



Australian Government

Veterans' Advocacy and Support Services Scoping Study

A modern professional sustainable
service for Australian veterans
and their families

DISCUSSION PAPER

May 2018



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Making a submission

The scoping study will be pleased to receive **submissions about any of the matters** raised by the Terms of Reference **by 31 July 2018**.

The discussion paper is made up of ten Sections. Some questions are set out at the end of each Section indicating matters which are of interest to this study. People making a submission are not expected to answer every question. They can answer as many or as few of those questions as they like. They can also comment on any matter they consider is relevant to the Terms of Reference whether or not it is covered by the questions in this discussion paper.

The study has prepared two proforma questionnaires which may assist you to make a submission (one for organisations and people answering some or all of the questions in the discussion paper and one for veterans and members of their families who want to tell the study about their personal experience). You do not have to use these questionnaires but, if you wish to do so, they are available at www.dva.gov.au/advocacystudy/questionnaires and may be submitted to the scoping study either electronically or in hard copy.

Further details, including how to lodge your submission, are on pages 6 and 7.

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This document must be attributed as:

Veterans' Advocacy and Support Services Scoping Study Discussion Paper,
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VETERANS' ADVOCACY AND SUPPORT SERVICES SCOPING STUDY

DISCUSSION PAPER

On 16 April 2018, the Hon Darren Chester MP, Minister for Veterans' Affairs, announced this scoping study to improve advocacy and support services for veterans' and their families. The Terms of Reference are set out at **Attachment A** to this discussion paper.

INTRODUCTION

Who is a 'veteran'?

In its Report, entitled *The Constant Battle: Suicide by Veterans*, the Foreign Affairs, Defence and Trade References Committee observed that the term 'veteran' can mean different things to different people. It can mean a person who is taken to have rendered eligible war service under the *Veterans' Entitlements Act 1988* while the *Military and Rehabilitation and Compensation Act 2004* identifies veterans by type of service: warlike service, non-warlike service, peace time service and defence service.¹

It is important to be very clear about this terminology.

The *Ministerial Statement on Veterans and Their Families* delivered in August 2017 by the then Minister for Veterans' Affairs, says:

There are currently around 58,000 Australians serving in our Defence Forces. Some will serve overseas. Others will serve in barracks and bases around the country....

In the Australian community, there are an estimated 320,000 veterans who have been deployed. Many thousands more have not seen service outside of Australia. These men and women have worn their uniforms in both peace time and in conflict.²

The Statement concludes that, no matter who they are, all of them are or will become veterans.

In this scoping study, 'veterans' includes all past members of the Australian Defence Force (ADF) and, where appropriate, their families in accordance with the Ministerial Statement.

The need for this scoping study

The Australian Government and the Department of Veterans' Affairs (DVA) acknowledge the great dedication shown and invaluable service provided to veterans by ex-service organisations and their advocates over many years.

Now, looking to the future, a number of factors necessitate a reconsideration of the current delivery of advocacy and support services. They include:

- the emerging needs of younger veterans, female veterans and veterans' families
- the importance of effectively managing transition from the Defence Force, particularly in the case of early medical or administrative termination of service
- an increasing emphasis on rehabilitation and assistance to get a job in the civilian workforce
- the challenges faced by ex-service organisations in attracting younger veterans to replace their declining number of ageing volunteer advocates
- the complexity of the legislation governing – and the wide range of agencies and organisations delivering – veterans' entitlements and services, and
- the consequent need for advocate training and accreditation to cope with this complexity and flexible options for maintaining the number and location of trained or professional advocates to

¹ See *The Constant Battle: Suicide by Veterans*, August 2017, page 5, paragraph 1.17

² Page 2

provide a sustainable, consistent and reliable advocacy service to meet demand.

As a result, the Government and DVA began reassessing the structure and delivery of advocacy and support services several years ago. This comprehensive scoping study, which follows on earlier reports and investigations, was commissioned in response to recommendations made by parliamentary committees and the Veteran Ministers' Roundtable.

In particular, the Foreign Affairs, Defence and Trade References Committee made these recommendations in The Constant Battle Report:

Recommendation 23: The committee recommends that the Australian Government establish a Bureau of Veterans' Advocates to represent veterans, commission legal representation where required, train advocates for veterans and be responsible for advocate insurance issues.

Recommendation 24: The committee recommends that the Australian Government establish an independent review of the representation of veterans before the Veterans' Review Board. This review should assess whether the rights of vulnerable veterans are being adequately protected and whether further support mechanisms for veterans appearing before the Veterans' Review Board are required.

The Veteran Ministers' Roundtable supported the establishment of a body to define standards for services provided by ex-service organisations to veterans and establish a formal accreditation process in its 8 November 2017 Joint Communique.³

On 17 December 2017, the Defence sub-committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade recommended that the:

...Department of Veterans' Affairs investigate options for an independent authority to review all unsuccessful Veterans' Review Board determinations in consultation with the affected veteran or their delegate to alleviate the stress and burden of making their own case on appeal.⁴

The scope of this investigation

While those recommendations prompted this study, the Terms of Reference are drawn more widely to take into account the broader context in which advocacy and support services are provided to veterans.

If there are fewer appeals to the Veterans' Review Board, the Administrative Appeals Tribunal and the Federal Court of Australia, it follows that there could be some reduction in the need for advocacy and support services.

The study will look at some of the surrounding factors which can affect advocacy for veterans, such as:

- *Transforming DVA to put Veterans and their Families First and Veteran Centric Reform* being undertaken by the Department to improve efficiency in, and remove barriers to, determining claims and assisting veterans to access all of their entitlements and consider whether further improvements can be made
- the cooperation between DVA and the Department of Defence to support those efficiency improvements (including the timely exchange of veteran information)
- the conduct of appeals to the Veterans' Review Board
- the conduct of any further appeals to the Administrative Appeals Board and the Federal Court, and
- other suggestions put forward in submissions or identified during this scoping study.

3 Note that, from 1 July 2016, the Advocacy Training and Development Program introduced accredited training for advocates providing compensation and welfare services to veterans

4 Recommendation 10

The format of this discussion paper

This discussion paper is designed to assist veterans, their families, ex-service organisations and other interested parties to provide information to the scoping study. Organisations and individuals can make a submission on any matter raised in the Terms of Reference.

To assist people who want to make a submission, the Paper identifies specific issues arising from the Terms of Reference and asks for comments. The questions at the end of each Section are numbered so respondents can, if they wish, comment on one, two or more questions which are relevant to their interest or experience and ignore the others.

There are two questionnaires available at www.dva.gov.au/advocacystudy/questionnaires which can be used as a basis for submissions, if they are of assistance. One questionnaire is designed for organisations and people answering some or all of the questions in the discussion paper. The other is for veterans and members of their families who want to tell the study about their personal experience. The study is keen to hear about the personal experiences veterans and their families have had making claims, appealing adverse delegates' or VRB decisions and their dealings with advocates and welfare support services.

The acronyms and abbreviations used in this discussion paper are set out in **Attachment B**. While they have been kept to a minimum, some acronyms and abbreviations which are in common use and readily understood can simplify the text and make it easier to read.

Applicable legislation

Services and support for veterans (originally known as repatriation benefits) have a long history in Australia, starting in the second half of 1915 when *World War I* was at its zenith.⁵ The development of repatriation policy has historically been organised around five principal policy areas: *war pensions and other compensatory assistance; general assistance to war veterans; medical and hospital benefits; war service housing; and Australian war graves.*⁶

Given that long history, it is not surprising that the legislative provisions governing veterans' benefits, services and support have changed over the years. The current legislation is found in:

- the *Veterans' Entitlements Act 1986* (VEA) which covers claims made or arising from circumstances which occurred or began before 1986 or, for some VEA claims, 30 June 2004
- the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (DRCA) which, since a 2017 legislative amendment, covers claims made or arising from circumstances which occurred or began between 1988 and 2004. Previously these claims were covered by the military component of the *Safety, Rehabilitation and Compensation Act 1988* (SRCA), and
- the *Military Rehabilitation and Compensation Act 2004* (MRCA) which covers claims made or arising from circumstances which occurred or began since 1 July 2004.

Depending on the date of the circumstances giving rise to a claim and the nature of the impairment, incapacity, injury or illness, long serving members of the ADF may over time make claims under one or two or all three of those Acts.

Making a submission

The scoping study would be pleased to receive written submissions in response to this discussion paper by Tuesday 31 July 2018.

Submissions can be open or categorised as name withheld or confidential. These categories mean:

- the author of an open submission will be listed in the study's Report and the submission will be placed on the study's website (subject to DVA's electronic media policy)

⁵ See *The Last Shilling – A History of Repatriation in Australia* by Clem Lloyd and Jacqui Rees, page 1

⁶ *Ibid*, page 3

- the study may quote or refer to the content of a Name Withheld submission in its Report without identifying the person who made the submission, and
- the name of the author and the content of a confidential submission will be kept in confidence at all times.

Name Withheld and Confidential submissions and any accompanying correspondence **must be clearly marked**. Unmarked submissions will be accepted as open submissions.

Submissions can be provided to the scoping study as follows:

- by hand to any Veterans' Access Network office (address details are available on the Department's website at <https://www.dva.gov.au/contact/dva-office-and-client-service-locations>)
- by mail to the Advocacy and Support Services Scoping Study, Department of Veterans' Affairs, GPO Box 9998, Brisbane, Queensland, 4001
- by email to advocacystudy@dva.gov.au, or
- by uploading your submission via the DVA website (www.dva.gov.au/advocacystudy).

Any questions concerning preparation or delivery of a submission can be forwarded to advocacystudy@dva.gov.au.

SECTION 1: EX-SERVICE ORGANISATION ADVOCATES

Most advocacy and support services for veterans are provided by ex-service organisations (ESOs) through volunteer advocates (although a small number of paid advocates are employed by their organisation).

Advocates provide services in regard to predominantly compensation claims (including preparing claims and representation at the Veterans' Review Board and the Administrative Appeals Tribunal), welfare benefits available from the Department of Veterans' Affairs or other government agencies or both.⁷

The *Ex-Service Organisation Mapping Project Final Report* published in 2016 contains a map showing the location of thousands of ESOs (including branches and sub-branches) on a state by state basis.⁸ The biggest ESOs are the Returned and Services League and Legacy and these two organisations provide a large proportion of advocacy services for veterans.

DVA does not have detailed statistics on the number of ESO volunteers providing advocacy and support services. Based on funding claims, DVA estimates there are approximately 1,600 active ESO veterans' advocates.

As many of those advocates are from the post-World War II veteran cohort, their numbers are expected to decline, possibly significantly, over the next few years due to age, illness or retirement.

The *Review of DVA-Funded ESO Advocacy and Welfare Services Final Report*, December 2010, commented on the demographic changes in the veteran population and the challenges presented by the number of ageing advocates available to assist DVA beneficiaries and claimants and the wider veteran and defence communities.⁹

The volunteer advocates often have years of valuable experience in dealing with claims under the Veterans' Entitlements Act but less experience with claims under the Safety, Rehabilitation and Compensation (Defence-related Claims) Act and the Military Rehabilitation and Compensation Act and the interaction between the three enactments.¹⁰

The *Review of Advocates Training Report 2015* (known as the *Rolfe Review*) found¹¹:

- present ESO advocates were often well versed in the VEA but less confident with later legislation
- many ESO advocates have been reluctant to develop familiarity with SRCA (now DRCA) and MRCA due in some cases to age, limited time and personal health issues, and
- the number of volunteer advocates is declining and they are not being replaced by younger persons, who are generally reluctant to join traditional ESOs.

As the number of veterans claiming under the VEA declines over the next few years, familiarity with DRCA (for claims made between 1988 and 2004) and MRCA (for claims from 1 July 2004) will become increasingly important.

During the 1990s DVA, in consultation with ex-service organisations, established some levels of formal training for advocates through the Training and Information Program supported by funding from the Building Excellence in Support and Training Grant Program. More recently, from 1 July 2016, the Advocacy Training and Development Program introduced accredited training for advocates providing compensation or welfare services or both. These programs are commonly referred to as BEST, TIP and ATDP.

7 ESO advocates cannot charge a fee for pension or welfare services

8 See page 25

9 Report, page 5

10 Since October 2017, the Minister for Veterans' Affairs is the responsible Minister for all three enactments

11 Review of Advocates Training Report 2015, page 19

DVA has advised this scoping study that just on 400 advocates have been accredited under the Advocacy Training and Development Program through recognition of prior learning and approximately 500 applicants are seeking accreditation by participation in the full program.

However, the Rolfe Review observed in 2015 that DVA was unable:

... to assure SRCA/MRCA clients of a particular level of assistance due to variations in skill and knowledge of ESO advocates.¹²

This concern is being progressively addressed through the Advocacy Training and Development Program.

Question 1:

- 1.1 Can ex-service organisations please provide statistics showing their current complement of veteran advocates in the following four categories: accredited in compensation advocacy, accredited in welfare advocacy, accredited in both and unaccredited.
- 1.2 How many of that total number of advocates are female?
- 1.3 How many of that total number of advocates are paid advocates?
- 1.4 How do ex-service organisations ensure that their veterans' advocates are sufficiently familiar with the Safety, Rehabilitation and Compensation (Defence-related Claims) Act and the Military Rehabilitation and Compensation Act to provide advice or handle claims arising under those Acts?
- 1.5 Can ex-service organisations provide estimates of their likely complement of veteran advocates in the four categories in 2024 and 2030?
- 1.6 If the 2024 and 2030 estimates are unlikely to meet the projected demand for veterans' advocacy services, can ex-service organisations provide details of any current plans or strategies to meet the expected shortfall in advocates?

Note: Advocate training and accreditation are dealt with in more detail in Section 6.

SECTION 2: YOUNGER VETERANS

There are two issues to take into account when considering advocacy services for younger veterans. The first is the ready availability of those services to meet the present and future demand for them. While ESOs have to date provided the great bulk of advocacy services through their cohort of post-World War II veterans, the number of those volunteers is declining and they are not being replaced by younger veterans.

The Rolfe Review found that *younger veterans are generally reluctant to join traditional ESOs* and that fact is widely accepted. Their reluctance is in part attributed to the different service experience of older advocates to the contemporary 1999-plus cohort of career personnel who have seen multiple shorter deployments to a number of war and peace-keeping zones.¹³

Other factors which may contribute to younger veterans' reluctance to join ESOs and, in some cases, replace ageing volunteer advocates, could include:

- ex-Defence Force personnel who have not served overseas may not see themselves as veterans or even know that the Government (and therefore DVA) now includes them in that category, and
- younger veterans with work and family responsibilities may not have available time to participate in volunteer work (which may reflect more widespread trends affecting community service organisations generally).

Irrespective of the reason, the number of volunteer advocates is declining. So there is a real likelihood under the present arrangement that there will not be enough advocates to meet the future needs of both older and younger veterans, that is, all ex-members of the Australian Defence Force and their families.

Some statistics indicate the size of the looming problem¹⁴:

- there are currently around 58,000 Australians serving in the Defence Forces who will become veterans when they separate from the ADF
- each year, around 5,200 members will leave
- DVA supports around 291,000 Australians at present and just over half of them are veterans or currently serving members of the ADF. Around 48 percent are women; 82,000 are widows or widowers; and around 2,500 are children of veterans, and
- today, more than 203,000 of DVA's clients are 65 years or over while about 23,000 are under the age of 40.

The second issue is whether the currently available advocacy services meet the needs and expectations of the contemporary group of younger veterans now or will do so into the future.¹⁵

The Terms of Reference acknowledge these factors in regard to advocacy services for younger veterans:

- they seek quality services which are underpinned by accreditation frameworks and high standards of governance
- they are seeking a nationally consistent service where the support, at a minimum, is equal to those provided in comparable sectors, and
- they have a strong preference for modernised services where they are empowered to act independently.

13 See the Review of Veterans' Advocacy Training Report 2015, page 19

14 These statistics are taken from the Australian Government Ministerial Statement on Veterans and their Families, August 2017, pages 2, 3 and 8

15 Review of Advocates Training Report 2015, page 19

In support of the first and second points, the Rolfe Review found that *there is anecdotal evidence that more of the younger veterans are approaching solicitors to assist them with their claims.*¹⁶

As to the third point, the Foreign Affairs, Defence and Trade References Committee observed in The Constant Battle Report:

*Older veterans are generally not reliant on online resources but contemporary veterans expect them. The committee believes there is scope for DVA to enhance its digital communications through social media to reach younger veterans. This would assist in referring clients to the most appropriate resources.*¹⁷

It is highly likely that younger veterans will expect both DVA and advocate services to be provided quickly and efficiently, maximising the use of modern technology and, as a result, enabling them to manage, or at least assist in, the conduct of their own claim, if they choose to do so.

Finally, at a very basic level, anecdotally younger veterans may be more comfortable dealing with a trained advocate of roughly similar age, background and ADF experience as their own.

These considerations support the thrust of the Terms of Reference that significant change in the provision of advocacy and support services is needed to meet future demand and veterans' expectations.

Question 2:

2.1 Why don't younger veterans join ex-service organisations?

2.2 Do advocacy services need to be modernised to meet younger veterans' expectations and, if so, how?

2.3 Apart from training and accreditation, what qualities or experience are younger veterans looking for in advocates that are not currently available to them?

Note: Advocate training and accreditation issues are dealt with in more detail in Section 6.

16 Ibid, page 11

17 The Constant Battle Report, pages xxi - xxii

SECTION 3: FEMALE VETERANS AND VETERANS' FAMILIES

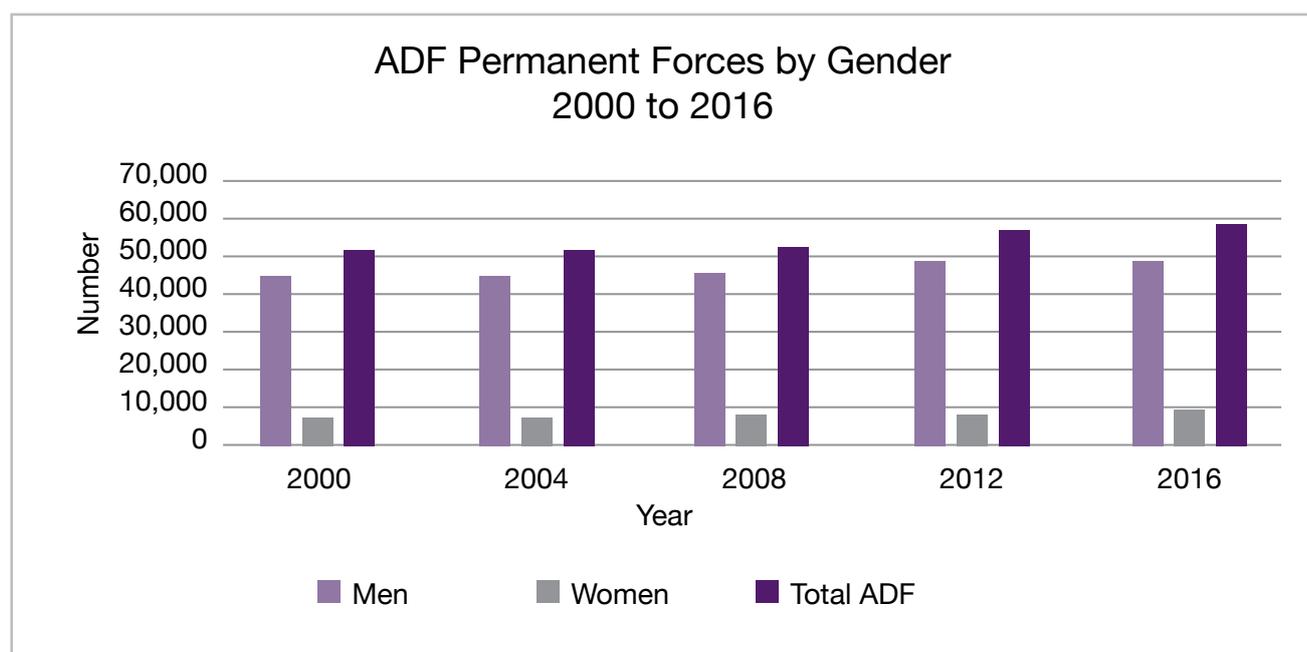
The issues raised in Section 2 will apply equally to male and female veterans as indicated by this suggestion put forward by a participant in the Female Veterans Policy Forum held on 10 October 2017:

Modernising and centralising advocacy support in a modern workforce model. We rely on volunteer advocates, but it's difficult trying to keep them updated on the Acts and on the issues faced by women. Why can't we create a paid advocate workforce?¹⁸

Female veterans have other issues calling for additional consideration. They will require greater attention and understanding as the female membership of the ADF continues to grow.

The Australian Defence Force has increased the total number of female members in the Permanent Forces from 6,885 out of a total of 52,019 (13.24%) in 2000 to 9,728 out of 58,206 (16.71%) in 2017. The breakdown by Service as at 30 June 2017 is: Army 3,978 (6.83%); Navy 2,789 (4.79%); and Air Force 2,961 (5.09%).

The study notes that the ADF's marketing initiatives and television advertisements are strongly focused on increasing female enlistments in coming years.



Note: Statistics taken from ADF Annual Reports 2000 to 2016

In addition to the current female members of the ADF, the figures set out in the previous Section show that DVA supports 82,000 widows and widowers (mainly widows); 48,000 women veterans; and 2,500 veterans' children.

A female veteran may, in particular, need welfare advocacy on a range of issues such as domestic violence, women's health and physical or sexual abuse or harassment.

In regard to health, the Female Veterans Policy Forum noted:

DVA provides a range of health services, but female veterans are less likely to access those services. Female veterans perceive those services as predominantly focused on men's health needs.¹⁹

¹⁸ Forum Report, page 23

¹⁹ Forum Report, page 19

The suggested solutions included:

- increased number of trained female advocates, and
- increase advocates' and DVA delegates' knowledge of female specific health needs and the impact of service on these needs.

One participant observed:

They don't believe that we're doing the sort of work that we're doing. Delegates and advocates need to remove their gender bias.

In relation to abuse within the ADF, the Defence Abuse Response Taskforce observed:

The experience of the Taskforce has confirmed the long-accepted understanding that those who have experienced abuse may take years – often decades – to get to a point at which they can report or talk about it. ... It is likely that other subjects of past abuse will continue to come forward when they feel able to do so, for many years into the future.²⁰

While there are several avenues to report or seek treatment for such abuse (depending on what outcome the veteran wants), a trained welfare advocate could certainly assist veterans who can at last talk about and confront their abuse (women and men) to understand the options open to them and to seek appropriate medical or other assistance.

There are other issues affecting veterans' families. Some of them include:

- the impacts of military service on veterans' families
- the intergenerational impact of trauma on veterans' children, and
- the need to be taught resilience building skills.²¹

Another family issue of increasing importance where welfare advocates could be of great assistance will be the care of a veteran's dependent or disabled adult children when the ageing veteran parent (or widow or widower) is no longer able to provide that care or dies.

Question 3:

- 3.1 Are there sufficient female advocates to meet demand and, if not, what should be done to increase their numbers?
- 3.2 What specific issues affect female veterans that compensation or welfare advocates (or both) need to take into account?
- 3.3 What specific issues affect veterans' families that compensation or welfare advocates (or both) need to take into account?
- 3.4 Do advocates dealing with some of the issues referred to in this Section need training in trauma informed care to ensure they do no further harm?

²⁰ Final Report, March 2016, page 58

²¹ See Female Veteran's Policy Forum Report, 10 October 2017, page 13

SECTION 4: BARRIERS TO ACCESSING ENTITLEMENTS

This scoping study is required to examine the current challenges in, and barriers to, accessing entitlements and services and the impact those challenges and barriers have on veterans' wellbeing. As DVA does not have details of all veterans who are entitled to claim veterans' benefits, information about this study may not reach all categories of veterans through the Department's regular communications with the veteran community. So this study is seeking information about their experience directly from all categories of veterans and their families.

Some barriers which may make it difficult to access veteran entitlements could include:

- lack of knowledge about the benefits potentially available
- ex-service members who have not served outside Australia may not see themselves as veterans
- uncertainty about where to go to get initial advice: another ex-service member, an ex-service organisation, the Department of Veterans' Affairs or possibly a medical practitioner or lawyer
- finding a preferably local ESO which can provide both compensation and welfare assistance
- being discouraged if the initial attempts to get advice or assistance are not successful, and
- the cost involved if the veteran has to pay for medical reports or legal advice and assistance in making a claim or legal representation in an appeal to the Administrative Appeals Tribunal.

Some challenges which may make it difficult to access veteran entitlements could include:

- difficulty in gathering old service and medical documentation to support a claim
- having to deal with too many people to advance a claim
- the complexity of the veterans' benefits legislation and procedures
- the time taken to finalise a claim, and
- coping with any stress involved in seeking assistance or making a claim, particularly for vulnerable veterans.

Question 4:

4.1: What barriers have veterans encountered in making a claim for veterans' benefits?

4.2: What challenges have veterans encountered in making a claim for veterans' benefits?

4.3: What barriers and challenges have veterans' families encountered in making a claim for veterans' benefits?

4.4: What impact have these barriers and challenges had on veterans' wellbeing or the wellbeing of their families?

4.5: What could be done to remove these barriers?

4.6: What could be done to minimise these challenges?

SECTION 5: APPEALS FROM DELEGATES' DECISIONS

The Veterans' Review Board

The Veterans' Review Board is the first level of external appeal from a delegate's adverse decision on a claim under both the Veterans' Entitlements Act and the Military Rehabilitation and Compensation Act (but not the Safety, Rehabilitation and Compensation (Defence-related Claims) Act).

The VRB's objectives require it to provide a mechanism of review that is accessible; fair, just, economical, informed and quick; proportionate to the importance and complexity of the matter; and promotes public trust and confidence in the decision-making of the Board.²²

The VRB is not a court. It is a specialist, high volume tribunal. The VRB is not bound by technicalities, legal forms or rules of evidence and it is required to act according to substantial justice and the merits and all the circumstances of the case.²³

The general rule in VRB hearings is that cases are decided to the reasonable satisfaction of the members hearing the matter but some matters are required to be determined on a reasonable hypothesis test.

These standards of proof are referred to as the balance of probabilities and beyond reasonable doubt respectively.²⁴

VRB hearings are heard by three members made up in part from a panel of Service members chosen by the Minister from a list of names submitted by organisations representing veterans.²⁵ Matters are decided by a majority vote of the members hearing the application.

Veterans can be represented at a VRB hearing by a representative, usually by an ESO compensation advocate.

Consistent with those objectives and that statutory informality, veterans cannot be represented at VRB hearings by a lawyer²⁶ as these are not adversarial hearings. The government is not a party to VRB proceedings and does not contest the case put forward by the veteran or their advocate.²⁷

When an appeal is lodged, DVA²⁸ provides the applicant and the Veterans' Review Board with a report containing a copy of all the relevant documents used to make the original decision. The report is known as a section 137 report.

The VRB reconsiders the applicant's claim afresh and, if it varies or sets aside the delegate's decision, substitutes its own, new decision in its place.

Lawyers can assist veterans (at their cost) in preparing their claims, providing advice before a hearing and drafting submissions to be submitted to the VRB by the applicant or the applicant's representative at the hearing.

The VRB is increasingly finalising cases through alternative dispute resolution (ADR) or at, or shortly after, directions hearings. Lawyers can represent veterans participating in the VRB's ADR program. A DVA representative attends ADR conferences and takes part in negotiations to finalise the claim.

The term alternative dispute resolution describes a range of ways the VRB can help parties resolve their disputes without the need for a full hearing – for example, outreach conferences, conferences and on paper reviews including case appraisals and neutral evaluations.²⁹ Whichever method is

22 Section 133A, Veterans' Entitlements Act

23 Section 138, VEA

24 See section 120(4) and section 120(1) and (2), VEA

25 Section 158, VEA

26 See section 147 of the VEA

27 The Repatriation Commission and the Military Rehabilitation and Compensation Commission and the Service Chiefs may, but very rarely, appear at Veterans' Review Board hearings: see VRB Annual Report 2016-17, page 38

28 On behalf of the relevant Commission

29 See VRB Annual Report 2016-17, page 21

used, the key elements of ADR are: it is voluntary and informal; options for a mutually acceptable resolution are explored in a non-adversarial way; and there is no obligation to reach a settlement – the appeal can always go forward to a formal VRB hearing if the parties do not agree.

In 2016-17, DVA delegates made around 59,000 decisions on veterans' claims. The VRB's most recent statistics are published in its 2016-17 Annual Report. During that year:

- 2,844 applications were decided and in 53.3% of cases the DVA delegate's decision was varied or set aside; in 46.6% of cases the delegate's decision was affirmed
- in 86% of the decided cases, the applicant was represented
- hearings were only held in 38.4% of decided cases (the rest being resolved by ADR or other means), and
- 5.8% of applications were appealed to the AAT.

The fact that the primary decision-maker's decision was varied or set aside does not necessarily mean it was an incorrect decision on the information then available. Reasons for setting aside a delegate's decision include: the adequacy of the information presented to the primary decision-maker; the nature and extent of new material presented on review; changes to the Statements of Principles between the date of the primary decision by the delegate and the VRB's decision; and changes in the applicant's degree of incapacity between the date of the primary decision and the VRB's decision.³⁰

It may also be that primary decision-makers can take a stricter view in applying the Statements of Principles than the VRB under its statutory remit.

Question 5:

- 5.1 Is the Veterans' Review Board's alternative dispute resolution program an effective and fair means of achieving an early settlement of a claim?
- 5.2 Are hearings before the Veterans' Review Board conducted effectively and fairly?
- 5.3 What is your assessment of the competence and professionalism of advocates appearing before the Veterans' Review Board?
- 5.4 Do the Veterans' Review Board and the advocates take particular care to ensure vulnerable veterans and their rights are being adequately protected when appearing before the VRB and, if so, what do they do?

In The Constant Battle Report, the Foreign Affairs, Defence and Trade References Committee noted that:

A universal prohibition on legal representation may not reflect the range of circumstances of veterans before the VRB, nor can it be described as 'veteran centric'. In the view of the committee, it is time that representation before the VRB is independently reviewed to assess if it is still appropriate for all veterans. There may need to be additional supports put in place to ensure veterans are appropriately represented before the VRB or criteria may need to be developed to allow classes of vulnerable veterans to be legally represented.³¹

The Committee recommended in Recommendation 24:

...that the Australian Government establish an independent review of the representation of veterans before the Veterans' Review Board. This review should assess whether the rights of vulnerable witnesses are being adequately protected and whether further support mechanisms for veterans appearing before the Veterans' Review Board are required.

That recommendation is included in the Terms of Reference for this scoping study.

³⁰ Ibid, pages 23-24

³¹ The Constant Battle Report, page 153, paragraph 7.86

Accordingly, the study is seeking comments and views on the proposal that lawyers should be permitted to appear for veterans before the VRB generally or for a more limited class of vulnerable veterans.

Question 6:

- 6.1 Are the arrangements presently in place to protect vulnerable veterans appearing before the Veterans' Review Board adequate and effective? Could they be improved and, if so, how?
- 6.2 Would legal representation provide better support and assistance for vulnerable veterans appearing before the VRB and, if so, how? What is an appropriate definition of 'vulnerable veteran' for this purpose?
- 6.3 Are there other ways of providing better support and assistance for vulnerable veterans appearing before the VRB?
- 6.4 Should the statutory prohibition on legal practitioners appearing before the VRB be removed so a lawyer can represent any veteran before the VRB? What would be the advantages and disadvantages of doing so?

The Administrative Appeals Tribunal

A veteran who is dissatisfied with the outcome of their case at the VRB can appeal to the Administrative Appeals Tribunal and the AAT's Veterans' Appeals Division will deal with the matter. In 2016-17, there were 165 applications for review from VRB decisions, representing an appeal rate of 5.8%.³²

The President of the AAT, Justice David Thomas, summed up the AAT's role in these terms:

*I am committed to ensuring that the AAT continues to provide an independent, accessible, fair and quick way to have decisions made by the Australian Government reviewed on their merits. This important task requires us to stand in the shoes of the original decision-maker and remake the decision. In most cases, we have new or additional information that was not available to the original decision-maker. Having regard to all the facts and circumstances of a case, the Tribunal must reach the correct decision according to the law. In cases where there is a discretion, we must make the preferable decision, not on the basis of personal preference, but taking into account factors set out in the law and relevant policy.*³³

In 2016-17, the AAT received 330 new veterans' appeals, finalised 308 appeals and had 354 appeals on hand at 30 June 2017. The great majority of these appeals were lodged by or on behalf of veterans.

On hearing an appeal from the VRB, the AAT may affirm a decision; vary a decision; set aside a decision and substitute a new decision; or remit a decision to the decision-maker for reconsideration. In 2016-17, the AAT varied or set aside the VRB decision in 33.9% of appeals finalised in that year. The reasons for the AAT decisions include concessions by DVA, the receipt of new information or the appeal being withdrawn.

The Administrative Appeals Tribunal is, therefore, a second level of merits review with the significant difference that lawyers can appear for the veteran applicant. In most cases, applicants must bear their own legal costs unless they are assisted by Legal Aid or some other source of personal financial support.

There are limited rights of further appeal from the AAT to the **Federal Court of Australia** on a question of law.

The following concerns about appeal hearings, which are raised in The Constant Battle Report, also need to be considered:

³² VRB Annual Report 2016-17, page 27

³³ AAT Annual Report, page 2

On the evidence received, the committee is persuaded that an adversarial approach to appeals appears to have been taken by DVA and its lawyers in some cases. The committee is concerned that contract lawyers representing DVA are not always acting in accordance with the Commonwealth's Model Litigant Guidelines. There are significant access to justice issues in relation to the DVA's capacity to use legal costs to deter appeals by veterans and other claimants. Structurally, the system for appeals through the VRB, AAT and Federal Court of Australia seems to be unfairly weighed against veterans seeking review of decisions. Access to legal aid to appeal decisions by veterans is limited.³⁴

Question 7:

- 7.1 Are hearings before the Administrative Appeals Tribunal conducted effectively and fairly?
- 7.2 What is your assessment of the competence and professionalism of advocates appearing for veterans before the AAT?
- 7.3 What is your assessment of the competence and professionalism of lawyers appearing for veterans before the AAT?
- 7.4 What is your assessment of the competence and professionalism of lawyers appearing against veterans before the AAT?
- 7.5 Are there any significant behaviours or power imbalances that prejudice veterans on the hearing of their appeals arising from the different types of representation engaged by different parties?

34 The Constant Battle Report, page 152, paragraph 7.80

SECTION 6: PROFESSIONALISATION

The majority of veterans' advocates are engaged by ex-service organisations on a volunteer basis to provide services free of charge. ESOs also employ a small number of paid advocates. In addition, some legal practitioners provide advocacy services to veterans, either on a fee for service basis or through Legal Aid.

Since the Rolfe Review in 2015, veteran advocacy has been moving towards greater professionalisation.

Professionalisation can be defined as a trade or occupation that transforms itself to the highest integrity and competence. The components of a profession include:

- knowledge and performance testing
- completion of study relating to the profession
- a sustained period of mentored experience or apprenticeship
- continuing education
- licensing by a formal authority, and
- ethical standards of behaviour with enforcement, including removal of profession.³⁵

In partnership, the Department of Veterans' Affairs, the ex-service organisation community and the Department of Defence are implementing the Advocacy Training and Development Program. This program is introducing accredited training for veterans' advocacy and includes the components listed above. It can be accessed by both volunteer and professional advocates. Further details are set out in **Attachment C**.

Indicative data from DVA's Building Excellence in Support and Training Grant Program suggest approximately 1,600 advocates provide advocacy services to veterans and their families. To date, the ATDP has accredited 400 of these advocates based on Recognition of Prior Learning and 500 individuals are training to become an advocate for the first time.

However, not everyone supports the current path towards greater professionalisation. Some have raised concerns:

- about the administrative burden accreditation places on ex-service organisations and their advocates³⁶, and
- the fact that not all trained advocates are equally competent. This concern may, at least in part, reflect that early advocate training focused on VEA claims rather than SRCA and MRCA claims. This focus has changed more recently under the ATDP.³⁷

On the other hand, there are also concerns about:

- veteran advocacy continuing to be based on a workforce of volunteers, many of whom are clients of DVA and have been found unfit for work because of their injuries and illnesses, yet are engaged as advocates to provide complex advice on entitlements³⁸
- the need for advocates handling veterans' claims to be trained and competent, given how important those claims are to the future financial security of veterans and their families, and
- the fact that professional indemnity insurance – which is an essential element of professionalisation – will not be available in the near future to advocates who completed the Training and Information Program.

35 Professionalising the Nation's Cybersecurity Workforce? Criteria for Decision Making, The National Academies of Sciences, Engineering and Medicine.

36 The Constant Battle Report, page 142, paragraph 7.37

37 Ibid, page 142, paragraph 7.40

38 Ibid, page 142, paragraph 7.38

The Veterans' Indemnity and Training Association Inc is the main provider of professional indemnity insurance for members of ex-service organisations and incorporated groups who provide advice and advocacy services to members of the ex-service community about government pensions, benefits and community support services.

In an open letter dated 7 December 2017, VITA advised that, after 30 June 2019, TIP-trained advocates at levels 1 and 2 and, after 31 December 2021, advocates at levels 3 and 4 will not be covered unless they become accredited under the Advocacy Training and Development Program. The reasons for this decision were:

- TIP-trained practitioners have had ample time to transfer to the ATDP stream based on Recognition of Prior Learning, and
- practitioners are required to maintain currency but, as TIP refresher training is no longer available, TIP practitioners cannot update their training without ATDP accreditation.

The Constant Battle Report highlighted the need for paid advocacy to be considered. It recognised there will be a gap in capability as veteran advocacy transitions towards a higher form of professionalisation due to the number of volunteers decreasing and the legal and technical complexity of claims under three Acts and regulations and a large number of Statements of Principles covering veterans' entitlements.

The study also notes that this area of the law requires specialist knowledge. Most lawyers would have little or no practical experience in the application, nor any detailed understanding of, those three Acts, regulations and Statements of Principles. They may also lack any Service background or understanding and have no experience in dealing with vulnerable clients who have serious mental health or other illnesses arising from Defence service.

While all the components of a profession exist within the veteran advocacy sector, there is no single authority responsible for managing the overall professional governance for advocacy and support services. As over 140 organisations directly provide advocacy services to veterans³⁹ and an even greater number provide support services⁴⁰, the availability and standard of services a veteran receives can be highly variable.

In November 2017, the Ministers' Roundtable responsible for veterans agreed to support the establishment of a Veteran Support Services Accreditation Association to enable the accreditation of support services delivered by ex-service organisations.⁴¹ This commitment will assist in standardising and improving support services for veterans and strengthening their professional framework.

Question 8:

- 8.1: What level of training and expertise do advocates (paid and volunteer) need?
- 8.2: What further training or expertise (if any) do legal professionals need to represent veterans?
- 8.3: Should veteran advocates be regulated by a single body with authority over professional governance, training, accreditation, insurance, quality standards and compliance?
- 8.4: Should all ex-service organisations and advocates be accredited for all compensation and welfare services they provide?
- 8.5: What are the benefits and consequences of increasing the number of paid advocates, as well as legal professionals, providing advocacy services for veterans and their families?
- 8.6 Do the current professional indemnity insurance arrangements for advocates provide adequate protection for veterans and their families? If not, what changes should be made?

39 <https://www.dva.gov.au/consultation-and-grants/grants/approved-grants-list>

40 The Aspen Report Foundation Report, Ex-Service Organisation Mapping Project, 2016

41 Joint Communique - Veterans' Ministers meeting, media release, the Hon Dan Tehan MP, 8 November 2017

SECTION 7: COMPARABLE AUSTRALIAN GOVERNMENT ADVOCACY SCHEMES

There have been many inquiries into, and reviews of, support for veterans and their families. The 2003 *Review of Veterans' Entitlements* (known as the *Clarke Review*) stated the core principle of veterans' entitlement system:

*The Government, in expression of the nation's debt of gratitude, shall provide a beneficial level of compensation and support to veterans and their dependants ...*⁴²

In its response to the Clarke Review's recommendations, the Government affirmed it would continue to provide special recognition and comprehensive assistance to those who have served their country.

The scoping study is required to examine different models for professionalised advocacy both in Australia and overseas to recommend the most suitable model for veterans. In accordance with the core principle, the preferred model is to provide a level of service which, at a minimum, is comparable in quality and value with other cohorts accessing government entitlements.

This Section looks at two comparable Australian Government advocacy schemes. Overseas models are considered in the following Section.

Assistance with access to services and entitlements

Disability: Under the National Disability Insurance Scheme (NDIS), Local Area Coordinators are provided by disability and other organisations to assist people with disabilities, or their representatives, to access entitlements.

The coordinator can assist with the preparation and implementation of an NDIS plan for their support and necessary services. However, the coordinator cannot act as an advocate for the client.

The National Disability Advocacy Program also funds community disability organisations to provide services for general or specific needs. Advocacy services may be provided to assist with representation and access to entitlements.

Aged care: Accessing aged care services funded by the Australian Government starts with a request for an assessment from the Department of Health through My Aged Care.

The Department provides advocacy support through the National Aged Care Advocacy Program. A single supplier delivers the Older Persons Advocacy Network under that program. Depending on their circumstances and need, clients and their families may be given free, confidential and independent advocacy support to access their entitlements and coordinate services.

Assistance with reviews and appeals

Disability: If dissatisfied with a National Disability Insurance Agency decision, a client may seek an internal review. If the client is not satisfied with the outcome of the internal review, they can appeal to the Administrative Appeals Tribunal. Assistance for the AAT appeal is available through NDIS Appeals Support.

There are two types of support provided:

- access to a skilled disability advocate who acts as a support person throughout the appeal, and
- funding for legal services provided through Legal Aid where a case raises complex or novel legal issues.

Disability advocates provide support to clients by:

- explaining the review process, including what is involved in appealing to the AAT
- helping to prepare documents
- providing advice and skills so the client can represent themselves, and

42 *Report of the Review of Veterans' Entitlements*, January 2003, page 3

- attending AAT conferences and hearings to assist clients in putting their case to the AAT.

The terms of the grant funding for disability advocacy agencies require them to be independently audited and certified as complying with the National Standards for Disability Services.

Aged Care: The client must seek an internal review of a Department of Health decision before they can appeal their matter to the Administrative Appeals Tribunal. Depending on the circumstances and individual needs of a client, the level of support through the Older Persons Advocacy Network may vary from verbal guidance to full representation. The Network's services are provided free of charge to clients by paid advocates.

Assistance with complaints

The Commonwealth Ombudsman receives and can investigate complaints from people who believe they have been treated unfairly or unreasonably by an Australian Government department or agency. The Office of the Ombudsman aims to resolve complaints impartially, informally and quickly.

Disability: The NDIS Quality and Safeguards Commission is a new independent body that will regulate the NDIS market and support the resolution of complaints about the quality and safety of NDIS supports and services. The Commission will be established in July 2018 and is expected to commence operations around Australia by 1 July, 2020.

Aged care: The Older Persons Advocacy Network advocates on behalf of clients with disabilities to improve access to, and quality of, services. It also provides education about clients' rights.

The Aged Care Complaints Commissioner is funded to deal with complaints and concerns about government funded aged care homes and home assistance packages (excluding the Veterans' Home Care Program). The Complaints Commissioner is an independent statutory officer and the Commissioner's decisions and actions may be reviewed by the Commonwealth Ombudsman.

Question 9:

- 9.1 What aspects (if any) of comparable Australian Government advocacy models could be considered for veterans' advocacy and support?
- 9.2 Are there consistent levels and standards of service provided under these comparable advocacy models in different States and Territories?

SECTION 8: OVERSEAS VETERANS' ADVOCACY SCHEMES

The Foreign Affairs, Defence and Trade References Committee formed a positive view of the advocacy and support services Canada provides for veterans which resulted in The Constant Battle Report recommendation 23 which is included in the Terms of Reference.

The committee said:

7.82 The committee recommends the establishment of a Bureau of Veterans' Advocates (BVA) institutionally modelled on the Bureau of Pensions Advocates in Canada. This would consist of a section of legally trained public servants with a mission to independently assist and advocate for veterans in making claims. The BVA will supplement and support the current system of volunteer advocates. Where necessary, the BVA will allocate a budget to commission legal aid to assist veterans make appeals. The BVA will also take over responsibility for grants to ESOs regarding advocacy, training and accreditation of volunteer advocates and insurance issues.

7.83 This recommendation is not, in any way, to denigrate the work of the current cohort of volunteer advocates and those supported by ESOs. The committee was deeply impressed by many dedicated advocates committed to supporting veterans make their claims. Volunteer and ESO supported advocates will continue to be needed to assist the vast majority of veterans to make claims.⁴³

This Section considers the Canadian and other international models.

Assistance with access to services and entitlements

Canada: Veterans' Affairs Canada (VAC) and the Department of National Defence together run a network of 24 Integrated Personnel Support Centres. These centres provide assistance for current and former members of the Armed Forces including transition services and advocacy.

The Royal Canadian Legion is the largest ESO in Canada. It is a not for profit, membership-based organisation which does not accept grants or financial assistance from the government. The RCL's Service Bureau Network provides assistance and representation for current and former Canadian Forces members and their families with disability and other claims as well as with reviews and appeals.

United Kingdom: Veterans' UK funds 13 regional independent Veterans Advisory and Pensions Committees. The committees are voluntary bodies and are independent of the Ministry of Defence. They provide advice and advocacy services for veterans and their families, including help with problems or complaints about war pensions and compensation claims.

United States: The Veterans' Health Administration (which is part of the Department of Veterans Affairs) is a health provider, with 1,700 hospitals, clinics and other health services. The only government funded advocacy service is the VA Patient Advocacy Program which helps veterans and family members with concerns about the services provided by these health facilities. Veterans with concerns about VA health facilities can access the government funded VA Patient Advocacy Program.

New Zealand: Veterans' Affairs New Zealand is an operational unit within the NZ Defence Force. Veterans' Affairs case managers assist veterans with submitting compensation claims but do not advocate for veterans.

Assistance with reviews and appeals

Canada: Clients who are not satisfied with a Veterans Affairs Canada decision about a claim can request a departmental review or a review by the Veterans Review and Appeal Board. VAC has qualified lawyers who provide free legal assistance with reviews. These lawyers form the Bureau

43 The Constant Battle Report, page 152

of Pensions Advocates. Although the Bureau is part of VAC, the lawyers have a solicitor-client relationship. The lawyer works for the client and only takes instruction from the client.

Bureau lawyers also assist VAC clients who appeal a decision of the Veterans Review and Appeal Board to the Federal Court of Canada. The client may appeal on the basis that the Board has made an error in law, an error in fact or has overlooked significant facts that may have effects on a larger class of clients.

United Kingdom: In the UK, a number of ESOs provide advocacy services. The Royal British Legion is one of the largest ESOs. It provides free advice and help with compensation claims as well as assistance with lodging appeals. It can represent applicants before the War Pensions and Armed Forces Compensation Tribunal. The RBL employs War Pensions and Compensation Advisors, some of whom have legal qualifications.

United States: Private legal practitioners and specialist claims agents provide assistance, advocacy and representation for appeals against decisions made by the Department of Veterans Affairs (VA) along with American ESOs.

All veterans' representatives must be accredited by VA. Accreditation involves an examination, a background check and continuing education courses.

Accredited advocates can charge their clients a fee for their services once the claim is finalised. Unaccredited advocates can provide other services to veterans but may not assist in the preparation, presentation and prosecution of claims for benefits.

Ex-service organisations, such as the American Legion, have accredited advocates who provide free advice about benefits, assist with applications and represent veterans and their families in appeals.

New Zealand: In New Zealand, ESOs provide advocacy and support for veterans and their families. The Royal New Zealand Returned and Services' Association is one of the largest ESOs. It provides financial support and advocacy through a network of local RSA Support Advisors and District Support Advisors.

Question 10:

- 10.1 Should the Government set up and fund a Bureau of Veterans' Advocates as proposed by the Foreign Affairs, Defence and Trade References Committee? What would be the advantages and disadvantages in doing so?
- 10.2 Are there any features of other overseas veteran advocacy and support services that could be considered for Australian veteran advocacy?
- 10.3 What flow-on effects would result from the establishment of a Bureau of Veterans' Advocates that will have to be taken into account?
- 10.4 What transitional arrangements will have to be put in place to ensure the establishment a Bureau of Veterans' Advocates can be managed effectively and with minimum disruption to advocacy and support services for veterans and their families?

SECTION 9: THE DEPARTMENT OF VETERANS' AFFAIRS TRANSFORMATION PROGRAM

When considering issues regarding support and advocacy for veterans and appeals from delegates' decisions on claims, it is important to note that the Department of Veterans' Affairs is undertaking a very significant modernisation program under the banner *Transforming DVA to put Veterans and their Families First*.

Secretary Liz Cosson AM CSC has said the transformation is *about making DVA a 21st century organisation with a 21st century service that puts our veterans and their families at the centre of everything we do*.

Within that broad umbrella, DVA is undertaking some specific administrative initiatives collectively referred to as *Veteran Centric Reform* which are relevant to this study. One example is MyService which allows any veteran with a PMKeyS number and their advocates to make their claims online. MyService replaces a 36-question paper claims application form with an intuitive website that asks only three to seven questions and has so far allowed over 2,200 clients to register and make more than 2,100 claims. Initial results show that claims lodged through MyService only take around a quarter of the time when compared with the standard paper-based process.⁴⁴

Based on departmental research, DVA has also developed a list of 40 commonly approved conditions that can be approved quickly through a streamlined or straight through process on receipt of a claim, diagnosis and a doctor's certificate or advice.

Transforming DVA and Veteran Centric Reform are relevant to appeals because improvements in the claims process and other administrative improvements within DVA could result in fewer initial appeals to the Veterans' Review Board and, in turn, the Administrative Appeals Tribunal.

Question 11:

- 11.1 What is your experience (if any) with the early stages of implementation of the Transforming DVA to put Veterans' and their Families First initiatives?
- 11.2 Do veterans want more self-service options so they can independently make and progress their claim?
- 11.3 Do you wish to comment on any aspects of DVA's management of claims or its response to appeals before the Administrative Appeals Tribunal or the Federal Court of Australia?

44 This information is taken from a briefing paper *Transforming DVA: We're starting small, but thinking big* available at <https://www.dva.gov.au/search/site/myservice>. Also see *A plan for veteran centric reform* at <https://www.dva.gov.au/about-dva/publications/vetaffairs/vol-33-no3-spring-2017/plan-veteran-centric-reform>

SECTION 10: ANYTHING ELSE?

The questions set out in this discussion paper cover the areas and issues which appear to the scoping study, at this stage of its enquiries, to be raised by the Terms of Reference. However, the list is not intended to be exhaustive.

The scoping study would be pleased to receive submissions about any other matters which may need to be taken into account.

Question 12:

12. Do you want to comment on any other matters raised in the study's Terms of Reference (which are **Attachment A** to the discussion paper)?

ATTACHMENT A: TERMS OF REFERENCE

VETERANS' ADVOCACY AND SUPPORT SERVICES SCOPING STUDY

CONTEXT

The veterans' advocacy sector is undergoing a period of change. The nature of service and training is evolving, driven by the expectations of younger veterans who seek a more professionalised client centric service than their predecessors in accessing their entitlements. They seek quality services which are underpinned by accreditation frameworks and high standards of governance.

Veterans' advocacy services can encompass assistance with the lodgement of an initial claim through to assistance with the appeals process including internal review, the Veterans' Review Board and the Administrative Appeals Tribunal.

The majority of current services to veterans are delivered by ex-service organisations and their volunteer workforces. However, some ex-service organisations and other professional bodies, such as the legal aid commissions, do employ professional, paid advocates. Overall, service standards are not well defined and differ depending on the organisation providing them.

Younger veterans are seeking a nationally consistent service where the support, at a minimum, is equal to those provided in comparable sectors and have a strong preference for modernised services where they are empowered to act independently.

On 15 August 2017, the Senate Committee on Foreign Affairs, Defence and Trade tabled its report, *The Constant Battle: Suicide by Veterans*, in Parliament. The report found the current advocacy model is unsustainable because ex-service organisations are unable to attract younger veterans into their ranks to replace the ageing volunteer workforce. It recommended:

"...the Australian Government establish a Bureau of Veterans' Advocates to represent veterans, commission legal representation where required, train advocates for veterans and be responsible for advocate insurance issues." (Recommendation 23).

The report also considered the current legislative provision, which prevents lawyers from appearing at Veterans' Review Board hearings. It recommended:

"...the Australian Government establish an independent review of the representation of veterans before the Veterans' Review Board. This review should assess whether the rights of vulnerable veterans are being adequately protected and whether further support mechanisms for veterans appearing before the Veterans' Review Board are required" (Recommendation 24).

On 8 November 2017, at the Veteran Ministers Round Table, Ministers supported the establishment of a body within the sector to define the standards for services provided by ex-service organisations to veterans and establish a formal accreditation process.⁴⁵ Whilst the Government provides grant funding to support ex-service organisations in providing services to veterans, there is currently no means of assessing the quality of those services.

On 7 December 2017 the Defence sub-committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade found debriefing on unsuccessful Veterans' Review Board cases may reduce appeals and associated stress for veterans. It recommended the

"...Department of Veterans' Affairs investigate options for an independent authority to review all unsuccessful Veterans' Review Board determinations in consultation with the affected veteran or their delegate to alleviate the stress and burden of making their own case to appeal" (Recommendation 10).

From 1 July 2016, prior to these reviews, the *Advocacy Training and Development Program* introduced accredited training for advocates providing compensation and welfare services to veterans. This is a joint initiative between the ex-service community, the Department of Veterans' Affairs (the Department) and the Department of Defence to improve the quality of advice provided to

45 VMRT Joint Communiqué at http://minister.dva.gov.au/media_releases/2017/nov/joint_vmm.htm

veterans in accessing their entitlements. The program introduces the first form of accreditation into the sector which provides a solid foundation for advocacy and other reforms to build on.

More broadly, the Department's Veteran Centric Reform is seeking to modernise the claims process by making it simpler and more efficient for the majority of veterans to access their compensation entitlements without assistance.

The Veterans' Review Board has recently introduced an Alternative Dispute Resolution Program to put the veteran at the centre of the appeal process and resolve cases as quickly as possible without the need for a formal hearing. The Board provides active assistance to veterans', both represented and unrepresented, to achieve an acceptable outcome and provides training to educate their representatives. Further, the Board has offered training and support to educate and inform representatives.

Advocacy is an essential part of a modern service that is able to meet the wide range of veterans' needs. A more professionalised service will allow veterans to focus on their rehabilitation and civilian life.

SCOPE

In response to the several recommendations outlined above, the Department has committed to undertaking this Scoping Study to examine the:

- range of advocacy and welfare services currently provided by both volunteers and paid professionals from the ex-service community, government and the legal sector;
- current challenges in and barriers to accessing entitlements and services and the impact they have on veterans' wellbeing;
- needs of different veteran cohorts for professionalised advocacy support and the potential benefits to each cohort;
- different models for professionalised advocacy both within Australia and overseas to determine the most suitable model so veterans have:
 - » *a sustainable, consistent and reliable* advocacy service which is *scalable* based on demand;
 - » *an efficient and effective* service to assist them to access their entitlements so they can focus on more important things, such as rehabilitation and their civilian life;
 - » *a level of service*, which at a minimum, is *comparable in quality and value* with other cohorts accessing government entitlements;
 - » *a service based on their needs*, irrespective of age, which *adequately protects their interests*; and
 - » *access to advice* on why their claim was unsuccessful and options for appeals;
- *governance and quality frameworks* available to deliver performance driven, professionalised advocacy and service models, including recommending the most appropriate frameworks and any partnerships required to achieve this outcome;
- *roles and responsibilities* of traditional, new and emerging stakeholders within the veterans' advocacy sector as it stands and under any future model, articulating the value and contribution of those roles and responsibilities in professionalising veterans' advocacy;
- *costings* for all models considered; and
- timeframes and strategy for implementation including: key milestones, risks, change management and transitional considerations.

APPROACH

The Study will be led by Mr Robert Cornall AO.

Ex-service organisations and their existing volunteer workforce have provided a great service to Australian veterans over many years. The ex-service organisation, veteran and Australian Defence Force communities will be widely consulted as an integral part of this Study. In particular, younger veterans, female veterans and veterans' families, who have emerging needs, will be co-contributors to the Scoping Study through consultation and gathering information about user experience.

The Study will incorporate various forms of research and include the views of relevant policy and technical stakeholders (here and overseas), including community consultation with the veteran community, appeal bodies including the Veterans' Review Board and the Administrative Appeals Tribunal. It will also include new stakeholders from the legal services, community, health and disability sectors.

TIMEFRAME

This Study will commence in April 2018 and will be completed by December 2018. Public submissions will be accepted until mid-2018.

OUTCOME

A report complete with its evaluations and recommendations will be submitted to Government at the end of the year.

ATTACHMENT B: ACRONYMS AND ABBREVIATIONS

AAT:	The Administrative Appeals Tribunal
ADF:	Australian Defence Force
ADR:	Alternative dispute resolution
ATDP:	Advocacy Training and Development Program
ASQA:	Australian Skills Quality Authority
BEST:	Building Excellence in Support and Training Grant Program
DVA:	The Department of Veterans' Affairs
DRCA:	The Safety Rehabilitation and Compensation (Defence-related Claims) Act 1988
ESO:	Ex-service organisation
Minister:	The Minister for Veterans' Affairs
MRCA:	The Military Rehabilitation and Compensation Act 2004
NDIS:	National Disability Insurance Scheme
SRCA:	The Safety, Rehabilitation and Compensation Act 1988
TIP:	Training and Information Program
VAC:	Veterans' Affairs Canada
VEA:	The Veterans' Entitlements Act 1986
VITA:	Veterans' Indemnity and Training Association Inc
VRB:	Veterans' Review Board

The Constant Battle Report: *The Constant Battle: Suicide by Veterans*, August 2017

The Rolfe Review: *Review of Advocates Training Report* 2015

ATTACHMENT C: ADVOCACY TRAINING AND DEVELOPMENT PROGRAM

The purpose of the Advocacy and Development Training Program is to provide nationally consistent accredited training to practitioners nominated by their ex-services organisation to provide quality advocacy services to veterans. Training is provided in line with adult learning principles and incorporates assessed competency and accreditation standards.

In April 2017, the ATDP Course in Military Advocacy was formally accredited by the Australian Skills Quality Authority (ASQA). The Course comprises two streams of study: compensation and welfare.

Compensation advocacy has four levels:

- Level 1: providing assistance to veterans with lodging their claim, under supervision
- Level 2: providing assistance to veterans with lodging their claim, without supervision
- Level 3: representation at the VRB, and
- Level 4: representation before the AAT.

Welfare advocacy has two levels:

- Level 1: providing welfare support to veterans under supervision, and
- Level 2: providing welfare support to veterans without supervision.

Period of mentored experience/apprenticeship

New advocates or existing advocates seeking to become accredited at the next level must be assessed by their sponsoring ex-service organisation to determine their suitability for a role as an advocate. There are no specific knowledge pre-requisites, although an advocate should be familiar with the work (compensation or welfare), understand the ex-service organisation environment and have the commitment and capacity required to complete the accredited training.

Once the ESO is satisfied the person is suitable for advocacy and a workplace mentor has been assigned, the individual can register to start their formal training.

Knowledge, performance testing and completion of study

For existing advocates, Recognition of Prior Learning is a process where their knowledge and skills are tested before accreditation is given. Advocates are required to undertake a questionnaire, attend an interview and provide examples of redacted cases for assessment by a qualified trainer. This process can take between two and three days if the advocate demonstrates appropriate competencies. If they cannot, a recommendation will be made to their mentor for further training.

For individuals wanting to become an advocate for the first time or to progress to the next level, they need to complete their Workplace Experience Log (prescribed learning activities) under the guidance and sign-off of their workplace mentor, and their online training. Once those requirements have been completed, advocates will undertake their face-to-face training. Their skills and experiences are tested and signed-off throughout the process which can take between six and 12 months or potentially longer depending on their workplace experiences.

Licensing by a formal authority

The ASQA has formally accredited the ATDP Course in Military Advocacy. A Registered Training Organisation issues Statements of Attainment and audits all ATDP training and development activities.

Continuing Professional Development

An accredited advocate will be required to undertake continuous study to keep their skills and knowledge current through the ATDP's Continuing Professional Development program, which will be launched on 1 July 2018. An advocate will accrue points from undertaking different learning and development activities and be required to meet a set number of points each year.

Activities include questionnaires, essays, seminars and participation in communities of practice.

Ethical standards of behaviour with enforcement, including removal from profession

The ATDP has developed a Code of Ethics for advocates to follow, although this is not enforceable by the ATDP.

Veterans' Advocacy and Support Services Scoping Study

www.dva.gov.au/advocacystudy | Email: advocacy.study@dva.gov.au

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