

11 May 2023

The Hon Matt Keogh MP
Minister for Veterans' Affairs
Minister for Defence Personnel

By email: legislation.reform@dva.gov.au

Dear Minister

Veterans' Entitlements Legislation Reform Consultation Pathway

Thank you for the opportunity to provide feedback on the proposed Veterans' Entitlements Legislation Reform Consultation Pathway (**Consultation Pathway**).

Legal Aid NSW supports the Consultation Pathway and the proposal to simplify and harmonise the veterans' compensation and rehabilitation scheme. We agree that the current framework is overly complex and fraught with difficulties.¹ A new simpler scheme will provide greater clarity and consistency around entitlements for veterans and their families and also assist the Department of Veterans' Affairs to make better and more transparent decisions.

While Legal Aid NSW supports a future model where all fresh claims are considered under a single ongoing veterans' entitlement scheme,² we are concerned that closing out the *Veterans' Entitlements Act 1986 (VEA)* to fresh claims will cause further difficulties and confusion, and disadvantage veterans seeking to make a claim to increase their current payments for sequelae or new conditions.

We recommend that veterans currently receiving entitlements under the VEA be offered the opportunity to make a one-off choice to either continue under the VEA or switch to the new scheme for fresh claims. This would avoid the complexity of multiple payments under different schemes and potential offsetting of payments, and also ameliorate concerns that some veterans could be worse off under the new scheme.

¹ Interim Report of the Royal Commission into Defence and Veteran Suicide, page xxviii at [17]; page 185 at [66].

² This is referred to in the Consultation Pathway as an "improved" *Military Rehabilitation and Compensation Act (MRCA)*.

While the Consultation Pathway also proposes to close off the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 (DRCA)*, we have confined our submission to the impact of the proposals on veterans receiving entitlements under the VEA, as those veterans are more likely to be adversely affected by the new scheme for the reasons discussed below.

Proposal to ‘close out’ the VEA to new claims

The Consultation Pathway proposes to close out the VEA to new compensation claims from a future cut-off date, so that all fresh claims are considered under the new scheme. It also proposes to grandfather all existing arrangements so that current entitlements would be unaffected.

This means that veterans could still claim an increase in payments if their currently accepted conditions worsened, but fresh claims for sequelae or new conditions would be considered under the new scheme.³

In our view, this proposal to close out the VEA to new claims does not remedy the complexity of the current compensation scheme and fails to consider the following crucial factors:

1. VEA disability pensions could be offset by new scheme payments if they involved the same incapacity, irrespective of whether they were separate conditions.⁴ This would maintain the current complexity caused by offsetting, which creates uncertainty for veterans and risks an overpayment debt being raised against them in the future. However, veterans receiving a disability pension and claiming for new conditions or sequelae under the VEA only, would not be affected by offsetting arrangements.
2. Veterans who are receiving a disability pension under the VEA may prefer to retain their pension rather than receive compensation under two schemes if they wished to claim new conditions or sequelae after the cut-off date. This may be for simplicity and that the highest pension available under the VEA (Special Rate) greatly exceeds the maximum weekly compensation available for permanent impairment under the current *Military Rehabilitation and Compensation Act 2004 (MRCA)* scheme.⁵ By closing off the VEA to new claims, veterans could be worse

³ *Consultation Pathway*, page 3.

⁴ Part II, Division 5A of the VEA.

⁵ \$1,617.16 per fortnight versus \$375.80 per week respectively. See <https://www.dva.gov.au/financial-support/payment-rates/summary-pension-rates-limits-and-allowances> and <https://www.dva.gov.au/financial-support/payment-rates/compensation-payment-rates-mrca>

Under the MRCA, the weekly amount can be converted into a lump sum in accordance with advice from the Australian Government Actuary by reference to the person’s age at that date (s78(5) MRCA).

off as they would be prevented from potentially claiming a pension above the General Rate under the VEA.⁶

3. While some additional benefits may be available under the new scheme, veterans under the VEA may not meet those criteria for compensation. For example, additional compensation under section 80 of the MRCA is payable when a veteran has received the maximum compensation and has dependent children who also meet the criteria for an 'eligible young person' (as defined in section 5). However, many veterans receiving a disability pension under the VEA are less likely to have dependants who meet these criteria as they tend to be an older cohort. It is therefore uncertain whether VEA recipients would be eligible to receive some or all the additional benefits under the new scheme.

Our Recommendation

To ameliorate concerns about veterans being eligible and receiving compensation under more than one scheme and the potential offsetting of payments, we recommend that veterans who are currently receiving entitlements under the VEA should be offered the opportunity to make a one-off choice to either continue under the VEA, or switch to the new scheme for fresh claims. This proposal is consistent with the findings and recommendations of the Productivity Commission.⁷

By providing an opportunity to make a choice, veterans would be able to make an informed decision about which scheme they considered to be the most suitable to their specific needs and circumstances. We recommend that veterans should have access to free financial advice to help them make this choice.

Veterans who have opted to remain under the VEA scheme, would continue to receive their pension and be able to make any new claims for sequelae or new conditions under the same scheme, avoiding the complexity of offsetting and multiple payments under different schemes. It would also mean that veterans would not be adversely impacted if they were eligible for a pension above the General Rate as a result of a fresh claim.

We acknowledge that veterans who chose to move to the new scheme and make a fresh claim would continue to be impacted by offsetting arrangements. However, fewer veterans would be affected by offsetting under our recommendation than the number of veterans potentially impacted by the proposal to consider all fresh claims under the new scheme.

⁶ Such as a Special Rate, Intermediate Rate or Extreme Disablement Adjustment.

⁷ *A Better Way to Support Veterans* (2019), Productivity Commission, Vol 1, page 40; Vol 2, page 817.

Thank you again for the opportunity to provide feedback on the Consultation Pathway.
If you have any questions or require further information, please contact [REDACTED]

Yours sincerely

A handwritten signature in blue ink, appearing to read 'M Brodie', is written over a light blue circular stamp.

Michael Brodie
A/Chief Executive Officer