defend that legislative criterion. This contention relies on the decision of the Federal Court in *Kohn*[59] in which the Court per Hill J, held:

> *54. **The legislative policy behind the Veterans' Entitlements Act is that a person who has rendered operational service in the sense defined in s.6(1) should more readily be able to obtain a pension than a person who has not rendered such service**. It was the intention of the legislature that it was only members of the Armed Forces who, in truth, were on service outside Australia during World War 2 who should receive this preferential treatment as to pensions. It cannot be conceived that Parliament intended that veterans who were at all times stationed in Australia but who travelled from one place in Australia to another and thereby were for short periods of time outside Australia, should be treated in the same way as veterans who fought in a theatre of war, sailors who served continuously on a ship engaged in or likely to become engaged in combat or members of the Air Force engaged in flying missions outside Australia.* (Writer's bold emphasis).

The Corporation acknowledges what the Courts believed, namely that Parliament had drafted a law to give preferential treatment to veterans who had actually rendered active (operational) service. Nothing in any subsequent decision by a Court of superior jurisdiction has disturbed *Kohn.*

A clear distinction exists in the assessment of and grant of pensions of those applicants who had rendered operational service and those who had not.

In the Corporation's view, this clearly enunciates the Government's intent to do the right thing by those who had done the hard yards. It is on every level, a beneficial intent and as such, must be maintained.

The Corporation contends that the comments by Hill J apply just as equally **to qualifying service** in the examination of having incurred danger from hostile forces. There is a large body of litigation on these topics and it is very much against veterans who have not rendered operational (warlike) service nor incurred danger from hostile forces.

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[59] ***Repatriation Commission v Kohn*** (1989) FCA 244(3 July 1989).

In an email copied to this writer[60] previously discussed and cited, containing a number of comments related the Commission's Draft Report, the author, a DFWA member who is a retired decorated Infantry Brigadier, addressing both the devolution of DVA to Defence and the Gold Card, made the further following instructive comments:

> *I have held a Gold Card now from 2012 when I turned 70, and from that day forward I cannot recall paying anything for my health support, except for some small amounts for pharmaceuticals. This has been particularly vital over the last two years during which I have had 10 or more operations, four of them major, supported by umpteen consultations, specialists, MRIs, scans, x-rays, hospitalizations, etc, all picked up by DVA without complaint. I recall too, with pleasure, the commemorative events that I have attended over the years, all sponsored by DVA. It's difficult for me in the circumstances to put my finger on the fundamental flaws said to exist…*

The beneficial provisions of the Gold Card as described by the veteran in question, put the issue of the incalculable value of the Gold Card, beyond doubt.

The Corporation agrees completely with his comments.

The age factor of an automatic (qualifying service) issue of a Gold Card is not a relevant consideration. Aside from the financial component, the practical value of the Gold Card as described above, is incomparable.

The medical support issues described above, can in many instances apply to a younger cohort of veterans too who will inevitably get older and more frail, like veterans' cohorts before them. However, due the provisions of MRCA they are denied the privilege of an entitlement to similar treatment by way of a Gold Card (100% Rate and Intermediate Rate) unless they are in receipt of a SRDP pension.

The Corporation contends the retention of the protections surrounding the criteria for grant of Disability Pension payable at 100% of the GR and upwards including mandatory criteria for rendering qualifying service, must remain in place.

The Corporation's position is that:

1. Abolition of the Gold Card and a reduction in its benefits is not supported;

2. Retention of the Gold Card and retention of its protective eligibility criteria is and remains a non-negotiable fixture in the veterans' disability pension hierarchy; and

3. Introduction of a three-tier system of pensions for MRCA veterans, should be considered.

[60] Above, n.14.

14 ADVOCACY (Draft Report pp. 384-385)

The evidence adduced from successive reviews of the advocacy system and advocate training, indicates a considerable variation in the competency of practicing advocates.

This occurs primarily due to some ex-service members undertaking to look after other veterans in the advocacy space with no formal training, while other advocates undertake a level of training directly commensurate with their skill level in a field of veteran support in which they wish to practice, be it Pensions/Welfare, VRB or AAT.

The Corporation addressed the issue of veterans' Advocacy and the operation of the new ATDP process, in its original submission to the Productivity Commission (sub 29, pp.22-26) and discussed *inter alia,* the following matters:

14.1 Monitoring Advocates' Competency

The Corporation notes as does ADSO, that no audit process exists for DVA to monitor or record the quality of Advocates' work. As such, this lack of monitoring has operated to adversely affect identification and further training of incompetent or poorly motivated Advocates.

The development and introduction of a new model of advocacy training and competency-based training under the aegis of the Advocacy Training and Development Program (ATDP) will hopefully remedy the issues surrounding incompetent representation which is it must be contended, is confined to a very small fraction of veterans' practitioners.

It is hoped the structured competency-based training regime such as that being implemented via the ATDP process, will enable DVA to monitor Advocates' success.

14.2 Limitations to successful advocacy training and monitoring

The Corporation notes that motivating and recruiting new Advocates from the contemporary veteran cohort to replace those who have been practising for the past 30 or more years, meets with significant challenges. These challenges are:

1. A marked reluctance by contemporary veterans to have anything to do with mainstream ESOs (membership of which is a primary major criterion for selection to undertake advocacy training), in particular in respect of a new Advocate training programme which is perceived rightly or wrongly, to be underwritten by DVA.

2. Contemporary veterans have lost a significant level of trust and faith in mainstream ESOs due to the recent scandals surrounding the nation's leading ESO, the RSL.

3. The walking away from Advocacy by post-Vietnam Advocates due to a range of factors, i.e., age, illness, exhaustion, frustration and disillusionment at having to work with three different Acts and undergo further RPL and retraining.

4. The demeaning nature of the process which fails completely to take into consideration by way of an example, a TIP 4 AAT qualification, which carries advanced standing and four credit points towards a Graduate Diploma in Legal Studies at some tertiary institutions.

5. The length of time between completion of all competencies and obtaining formal certification from a RTO - six months - is a major impediment to an ATDP-qualified veterans' practitioners commencing actively representing veterans.

6. The haemorrhaging of highly experienced and qualified Advocates and the slow uptake by younger veterans in this space has now seen the Veterans Indemnity and Training Association (VITA) extend its coverage of veterans' practitioners until at least 2021, to enable development of a larger pool of ATDP-trained Advocates commence practising.

7. The loss of trained and highly-experienced Advocates and the slow uptake by younger veterans, is considered by the Corporation to act to the detriment of the ability by veterans to be able to access Advocates to represent them when required. This will ultimately operate to impact negatively on the efficient processing of claims and appeals though this shortfall.

8. Notwithstanding the necessity for insurance coverage in this litigious age, the continued refrain that it is a matter of ensuring indemnity cover, is tiring to say the least. The closure of VITA coverage in 2021 gives ESOs sufficient time to examine taking out liability coverage for their entities and Advocates.

The need to have the ATDP Programme in place and fully operational by 2021 will be governed by having sufficient numbers of trained, qualified **and formally certified** veterans' practitioners available by 2021 – given the slow uptake, as that is when the VITA coverage ceases.

The low uptake has two limbs; viz

1. The younger cohort of veterans walking away from the training due to the associated heavy workload and subsequent demands on their time.
   This is particularly significant given that the younger cohort of veterans see establishing themselves and their families in a new life as their overriding priority.

2. The refusal of current and highly experienced veterans' practitioners with TIP qualifications and over 30 years practical experience in the Veterans' appeals jurisdiction, walking way from the ATDP Model due to their refusal to be subjected to a demeaning and humiliating RPL process and the demands on their time to undergo further re-education.

The preceding analysis been alluded to by Slater and Gordon who contend, *inter alia*:

> *ATDP is placing a huge burden on volunteers to manage a very complex process and it is running the risk of losing the support of all ESOs. (Slater + Gordon, sub. 68, p. 80)* (Draft Report at 384.)

Similarly, Legacy argued that:

> *… the ATDP has become bureaucratised and process driven and many of the current, long term advocates have expressed the opinion that it will be very difficult for volunteer advocates to achieve accreditation under the current arrangement. (Legacy, sub. 100, p. 4)* (Draft Report at 384).

Further, the Corporation noted:

> *The introduction of the ATDP concept was rushed, it failed to adhere to the original model ... and is particularly onerous upon the unpaid volunteer advocates. The previously [Training and Information Program] trained advocates will continue to drop out as the requirement for on-going mentoring, training and bureaucratic interference continues. (David Melandri, sub. 61, p. 3)* (Draft Report at 384).

This is significant, as there is a marked reluctance by ATDP leaders to countenance any form of recognition of previously formally obtained TIP training qualifications. This has in effect thrown a large number of veterans' practitioners on the Advocacy scrapheap causing them to drop out and walk away from Advocacy.

The consequential effect of this has operated to create a knowledge and experience gap in the availability of trained and highly-experienced practitioners which has impacted on VITA coverage now having to be extended to 2021 when it is hoped sufficient numbers of ATDP practitioners will have qualified to practice.

According to the Queensland RSL:

> *However, this program is still predominantly following the [Training and Information Program] training modules and is focussed on Compensation and Welfare. There is very little clear direction or training for potential advocates regarding the importance of rehabilitation and having veterans seeking to achieve a high level of wellness. (RSL Queensland, sub. 73, p. 6)* (Draft Report at 384)

Two issues flow from RSL Qld's contentions:

1. The assertion the ATDP is in effect mirroring TIP Training begs the question as to why are no trained and qualified TIP 3 ad TIP 4 Advocates being issued with Certificates of Attainment to provide formal bridging recognition of their certified skills and qualifications to enable them to continue to practice at appellate level on VEA matters.

2. This contention by RSL Qld challenges the somewhat erroneous assumption by ATDP leaders that the new Model is to be the operative provision to the total exclusion of all that has gone before.

The Corporation contends the complexity alluded to by Slater & Gordon is directly attributable to the clunkiness of having to work with three differing legislative regimes and the complexities which flow from that. This again reinforces the Corporation's contention that an Omnibus Act will go a long way to removing these complexities.

The Commission's attention is directed to the Corporation's submission advocating for the development of an Omnibus Act, including the recommendation of the Dunt Review and South Australian Government, strongly advocating for an Omnibus Act (sub.29, pp.28-29).

The Corporation notes and supports, the contention of the National Veteran Compensation Advocacy Adviser of the Australian Commandos Association[61] that improvements can be made to the ATDP Model *"to include TIP Trained VEA Advocates with a Statement of Attainment and allow them to continue their valuable work to the Veteran Community."*

The Corporation agrees completely with that contention. There are many veterans who come under the VEA regime who have need of a veterans' practitioner to represent them in their Section 31 and appeals process and any suggestion to the contrary is not supported.

14.3 Paid Advocates

The Corporation notes the Draft Report is completely silent on the issue of paid Advocates despite the Corporation addressing this issue in its formal submission.

The failure by the Commission to have regard to this very important matter by the Commission is disturbing.

This is an area in which the ATDP hopes to recruit former veterans in the hope that they will make career out of professional advocacy. The proposal to employ paid advocates is one the Corporation contends must be subject to close and rigorous due diligence and careful examination. Should paid Advocacy become the norm, the following issues will need to be considered:

1. **Remuneration** – what remunerative level will be available to Advocates who practice at a particular skills level? Has consideration been given to examining remuneration for these differing levels of practice?

2. **Funding** – no answer has been obtained from the ATDP or the ex-service community as to a funding model for paid Advocates. It follows that, not all ESOs will be in any position to contribute to funding Advocacy services for any proposed Institute of Professional Advocacy.

3. **Terms and conditions of employment** – conditions of employment including leave, workplace insurance/compensation cover and industrial representation, will need to be considered.

[61] Email Copeland-Mc Laughlin Tuesday 18/12/2018 at 0441hrs.

4. **Hours of work** – there is a very strong possibility that veterans who are unable to undertake remunerative employment due to their accepted disabilities may be able to undertake vey limited paid Advocacy to supplement their Special Rate (TPI) pension (VEA) or SRDP Pensions (MRCA).

5. **The danger of paid work** - a danger exists in that the remunerative nature allied to a very demanding and time-consuming workload, gives rise to the contention that such employment may operate to impinge on the legislatively-mandated maximum 8-hr work cap (s.24 VEA), the up to 20-hour Intermediate Rate (s.23 VEA) or the 10-hr work cap (s.199 MRCA).

6. Consideration must also be given by SRDP recipients that offsetting any remuneration by a veterans' practitioner in receipt of a SRDP Pension, may also apply to the detriment of whatever they earn, within the 10-hour cap.

7. The Corporation freely acknowledges that, although the remuneration within the SRDP cap may be of such a level that offsetting may not occur, it contends the level of intense dislike of the offsetting provisions mandates that a degree of caution exist to ensure offsetting does not affect any such remuneration.

8. Similarly, veterans in receipt of a TPI pension (and eligible MRCA recipients) who also receive a means and assets-tested Service Pension, will be legally required to notify the Repatriation Commission of any changes to their financial circumstances, including remuneration earned within the 8-hr cap. That remuneration will result in a reduction in Service Pension payments. Failure to do, so will result in overpayment and a self-executing clause in the Act operating to cause a veteran to receive letter of demand for funds overpaid.

9. Veterans in receipt of either class of pension and who do not wish to jeopardise them, should be accepted on a voluntary advocacy basis and with equal status to paid Advocates.

14.4 Challenges to Recruiting Paid Advocates

The challenge facing adequate veterans' representation paid or otherwise, flows from the post-service priorities of discharged ADF members. On discharge or retirement, ADF members are:

1. Focused primarily on settling down to a new life either singly or as a family unit and are not interested in joining ESOs;
2. Are primarily in the prime of their life;
3. Focused on obtaining employment in anew work environment;
4. Focused on starting a new life away from the ADF and in the main want to leave that life well behind them;
5. Typically persons who have served on average 10 years in the ADF;
6. Are not interested in joining mainstream ESOs to be elected for Advocacy training;
7. Are reluctant to commit the time required to obtain the relevant qualification; and
8. Have no first-instance interest in veterans' issues.

These priorities are reasonable in all the circumstances.
The challenge will be to attract and retain suitable personnel to take on what is a very demanding, time-consuming and stressful role.

15 SERVICE PENSIONS - NOT PHENOMENA (Draft Report p.112)

The Commission addressed the issue of service pensions in expressing surprise as to how this class of pension came about when it stated:

> *To what degree this phenomena was due to mental illnesses, economic pressures (with decreased veterans' earning capacity) or other factors is unknown…*(p.113).

The inference to be gained here by describing Service Pension as a ***phenomena*** is to imply the creation of this level of pension is an aberration – a temporary glitch.
This is clearly not the case and in describing this pension in this manner, the Commission is acting to *de minimis* the reasoning behind the creation of this class of pension.

It is clear on the facts that the Service Pension was not designed to be a *phenomenon* as asserted by the Commission. According to Toose (1975)[62], during the early 1930s a presumption was made linking premature ageing in returned servicemen with war service. Absent any medico-scientific evidence, the Commonwealth Statistician elected to make calculations based on the 1933 census through making a comparative analysis between age at death of veterans and the general civilian population for the same age group.

The Commonwealth Statistician reported *inter alia*:

> *…that the mortality amongst returned soldiers since discharge exceeds that of a body of males of the same age constitution drawn from the general population by abut 13 per cent.*[63]

This finding created the situation where there a was an advantage to a non-veteran civilian in survivability of four years.[64] The resultant creation of the Service Pension was enshrined in the *Australian Soldiers Repatriation Act 1935* (Cth) and had bipartisan support.

According to DVA[65]:

> *A service pension provides a regular income for people with limited means. A service pension can be paid to veterans on the grounds of age or invalidity, and to eligible partners, widows and widowers. It is subject to an income and assets test. The age service pension paid to veterans who have qualifying service and the partner service pension paid to eligible partners, widows and widowers, are paid earlier than the age pension paid by Centrelink. This is in recognition of the intangible effects of war that may result in premature ageing of the veteran and/or loss of earning power. Invalidity service pension may be granted at any age up to the age pension age.*

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[62] Toose, P., ***Independent Enquiry into the Repatriation System***, 1975, AGPS Canberra, pp. 19-75 at paragraph 2.16, in *LAW 10069 Veterans' Law 1*, 2003, © Southern Cross University, Book of Readings, per Topperwein, B. (Tutor).
[63] Above, n.63.
[64] Above, n.63, cited from ***Official History of the Australian Army Medical Services in the War of 1914 – 1918,*** Volume III, p. 818.
[65] Online at https://www.dva.gov.au/factsheet-is01-service-pension-overview [accessed 19/12/2018]

As the Commission noted, in citing the Clarke Review:

> *the extension to service pensioners with qualifying service was justified on the basis of financial and medical need* ***(the service pension itself was created in recognition of the 'premature ageing' from war service)*** (p. 573). (This writer's bold emphasis).

The rationale behind the creation of the Service Pension clearly rebuts any assertion by the Commission that this class of pension is a *phenomena*. It is a vital component of the compensatory regime currently in place under the VEA 1986 and MRCA 2004 and, subject to the qualifying service criterion, must be retained.

16 STATEMENTS OF PRINCIPLE (SOPs) (Draft Report p.307)

The Corporation tendered a response in its submission to this topic.

16.1 Slowness in Process

In its Draft Report, the Commission contends:

> *Some participants suggested that the SoPs system is slow to incorporate new or emerging evidence of causal links. To address these concerns, the Australian Government should:*
>
> - *increase resourcing for the RMA so that SoPs can be updated more quickly to reflect emerging evidence*
> - *allow the RMA to fund and guide research into unique veteran health issues*
> - *require the RMA to better explain the evidence relied on for decisions.* (At 307).

It is well held that the SOPs are now a permanent part of the claims and determination process, despite the intense dislike of them by veterans' practitioners and veterans alike.

The Commission's contention above, has merit as it will make the RMA more open and accountable to the veteran community and DVA, as to how it arrives at its decisions to accept or reject amendments to SOPs, delete Risk Factors from SOPs and justify any refusal to commence investigations in respect of developing new SOPs.

16.2 Specialist Medical Review Council (SMRC)

The Corporation notes the following contention by the Commission in its Draft Report:

> *The merits of a standalone Specialist Medical Review Council in the SoP review process are also uncertain, given its functions could be folded into the RMA.* (At 307).

The Corporation is of the view that the SMRC should continue to act as a standalone entity, separate from the RMA. It is an independent statutory body established under the VEA.

The primary function of the SMRC is to:

> *On request from an eligible person or organisation the Specialist Medical Review Council reviews decisions made by the Repatriation Medical Authority (RMA) in respect to the contents of a Statement of Principles, to not to issue a Statement of Principles, or to amend a Statement of Principles, or to not to carry out an investigation under section 196C(4) of the Veterans' Entitlements Act 1986.*[66]

The operative phrase in its title is ***"Review"*** and to that end, it must be seen to be completely impartial in much the same way the VRB operates. The SMRC should always undertake any function within its remit, as nothing less than a *de novo* review.

The Corporation contends that the SMRC's neutrality and independence will be compromised if the SMRC is folded into the RMA. Such a move will operate to damage the integrity of the review process and adversely affect ESOs' and veterans' confidence in its operation. The Corporation contends the SMRC should remain a standalone entity.

16.3 Cross-vesting SOPs to apply to DRCA 1988 (Draft Report, p. 307)

In Draft Recommendation 8.1 (p. 341) the Commission stated *inter alia:*

The Australian Government should harmonise the initial liability process across the three veteran support Acts. The amendments should include:

- *applying the Statements of Principles to all DRCA claims and making them binding, as under the MRCA and VEA*

In its submission to DVA in October 2017, the Corporation made the following points:

1. Paradoxically, the strict application of the SOPs and Risk Factors has resulted in one positive matter for veterans practitioners. A SOP enables a veterans' practitioner to clarify with a client, if their client can meet any of the Risk Factors listed.

2. It is common ground that SOPs are now a well-established fixture in the veterans' entitlements landscape, notwithstanding their unpopularity in some quarters.

3. It follows that, SOPs should be applied across all three Acts to ensure consistent application of a specified set of minimum criteria to be met under any Act.

4. It is contended that SOPs be included in any harmonising exercise and in the event an Omnibus Bill is drafted, SOPs must feature in that draft, also.

[66] Online at http://www.smrc.gov.au/ [accessed 19/12/2018].

16.4 Harmonising SOPs (Draft Report, p.307)

The SoPs are created at two different standards of proof for the underlying medical-scientific evidence — a beneficial 'reasonable hypothesis' standard for operational service under the MRCA and VEA, and a 'balance of probabilities' standard for all other types of service.

- *The Commission is proposing that only one standard should apply, but is seeking feedback on the systemic impacts (such as cost and acceptance rates) of moving to a single standard across all three Acts, and on which standard should be used.*

It is well settled that SOPs are subordinate law and have the force of law.

The proposal by the Commission to harmonise the two SOP regimes into one, has merit.

However, this must be tempered by one single point that differentiates a Reasonable Hypothesis (RH) SOP - **operational service**, from that of a Balance of Probabilities SOP (BOP SOP) - **eligible Defence service**, (non-operational service) and that is in the number of Risk Factors set out in each type of SOP.

A veteran who has rendered operational service must, as a minimum, meet only one of the Risk Factors listed in either category of SOP. In the case of a RH SOP claim, veterans are able to base their claim on accessing a larger number of listed Risk Factors for a claimed disability, whereas a veteran who has rendered eligible Defence service only, is required to base their claim via a BOP SOP which has a reduced number of listed Risk Factors that can be accessed.

The intent of Parliament here is clear through the provision of a more beneficial approach to provide for a more beneficial intent through the provision of a larger number of Risk factors for a RH SOP claim due to the nature of a veteran's operational service.

The beneficial intent in that regard is clear as is evidenced by a large number of Common Law decisions, including the Federal Court decision in *Kohn*, previously discussed.

This is the critical choke point that will impact significantly on harmonising SOPs into a single document.

The challenge for DVA will be to design a single SOP that encompasses both classes of service without any detriment veterans by reducing RH Risk Factors.

In order to not offend the current rules of evidence applying to both categories of SOPs, it will be necessary to increase the number of Risk Factors in the BOP SOP to a level where they are not quite a full suite of RH-equivalent Risk Factors but are sufficient to enhance a veteran's chances of meeting one of the additional Risk Factors.

There appears to be no information or policy on either the RMA website or in the CLIK database related to SOPS which would prohibit the RMA for considering this course of action.

A question arises in respect of the potential impact, harmonsing of the SOPS may have on the more beneficial of the two SOPs – the RH (operational service) SOP which applies a Common Law **test** in lieu of the stricter **civil standard of proof** for non-operational service.

It is worth noting that in the section ***Dual Standards of Proof*** (Draft Report pp. 330-332), the Commission contended, *inter alia*:

> *the Commission is of the view that the existing divides between operational and peacetime service are not justified. This is on the basis that 'an injury is an injury', regardless of where it occurred.* (p.331).

The Commission's assertion is consistent with the Corporation's contention that a case can be made out to harmonise the SOPS without detriment to the RH level of evidentiary requirements. This finds further support by the Commission in citing Baume *et al* (1994) who argued:

> *Historically, a single standard of proof also applied for all operational and non-operational service from the genesis of the Repatriation Act 1920 until the legislative amendments in 1977 (Baume, Bomball and Layton 1994, p. 26).* (p.331).

The Commission's statement in Draft Recommendation 8.1 that DVA consider "*making the heads of liability and the broader liability provisions identical under* all three Acts along with:

- *adopting a single standard of proof for determining causality between a veteran's condition and their service under the VEA, DRCA and MRCA.*

is supported by the Corporation.

According to the repatriation Medical Authority (RMA) , it has *"created around 2500 SoPs, and over 300 injuries or diseases included"* in them (Draft Report, p.316).
The challenge for DVA, DVA Legal and the RMA, to come up with an appropriate form of words addressing the Preamble in ***"Factors"*** as set out in all SOPs as is seen in the following example:

> *The factor that must as a minimum exist before it can be said that a reasonable hypothesis has been raised connecting* ***lumbar spondylosis*** *or* ***death from lumbar spondylosis*** *with the circumstances of a person's relevant service is:*
>
> (RMA's bold emphasis).

by combining both RH and BOP rules of evidence, without compromising either, into one single harmonised multi-application SOP, will be considerable, but achievable.

The question to be answered, lies in whether harmonising both SOPs into one will damage, prejudice, or completely nullify the beneficial RH test, causing detriment to all future claims, which currently exists in a separate SOP.

Recommendation
The Corporation recommends that DVA seek advice from DVA's Principal Legal Advisor in respect of the potential benefits or dangers of harmonsing two SOPS - one with no standard of proof (RH with more Risk Factors) and one with a standard of proof (BOP with less Risk factors) into one SOP, without prejudice to the RH and increased number of Risk Factors required for operational service.

16.5 Clinical Onset (Draft Report p.310)

There are a number of ways to establish clinical onset or worsening of a condition. If the condition was caused by a particular incident during service (such as an accident), then ideally the claimant's service records would include a medical record or incident report that indicates a date of onset or worsening.

In the vast majority of cases, where primary evidence is missing — because there was no incident report or, commonly, there was no particular incident that led to the condition — the date of clinical onset or worsening can be estimated by the treating or assessing medical specialist.

The latter paragraph in the Commission's comment, "*the date of clinical onset or worsening can be estimated by the treating or assessing medical specialist."* compels a response.

The issue of clinical onset is one which has in the past been contentious.

It was however settled by the then Inaugural Chairman of the RMA Professor Ken Donald, a world-renowned epidemiologist, who stated *inter alia* in his keynote speech to ESOs and other attendees at the inaugural RMA Conference on 9/11/1998: viz

The RMA provides a very precise definition of diseases. Now, that's another decision process. By changing the wording in some of those SOPS where we define the disease, the system could be changed in quality. It could be more difficult to actually meet the definitional requirements of the SOP. So, in future RMA starting to change the definitions of diseases could change the standards of the system. It's a decision area in which that could happen.

One, in particular, where you have nagged us a lot is about clinical onset. There are have been a number of your representatives who have pushed us very hard to define clinical onset. We have not done so, and we don't intend to do so. We have always pointed out that it's an example where, as soon as we write down a definition for clinical onset, we will make the system more restrictive. *And I think took some of your representatives quite a while to come to grips with that.*

As it is operationalised now, a clinical onset means what the English usage of those words means. It means the first time the veteran noticed anything to do with the disease. Clinical onset is not when it's diagnosed, not when the first laboratory test or X-ray is done. Clinical onset in its ordinary English usage means the first time the patient notices anything to do with the disease. Now, that is a much more generous interpretation than anything we could write in terms of laboratory tests or diagnostic processes, therefore we have refused to codify. We've refused to write it down.

It also fits in better unwritten with the other part of the legislation about developing a reasonable hypothesis. *Remember that the reasonable hypothesis involves an assessment of the whole claim.*

It involves an assessment of the likelihood that veterans' claim about what happened at war or as a result of war is true. It revolves around when the disease started in relation to the war service.
It revolves around meeting the template of the SOP, so that the reasonable hypothesis is a total package, and we make a very restrictive, if you like, template in the SOP end.

The more we were to stray into making definitions in disease onset, the more we would go into that other part of the reasonable hypothesis which is the questions about what happened to the veteran in war which, in fact, is none of our business.

But another RMA, if it decided to push the legislation and begin to make written pronouncements about clinical onset - ***remember that once we have written something and it sits on both tables of Parliament for two weeks, it becomes the law. So, it is then a very restrictive template.***

So, once we write it, once it becomes the law, and if an RMA was to start pushing towards that other end of reasonable hypothesis, towards when did the disease come on, how do you define when the veteran first got sick, it's not a big step to then saying, when did the etiological factor occur, and the RMA is already then dabbling in the other end of reasonable hypothesis where, in our view, it has no place. We believe we are restricted to the factors that cause disease. We are not involved in the rest of the construction of a reasonable hypothesis.

So, I've always seen the push from you to get us to define clinical onset as being a bit of an invitation for us to move into an area of the construction of a reasonable hypothesis where I don't think you want us to be. And that's the reason why we always resisted doing it. So, if you get a new RMA in the future sometime, I wouldn't push them in that direction. I would not push them in going in that business of defining clinical onset. (This writer's bold emphasis).

The Corporation contends the approach by Professor Donald to the matter of clinical onset is well settled and is the operative provision from an eminent medical expert, to be considered by veterans when making a claim under VEA and MRCA.
It is for these reasons that cross-vesting SOPs to operate under DRCA, should also be considered.

16.6 Accrued Rights – a Denial of Natural Justice

The one issue not addressed by the Commission in respect of SOPs is that of accrued rights as they apply to SOPs, in certain circumstances.

If any example of a callous and discriminatory process can be exemplified to demonstrate the failure of the Government to act within the threshold questions posed in the review proper, it is in this area of accrual of veterans' rights in respect of the SOPs. This particular issue is also emblematic of the Government failing in its duty to act as an honest broker.

It follows that, regardless of improvements discussed in the submission, there are still a number of areas in which improvement or reform is seriously lacking, including the matter of accrued rights. In Re: *Petersen and MRCC* [2008][67] the Tribunal noted:

[67] Re: ***Petersen and MRCC*** [2008], AATA 1145, (19 December 2008) at [16] online at www.austlli.edu.au [accessed 19/5/18]. See also, Creyke R, and Sutherland, P., ***Veterans' Entitlements Law*** 2016, 3rd Edn, Federation Press, Leichhardt NSW, at p. 343.

> *….there is an important difference between the VE Act and the MRC Act when it comes to determining which SoP should be applied, where the SoPs which were in force at the time the claim was made have subsequently been repealed and replaced by the current SoP. While under the VE Act, the Full Court of the Federal Court in Repatriation Commission v Gorton [2001] FCA 1194; (2001) 110 FCR 321 recognised rights which may have accrued under repealed SoPs thus resulting in a sequential approach when considering the SoPs, s 341 of the MRC Act mandates that where there exists a current SoP, it is the current SoP which must be applied. Further, s 341(3), inserted for the avoidance of doubt, declares that* ***no rights, privileges, obligations or liabilities are acquired or accrued*** *which would permit the MRC or the Tribunal, when making a decision on reconsideration or review, to apply any SoP that is no longer in force.*

In *Gorton (supra)* their Honours referred to *Keeley's*[68] case (discussed and applied) where the Federal Court per Lee and Cooper JJ, addressed the provisions of the *Acts Interpretation Act* (1901) (Cth) in which the Court addressed s.50; viz

> *"Where an Act confers power to make regulations, the repeal of any regulations which have been made under the Act shall not, unless the contrary intention appears in the Act or regulations effecting the repeal:*
>
> *(a) affect any right, privilege, obligation or liability acquired, accrued or incurred under any regulations so repealed;*

The provisions of Section 341(3) MRCA offends the relevant provisions of the *Acts Interpretation Act* 1901. The provisions of s.341(3) in effect act to completely destroy any legitimate entitlement of a veteran to statutory relief through the beneficial application of an accrued right available to a veteran under the VEA 1986.

The manifestly discriminatory provisions of Section 341(3) creates in effect two classes of veteran in respect of accrued rights, the haves and the have-nots. This is a completely indefensible position that the Government has adopted in respect of veterans' rights and should be set aside at the earliest opportunity.

The insertion of this provision in MRCA is to be seen for what it represented, namely another attempt at cost-cutting at the expense of MRCA veterans' rights and entitlements.

The implications for MRCA veterans are dire, forcing them to appeal against an adverse decision based on a SOP under MRCA 2004. They find themselves in a position where they are denied a legitimate access to a benefit under veterans' entitlements under law, that is extended to a class of veterans under a different Act.

This is on any view, an appalling and indefensible application of a bad policy based on bad law as demonstrated by section 341(3).

The failure by the Government to not introduce harmonising provisions to cross-vest this very important entitlement – namely the right to access the statutory comfort of a right and a privilege available to other veterans, gives rise to the not unreasonable inference that the Government is not complying with its duty to act as an honest broker or model litigant.

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[68] ***Repatriation Commission v Keeley*** [2000] FCA 532;(2000) 98 FCR 108 at [20] online at www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2001/1194.html [accessed 19/5/18].

It is the Corporation's contention that, consistent with procedural fairness and equality of entitlement to a beneficial provision, action needs be taken to draft legislative amendments, to cross-vest the accrual of rights of superseded SOPs should as a matter of priority, be enacted to allow coverage for appellants under MRCA.

17 OPEN ARMS (Formerly VVCS) – (Draft report, p.597)

DRAFT RECOMMENDATION 15.4
The Department of Veterans' Affairs (DVA) should monitor and routinely report on Open Arms' outcomes and develop outcome measures that can be compared with other mental health services.
Once outcome measures are established, DVA should review Open Arms' performance, including whether it is providing adequate, accessible and high-quality services to families of veterans.

The Corporation considers the operation of Open Arms (formerly VVCS which was founded in 1982) to be a vital link in the chain of support to veterans and their families. Its value to veterans – both current and former service personnel and their families is incalculable.

Any review into its performance as recommended by the Commission, must ensure it is retained as a standalone veterans-centric mental health support organisation within DVA's veteran support network.

17.1 Others also provide rehabilitation services (Draft Report p.224)

In its Draft Report, the Commission addressed the issue of entities which provide the type of rehabilitation; viz

> *Given the disparate nature of such services, and the fact that individuals may seek out services on a private basis, the full extent of demand for these forms of rehabilitation is not known. Mainstream health and other services are also at play here, but again,* ***there are limited data on use by ADF or ex-ADF personnel****.* (p. 224, this writer's bold emphasis).

This is surprising. It is common practice for agencies who provide Employee Assistance Programmes (EAPs) for staff to access - particularly in the public sector, to not have to report by employee category, gender or type of military service, on those who accesses their confidential services. The Corporation contends this applies equally to persons who access counselling services such as Open Arms for ether counselling or attendance on any of their courses/workshops.

17.2 Strength in numbers

Open Arms has a long and successful record of providing support to the veteran community. This support is fundamental to wellness and helping veterans and families to develop coping skills get back on their feet. In its Draft Report, the Commission stated:

> *Open Arms staff provided counselling to about 4700 people in 2016-17 (DVA 2017d). Open Arms also has a network of outreach counsellors (psychologists and mental health accredited social workers), who deliver services to Open Arms clients unable to access an Open Arms centre. Open Arms outreach counsellors saw about 11 000 clients in 2016-17. Open Arms also provided intake assessments (which did not lead to counselling) to about 2000 people (DVA 2017d).* (Draft Report at p. 568)

DVA reported[69] that in 2017, *"more than 16,000 veterans and their families received more than 100, 000 counselling sessions."*

These attendance figures represent on any analysis, a significant number of attendees and sessions, and reinforces the value of Open Arms to the veteran and wider Defence community. The large numbers of attendees also operate to remove the stigma of being perceived to be weak.

It would in the Corporation's view, be of statistical and planning value to see DVA report on the number of courses/workshops delivered and how many veterans and their families attended. Similarly, a breakdown by status (current or former member) and branch of Service, should also be considered for reporting and statistical purposes.

These statistics are needed to form the basis for Open Arms to ensure funding levels are maintained.

The Corporation notes and agrees with the Australian Commandos Association[70] that Open Arms must never be devolved from DVA to any other Government agency nor must it be outsourced.

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[69] ***Vietnam Veterans pass the baton,*** Vetaffairs, Summer 2018, Vol 34 no 4, p.9

[70] Above, n. 57.

18 VETERANS' REVIEW BOARD (Draft Report, p.387)

Dispute resolution: The VRB's role should be modified to specialise in resolving cases through ADR processes, but not to have determinative powers (nor conduct hearings).

The above contention by the Productivity Commission is not supported on any level.

18.1 The Value Of The VRB in the Veterans' Merits Review Continuum

The VRB is a merits review body established under the VEA 1986 and is seen by many veterans as their Court of last resort. The Board enjoys a very good reputation amongst veterans and Advocates, alike. It is purely inquisitorial in nature and hears matters before it as *de novo* hearings.

The Act prohibits legal practitioners from appearing before it (s.147 B).
Along with the Board's inquisitorial nature, these two factors are considered to be the jewels in the VRB's crown.

By eliminating the VRB from its current role to one purely as an ADR and conciliation body devoid of making findings of fact based on the evidence before it, veteran appellants including vulnerable veterans, will find themselves locked out of a very successful and effective Tier 1 Tribunal, and be forced to go to the AAT which is not inquisitorial but is adversarial in nature, and determines matters on points of law.

Appearances by veterans before the AAT will in most cases, require representation by either a solicitor or barrister. In some instances, representation by a TIP4 –qualified Advocate may be available to a veteran or veteran's widow.

The adversarial process at AAT level will result in unwanted stress for veterans and create a great deal of stress and confusion for a veteran appellant enduring legal practitioners arguing points of law which any reasonable persons will not understand.

There is no such environment at the VRB and with good reason, due to its method of operation.

The current policy for granting legal aid to veterans applies only those veterans who have rendered operational service. Legal aid for veterans who have rendered eligible Defence service only, is at member's expense.

The funding for legal aid to assist veterans prosecuting their appeal from the VRB to the AAT or to a Court of superior jurisdiction are come within the budgetary purview of the Commonwealth Attorney General's Department.

Veterans appeal funding is contained within that budget and is not quarantined from the main Legal Aid budget.

It follows that, the allocation of funding for a veteran's appeal is subject to the vagaries of competing legal aid interests. This is considered to be an unacceptable situation and an one which actually militates against veterans prosecuting an appeal to seek natural justice, with the risk of limited or no funding, causing a veteran to vacate their appeal.

To place veterans in this situation by taking determinative powers away fro the VRB and in effect pulling its decision-making teeth, is profoundly unsafe and unsound for veterans and veterans' widows.

The appearance before the VRB represented by a suitably qualified Advocate is carried out *pro bono* – the Veterans Indemnity and Training Association (VITA) has a prohibition on Advocates charging a fee. The *pro bono* approach espoused by veterans' practitioners is essential in ensuring veterans do have a representative at the VRB.

Equally importantly are recent are recent changes to veterans' legislation which have cross-vested an appeals path to the VRB for MRCA veterans pursuing an appeal against a decision of the MRCC.

On 1 September 2016, Parliament passed the *Veterans' Affairs Legislation Amendment (Single Appeal Path) Bill 2016* which contains Schedule 24 containing all provisions sought to have the single-path appeal process enshrined in law (strongly supported by the Corporation), to give serving and former ADF members access to a more equitable merits review appeals process via the VRB and the AAT, and access to the provision of costs being awarded in the event of a successful AAT appeal, in certain circumstances.

Awarding of costs does not apply to appellants who have Legal Aid. The Bill became law on and from 1 January 2017. That is a major improvement in the natural justice (appeals) process.

The powers and functions of the Board in respect of Alternative Dispute Resolution (ADR) are enshrined in Division 4 of the VEA[71]. They are completely silent on the matter of the exercise of a power and functions by the Board to vary or revoke a decision with the consent of the parties to the matter before the Board. There is no reference to the term ***"vary"*** or ***"revoke"*** in Division 4.

Similarly, ADSO notes the lack of any steps in the Board's General Practice Direction[72] permitting revoking or varying a primary decision, in respect of consent between parties to an ADR. Therefore, no authority exists to enable the Board to make a joint (consenting party) decision, as is the case with the AAT Act vide s.34D (4).

This lack of decision-making authority presents a clear and present danger to veterans seeking natural justice, should the current formal decision-making powers of the VRB be neutered.

The lack of such a provision is considered by the Corporation to prejudice the administration of natural justice by the lack of an effective statutory tool designed to operate to the satisfaction of the parties to a matter before the Board.

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[71] ss.145A to 145G inclusive.

[72] http://www.vrb.gov.au/pubs/practice_dir_guide/general-practice-direction.pdf [accessed 20/12/2018].

This proposal by the Commission to have a determinative process abolished as a power and function of the VRB, is dangerous. It is not an exaggeration to contend that such a proposal is on any analysis, another attempt to apply economic rationalism (cost-cutting) which will operate to the detriment of all first – level veteran appellants.

Any such move to even remotely contemplate extinguishing the VRB's primary function and substituting it with another conciliatory body as discussed, should be strongly rejected.

18.2 Clarifying VRB Reasons for Decision (Draft report, p. 406)

DRAFT RECOMMENDATION 10.1
The Department of Veterans' Affairs (DVA) should ensure that successful reviews of veteran support decisions are brought to the attention of senior management for compensation and rehabilitation claims assessors, and that accuracy of decision making is a focus for senior management in reviewing the performance of staff.

Where the Veterans' Review Board (VRB) identifies an error in the original decision of DVA, it should clearly state that error in its reasons for varying or setting aside the decision on review.

The Commission's recommendation in respect of requiring the VRB to clearly state its reasons for varying or setting aside or for that matter affirming a decision under review (the latter not addressed by the PC in the Draft Report), is unusual.

The Board does in some cases, hand down an *ex tempore* decision once a hearing is concluded and will as required by law send a written copy of its reasons for decision to veterans and their ESO representatives.

It is this writer's experience that the written reasons for decision contain sufficient information to properly and relevantly inform veterans and their Advocates as to why the Board arrived at its decision. Failure to include such reasons constitutes an error of law and is appealable.

In essence, the Board's reasons for decision will include the nature of the matter being reviewed, evidence tendered from the very first instance a claim or AFI is lodged with DVA.

This may well include additional evidence tendered to support a veteran's case before the Board, relevant legislative authority (e.g. standard of proof to be applied vides.120 VEA 1986) relevant persuasive authority(case law) where applied by both parties, and will also cite the relevant legislative and Common Law and other persuasive authorities it applies in its *de novo* decision-making process.

It is this writer's experience that nothing in a Board decision is of such a nature that a veteran is not sufficiently informed as to the Boards decision. The decisions are well-written, clear, concise and easily understood by the average reasonable reader (veteran) as opposed to decisions by a tribunal or court of superior jurisdiction, such as the AAT and Federal Court.

18.3 Informing the Wider Advocate Cohort of VRB Decisions

Since its inception, the VRB has published a magazine called ***VeRBosity*** containing a raft of very informative articles including most importantly and critically, published commentary on cases heard at Board, AAT, Federal Court and High Court level. These cases were an ideal starting point for Advocates researching similar fact persuasive authority to assist them in prosecuting their clients' matters.

Over the years, the magazine has unfortunately faltered and ceased publishing important selected VRB cases where a precedent may be set and has focused on Tribunal and Court decisions. It is noted that *VeRBosity* 31 (2018) is completely devoid of any VRB matters whereas for example, *VeRBosity* 27 (2011-2012) provides an excellent Case Note commentary of a VRB decision related to connection with service under MRCA 2004 (at pp.8-11).

The Corporation acknowledges the impossibility of publishing all VRB decisions in its magazine and that publishing coasts are also a factor. The Corporation believes this is a matter which needs to be rectified as it is at this first external VRB review level, that in many cases, relevant Tier 1 persuasive authority may be all that is required.

The Corporation does not agree with Draft Finding 10.4 (p.414), that VRB functions overlap with AAT functions. One body is an informal and inquisitorial environment, and one is a more formal and hostile adversarial environment. Neither the twain shall meet.

In its Draft Report, the Commission posited several options for the VRB, including:

> *Status quo: The VRB would retain all of its current ADR powers, as well as the power to conduct itself as a tribunal and hold formal hearings.* (Draft report, p. 414).

The Corporation agrees completely with this option.

The Corporation strongly recommends that the VRB reinstate publishing VRB case decisions in *VeRBosity*, where they are of such a nature, the facts of the matter should be made known to both DVA and veterans' practitioners.

19 SINGLE REVIEW PATHWAY (Draft Report, pp 418)

DRAFT RECOMMENDATION 10.2
The Australian Government should introduce a single review pathway for all veterans compensation and rehabilitation decisions.

This recommendation has some merit. The conflicting internal review processes under three different pieces of legislation is clunky and unwieldy and acts as a fetter to veterans obtaining natural justice and is seen to be a complicating factor in equity in decision-making. Internal review decisions adverse to a veteran end up being litigated at the VRB and higher. The proposal to harmonise and standardise a single-pathway internal review process will present with some challenges.

VEA internal review. The process via the VEA is to have an automatic review as set out in the Practice Instructions contained in DVA's CLIK database.

Notwithstanding that policy, under the Act, "*the Commission may in its discretion*" (s.31(1)(b)) review a matter. This allows a review officer the discretion absolutely in law, to decline to intervene. A time period of 12 months(the application period), applies to lodging a request for a s.31 review.

The Corporation notes the anecdotal evidence contained in the Draft Report (Box 10.3, p.401) as to the difficulties veterans and others have experienced with this approach and agrees with the prevailing attitude that the s31 process as it is currently structured is a compete waste of time for veterans and Advocates. It is not a just outcome due to its extremely low application and success rate for veterans.

Consequently, a s.31 refusal to intervene or affirmation of a primary decision, can be appealed to the VRB and from there if required, to the AAT, with its attendant stress on the veterans and their families.

MRCA Review. Applications for reconsideration of a MRCA Delegate's decision are made under s.347.

A time limit of 30 days (the application period), applies although an extensor o time can be granted , if sought. The 30-day limit is considered to be on any analysis, excessively restrictive and is in fact an application of a policy that is unreasonable and oppressive.

The failure by the legislative drafters to consider a more reasonable application period similar to that in s.31 VEA, constitutes a unreasonable fetter to veterans obtaining natural justice.

The stress-inducing issues confronting veterans subject to a very restrictive 30-day time limit under MRCA and its cousin DRCA, particularly in complex matters involving more than one condition, speaks for itself.

DRCA internal review. Under DRCA, the process on refusal of a claim is to seek a reconsideration by a determining authority and if necessary to then proceed to the AAT with the added burden of seeking legal representation and being subject to an adversarial process. Applications for internal review of a DRCA Delegate's decision are made vide s.62 and as for MRCA veterans, are subject to a restrictive time limit of 30 days (the application period), vide s.62(3)(b).

The Corporation notes that DRCA defines determining authority vide s.60(1) thus:

> "***determining authority**, in relation to a determination, means the person who made the determination."*

The difficulty with that provision lies in the fact that no statutory separation of a primary decision being referred to a person other than the same primary decision-maker, exists.

That is an any level, a complete abrogation of a decision-maker's duty to act impartially in a matter before them, in this instance, for a second time. It is a conflict of interest so blatant that it is tantamount to Caesar judging Caesar, and comprehensively compromises that impartiality.

In view of the facts as enunciated, a case can be made out to have a simplified, harmonised internal review process cross-vested across all three Acts with a more beneficial and reasonable application period for veterans to lodge applications for review and reconsideration.

20 THE AUSTRALIAN WAR MEMORIAL (Draft Report, p.56)

DRAFT RECOMMENDATION 11.4
The Australian War Memorial (AWM) already plays a significant and successful role in commemoration activities. As a consequence of the proposed governance and administrative reforms, the Australian Government should transfer primary responsibility for all commemoration functions to the AWM, including responsibility for the Office of Australian War Graves.

Both DVA and the AWM are linked by Administrative Arrangements and budgetary commitments placing the AWM within DVA's portfolio. DVA's remit is national and international, whereas the AWM is Canberra-centric.

DVA is considered on any level, to be the pre-eminent macro-level recognition and ceremonial organisation through its highly-developed and much respected commitment to organising and conducting successful commemorative functions and ceremonies, error-free, both in Australia and internationally.

DVA is considered in the Corporation's view, second to none, in this field. Its international role also enables DVA to engage on behalf of Australia in soft, discreet diplomacy when undertaking commemorative activities in other countries. The value to Australia's standing in the international community, is priceless.

The Corporation is concerned the AWM's capacity to exercise such a degree of responsibility may be beyond its remit as it is considered, a compared to DVA, to be a micro-level commemorative entity albeit one with a very critical part to play.

The AWM's primary function as the repository of the nations military history in preserving and telling the story of that history in conjunction with its nightly Last Post commemoration services. Similarly and significantly, the recent announcement in November 2018 of a $450 million dollar refurbishment of the AWM will require that organisation to direct its focus on that task.

It is contended that project will of itself, distract and detract from, maintaining the same level of high quality expertise demonstrated by DVA in exercising its Departmental responsibilities in commemorating significant military anniversaries and in maintaining the OAWG who preserve the war graves of fallen Australians. Nobody in the Corporation's view, does it as well as DVA.

Although sharing the same organisational and national commemorative and guardianship DNA in preserving and honouring Australia's military history under their relevant charters, Both DVA and the AWM have a different approach to their tasks and statutory responsibilities, in respect of honouring and commemorating those who served the nation.

Therefore as such, that status quo should be maintained.

The proposal to sever commemorative and OAWG functions from DVA, is not supported.

22 OTHER RELEVANT CONSIDERATIONS

In examining the issues discussed in the Draft Report, the Corporation offers its views on the issue of Defence Reservists.

21.1 Defence Reservists – Left in Limbo

The Draft is completely silent on this issue, which is disturbing.
The failure by the Commission to acknowledge Defence Reservists is a failure to acknowledge the high value placed on them and their place in augmenting Regular forces. Again, this matter was addressed by the Corporation in its submission.

The involvement and value of Defence Reservists in augmenting regular AFD assets is invaluable, particularly in the context of the increased operational tempo the ADF has found itself in, since INTERFET, 1999.

Defence Reservists undergo the same training as their regular ADF counterparts and are at equal risk of death, injury or mutilation by either enemy action or accidents during training activities. The VEA 1986 provides no Repatriation cover for Defence Reservists.

The MRCA Act 2004 which comprises 440 sections, contains a mere 13 references to the term ***"Definition of…"*** and does not include a definition of Defence Reservist.

21.2 Extension of NLHC to Defence Reservists in Certain Circumstances

The Act provides for coverage of Defence reservists who undergo continuous full-time service (CFTS). In addition to coverage for operational (CFTS) service, the Corporation was informed at a briefing by the Secretary DVA on 29/5/18 (sub. 29, p.8, 53), that Defence Reservists after one day's service now have access to NLHC coverage where they have been involved in:

- Operational service;
- Disaster relief operations - domestic or international;
- Suffer serious injury during training; and
- Border Patrol duties.

CFTS Reservists also have access to DVA's NLHC coverage in certain (limited) circumstances, as discussed in this submission. The Act does not provide for any cover for other Reservists who render standard Reserve service and who incur an injury illness or disease during Reserve commitments or the acceleration or aggravation, thereof.

The application of this policy under MRCA is considered by the Corporation to be an unacceptable gap in the DVA support continuum in terms of honouring and looking after those who serve the nation, albeit as full-time Regular ADF members or as CFTS or non-CFTS Reserve members.

The effect of a catastrophic injury on a Reservist on CFTS or non-CFTS is equally as real, for example, spinal trauma. The pain and physical and physical effects are the same.

To deny non-CFTS Reservists equality of cover and support under MRCA is completely illogical and is in effect another example of Government cost-cutting infused throughout the Act at the expense of injured non-CFTS Reservists.

It is not an exaggeration to contend the exclusion of non-CFTS Reservists would appear to be drifting very closely to discrimination on the grounds of class of Reservist.

It goes against the grain of supporting a vital component of the ADF which has proven itself time and again, since Federation. It is contended that the Government owes a duty to ensure Defence Reservists are in receipt of equal cover, protection and support under the relevant legislation, as are their Regular ADF counterparts.

In referring to the Campbell Review into MRCA (2011), the Senate Standing Committee into veterans' suicides noted the MRC Review:

> *concluded that the objectives of the MRCA were sound and that the unique nature of military service justified rehabilitation and compensation arrangements specific to the needs of the military.*[73]

[73] ***The Constant battle: Suicide by Veterans***, Report of the Senate FADT Committee Inquiry into Veterans' Suicides, August 2017, clause 4.12, at p. 48.

The inference to be reasonably gained from Campbell, is that Reserve service regardless of class of service, is justified in terms of rehabilitation and compensation coverage. Nothing in that conclusion operates to sever Reserve service from full-time service in this context. To deny otherwise, is to deny reality. Nothing in the current Act operates as a beneficial approach for coverage of all classes of Defence Reservist.

The Corporation contends that, that the necessary amendments should be made to MRCA 2004 to include full coverage for Defence Reservists **regardless** of classification of Reserve service, and that any future legislative harmonsing exercise or drafting of Omnibus legislation must also include full coverage for all classes of Defence Reservists.

22 COMPENSATION and INSURANCE (Draft Report, p.57)

DRAFT RECOMMENDATION 11.5
Once the new governance arrangements in draft recommendations 11.1 and 11.2 have commenced, the Australian Government should make the veteran support system a fully-funded compensation system going forward. This would involve levying an annual premium on Defence to enable the Veteran Services Commission to fund the expected future costs of the veteran support system due to service-related injuries and illnesses incurred during the year.

The commentary and recommendations by the Commission regarding moving to a market-based insurance scheme, should be viewed with suspicion.

The inference to be gained by the Commission's comments is that their intention is to have Government abolish the current veterans' pension/compensation schemes currently available under VEA, MRCA and DRCA and replace it with a single civilian-based workers' compensation scheme.

Again, by attempting to civilianise a veterans support and scheme, the Commission has again failed manifestly to have regard to the unique nature of military service and its consequential physical and mental health effects on veterans. Veterans are not in any scheme of things, mere civilians for the purposes of civilian workers' compensation.

They are and remain until their death, **veterans who have served their nation** and are entitled a special status within the Australian community, including treatment and support. They do not require the creation of an entity that is nothing more than a pale imitation of something along the lines of a Suncorp or NRMA Insurance.

The proposed creation of a VSC with additional responsibilities of managing an insurance scheme and determining organisational insurance premiums, is just another reinvention of the wheel, creating another super-sized department performing a function that is already well-preformed by Comcare.

Duplication of effort as suggested by the Commission is not supported.

The management of premiums will, based on Comcare's premium determination billing history, see premiums increase incrementally. This will be due to a range of factors such as increased medical treatment involving hospitals and surgery, GP, specialist, psychologist, psychiatrist, counsellor, workplace modifications, modifications to residences and rehabilitation providers.

Add to that, the complete suite of treatment and support options available to veterans including the Repatriation Appliances Programme (RAP) and Vehicle Assistance Scheme (VAS) and these costs will be reflected in continuing cost increases in premiums which will become prohibitive. This will be particularly so in the case of managing long-tail injures or long-tail psychological conditions.

The consequential effects of premium increases will include a clawing back of incapacity payments and access to certain treatments and rehabilitation, in order to save money and cut (premium) costs. This impacts directly and adversely on the veteran.

The recommendation that veterans be covered by a market-based insurance and commendation scheme is fraught and must not be allowed to stand.
The purpose of State-based civilian workers' compensation is to deny, deny, deny and frustrate claimants, to save money.

This includes insurance companies placing claimants and recipients under surveillance by private investigators, often to the point of overt harassment. It is this environment that veterans and their families potentially face, should a market-based insurance and compensation scheme be considered. An additional and equally concerning feature of market-based insurance claims, is the excessive time taken to investigate and determine insurance and compensation claims

This is a potential minefield for veterans as it poses a significant threat to their wellbeing and that of their families, particularly vulnerable veterans who suffer from the debilitating effects of PTSD. The suicide of Jessie Bird is directly analogous.

However, given the move towards a civilianised model, the risks of much longer time frames for investigation and determination could well see further instances of self-harm or worse, occurring. The experience of former sworn NSW Police members is a case in point where members injured in the line of duty have waited years for their claims to be assessed.[74] A risk also arises in that a market-based insurer which is what the VSC will become, may well refuse to cover certain conditions, such as PTSD.[75]

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[74] ***Police on the scrap heap: The hidden plight of injured officers,*** *Sydney Morning Herald, Patty, A.,* 17 November 2014, online at https://www.smh.com.au/national/nsw/police-on-the-scrap-heap-the-hidden-plight-of-injured-officers-20141114-11n4at.html [accessed 7/1/2019].

[75] ***'I have grave concerns': WA police compensation inadequate claim union****, WAToday* AAP, 28 November 2016, online at https://www.watoday.com.au/national/western-australia/i-have-grave-concerns-wa-police-compensation-inadequate-claim-union-20161128-gsz7n1.html [accessed 7/1/2019].
See also ***WA Police to make workers' compensation an election issue,*** *ABC News* ***O'Connor, A.,*** 28November, 2016, online at https://www.abc.net.au/news/2016-11-28/wa-police-compensation-scheme-stoush/8072554 [accessed 7/1/2019].

As it is, DVA now describe their Delegates/Determining Officers/Primary Decision-makers as Claims Assessors. Veterans are known as clients, and not veterans and are left to wonder if in fact they are dealing with a Government Department or a private insurance company.

These subtle language changes all operate to commence a deliberate blanding down DVA's interrelationship with its constituent stakeholder base – the veteran community and the Defence community. The potential threat of a civilianised insurance and compensation scheme further adds to this blanding down and elimination of the special status of veterans arising from the unique nature of their service to Australia.

It is worth noting that civilian workers compensation schemes have a very strict and short statute of limitations placed on the lodgement of claims. This poses a real threat to veterans subject to a market-based insurance scheme run by a Government agency not for purpose.

The threat arises in circumstances where an injured veteran seeking compensatory justice is unaware of that statute of limitations or is incapable of lodging a claim due to the effect of the injury or illness incurred.

In her report on compensation issues affecting Queensland Police, Rasmussen(2016)[76] reported:

> *The claims process and overall system is full of obstacles for a person suffering from a psychological injury. From statutory claim limitation periods, legislative exemptions, having to attend multiple medical assessments, and decisions being made by nonqualified claims assessors, the claims process can be extremely overwhelming in a system where support is between minimal and non-existent. Workers have 6 months to lodge a claim from the date that they first attended the doctor and were diagnosed with a work related injury. Most are not aware of the limitation period and whilst battling a psychological injury many find that they miss the opportunity to lodge a claim. More often than not, their psychological injury claim will be excluded and rejected by the Insurer (see figure 3) in any case* (p.2).[77]

Similarly, the Corporation's contention that market-based insurance and compensation in the veterans' jurisdiction is dangerous for the reasons discussed, finds support from Rasmussen who wrote[78]:

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[76] Rasmussen, K., ***Broken, bullied & blue***: ***A report on the obstacles faced by police and others who sustain psychological injuries, and how the workers compensation system is failing them,*** 18 December 2016, 44pp. Online at http://justice4workersqld.com.au/wp-content/uploads/2017/07/Broken-Bullied-and-Blue-Public-Copy.pdf [accessed 7/1/2019].

[77] **Important note:** The matter of police compensation is directly relevant and analogous to this response to the PC's Draft Report, in that claimed conditions are similar in some respects to those of ADF members.

[78] Above n. 77, p.32.

An article published by the Illawarra Mercury on 26th June 2015 reported that 90 New South Wales police officers have had their compensation claims unnecessarily delayed, and have suffered at the hands of insurance companies[79] *In another article, Slater and Gordon Lawyer John Cox*[80] *told the Illawarra Mercury "I have seen my clients wait years for their TPD claims to be determined, and in my opinion, MetLife has not properly or adequately addressed this issue which has continued to cause extreme distress to my clients, aggravated their symptoms and delayed their recovery".*

NSW Greens MP David Shoebridge[81] *told the ABC of the issues faced by NSW Police Officers which he became aware of after representing injured police in his former career as a barrister.150 Mr Shoebridge stated that with regards to insurance claims that 'we need to ensure that those claims are handled promptly, fairly and independently...At the moment, there are many outstanding psychological injury claims that have been running for years. That aggravates the injury.'*[82]

Rasmussen's revelatory assessment of nine private sector Claims Assessors (via LinkedIn) is nothing short of damning, and exposes the compete lack of qualifications including necessary competencies required to undertake the role of assessing, investigating and determining claims (pp. 13-16). The comparison between DVA Delegates could not be more stark in terms of subject matter knowledge and application of that knowledge.

The current DVA transformation process is seen to value-add to the development Delegates' competencies which will also be enhanced by the implementation of a new IT system.

The private sector is, based on Rasmussen's assessment, frighteningly inadequate at best and dangerously under-qualified and incompetent, at worst. She further reported[83]:

The Queensland Teachers Union submitted that '…..WorkCover decision makers appear to receive little or inadequate training in the legislation'. Their decisions frequently do not reflect that the decision maker has considered each step in the process to make the decision. QTU considers that 'well written, well-reasoned decisions would be more likely to be accepted by workers and not pursued to application for review or appeal stage'.

(p.16).

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[79] http://www.illawarramercury.com.au/story/3173655/former-illawarra-police-still-waiting-for-payouts/. Cited in Rasmussen at footnote 148, above n. 77, p.32.

[80] http://www.illawarramercury.com.au/story/2822996/full-statement-compensation-lawyer-john-cox-reactsto- metlife-pledge/. Cited in Rasmussen at footnote 149, above n. 77, p.32.

[81] ***Death in the Line of Duty***, ABC Radio National, Sunday 2 March, 2014 online at https://www.abc.net.au/radionational/programs/backgroundbriefing/2014-03-02/5283154 [accessed 7/1/2019) cited in Rasmussen at footnote 150, above n.72.

[82] Cited in Rasmussen - ibid at footnote 151, above, n.77, p.32.

[83] Finance and Administration Committee, Parliament of Queensland, *Inquiry in to the Operation of Queensland's Workers Compensation Scheme;* Report No 28 (2013) p.69. at footnote 62. Cited above,n.77.

The facts set out in Rasmussen's[84] report are concerning on every level and give further weight to the contention that any proposed move towards a civilianised insurance and compensation scheme similar to Work Cover, is dangerously fraught and should be seen for what it is:

- a money saving exercise replete with truncated claim time limitations,
- excessively long investigation and determination time frames,
- being placed under surveillance ;and
- increasing agency insurance premiums with the consequential reduction in services and support to injured veterans and ADF members.

Rasmussen's assessment of Claims Assessors further solidifies the contention that no valid case exists to reinvent the wheel with a new compensation and insurance scheme based on private sector models, such as Work Cover, GIO, NRMA or Suncorp as proposed by the Commission.

In view of the facts as enunciated, it is contended that the Productivity Commission's proposal to move to an insurance scheme that does not remotely resemble the current compensation regime for veterans, should be rejected.

23 TRANSITION – A JOINT VENTURE BETWEEN DVA and ESOs.

23.1 Tailored transition preparation and advice for every veteran (Draft Report, p. 282)

In addressing the matter of transition, the Commission reported (at p.265):

> *Regardless of whether they are framed as case managers, concierges or counsellors, the transition advisers would provide a single point of contact for reintegration questions, concerns and support needs. A veteran's adviser would be an easily available and accessible expert support person to whom veterans and their families could reach out when required.*
>
> *As noted above, transition advisers would come from a range of professional backgrounds, provided they have the skills to assist veterans in both the practical and psychological aspects of military-to-civilian transition. This could include, for example, assistance with the preparation of civilian resumés, interview coaching, mentoring and pre- and post-employment support services.*

[84] Kate Rasmussen is a former sworn member of the Queensland Police Force. She is a former Sergeant who was diagnosed with PTSD in 2011 and retired on medical grounds in 2014 after serving for almost 12 years and is now a member of **Justice 4 Workers Qld**. Her experience, research and studies have given her a very well-developed appreciation and understanding of the Queensland workers' compensation system, particularly relating to psychological injury matters. Qualifications include: Graduate Certificate in Industrial Relations (Post-graduate level – Charles Sturt University); Diploma of Work Health and Safety; Diploma of Leadership and Management; Diploma of Public Safety (Policing); Advanced Diploma of Justice; and Cert IV in Training and Assessment

In its submission dated 20 July 2018, to the Inquiry into Transition from the ADF, the Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT), the Corporation[85] contended *inter alia* that the transition to civilian life of ADF members is a major activity at all levels of Defence and DVA. The coaching/mentoring role by Transition Support Centres is integral to the success of member transition.

In a joint Defence-DVA Submission[86] to the Inquiry, Defence reported[87]:

> *As part of Defence's Transition Transformation program, the APS workforce of ADF Transition is being professionalised through a Certificate IV in Career Development. This course was specifically designed to increase the skills of APS staff to providing support to ADF members as they transition from Defence with a focus on career coaching and mental health. The course design includes two mental health focussed modules titled 'Work with People with Mental Health Issues' and 'Respond Effectively to Behaviours of Concern'.*

The decision to require Transition Support staff (mentors) to obtain a minimum mandatory qualification to manage members who are discharging from the ADF, is welcomed. The qualification, CHC41215 Certificate IV in Career Development comprises a total of five core units and eight electives and takes 50 weeks to complete[88] and is costed at $2995.

However, the information supplied by Defence is silent on the number of staff who have commenced attaining that qualification and at what stage they are at, in respect of completing the training.

23.2 The case for a Joint Venture

Although the mandatory qualification of a Certificate IV in Career Development is a Department of Defence staff-specific requirement in the transition space, it is the Corporation's very strong belief that a role involving DVA and ESOs exists in respect of this certification.

The transition process for commencement to ultimate conclusion is estimated to take up to 12 months. In its evidence to the Inquiry, the Corporation stated[89]:

> ***Mr McLaughlin:*** *I've not heard anything to the contrary, sir—nothing at all. I would like to say one other thing, if I may, in relation to the certificate in career development. I suggest that there is a need to expand outside DVA and Defence on this.*
>
> *I note, from reading everything, that at the end of twelve months the apron strings are cut and the digger is then completely free of that transition process. That includes setting up the new house for the family, getting a job—everything. But there could be a situation where an employment difficulty could arise down the line. The thing is that the veteran is clear of the transition process. So I think the last thing that a transition centre wants is a digger to come back into it for more help.*

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[85] The author attended and gave evidence to the Inquiry in company with RAAC Corporation Advisory Board Member, former RSM-A Mr Peter Rosemond CSC OAM, RAAC (Ret'd), Sydney 5 October, 2018.
[86] Submission No 33, Joint Submission by DVA and Department of Defence, July 2018, 68.pp
[87] Above, n.86, paragraph 151 at p.38.
[88] https://training.gov.au/Training/Details/CHC41215 [accessed 7/1/2019].
[89] Hansard, Noel Mc Laughlin – Senator Molan, at pp.4-5, Friday 5 October, 2018.

In the Corporation's view, we think there is an absolute need to have that training expanded to ESOs to enable selected ESO practitioners to undertake the training, to be the catcher's mitt for that veteran when that veteran starts to have employment or other difficulties. They can then also speak to the relevant professional mentor at the transition centre who's done the course at that applicable level so that there's no miscommunication.

I'd formally request the committee to recommend to government that DVA consider entering into a joint venture with the ESOs to identify and train selected ESO practitioners and to undertake this training on a 60-40 per cent funding basis—60 per cent DVA and 40 per cent by the veteran or the ESO, contingent upon the veteran in the ESO successfully completing the course.

***CHAIR:** Is that in your submission?*

***Mr McLaughlin:** No. This is my homework, sir. I would really like to see that. The more I read about this the more I thought we needed to expand. As you say, it's got to be seamless and continuous. I see the continuity occurring, with us as the catcher's mitt, from that point onwards.*

The Corporation's contention is that ESOs are the catcher's mitts for discharged members once the transition process has been finally concluded by ADF Transition Support Centres. The Corporation is of the very strong view that employment difficulties and issues with discharged members will not end at the completion of the process or at the start of a job, and Defence staff will naturally move on to the next member taking discharge.

This creates a gap in the post-discharge/employment continuum particularly in circumstances where recently-discharged members are experiencing difficulty in employment albeit struggling to remain in paid work or struggling to obtain a change of employment. Factors potentially influencing this would include any ongoing rehabilitation and/or counselling, requiring time off work.

The Corporation considers the vulnerability period for newly-discharged ADF members in the employment space is a further 12 months after final action by the Transition Support Centre. It is this vulnerability period into which a designated and qualified ESO representative, steps.

The Corporation proposes that DVA consider a joint venture/partnership with ESOs whereby designated ESO representatives attain these competencies.
ESOs are the ultimate catchers mitt for veterans and are very well-placed to be able to assist veterans with employment issues, provided designated ESO representatives have the requisite qualifications.

The ability then, for a designated ESO representative to be able to speak the same language in a career development (employment) context and if necessary consult with a Defence Transition Centre, is considered to be vital in maintaining the post-discharge support continuum in terms of veterans obtaining and keeping, a job.

The Corporation submits that DVA give consideration to entering into a joint venture with ESOs and contribute 60% of the cost of designated ESO representatives obtaining this qualification contingent on that person successfully completing and attaining the qualification, with the balance of 40% to be paid by a designated ESO representative's organisation.

The Corporation submits that in examining the efficacy of using ESO representatives to act as catchers' mitts to assist discharged Defence members in the employment space, they should look no further in the first instance, to TIP-trained veterans' practitioners.

The Corporation is of the very strong view that veterans' practitioners who have rejected any involvement with the ATDP process are ideally placed to be considered for undertaking the role of a certified ESO employment mentor.

TIP-trained practitioners have on average between 25 and 33 years practical experience in veterans' matters including a wealth of knowledge, experience, communications and negotiating skills, very well-established community and DVA connections and lived experience that would be invaluable in taking on this role. Their vast experience also makes them eminently qualified to discuss any issues with a Transition Support Centre Mentor, should the need arise.

Additionally, consideration should be given to approaching the younger veterans' cohort to ascertain if they are interested in undertaking this level of training, to be of assistance to their contemporaries as an ESO employment mentor.

The Corporation contends that consideration should be given to the development of a joint partnership between DVA and ESOs to examine and if possible, implement this proposal.

24 A BETTER WAY TO SUPPORT VETERANS AND THEIR FAMILIES (Draft Report p.26)

The Commission contends:

> *While the VCR program is showing some early signs of success, even when fully implemented, it will not address the fundamental problems of: the lack of focus on the lifetime wellbeing of veterans, the poor oversight of client supports, and the disjointed structure of the veteran support system* (P.26).

It is difficult to reconcile the fact the Commission failed to acknowledge that throughout FY 2017-18, DVA undertook a major initiative to meet and consult with over 2000 veterans, their families, ESOs groups and forums, Government, private partners and DVA Executive, to gauge and ascertain the needs of veterans and their families.

The purpose of these consultations; to design and develop better programmes and solutions that are better suited to veterans needs and those of their families is a hugely significant development in the move to implement a vastly improved model of service and support to veterans and their families. The Commission has not acknowledged this fact at all.

It is this level of input that DVA is using to continue with transforming its image and service delivery. It again reinforcers the review of the literature that DVA is an entity that is maintaining a leading strategic edge in the veterans' support space and is doing so successfully.

This writer does not recall this level of engagement by DVA with the veteran and other stakeholder groups seeking input from DVA's end-users, namely veterans and their families at all, in the past 33 years.

The campaign by DVA to consult with end-users and other stakeholders as equal strategic partners in the DVA Transformation process is fundamental to designing operating and maintaining a standalone pioneer Department and its programme delivery to better suit veterans and their families well into the 21st century.

The inexcusable failure by the Commission to acknowledge this very important achievement, raises the not unreasonable inference that the Commission is wilfully blind to DVA's considerable achievements in the space of three short years in taking major action to right the wrongs of decades of bureaucratic inertia. This failure to acknowledge reinforces the perception that the Commission is anti-DVA.

25 TRANSITION CENTRES (Draft Report, p. 48)

DRAFT RECOMMENDATION 7.1
The Australian Government should recognise that Defence has primary responsibility for the wellbeing of discharging Australian Defence Force members, and this responsibility may extend beyond the date of discharge. It should formalise this recognition by creating a 'Joint Transition Command' within Defence. Joint Transition Command would consolidate existing transition services in one body, with responsibility for preparing members for, and assisting them with, their transition to civilian life.

The Joint Defence-DVA submission to the JSFADT Inquiry into Transition from the ADF, describes the establishment and staffing of Transition Support Centres, provided the following information:

> ***Resourcing in ADF Transition Centres***
>
> *16. As at 19 June 2018 the* ***Directorate of ADF Transitions, within Defence Community Organisation,*** *has a headcount of 52, which is made up of 42 Australian Public Service (APS) employees, and five military and five contracted staff. These resources are distributed across the 13 ADF Transition Centres, and Defence Community Organisation Headquarters.*
>
> (This writer's bold emphasis)
>
> *17. Of the staff mentioned above, 36 APS and 4 contracted staff are responsible for delivery of client facing transition coaching services. To support the ADF Transition service delivery model, Defence has professionalised the role of the Transition Coach. To meet the requirement of the role, staff are to a hold a Certificate IV in Career Develop (or equivalent) or have experience (5+ years) in the employment services industry.*
>
> *18. Under the Transition Transformation program, Defence provided all existing ADF Transition staff the opportunity to undertake the Certificate IV in Career Development. This course built on the existing skills and experience of these staff, a number with over 10 years' experience in the role, with a focus on career coaching and mental health.*
>
> *19. In the current resource constrained environment, the ability of Defence to deliver transition support to approximately 6,000 transitioning members per year, utilising a coaching and mentoring model, is a delicate balance.*
>
> *20. The implementation of the coaching and mentoring model, requires a greater amount of preparatory and client facing time investment from the Transition Coach than the previous administrative model. Defence has implemented business process improvements to lean administration and allow Transition Coaches to focus on client facing service delivery.*
>
> *21. With an increasing number of transitions on an annual basis, Defence is continually reviewing resource priorities to deliver transition support.*[90]

The Corporation notes the Draft Report is silent on any reference to the Joint Submission and considers the comments in Draft Recommendation 7.1 relating to the establishment of a dedicated ADF transition entity, answered.

[90] Above, n.86, at numbered p. 59.

26 A TALE OF TWO SCHEMES (Draft Report pp.2, 37-38)

26.1 Forced Migration From the VEA 1986

The Commission in its Key Points (p.2) proposes the creation of two pension/compensation schemes by forcibly limiting pre-2004 veterans to the VEA (Scheme 1).

This proposal is dangerous and flies in the face of the positive and welcome policy change introduced in 2008 during the Rudd-Gillard-Rudd Government's term in office, to restore access to the VEA to ADF members who had VEA coverage pre-2004 and who continued to serve post-2004, as an option to being held within the confines of MRCA.

At the time MRCA 2004 came into effect, that cohort of ADF members found themselves, forced against their will, out of the protection of the VEA and press-ganged into the convoluted and nightmarish process enshrined in MRCA. The change in policy removed that egregious and unwelcome impediment.

To force post-2004 veterans who continued to service in the ADF after 1 July 2004 out of that Act and its beneficial and remedial support mechanisms into what is essentially bad law defies logic. It again reinforces the contention that the Commission's true purpose is to act as an unelected Government razor gang, in effect a fiscal toe-cutter.

Similarly the Commission's proposition to introduce Scheme 2 (p.2) is on its face, an action which should be viewed with deep suspicion. The optimism of the Commission in asserting that a modified MRCA incorporating DRCA as Scheme 2 to become *"the dominant scheme"* (p. 37) should fill any reasonable reader and every veteran with deep apprehension and suspicion.

The intent to freeze veterans who have pre and post-2004 VEA eligibility out of access to the provisions of that Act is dangerous on every level. The statement by the Commission that, *"any veteran who does not have a current VEA liability claim by 1 July 2025 will no longer be eligible to make claims under this scheme"* (p.37), cannot go unchallenged.

Protections in DRCA

Similarly the Commission's proposal to incorporate DRCA into MRCA (p.37) is silent on what provisions the Commission recommends. The proposal to **incorporate** DRCA into MRCA is considered to be disingenuous when the Commission contends,
"A two scheme approach will reduce confusion around eligibility and minimise/remove the need for offsetting, and it will effectively abolish the DRCA." (Draft Report, p. 631).

The complete absence of any suggested provisions to be migrated into MRCA is to be viewed with suspicion. DRCA contains a critical beneficial provision which needs to be harmonised across all three Acts in the event no Omnibus Bill is drafted.

DRCA contains section 121B; viz

> ***121B Regulations modifying the operation of this Act 21***
>
> *(1) The regulations may modify the operation of this Act.*
> *(2) Before the Governor-General makes regulations under subsection (1), the Minister must be satisfied that it is necessary or desirable to make the regulations to ensure that no person (except the Commonwealth) is disadvantaged by the enactment of this Act.*

The inclusion of this section is significant as it provides ultimate protection to members covered by DRCA.

The provisions of s.121B impose a **reverse disadvantage** on the Commonwealth. In essence the provisions of the section make it possible for the Minister to make regulations modifying the Act, in essence a reverse of the primary legislation (DRCA) having supremacy over Regulations.

The section will enable the Minister to make a Regulation in circumstances such as a Federal Court decision which reads down an appeal or part of the Act that would act to the detriment of all ADF members covered by this Act. The provisions known as the **Henry VIII** clause[91], was addressed in detail in the EM to the Bill at p.24.

The provisions of this section will also operate to ensure no ADF members' entitlements under the new DRCA are displaced by any transitional provisions arising from this new legislation.

This is a hugely beneficial provision and the dismantling of DRCA to have it subsumed by MRCA as part of further cost-cutting measures, is one that will need to be very carefully monitored by all SOs and vigorously challenged where any diminution of a beneficial provision in the migration process threatens the entitlements of members subject to the DRCA/MRCA mix.

The lack of detail by the Commission is in many respects as disturbing as those matters it discusses.

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[91] A Henry VIII clause is the term given to a provision in a primary Act which gives the power for secondary legislation (regulations) to include provisions which amend, repeal or are inconsistent with the primary legislation. The effect of a Henry VIII clause is that whoever who makes the regulations has been delegated legislative power by the Parliament. In other words, the executive arm of government would have the power to make regulations which can modify the application of the primary statute. The original Henry VIII clause was contained in the *Statute of Sewers* in 1531, which gave the Commissioner of Sewers powers to make rules which had the force of legislation (legislative power), powers to impose taxation rates and powers to impose penalties for non-compliance. A later *Statute of Proclamations* (1539) allowed the King to issue proclamations which had the force of an Act of Parliament. Both these were passed during the time of Henry VIII. Online at http://www.ruleoflaw.org.au/wp-content/uploads/2012/08/Reports-and-Pres-4-11-Henry-VIII-Clauses-the-rule-of-law1.pdf [Accessed 21/1/19].

26.2 Older and Younger Veterans

The Commission infers that it is only *"an older cohort"* of aged VEA veterans who will end up with coverage under this Act (p.37). The entire Report is silent on the matter of life expectancy of male and female Australians.

That is disturbing as it was reasonably open to the Commission to properly and relevantly have regard to the research conducted in this area before making such a statement.

According to the Australian Institute of Health and Welfare (AIHW) (July 2018)[92] the life expectancy for Australian males is estimated to be **80.4 years** and females **82.5 years**. There are a number of very basic assumptions that can reasonably be made, having regard to the provisions of AIHW Table 6.3. These are:

Assumption 1: Assuming male veterans (born 1981) enlist in 1998 aged 17, it can be reasonably postulated their life expectancy will see them retain and require VEA coverage for another 63.4 years taking that coverage to **2061** and for female veterans in the same age cohort by another 4.1 years, to at least **2065**.

Assumption 2: Assuming the average age of male veterans (born 1986) who enlisted pre-2004 and who for example served Afghanistan in 2011, is 25 years, their VEA coverage eligibility will see the requiring VEA support out to **2066** with an additional 4.1 years for female veterans in the same age cohort taking the requirement for VEA eligibility and coverage out to **2070**.

In applying both these notional age assumptions as exemplars, it is difficult to see any justification in the Commission's contention that any veteran not in receipt of a Disability Pension by 2025, will be ineligible after that date for further VEA coverage and protection. It is impossible to calculate when a veteran will make the decision to lodge a claim for a disability pension.

The clear contention here is that the VEA 1986 will not be extinguished and will remain in operation for quite some time.

[92] ***Table 6.3 Life expectancy (years) at birth, top 10 OECD countries by sex, 2015,*** online at: https://www.aihw.gov.au/reports/life-expectancy-death/deaths-in-australia/contents/life-expectancy [accessed 19/1/19]

26.3 Comparative Analysis of Both Schemes

The breakdown of the two schemes as set out in the Draft Report suggests a closer examination of what is proposed, given the threat to veterans' rights and entitlements contained within the proposal to introduce these two scheme as illustrated in Figure 9, below.

Figure 9: Compensation available under the schemes

	Scheme 1	Scheme 2
Impairment compensation	General rate disability pensions Additional payments for specific disabilities	Permanent impairment payments
Income replacement	Above general rate disability pensions Superannuation invalidity pensions	Incapacity payments Superannuation invalidity pensions (offset)
Dependant benefits	Widow(er)'s pension Orphan's pension Funeral allowance Bereavement payment Income support supplement Education allowance (under 16 only)	Wholly dependant partner payments Payments for eligible children Payments to 'other' dependants Funeral allowance Bereavement payment Income support supplement Education allowance (under 16 only)
Health care	Gold Card White Card Attendant care Household services	Gold Card White Card Attendant care Household services
Other allowances	Service pension Motor Vehicle Compensation Scheme	Service pension Veteran payment Motor Vehicle Compensation Scheme Legal and financial advice

Source: Productivity Commission Draft Report December 2018, at pp. 38, 641)

Impairment Compensation

Under Scheme 1, payment of benefits are completely non-taxable and do not become automatically extinguished at age 65 forcing veterans on to the aged Centrelink pension.

Veterans, both former and currently serving members, consider any thought of becoming enslaved by Centrelink, to be anathema. This level of benefit and allied support continues under the VEA for the entire life of the veteran, free from the clutches of Centrelink.

Under Scheme 2:

> *SRCA and MRCA incapacity payments are generally payable to age 65 and reduce VEA service pension payments on a dollar for dollar basis before Age Service Pension age. They are counted as income when determining the rate of VEA income support supplement and when determining financial hardship. SRCA and MRCA incapacity payments are taxable.*[93]

The beneficial application of impairment compensation under Scheme 1 speaks for itself.

[93] 4.3.5.60 Dept of Social Security, ***About DVA Compensation Payments***, http://guides.dss.gov.au/guide-social-security-law/4/3/5/60 [accessed 21/1/19].

A Cautionary Note

Further, the Commission contends that:

> *For example, those on a VEA Special Rate Disability Pension could prima facie be covered by scheme 1. For veterans on incapacity payments, they could be covered by scheme 2 (their existing VEA benefits would not be affected).* (Draft Report, p. 642).

This contention is inconsistent with the commentary in Figure 9 above -*Impairment Compensation* – which mentions *"General rate disability pensions"* (plural).

The Corporation takes this to mean the entire suite of VEA-specific Disability Pensions will remain in Scheme 1 – as they must do. Not every eligible veteran in receipt of a VEA Disability Pension will be in receipt of a Disability Pension paid at Gold Card level.

However, the comment by the Commission above, addresses the Special Rate of Pension under VEA to the complete exclusion of the remaining levels and classes of White and Gold Card pensions.

Although the Commission's contention is only an example, the mere fact it addresses only one level of VEA pension is to be regarded by ESOs and veterans alike, with considerable caution. There may be a perfectly valid explanation ,however regardless of that, the subliminal effect of an innocuous example are known to take on the existence of fact and morph into policy without a shot being fired and resulting in all other pension levels disappear into Scheme 2.

The inference to be gained from reading of the Draft Report *in toto* is that the Commission has developed an unhealthy obsession for and dislike of, the Special (TPI) Rate of Pension to the extent it is biased against this level of pension and fails to have regard to the other levels of Gold Card pensions and their value to veterans.

Any protective mechanisms to retain the Special (TPI) Rate Pension in Scheme 1 must, as a minimum, include retention of all existing pension categories in Scheme 1 also.

Income Replacement

The Disability Pension regime under VEA (Scheme 1) provides for pension support and consequential medical treatment for and accepted disability or disabilities, calculated at 10% gradients up to 100% of the General Rate (GR). The Above GR (AGR) family of pensions (over 100%) has eligibility assessed subject to stringent legislative tests for each category of AGR pension.

Offsetting may occur in instances by way of an example where a lump sum compensation payment made under the *Commonwealth Employees Compensation Act* 1948 and the *Compensation (Commonwealth Government Employees)* 1971, is made.
However, the offsetting payments are so minimal as to not have not have an effect on the whole of a GR Disability Pension.

Thankfully, there is no MRCA-style offsetting under this scheme, again confirming Scheme 1's beneficial and remedial application as being superior to that of Scheme 2.

The MRCA in terms of Scheme 2, is an unacceptable application of a policy that continues to claw back where it can, hard-won entitlements of MRCA-covered veterans, by offsetting a significant portion of their SRDP pensions in certain circumstances, a practice noted by the Commission as one that *"can also lead to errors in compensation estimates which can have serious consequences for veterans."* (Draft report, p.17).

This clawing back occurs due to the fact the MRCA veterans receiving the Special Rate Disability Pension (SRDP) to be double-dipping and offsets vide Section 204, a SRDP by 60% in circumstances where a SRDP veteran is in receipt of superannuation.
This is considered to be an insult to a veteran's integrity to be tarred with the brush of double-dipping and is indefensible in the extreme.

The detestation of offsetting amongst veterans and ESOs is well established and concurs with the Vietnam veterans Federation of Australia's (VVFA) contention that offsetting is discriminatory. The Corporation also notes and agrees with the following responses from the VVAA and TPI Federation; viz

> *The Vietnam Veterans' Association of Australia (sub. 78, p. 10) stated that superannuation offsetting was 'unreasonable'. The TPI Federation stated that it 'is criminal that a veteran and the veteran's family is put in the position where they receive no compensation because of a superannuation income protection payment …' (sub. 134, p. 14).* (Draft report, p.504)

The Commission has made its cost-cutting intention quite clear in stating *inter alia* at Draft Finding 12.1:

> *There is no case for changing the current offsetting arrangements between government-funded superannuation payments and incapacity payments.*
> (Draft report, p.57).

The application of a purely money-grabbing policy allied with the fact it is to be retained in Scheme 2, gives further weight to the contention that Scheme 2 continues to be hostile to veterans and will continue to be so, unless close, due diligence by ESOs and major legislative reform - preferably repeal of MRCA, is undertaken.

Dependant Benefits

As stated by the Corporation in its formal submission to the Commission, families of deceased veterans are better off financially under MRCA than they are under VEA. Funeral benefits under MRCA are superior to those under VEA, namely $11470 under MRCA and DRCA and a mere $2000 under VEA.

The fact funeral benefits under VEA have not been increased in the 32 years the Act has been in operation, stands as a deliberate attempt by the Federal Government to save money. Death is the ultimate leveller but that does not appear to be recognised by either Government or the Commission and which is amply demonstrated by the parsimonious approach by Government, to VEA-based funeral support. Even with bereavement

payments added to that of a TPI-based funeral benefit which tops out at approximately $7,000 dollars, the VEA funeral benefit is still well short of the MRCA benefit.

The failure by the Commission to even address and recommend restoring equality and balance in both funeral benefit schemes, is disappointing and gives further credence to he contention the Commission continues to demonstrate a complete lack of understanding of the issues concerning the veteran community, including in the area of funeral and bereavement support.

According to the Commission:

> *When a veteran dies, dependants would receive compensation based on the scheme the veteran was covered by. If the veteran did not have an existing claim accepted by the DVA prior to implementation date, dependants would receive compensation through scheme 2. In most cases, the compensation available to dependants through scheme 2 would be higher than that available under scheme 1* (Draft report, p.642).

This particular comment by the Commission has some merit as it is generally agreed that dependants of deceased veterans are better off financially under MRCA, than under the VEA.

Health Care

While acknowledging the consistency of application to both schemes in respect of health care, nothing in the Draft provides the average reasonable reader with any comfort in whether or not an ulterior motive exists to have services hived off to non-veteran-centric and focused agencies such as NDIS, My Health and My Aged care to the complete detriment veterans under both schemes.

Other Allowances

The Commission has failed acknowledge or include in Scheme 1 the valuable support provided under the VEA by DVA, to veterans through the **Repatriation Appliances Programme (RAP),** providing invaluable support in the following areas:

- *mobility and functional support;*
- *continence;*
- *oxygen and continuous positive airways pressure (CPAP);*
- *cognitive, dementia and memory assistive technology;*
- *personal response systems (PRS);*
- *falls prevention;*
- *low vision;*
- *prostheses;*
- *orthoses;*
- *hearing appliances;*
- *speech pathology appliances;*
- *diabetes; and*
- *home modifications and household adaptive appliances.*[94]

[94] https://www.dva.gov.au/factsheet-hsv107-clients-rehabilitation-appliances-program [accessed 21/1/19].

The inference to be drawn from this unacceptable omission by the Commission is that an intent exists to devolve by stealth, the functions of the RAP to a non-veteran specific entity such as the NDIS. This is again considered to be another cost-saving measure contingent on DVA's destruction - being undertake and the expense of and to the detriment of, veterans. This contention is given further weight by virtue of the fact there is no recommendation by the Commission to have the RAP to be applied to Scheme 2.

Motor vehicle assistance.

The Vehicle Assistance Scheme (VAS) vide s.105 VEA 1986, is similar to that applied vide s.212, MRCA 2004, with some slight differences which appear on balance, to favour the MVCS as being the more beneficial of the two schemes.
A comparison of the relevant features at Table 2 below, sets out these features.

Table 2 – Vehicle Scheme Comparisons

Purpose	To assist an eligible veteran, member of the Forces, member of a Peacekeeping Force or Australian mariner, by providing him or her with a motor vehicle, modifying the vehicle as necessary, and assisting with running costs and maintenance.	To provide for the reasonable costs of a vehicle's modification (and vehicle purchase in some circumstances) required because of injury or disease for which liability has been accepted under the MRCA.
Eligibility	Former member (veteran) who is clinically assessed as able to derive benefit from assistance due to such physical conditions as a leg/arm/wrist amputation, paraplegia or a condition of similar severity or effect	For an ADF serving or former member who has an accepted condition and has been clinically assessed as being unable to drive or be driven in a motor vehicle in safety and reasonable comfort without modifications. The person must be considered able to drive or derive a benefit from using the motor vehicle at least twice a week.
Benefits	• A new motor vehicle • Professionally recommended modifications to the motor vehicle • Assistance with running costs and maintenance	• Professional recommended vehicle modifications • Provision of a new vehicle with professionally recommended modifications (in some circumstances) • Insurance and repairs for the recommended modifications
Responsibility of the Client	• Registration • Stamp Duty • Insurance • Optional extras • Garaging	• Registration • Stamp duty • Insurance • Optional extras • Garaging • Maintenance & running costs

Source: Adapted by this writer from the Consolidated Library of Information and Knowledge (CLIK) database, compiled by DVA: *10.12 The Motor Vehicle Compensation Scheme (MVCS).*

There is no requirement under VAS to have to drive a vehicle at least twice weekly.

There are no such provisions in the VAS for that criterion. The VAS requires that a veteran "*who can drive"*[95] and in order to derive a benefit *"must drive the motor vehicle regularly"*[96].

This is considered to be more generous by not imposing a strict minimum weekly use on either a driving veteran or a non-driving veteran's driver. However, although both schemes acknowledge the need for a veteran to drive, or be driven, it is contended the more generous nil minimum time of the VAS should apply to the MVCS and should apply across both schemes proposed by the Commission.

The provision of maintenance and running costs under VAS is considered to be more beneficial than that under MVCS (non-existent) and should be applied to both schemes.

Similarly, the provision under the MVCS of insurance to cover any modifications is a beneficial provision that is not available to VAS veterans. This is seen to be a defect in a material particular, in the operation of the VAS.

Of particular concern to the Corporation under MVCS, is provision of *"a new vehicle with professionally recommended modifications (in some circumstances)."*

The '*in some circumstances'* caveat is concerning. The MVCS differs significantly from that of the VAS, which mandates a vehicle must be a **new** vehicle. Under the MVCS[97]:

> *Where the Commission subsidises the purchase of a motor vehicle for a person for the first time, that vehicle is known as an "initial motor vehicle". The initial vehicle may be a new vehicle,* ***or a second-hand*** *vehicle.* (This Writer's bold emphasis).

The Corporation contends this feature of the MVCS is flawed in that a used car warranty is significantly less than that which accompanies the purchase of a new car. As such, this places a MVCS veteran at risk of not receiving the full warranty protecting afforded to a new car purchaser in the community, or a veteran eligible for a vehicle under the VAS.

That is considered to be on any analysis, a grossly unfair situation and demonstrates a significant imbalance in the beneficial and remedial application of the MVCS as opposed to the VAS.

It is well settled that litigation and disputes between purchasers and vehicle dealers over warranty difficulties and flaws, have received considerable publicity over many years. The stress placed on a veteran who is required by the application of a MVCS policy to purchase a second-hand car with ongoing warranty problems (a lemon), requires no further elaboration.

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95 CLIK 6.4.1 ***Eligibility for the VAS***, at para 2.
96 Above, n.96.
97 CLIK 10.12.7 ***Subsidising the purchase of an initial new or second-hand motor vehicle***.

The proposal by the Commission as illustrated in Figure 9 (p.38) (Table 2 above) are of such a nature that on balance, the MVCS provisions which are beneficial and not found in the VAS should be cross-vested in the VAS. It is also contended that further examination of the differences in both schemes be undertaken s ensure they are equal and neither scheme will cause veterans to suffer detriment.

In view of the facts as enunciated, it is contended that no justification exists to have two separate schemes, which as discussed, will cause significant detriment to veterans.

There is a well-founded fear by veterans of services being, reduced, cancelled or devolved to other non-veteran – centric agencies throwing veterans into the monolithic and uncaring organisational soup that is represented by Defence (VSC), Centrelink, NDIS, My Health and My Aged Care.

This will destroy the unique place veterans, their families and serving ADF members enjoy in the community, and completely nullifies the uniqueness of that military service.

The proposal has only one objective in mind, to save money at the expense of providing veteran-specific support by a veteran-specific and focused Department, to veterans.
The two-scheme proposal is not supported.

27 STATUTORY TIME LIMITS (Draft Report p.369).

In its submission to the Productivity Commission (sub. 29, p.30), the Corporation agreed with the contentions of Slater and Gordon that consideration should be given to the imposition of statutory time limits for the processing and determination of claims.

The development of electronic claims processing and determinations couped with automatic acceptance of some claimed conditions - such as musculoskeletal injury involving heavy weights, is a major paradigm shift in DVA's path to transformation and being more responsive to veterans' needs.

Additionally, the use of e-claims processing is contributing significantly to markedly reduced time taken to process claims (TTTP) and may well impact on whether to remove protection from Mandamus, or not.

The improved time frames arising from straight-through processing of claims is a very relevant consideration in looking whether or not to introduce statutory time limits.
The reduction in time taken to process claims TTTP from 109 to 33 days by DVA[98], is an outstanding result and notwithstanding this significant achievement in the TTTP space, necessitates a further look at the requirement for statutory time limits.

In that regard, the Corporation acknowledges DVA's contention that should the VCR process "*fail to deliver further significant improvements in the timely handling of claims, then the need for statutory time limits should be reconsidered.*" (Draft finding 9.3 at p.370).

[98] Above, n.21.

While seen to be a solution to reducing TTTP, statutory time limits will be directly influenced by following contentions.

1. The rules of evidence for claims investigation and determination (RH and BOP) will still need to be applied regardless of whether a claim is electronically processed or is a complex multi-disability claim requiring significant time to process.

2. DVA's duty of prudence in ensuring its budgetary processes (taxpayers' money) including claims management and payments, must be factored in.

3. The law mandates DVA operate within its budget and have in place processes to ensure this occurs, including a specific and well-laid out claims investigation and determining process.

4. Careful investigation of all claims consistent with the rules of evidence applying to RH and BOP claims also AFIs in the GR and AGR Disability Pensions category, must remain a priority for Delegates in ensuring due diligence and all care is taken to ensure no fraudulent claims find their way through the system.

It follows that, Delegates must have the time and space to be able to drill down into the deepest recesses of a claim to ensure it is legitimate and meets the required rules of evidence. A reverse duty is also owed by Advocates in this regard.

Claims processing will continue to be influenced by the following factors some of which DVA and the veteran, have no control over:

1. The ability of vulnerable veterans to undertake medial and other assessments to assist with establishing eligibility.

2. The number of impairments MRCA/DRCA) or claimed disabilities (VEA) to be assessed and reported on medically.

3. The availability and cooperation of medical practitioners to examine veterans and provide the necessary reports (work capacity, impairment etc.).

4. Difficulty experienced by medical practitioners in understanding the documentation required by DVA.

5. Delays in obtaining specialist reports (inactivity period) impacting on timely assessment processes.

6. Managing situations where specialists who operate on veterans and refuse to furnish reports.

7. The lengthy waiting time (inactivity period) for veterans to see a specialist impacting on timely assessment processes.

8. An inability by veterans to provide information in a timely manner required to support their claim – this requires careful sheepdogging of a veteran by a Pensions Officer/Advocate (PO/A) to ensure all relevant information is obtained.

This lack of control over external factors discussed above, by both veterans and DVA Delegates is well summed up by the Commission in citing from the RANZCP submission:

For example, the Royal Australian and New Zealand College of Psychiatrists suggested that DVA's burdensome paperwork requirements may discourage providers from accepting DVA patients:

> *… RANZCP members have indicated that time-consuming paperwork requirements are directly impacting the availability of clinicians for clinical assessment and treatment. Such requirements discourage medical practitioners from taking on veterans that require engagement with DVA. (sub. 58, p. 5)* (Draft report, p.598).

Similarly, the College noted *inter alia*:

> *Burdensome paperwork requirements and limited rebates from DVA may further discourage health services from accepting veterans and ex-service personnel as patients, even when they do have appropriate services.* (sub. 58, p. 5) (Draft report, p. 598).

The challenge for DVA will be to reduce this burden on treating practitioners across all medical and psychological disciplines and specialties and veterans alike, in order to have a smoother and more effective assessment and determining process.

Similarly, notwithstanding budgetary pressures and changing Government policy priorities, DVA's capacity to determine claims is further influenced by the following factors:

Staffing: The Commonwealth Public Service is a career-driven entity and public employees are encouraged to seek lateral and vertical promotion or act up in senior positions on HDA. DVA is not immune from the vicissitudes of maintaining adequate staff levels to ensure timely assessment and determination of claims and payment approvals.

1. The loss of a successful officer from an operational (claims processing) team will create a gap in that team's capacity to deliver improved TTTP.

2. Failure to backfill that vacancy will exacerbate delays in TTTP for veterans whose cases are now left idle. This could well result in outstanding claims being delegated to another action officer adding to that officer's case load with its attendant pressures on that officer.

3. Additionally, the need for an officer to get up to speed with the cases now added to their workload, will potentially see a veteran being subject to further questions that he or she has already answered, creating a degree of hostility in the veteran at having to repeat themselves. This is a primary complicating issue with veterans complaining of having to repeat themselves over and over.

4. The management of caseloads must comply with WHS obligations and increased workloads must be managed in a way that WHS requirements are not breached or that veterans claims do not suffer detriment thought an increased delay in TTTP.

5. Work absences due to leave, courses, illness redeployment due to work-related stress and other factors are also seen to be intervening factors which could act as a fetter to managing a claim within statutory timeframes.

These issues are seen to be manageable. DVA owes a duty to ensure backfilling/succession/training plans are in place to ensure sufficient staff both at FTE and PPTE level are available so all claims are determined in a timely manner.

Notwithstanding the advances in digital and electronic claims processing, the human factor of DVA is still the most important pillar of continued successful VCR.

27.1 Factors Influencing Statutory Reporting

Digitising DVA files is also seen to be a major key in enhancing claims processing and reducing TTTP. As of 21 November 2018[99], a total of 205,127 files comprising 42,191,344 pages had been digitised.

This is on any analysis, a significant achievement and is considered by the Corporation to be a major contributing factor along with development of e-claims processing and PAMT in reducing TTTP for claims by eliminating the need to fly hard copy files around Australia with a consequential risk of files being lost.

The purchase an installation of a new IT system to replace DVA's current ageing system is seen to be a key to DVA not needing to go down the mandatory time limits path.

The Corporation notes Slater and Gordon along with Maurice Blackburn argued again in a Fairfax Press article[100] for the introduction of mandatory time limits for claims processing.

The Corporation notes DVA's commitment to reconsider introducing statutory time limits in the event of unsuccessful reform in TTTP. However, given the Department's success in massively reducing TTTP and the ongoing achievements being seen in the VCR process, DVA should, subject to that commitment at Draft Finding 9.3, be able - absent any failure of further reform of the claims process , be able to continue without recourse to introducing statutory time limits. Should the VCR process fail to deliver more timely claims processing then statutory reporting times must then be considered.

The achievements achieved thus far in the TTTP space discussed, clearly advance the not unreasonable proposition that the VCR process under way is achieving significant milestones, again reinforcing the contention that DVA, as a standalone Department continues to maintain a leading strategic edge in the veterans' welfare and support space and is on any analysis, still fit for purpose.

[99] Above, n.21.
[100] 'How Veterans' Affairs could gain soldiers' fragile trust', *Canberra Times*, 21 January, 2019, Dingwall, D., pp.4-5.

28 ERRORS OF FACT

28.1 Opera Singing and Professional Sports

According to the Commission, there are aspects of military service that have *"features in common in common with other occupations, such as **professional sport or opera singing,** that require particular physical skills and have unusual timetables or schedules."* (Draft Report,p.250). (This writer's bold emphasis).

Such an astonishing and completely ludicrous assertion by the Commission cannot pass without a response. To equate professional Australian Defence Force personnel with opera singers and highly-paid sports people is not only risible in the extreme, it is deeply offensive. There is no comparison.

It offends most grievously, all former and currently serving veterans who have throughout Australia's history, donned the uniform of this nation and in particular, those who gave their lives in that service to the nation.

Such a ridiculous and completely irrelevant comparison grievously offends the families of veterans killed in action, or who, wounded, maimed or ill, succumb in later years to the effects of their service leaving loved ones to live in a vale of grief.

The Corporation completely rejects any and all comparisons with the two occupations cited and directs the Commission's attention to the Corporation's position on the uniqueness of military service as set out in the Statement of Fact at the beginning of this response.

The Corporation's Statement of Fact renders the Commission's comparisons, otiose.

In noting the Commission's boasts of meetings, site visits and round table discussions (p.75) across Australia, it is quite clear the Commission still remains blinded to the realities of Service life in completely ignoring the brutal facts of the demands of Service life.

In comparing that life to that of a highly-paid and cosseted opera singer and equally highly-paid and cosseted sports people, the Commission has demeaned the very notion of service and sacrifice to the nation.

Again, the Commission fails completely to appreciate the fact that the **very unique nature of military service** is such that **no other occupation or career in Australia** expects its personnel to fight and die as part of their job. None. Certainly not opera singers or athletes.

Such a baseless and hopelessly inaccurate and patently ludicrous comparison has no place in the Commission's Draft Report.

28.2 Unpublished DVA Data

Throughout the 704 pages of the Draft report, there are 45 instances of statements and statistics in which the Commission relies on the use of *"unpublished DVA data."*

This is concerning. The fact such an approach has been used by the Commission in the drafting of this report, calls into the question the veracity, accuracy, integrity and relevance of such data using unpublished sources.

It makes it impossible for the average reasonable reader to either discuss or challenge the data, if it is hidden behind a screen called unpublished data.

This creates a perception the Commission in the position of engaging in misleading and deceptive conduct, through making statements which could be challenged on the grounds that such statements are false and misleading as to the facts and are in reality, sheer puffery designed to pad out the brief. Such an approach by the Commission ought properly and relevantly call into question, the integrity and credit of the entire review process and the preparation of their Draft Report.

28.3 Rank Groupings

The explanatory notes accompanying Figure 7.2 (p.253), ***"Rank at Separation from the ADF"*** describe the rank grouping of ADF personnel at the time of separation from the ADF. The Commission cites the Australian Government as the primary source for the information – a source which could well be accepted by the ordinary reasonable reader.

Additionally, it is noted that the rank groupings addressed relate **specifically** to the Army. There is no information in respect of RAN or RAAF separation rates by Service equivalent rank groupings. This complete lack of detail is sufficient to challenge the Commission's assertion that the information Figure 7.2 is ADF-wide.

This lack of detail advances the not unreasonable proposition that the statistical information in Figure 7.2 is Army-specific only and not ADF-wide, as purported.

The rank grouping applied in Figure 7.2 however, should have been checked by the Commission's fact-finders before being accepted as Holy Writ and published.
The Commission failed in its duty to check the veracity and accuracy of the information provided in respect of the rank groupings contain a number of factually incorrect statements.

The rank groupings cite; "*Senior non-commissioned officer (NCO)— Warrant Officer Class 2 to Regimental Sergeant Major - Army*." That is incorrect. The rank groupings for this rank cohort is Warrant Officer, encompassing Warrant Officer Class Two (WO2) to Warrant Officer Cass 1 (WO1) RSM and-RSM Army. Service members who attain this rank are promoted by Royal Warrant. They are not Senior NCOs.

NCO — Sergeant to Staff Sergeant; this is completely incorrect. Personnel who attain this rank are Senior Non-commissioned Officers - Senior NCOs (SNCOs)[101].
Other Ranks — Private Proficient to Lance Corporal. This rank grouping completely fails to include the rank of **Corporal** (CPL). Corporals and Lance Corporals are known as Junior NCOs (JNCOs) and it is beyond comprehension how the Commission failed to include this rank which is the nursery for promotion to SNCO rank.

The lack of accuracy discussed in this section, is on any analysis quite disturbing, and begs the question; how much more information in the Draft Report *in toto* is deficient and inaccurate in a material particular.

29 THE DEMAND SIDE AND EVIDENCE OF STIGMA (Draft report, p.226)

This particular issue resonates with all veterans who have separated from the Service and who for good reason, choose to not report physical or mental problems during their career and in later civilian life, in order to not be medically downgraded, removed from the team environment and compulsorily discharged, and following discharge (voluntarily or otherwise), lose their jobs.

The Corporation's submission in September 2015 to the Senate Foreign Affairs, Defence and Trade Standing Committee Inquiry into ADF Mental Health Issues, addressed *inter alia*, the issue of stigma particularly in respect of PTSD. These comments are directly relevant to the Commission's Draft Report.

PTSD is a debilitating and demotivating condition, noted for its latency and persistence. Added to that, the effects of any wounds received on operational service or non-battle injuries incurred during operational service, and the situation for a veteran in obtaining employment, becomes dire.

29.1 The lottery of seeking employment

Obtaining remunerative employment in both the private and public sector does not of itself, confer an automatic grant of right that a veteran should receive preferential treatment in employment as occurred to returning veterans fromWW2. A veteran's accepted disabilities have the potential to impact adversely on any employer's insurance and compensation premiums; viz

The job application process requires all applicants to declare if they have any pre-existing conditions which may affect their captaincy to undertake the full range of tasks associated with the job. It is for contemporary veterans, a very fraught process due to the following facts:

- A veteran is essentially deemed to be not only uninsurable but also unemployable;
- The risk of further injury to the veteran and others in the workplace; and

[101] As a retired Senior NCO, the author relies on the benefit of qualified privilege.

- Any need for a veteran to:

    - ✓ have regular physiotherapy or counselling during work hours
    - ✓ take numerous rest breaks,
    - ✓ have an inability to sit or stand for prolonged periods or
    - ✓ carry out do any of the duties they are paid to do, impacts adversely on efficiency, productivity and ultimately organisational profits;

all of which make the option of employing a veteran totally unacceptable due to the effects of his or her accepted disabilities on a veteran's ability to engage in remunerative work and remain in that work.

Failure by a veteran to disclose any medical conditions on an employment application has significant medicolegal implications as can be seen from the above points. It is a criminal offence for an employer to fail or refuse to cover, an employee for compensation insurance.

The above challenges militate significantly and severely against any veteran obtaining remunerative employment. It follows that, veterans become disillusioned and give up completely on trying to find work.

They suffer a significant and catastrophic loss of income with all its attendant consequences, including homelessness. Often, relief from pain and misery and in trying to blot out persistent and intrusive thoughts and memories is only achieved through self-medication and the use of illicit drugs and in extreme cases, lead to suicide.

29.2 Removing the stigma of PTSD – a challenge

In its fact-finding, the Commission reported that it

> *heard repeatedly that there is a widespread reluctance by serving personnel to report and seek treatment for physical injury and mental illness with the ADF. For serving personnel, this is driven largely by concerns for reputation, career prospects and deployment.* (Draft Report, p. 226).

The stigma of having to declare a physical and potentially job-limiting disability is very traumatic and challenging for a voluntarily or compulsorily discharged ADF member. Similarly, the stigma that still attaches to declaring PTSD as a medical condition is equally if not more severe.

A common thread in veterans presenting with PTSD is the mistaken perception that it is they who are going mad and nobody else. That, combined with the fear of being seen as weak by their peers and superiors for serving career-oriented members and for former members by the general community, exacerbates both the feelings of isolation and damage done through bottling everything up.

Consequently, serving soldiers are still reluctant to seek help for psychological injury due the very strong perception that any such move would be potentially career-limiting or result in discharge. This was noted by the Evatt Royal Commission into Agent Orange in which the Commission found *"Serving soldiers actually fear disadvantage or even reprisal for seeking help."*[102]

Bale (2014)[103] notes:

> *…stigma represents a significant barrier to the early identification and treatment of PTSD, increasing the burden of illness for individuals, their families and the Army. This in turn results in a loss of effectiveness and productivity for units, and equates to a significant monetary and social cost, highlighting the vital importance of research into the presence of such a stigma and the employment of de-stigmatisation initiatives within the Army* (p. 33).

The assessments by the Royal Commission and Bale find credence in the following extract from an appeal brief[104] on behalf of a former senior Army officer; viz

> *The veteran served his country as a professional soldier and military officer for over 30 years attaining the rank of Colonel. The veteran had imbued into him from his first day at the Royal Military College Duntroon that as an officer he is expected to be strong, lead by example, never fail and never complain. The veteran lived by that code as do all officers and NCOs in the Australian Army.*
>
> *Any acts or signs of weakness or personal problems were sure to be very detrimental to an officer's career, his prestige and his employability in the Army. I am instructed by the veteran that he lived and worked for many years in fear of letting others know of how he felt and incurring the wrath and derision of his peers and superior officers and its consequential effects on future promotion, resulting in his disguising his problems and bottling everything up.*

Hence, the refusal or failure of veterans serving or otherwise, to declare.

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[102] Evatt Royal Commission 1984-85, 17.3 The Treatment of Vietnam Combat Veterans, at IX-189.

[103] Bale, J., *PTSD and Stigma in the Australian Army*, Army Research Paper No3, Commonwealth of Australia. This publication should be required reading for the Standing Committee.

[104] The author has been a Practising Veterans' Advocate at the VRB since June 1986 and is self-taught. He holds a Practising Certificate (TIP4 level) to appear at the Commonwealth AAT in the Veterans' Division and enjoys a 100% success rate.

30 ARE VETERANS DISADVANTAGED AT THE AAT? (Draft Report, p.442)

In its Draft Report, the Commission stated:

> *Most of DVA's legal matters were dealt with by external lawyers: in 2017-18, it briefed 72 barristers at a total cost of $487 000; its total external legal costs were $9.4 million (DVA 2018f, p. 100). In this environment, expecting all veterans to be adequately served by volunteer advocates may be a hard ask.* (p. 442).

The amount of money expended by DVA in appeals is significant and demonstrates to the average reasonable reader, the weaponised side of DVA's approach to defending its turf. There is no way a veteran can hope to compete on a financial basis when confronted by a fighting fund of that size.

It is not possible to comment on whether or not it is too much of an ask for Advocates to represent their clients at that level. However, it is perfectly reasonable to contend that Advocates who represent their client base at VRB and AAT level, bring with them a wealth of experience and knowledge of the review system; all of which equips then very well to take on DVA in the VRB and AAT. In addition, their well-developed relationships with DVA determining staff, is a definite plus.

The process for an AAT appeal is multi-layered and includes ADR, Preliminary Conferences (PCs) and Directions Hearings, all before proceeding to a full appeal.

The financial implications of going up against a Department with very deep pockets in the field of veterans' litigation is however, of very significant concern.

The Commission also contended in its Draft Report (pp 423-424):

> *As with all matters in the AAT, costs are measured using the Federal Court costs scale, rather than the actual amount charged by the solicitor. This means that generally, the veteran remains out of pocket — sometimes by as much as 50 per cent of their total costs incurred in pursuing the review (Maurice Blackburn, sub. 82, p. 19).*
>
> *Although this current approach is likely to leave veterans out of pocket, it reflects standard practice in the AAT. The Commission is concerned that this part of the review process has potential to deny access to justice for veterans. If the AAT holds more hearings for veterans than it currently does under the system proposed in this chapter, then there is a risk that more veterans could be denied access to justice if they cannot receive a costs order in support of their application. The Attorney General's Department (which has policy responsibility for the broader administrative review system) should consider the implications of the AAT approach to costs on veterans.*

The disadvantage to veterans in both adversarial and financial terms is significant, and is considered by the Corporation to be a major disincentive for veterans to go to appeal from the VRB. The financial detriment impact cited by Maurice Blackburn above, is significant.

This leaves veterans or veterans' widows with only two choices in this instance, to walk away or to commence from scratch with a reconstructed claim with the risk of a further refusal of claim. It is a vicious circle and one the Corporation contends is intertwined with legal aid funding.

The way the financial cards are stacked against veterans or veterans' widows considering AAT action, give further weight to rejecting the Commission's recommendation that major change affecting the review and appeals system should include changes to the VRB's operation, basically neutering it, by modifying its role to purely one of *providing alternative dispute resolution services only."* (Recommendation 10.3).

If further justification was sought by the Commission for retaining the VRB in its current format, there are 9.4 million reasons above, to justify leaving the VRB as the veterans' court of last resort, to continue operating as it is.

As an adjunct to the issue of representation at the AAT, the Corporation contends that further research should be conducted with State Law Societies, to ascertain the level of knowledge of solicitors in the field of Veterans' Law, which is of itself, a specialised area made more complex by the operation of three Acts, all at odds with each other.

It is contended that legal representatives who have little or no knowledge of Veterans' Law are disadvantaged when appearing against DVA-paid legal teams, which operates to the disadvantage and detriment of the veterans, also. It is doing an injustice to veterans where they suffer from inadequate legal representation due to a lack of knowledge of Veterans' Law.

Consequently, it follows that,TIP4-qualified and newly-trained ATDP Advocates (once they come online) may find themselves filling the gap left by inexperienced legal practitioners.

31 SUMMARY

In summary, the Commission's proposal for major change to the way veterans are supported and administered is an exercise that on its face, is considered to be nothing more than a cost-cutting exercise undertaken with no appreciation for the unique nature of military service and the consequences of that service.

The attitude of mind of the Commission appears to be one where it is saying to veterans, their families and serving members and families; ***"get over yourselves, you're no different to the rest of us."***

The Draft Report is a dangerous document, lacking in credit.
It contains a number of inaccuracies of fact, it relies on unpublished data and contains proposals which are on any analysis, fraught with danger for veterans, veterans' families, the Defence community and DVA.

The Draft Report refers to *"the unique nature of military service"* nine times.
That referral should be viewed through the prism of what the Report's actual intent is, that is to save money. Its intent to achieve this outcome is by advocating for the destruction of DVA and a consequential hiving off of DVA-specific functions and services and see these services and functions along with veterans, disappear into the maw of other monolithic bureaucracies such as Defence, Centrelink, Human Services, NDIS, My Health, My Aged Care and a GIO/NRMA-style insurance and compensation system.

The potential damage to the veterans' support continuum if the Commission's proposals are adopted will be catastrophic for veterans, their families and veterans' widows.

The Draft Report appears on its face, to presumptuously and arrogantly preordain the outcome that DVA will be abolished. The recommendation that DVA be abolished, is completely unjustifiable.

The Report's tenor suggests the Government is continuing to tell veterans what it, the Government **thinks** is best for the veteran community, ignoring what the veteran community **knows** it needs and **what is best for it**.

Similarly, the backlash from the veteran and general Australian community in term of political and electoral backlash will be severe. This is particularly so, should DVA be abolished as is recommended.

DVA is a pioneer 102-year-old Government Department of State, with a level and depth of experience in caring for and supporting veterans that is unmatched in any comparable Western jurisdiction.

The assertions by the Commission and RSL NSW in relation to Service Pensions and the Gold Card are rejected. The failure by the Commission to have regard to Defence Reservists is indefensible.

The Ceremonial functions recommended by the Commission to be transferred to the AWM should remain within DVA, for the reasons stated in this submission.

The Department is undergoing a complete rebirth and must be allowed to complete that process and continue as a standalone Department completely free of the Damoclean sword of abolition and destruction, continually hanging over it head.

DVA is operating in a manner consistent the Strategic Management and Adaptive Strategy Models discussed in this submission and must be allowed to continue to do so unfettered by continued threats to its existence.

Transforming DVA is also at its heart, a highly discursive process which must include in its vision of total reformation and future operability and survival, a leveraged, mutually positive relationship and ongoing level of engagement with the veteran community, through their representative ESOs.

Having been assessed in the PSC Capability Review as being an organisation in which "*change has not been managed well*,"[105] DVA has since at least 2016, embarked on a programme of vigorous and positive change resulting in the Department's transformation for the betterment of the organisation, veterans, veterans' families, veterans' widows and the wider Defence community, as discussed in this submission.

The legislative ecosystem that comprises the VEA, MRCA and DRCA has spawned a jungle of policies (including but not limited to Fact Sheets, CLIK, Treatment Principles, VAS and RAP) . This ecosystem is now is of such complexity that an urgent need exists to have these Acts repealed through the development of a new Omnibus Act, as a matter of priority.

In order to maintain its hard-won strategic edge, DVA will need to continue to operate in a manner consistent with the Strategic Management Models discussed.

The purchase and roll-out of a new IT system to replace the current IT system which is not fit for purpose, must remain a priority for DVA. The purchase development and roll-out of a new IT system will be a major game-changer in DVA's transformation.

DVA must remain functioning as a standalone pioneering Department with a very firmly-established strategic edge, and its functions must never on any level, be devolved to a Department completely unfit for purpose.

DVA's profound and far-reaching transformation process confirms its status as a pioneer Department.

DVA is on every level and on every analysis, a Department with a demonstrably strong extraordinarily niche specialised leading strategic edge in service delivery and support to veterans and their families, unambiguously confirming the contention that **DVA must not be abolished.**

[105] Above, n.40, p.18

32 CONCLUSIONS

There are 45 conclusions. They are:

1. Veterans are the conscience of the nation.

2. Veterans are, by the very uniqueness of their service, well qualified to hold Governments and DVA to account and to keep them honest.

3. Veterans through their ESOs stand in the shoes of all veterans and also represent the interests of serving ADF members.

4. ESOs are uniquely placed to sit with DVA in a consultative and cooperative environment, to work with DVA through the Commissions proposals and issues discussed in this submission, should be examined with a view to consider leveraging commitment from ESOs to work with DVA in a strategic partnership.

5. The unique nature of military service has no parallel in civilian occupations.

6. Any positives identified by DVA in the Draft Report must be viewed with caution by the veteran and Defence communities to ensure any positives are not in fact negatives for veterans, their families, veterans' widows, ADF members and their families.

7. The proposal to abolish DVA is a dangerous proposal and is not supported in any form.

8. The political and electoral backlash from veterans' groups and the Australian public over such a proposal, needs no elaboration.

9. The move to place a truncated DVA within Defence which is not fit for purpose, is not supported and must be treated with suspicion and vigorously challenged and resisted.

10. The Commission's Draft Report is arrogant in its presumption DVA will be abolished.

11. It is a report that is poorly conceived with one major theme – abolish DVA and privatise as much of the current veteran support continuum as it can and create an insurance and compensation scheme, similar to civilian Work Cover (p.573).

12. The ulterior motive of the report – abolition, devolution and privatisation of some functions - calls into question as to how believable the Commission's comments on the uniqueness of military service, really are.

13. Its reliance on unpublished data challenges the credit and integrity of the Report.

14. The uncapped budget of DVA offers greater fiscal flexibility than that of Defence (uncapped). The flexibility of an uncapped budget enables DVA to deliver its services to its client base.

15. The destruction of DVA will result in a loss of highly-trained and experienced staff leading to a deterioration in service delivery under Defence with its uncapped (inflexible) budget.

16. DVA is a niche specialist Department that has, despite its failings, delivered service and support to veterans and their families for over 100 years.

17. DVA is undergoing a process of massive change through the VCR process and must be allowed to complete that process free from the threat of abolition.

18. DVA's antiquated IT systems must be replaced as a matter of priority to enhance the VCR process.

19. DVA staff should receive job-specific training commensurate with the new organisational paradigm.

20. DVA must be allowed to compete its transformation and continue on a path of review and renewal on completion of VCR.

21. DVA's achievements in initiating among other things, online electronic claims and assessments is a game-changer and is highly commended.

22. DVA's development and implementation of screen-based assessment tools to calculate weights for heavy-lifting injuries to spine and weight bearing joints is a major step forward for veterans reducing the stress associated with manually calculating SOP-mandated total weights.

23. DVA's development of MyService is a huge step in reforming the entire veterans' support continuum for compensation claims, White Cards, development of a White Card for smart phones.

24. DVA's development and implementation of the PAMT health and wellbeing process should be made permanent and should be extended to cover VEA-cohort veterans.

25. DVA's change of organisational direction to focus on veterans and their families first, is welcomed.

26. DVA is strategically very well-placed to continue to provide support services and administer pensions and other programmes for veterans and their families, as a standalone pioneering Department.

27. DVA's success in improved TTTP processes is a welcome sign that the VCR is starting to deliver results.

28. The Productivity Commission's contentions regarding the Gold Card and description of Service Pension as some sort of phenomena, are not supported.

29. The contemptible assertion by RSL NSW of a Gold Card being viewed as some sort of cash grab and prize is baseless and insulting to veterans and is rejected.

30. The Commission's assertion that military service is comparable to that of opera singers and athletes is rejected out of hand and has no relevance to this debate.

31. The Commission failed in the review to have regard to Defence Reservists and their place within the DVA support footprint.

32. Advocacy issues need closer attention paid to them particularly in light of the criticisms of ATDP by ESOs and other parties as cited in the Draft Report.

33. The case by the Productivity Commission to tinker with the Gold Card as proposed is anathema to the veteran community and is not supported. The backlash from veterans groups needs no elaboration.

34. Consideration should be given to establishing a three-tier Hierarchy of AGR pensions for MRCA veterans

35. Consideration needs to be given to drafting an Omnibus Bill incorporating all beneficial provisions from all three Acts into one Act and repealing the three current pieces of legislation.

36. Consideration should be given to harmonising the beneficial and other provisions extant in all three Acts as a backstop or in lieu of, any Omnibus drafting exercise.

37. Revision of GARP 5 is supported with the caveat that no further reduction of the shaded area in **Scale 23.1** (at p.278) be contemplated.

38. The veteran-hostile Apportionment Tables in GARP 5(M) should be abolished and replaced with the relevant more veteran-friendly Tables in GARP 5.

39. Accrued SOP rights denied to veterans under s.341(3) MRCA, constitute a denial of natural justice and repeal of that particular section needs to be addressed as a matter of priority.

40. The VRB's decision-making powers to set aside, vary or revoke a primary decision must not be extinguished and farmed off to the AAT.

41. The VRB must never be turned into another ADR vehicle thereby robbing veterans and veteran's widows of a Tier 1 merits review appeals and decision-making body.

42. The devolution of commemorative and OAWG functions from DVA to the AWM is not supported.

43. The Productivity Commission's proposal for the establishment of a completely new (civilianised) insurance and compensation scheme is not supported.

44. The case by the Productivity Commission for the abolition of DVA and devolution of DVA functions to Defence is not made out. Abolition is not supported.

45. The facts and contentions as enunciated in this submission clearly establishes DVA's entitlement to survive as a standalone Department. It must be allowed to continue to do its job. DVA must not be abolished.

RECOMMENDATION

That the Productivity Commission note the above.

Noel Mc Laughlin OAM MBA
Chairman
RAAC Corporation
31 January, 2019

"Kind-hearted people might of course think that there was some ingenious way to disarm or defeat an enemy without too much bloodshed, and might imagine this is the true goal of the art of war. Pleasant as it sounds, it is a fallacy that must be exposed: war is such a dangerous business that the mistakes which come from kindness are the very worst." **(Von Clausewitz 1780-1831).**

ATTACHMENT A

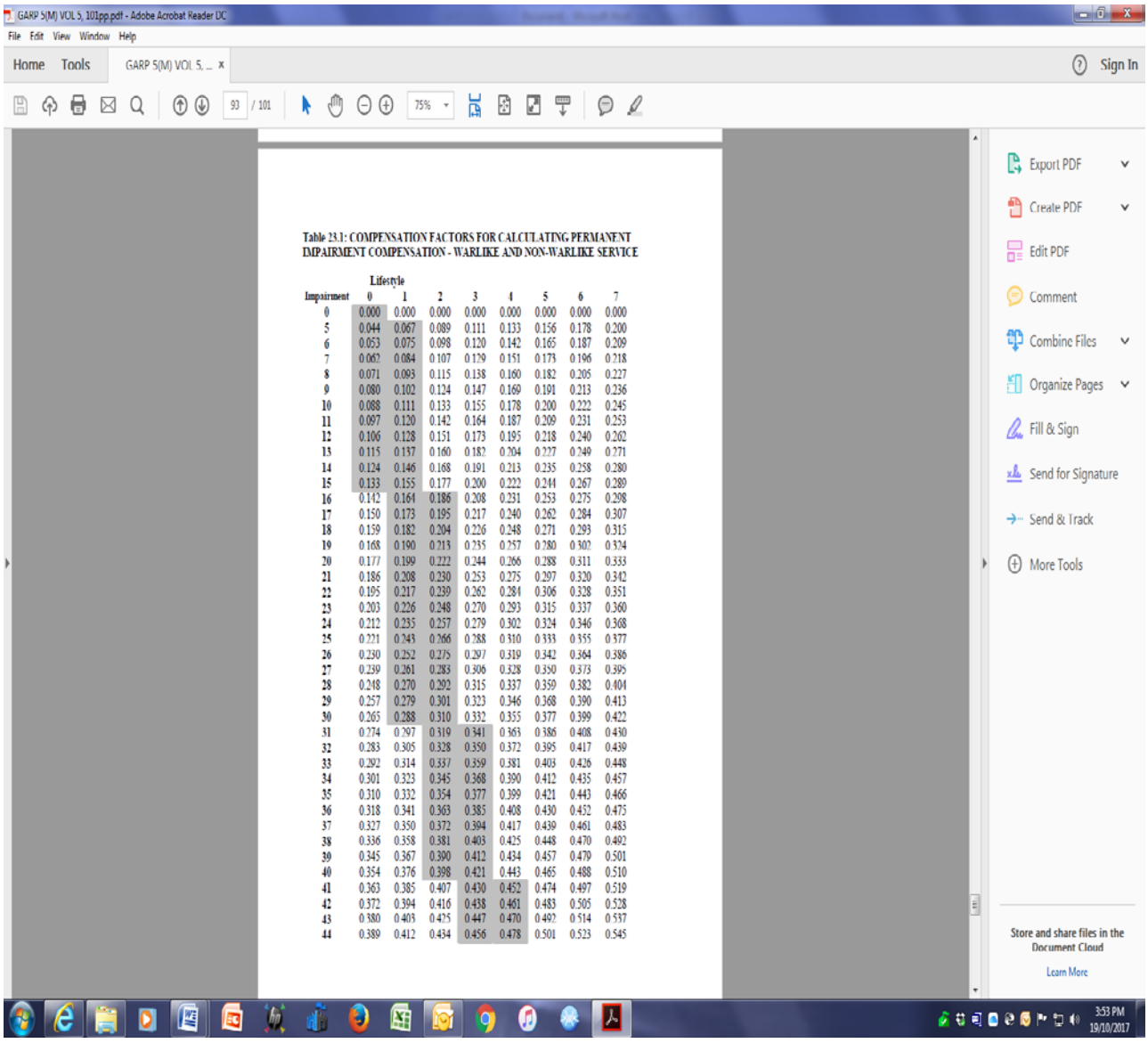
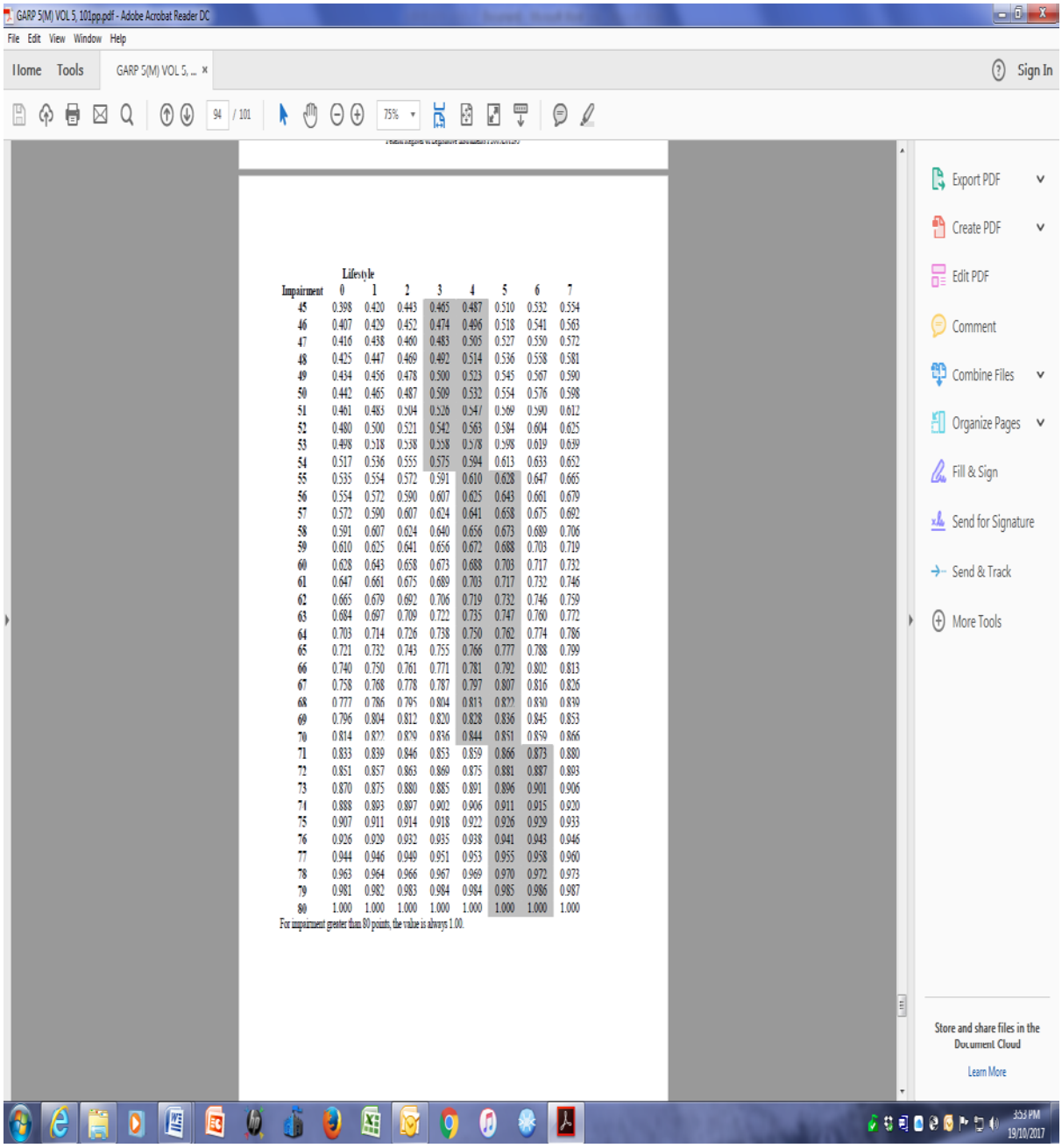


Table 23.1: COMPENSATION FACTORS FOR CALCULATING PERMANENT IMPAIRMENT COMPENSATION - WARLIKE AND NON-WARLIKE SERVICE

	Lifestyle							
Impairment	0	1	2	3	4	5	6	7
0	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
5	0.044	0.067	0.089	0.111	0.133	0.156	0.178	0.200
6	0.053	0.075	0.098	0.120	0.142	0.165	0.187	0.209
7	0.062	0.084	0.107	0.129	0.151	0.173	0.196	0.218
8	0.071	0.093	0.115	0.138	0.160	0.182	0.205	0.227
9	0.080	0.102	0.124	0.147	0.169	0.191	0.213	0.236
10	0.088	0.111	0.133	0.155	0.178	0.200	0.222	0.245
11	0.097	0.120	0.142	0.164	0.187	0.209	0.231	0.253
12	0.106	0.128	0.151	0.173	0.195	0.218	0.240	0.262
13	0.115	0.137	0.160	0.182	0.204	0.227	0.249	0.271
14	0.124	0.146	0.168	0.191	0.213	0.235	0.258	0.280
15	0.133	0.155	0.177	0.200	0.222	0.244	0.267	0.289
16	0.142	0.164	0.186	0.208	0.231	0.253	0.275	0.298
17	0.150	0.173	0.195	0.217	0.240	0.262	0.284	0.307
18	0.159	0.182	0.204	0.226	0.248	0.271	0.293	0.315
19	0.168	0.190	0.213	0.235	0.257	0.280	0.302	0.324
20	0.177	0.199	0.222	0.244	0.266	0.288	0.311	0.333
21	0.186	0.208	0.230	0.253	0.275	0.297	0.320	0.342
22	0.195	0.217	0.239	0.262	0.284	0.306	0.328	0.351
23	0.203	0.226	0.248	0.270	0.293	0.315	0.337	0.360
24	0.212	0.235	0.257	0.279	0.302	0.324	0.346	0.368
25	0.221	0.243	0.266	0.288	0.310	0.333	0.355	0.377
26	0.230	0.252	0.275	0.297	0.319	0.342	0.364	0.386
27	0.239	0.261	0.283	0.306	0.328	0.350	0.373	0.395
28	0.248	0.270	0.292	0.315	0.337	0.359	0.382	0.404
29	0.257	0.279	0.301	0.323	0.346	0.368	0.390	0.413
30	0.265	0.288	0.310	0.332	0.355	0.377	0.399	0.422
31	0.274	0.297	0.319	0.341	0.363	0.386	0.408	0.430
32	0.283	0.305	0.328	0.350	0.372	0.395	0.417	0.439
33	0.292	0.314	0.337	0.359	0.381	0.403	0.426	0.448
34	0.301	0.323	0.345	0.368	0.390	0.412	0.435	0.457
35	0.310	0.332	0.354	0.377	0.399	0.421	0.443	0.466
36	0.318	0.341	0.363	0.385	0.408	0.430	0.452	0.475
37	0.327	0.350	0.372	0.394	0.417	0.439	0.461	0.483
38	0.336	0.358	0.381	0.403	0.425	0.448	0.470	0.492
39	0.345	0.367	0.390	0.412	0.434	0.457	0.479	0.501
40	0.354	0.376	0.398	0.421	0.443	0.465	0.488	0.510
41	0.363	0.385	0.407	0.430	0.452	0.474	0.497	0.519
42	0.372	0.394	0.416	0.438	0.461	0.483	0.505	0.528
43	0.380	0.403	0.425	0.447	0.470	0.492	0.514	0.537
44	0.389	0.412	0.434	0.456	0.478	0.501	0.523	0.545



Impairment	Lifestyle 0	1	2	3	4	5	6	7
45	0.398	0.420	0.443	0.465	0.487	0.510	0.532	0.554
46	0.407	0.429	0.452	0.474	0.496	0.518	0.541	0.563
47	0.416	0.438	0.460	0.483	0.505	0.527	0.550	0.572
48	0.425	0.447	0.469	0.492	0.514	0.536	0.558	0.581
49	0.434	0.456	0.478	0.500	0.523	0.545	0.567	0.590
50	0.442	0.465	0.487	0.509	0.532	0.554	0.576	0.598
51	0.461	0.483	0.504	0.526	0.547	0.569	0.590	0.612
52	0.480	0.500	0.521	0.542	0.563	0.584	0.604	0.625
53	0.498	0.518	0.538	0.558	0.578	0.598	0.619	0.639
54	0.517	0.536	0.555	0.575	0.594	0.613	0.633	0.652
55	0.535	0.554	0.572	0.591	0.610	0.628	0.647	0.665
56	0.554	0.572	0.590	0.607	0.625	0.643	0.661	0.679
57	0.572	0.590	0.607	0.624	0.641	0.658	0.675	0.692
58	0.591	0.607	0.624	0.640	0.656	0.673	0.689	0.706
59	0.610	0.625	0.641	0.656	0.672	0.688	0.703	0.719
60	0.628	0.643	0.658	0.673	0.688	0.703	0.717	0.732
61	0.647	0.661	0.675	0.689	0.703	0.717	0.732	0.746
62	0.665	0.679	0.692	0.706	0.719	0.732	0.746	0.759
63	0.684	0.697	0.709	0.722	0.735	0.747	0.760	0.772
64	0.703	0.714	0.726	0.738	0.750	0.762	0.774	0.786
65	0.721	0.732	0.743	0.755	0.766	0.777	0.788	0.799
66	0.740	0.750	0.761	0.771	0.781	0.792	0.802	0.813
67	0.758	0.768	0.778	0.787	0.797	0.807	0.816	0.826
68	0.777	0.786	0.795	0.804	0.813	0.822	0.830	0.839
69	0.796	0.804	0.812	0.820	0.828	0.836	0.845	0.853
70	0.814	0.822	0.829	0.836	0.844	0.851	0.859	0.866
71	0.833	0.839	0.846	0.853	0.859	0.866	0.873	0.880
72	0.851	0.857	0.863	0.869	0.875	0.881	0.887	0.893
73	0.870	0.875	0.880	0.885	0.891	0.896	0.901	0.906
74	0.888	0.893	0.897	0.902	0.906	0.911	0.915	0.920
75	0.907	0.911	0.914	0.918	0.922	0.926	0.929	0.933
76	0.926	0.929	0.932	0.935	0.938	0.941	0.943	0.946
77	0.944	0.946	0.949	0.951	0.953	0.955	0.958	0.960
78	0.963	0.964	0.966	0.967	0.969	0.970	0.972	0.973
79	0.981	0.982	0.983	0.984	0.984	0.985	0.986	0.987
80	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000

For impairment greater than 80 points, the value is always 1.00.

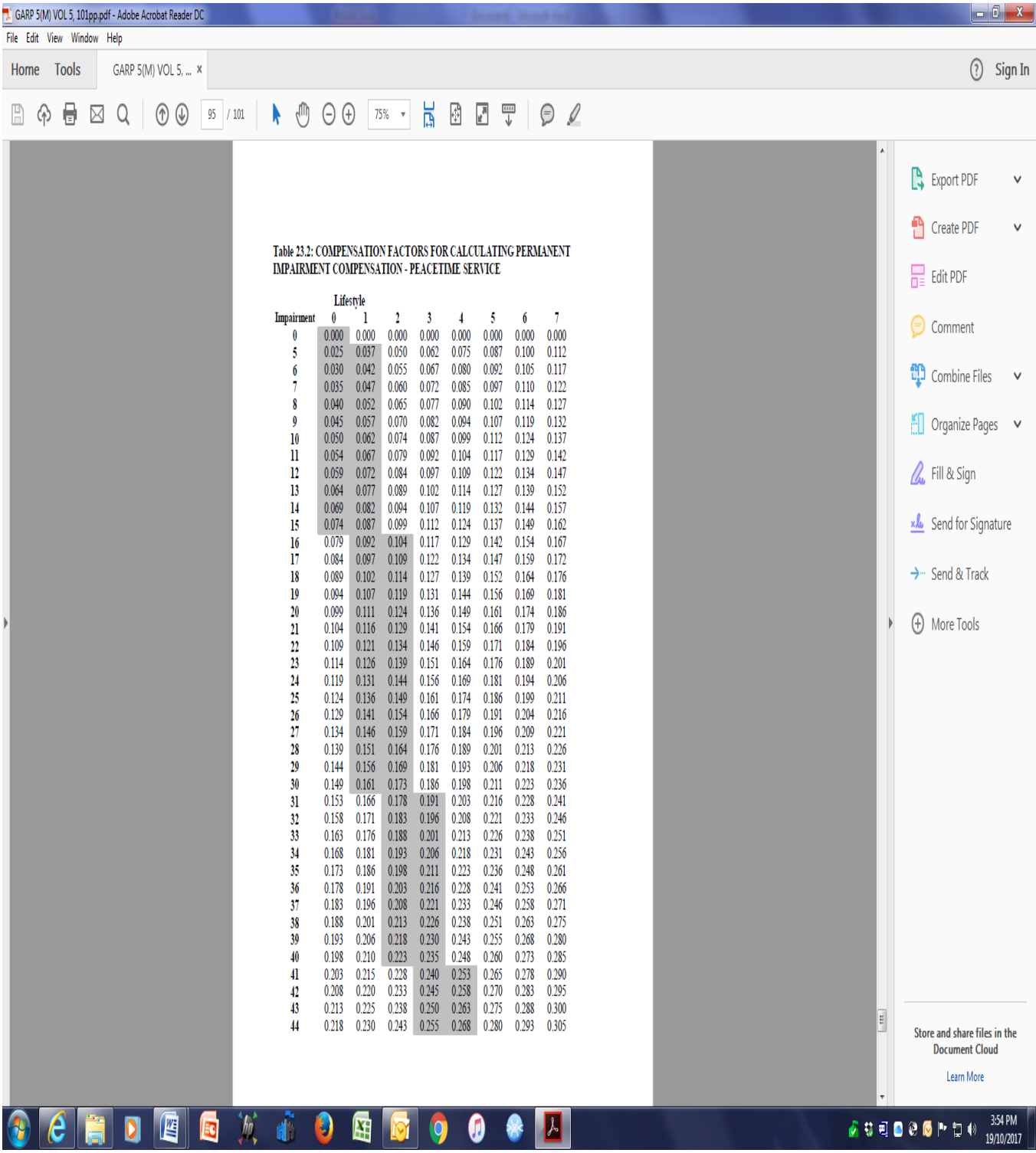
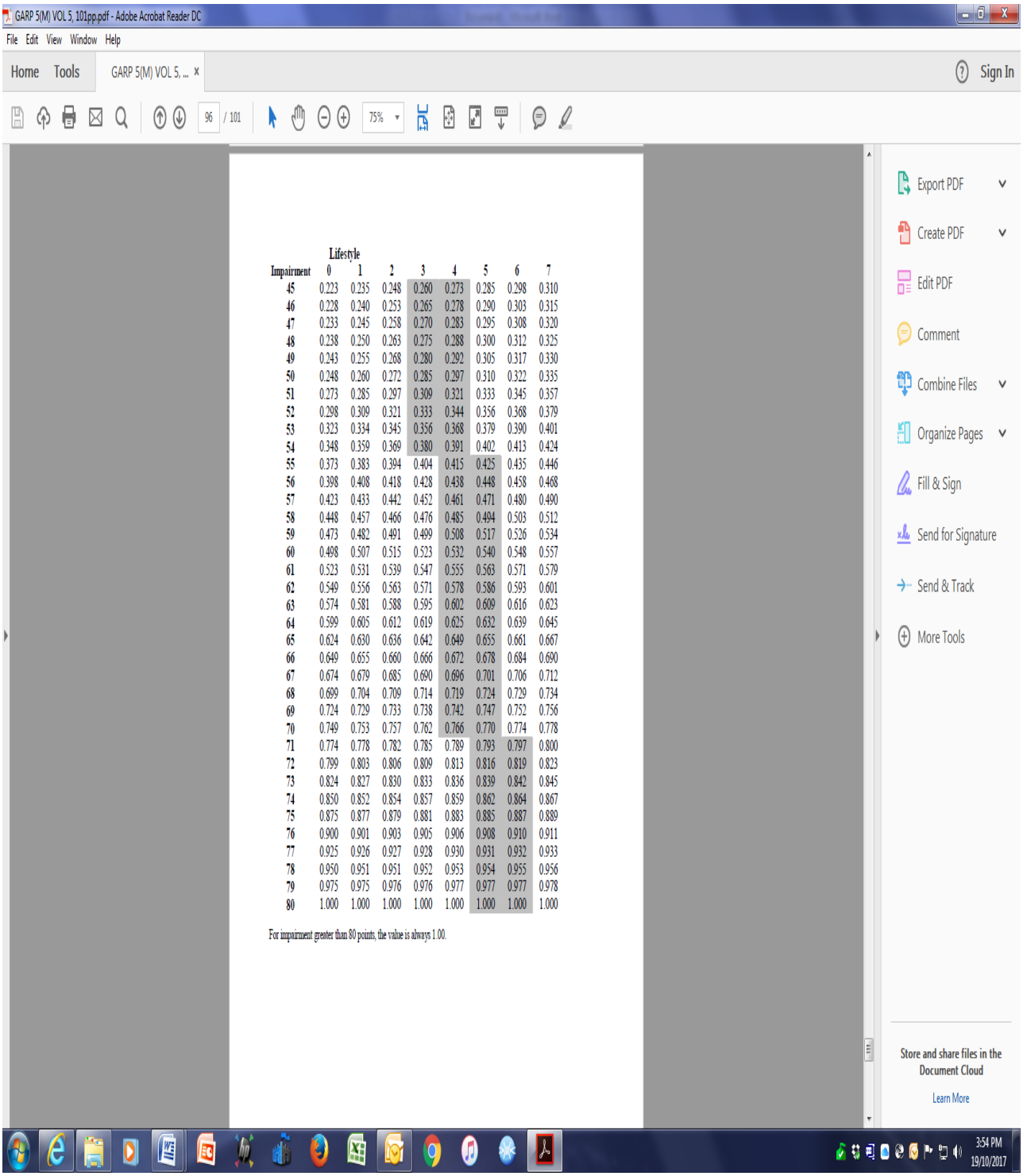


Table 23.2: COMPENSATION FACTORS FOR CALCULATING PERMANENT IMPAIRMENT COMPENSATION - PEACETIME SERVICE

	Lifestyle							
Impairment	0	1	2	3	4	5	6	7
0	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
5	0.025	0.037	0.050	0.062	0.075	0.087	0.100	0.112
6	0.030	0.042	0.055	0.067	0.080	0.092	0.105	0.117
7	0.035	0.047	0.060	0.072	0.085	0.097	0.110	0.122
8	0.040	0.052	0.065	0.077	0.090	0.102	0.114	0.127
9	0.045	0.057	0.070	0.082	0.094	0.107	0.119	0.132
10	0.050	0.062	0.074	0.087	0.099	0.112	0.124	0.137
11	0.054	0.067	0.079	0.092	0.104	0.117	0.129	0.142
12	0.059	0.072	0.084	0.097	0.109	0.122	0.134	0.147
13	0.064	0.077	0.089	0.102	0.114	0.127	0.139	0.152
14	0.069	0.082	0.094	0.107	0.119	0.132	0.144	0.157
15	0.074	0.087	0.099	0.112	0.124	0.137	0.149	0.162
16	0.079	0.092	0.104	0.117	0.129	0.142	0.154	0.167
17	0.084	0.097	0.109	0.122	0.134	0.147	0.159	0.172
18	0.089	0.102	0.114	0.127	0.139	0.152	0.164	0.176
19	0.094	0.107	0.119	0.131	0.144	0.156	0.169	0.181
20	0.099	0.111	0.124	0.136	0.149	0.161	0.174	0.186
21	0.104	0.116	0.129	0.141	0.154	0.166	0.179	0.191
22	0.109	0.121	0.134	0.146	0.159	0.171	0.184	0.196
23	0.114	0.126	0.139	0.151	0.164	0.176	0.189	0.201
24	0.119	0.131	0.144	0.156	0.169	0.181	0.194	0.206
25	0.124	0.136	0.149	0.161	0.174	0.186	0.199	0.211
26	0.129	0.141	0.154	0.166	0.179	0.191	0.204	0.216
27	0.134	0.146	0.159	0.171	0.184	0.196	0.209	0.221
28	0.139	0.151	0.164	0.176	0.189	0.201	0.213	0.226
29	0.144	0.156	0.169	0.181	0.193	0.206	0.218	0.231
30	0.149	0.161	0.173	0.186	0.198	0.211	0.223	0.236
31	0.153	0.166	0.178	0.191	0.203	0.216	0.228	0.241
32	0.158	0.171	0.183	0.196	0.208	0.221	0.233	0.246
33	0.163	0.176	0.188	0.201	0.213	0.226	0.238	0.251
34	0.168	0.181	0.193	0.206	0.218	0.231	0.243	0.256
35	0.173	0.186	0.198	0.211	0.223	0.236	0.248	0.261
36	0.178	0.191	0.203	0.216	0.228	0.241	0.253	0.266
37	0.183	0.196	0.208	0.221	0.233	0.246	0.258	0.271
38	0.188	0.201	0.213	0.226	0.238	0.251	0.263	0.275
39	0.193	0.206	0.218	0.230	0.243	0.255	0.268	0.280
40	0.198	0.210	0.223	0.235	0.248	0.260	0.273	0.285
41	0.203	0.215	0.228	0.240	0.253	0.265	0.278	0.290
42	0.208	0.220	0.233	0.245	0.258	0.270	0.283	0.295
43	0.213	0.225	0.238	0.250	0.263	0.275	0.288	0.300
44	0.218	0.230	0.243	0.255	0.268	0.280	0.293	0.305



	Lifestyle							
Impairment	0	1	2	3	4	5	6	7
45	0.223	0.235	0.248	0.260	0.273	0.285	0.298	0.310
46	0.228	0.240	0.253	0.265	0.278	0.290	0.303	0.315
47	0.233	0.245	0.258	0.270	0.283	0.295	0.308	0.320
48	0.238	0.250	0.263	0.275	0.288	0.300	0.312	0.325
49	0.243	0.255	0.268	0.280	0.292	0.305	0.317	0.330
50	0.248	0.260	0.272	0.285	0.297	0.310	0.322	0.335
51	0.273	0.285	0.297	0.309	0.321	0.333	0.345	0.357
52	0.298	0.309	0.321	0.333	0.344	0.356	0.368	0.379
53	0.323	0.334	0.345	0.356	0.368	0.379	0.390	0.401
54	0.348	0.359	0.369	0.380	0.391	0.402	0.413	0.424
55	0.373	0.383	0.394	0.404	0.415	0.425	0.435	0.446
56	0.398	0.408	0.418	0.428	0.438	0.448	0.458	0.468
57	0.423	0.433	0.442	0.452	0.461	0.471	0.480	0.490
58	0.448	0.457	0.466	0.476	0.485	0.494	0.503	0.512
59	0.473	0.482	0.491	0.499	0.508	0.517	0.526	0.534
60	0.498	0.507	0.515	0.523	0.532	0.540	0.548	0.557
61	0.523	0.531	0.539	0.547	0.555	0.563	0.571	0.579
62	0.549	0.556	0.563	0.571	0.578	0.586	0.593	0.601
63	0.574	0.581	0.588	0.595	0.602	0.609	0.616	0.623
64	0.599	0.605	0.612	0.619	0.625	0.632	0.639	0.645
65	0.624	0.630	0.636	0.642	0.649	0.655	0.661	0.667
66	0.649	0.655	0.660	0.666	0.672	0.678	0.684	0.690
67	0.674	0.679	0.685	0.690	0.696	0.701	0.706	0.712
68	0.699	0.704	0.709	0.714	0.719	0.724	0.729	0.734
69	0.724	0.729	0.733	0.738	0.742	0.747	0.752	0.756
70	0.749	0.753	0.757	0.762	0.766	0.770	0.774	0.778
71	0.774	0.778	0.782	0.785	0.789	0.793	0.797	0.800
72	0.799	0.803	0.806	0.809	0.813	0.816	0.819	0.823
73	0.824	0.827	0.830	0.833	0.836	0.839	0.842	0.845
74	0.850	0.852	0.854	0.857	0.859	0.862	0.864	0.867
75	0.875	0.877	0.879	0.881	0.883	0.885	0.887	0.889
76	0.900	0.901	0.903	0.905	0.906	0.908	0.910	0.911
77	0.925	0.926	0.927	0.928	0.930	0.931	0.932	0.933
78	0.950	0.951	0.951	0.952	0.953	0.954	0.955	0.956
79	0.975	0.975	0.976	0.976	0.977	0.977	0.977	0.978
80	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000

For impairment greater than 80 points, the value is always 1.00.

SCALE 23.1 

CONVERSION TO DEGREE OF INCAPACITY

Medical Impairment	**Lifestyle Ratings**							
	0	1	2	3	4	5	6	7
0	0	10	10	20	N/A	N/A	N/A	N/A
5	10	10	20	30	40	40	N/A	N/A
10	10	20	30	30	40	50	60	N/A
15	20	30	30	40	50	60	60	N/A
20	20	30	40	50	50	60	70	80
25	30	40	40	50	60	70	70	80
30	40	40	50	60	70	70	80	80
35	N/A	50	60	60	70	80	90	90
40	N/A	50	60	70	80	80	90	100
45	N/A	60	70	80	80	90	100	100
50	N/A	70	70	80	90	100	100	100
55	N/A	70	80	90	90	100	100	100
60	N/A	80	90	90	100	100	100	100
65	100	100	100	100	100	100	100	100
70	100	100	100	100	100	100	100	100
75	100	100	100	100	100	100	100	100
80	100	100	100	100	100	100	100	100
85	100	100	100	100	100	100	100	100
90	100	100	100	100	100	100	100	100

No Age Adjustment Permitted for this Table

ATTACHMENT C

The Australian Federation of Totally and Permanently Incapacitated
Ex-Servicemen & Women Ltd (Incorporated in the ACT)
ACN 008 591 704 ABN 61 008 591 704

Patron-In-Chief: His Excellency General the Honourable Sir Peter Cosgrove AK MC (Retd)

TPI FEDERATION AUSTRALIA

"Disabled in our Service United in our Cause"

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Ph - 07 5570 3428 Mob – 0400 738 139 | Email secretary@tpifed.org.au

4th August 2017

The Hon. Malcolm Turnbull, MP
Prime Minister
PO Box 6022
Parliament House
Canberra, ACT 2600

The Hon. Barnaby Joyce, MP
Deputy Prime Minister
PO Box 6022
Parliament House
Canberra, ACT 2600

Senator Marise Payne
Minister for Defence
PO Box 6022
Parliament House
Canberra, ACT 2600

The Hon Dan Tehan MP
Minister for Veterans' Affairs
PO Box 6022
Parliament House
Canberra, ACT 2600

Dear Prime Minister, Deputy Prime Minister, Senator and Member

The TPI Federation has campaigned since the beginning of the Centenary year of the ANZAC for the Government to reassess the current inequitable loss of income compensation for Australia's 28,062 Totally & Permanently Incapacitated Ex-Servicemen & Women/Special Rate (TPI/SR) recipients. The commemorations for this Centenary is nearing to a close and still our issues have not been resolved.

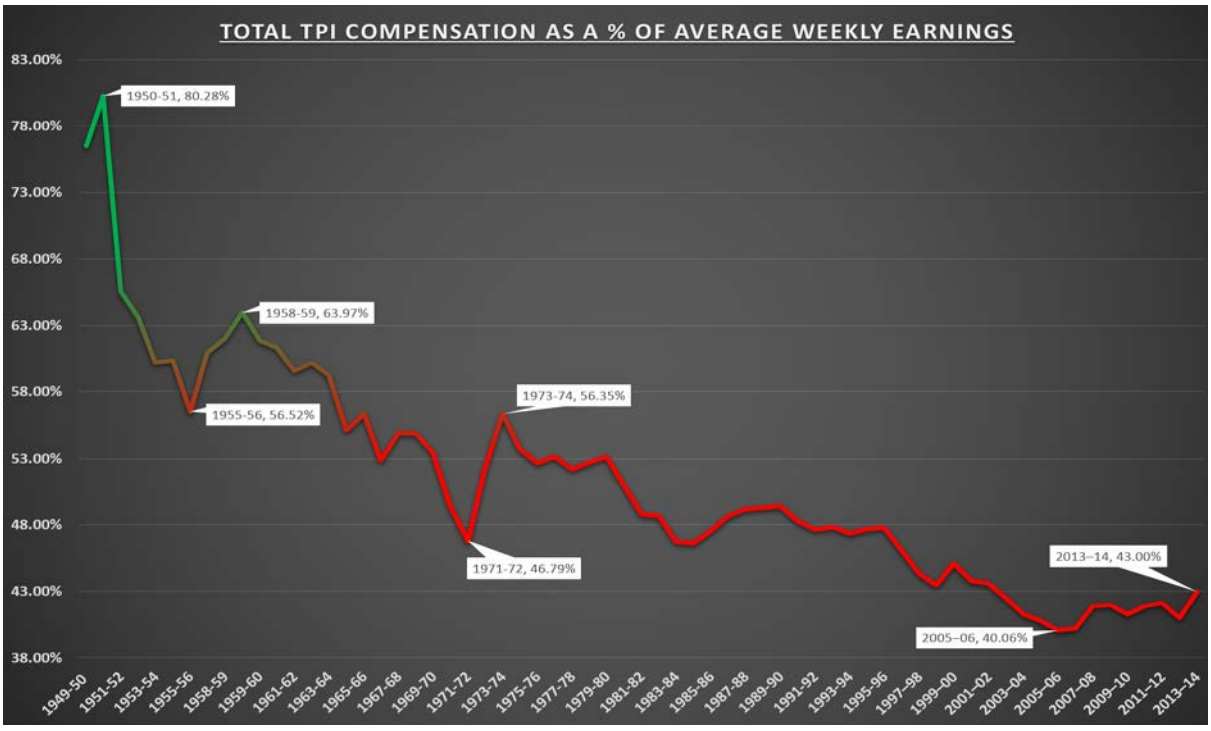
The TPI Federation commends the Government on the progress that has been made in the area of Mental Health services for all Veterans and their families. Although this can be

appreciated, a number of letters have been forwarded, and responded to, in the context of this campaign, and still our main issue has not changed. The major concern is highlighted below and the principle of our argument appears to have been accepted by most that we have discussed this with.

The obvious inadequacy of the 'Above General Rate' compensation provided to our most disabled Veterans, the TPI/SRs, needs to be urgently addressed by the Government.

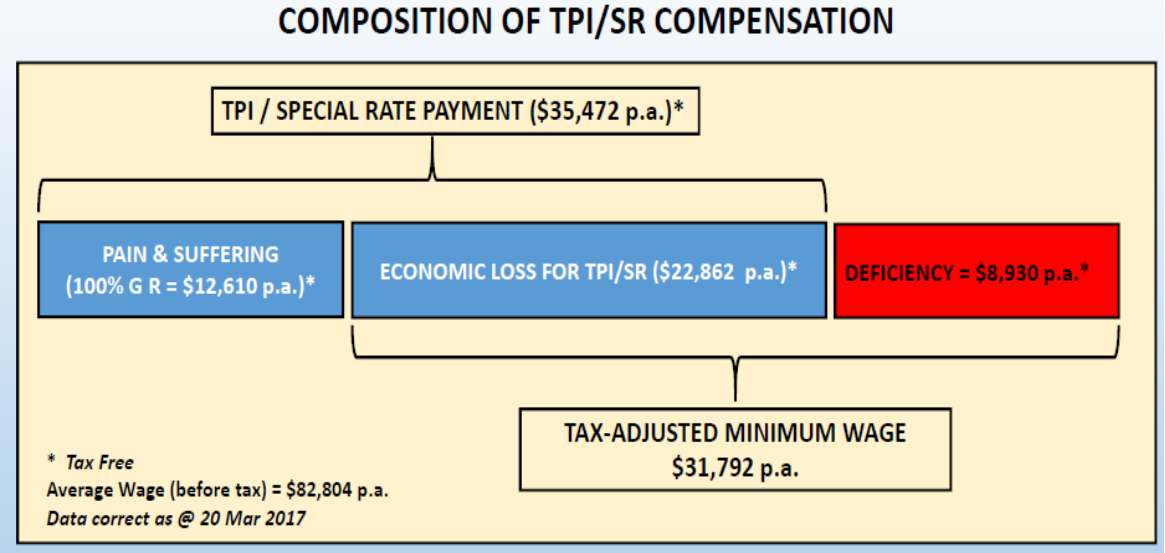
It has been well established over many years that the TPI/SR compensation payments are notionally split into 'Pain and Suffering' (the 'General Rate') and 'Economic Loss' (the 'Above General Rate') components.

Disappointingly, independent research now shows that TPI/SR payments alone have declined over many years. Research also reveals that the 'Economic Loss' component is now so deficient that it only rates at approximately 65% of Australia's Minimum Wage. The graph below reflects some of this research.



'Economic Loss' is supposed to provide replacement income compensation for Service related disabilities, and therefore it should at least modestly support the Veteran and their family. It has become very apparent that the current 'Economic Loss' component of $440 per week is inadequate to the task. It bears no relationship to any community based income assessment, or benchmark, independently derived to guarantee such adequacy.

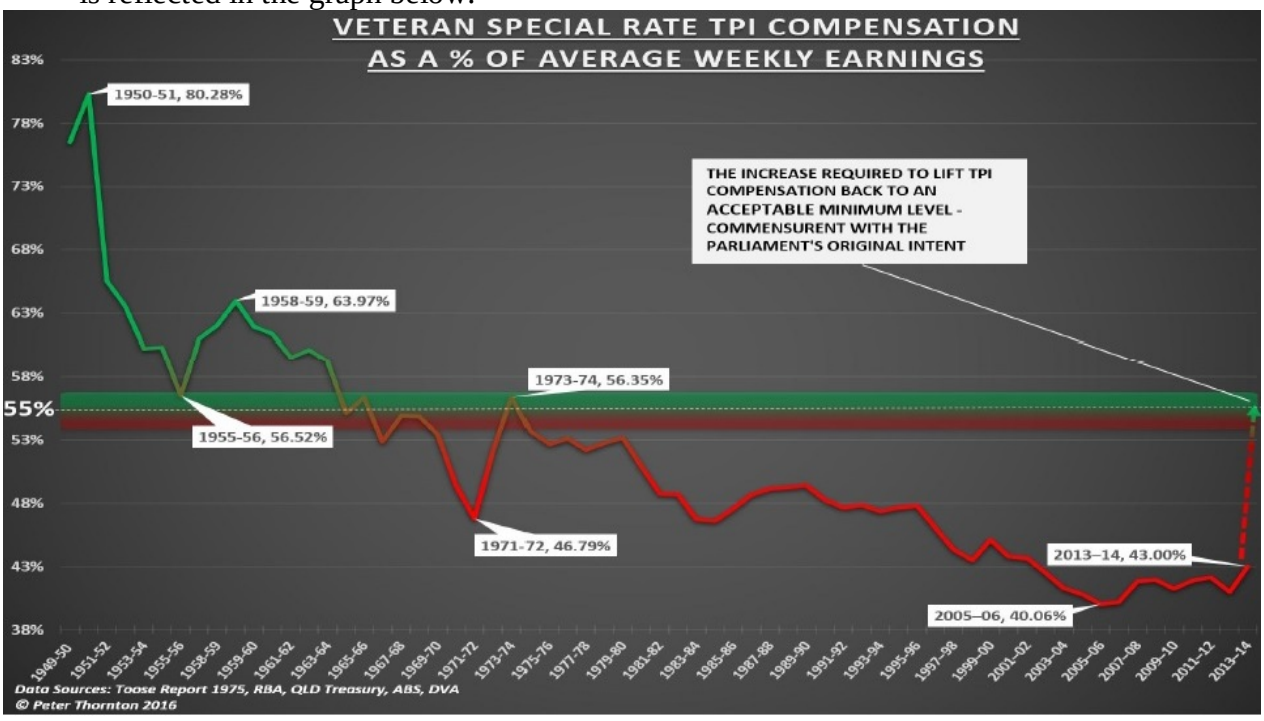
By modern day contemporary standards, we believe such a level remains totally inadequate and subsequently greatly affects the living standards of TPI/SR recipients and their families.



The current situation begs a serious question – "What income standard is used to determine the 'Economic Loss' component of a TPI/SR Compensation Payment"? Does this truly represent "**fairness and value**" as compensation? This inadequacy is reflected by the deficiency stated in the above graph.

The TPI Federation is aware that a legislative change is required to right this injustice. Section 24(4) of the Veteran's Entitlement Act 1986 (VEA) states "Subject to subsections (5) and (6), the rate at which pension is payable to a veteran to whom this section applies is $919.40 per fortnight." This figure of '$919.40' has not changed since 2007. The previous change to this was in 1992.

The TPI Federation is requesting that the figure of '$919.40' from within Section 24(4) of the VEA, be replaced with 'the General Rate plus the tax-adjusted Minimum Wage'. This change would then enable the Above General Rate to truly reflect the most basic wage loss compensation for their Defence caused wounds/injuries. The result of such an amendment is reflected in the graph below.



Such an amendment would enable a basic minimum benchmark to become a stable basis for this payment. This combined with the better of CPI/MTAWE indexation would reflect a fairer and more suitable standard of living to be maintained for the 28,062 TPI/SR recipients who are currently being paid 43% of the Average Weekly Earnings as compensation for their Service related wounds/injuries. Do you seriously think this is fair and equitable compensation?

Such an amendment would also reflect the structural adjustment that the previous Government of 1973 felt was necessary to bring the TPI/SR compensation payment to an acceptable minimum level. The TPI Federation believes the request for a rise in the compensation back to this acceptable minimum level is commensurate with the Parliament's original intent.

With the assistance of Senator Jacqui Lambie, the TPI Federation was able to gain a Parliamentary Budget Office (PBO) costing of our proposal dated 24th April 2017. The PBO has advised that this proposal's financial implications for 2017/18 would be $240m. Considering the final effect on almost 30,000 recipients this is a small price for the Government to implement.

Parliament's original intent of the War Pension Act of 1914, which was to "provide for the grant of Pensions upon the death or incapacity of Members of the Defence Force". This statement was reinforced by Prime Minister Billy Hughes CH KC who, in 1917, said –

"We say to them – 'You go and fight, and when you come back we will look after your welfare' …. we have entered into a bargain with the soldier, and we must keep it!"

The essence of Mr Hughes's statement was once again reinforced by Senator Chris Ellison at the second reading of the 2007 legislation when he said, *"This Bill continues the Government's ongoing commitment to supporting Australia's Veteran community and will ensure ongoing* ***fairness and value*** *in the pensions for our disabled Veterans and War Widows and War Widowers."* The then Minister for Veterans' Affairs, Mr Bruce Billson MP, also stated in 2007, *"In keeping with the Government's commitment to a 'best practice' and beneficial system of support for Service related injuries, illnesses and impairment…."* He also went on to say: *"I am pleased to present a bill that introduces a uniform – and a more rational and equitable method of indexation for all disability pensions."*

With the foregoing in mind, we ask, "What has changed within the Government's ideology".

Prime Minister, we realise this information may come as a bit of a surprise to you personally, but the Alliance of Defence Service Organisations (ADSO), of which the TPI Federation is a member, appraised the Government of this fact back in June of 2014. Upon gaining this knowledge, we fully expect that you would share our concern as to the level of 'Economic Loss' that our most disabled veterans are receiving. Again, this is a level that only equates to approximately 65% of the Minimum Wage.

The DVA Minister, Dan Tehan MP, has been very sympathetic to this plight, but without any doubt we feel he is in a rather invidious position with the Cabinet, given the current necessary budgetary considerations.

It is logical and defensible that the Minimum Wage be used as the specific measure, or benchmark, under such circumstances, as it represents the absolute bare minimum wage that a TPI/SR Veteran could reasonably expect to earn if they were not Totally and Permanently Incapacitated.

With all this information and the knowledge that many of your contemporaries are in agreement with the principle of this proposal, it now remains to be the 'Will of the Government' for this to be endorsed.

We respectfully ask that you, and the Government, seriously consider this very important issue, which is of major concern to your constituents. Given the importance of this matter, we would welcome the opportunity to meet with you directly to brief you in more detail.

We would welcome and appreciate your immediate consideration and response please.

Yours sincerely

Ms Pat McCabe OAM
President