



1. Overview

- 1.1. This submission is presented on the basis that the Returned & Services League of Australia (Victorian Branch) Inc. ('RSLV') will not have been afforded the opportunity to appear before the Royal Commission prior to the Commission handing down its interim report. The intention of this submission is to supplement the existing submissions made by other RSLs and to inform the Commission of RSLV's views regarding evidence given to the Commission to date. RSLV also looks forward to appearing before the Commission at a future date.
- 1.2. In hearings conducted to date, the Commission has heard from numerous witnesses who have provided cogent and compelling evidence as to the problems and challenges that they, their loved ones or others have faced. Understandably, much of this evidence entails individuals recounting tragically sad lived-experience accounts of their dealings with Defence and DVA.
- 1.3. Whilst RSLV has and will continue to continue to provide unbiased, frank, and fearless critical opinion on the role of Government, Defence and DVA's shortcomings where appropriate, the focus of this submission is not to simply add to the chorus of criticism and fault finding, but to also offer commentary in the form of proposed solutions to the issues identified to date or, alternatively, to highlight the approach taken by RSLV to ameliorate many of the challenges facing our veterans.

2. The role of Ex-Service Organisations

- 2.1. RSLV notes the specific term of reference contained within the Letters Patents concerning the role of non-government organisations, including ex-service organisations, in providing relevant services and support for defence members, veterans, their families and others.
- 2.2. RSL was formed in 1916 in response to government failures to provide meaningful support, repatriation facilities and medical services for veterans returning from the Great War. Subsequently, RSL has been joined by a number of other Ex-Service Organisations, ('ESOs') dedicated to improving the quality of life

for veterans along with non-member based, not-for-profit organisations ('NFPs') with a veteran wellbeing focus.

- 2.3. It is important to note that the scope and function of ESOs can vary greatly, ranging from specific unit organisations who focus on preserving unit history and camaraderie, whereas RSLs assume a broader bailiwick of veteran support responsibilities. Similarly, NFPs can range in size and scope from individuals through to national or even international charitable bodies.
- 2.4. Whilst RSLV does not claim any form of exclusivity to assist veterans, we do note the proliferation of NFPs operating in the veteran support space in recent years, many of whom purport to offer wellbeing services to the wider veteran community. Whilst RSLV does not seek to preclude any individual or organisation from supporting veterans, we raise concerns as to the structure, motivation, and viability of some NFPs, some of whom lack formal training, accreditation or qualifications, yet profess to offer counselling and other wellbeing services to vulnerable veterans.
- 2.5. We also note with some concern the potential for an ESO or veteran NFP to be used as a vehicle for individual self-promotion or to further business or political agendas. RSLV is aware of one instance where an individual solicited donations to refurbish a property ostensibly as a "veterans retreat" only to sell the property and retain the sale proceeds once the renovations were complete. Sadly, this type of behaviour is not uncommon within the veteran support space.
- 2.6. The proliferation of ESOs and NFPs potentially adds to the confusion that many veterans experience when seeking help and support, with some veterans reporting the frustration they experienced when being referred from one organisation to another based on the type of support the veteran requires. Additionally, RSLV believes that some of these organisations do not provide evidence-informed wellbeing services with some the services rendered being of dubious efficacy.
- 2.7. Regrettably, the ESO and veteran NFP sector is not immune from professional rivalries and jealousies. RSLV is aware of a number of instances where NFPs have engaged in campaigns against perceived rivals and competitors, denigrated the efforts of others to assist veterans, or engaged in what appears to be the deliberate replication of services and branding. Such rivalries are not only counterproductive, but also harmful to the health and wellbeing of veterans who could potentially end up as collateral damage in such internecine conflict.
- 2.8. Notwithstanding the concerns expressed above, RSLV notes that many ESOs and NFPs have in recent times recognised the need to adopt a more collaborative approach and efforts have been made to improve working relationships and cooperation, including endeavours to provide a seamless and holistic pathway for veterans to access service and support from ESOs, government agencies and the broader social supports network.

- 2.9. A good example of this collaborative veteran centric approach is the establishment in 2021 of the Vivian Bullwinkel Veterans and Families Wellbeing Centre in the Melbourne CBD, where RSLV operate in partnership with Melbourne Legacy, Soldier On and Open Arms. The Centre offers the veteran community access to vital care from specialist staff and essential support services including counselling, advocacy, case management, employment, and referral pathways.
- 2.10. RSLV has also recently commissioned the Tim Fischer AC Veterans and Families Wellbeing Centre in Wodonga. Co-funded via a grant from the Commonwealth Government (via Department of Veterans' Affairs – DVA), the Centre will see RSLV co-located with other ESOs and veteran support and rehabilitation providers. Veterans attending the Centre will be able to obtain appropriate support via a centralised intake and triage process that ensures that all of a veteran's, or their family's, needs are assessed, understood, and addressed by the most appropriate agency or ESO. Initiatives such as these are only possible through the collaborative attitude and commitment shown by the organisations involved to a mutually high standard of care and professionalism.
- 2.11. In pursuit of the improvement in the ESO and NFP sector and the level and quality of services offered to veterans, RSLV supports the concept of an accreditation process, whereby ESOs and veteran focused NFPs would be accredited to a common standard and encouraged to work more collaboratively. Such an approach would simplify the ESO/NFP sector, break down what can be at times a siloed approach and ultimately deliver better outcomes to the veteran community. RSLV submits that any such accreditation process should utilise existing people-centred not-for-profit community accreditation standards, which will over time ensure that ESOs and veteran focused NFPs meet established and agreed standards of transparency, accountability, and governance.

3. The emergence of for-profit advocacy services

- 3.1. Of concern to RSLV is the emergence of fee for service advocacy businesses and law firms whose business model commoditises veterans. Notably, many of these businesses seem to specialise in claims lodged under the MRCA and DRCA Acts, which – coincidentally – offer compensation by way of lump sum payment and therefore provide a guaranteed pool of funds from which fees can be deducted.
- 3.2. RSLV is aware of a number of anecdotal accounts where veterans seeking help from such organisations have been charged significant sums of money for advocacy services that other ESOs including RSLV offer to veterans free of charge.
- 3.3. In one case, a prominent personal injury law firm charged a veteran \$35,000 in legal fees to complete a Defence Ombudsman abuse claim form that was deducted from a \$100,000 settlement payout. In another instance, a private advocacy service convinced a veteran to sign up for their service on the promise that it could somehow intervene and have his claim bypass the DVA backlog. The claim in question had already

been submitted by an RSL advocate some time ago, was awaiting determination and no further work was required on the file. When the claim was accepted by DVA, the private advocacy service contacted the RSL advocate, asking that he complete and lodge the rest of the required paperwork and then attempted to charge the veteran \$8,000 in fees for work performed by RSLV .

- 3.4. The existing ESO advocacy program supported by DVA was intended to operate as a low-cost model that eschewed the need for a veteran to have to pay for professional representation in order obtain compensation. In some cases, legislation was specifically designed to prohibit lawyers from representing veterans.¹ That the complexity of veteran compensation legislation now supports such a business model and desperate veterans are willing to see sizable fees deducted from their entitlements, often as a result of a misguided belief that their claim will be processed faster through the use of a ‘user pays’ service, speaks volumes as to both the complexity of the DVA process and the unacceptable delay in having compensation claims determined.
- 3.5. Whilst RSLV understands that a legal practitioner is free to offer their services to anyone seeking assistance with a compensation matter and accepts that at times there is a place for such services being provided by legally qualified and licenced practitioners, it strongly objects to privately operated advocacy businesses being permitted to charge veterans for submitting claims for compensation and recommends to the Commission that private fee for service advocates – other than legal practitioners – be prohibited from lodging compensation claims for veterans.

4. The RSLV Resilient Veteran Strategy

- 4.1. In 2017, RSLV began to observe and record a demonstrable increase in the number of veterans seeking support with issues ranging from homelessness, unemployment, and mental and physical health issues. In response to this demand, in 2018, RSLV conducted a broad review of its veteran assistance operations, which resulted in the 2020 establishment of the Veteran Services Department, recruitment of the first ‘Chief of Veteran Services’ and the subsequent design and implementation of RSLV’s Resilient Veteran Strategy 2021-2026, a program designed to provide veteran-centric support services in a straightforward, simple to understand manner and to help veterans live their best life post-service. The aim of the Resilient Veteran Strategy is to support veterans to access individual, social and community resources that allow them to increase their quality of life, reduce any adverse effects of service on their lives and not have their time spent in service adversely define and affect the rest of their life.
- 4.2. The Resilient Veteran Strategy adopts the Australian Institute of Health and Welfare veteran-centred wellbeing model incorporating eight wellbeing domains when considering the needs of individual veterans

¹ *Veterans’ Entitlements Act 1986* (Cth) s 147.

and their loved ones: Education and Skills, Health, Social Support and Connection, Recognition and Respect, Justice and Safety Housing, Employment and Income and Financial Security. Whilst many ESOs have in the past focused on one or two of these domains, the Resilient Veteran Strategy takes a holistic approach to a veteran's needs throughout their lifetime. The Strategy recognises that veterans have different needs in each wellbeing domain throughout their life journey including transitioning out of the defence force, setting up and putting down roots in civilian life, through to retirement and aging.

- 4.3. A central tenet of the Resilient Veteran Strategy was RSLV coordinating all its support, advocacy, wellbeing, and welfare services via Veteran Central, a "one door, one veteran" support service accessible via a single call centre number: 1300 MIL VET (1300 645 838) or via email at veteranservices@rslvic.com.au. Veteran Central operates in conjunction with the existing RSL network of local sub-branches and Veteran and Family Wellbeing Centres.
- 4.4. The decision to adopt a holistic assessment and service navigation approach was in response to feedback from veterans who almost universally expressed frustration at the levels of complexity they encountered when seeking support, be it from DVA, ESOs, the NFP sector and the confusion that many veterans reported when being referred between agencies and organisations who often offer support in a piecemeal fashion.
- 4.5. Veterans who contact RSLV's Veteran Central are seamlessly connected into not only the RSL veteran support network offering services ranging from compensation advocacy, emergency accommodation, veteran and spouse employment assistance and financial support programs but also with other ESOs or organisations who offer evidence-informed support programs not offered by RSLV.
- 4.6. The Veteran Central program ensures that a veteran is able to access all necessary supports from a single point of contact and seeks to simplify what can be at times a daunting, confusing, or intimidating task for a veteran.
- 4.7. Whilst 1300 MIL VET operates only in Victoria at present, RSLV has held preliminary discussions with other RSL state branches proposing that the 1300 MIL VET service be rolled out nationally across the RSL network to provide a simple, single point of contact for veterans seeking assistance with the ultimate aim of simplifying the process for veterans to obtain as much support as possible.

5. The changing nature of veteran support services

- 5.1. Historically, much of the work done to support the veteran community with their dealings with DVA and other agencies has been conducted by a dedicated cohort of RSL volunteers operating autonomously out of local RSL sub-branches. Whilst volunteers are and will always be the heart, soul and lifeblood of the RSL, the reliance on a largely volunteer workforce does present challenges, including the limited availability of

volunteers at times, the difficulty that some veterans living in remote and regional locations experience when seeking support and the aging demographic of some of the RSL volunteer workforce.

- 5.2. Following its 2018 operational review, RSLV recognised the need to improve the level of support provided to both the wider veteran community and to the volunteers who work selflessly to support them. As part of this commitment, the RSLV Veteran Services Department was augmented via the recruitment of a cadre of paid compensation advocates along with staff in leadership roles holding professional qualifications in law, social work, training, and psychology. As part of their duties, staff in leadership positions are tasked with enhancing the service and professionalism of RSLV's Veteran Services program delivery and the overall capacity of RSL volunteers.
- 5.3. As part of the commitment to continuous improvement, RSLV Veteran Services staff and volunteers now undertake regular accredited professional development training to ensure their professional knowledge remains current and that they are trained to operate in the contemporary veteran environment. In the past 12 months, Veteran Services staff and volunteers have undertaken accredited training in suicide awareness and prevention, sexual assault investigation and domestic violence awareness and response. In the longer term, it is planned that all Veteran Services staff will as a minimum, be required to complete a Certificate IV in Community Services.
- 5.4. The driving philosophy behind this operational restructure is to create a seamless support network across Victoria that ensures all Victorian veterans are able to access high quality advocacy and wellbeing services irrespective of where they may live and RSLV staff and volunteers are able to provide local and personalised veteran contact whilst being provided with professional levels of support.
- 5.5. The veteran-centric focus of the Resilient Veteran Strategy has also resulted in the implementation of a number of focused programs and initiatives, including regular advocacy clinics in regional areas to ensure veterans living in remote areas of Victoria have access to professional advocacy and claim support and the recent establishment of the Geelong RSL Veteran Clinic.
- 5.6. The "Veteran Clinic" is a partnership between RSLV and a Dr Mark Savage, a local general practitioner and former RAAF Medical Officer who donates his time to meet with veterans within the veteran-friendly environment of Geelong RSL. The program allows timely and accurate diagnosis and treatment of service-related injuries and illnesses and the completion of the associated DVA paperwork necessary to lodge a claim with DVA.
- 5.7. In evidence to the Commission, Dr Phillip Parker recounted the difficulties that many veterans experience in finding a general practitioner who both understood the veteran's circumstances and was prepared to take the time to complete the requisite DVA paperwork, an issue that has been further compounded by the refusal by Defence contracted health providers to complete DVA diagnosis paperwork on behalf of

serving ADF members.² As recently as 9 June 2022, RSLV referred a serving member of the ADF to the Veteran Clinic after the on base contracted medical provider refused to assist him citing a “conflict of interest”. The Geelong Veteran Clinic is designed to address the very issues raised by Dr Parker and is an example of the unpublicised work that RSL quietly does to assist the veteran community and the proactive nature of our approach.

- 5.8. In addition to the initiatives and programs detailed above, RSLV is currently in preliminary and positive discussions with the Magistrates’ Court of Victoria to introduce a state-wide veteran support and referral program for veterans involved in the justice system, be it as an accused, victim, or party to a domestic violence proceeding. RSLV has also joined the Victorian Department of Justice and Community Safety Work and Development Permit scheme as a sponsor agency that will allow veterans to work off court imposed fine debts by participating in unpaid work, mentoring, training, or treatment programs. Again, these initiatives are the result of an evidence-based approach taken by RSLV to address contemporary issues impacting the veteran community brought to fruition through hard work, extensive networking, and a willingness to help by all parties involved. These initiatives are congruent with the stalled ambitions of DVA to better connect with veterans involved in the justice process.³

6. DVA Resourcing

- 6.1. The Commission has heard evidence regarding the level and composition of DVA staffing. RSLV agrees with the proposition that the current levels of DVA staff are insufficient to provide an adequate level of service to the veteran community and registers its concern over the reliance on short term labour hire workers to process complex claims in order to adhere to what the Secretary of DVA (‘the Secretary’) described as a government ideology,⁴ despite labour hire employees being significantly less productive and more costly to employ than an equivalent APS member.⁵
- 6.2. In her evidence to the Commission, the Secretary conceded that adherence to this ideology, has resulted in significant inefficiency, distress, mental health consequences and has potentially contributed to suicide by veterans.⁶ RSLV considers it shameful that any government should prioritise a political or economic ideology over the life or wellbeing of a veteran.
- 6.3. In its 2019 report, the Productivity Commission found that DVA has failed to ensure that staff consistently applied its own internal guidelines for communicating with clients which resulted in poor outcomes for

² *Royal Commission into Defence and Veteran Suicide*, Transcript of Proceedings, 2 December 2021, 4-400-2. (‘Transcript’)

³ See Transcript 14 April 2022 31-2977 [35].

⁴ Transcript, 14 April 2022, 31-2982 [25].

⁵ Ibid 31-2937 [15].

⁶ Ibid 31-2982 [30].

clients, undermined confidence in DVA and contributed to veteran distress.⁷ In response, the Productivity Commission recommended that DVA staff interacting with veterans undertake specific training to deal with vulnerable people.⁸

6.4. Generally speaking, RSLV's dealings with DVA are largely positive and RSLV staff report that the vast majority of DVA staff work in a collaborative and cooperative manner with RSLV Advocates to support veterans. We also acknowledge that DVA staff do an admirable job in dealing with what must seem at times a Sisyphean task. Notwithstanding this, RSLV is aware of numerous incidents where DVA employees have demonstrated a poor understanding of service life, DVA policy and procedure and the veteran community in general, which has resulted in instances of claims being unnecessarily prolonged or unfairly denied. Generally, these instances have occurred where the DVA staff member is new to the role. Some recent examples of the lack of knowledge displayed by DVA personnel include:

- a veteran with a diagnosis of bilateral knee injuries having liability for one knee accepted and the other denied as the delegate did not understand what the term bilateral meant.
- a claim for post-traumatic stress disorder ('PTSD') being queried on the basis of the date of clinical onset occurring after the date of the veteran's discharge, with the DVA employee apparently not understanding what PTSD was.
- denying a young veteran with severe combat related injuries a DVA gold card on the basis that they were not over 70 years of age. When it was pointed out that this was not a requirement for veterans with MRCA service, the DVA staff member refused to reconsider the decision stating that they only dealt with claims for veterans aged over 70, they had made their decision and that the veteran would have to submit a new claim. The DVA staff member also refused to forward the application to the appropriate section of DVA stating that the case was closed as far as they were concerned.⁹
- a DVA staff member asking an RSL Advocate, "What's ANZAC day about?"
- a senior staff member of DVA who contacted RSLV on behalf of a family member, expressing disbelief when told that claims often take between one and two years to process insisting that it was "more like two weeks."

6.5. This under-resourcing of DVA has inevitably led to chronic delays in the processing of DVA compensation and rehabilitation claims at a time when the number of claims by veterans are burgeoning.¹⁰ RSLV submits that the over-reliance on short term labour contracts is a significant contributory factor in these instances or poor support and endorses the Productivity Commission recommendation that better levels of training and support should be provided to DVA staff who deal with veterans directly.

⁷ Productivity Commission (Cth), *A Better Way to Support Veterans*, Report No 93 (2019) 406.

⁸ Ibid 408.

⁹ It took intervention at DVA senior executive level for this decision to be overturned.

¹⁰ According to the 2022-23 DVA Budget Information Sheet, DVA claims have more than doubled over the last three financial years, from 60,663 in 2017-18 to 143,155 in 2020-21 - a 136 % increase.

- 6.6. RSLV notes a recent event where DVA staff were invited to attend a training day at Gallipoli Barracks that saw them hear direct accounts of the vicissitudes of service life from current serving soldiers as well as being able to experience firsthand the effects of wearing body armour and load bearing equipment whilst performing basic soldiering tasks.¹¹ RSLV applauds this initiative as a practical means of acquiring a better understanding of the nature of a soldier's daily duties and says that training of this type should be mandatory for DVA claims assessment staff.
- 6.7. It is not just DVA that finds itself stretched by the increasing demand for veteran support. RSLV itself has found itself struggling to keep up with the ever-increasing requests for compensation advocacy services from veterans who found the DVA system over complex, bureaucratic, and often adversarial in nature. From 2018 to 2022, demand for RSL compensation advocacy services increased by 364%, with a significant number of these requests for support coming from veterans who had initially lodged their own claims for compensation and been unsuccessful in the first instance.
- 6.8. It is a truism that dealing with government red tape, officiousness and bureaucracy can be frustrating at the best of times, however for veterans who are struggling with complex mental health conditions or simply finding life a challenge, navigating the complexities of the DVA process can seem an insurmountable obstacle. In her evidence to the Commission, Dr Bernadette Boss, the Interim National Commissioner for Defence and Veteran Suicide Prevention opined that having to deal with such a complex system would 'create problems for people who were already unwell.'¹² Sadly, RSLV is all too familiar with the tragic outcomes or serious deleterious effects that this frustration can have on a veteran:

At one point when I was dealing with DVA with regard to my initial physical claims, I met with a DVA delegate...During this meeting, I recall that I was very distressed as I was frustrated with the way that my DVA claim was being processed. Specifically, I recall at one point I said, that it was almost like the DVA system was designed to make you give up and kill yourself. In reply, [the delegate] looked directly at me and replied, "Well that's always an option for you".¹³

7. The urgent need for legislative and policy reform

- 7.1. Whilst RSLV agrees that DVA is insufficiently staffed and resourced, we hold the view that simply recruiting more staff is not the answer to the root cause for the current backlog of DVA claims, namely the complex and convoluted nature of DVA compensation legislation. RSLV is firmly of the view that root and branch legislative reform is essential and should be a high priority issue for the Commission.

¹¹ Jessi Robilliard, 'DVA staff given a taste of Army life', *Army Newspaper*, (4 November 2021).

¹² Transcript 30 November 2021 1-152 [40].

¹³ Affidavit from a veteran being assisted by RSL Vic who attempted suicide following his dealings with DVA. Ironically, DVA declined his claim for compensation for the effects of his attempted suicide.

7.2. RSLV supports the Productivity Commission proposal regarding the amalgamation/ harmonising of the DRCA and MRCA Acts whilst grandfathering the provisions of the VEA.¹⁴ Whilst the ideal operational model would be one Act covering all veterans, the structure and features of the VEA are such that it would be difficult to incorporate many of the VEA entitlements surrounding service pensions, etc. into an Act structured along the lines of the MRCA. RSLV believes that the Commission should in its interim report recommend to government that this action take place as a matter of priority.

7.3. In addition to amalgamating the MRCA and DRCA into one Act, RSLV also contends that the VEA needs significant updating and reform to address what Katzmann J in *Knight v Repatriation Commission* described as the 'Byzantine provisions of the *Veterans' Entitlements Act*.'¹⁵

7.4. The Commission has heard evidence from numerous witnesses that the current legislative framework is overly complex and in need of reform. Dr Bernadette Boss, testified:

The bottom line is, the system is too complex...It should be like the duck on the water with the feet going underneath at a million miles an hour, the end user should just see the duck floating by. But at the moment the duck is travelling upside down, the feet are in the air and the duck must be under water...There is a psychological cost and there are people who are not well who find it incredibly difficult to deal with fairly straightforward administration, let alone the complexity of having to go backwards and forwards and trying to get their heads around which Act they are supposed to be dealing with.¹⁶

7.5. Similarly, the Secretary conceded that legislative complexity was one of the key contributory factors to the lengthy delays in the processing of claims and agreed with the proposition that delay in the processing of claims could be a contributory factor in the number of veteran's taking their own lives.¹⁷ The Secretary also advised that the largest back log of claims sits within the MRCA initial liability section.¹⁸ This admission is significant as the majority of younger veterans claims fall under the MRCA and it is the experience of RSLV that it is this cohort of veterans who currently present as needing the highest levels of wellbeing support.

7.6. The idea that veteran compensation legislation should be updated and simplified is neither new nor novel. In 2009, an independent review into veteran suicide commissioned by the then Minister for Veterans' Affairs, found the Multi-Act DVA system was 'difficult for veterans to navigate and DVA delegates to advise and process' and recommended that if the three Acts could be rolled-up into one successor Act, the DVA compensation scheme could be simplified considerably.¹⁹

¹⁴ Productivity Commission (Cth), *A Better Way to Support Veterans*, Report No 93 (2019)

¹⁵ [2010] FCA 1134 [1].

¹⁶ Transcript, 30 November 2021, 2-152 [20].

¹⁷ Ibid 14 April 2022, 31-2925 [35].

¹⁸ Ibid 14 April 2022, 31-2916 [5].

¹⁹ David Dunt, *Independent Study into Suicide in The Ex-Service Community* (2 February 2009) 12.

- 7.7. In 2011, a report presented to the Minister for Veteran's Affairs recognised the complexity of the three Act DVA system, the inequities that the system created, and acknowledged that 90% of DVA claimants would be better off under the MRCA scheme than the DRCA. The report also found that an amalgamation of DRCA and MRCA would reduce the overall complexity of the system, the level of confusion amongst stakeholders as well as the degree of administration required of DVA.²⁰
- 7.8. In 2017, an enquiry into veteran suicide conducted by the Senate Foreign Affairs, Defence and Trade References Committee found that the 'burden of legislative complexity and administrative hurdles impacts veterans when they are seeking support at a vulnerable period in their lives' and acknowledged that the complexity of the legislative framework was arguably the most important issue considered during the enquiry.²¹
- 7.9. Most recently, in 2019, the Productivity Commission determined that most veterans and their families would be made better off by the harmonisation of the DRCA and MRCA.²²
- 7.10. Regrettably, successive governments have failed to act on this advice. The Commission has heard various justifications as to why this has not occurred, ranging from the inherent complexity of the current legislation,²³ difficulties in updating the DVA information technology systems,²⁴ through to speculation concerning the cost and burden that drafting updated legislation would have on the parliament.²⁵
- 7.11. RSLV believes that the evidence that the DVA legislative framework needs to be fundamentally reformed, and the compensation process simplified is not only irrefutable, but is universally accepted as such. That successive governments have sat on their hands in the face of this overwhelming body of evidence and knowingly allowed this situation to cause or contribute to the suicides of Australian veterans is a shameful blight on our national parliament.
- 7.12. To illustrate the absurdity of the inertia of parliament, RSLV draws the Commission's attention to the provisions of the *Australian Veterans' Recognition (Putting Veterans and Their Families First) Act 2019* (Cth)²⁶ ('Recognition Act'), an Act that ostensibly commits the Commonwealth to deciding a claim under the MRCA within a 90 period,²⁷ but in reality, does not impose any obligation on DVA or provide a veteran with a means to seek redress.

²⁰ Ian Campbell, *Review of Military Compensation Arrangements: Report to the Minister for Veterans' Affairs* (24 February 2011) 275-80.

²¹ Senate Foreign Affairs, Defence and Trade References Committee, Parliament of Australia, *The Constant Battle: Suicide by Veterans*, Report (August 2017) 25.

²² Productivity Commission (Cth), *A Better Way to Support Veterans*, Report No 93 (2019) 610-1.

²³ Transcript, 30 November 2021, 2-161 [5].

²⁴ Transcript, 18 February 2022, 5-1342

²⁵ Transcript, 16 March 2022, 22-2032-5.

²⁶ *Australian Veterans' Recognition (Putting Veterans and Their Families First) Act 2019* (Cth) s 10.

²⁷ *Ibid* 7(3).

- 7.13. The impotency and pointlessness of this legislation was starkly illustrated in the case of *Davis v Military Rehabilitation and Compensation Commission*,²⁸ a case where Mr Anthony Davis, a veteran frustrated by the delays in having his claim determined, unsuccessfully attempted to use the provisions of the Act to obtain a writ of mandamus compelling DVA to process his claim. In dismissing the action, Logan J held that the undertaking to process claims within 90 days found at s 7(3) of what he called the ‘grandiosely titled’ Act did not create a legally enforceable obligation and the statement was for a considerable time beforehand ‘been nothing more than cant’.²⁹
- 7.14. His Honour went on to reflect further on the reasons for the delay in processing Mr Davis’ claim:
- It is quite apparent from Ms Cole’s evidence, which includes reports annually provided by the Department of Veterans Affairs and tabled in the parliament, that for some time the resources made available by the parliament, notwithstanding the Recognition Act, to that department have been most inadequate to achieve the aspiration found in s 7(3) of the Recognition Act.
- 7.15. It is significant that His Honour who is also a veteran and the current President of the Defence Force Discipline Appeal Tribunal, chose to describe the Act and comment on the reasons for delay as he did. RSLV does not believe that he chose his words carelessly.
- 7.16. That the parliament would busy itself with the passing of legislation that would appear to be nothing more than window dressing and a statement of good intentions, whilst real veteran legislative reform remains unactioned for decades beggars belief.
- 7.17. It is also noteworthy that Schedule 1 of the Recognition Act contains the Veterans’ Covenant as set out below:

We, the people of Australia, respect and give thanks to all who have served in our defence force and their families.

We acknowledge the unique nature of military service and the sacrifice demanded of all who commit to defend our nation.

We undertake to preserve the memory and deeds of all who have served and promise to welcome, embrace and support all military veterans as respected and valued members of our community.

For what they have done, this we will do.

²⁸ [2021] FCA 1446.

²⁹ Ibid 2.

- 7.18. RSLV makes the point that whilst the commitment to ‘do’ in the last line of the Veterans’ Covenant includes issuing veterans with tokenistic ‘pins, cards, or other artefacts’ in recognition of their military service,³⁰ it apparently does not extend to the parliament taking prompt action to address what successive reports, government enquiries and witnesses to the Commission have identified as being a key contributor to the rates of veteran suicide.³¹
- 7.19. RSLV also notes that the financial cost of the Recognition Act implementation is estimated as being \$11.1 million dollars,³² money that could arguably have been better spent resourcing DVA to help reduce the current back log of DVA claims.

8. Proposed structure of a MRCA and DRCA successor Act

- 8.1. In the event that the DRCA and MRCA Acts are combined into a single successor Act, RSLV submit that that the following amendments should be incorporated into any successor Act :

Adoption of presumptive legislation

- 8.2. RSLV has previously advocated that DVA legislation should be amended so as to incorporate presumptive rights for veterans suffering from commonly incurred service-related injuries. Such an approach was adopted by the Victorian Government with regard to compensation for firefighters suffering from certain cancers.³³ As a minimum, RSLV believes presumptive rights should be applied to veterans suffering from the conditions covered by the Provisional Access to Medical Treatment program (‘PAMT’), as well as diagnosed mental health conditions attributable to warlike service.
- 8.3. On 15 December 2021, RSLV wrote to DVA proposing that DVA should consider adopting such a course of action. In its response dated 10 February 2022, DVA indicated that whilst it was not opposed to the idea, legislative change would need to take place to accommodate such an approach. RSLV says that that any successor Act should incorporate such an approach.

Adoption of common standards of proof and levels of compensation

- 8.4. Currently DVA operate under two differing standards of proof: balance of probabilities for peacetime injuries and conditions and the reasonable hypothesis standard for war-like and non-warlike service. Additionally, compensation payable under the latter standard is higher. This serves to create an unequitable position where a veteran injured whilst undergoing pre-deployment training will receive less compensation than if the same injury was suffered on deployment.

³⁰ *Australian Veterans’ Recognition (Putting Veterans and Their Families First) Act 2019* (Cth) s 9.

³¹ Transcript, 16 March 2022 22-1996-7.

³² Explanatory Memorandum *Australian Veterans’ Recognition (Putting Veterans and Their Families First) Bill 2019* (Cth).

³³ *Firefighters’ Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Act 2019* (Vic) s 6.

- 8.5. RSLV supports recommendation 8.4 of the Productivity Commission Report and says the reasonable hypothesis standard should be adopted for all initial liability claims. RSLV also supports recommendation 14.1 regarding having a single rate of compensation being applied to all injuries whether they were sustained via warlike, non-warlike or peacetime service.
- 8.6. Adoption of these two recommendations will not only simplify the DVA claims process but will also ensure that all veterans receive fair and equitable compensation for service injuries irrespective of how and where the injury occurred.

Harmonising the application of the Statement of Principles

- 8.7. Currently, claims submitted under the VEA or MRCA are subject to the provisions of s 196B of the Veterans Entitlements Act, which sets out the operation of the Statements of Principles, (SoPs) whilst claims made under the DRCA are not.
- 8.8. RSLV supports the evidence of Dr Bernadette Boss that the SoP application process needs to change³⁴ and says that the SoPs are overly prescriptive and operate to unfairly deprive veterans of compensation if they do not fit neatly into the “SoPs box”.
- 8.9. Whilst RSLV does not oppose the continuation of the SoP process, it proposes, they should operate and be applied in a prima facie manner and not be used as a hard barrier to preclude a veteran from obtaining compensation for service injuries, i.e. if a veteran’s condition satisfies the SoP factors, then DVA should be satisfied that liability has been met, however a failure to meet the prescriptive standards of the SoPs should not mean that the veteran should be denied compensation if they can present alternative evidence that the condition should be considered as service related. In such circumstances, the veterans’ claim should be assessed using the balance of probability standard. This approach preserves the underlying epidemiologically based integrity of the system whilst at the same time allowing for some degree of flexibility in the liability determination process.

9. Defence Culture

- 9.1. Many witnesses appearing before the Commission have sought to paint the ADF as an intrinsically toxic, hypermasculine and overly aggressive organisation. Such sentiments have also been echoed in recently public commentary, arguably by parties opposed to the mission of the ADF or in furtherance of a political or ideological agenda. Commentary such as this ignores the fact that the primary mission of the ADF is to defend Australia from acts of external aggression and threats to our national interest. Central to this mission is the ability of the ADF to wage war against our enemies. It is an inconvenient truth that having a

³⁴ Transcript, 30 November 2021, 2-161 [40].

well-trained defence force willing to use violence to further the mission of the ADF is essential in order to undertake this role.

- 9.2. Notwithstanding the inescapable reality that any effective military force must have at its core the ability and willingness to visit violence on their adversaries, RSLV stresses that the indiscriminate use of violence, oppression or exploitation has never been an accepted part of ADF culture. The ADF promotes and seeks to inculcate in its members, core values of service, courage, respect, integrity and excellence - the Defence Values. To date, the Commission has heard numerous lived experience accounts from veterans who have suffered appallingly during their service. Almost universally, each tragic occurrence has seemed to have occurred in circumstances where the Defence Values have been absent, leadership has been lacking, toxic sub-cultures have been permitted to fester and grow and poor conduct inexcusably tolerated. Former Army Officer Padre Gary Stone in his evidence articulated how conduct such as this is a perversion of true ADF culture:

The reason I'm so emotional today is it's just been shocking to hear the stories that some of the families have had to share with you. Anyone listening to this out there in Australia, most military people are really good people, fair dinkum, and I've seen thousands and thousands and thousands of them. Bullying is abhorrent to us. There is no training pamphlet that says you need to bash people up or yell at them or scream at them or anything like that. Absolutely good leadership is compassionate, caring and empowering. So the stories that you hear, they are not part of our culture, they are aberrations.³⁵

- 9.3. RSLV cautions the Commission against adopting a view that ADF organisational culture is somehow the root cause of unacceptable conduct. Universally, the profession of skill at arms embodies the concept of serving with honour whilst protecting and defending others, not preying upon them. Acts of predation and degradation are a betrayal of that code and the military profession in general.

10. ADF responses to sexual assault and harassment

- 10.1. Notwithstanding its proud history of service to our nation, The ADF has a shameful history when it comes to its handling of sexual abuse within its ranks. Much of the failings of the ADF have been laid bare in successive reports, dealing the horrific occurrences that took place at HMAS Leeuwin, The Royal Military College at Duntroon, the Army Apprentice School, Balcombe and well as other ADF locations and the inadequate response to the issue by Defence.
- 10.2. In its Introductory Defence Briefing, submitted to the Commission in August 2021, The Department of Defence refers to how matters involving sexual misconduct are managed. Purportedly, Defence asserts

³⁵ Transcript 2 December 2021 4-378 [15].

that allegations of this nature are rigorously investigated, and victims are actively supported via the Sexual Misconduct Prevention and Response Office ('SeMPRO'). The Commission also heard evidence from a number of senior ADF leaders that significant progress has been made to address and stamp out what is a blight on the ADF.

- 10.3. Whilst progress may have been made in this area, RSLV believes the ADF response to this issue lags behind the rest of the community and significantly more work needs to be done by the ADF to address this issue. In the first six months of 2022, the RSLV Compensation Advocacy Team has submitted 24 claims to DVA and the Defence Ombudsman Scheme for compensation arising from sexual abuse. Anecdotally, the RSLV Veteran Services Team report that they also regularly receive reports from contemporary veterans seeking help for sexual abuse that recently occurred in service. In one recent instance occurring in early 2022, a member of the ADF reported being medically discharged within a month of her reporting being sexually assaulted, whilst no apparent action was taken against her alleged attacker.
- 10.4. The Commission has also had the melancholy responsibility to hear a number of accounts from veterans traumatised by the abuse they have suffered in service.
- 10.5. On 8 December 2021, the Commission heard the heart wrenching lived experience evidence of witness BR1, a Navy veteran who recounted her ongoing poor treatment by the Navy after she attempted to report being sexually assaulted as well as the lack of action taken by the Military Police when she sought help following her being victim of domestic violence.
- 10.6. On 8 March 2022, the Commission heard from Navy veteran Danielle Wilson, who courageously recounted the numerous incidents of sexual assault and harassment she endured over a three-year period from 1987 to 1990 and the callous indifference shown by the Navy to her ordeal. Ms Wilson's experience whilst serving in the Navy contrasts with her later experience as a New South Wales police officer, where swift action was taken to remove from within the ranks a police officer who sexually assaulted her.
- 10.7. It is well settled that sexual harassment or misconduct in the civilian workplace constitutes a valid basis for instant dismissal with the Fair Work Commission consistently upholding and endorsing the right of employers to terminate employees who engage in such behaviour to the point that instant dismissal would appear to be the accepted default response for such conduct.³⁶
- 10.8. RSLV notes the apparent disparity between approach taken by the ADF when dealing with sexual misconduct in the workplace compared to the wider community. By way of example, the table below sets out the outcomes of a number of recent proceedings by way of Court Martial or Defence Force Discipline

³⁶ See, *Abarra v Toyota Motor Corporation Australia Ltd* [2018] FWCFB 7566, *Angelakos v Coles Supermarkets Aust Pty Ltd T/A Coles Supermarkets* [2019] FWC 29, *Dean Dunlop v BHP Billiton WAIO Pty Ltd T/A BHP* [2022] FWC 790.

Appeal Tribunal hearing involving circumstances of indecency or assaults on female members of the ADF. In each of these instances, the guilty party was permitted to continue to serve in the ADF. RSLV submits that had these incidents occurred within a civilian workplace, the perpetrator would more than likely have been dismissed from their employment.

| Date | Case | Details | Outcome |
|------------------|---|---|---|
| 1 April 2022 | <i>Private R v Chief of Army</i> [2022] ADFDAT 1 | Private - Assault of a female member of the ADF (ex-partner) | 120 days detention suspended for 90 days with a strong recommendation by the presiding Defence Force Magistrate that he remain in the Army. |
| 22 December 2020 | <i>Mikus v Chief of Army</i> [2020] ADFDAT 1 | Lt Col - Found guilty of smacking a junior enlisted female soldier on the buttocks | Fined \$6,500 and reprimanded |
| 21 March 2022 | Synott – Court Martial | Chief Petty Officer – Act of Indecency without consent, victim touched in an “intimate area” | Reduced in rank to Petty Officer |
| 5 April 2022 | Hailes – Court Martial | Private - Posted photographs of his ex-partner online along with an invitation to contact her for sexual acts | Fined \$1,600 and severely reprimanded |
| 23 March 2021 | Buswell – Court Martial | Sergeant - Assault of a subordinate. intentionally touched female victim’s breast | Reduced in seniority and fined \$2,965 |
| 3 May 2021 | Kearns – Court Martial | Lt Col - Assaulted a Staff Cadet, touching her on her thigh, shoulders and head | Reduced in seniority. |
| 24 August 2021 | Veltman – Court Martial | Corporal - “sexting” sent a female subordinate an unsolicited picture of a penis | 28 days detention wholly suspended. Demoted to Private |
| 5 October 2021 | Sgt A- Court Martial | Sergeant – Assault and commit an act on indecency on female colleague | Severe reprimand, reduced in seniority and fined \$2,000 |

| | | | |
|------------------|----------------------------|--|--|
| 12 October 2021 | Ackroyd – Court Martial | Midshipman – committed an act of indecency on a female junior sailor | Severely reprimanded and fined \$3,500 |
| 13 October 2021 | Harmsworth – Court Martial | Lieutenant - non-consensual distribution of intimate images | Reduced in rank to 2 nd Lieutenant. Severe reprimand. |
| 22 November 2021 | Neil – Court Martial | Craftsman - non-consensual distribution of intimate images | 30 days detention wholly suspended. Severe reprimand. |

10.9. It is also instructive that the applicable Practice Note published by the Chief Judge Advocate General pertaining to sentencing³⁷ contains numerous references to the court taking into consideration the effects that any sentence is likely to have on an offender’s wellbeing, financial position and career and promotion prospects, yet does not make any reference to a victim’s circumstances, their views and wishes or the impact that the crime has had on them at all. RSLV says that this one-sided focus on the welfare of the offender is at odds with the approach taken by civilian courts who have for over 30 years routinely take the views of victims into account when considering the sentencing of an offender,³⁸ and is out of touch with current Australian community standards.

11. Conclusion

11.1. For many years the veteran community has told successive governments that the DVA system is not fit for purpose and pleaded with all who would listen for meaningful change. Over that time, numerous enquiries have been conducted, committees and working parties have been established, studies have been undertaken and reports have been written and tabled.

11.2. Almost universally, the findings of these endeavours acknowledge that the system is broken and make recommendations for change. In hearings held to date, the Commission has also heard unchallenged evidence acknowledging that that causes of the longstanding problems faced by our veteran community

³⁷ Chief Judge Advocate, *Practice Note 6 – Part IV Sentencing*, 15 March 2022.

³⁸ See, eg, the Sentencing Act 1991 (Vic) div 1C that deals with the use of victim impact statements, see also, the *Victims’ Charter Act 2006* (Vic) s13 - Victim impact statements.

are well known and apparent. It is RSLV's hope and expectation that the Commission will adopt a similar view.

- 11.3. Despite the preponderance of evidence acknowledging the issues and the collective chorus for action, real change and reform does not follow afterwards. Sadly, it seems that when the time comes to turn words into actions, the path of organisational paralysis, lip service and inaction is well worn and closely followed by those empowered to effect real change. In the meantime, our veterans will continue to take their own lives at rates disproportionate to the rest of the community and family members and loved ones left behind will continue to grieve, mourn and suffer.
- 11.4. In due course, the Commission will deliver its findings and recommendations to government. The burden of turning those recommendations into actions will then lie with our elected representatives. Those charged with this responsibility will then face a stark choice, either consign the Commission's work to the parliamentary library to gather dust with the preceding voluminous tomes published on these matters, or to depart from history and show the courage and determination to implement the changes needed to address these issues.
- 11.5. In Greek legend, when faced with the Gordian knot, Alexander the Great took decisive action to deal with what was previously thought to be an insurmountably complex problem. In referring to this story, in the first scene of Shakespeare's *Henry V*, the Archbishop of Canterbury extolls the effectiveness of the newly crowned king opining: 'Turn him to any cause of policy, The Gordian knot of it he will unloose.'³⁹ RSLV implores those charged with turning the Commission's recommendations into practice to have the courage and commitment to sever the Gordian knot of outdated and ineffective veteran legislation, policy and procedure that for far too long has been regarded as an impossible task.

³⁹ William Shakespeare, *Henry V*, 1.1