THE RAAC CORPORATION LIMITED
ACN 156 250 958
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The Senate Foreign Affairs, Defence and Trade Committee
PO Box 6100
Parliament House
CANBERRA ACT 2601

The Royal Australian Armoured Corps Corporation (the RAAC Corporation)[1] is an interested party in the development of the new harmonised veterans' legislation scheduled to become law on 1st July, 2026.

The RAAC Corporation notes that the Senate FADT Committee will examine matters related to **Compensation and income support for veterans** under the following Terms of Reference (TOR); viz

(a) the appropriateness of commercial entities, within and outside Australia, providing advocacy services, including the charging of fees or commissions on statutory entitlement payments;
(b) representation of veterans at the Veterans' Review Board, including by legal practitioners;
(c) regulation, training and professional discipline arrangements for advocates;
(d) the consideration of previous reviews undertaken into the advocacy model, including recommendations made and subsequent implementation or lack thereof; and,
(e) any related matters.

The RAAC Corporation has prepared a submission for the Honourable Committee's perusal.

In drafting the submission it was considered more appropriate to examine what has already been submitted to DVA and other actors in the veterans entitlements sphere over the preceding years. This action was taken due to the fact the issues addressed by the RAAC Corporation remain extant.

The attached submission also contains issues that have been extracted for their master documents in order to have them more relevant to the TORs. The RAAC Corporation will respond only to those TORs it considers it is competent to comment on.

[1] The Royal Australian Armoured Corps Corporation Limited (the RAAC Corporation) is a Tier 1 ASIC and ACNC - registered entity which was stood up on 14/3/2012 and subsequently registered with the ACNC on 15/7/2021. It is an ESO in good standing and also a member of ASDSO (2015). The RAAC Corporation represents the interests of 3000 former serving members of the RAAC and the interests of 2007 serving members of the RAAC.

IMPORTANT NOTE

The enclosed submission address maters related to our response to the release on 13 March 2019, of the final report by Mr Robert Cornall AO into the Scoping Study Into Advocacy and Support Services (the Cornall Review). It is submitted that issues discussed herein from 2018-19 remain relevant.

The Corporation's submission regarding the Cornall Review (126pp),was submitted to the responsible entity within DVA on 29 April, 2019.

This iteration of that submission has been reviewed and updated, where relevant and necessary.
All other matters discussed herein are still live and remain extant.

The Corporation thanks the Secretariat for extending an invitation to provide further commentary in respect of the matter before the Honourable Committee.

This submission is tendered in good faith and with sincere intent. It is hoped it is accepted in the spirit in which it is tendered.

The comments in this submission relate to matters the RAAC Corporation feels competent to comment on.

I commend the RAAC Corporation's enclosed submission to the Secretariat

Yours sincerely,

Noel Mc Laughlin OAM MBA
Chairman
RAAC Corporation
(Advocate TIP 4)
9/5/2025

THE ROYAL AUSTRALIAN ARMOURED CORPS CORPORATION RESPONSE TO THE VETERANS' ADVOCACY AND SUPPORT SERVICES SCOPING STUDY, 2019

REVIEWED AND UPDATED FOR THE SENATE FADT COMMITTEE MAY 2025

I think the thing that sets the Australian soldier apart is humanity.
That's the most important thing.
They're human beings and they treat other people that they come across, whether they be friend, for or neutral, as human beings also.
They've shown amazing degrees of compassion to those in need.

Major General Duncan Lewis, in, Lindsay, P., ***The Spirit of the Digger*** **2011, HarperCollins, Sydney, NSW, pp.301-302.**

EXECUTIVE SUMMARY

1. The Veterans' Advocacy and Support Services Scoping Study undertaken by Robert Cornall AO in 2018, is a document that traverses a wide range of topics related to supporting veterans and their families, comprising 13 Findings and 12 Recommendations, which the Corporation has endeavoured to address. It forms the basis for this submission to the Honourable Committee.

2. The Cornall Study examined veterans' support nationally and internationally to arrive at what it believes could or should be implemented by DVA to better the lot of veterans and their families.

3. The finding and recommendation that the statutory prohibition on legal practitioners remain in place is welcomed, as is the increase of the options to veterans to prosecute their appeals to the Board which are addressed in this submission.

4. The power imbalance between DVA and veterans at AAT level is demonstrated by the huge amount of public monies expended by DVA in fighting cases.

5. The Study's finding that veterans and Advocates are at a significant disadvantage is well settled and is amply demonstrated by the large amounts of public monies expended by DVA in defending appeals.

6. The Study's recommendation that DVA increase its in-house advocacy (Departmental) staff with an increase in workload to include defending MRCA and DRCA matters, is seen to operate to increase the disadvantage experienced by veterans and Advocates at AAT/ART level and should not be supported.

7. The lack of gender-specific advocates to assist female veterans is an area of some concern and is one that needs to be rectified as a matter of some priority.

8. Advocates and veterans at the ART level suffer significant disadvantage by virtue of the of the expenditure (Tables DVA 1 to DVA 3) in defending appeals by veterans.

9. Veterans are too busy settling down and re-establishing themselves and their families in civilian life, which acts against them considering undertaking ATDP training and accreditation.

10. The difficulty in getting veterans to undertake studies in obtaining a certificate 4 in Military Advocacy is also attributable to the length and sheer volume of the competencies to be achieved. This will only be rectified by restructuring the current course and introducing a short course to enable interested persons to attain the relevant competencies.

11. A review of all training and the development of a shorter primary course for new trainee Advocates, the development of a bridging course for TIP-trained Advocates needs to be undertaken to attract more new blood and to retain highly experienced TIP -level Advocates.

12. DVA staff training must include specific units of competency from Certificate 4 in Career Development, to assist them in dealing with vulnerable veterans.

13. The Cornall Review used the terms *"Canada"* 45 times and *"Canadian*" 37 times in its final report, suggesting a strong bias towards the Canadian Model.

14. While the Canadian veterans' jurisdiction was *inter alia*, discussed in the final report and while it appears the Cornall Review favoured the Canadian Model, there is little to recommend the Veterans' Review Board (VRB) adopt some of the processes as discussed in the findings and recommendations flowing from discussing the Canadian Model.

15. Considerable caution and extensive consultation must be foremost when examining considering implementing in the Australian veterans' jurisdiction, any of the findings and recommendations flowing from the Scoping Study's examination of processes coming from a foreign jurisdiction.

16. The RAAC Corporation recommends that the VRB reinstate the implementation of the Single Member process which was discontinued following a trial undertaken by the VRB in 2019.

17. Families who are forced to restructure where a family member is a veteran with physical disabilities and/or mental health issues, is an area requiring support.

18. The Study noted the strong support provided to (Third Wave) Vietnam veterans by their families. DVA should commission Open Arms to conduct a survey amongst that cohort of families to identify coping and support strategies and survival tools for families to enable the to be applied by Fourth Wave veterans' families.

19. The lack of take-up by Fourth Wave veterans in membership of mainstream ESOs is of considerable concern. This is not helped by the Study's assertion that RSLs are seen to be clubs where drinking and eating are the primary activities. Such comments do nothing to contribute to the debate on falling numbers and as such, they should be rejected and not allowed to stand.

20. Th evidence adduced by Colonel Judge Douglas Humphreys CSC OAM at the Royal Commission into Defence and Veteran Suicide supports the RAAC Corporation's contention that the VRB is on any view superior to the Canadian Model

21. The Canadian Model which allows the Veterans Review and Appeal Board (VRAB) to rehear a previous decision of the Board will not succeed in the Australian veterans review jurisdiction due to the doctrine of *functus officio*.

THE RAAC CORPORATION

The Royal Australian Armoured Corps Corporation (the Corporation) comprises
12 RAAC ESOs known as Member Associations comprising 3000 former members of the RAAC.

It also acts as a lobby group for up to 2000 serving soldiers of the RAAC, who are the Corporation's key stakeholders.

The majority of the Member Associations are formed around the former CMF - now Army Reserve units. All Member Associations are unanimous in their view that they do not have the resources nor the time or inclination or members, to undertake advocacy of the type practiced by TIP-trained veterans' practitioners or the newly-formed ATDP. Their stance in this regard is acknowledged and respected.

All member Associations will refer their members who require that level of specialist support and representation to major ESOs which they believe have the wherewithal to handle matters such as that. They will refer their members to ESOs such as the RSL, VVAA, VVFA, Mates 4 Mates, Soldier On, and like entities.

Member Associations see their role as one of a more social/welfare nature, enhancing bonds of friendship and camaraderie and looking after one another. Their stated view in this regard is reinforced in their annual reports presented at each Corporation AGM.

The responses herein are tendered by this writer who has been a *pro bono* volunteer Practising Lay Advocate since 6 June 1986 and having successfully completed a TIP 4 course issued by the Law School of the University of Canberra (attendance by invitation only), with Advanced Standing of 4 credit points towards a Graduate Diploma in Legal Studies.

PART 1 – FINDINGS (CORNALL 2018)

FINDING 1.4

On present indications, fourth wave veterans are not interested in joining the major, long-established ESOs

The Corporation agrees with this contention. It is a common ground that on discharge or retirement, ADF members are:

1. Focused primarily on starting a new life as a family unit or singly and are not interested in joining ESOs which they do not see as an overriding priority;
2. In the main, in the prime of their life;
3. Focused on obtaining employment in anew work environment;
4. Focused on starting a new life post-ADF and seek to leave that life well behind them;
5. Typically persons who have served on average 10 years in the ADF; and
6. Have no first-instance interest in veterans' issues.

The lack of take-up by Fourth Wave[2] veterans of membership of mainstream ESOs is concerning and is considered by the Corporation to act as a fetter to attracting members of this cohort of veterans to undertake training in Advocacy. This will present significant challenges when VITA indemnity coverage ceases in 2021. Resolving this issue is not aided by completely unhelpful comments in the Study, which conflate RSL Sub-branches with licensed RSL **Clubs**, perpetuating the damaging myth that RSL **Sub-branches** are focused on drinking, eating and gambling.

FINDING 2.3

The study found: only 3.9% of accredited advocates are under 39 years of age.

This is significant, in that it advances the not unreasonable proposition that such a low percentage of younger-age accredited Advocates gives credence to the primary focus on discharged members being matters other than Advocacy. It follows that, the pool of older highly-experienced and knowledgeable Advocates is diminishing for the reasons outlined in the report such as age ,illness, exhaustion and disillusionment.

[2] The Cornall Scoping Study describes veteran cohorts as First Wave WW1, Second Wave WW2, Third Wave Korea-Vietnam and Fourth Wave being those veterans who served in East Timor, Afghanistan and Iraq, at p.23.

FINDING 2.4

The age and gender of an advocate are important considerations for younger veterans who want to deal with advocates of similar age and experience.

The need for age and gender-related Advocates is supported.
The change in the makeup of the ADF though enlisting more female service members is a major paradigm shift and as a consequence, a need exists to have during and post-service gender-appropriate Advocacy and representational support available.

The matter of age-related considerations is one that requires a degree of caution.
It is considered essential to have regard to the huge degree of corporate knowledge and experience current Third Wave Advocates and Pensions/Welfare Officers possess. That pool of invaluable subject matter expertise and should not be written off or ignored by Fourth Wave veterans.

FINDING 2.5

The Transforming DVA reforms are resulting in increasing numbers of primary claims being lodged electronically through MyService.

The RAAC Corporation notes that since the introduction of electronic processing, DVA suffered a catastrophic loss of trust and support due to the tremendous delays in time taken to process (TTTP) claims and applications. The reputational damage suffered by DVA needs no further elaboration.
Damage control has seen DVA implement a number of initiatives such as straight-through processing (STP). There are over 40 Primary Conditions and over 40 Sequelae Conditions which are accepted on a presumptive liability basis as of February 2023 (**ATTACHMENT A**).

The current status of claims processing is considered by DVA to be a significant improvement over the recent processing difficulties. DVA reports that as of 31/3/25[3] there were 81,919 claims on hand, comprised of 8,706 unallocated claims and 73,213 claims being processed. No reason is given for the large number of unallocated claims.

In the financial year to date (FYTD - 1/7/24 to 31/3/25[4] the following was achieved:

- DVA received 74,767 claims
- DVA made 75,038 determinations
- the average time taken to process MRCA Initial Liability (IL) claims was 301 days, a decrease of 76 days (or 20.2%), compared to the previous FYTD.
- The average TTTP for MRCA IL claims received within the last 12 months, was 104 days.

The reform of the claims processing continues to reduce waiting times as evidenced by the above statistics. The RAAC Corporation contends however, that MRCA IL claims processing of 301 days is still too long and needs to significantly reduced.

[3] Claim processing times | Department of Veterans' Affairs [accessed 6/5/25].
[4] Above n.3, [6/5/25]

In its response to the Productivity Commission's Draft Report into DVA, the Corporation noted that the ease of straight-through claims lodged online where specific conditions have automatic acceptance has contributed to a significant degree to the ongoing improvements in the claims and assessment/determination process. This includes markedly reduced time lags between claim and decision. This will improve with the creation as of February 2023 of over 40 Primary Conditions and over 40 Sequelae Conditions which are accepted on a presumptive liability basis.

Equally significantly, the ease of operation for current and former ADF members to access the MyService data base and lodge a claim, is a welcome addition to the throughput of claims and their effective management by DVA. The effectiveness of MyService will operate to reduce the workload of Advocates.

Similarly, the simplification of claims administration - assessment and determination as discussed in **Finding 2.5** will also operate to create opportunities for Advocates to become Wellbeing Advocates rather than just Compensation Advocates as cited in **Finding 3.5.**

The roles as discussed at p.9, clearly indicate that they are entirely different and should have a separate Certificate of Competency rather than a stand-alone Level 3 unit.
Both **Finding 2.5** and **3.5** complement teach other.

4.4 Ex-service organisations and veterans' advocates provide a very valuable service assisting veterans and their families to lodge primary claims with DVA and it is important that they continue to do so.

The Corporation agrees completely with this contention.
Notwithstanding the success of MyService in reducing time taken to process claims (TTTP) and to automatically accept liability for certain conditions, a need will always exist for personal one-on-one interaction and support for veterans who have multiple and complex conditions including veterans who may have a dual diagnosis situation (physical and psychological).

FINDING 5

The study found:

5.1 the Veterans' Review Board is doing its job and discharging its statutory functions effectively and with general support from veterans and advocates.

5.2 the recently introduced alternative dispute resolution procedures allow many cases to be resolved by agreement more quickly with less cost and inconvenience.

5.3 the VRB has protocols to support vulnerable veterans.

5.4 when a matter does go to a hearing, the Board treats the veteran with care and respect and decides the case in a way that reflects the spirit of beneficial legislation. Accordingly, the study does not make any recommendation for change to the VRB's current arrangements or processes.

The Corporation endorses all the above findings and welcomes the findings.

They are complemented by the introduction of a new trial initiative at the VRB's Sydney Registry.

The RAAC Corporation was informed in a telecon with the VRB on 22/2/19 that on 1/2/19 a trial was commenced, whereby veterans who have gone through the ADR process will be offered the option of appearing before either the Full Board or a single member.

The trial focused on hearing appeals by veterans with less complex matters and was intended to reduce the stress and anxiety for veterans waiting for a hearing date. Indications are that the trial had been very successful for veterans. Disappointingly, this strategy was not implemented post-trial.

It would have permitted a single member Board sitting as a Full Board without prejudicing the rights of a veteran to elect hearing by a Full Board..

The RAAC Corporation believes that reconsideration of disallowing the implementation of this single Board Member process should be examined anew and if possible reinstated.

Should the trial be reconsidered after close re-evaluation, to be viable for formal implementation, the RAAC Corporation would support the establishment of a single member panel being rolled out to all State VRB Registries once the trial has been re-examined.

The RAAC Corporation contends that, the re-establishment of a Single Board process will enhance the level of service provision to veterans and widows; again demonstrating an enhancement of the flexibility that is a major characteristic of the Boar's operation. The enhanced processes presently in place are discussed in this submission by a previous Principal Member of the VRB and former CEO of the AAT, Colonel Judge Douglas Humphreys CSC OAM in his evidence to the Royal Commission into Defence and Veteran Suicide.

Given the current harmonising exercise underway, it is entirely possible that VRBmatters may increase, The introduction of a single path access to the VRB for DRCA veterans with effect from 1/4/2025 is one limb that may find an increase in cases before the VRB.

FINDING 6

The study found the veterans' advocacy service is not meeting veterans' needs for competent representation at the Administrative Appeals Tribunal.

This finding sits within and is directly relevant to the issues discussed in **Finding 7**.

FINDING 7

7.1 veterans and advocates perceive AAT appeals to be adversarial and that they are at a significant disadvantage.

In its Draft Report (2018), the Productivity Commission stated:

> *Most of DVA's legal matters were dealt with by external lawyers: in 2017-18, it briefed 72 barristers at a total cost of $48, 000; its total external legal costs were $9.4 million (DVA 2018f, p. 100). In this environment, expecting all veterans to be adequately served by volunteer advocates may be a hard ask.* (p. 442).

The amount of money expended by DVA in appeals is significant and demonstrates to the average reasonable reader, the weaponised side of DVA's approach to defending its turf.
There is no way a veteran can hope to compete on a financial basis when confronted by a fighting fund of that size. It is not possible to comment on whether or not, it is too much of an ask for Advocates to represent their clients at that level.

However, it is perfectly reasonable to contend that Advocates who represent their client base at VRB and AAT level, bring with them a wealth of experience and knowledge of the review system; all of which equips then very well to take on DVA in the VRB and AAT/ART.
In addition, their well-developed relationships with DVA determining staff, is a definite plus.

The process for an AAT/ART appeal is multi-layered and includes ADR, Preliminary Conferences (PCs) and Directions Hearings, all before proceeding to a full appeal. The financial implications of going up against a Department with very deep pockets in the field of veterans' litigation is however, a very significant concern. Advocates and veterans are at a distinct disadvantage when confronted with the expenditure figures cited below. This is best demonstrated by DVA's legal services expenditure for F/Y 2023-24[5]; viz

Table DVA 1

Internal legal expenditure

Internal legal expenditure comprises the total amount DVA spent on legal work undertaken by in-house lawyers.

The reported cost includes both direct and indirect costs. The methodology for ascertaining total cost was based on the Australian National Audit Office Better Practice Guide *Legal services arrangements in Australian Government agencies* (August 2006).

In 2023–24, DVA spent $10.21 million on direct and indirect internal legal services. This expenditure mostly comprised the salaries for 54.27 full-time equivalent APS lawyers and legal support staff as well as contracted legal support staff.

Source: Adapted by the author from DVA's Annual Report 2023-24

Table DVA 2

External legal expenditure

External legal services expenditure comprises the total value of briefs to counsel, the total value of disbursements (excluding counsel), and the total value of professional fees in accordance with the guidance issued by OLSC. These costs are incurred where DVA seeks legal specialists and expert assistance from external legal service providers and where DVA contracts lawyers from external legal service providers to work alongside our in-house lawyers.

In 2023–24, DVA spent $12.70 million on external legal services. Of the 59 matters briefed out to counsel, 65% were briefed to female counsel and 32% were briefed to junior counsel.

Approximately 55% of the total external expenditure went towards seconding 37 external lawyers, on full-time and part-time bases, to work alongside our in-house lawyers over the last financial year.

Source: Adapted by the author from DVA's Annual Report 2023-24

[5] Legal services [Accessed 7/5/25]

Table DVA 3

TABLE 23: LEGAL EXPENSES INCURRED BY DVA, 2023–24

Type	Value ($'000)
Cost incurred by DVA	
Solicitors	5,020
Seconded lawyers	6,970
Briefs to male counsel	120
Briefs to female counsel	130
Disbursements	460
Total costs incurred by DVA (A)	**12,700**
Costs paid to applicants	
External legal expenditure (A)	12,700
Internal legal expenditure (B)	10,210
Total legal expenditure (A) + (B)	**22,910**

Source: Adapted by the author from DVA's Annual Report 2023-24

The Corporation also notes the 2018 Scoping Study's breakdown of costs to the public purse in DVA defending AAT/ART appeals; viz

> *In total, the Commissions spent $7,328,609 on their AAT representation in 2017-2018 made up as follows: solicitors $5,792,699; counsel $473,830; and disbursements (mainly medical specialists' fees) $1,062,080.9* (at p.10)

It is interesting to note no costs were disclosed for DVA defending appeals to the Federal Court, Full Federal Court and High Court. The costings cited by both the Productivity Commission and Scoping Study should be considered to be less than complete.

However the current figures cited above still paint a depressing picture for veterans and their Advocates, who endeavour to represent their clients on a *pro bono* basis.

Cornall's suggestion that legal representation be sought on a no-win no-fee basis (p.10) will present with challenges, given law firms rely on billable hours to boost their bottom line to remain viable.

The RAAC Corporation notes that:

> *The unevenness of the level of representation is a significant factor in veterans' perception that DVA is adversarial and the system is weighted against them* (at p.10).

This contention finds considerable support.
Given the financial and organisational forces stacked against veterans and Advocates the proposal by the Scoping Study that DVA consider engaging a small number of additional Departmental Advocates to cut costs is to be viewed with caution. While expenditure may be reduced, the playing field in terms of firepower (legal and lay representation) by DVA is still significant and contributes to perpetuating representational unevenness.

7.1 veterans and advocates perceive AAT appeals to be adversarial and that they are at a significant disadvantage. (At p.69).

In its Draft Report, the Productivity Commission stated:

> *Most of DVA's legal matters were dealt with by external lawyers: in 2017-18, it briefed 72 barristers at a total cost of $48, 000; its total external legal costs were $9.4 million (DVA 2018f, p. 100). In this environment, expecting all veterans to be adequately served by volunteer advocates may be a hard ask.* (p. 442).

7.2 that disadvantage is a major barrier to veterans accessing their entitlements.

The matters discussed in **7.1** relate to this finding, also.

The amount of money expended by DVA in appeals is significant and demonstrates to the average reasonable reader, the weaponised side of DVA's approach to defending its turf.
There is no way a veteran can hope to compete on a financial basis when confronted by the fighting funds set out in **Tables DVA 1 to DVA 3.** According to Cornall:

> *The study proposes that the Government should establish a Veterans' National Legal Service and fund Australia's eight legal aid commissions to represent, or engage private lawyers to represent, any veterans appealing from a VRB decision or a DRCA reconsideration free of charge. The legal assistance would be subject to a merit test (which is a standard and sensible legal aid requirement) but no means test. One of the legal aid commissions' several advantages is that they have a large network of offices around Australia (in central, metropolitan and regional locations in each state and territory) and established practices in similar advocacy schemes. If that recommendation is accepted, every veteran appealing to the AAT will have the opportunity of free legal representation but could, of course, still engage an advocate or a lawyer at their own cost or appear on their own behalf.* (Cornall 2018, p.11).

7.3 the establishment of a Veterans' National Legal Service and Veterans' National Legal Helpline will meet the issues raised by parliamentary committees which are set out in the terms of reference.

The proposal recommended by Cornall has considerable merit.
It will allow the establishment of a legal assistance entity which will provided free legal representation to all veterans and not just some

This is significant because Cornall's recommendation focuses on all veterans and not one particular cohort.

Currently, Legal Aid is predicated on a veteran having rendered **operational service**.
Cornall's recommendation joins veteran who have not rendered operational service (**eligible Defence service**)to the entire target cohort.

The RAAC Corporation believes the establishment of such an entity to provide legal assistance to all veterans in respect of AAT/ART matters only, will go a long way to reducing representational unevenness.

Given the sheer breadth and depth of the changes to the veterans' legislative landscape commencing in 2026, the RAAC Corporation contends that serious consideration should be given to implementing Recommendation 7.3.

FINDING 8

8.1 Veterans Affairs Canada and the veteran community work cooperatively to assist veterans gain their full entitlements.

DVA is in the process of undergoing major BPR to develop a model somewhat similar to Veterans Affairs Canada (VAC). The MyService , shorter TTTP claims times,
straight-through automatic claims assessment and acceptance, are major factors in DVA moving to a more responsive and cooperative operational framework.

8.2 Canada has a long history of using government administrative officers and lawyers to assist veterans making claims for entitlements.

The Australian experience differs from this model.
DVA officers are in this writer's experience prepared to discuss with an Advocate, a client's situation. The use of Departmental officers to assist a veteran submit a claim or for that matter a member of DVA Legal, is fraught and may constitute in a Departmental officer's context, a potential conflict of interest.

This falls within the conflict of interest (COI) template by virtue of DVA staff including legal practitioners employed by DVA.

The potential for COI arises from the master-servant relationship between the public employee and the employer, the Commonwealth Government as represented by DVA.
A DVA officer who is placed in a situation of substantively assisting veterans in this regard, may over time, find themselves Stockholmed by this role.

The Stockholming may well transfer to a Departmental officer - an officer of the Australian Public Service, becoming an advocate for a veteran and acting and operating against their employer, DVA. The risk of an officer in this circumstance potentially breaching the APS Code of Conduct enshrined in the *Public Service Act 1999* (Cth), in particular ss 13(1) 13(32) and 13(7)(a) are matters to be considered and DVA will need to ensure that it is satisfied beyond reasonable doubt that no possible loyalty issues will arise, should this proposal be implemented.

The Corporation is not comfortable in seeing Departmental staff act as ESO Pensions Officers for veterans. That role sits absolutely, within the jurisdiction of non-departmental personnel, ESOs and Advocates.

The Corporation contends that Departmental Officers should provide advice to veterans and Advocates as needed, but should not under any circumstances, perform in an active advocacy role.

8.3 the Bureau of Pensions Advocates conducts an independent legal practice for veterans even though its lawyers are public servants employed by Veterans' Affairs Canada and its offices are in VAC premises.

The challenge to having legal practitioners who are in essence paid employees of a Government agency is noted. The cautionary note in relation to public servants actively advocating on behalf of veterans in response to **Finding 8.3** above, have equal application to the provisions of this Finding.

Notwithstanding the need for caution in attempting to implement a more favourable advocacy regime for veterans and their families, the testimony before the Canadian Parliamentary Veterans Affairs Committee on 16 June 2016 of **Mr Anthony Saez, Executive Director and Chief Pensions Advocate, Bureau of Pensions Advocates, Department of Veterans Affairs Canada,** is instructive.[6]

In his evidence before the Committee[7], Mr Saez stated *inter alia*:

> *By way of opening, I'd like to say that the Bureau of Pensions Advocates was formed in 1971, following the tabling in Parliament of the Woods committee report. This committee recommended the formation of an independent body of lawyers, also called advocates, who would work on behalf of clients to ensure that no stone would be left unturned in the consideration of applications for disability benefits.*
>
> *The bureau's mandate is to offer free legal advice, consultations and representation on cases brought before the Veterans' Review and Appeal Board. This service is for individuals who are not satisfied with a decision made by the department regarding their disability benefits claim.*
>
> *The Woods committee was clear in its understanding of the role of BPA advocates, stating:*
>
> > *'The role of the advocate is unique in that his responsibility is to assist the applicant for pension, and the only duty he owes to his employer (the Crown) is to do his utmost to assist this applicant. An applicant for pension has the right to expect from the advocate, without charge, the same service as an applicant would demand of his solicitor in civil legislation.'*
>
> *Therefore, although administratively the bureau reports to the deputy minister of Veterans Affairs Canada, by legislation it has a solicitor/client relationship with clients. A BPA lawyer works for the client and takes instruction from the client and no one other than the client.*

THE FIVE STEPS

The five representational steps[8] outlined by Saez in evidence to the Veterans Affairs Committee on 16 June 2016 on the disability redress process, are very instructive. According to Saez, there are potentially five steps available to veterans seeking redress. These are:

> ***First**, they may be "counselled out". This is where the advocate, who normally has vast experience in the medical-legal field, considers the merits of the case and advises the client against proceeding, keeping in mind that the client may decide to proceed nevertheless with advocate representation, regardless of the advice received.*

COMMENT 1. The RAAC Corporation has a major concern regarding an advocate who is purported to have *"vast experience in the medico-legal field."* There is no evidence adduced to describe the mandatory qualifications such a person will be required to hold.

There is no evidence to describe whether or not a person preforming the functions of an Advocate is a legal practitioner with medical qualifications or not. The use of such an individual within the Australian model of veterans' representation does not lend itself to the Australian model.

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[6] https://openparliament.ca/committees/veterans-affairs/42-1/20/anthony-saez-1/ Transcript 7pp, [accessed 5/5/2025].
[7] Above, n.6., p.1 (online).
[8] Above, n.6, p.1 (online).

It will require medical experts sitting on the Board as well as representing a veteran or widow and could well become an adversarial grievously offending the VRB's proud record of being an inquisitorial Tier 1 Tribunal.

It is contended that, the use of such a two ways trained advocate may present significant problems in respect of a medical matter resulting in potentially additional protracted litigation based on a challenge on the grounds of medical opinion applied by the Advocate or an Advocate's qualifications, it does in fact operate to offend the decision of the High Court in *Bushell* (1992).

There exists a strong possibility that any steps taken through the veteran's appeal process through the appeals hierarchy, could very well result in the Advocate's submissions being read down by a court of competent jurisdiction, properly instructed.

Saez failed in his evidence to adduce what training and experience in Veterans Law and Medical matters will be mandated to produce that particular class of Advocate.

In addition to the requisite level of training, such an Advocate would, in the Australian system, need to have *inter alia*, a very well-developed appreciation and knowledge of the medical issues addressed in the 770 Statements of Principle (SoPs) currently promulgated and broken down into two categories, namely 385 SoPs for Operational Service and 385 SoPs for eligible Defence Service.

The contention here is that the application of the High Court decision in *Bushell* (1992)[9] (the *Bushell Principles*) affirmed by the High Court in *Byrnes* (1993)[10] (the **Bushell-Byrnes approach)**, is to be taken to apply to professional expert opinion tendered by specialists in their respective medical fields, that according to Brennan CJ:

> *"… the case must be rare where it can be said that a hypothesis, based on the raised facts, is unreasonable when it is put forward by a medical practitioner* ***who is eminent in the relevant field of knowledge"*** *Conflict with other medical opinions is not sufficient to reject a hypothesis as unreasonable."*[11] (This writer's bold highlighted emphasis).

Similarly, its not an exaggeration to contend that the AMA would be very resistant to the idea of what it considers to be anon-medical interloper intruding on what is a closed medical shop.

The idea lacks merit when compared to the current veterans' appeal model that exists in Australia. The RAAC Corporation considers the introduction of such a model to be fraught with risk and contends that, the status quo should be retained.

> ***Second****, if the case was turned down by the department at first application due to information that was missing and easily obtained after the fact, this information may be gathered and the case may be returned to the departmental adjudicators for a departmental review, which is handled quickly and often results in a positive outcome for the client.*

[9] ***Bushell v Repatriation Commission*** [1992] HCA 47; (1992) 175 CLR 408; (1992) 29 ALD 1 (5 May 2025).
[10] ***Byrnes v Repatriation Commission*** [1993] HCA 51; (1993) 177 CLR 564; (1993) 30 ALD 1 (5 May 2025).
[11] Per Brennan CJ, Above, n.5, at [10].

COMMENT 2. The situation in Australia differs significantly from that in Canada in respect of what point 2 proposes. At a Departmental level, a veteran has a specific time-frame in which to seek an internal review or elect to go to the VRB instead. A Departmental Delegate has the discretion absolutely to either review the contested decision or decline to intervene triggering an application for the matter to go before the VRB.

> ***Third**, where the advocate and the client feel there is merit in proceeding to a review hearing before the Veterans Review and Appeal Board, client and advocate will work together to obtain the necessary information to substantiate the claim and prepare the case. This hearing is an opportunity for the client to appear in person before the board members, with transportation and accommodation paid for by VAC regardless of the place of residence of the client. The review hearing is the client's opportunity to give oral testimony in person, provide additional evidence in support of the claim, and have witnesses attend as necessary, with the additional benefit of legal representation.*

COMMENT 3. The RAAC Corporation notes the provisions of Part 3 and their similarity to the experiences of veterans appearing before the VRB.

> ***Fourth**, sometime after the review hearing, the client will receive the decision of the board. If the decision is unfavourable or partially unfavourable, there may be an opportunity to proceed to an appeal hearing before VRAB, which would be held before a different panel of board members. The appeal decision is final and binding.*

COMMENT 4. The inference in Part 4 to be drawn here, is that all appeals cease with the decision of the Veterans' Review Appeal Board (VRAB). That is on every level a travesty of justice and completely lacking in any merit. The RAAC Corporation further contends that restricting natural justice to only two arms of seeking redress, is unconscionable and indefensible.

Veterans render service to their nation and recognition of the unique nature of that service is a matter of the gravest importance to veterans and their families.

To be blocked from further avenues of redress flowing from being either wounded in action or injured as a direct consequence of service to the nation acts, as an unconscionable and indefensible fetter to veterans and veterans widows endeavouring to obtain natural justice.

The Australian veterans' review and appeals process allows a veteran or veteran's widow to challenge an adverse decision from Primary Decision up to and including the Full High Court of Australia.

It is this process which on every view makes the Australian veterans' jurisdiction world's best practice.

> ***Finally**, in circumstances where new and compelling evidence comes to light after the appeal hearing, or where there may have been an error of fact or law, there is a limited option open to the client, with approval from VRAB, to make application for reconsideration*

COMMENT ON FINAL MATTER. The RAAAC Corporation notes in Part 5 the issue of **new and compelling evidence** takes the position that such a proposal would not work in the Australian veterans' jurisdiction due to the doctrine of *Functus Officio*. The RAAC Corporation further contends that restricting natural justice to only two arms of seeking redress, is unconscionable and indefensible.

In Australia the VRB is along with the AAT (now ART) protected from being required to review their own decisions regardless of a veterans' practitioner adducing further new, fresh and compelling evidence post-previous a VRB or ART decision. The relevant Tribunals are protected by the doctrine of *Functus Officio*.

Butterworths Concise Australian Legal Dictionary[12] defines *Functus Officio* as *inter alia:*

> *"Having performed the authorised act and being unable to go back to it a second time. One who is functus officio is precluded from again considering the matter even if new arguments or evidence is presented.*

The doctrine of *Functus Officio* is well protected in the administrative law jurisdiction and would on any analysis act as a significant fetter to having a matter re-examined anew by the original decision-making body, namely the VRB. The RAAC Corporation relies on the decision of the AAT in *Atkins*[2014][13] in which the Commonwealth as the Respondent argued:

> *As the applications had already been decided, the VRB could not re-open them, and had accordingly held that it had no jurisdiction to hear the applications, and was functus officio.*

The Tribunal upheld the VRB's decision to rely on the doctrine of *Functus Officio*; viz

1. *Further, as the VRB has held that it has no jurisdiction, the AAT has no reviewable decision before it, and cannot review Mr Atkins' application, which must accordingly be dismissed.*[14]

In *Garton* [2022][15] (12 cases cited including the decision of the FCAFC in *Snell*), the Tribunal reinforced the supremacy of Functus Officio; viz

> *The Tribunal's conclusion that it is functus officio with respect to the Application for Review is respectfully the same as that reached by Senior Member Illingworth in Garton and Repatriation Commission.*
>
> ***DECISION***
> *35. The application is dismissed.*

[12] ***Butterworths Concise Australian Legal Dictionary*** (2004) 3rd Edn, Reed International Books Australia T/A LexixNexis,526pp, at 185.
[13] ***Atkins and Repatriation Commission*** [2014] AATA 42 (30 January 2014) online at https://classic.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/AATA/2014/42.html?stem=0&synonyms=0&query=%22functus%20officio%20%22#disp1 [accessed 5 May 2025].
[14] Above, n13.
[15] ***Garton and Repatriation Commission (Veterans' entitlements)*** [2022] AATA 647 (18 January 2022) online at https://classic.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/AATA/2022/647.html?stem=0&synonyms=0&query=%22functus%20officio%20%22#disp1 [accessed 5 May 2025].

Significantly, in *Garton* the Tribunal noted :

> *22. In Commonwealth of Australia v Snell ('Snell') the Full Court of the Federal Court made it very clear that the Tribunal is not a court and therefore is not bound by the same doctrines which apply to courts, such as estoppel, when the Tribunal is asked to reconsider a previous decision of its own in relation to the same parties and on the same facts. The same can be said about any supposed rule or principle that the Tribunal is functus officio. Clearly, if the Tribunal is not bound by the doctrine of issue estoppel and can review its own earlier decisions between the same parties, it is not functus either.*

The decision of the Full Federal Court in Snell[16] give rise to the not unreasonable proposition that the Doctrine of *Functus Officio* is protected all the way to the Full Federal Court.

To implement a proposal such as that enunciated by Saez suggests that to do so in the Australian veterans' merits review and appellate jurisdiction, will not succeed due to the protection afforded by the Common Law in *Snell* of *Functus Officio*.

The RAAC Corporation contends that, such a proposal lacks merit, will fail and should not be considered. A copy of the AAT's decision in Atkins and Garton is at **ATTACHMENT B**.

BPA and VRAB

Saez states in evidence:

> *At VRAB review, BPA is successful about 52% of the time, and at VRAB appeal, about 39% of the time. Understanding that the bureau represents almost everyone who is dissatisfied with their initial decision, this indicates that very few applicants are turned down, either at first application or following redress. It is of note as well that Canada is the only country in the world that allows for an independent review of disability decisions by lawyers, and for free representation by lawyers before an administrative tribunal.*

The **Bureau of Pensions Advocates (BPA)** success rate demonstrates that 48% of veterans it represents, are unsuccessful in obtaining natural justice. That is considered to be an unusually high failure rate.

The **Veterans Review Appeals Board (VRAB**) appeal success rate of 39% results in a 61% failure rate for veterans they represent. These figures are concerning and beg the question as to why there is such a high failure rate and whether or not, Advocates are suitably trained to represent their clients.

The comment regarding being the only jurisdiction in the world to review matter and allow free representation compels a response.

The Australian merits review process involving a challenged decision has the following chain of procedures:

- Primary Decision – claim refused.
- Review of decision sought and actioned by an Independent Review Officer (IRO)
- If decision is affirmed an entitlement to appeal to the VRB exists

[16] ***Commonwealth of Australia v Snell*** [2019] FCAFC 57, per Allsop CJ, Reeves and Derrington JJ.

- Board hearings are de novo and Boards which have 3 members, comprise eat least one legally qualified Member sitting as the Senior Member
- The vast majority of advocates operate on *a pro bono* basis, however some are paid.
- Board hearings do not attract a fee.
- AAT/ART hearings do not attract a fee for veterans or compensation decisions[17]
- Veterans who have rendered operational service are entitled to Legal Aid to appeal to the Administrative Review Tribunal.

8.4 the BPA lawyers are clearly trusted by veterans to act only on their behalf and their independence is supported by legislation.

The evidence of Mr Saez goes to the heart of his organisation guarding its integrity in respect of the lawyer (Advocate) - client relationship which has a major focus on personalised service.
This is significant, because according to Saez, the Model is working effectively and is trusted by veterans; viz

> *Clients may choose to be represented by a veterans organization, such as the Royal Canadian Legion, or by a private lawyer, or they may represent themselves. The reality, however, is that over 95% of all cases presented before VRAB, and probably closer to 99%, are handled by the Bureau of Pensions Advocates*[18].

Saez also asserts a high satisfaction level by veterans; viz

> *Ninety-eight per cent of clients were satisfied or very satisfied with the courtesy of bureau employees; 94% were satisfied or very satisfied with the quality of advice provided by their advocate; and overall, 93% of respondents were satisfied or very satisfied with the service they received from the Bureau of Pensions Advocates.*[19]

8.5 the Canadian Review Board is very similar to the Veterans' Review Board in its role and procedure.

According to an examination of the first-instance Review Hearing, *applicants will be reimbursed for travel related expenses to attend your Review Hearing.*[20] Reimbursement of travel expenses does not occur at the second tier of the appeals process involving the VRAB.

An examination of the Canadian **Veterans Review and Appeal Board (VRAB)**[21] shows that the composition of the Board is restricted to two members only and not three as is the Australian case.
It is not as similar as the Scoping Study suggests. Under the VRAB protocols, *applicants rarely attend their Appeal hearings because the legislation does not allow for oral testimony or reimbursement of travel expenses*.[22] Applicants attending the VRB are entitled to apply to DVAfor reimbursement of travel expenses.[23]

At either VRB or AAT/ART hearings, applicants are fully invested in their hearings and are entitled to give oral evidence as required. This also applies to appeals to a court of superior jurisdiction.

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[17] at https://www.aat.gov.au/apply-for-a-review/other-decisions/fees [accessed 6/5/25].
[18] Above, n.6., p.1 (online).
[19] Above, n.6., p.1, (online).
[20] https://vrab-tacra.gc.ca/en/what-expect/review-and-appeal-hearings/guide-review-and-appeal-hearings#1[accessed 8/5/2025].
[21] http://www.vrab-tacra.gc.ca/Overview-Apercu-eng.cfm [accessed 7/3/19].
According to Cornall[22] Above, n.20, (online)
[23] Questions you may have | Veterans' Review Board [accessed 8/5/2025].

The Canadian Model allows applicants to attend the Tier 1 Review Appeals.
No attendance lies with a matter that proceeds to the VRAB. This differs significantly from the Australian veterans review and appeals system. Applicants are entitled to attend all levels of their appeal through to the High Court of Australia. This level of veteran involvement in obtaining natural justice is considered to be superior to the Canadian system in that Australian veterans and their widows have ownership of their case throughout the entire process.

The Canadian Model is completely at odds with the Australian merits review and Courts system, where natural justice principles enable a person who has had an adverse finding made against them to challenge in person, the decision under review. The application of such a policy to the Australian veterans' jurisdiction would on any view, grievously offend and be inconsistent with, the provisions of the *Administrative Decisions (Judicial Review) Act 1977* (Cth).

According to Cornall, *Review hearings – the veterans' first level of redress – are conducted by a two member Review Board in hearing venues around Canada. Hearings are open to the public (unless the Board determines otherwise)* (2018, p.74).

The Canadian VRAB is also the final avenue for redress and is open to the public, whereas Australian VRB hearings are *in camera* and are not the final avenue of redress. Redress for Australian veterans and veterans' widows extends to the High Court of Australia.

The *in camera* provisions are on every level, critical in enabling applicants to be able to put before the Board evidence that is of a sensitive nature and which should not on any measure be exposed to the public gaze. The application of the in *camera rule is* essential to reducing the stress a of attending a VRB hearing.

The use in the Canadian Model of two Board members in a **Review Hearing** and three Board members in an **Appeal Hearing** is an interesting concept. It begs the question as to whether implementing a two-member Review hearing in the Australian jurisdiction, will displace the current ADR process or enhance it.

The RAAC Corporation contends that, the Australian Model is superior to that of the Canadian Model whereby only two only two tiers are available in the Canadian system involving review hearing and subsequent appeal to the VRAB.

The VRAB Decision Service Standards mandate all decisions to be made within six weeks of hearing and is demonstrated by the following statistics[24] related to the percentage of decisions handed down within the relevant time frame as demonstrated in Table 1; viz

[24] Above, n.20.

Table 1 VRAB Service Standards

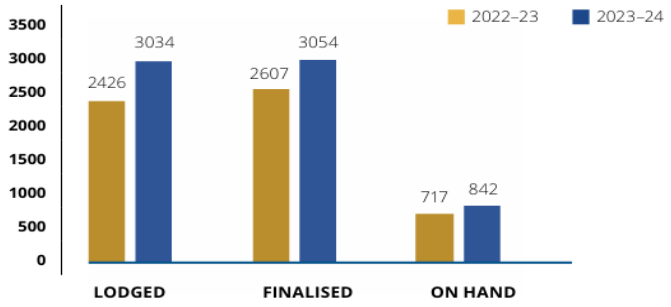
Service Standards		
Fiscal Year	**Review**	**Appeal**
2023-2024	56% of 4,755 decisions	51% of 666 decisions
2022-2023	44% of 3,600 decisions	55% of 474 decisions
2021-2022	34% of 2,801 decisions	39% of 713 decisions
2020-2021	68% of 1,626 decisions	64% of 846 decisions
2019-2020	55% of 1,427 decisions	51% of 858 decisions
2018-2019	74% of 1,407 decisions	75% of 567 decisions
2017-2018	65% of 2,017 decisions	42% of 375 decisions
2016-2017	87% of 2,219 decisions	88% of 937 decisions
2015-2016	84% of 2,507 decisions	89% of 793 decisions
2014-2015	79% of 2,729 decisions	84% of 1,039 decisions
2013-2014	84% of 3,213 decisions	85% of 1,159 decisions
2012-2013	87% of 3,236 decisions	89% of 928 decisions

Source: Adapted by the author from the VRAB Decision Service Standards online at http://www.vrab-tacra.gc.ca/Overview-Apercu-eng.cfm (5/5/25)

The data suggests there is a significant and consistently high turnaround in VRAB decisions which must on any analysis, operate to the advantage of veterans and also enhance the administration of natural justice.

The statistics above give further weight to Mr Saez's evidence as to the high satisfaction of veterans in the VRAB, however no evidence was adduced to address the issue of complex case timelines which may fall outside the six-week template. Regrettably the change in format to the VRB's Annual Report no longer provides charts as previously se t out in earlier reports. The clearance rate obtained form the Annual Report 2023-2024 is set out below.

Table 2 caseload clearance rates 2022-23 and 2023-24



Source: Adapted by the author from the VRB's Annual Report 2023-24 at p.22.

The data from the VRB's Annual Report indicates it heard and determined 3054 matters during the reporting period 2023-24, compared to the VRAB's 4755 (review and appeal) matters.
This gives rise to the not unreasonable proposition that the VRAB six-week mandated service standard results in a higher rate of turnover.

Table 3 AAT clearance and finalised rates

The table below shows the number of AAT appeals lodged in 2023–24 as a proportion of VRB decisions and the number of cases where the AAT, at hearing, made a different decision to the VRB. This amounted to 1.5 per cent of all VRB decisions which could have been appealed to the AAT.

Year	AAT appeals lodged	Proportion of total VRB decisions	Finalised	Percentage of cases where AAT at hearing decided differently to VRB*
2022–23	63	2.4%	65	0.3%
2023–24	46	1.5%	67	0.3%

*** This measure identifies those appeals heard by the AAT and excludes those cases where a consent agreement was reached by the parties.**

Source: Adapted by the author from the VRB's Annual Report 2023-24 at p.24.

VRB decisions appealed to the AAT (ART) remain low for both reporting periods, suggesting a high rate of satisfaction with VRB decisions as set out in Table 3 below:

Significantly, the very low overall 2-year figure of 3.9% in appeals against VRB decisions being referred to the AAT/ART, suggests that Board decisions either setting aside or affirming the decision under review, are acceptable to the parties involved.

The low rate of referral to the AAT demonstrates that the Tier 1 merits review practiced by the VBR is working and working effectively. By comparison the percentage of cases for review and appeal in the Canadian VRAB model are significantly higher for the same reporting periods and have remained so since F/Y 2013.

The difference in clearance rates of both jurisdictions is influenced by the availability of 25 locations across Canada for the VRAB and a large population (40.1 million as at 2023) compared to Australia (26.66 million as at 2023)[25] with hearings conducted in the six State capitals and Canberra, with hearings conducted *"at times"* in various regional centres[26] – these are not listed.

The mandated time frame in the Canadian VRAB Model, is noted.
However, it is complemented by the fact as stated in **Finding 8.8** and **Finding 8.9**, that medical evidence is provided by the veteran which suggests there is no delay in Boards adjourning to seek furthers and betters which would impinge on the six-week deadline for decision.

Similarly, the lack of a need to have medical experts appear before the Board, further enhances a rapid turnaround, whereas in the Australian system, regardless of any ADR process, situations will arise where the VRB may adjourn to seek furthers and betters which will incur a time delay in a Board making a final formal decision.

This is consistent with natural justice principles requiring the VRB to act according to substantial justice and the merits of the cases before it. A six-week template could be seen to be acting as a fetter to that requirement by creating a rushed process.

[25] australia's population - Google Search [accessed 5/52025].
[26] http://www.vrb.gov.au/what.html#_08 [accessed 18/3/19].

The Canadian Model does not take into account the lengthy waiting periods to see a treating specialist. Such delays add to the stress ands frustration experienced by veterans in particular veterans who have suffered significant mental/emotional trauma; not to muntin pain and suffering from wounds and/or injuries.

Delays in obtaining further evidence will be exacerbated in waiting times in veterans seeing treating GPs or specialists, failure by Advocates to ensure relevant matters such as GARP Lifestyle Assessments are before the Board, all of which contribute to further delays.

The RAAC Corporation contends that, a six-week turnaround to adduce medical evidence is not viable in the current and ongoing shortage of GPs and medical specialists and is not supported.
By comparison, the VRB Facts Sheets are silent on a specified deadline for handing down decisions; viz

> ***What happens after a hearing?***[27]
> *The VRB will send the decision and reasons to you as soon as possible after the hearing, usually within a few weeks.*

The necessity for introducing additional limbs to the merits review process a successful model as demonstrated by the processes available to all applicants. The additional redress mechanisms can be seen to be tailor-made to suit an individual applicant's circumstances.

The processes including a full hearing enable the VRB to operate on four limbs similar to that of the VRAB who use Teleconference and Videoconference facilities also. The number of options available to veterans including Outreach availability is a major strength of the Board which now uses the following pathway for resolution to a contested matter; viz

1. Veterans can request an Online Dispute resolution (ODR). After a person's application is with the VRB, the person ("the applicant") can ask for ODR by using the VRB Justice Portal.
2. Facilitation. A Conference Registrar will help the applicant to resolve their application online.
3. Decision. If an application can be resolved by ODR, the applicant will be given a binding decision, delivered online.
4. Where there is no resolution, the matter then proceeds to an ADR process and if still not resolved the matter proceeds to a full Board hearing.

The Conference Registrar may also based on this writer's representational experience, seek to have the matter decided on the papers and will if necessary, seek furthers and betters to make a decision.
A decision at this level will be be ratified by a Senior Member with legal qualifications.

VULNERABLE VETERAN PROTOCOL

The RAAC Corporation notes that after a search of the relevant online literature about the Canadian Tier 1 Review Hearing and Tier 2 VRAB process are completely silent on the use of a Vulnerable Veteran protocol. There are none listed. This differs vastly from the Australian Model.

Significantly the VRB uses a Vulnerable Veteran Protocol necessary demonstrating the application of another client-specific protocol forming part of the appeals process and is very successful.

[27] https://www.dva.gov.au/factsheet-vrb01-veterans-review-board [accessed 17/3/19]

The VRB's protocol is set out below:

> ***Vulnerable Veteran Protocol***[28]
>
> *This protocol addresses the needs of those veterans and current serving members who face particular difficulties in the review process, and whose ability to understand and effectively present their case or fully participate in the review process may be impaired.*
> *Early identification and priority attention*
> *A veteran may be identified as vulnerable at any stage during the review process. There are various ways in which the VRB can identify a veteran who may be vulnerable, or at risk of self-harm or harm to others. These sources include:*
>
> - *the veteran or his/her family member*
> - *the veteran's advocate*
> - *treating health professionals*
> - *government departments or agencies, including the Veterans' Affairs and Defence Departments, and law enforcement agencies*
> - *VRB members, Conference Registrars or staff.*
>
> *It is important that vulnerable veterans are identified as early as possible in the review process and that appropriate action is taken by the VRB as soon as possible to manage their applications. Where the VRB identifies a vulnerable veteran, the veteran's application will be immediately triaged for an on-papers review by one of the VRB's subject matter experts. If the application cannot be resolved on the papers, consideration will be given to arranging an urgent hearing with a full panel or a directions hearing, depending on the particular circumstances. If a veteran is unrepresented, the VRB will assist the veteran to appoint an advocate.*

The application and operation of a four-pronged approach at VRB level will substantially reduce waiting times for veterans and expedite and enhance the process of natural justice for veterans using a Model that is superior to two-pronged approach of the Canadian VRAB.

In view of the facts as enunciated, the similarity asserted in the Cornall Report between both Canadian and Australian Board jurisdictions is not on its face, as close as is contended.

The contention on the efficacy of a four-pronged approach, further strengthens the Scoping Study's comments in **Finding 5** with which the Corporation agrees, completely.

The lack of a Vulnerable Veteran Protocol similar to the VRB Protocol discussed above is failure of process and a failure to have regard to the emotional and psychological state of traumatised veterans endeavouring to have an adverse finding set aside.

The RAAC Corporation contends that, the Australian Model is vastly superior to its Canadian cousin.

The RAAC Corporation further contends that, the VRB's operation and very strong veteran-oriented focus is considered to be world's best practice.

[28] Vulnerable Veteran Protocol | Veterans' Review Board [Accessed 6/5/25].

8.6 the Canadian appeal process is dealt with by written submission from the BPA lawyer and could not be implemented in Australia without extensive legislative and cultural change.

The challenge for DVA and the VRB lies in the use of lawyers in the Canadian VRAB.

The prohibition against legal practitioners appearing before the VRB, supported by the Scoping Study (**Finding 5**) and very strongly supported by the Corporation and ADSO[29], present significant challenges if the Canadian Model was adopted. The introduction of lawyers at a Tier 1 merits review Board, is strongly resisted and with good reason.

In view of the facts as enunciated, there are reservations and concerns regarding the introduction of the Canadian Model in part or in whole. The provisions of **Finding 5** should take precedence in this instance.

It is contended that, any proposal to introduce portions of the Canadian VRAB Model, must not include the introduction of legal practitioners and must be viewed with great caution, and ensure that any changes do not detract from or dilute, the effectiveness of the Australian VRB Model.

8.7 Veterans Affairs Canada does not take any part in reviews or appeals.

It is well settled that DVA is not a party to proceedings before the Board.
That must never change.

8.8 the Canadian system makes far less use of independent medical evidence than the Australian system and often relies on the medical report obtained by the veteran.

The contention cited at **Finding 8.8** above is cause for concern.
The Australian veterans' jurisdiction's use of up-to-date *independent medical evidence* is a hugely beneficial provision in the Australian context and must never be replaced.

This is supported by Common Law decisions which have enunciated quite clearly, the importance and probative value of expert medical evidence tendered by relevantly qualified medical specialists in support of a veteran's claim or appeal.

The beneficial provisions enshrined in Veterans' Law and further reinforced by subsequent Common Law decisions, is a critical area of ensuring veterans and veterans' widows receive natural justice. These Statutory and Common Law protections must not be vitiated by any introduction of any part of an international veterans' support model.

The lack of up-to-date evidence by a practitioner eminent in the relevant field of medical discipline could be potentially fatal to a veteran's claim and any subsequent VRB or higher tier appeal matter. The precedent set, for example, in *Bushell*[30] and affirmed in *Byrnes*[31]which have been enunciated in subsequent Common Law decisions are binding on the VRB.

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[29] The RAAC Corporation is a Partner Organisation of ADSO, which comprises 18 ESOs operating in mutual support of each other, representing the interests of 90,000 paid-up members. Combined with families and dependants, ADSO's representational footprint covers over 500,000 Australians.

[30] ***Bushell v Repatriation Commission*** [1992] HCA 47; 175 CLR 408; 66 ALJR 753; 109 ALR 30; 16 AAR 1; 29 ALD.

[31] ***Byrnes v Repatriation Commission*** [1993] HCA 51; 177 CLR 564; 67 ALJR 805; 116 ALR 210; 18 AAR 1; 30 ALD 1

They are well-established principles in Veterans' Law. It is relevant persuasive authority such as these that must be protected. Amendments passed by Parliament in December 1988 to the *Veterans Entitlement Act 1986* allowed a veteran to be assessed at the date of hearing (i.e. up to date). That beneficial provision enables the tendering of additional independent up-to-date medical evidence and must also form part of the Advocacy support continuum for prosecuting a veteran's claim or in this instance, an appeal.

The contentions in **Finding 8.8** regarding "*making far less use of independent medical evidence"* are considered on any reasonable measure to be unsustainable in the Australian context due to the considerable body of persuasive authority, the potential damage to natural justice for veterans and widows being achieved and as such, must fall on fallow ground.

8.9 evidence from doctors and medical specialists is confined to their written reports – they do not give oral evidence at a review hearing.

The Australian system allows for medical practitioners or specialists to tender evidence to the VRB either in writing, by telephone link or appear in person at the VRB. The value of the attendance in person or by telephone link by medical practitioners and specialists, cannot be overestimated.

This very significant degree of merits review flexibility puts, in this writer's opinion, the VRB well ahead of its Five Eyes veterans' jurisdictions and must never be discontinued. The beneficiality and flexibility of the Australian approach to medical evidence, speaks for itself.

The provisions of **Finding 8.8** have no place in the Australian system.

FINDING 9

9.1 in Canada and the United Kingdom, the advocacy and support services for veterans reflect their history and the governmental, legal and administrative frameworks within which they work. Neither system could be simply uplifted and transferred to Australia but lessons can be learnt from the way they are structured and operate.

The RAAC Corporation notes this finding and agrees that migrating overseas systems and transplanting them either in part or whole into the Australian veterans' jurisdiction is not that simple.

The RAAC Corporation contends, based on its discussion in respect of **Finding 8**, that it will be a very difficult and challenging process from both a legislative and cultural perspective. The contention that lessons can be learned, has merit and is supported.

9.2 as large, national organisations, the Royal Canadian Legion and the Royal British Legion are able to fund and deliver a range and consistent level of services across their country.

Funding for the VRB's operation is quoted at $6.03m for FY 2017-18 (Table 2).
The Board's report is silent on any other cost incurred in its operation.

It is well settled that a need to ensure the VRB remains adequately funded remains a priority for Government, DVA and veterans. Government must ensure funding is kept at an appropriate level to enable the VRB to deliver its services in accordance with its statutory responsibilities.

9.3 the National Disability Advocacy Program and NDIS Appeals are government-funded programs providing people with disability with, first, access to disability advocacy and, second, assistance with internal reviews and AAT appeals. These programs are delivered by paid employees, not volunteers.

Noted. The extremely diverse client base of NDIS clients requires paid staff to deliver the services provided by the NDIS.

9.4 the National Aged Care Advocacy Program is a government-funded program providing older persons with advocacy services through a national network of nine service delivery agencies. This program is delivered by paid employees, not volunteers.

Noted. The care of elderly and frail clients is as for the NDIS, a very specialised area and nothing les than qualified, dedicated and adequately remunerated staff are essential to deliver the services provided by this Programme and the NDIS. Additionally, the RAAC Corporation notes the Cornall Study's comments on compliance requirements for funded advocacy services; viz

> *Funded advocacy services have to comply with: the terms of the grant agreement (including schedule and work plan); the Disability Services Act including legislated standards and certification requirements; all other relevant legislation and performance requirements; providing services free of charge; and the Operational Guidelines for the NDAP*. (At p.78).

If as is proposed, that veterans' advocacy is professionalised such as a Veterans Advocates Board (p.84), it will need to be a performance-driven entity. Consideration should be given to creating a structure similar to that in operation within the National Disability Advocacy Programme (NDAP). Similarly, the requirement to report Advocacy activity on a regular basis (p.79) will also need to be factored in.

The RAAC Corporation contends:

> The timeline for the establishment of a Veterans' Advocates Bureau will depend on the size and staffing levels approved by Government for each State or Territory jurisdiction and must have a degree of independence similar to the VRB.
>
> It should have as its Principal Officer, a Federal Court judge. It will also need to ensure sufficient work is available to justify its establishment. Staffing levels will need to be assessed as to whether full-time (FTE) or part-time personnel should be used and must also include voluntary Advocates.
>
> In addition, suitable training in the special field of Veterans' Law such as the excellent course developed by Southern Cross University. will need to be delivered. It is anticipated that **as a minimum**, a three-year transition period would be required. It will require considerable consultation with ESOs and must be adequately funded and staffed.
>
> The proposed creation of an Institute of Professional Advocacy will need to be examined in relation to whether or not such an Institute will create unnecessary duplication of roles.

FINDING 10

10.1 under the current ATDP training model, it takes a long time for trainees to achieve accreditation.

The issues surrounding length of attaining accreditation are considered to be multi-factorial as set out in the RAAC Corporation's response[32] to the Productivity Commission's Draft Report.

[32] (Sub DR 203 https://www.pc.gov.au/inquiries/current/veterans/submissions#post-draft), 136pp, pp.68-71.

10.2 as 83.8% of accredited advocates were born before 1965 and only 3.9% after 1979, there is a pressing need (particularly at compensation level 3) for younger advocates to be trained to take their place.

In its initial submission to the Productivity Commission (30/5/18), the Corporation made the following points and recommendations and contends these points are relevant to the Scoping Study:

Limitations to successful advocacy training and monitoring

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

1. A marked reluctance by contemporary veterans to have anything to do with mainstream ESOs, in particular in respect of a new Advocate training programme which is perceived rightly or wrongly, to be underwritten by DVA.

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

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

4. That process is considered to be demeaning and fails manifestly to take into consideration by way of an example, a TIP 4 AAT qualification, which on its face, carries advanced standing and four credit points towards a Graduate Diploma in Legal Studies at some tertiary institutions.

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

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

7. Notwithstanding the necessity for insurance coverage in this litigious age, the continued refrain that it is a matter of ensuring indemnity cover, is tiring to say the least.

8. The closure of VITA coverage in 2021 places the onus on ESOs to examine taking out liability coverage for their entities and Advocates.

Recommendation 9
The RAAC Corporation recommends that, the Commission endorse and recommend DVA engage an external organisation to undertake a root and branch review and audit of the entire ATDP process from training through to actual work performed by veterans' practitioners and that this audit and review be undertaken as part of the process of establishing an Institute of Professional Advocacy in the wake of the Royal Commission into Defence and Veteran Suicide (RCDVS).

Recommendation 10
The RAAC Corporation recommends that, the Commission endorse and recommend to Government that ESOs who utilise veterans' practitioners and who do not have liability insurance coverage, be required to take out liability insurance in order to practice and provide DVA with proof of coverage, on an annual basis.

10.3 younger veterans are unlikely to have the time or patience to undertake advocacy training unless the courses are shorter and more intensive.

The Corporation notes and agrees with this finding and supports the development of a short-form course. As discussed in its response Productivity Commission's Draft Report[33], the Corporation contended that the low uptake has two limbs; viz

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

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

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

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

Similarly, Legacy argued that:

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

Further, the Corporation noted:

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

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

[33] Above, n.25, pp.69-70.

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

10.4 as the ATDP progressively moves towards higher educational standards and greater quality assurance, it needs a more formalised structure and better defined role as the training and licensing authority for veterans' advocates.

The Corporation has significant reservations in respect of this finding.
The move towards higher education standards fails to set out precisely what educational standards the ATDP proposes.

It fails manifestly to have regard to ADF members –current and former, who do not complete upper-level secondary schooling who enlist in the ADF and develop into competent high-level military instructors. In the Corporation's representational sphere that relates to soldiers, in particular Schools Instructors who are at the apex of their profession, followed by Regimental Instructors.

These soldiers bring an enormous wealth of knowledge and adaptability to anything they turn their hands to, including Advocacy. The use of such highly-qualified former military instructors to help drive and conduct TIP training has been the cornerstone of the TIP process. To now suggest higher level education qualifications at the expense of Fourth Wave and Third Wave veterans who are highly competent subject matter experts, requires a serious rethink.

Recommendation 11

Cornall recommends at Recommendation 6.1 that the ATDP *give consideration to the course structure and duration that will be most suitable for future applicants* (Cornall 2018, p.85).
The RAAC Corporation supports this recommendation.

The RAAC Corporation recommends that, on standing the Institute of Professional Advocacy up, the Institute also undertake development of a shortened primary course due to the difficulty of a lengthy, time-consuming and ponderous training regime currently acting as a fetter to recruiting new blood to veterans' advocacy.

The RAAC Corporation also recommends that, a bridging course be developed for TIP-trained Advocates to enable their accreditation under the current regime. This is consonant with the provisions of Recommendation 6.2 that, the ATDP *develop intensive, short accreditation courses at each level in both compensation and wellbeing advocacy in conjunction with ESOs capable of providing the practical experience component* (Cornall 2018, p.85).

FINDING 11

11.1 there is a disconnection between female veterans on the one hand and ESOs and older male advocates on the other which is a significant barrier to them accessing their entitlements.

The discomfort of female veterans discussing their issues with male advocates is understood and acknowledged. It follows that, more effort needs to be made in recruiting female Advocates to remedy this disconnect.

11.2 there is a lack of recognition of female-specific health conditions.

In its initial submission to the Scoping Study, the Corporation made the following points:

The nature of the disability being claimed/appealed. Issues include reproductivity issues, breast cancer and other reproductive cancers, domestic violence, homelessness and sexual abuse and harassment. It will require the skills of a very experienced veterans' practitioner to, in some cases, obtain the necessary information from a female veteran to including harrowing and/or intimate matters to assist with their claim or appeal. The need to have a suitably-sized pool of female practitioners to be available to female clients, is a matter that needs to be addressed as a matter of urgency.

11.3 most female veterans expressed a preference for a female advocate.

Noted and strongly supported. The RAAC Corporation's response to **11.2** and **11.3** apply to this finding as well.

FINDING 12

12.1 family support for veterans—particularly badly injured or vulnerable veterans—is essential for their wellbeing.

It is well held that support of families for veterans is critical to their wellbeing and also in some instances, their very survival.

12.2 veterans' families give up a lot to support veterans throughout their career in Defence and yet they are cut off almost immediately a veteran transitions out.

The callousness of this cutting off, requires no further elaboration.
It is contended by the Corporation that greater involvement of families by Defence in members' transition should be mandatory so that at the absolute completion of the discharge/retirement process, neither the veteran or family are left feeling completely abandoned. This is particularly critical where discharge from the ADF is not voluntary (medical or administrative).

12.3 the study has seen the strong support the partners of Vietnam veterans have given them for decades.

This finding is significant. It is noted that the Scoping Study report is silent on any evidence to support this finding. The Corporation recommends that a survey of Vietnam veterans' spouses/partners be considered with a view to capture if possible what it is that spouses/partners of this cohort of veterans do in terms of providing strong support.

Similarly, the Corporation strongly recommends that information regarding spouses/partners support be sought from the Partners of Veterans' Association (PVA) and the War Widows' Guild, in order to build a clearer picture of strategies that can be applied to spouses/partners of Fourth Wave veterans.

12.4 in recognition of their invaluable contribution, veterans' partners and families should be able to access transition benefits that meet their needs in their own right.

The sacrifices made by military members spouses/partners and children during their careers is well settled. The Scoping Study Report addresses this quite succinctly (at p.93); viz

Today, in many families, both partners work and often have tertiary, trade or other training and qualifications. When members and families are shifted from base to base, the partner will have to leave a professional position and may not be able to find similar – or even any – employment in the new locations. After transition to civilian life, the partner may have trouble resuscitating a career that has been on hold, missing out on promotion and career advancement and creating a six, eight or more years' gap in their employment history. It raises the question whether sufficient recognition is given to the fact that, in many ways, the partner of a member of the Defence Force virtually joins the ADF as well and can pay a price for doing so.

One practical way that situation could be improved would be to extend the Defence Community Organisation's support to ex-Defence family members for two years after the veteran transitions out. Defence could provide all of its standard family assistance and any specific benefits DVA may add for veterans' partners and children to assist them to settle back into civilian life (including employment) during that period. Defence's assistance would include:

- *finding accommodation at the family's post-Defence location (in conjunction with Defence Housing Australia)*
- *developing a career resume and support in gaining employment (including any necessary updating of qualifications or experience)*
- *child care;*
- *education mentoring and support for school age children, and*
- *assistance to cope with any domestic dysfunction (including safe housing if needed).*

Local ESOs could contribute to the DCO assistance as an important part of their welfare support for veterans and their families. As this proposal involves the extension of established programs, the study suggests Defence should carry the cost if the recommendation is accepted.

The debt owed by the nation to serving and former members and their spouses/partners and children, can never be repaid and it is only right and proper that some form of tangible recognition of their sacrifice is considered by Government. The issues addressed above by the Scoping Study are strongly supported by the Corporation.

FINDING 13

13.1 the veterans' advocacy system as presently structured is coming to an end and will not provide veterans and their families with a modern professional sustainable advocacy service into the future.

Noted. The continuing challenge will be to be to recruit and train sufficient numbers to work alongside and eventually replace Third Wave Advocates.

13.2 advocacy services are unevenly spread around Australia with significant variation in the number, availability and quality of those services in different states and territories.

Noted. This is no better exemplified than the Aspen Mapping Project[34] which identified a total of 3000 ESOs/VSOs, all of which were working in isolation to each other (with few with any relevant TIP/ATDP qualifications) in providing services and support to veterans. It was noted that these entities were in the main, pop-up social media platforms which will probably in the course of time see a number of them close down.

[34] Condon, A., *Ex Service Organisation(ESO) Mapping Project*, Final Report Executive Summary, 2016, 18pp.

The study concluded that:

Significant effort is required to ensure there is another generation of volunteers being recruited, trained and mentored (while they gain experience) to continue this important work.[35]

13.3 veterans' advocacy can be more effectively and efficiently delivered through the consolidation and central coordination of the existing advocacy services provided by ESOs and individual advocates to achieve a collective impact.

The establishment of such an entity.4 is seen to be the solution to this issue and would possibly come under the auspices of an Institute of Professional Advocacy..

13.4 the proposed future model of advocacy service delivery will only work if it attracts and accommodates the needs and preferences of younger advocates and maximises the use of modern technology.

Modern technology should never supplant human interaction and involvement.
It should be seen as an adjunct to the human dimension and not take precedence.

13.5 there is no short term fix for the problems confronting veterans' advocacy and support services. Reforms need to be properly implemented and well-funded in line with the funding provided to advocacy services for other comparable cohorts to achieve their desired outcomes.

Noted. According to Condon[36]:

Collaborative organisational concepts/models/options for consideration could include:

- *Developing and committing to agreed common standards for support service delivery,*
- *Alliances/MOUs between ESOs,*
- *Forming ESO cooperatives with ESOs as members of the Cooperative,*
- *Merging some organisations,*
- *Sector self-regulation with Quality Assurance regimes (similar to age care sector).*

The challenges facing ESOs and Fourth Wave veterans are many and will require a considerable amount of cultural realignment and effort, supported by adequate funding, to achieve the outcome asserted by this finding.

RECOMMENDATIONS (CORNALL 2018)

RECOMMENDATION 1 (p.52)

Recommendations 1.1 to 1-3 are supported.

1.4 the Department of Veterans' Affairs reverse its current approach of declining to help veterans lodge primary claims, encourage veterans to come to DVA for assistance and widely publicise that service. The officers assisting them should receive training in veterans' entitlements, client service and dealing with vulnerable veterans. (Cornall 2018 p.19).

[35] Above, n. 34, at p.15.
[36] Above, n.34, at p. 16.

The response to **Finding 8.2** in respect of public employees in the Canadian system assisting veterans to *inter alia* assist veterans to lodge claims, applies equally to this recommendation.
That part of **Recommendation 1.4** is not supported.

The additional recommendation by Cornall regarding training including dealing with vulnerable veterans, has considerable merit and is supported, in particular training in dealing with vulnerable veterans.
To that end, in its 2019 response to the **Productivity Commission's** Draft Report, the RAAC Corporation contended *inter alia*:

> In its initial response in 2019, the RAAC Corporation recommended that DVA consider undertaking research into the development of a staff-specific training module for dealing with vulnerable veterans. It maintains that position.
>
> The RAAC Corporation submits that, a possible starting point would be to examine the competencies in **CHC 41425 Certificate IV in Career Development**.
> The competencies which attach to this certificate include as two of its electives:
>
> - **CHCCCS020 Respond effectively to behaviours of concern; and**
> - **CHCMHS001 Work with people with mental health issues.**
>
> Both electives or their equivalent is considered by the RAAC Corporation to be an excellent starting point in DVA front of house staff being given the necessary skill sets to deal with vulnerable veterans.
>
> Similarly, the RAAC Corporation noted with approval at that time, DVA's commitment to having Delegates undergo training to better manage their time when speaking on the phone with veterans or their families or ESO practitioners (PC Draft Report, p.361).
>
> Communication between Determining Officer/Delegate and the veteran or veteran's family or Advocate is critical and can mean the difference between success of failure of a claim's process particularly in circumstances where the claim is a complex one. Good telephone rapport between DVA and its end-user base, cannot be emphasised enough.
>
> Good communications can also mean the difference in ensuring DVA-veteran communications are conducted in such a manner that no damage by inappropriate comments from staff are made.
>
> The Corporation wholeheartedly endorses this initiative and further recommends that in having staff undergo this training, that DVA consider folding the phone training into the two Certificate IV units previously discussed.

The RAAC Corporation recommends that the Honourable Committee consider seeking furthers and betters from DVA as to what modules are included in training new Determining Officers, PI Delegates and IL Delegates and the effectiveness of that training in enabling staff to discharge their duties..

RECOMMENDATION 2 (p.60)

The Corporation supports and endorses completely, retaining the statutory prohibition on legal practitioners appearing before the VRB currently vide s.147 and soon to be grandfathered into s.252G MRCA 2024. The Corporation also directs the Scoping Study team to the remarks regarding the use of legal practitioners in the Canadian veterans' jurisdiction in its response to **Finding 8**.

RECOMMENDATION 3 (p.69)

The RAAC Corporation supports the recommendation and refers to its comments in respect of **Finding 7**.

RECOMMENDATION 4 (p.69)

The Corporation is not prepared to support this, based on the Scoping Study's recommendation that: *"the Department increase the size of the inhouse advocacy team (including lawyers, advocates and administrative assistants), increase its workload and include MRCA and DRCA as well as VEA cases."*

Such a recommendation is on its face, another step to increase the unevenness of he adversarial system to increase advocacy working on behalf of the Commonwealth against Advocates and veterans as discussed in **Finding 7** in this response.

Significantly, any increase in in-house advocacy will incur additional operating costs (and an additional financial burden on the taxpayer), contributing to a significant increase in the system being weighted against veterans. Such a recommendation is completely lacking in merit and is not supported.

RECOMMENDATION 5 (p.69)

The Corporation supports this recommendation a which is discussed in this response to **Finding 7.3**.

RECOMMENDATION 6 (p.85)

The Corporation supports this recommendation subject to the comments in relation to this submission regarding the review and redevelopment of the current course package and the development of a bridging course for TIP-level Advocates.

RECOMMENDATION 7 (p.90)

The Corporation supports this recommendation and refers the Scoping Study to its remarks in respect of female veterans, in **Finding 11**.

RECOMMENDATION 8 (p.94)

The Corporation supports this recommendation and agrees with the Study that DVA and ESOs have regard to five underlying issues discussed *"confronting veterans'' families,"* in the Report at pp 92-93; viz

1. The need for families to restructure where a veteran has physical disabilities or mental health issues or mental disabilities.

2. Lessons learned from the Vietnam (Third Wave) veteran generation that PTSD is permanent and can impact on families, indefinitely.

3. Families are struggling to cope with the turmoil in their lives that occurs from a family member being a veteran, and the challenges in accessing assistance.

4. The lack of direct input from Fourth Wave veterans into the Study which had as its main contributors, older veterans including those from the Vietnam generation.

5. Whether the structure of veterans' entitlements and their delivery, is effectively meeting the needs of 21st century veterans' families.

RECOMMENDATION 9 (p.96)

The Corporation supports the recommendation that DVA continue to improve its communications with veterans and families.

RECOMMENDATION 10 (p.103)

The Study proposes (at p.9) that the ATDP:

- *be incorporated as the Veterans' Advocates Board (a company limited by guarantee) to end its ill-defined legal status, and*
- *take on a fully developed role as the training and licensing authority for all accredited advocates including: continuing professional development; insurance; ethical standards; codes of conduct; complaints and disciplinary procedures.*

The Corporation supports **Recommendation 10** and believes the establishment of a national structure through the creation of a Veterans Advocates Board (**Recommendation 6.5**), possibly incorporating some, but not all, features from the Canadian Model (**Finding 8**), may be the appropriate vehicle for this to occur.

RECOMMENDATION 11 (p.104)

The Corporation conditionally supports this recommendation.

In its report, the Scoping Study defined two categories of Advocate, namely Compensation Advocates and Wellbeing Advocates. Compensation Advocates are defined thus:

> *advocates assist veterans to access their benefits and entitlements. They can prepare, or assist in preparing, primary claims and obtaining supporting information to be lodged with DVA.* (p.23)

Wellbeing Advocates are defined as persons who:

> *provide support and assistance for veterans dealing with health, personal and family problems including: rehabilitation; medical treatment; accommodation; employment; addiction; financial difficulties; and domestic dysfunction* (p.23).

The recommendation postulates that Wellbeing Advocates will in time take the place of Compensation Advocates. Given that Australia will continue to become involved conflicts and peacekeeping operations, the inference that Compensation Advocates will not again be needed, is not supported.

Similarly, non-operational service will continue to see instances where physical and/or psychological insults to ADF members' systems will continue to occur. It is impossible to see this contention by the Cornall Scoping Study gaining credence.

The Study argues at **Finding 3.3** that:

> "*wellbeing advocates work within a more complex and fluid environment which can involve addressing multiple issues over an* ***indefinite period.”*** (This writer's bold emphasis).

This finding implies a cradle-to-grave type of relationship with a veteran their family as distinct from a Compensation Advocate who, once matters are concluded, moves on to the next client, much in the way a legal practitioner does.

To imply a Wellbeing Advocate is in fact going to be basically bound for an indefinite period of time to supporting a cohort of veterans and their families, will present with challenges which may in any analysis, require more than a single unit of competency folded into a Certificate 4 in Military Advocacy. The Study contends that Wellbeing Advocates will require *"a level 3 wellbeing unit of competency leading to a Certificate IV qualification (similar to the Certificate IV in Community Services)"* (p.9).

The case could be made to have Wellbeing Advocates undertake more than one unit of competency to upskill this category of Advocate to Level 3.

RECOMMENDATION 12 (p.105)

The Corporation supports monitoring evaluation and reporting back to the Minister of the implementation of the recommendations – those that are in fact, implemented.

OTHER RELEVANT CONSIDERATIONS

Perpetuating a Myth

In addressing the issue of a lack of take-up of mainstream ESO membership such as with the RSL, the report discuses at p.7, a comparison between *"RSL clubhouses (bar and restaurant)"* and *"more modern veterans' facilities (with gymnasium, recreation areas, a coffee bar and outdoor adventure activities)."* The report acknowledged that no clear remedy exists for this failure to take up membership with ESOs such as the RSL. This is not surprising.

The Study asserts *Many younger veterans told the study they do not want to join the RSL or seek services from it* (p.7), yet provide no reasons in the Study's report as to what the reasons for non-involvement, are.

The Scoping Study has fallen into serious error by conflating the genuine service and support to veterans through their Returned and Services League (RSL) membership with its description of the League being focused on drinking, eating and poker machines.

This is a hugely vexing and damaging perception held by many and it is disappointing to see the Scoping Study fall for the same fundamental attribution error. It is an affront to the members of the RSL that have the best interests of their fellow veterans, their families and their communities at heart.

The difficulty arises from the RSL at National level some decades ago, granting permission for licensed venues to trade under the RSL name, resulting in the proliferation of large and wealthy licensed RSL Clubs.

In so doing, the RSL sold its soul to the Devil.
These clubs **are not** RSL clubs in the purest sense of the term. The actual RSL entities for financial veteran members are properly and relevantly called **RSL Sub-Branches** and is to these that membership of the League by veterans and serving members, belong. The end result of the Study's assertion is the perpetuation of a very unfortunate and inaccurate perception that RSLs are all about drinking, eating and gambling.

RSL Sub-Branches can be located within some licensed premises such as RSL **clubs**, football clubs and the like whereby they have an arrangement/agreement to hold monthly and other meetings specifically related to RSL matters only and not licensed club matters. Other Sub-Branches are fortunate to have premises separate from, but adjacent to licensed RSL/Ex-service/Services/Diggers Clubs, or are located some distance from those venues.

Notwithstanding the provision of pensions/welfare assistance and support, RSL Sub-branches generally open once a month for members of the League to attend scheduled meetings and may open once a week for a Happy Hour, where members and spouses/partners come together and enjoy each others' company to engage in good discourse.

Some Sub-branches also ensure frail and elderly veterans are collected and brought along from their home or nursing home to engage in and enjoy social interaction with their mates.

It remains a source of constant frustration to members of the League that this unhealthy and unfortunate perception is allowed to continue. Similarly, it remains a continuous frustration that researchers and others, fail manifestly to differentiate between the genuine RSL
Sub-Branch and the licensed club bearing the RSL name to attract paying customers.[37]

It is worth noting that the Study also failed to have regard to the morale-boosting projects such as packing AFOF Care Packages for ADF members overseas. Additionally, social and sporting activities undertaken at RSL sub-branches such as bowls (lawn and indoor) golf, walking groups, healthy living seminars, home and hospital visits; to name a few matters that are part and parcel of their involvement, in a physical wellness, social and camaraderie space that RSL sub-branches foster and respected for. Included in that mix is the care and support of veterans with their claims and VRB appeals.

The preceding analysis finds support in the Productivity Commission's Draft report into DVA (2018), acknowledging the value of ESOs including RSL sub-branches; viz

> ***The role of ex-service organisations***
> *Ex-service organisations (ESOs) play an important role in the veteran support system. They support the broad veteran community, including dependants of deceased veterans. Thousands of hours are volunteered each year to help veterans in all aspects of their post-service lives. They undertake a wide range of activities including:*
>
> - *welfare and mentoring services for veterans and their families*
> - *commemoration and recognition activities and other social events*
> - *transition support for members leaving the ADF*
> - *employment services*
> - *education and training services*
> - *advocacy services*

[37] The author is a Life Member of the League and a member of Cowra RSL Sub-Branch.
He joined the League at Penrith Sub-Branch in December 1969 on return from his first tour of duty in Vietnam.
He is a former President of the Belconnen ACT RSL Sub-branch (10 years) and a former member of the ACT State Branch Executive (3 years).

- *assistance with filing and presenting legal or administrative challenges/appeals to DVA decisions.* (at p. 35 of 704).

ESOs including RSL Sub-Branches, continue to demonstrate long after military service has ended, ***"****amazing degrees of compassion to those in need"* as noted by Lewis.[38]

It follows that, such an unjustified perception of drinking and eating as reported in the Scoping Study's Report, confers a degree of legitimacy to an assertion that is not on any level, warranted.

Generation Gaps

The generation gaps discussed in the Scoping Study (p.7) and at **Finding 1.3** (p.13) are noted.
It is common ground that with each conflict, generation gaps occur due to the bonding nature of the shared experiences of veterans who served in different conflicts and peacekeeping operations.

Human nature being what it is, this difference of service and experience will always be there.
The challenge is to be able to climb over that issue and make RSLs and other kindred ESOs attract membership from Fourth Wave veterans to keep the ESOs alive.

This is critical in an RSL context as that organisation is still the largest ex-service lobby group in Australia. It is also acknowledged by ADSO members as being the lead ESO in terms of the provision of advocacy and related support due the size of the organisation with over 100 years of accumulated experience, its vast resources and very significant corporate experience in this area.

Aspen ESO Mapping Project

In its Report, the Scoping Study lists at p.32, a number of ESOs who took part in the Aspen ESO Mapping Project. The Corporation also participated in this Project, having submitted its response to the Project on 9/3/2016.

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

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

The above contention by the Productivity Commission recommending non-determinative powers is not supported on any level.

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

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

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

[38] Cited on covering sheet, p.1.

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

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

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

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

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

The funding for Legal Aid to assist veterans prosecuting their appeal from the VRB to the AAT or to a Court of superior jurisdiction are come within the budgetary purview of the Commonwealth Attorney General's Department. Veterans appeal funding is contained within that budget and is not quarantined from the main Legal Aid budget.

It follows that, the allocation of funding for a veteran's appeal is subject to the vagaries of competing Legal Aid interests. This is considered to be an unacceptable situation and an one which actually militates against veterans prosecuting an appeal to seek natural justice, with the risk of limited or no funding, causing a veteran to vacate their appeal; an action that is on any view, profoundly unsafe and unsound for veterans and veterans' widows.

The appearance before the VRB represented by a suitably qualified Lay Advocate, usually *pro bono*. The *pro bono* approach espoused by veterans' practitioners is essential in ensuring veterans do have a representative at the VRB. It is noted some entities now employ Advocates and charge a fee for their services.

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

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

On 21/4/2025, the Single Path approach to the VRB was finally and belatedly extended to DRCA veterans.

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

The powers and functions of the Board in respect of Alternative Dispute Resolution (ADR) are enshrined in Division 4 of the VEA[39]. They will be grandfathered to Division 4 and will be enshrined in s.352V to 353A.

The retention of the ADR process and ensure its applicability to all classes of veterans affected by the grandfathering provisos is welcomed. In examining the ADR processes currently in place by the VRB, the RAAC Corporation notes their application and operation will enhance natural justice for veterans and their widows.

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

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

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

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

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

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

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

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

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

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

18.3 Informing the Wider Advocate Cohort of VRB Decisions

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

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

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

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

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

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

The Corporation agrees completely with this option.

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

THE VALUE OF THE VRB AS A TIER 1 TRIBUNAL IN THE VETERANS' MERITS REVIEW AND APPEALS LANDSCAPE

The operation of the VRB as the first port of call in the veterans' appeals/review process is cannot be understated. The critical importance of retaining this merits review Tier 1 Tribunal, cannot be over-emphasised.

It is also considered to be a veteran's and veteran's widow/ers Court of Last Resort. The effectiveness of the VRB's operation and its reputation is further reinforced by the Board winning the 2021 Australian ADR Awards for best Courts and Tribunals ARD Group of the year.

As an inquisitorial Tier 1 Tribunal, charged to act according to substantial justice and the merits of the case, the Board is unique in the veterans appeal landscape. A vital component of the VRB's operation also centres on the fact no lodgement fees are charged by the VRB. Nor are they charged for veterans (Footnote 16 refers).

The adversarial nature of AAT/ART proceedings which focus on points of law and legal practitioners at 10 paces with some financial cost to veterans, can be a stressful and traumatic process for veterans, in particular emotionally vulnerable veterans.

The nature of AAT proceedings was no better enunciated than by a former Registrar and CEO of the AAT and more latterly as VRB Principal Member Colonel Douglas Humphreys CSC OAM[40], who in his evidence[41] to the Royal Commission to a question by Mr Peter Singleton, Counsel Assisting, stated:

> Q. Just to give that some context, DVA decisions made under the DRCA, once they leave the DVA for review, go straight to the AAT; is that right?
>
> A. That's right. Look, I've been in both. I was the Principal Registrar and CEO of the AAT for seven years, so I know how both works. That was before, I should add, the AAT was given -- or the Social Security Appeals Tribunal, the Migration Review Tribunal and the Refugee Tribunal folded into the AAT, so it is a much bigger organisation than when I was there.
> **But the fact is the AAT is far more court-like. That frightens veterans. They don't want to go to court.** (This writer's bold highlighted emphasis).

The evidence by Judge Humphreys is instructive to say the least and a copy of his remarks[42] are set out hereunder; viz

> **EXHIBIT 27-2 (CONFIDENTIAL) - UNREDACTED STATEMENT OF DOUGLAS JOHN HUMPHREYS DATED 1 APRIL 2022**
>
> "PETER SINGLETON: Thank you. Mr Humphreys, that will allow me not to have you rehearse the whole lot. But can I draw your attention to paragraph 22, where you point out that the Veterans' Review Board has jurisdiction to conduct merit reviews of decisions made under the VEA and the MRCA, but not the DRCA. We have heard evidence that explains the historical reasons for that, the different streams of legislation and that's the way it turned out. But are you aware of any argument at the level of principle or logic for why the VRB should deal with two but not three of these Acts?
>
> A. I can think of no argument, in logical principle, why there should not be a single stream in relation to all veterans' entitlements, no matter what Act they are under. The Board is well set up -- and it would require some further training and education, but the Board is well set up to deal with these very effectively and quickly. Perhaps we can go into it later, but if you look at the processing times of the Board at the moment, compared to the AAT, they are chalk and cheese. The Board is processing matters far more quickly, far more effectively. The use of ADR within the Board is resulting in much, much better outcomes, and I think if the Board was given the extra jurisdiction, it would be able to get a hold of those matters and deal with them quickly, effectively and to the satisfaction of the applicants.

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[40] ***Royal Commission into Defence and Veteran Suicide***, 7 April, 2022. Mr Humphreys is now a Judge of the Federal Circuit and Family Court of Australia, Division 2. He holds the position of a Senior Reserve Officer for the Army Command Legal Panel with the rank of full Colonel and is a former Infantry officer prior to transferring to the Australian Army Legal Corps.
He was the Principal Member of the VRB from 2010 to 2018 Transcript of evidence at p. 27-2416. His evidence in a 130-page transcript encompasses **Fol.27-2416:25 to 27-2446:8 (30pp).**

[41] Above, n.23, Block 4 Canberra 7/9/20202, Transcript of Evidence at **Fol 27-2416:25 to 27-2420:41 (4pp).**

[42] Above, n.23, Transcript of Evidence 27-2418:25 to 27-2420:41, 7 April, 2022. Judge Humphrey's evidence covers pp.27-2418:25 to 27-2446:8 inclusive (28.pp) and is a master class for DVA on how to conduct its business.

Q. Just to give that some context, DVA decisions made under the DRCA, once they leave the DVA for review, go straight to the AAT; is that right?

A. That's right. Look, I've been in both. I was the Principal Registrar and CEO of the AAT for seven years, so I know how both works. That was before, I should add, the AAT was given -- or the Social Security Appeals Tribunal, the Migration Review Tribunal and the Refugee Tribunal folded into the AAT, so it is a much bigger organisation than when I was there. But the fact is the AAT is far more court-like. That frightens veterans. They don't want to go to court.

When I arrived at the Veterans' Review Board, it was euphemistically termed by some of the people involved with it as the "Veterans' Refusal Board". We managed to change over the period of time that I was there and it stayed completely the culture, in that it's beneficial legislation, it needs to be applied beneficially.

Now, the Board -- first of all, DVA as the respondent does not appear at the Board. The easiest way I can describe a Board session is a roundtable discussion. There's no bowing. If it is a three-member tribunal, one of the members will go and get the person, they'll come in, they will have their advocate with them.

The biggest thing I have said to members of the Board while I was there is that we wanted people to be heard and I wanted -- and I would say to veterans, "Look, at the end of the hearing, I want you to feel as if you have had everything that you want to say, say. It doesn't matter whether you think it's relevant or not, don't go away from here not saying something you want to say." Now, what that has meant is that in the long-term, people have been happy with outcomes.

Now, one of the most telling things I got was a letter from a widow, a war widow. She wrote to say she wanted to thank the Board for the hearing, but she said, "I didn't get what I wanted, which was a Gold Card and a widow's pension, but I actually now understand why it is I cannot get what I was told I could, and I want to thank you because you made me feel welcome and you made me feel -- and you went through and you explained the process to me." That is an essential difference of the Board to the AAT.

The Board is there to turn around and engage with veterans. It's there to turn around and go through their claims with them, to talk to them.

We have a preponderance of military members of the Board, and when I say "military members", they are people like me who have military service so they actually feel comfortable talking to us because they understand.

They can use the acronyms that are so prevalent in the military, and we can actually get what it's like when they turn around and say -- and a lot of things that people who haven't served would turn around and say, "That's ridiculous, that couldn't have happened", and you can think back to your own service and say, "Well, yeah, it did."

Now, the biggest thing is that -- I have also said we sometimes get people who come in and tell what I can euphemistically describe as recollections that may not necessarily accord with the historical records.

That happens. That's fine. The biggest thing is that we don't call them liars, we don't call them people who are malingering or trying things on. We simply find that the evidence doesn't satisfy the standard of proof. We respect the veteran, we respect their service, that's the important difference. We don't have to necessarily accept what they're telling us, but they're still entitled to respect for being a veteran and having served.

Q. To the extent that you have described a qualitative difference and experience, could I ask you now to turn to what might be called a qualitative difference and that is to ask you about the efficiency of the VRB, how quickly it can deal with processes, what administrative techniques it has got to handle the workload?

A. When I started with the Board, they didn't have alternative dispute resolution as a big thing. There had been a recommendation that ADR be introduced. We went through a fairly exhaustive process of looking at the best models we could come up with and we trialled a number of them.

The fact is that what we call outreach or the Board calls outreach, in which we proactively get in contact with the veteran or the veteran's advocate and say to them, "Well, we've had a look at this case. If you want this, you're going to have to get some more evidence. Can you get that evidence?"

Or we can probably turn around and in relation to -- there might be a number of claims in relation to the assessment of pension. "Well, based on the evidence you've given us, you can probably get this and get that, but you are going to have to go away and get a heap more evidence in relation to the third thing." In many cases what will happen is they will turn around and say, "We're happy with that, please do a decision on the papers and do that." In my statement I describe in my own case where a decision on the papers was done in relation to intervertebral disk prolapse.

Outreach has been an enormously successful thing and it's because we go out, or the Board goes out -- I use "we" because I still have an attachment to the place. The Board goes out and physically engages with people and talks to them about what it is they want, what it is they can get, what they might have to be able to provide. And if they can't provide stuff, as I said, in many cases they're quite happy.

Look, there was some evidence given by Professor Creyke about the Board on Tuesday. I have read what she said. She made some comments about -- that she felt eventually the Board could be folded into the AAT and I'll be honest, I think that would be a disastrous mistake.

When I was at the AAT, the AAT enjoyed bipartisan political support. It doesn't today. That is difficult. What you have is a specialist, small, highly veteran-centric Board that deals with veterans. The AAT is a much, much bigger organisation now than when I was there and its problems are well-known in the media and, indeed, I think the recent Senate report said it should be

disestablished. I don't know what that means. It doesn't sound real flash. That's not indicative of a body that enjoys high levels of bipartisan support."

Contentions

1. It follows that, every attempt should be made at VRB level to have the matters under review dealt with by the Board. The statute-barring of legal practitioners from appearing vide s.147 VEA, is a very good thing. It is noted that this provision will be grandfathered across to a new section **352G(2) MRCA (2024)**.

2. The no legal practitioner policy removes a considerable amount of stress and confusion for a veteran at a first-instance appeal from being confused by lawyerly arguments.

3. This contention finds support from Judge Humphreys who provided in his evidence a very powerful and compelling justification to retain the s.147 VEA (new section 352G(2) MRCA) prohibition on legal practitioners appearing before the VRB.

4. As a Tier 1 Tribunal, the VRB process is designed to be as stress-free as possible and the application of s.147 (now s.352G) goes a long way towards ensuring the stress for a veteran or veteran's widow/er is as minimal as possible.

5. The RAAC Corporation does not support the introduction of legal practitioners at the VRB.

6. The RAAC Corporation's very strong position is that the *status quo* statute-barring legal practitioners from appearing, must never change and supports the provisions of new s.352G(2) continuing this prohibition.

7. Similarly, it is this writer's experience[43] that the Board is not overly legalistic as has been suggested.

8. The Board is as a matter of settled law, obliged to make decisions in which it is required to apply relevant persuasive authority (case law) where necessary. To do any less would constitute an error of law.

9. The Board's decisions are reviewable all the way to the High Court. To do any less without oversight by Courts and Tribunals of superior jurisdiction, opens the Board to committing serious errors of law. It follows that, jurisdictional oversight from the AAT and courts of superior jurisdiction exists all the way to the High Court.

10. The Alternate Dispute Resolution (ADR) processes now in place enables veterans to be managed more effectively. The introduction of the Vulnerable Veterans Protocol[44] which has been applied to this writer's clients, is an outstanding initiative.

[43] The author has been a Practising Lay Advocate at the VRB since 6 June 1986. He holds a TIP 4 Practising Certificate to appear before the Commonwealth AAT. He has represented veterans and widows who have been denied statutory relief under the under the VEA 1986, MRCA 2004, the Repatriation Appliances Programme (RAP); The Vehicle Assistance Scheme (VAS); and Medical Approvals.

[44] https://www.vrb.gov.au/vulnerable-veteran-protocol [Accessed 15/3/2023].

11. A Conference Registrar is always allocated a Senior Member as a riding Senior Member who, on examination of the evidence with the Conference Registrar following a telephone outreach conference or a video conference, is able to exercise a power and function to affirm the decision under review or vary or revoke the decision under review and substitute it with another decision.

12. A Board Member stands in the shoes of the Board in that regard.
VRB Outreach *"Conference Registrars and Board Members are dispute resolution experts"*[45] and are available to guide veterans through the process. A telephone outreach decision that does not favour a veteran can be appealed by a veteran directly to an ADR process or elect for the matter to be heard by the full Board.

13. Based on this writer's experience and with the benefit of qualified privilege, the options open to veterans encountering this process after many years of only being able to appear before a full Board, represent a major and significant improvement on the older appeals and review process of the past.

14. Equally importantly is the capacity now for the Board to hand down an *ex tempore* decision. That does not appear to form part of the Canadian VRAB process which focuses on a six-week turnaround. The exercise of that power and function eliminates weeks of anxious waiting by an applicant to receive the decision. The processes *in toto*, now in place at the VRB can be considered to be a jewel in the crown of the Board.

15. Notwithstanding the granting of Legal Aid, it is common ground that Legal Aid funding has enormous demands on its resources and veteran's Legal Aid funding is not at present segregated from general Legal Aid funding.

16. All Legal Aid funding comes from the same budget allocation creating a pool of competitive bidders (Immigration appeals, Social Security, NDIS etc.,) for the Legal Aid dollar which is a finite resource. Given that Legal Aid also includes means testing, it follows that the more one looks at the VRB at first instance, it is a much more palatable option than the AAT/ART.

17. The depth and breadth of merits review now available to first-level veteran appellants through the VRB processes speaks for itself and establishes firmly the presence of the relevant Human Rights considerations; viz

    The right to a an independent, impartial and competent court or tribunal.

18. In this writer's experience based on the benefit of qualified privilege, the powers and functions exercised by the Board works effectively, as part of the ADR process. Its capacity to value-add to that process cannot be overstated.

19. The resolution strategies now in place obviate completely, the need for legal representatives to be permitted. The natural justice continuum afforded to veterans by the Board in all its resolution Protocols and full Board processes including Vulnerable Veteran protocols, is on its face considered by the RAAC Corporation to enhance to a significant degree, the administration of natural justice.

20. By acting as a Court of Last Resort, the Board in all its manifestations operates to the satisfaction of the parties to a matter before the Board.

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[45] ***A guide to appearing before the VRB – for self-represented veterans and representatives*** (2021) at p.21.

21. The preceding analysis supports the contention that the VRB model *sans* legal practitioners is on every level an excellent, completely fit-for-purpose Tier 1 Tribunal.

22. Similarly, the RAAC Corporation's contention that the prohibition on legal practitioners vide s.147 of the VEA 1986 (new section 352G(2) MRCA) must be retained, is on the facts as enunciated, reasonable in all the circumstances.

23. The RAAC Corporation is cognisant of the decision by the Government (per the Commonwealth Attorney-General) to rebadge the AAT in its present form and replace it with another creature it intends creating, the ART. Regardless of that change, it is the RAAC Corporation's contention that, the work of the VRB as the Court of Last Resort for veterans and widows remains an integral part of the veterans' rights and entitlements continuum.

24. It follows that, as a consequence of the Government's decision to do away with the AAT in its present form, the RAAC Corporation contends that, the necessity to have an operating Board capable of service delivery of a high order is even more critical. It must include having determinative powers throughout the ADR process.

25. Due to the extension of the single path appeal process enabling veterans to appeal to the VRB, no need exists for an Internal Review Officer (IRO).

PAID ADVOCATES

NOTE: The following commentary is extracted from the RAAC Corporation's 2019 response to the Cornall Review (2018), also featured in the RAAC Corporation's 2019 response to the Productivity Commission's 2018 Draft Report.

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?

The following extract for the Corporation's submission to the Productivity Commission's review into DVA addresses this question:

Caveat

A caveat to considering paid advocacy is that at no time in the veterans' support continuum, should voluntary advocacy ever be subsumed or sidelined by paid Advocates.

The Australian ethos of looking after one another is deeply ingrained in the Australian psyche, more so in the psyche of those who serve the nation.

The concept of volunteerism and its altruistic intent must be considered and acknowledged at all times. The concept of a Digger looking after their mates is paramount in the ex-service communities' ethos and within the ADF and must never be sacrificed.

The Corporation contends voluntary advocacy which is the backbone of looking after current and former service personnel must be seen as being completely equal to any proposed remunerative model.

The Corporation's position as to ensuring and maintaining equality of category of Advocates, voluntary or paid, is not negotiable.

Issues Surrounding Paid Advocates

Should paid advocacy become the norm, the following issues will need to be considered:

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

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

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

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

5. A danger exists in that the remunerative nature of such employment may operate to impinge on the legislatively-mandated maximum 8-hr (s.24 VEA)work cap or the 10-hr (s.199 MRCA) work cap. Consideration must also be given by SRDP recipients that offsetting any remuneration by a veterans' practitioner in receipt of a SRDP Pension, may also apply to the detriment of whatever they earn within the 10-hour cap. **This will need to be clarified before the new harmonised MRCA 2024 takes effect on 1 July, 2026.**

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

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

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

Challenges to Recruiting Paid Advocates

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

1. Focused primarily on settling down to a new life either singly or as a family unit and are not interested in joining ESOs;
2. Are primarily in the prime of their life;
3. Focused on obtaining employment in anew work environment;

4. Focused on starting a new life away from the ADF and in the main want to leave that life well behind them;
5. Typically persons who have served on average 10 years in the ADF;
6. Are not interested in joining mainstream ESOs to be elected for Advocacy training;
7. Are reluctant to commit the time required to obtain the relevant qualification; and
8. Have no first-instance interest in veterans' issues.

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

RAAC CORPORATION'S RESPONSE TO FINDINGS IN CORNALL'S FINAL REPORT

ADVOCACY (2018 Productivity Commission Draft Report pp. 384-385)

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

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

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

14.1 Monitoring Advocates' Competency

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

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

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

14.2 Limitations to successful advocacy training and monitoring

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

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

2. Contemporary veterans have lost a significant level of trust and faith in mainstream ESOs due to the previous scandals within RSL NSW prompting the Bergin Inquiry which reported to NSW Parliament on 31/1/2018.

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

4. The demeaning nature of the process which fails completely to take into consideration by way of an example, a Juris Doctor degree (professional equivalent of a Master of Laws), who was also denied RPL for Level 1 Advocacy Training on the grounds that '*You have not conducted a VEA interview.'* The refusal to acknowledge the experience of a TIP 4 AAT qualification, which carries advanced standing and four credit points towards a Graduate Diploma in Legal Studies at some tertiary institutions.

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

6. The haemorrhaging of highly experienced and qualified Advocates and the slow uptake by younger veterans in this space has hampered the development of a larger pool of ATDP-trained Advocates commence practising.

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

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

According to the Queensland RSL:

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

Two issues flow from RSL Qld's contentions:

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

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

The Corporation contends the complexity alluded to by Slater & Gordon is directly attributable to the clunkiness of having to work with three differing legislative regimes and the complexities which flow from that. Whether that clunkiness is reduced or eliminated with the introduction of a harmonised and simplified MRCA 2024, remains to be seen.

The Corporation notes and supports, the contention of the National Veteran Compensation Advocacy Adviser of the Australian Commandos Association[46] that improvements can be made to the ATDP Model *"to include TIP Trained VEA Advocates with a Statement of Attainment and allow them to continue their valuable work to the Veteran Community."*

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

OTHER RELEVENT CONSIDERATIONS

TOR 1: (a) the appropriateness of commercial entities, within and outside Australia, providing advocacy services, including the charging of fees or commissions on statutory entitlement payments;

The VRB has a significant number of legal practitioners who sit as Senior or Ordinary Members as the case may be. According to a former client of this writer and now a practising Solicitor, the makeup of Board members is as follows:

> *Of the 46 VRB members, 26 of them or 78 per cent have LLBs six of these have LLMs and four are barristers. The barristers have a total of 51 years' legal experience.*
> *Of the remainder there are five medical doctors, two psychologists and thirteen retired military/civilian members.*[47]

The inference to be gained from this census is that there is always a Board Member with a legally trained mind, sitting on a Board or providing Overwatch on Conference Registrars involved with an applicant on any of the other limbs of the Dispute Resolution process discussed in this submission.

A veteran has the right to retain a solicitor to assist them with their claim or appeal to the VRB up to but not including the veteran's attendance at hearing, due to legal practitioners being statute-barred from representing at the VRB.

Instances occur from time to time where disputes have arisen between veterans and their solicitors. An example is the recent dispute between practitioners and their veteran clients as reported on 12/2/25 in the Sydney Morning Herald.[48]

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

[47] Allan Joyce (2025), Submission to the Senate FADT Committee ***Review of Schedule 9 of the Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation)*** **Act 2025**.

[48] ***RSL NSW president's firm launches legal action against veterans,*** Harriet Alexander, 12 February 2025 Sydney Morning Herald online at https://www.smh.com.au/national/nsw/rsl-nsw-president-s-firm-launches-legal-action-against-veterans-20241115-p5kqv6.html [accessed 19/2/2025].

The RAAC Corporation contends that, the relevant legal membership bodies and Bar Associations should have processes in place to deal with instances such as this. Such an occurrence can have deleterious effects on vulnerable and traumatised veterans and their families.

The RAAC Corporation understands also, that a veteran who retains a solicitor to assist with claims or VRB case preparation must ensure they sign a costs agreement before instructing their solicitor.

The RAAC Corporation considers agreeing to costs to be of paramount importance before instructing their solicitor.

As to costs awarded and payment of fees, it is the RAAC Corporation's understanding that the quantum charged by a solicitor remains a matter for the veteran and their solicitor to agree to terms on.

TOR 2: (b) representation by Legal Practitioners at the VRB
The case for remaining the statute-barring of legal practitioners at the VRB vide the current s.147(2) and the future s.3252(G)(2)is strong and has been made out. The comments in evidence by Judge Humphreys puts the issue beyond doubt; viz "*But the fact is the AAT is far more court-like.*
That frightens veterans. They don't want to go to court. (At 52 of this submission).

TOR 3: (c) regulation, training and professional discipline arrangements for advocates;

The use of volunteer Advocates to represent their clients has been in place in this writer's experience for 39 years and has served the veteran community well. The training accreditation and retention of veterans under the new ATDP will continue to challenge ESOs due to the issues discussed in this brief.

It will fall to the future Institute of Advocacy to ensure Volunteer Advocates must on every view, be treated on the same level as paid Advocates.

TOR 4: (d) the consideration of previous reviews undertaken into the advocacy model, including recommendations made and subsequent implementation or lack thereof.

The documents comprising this brief address a number of issues that the Corporation has submitted in the past and are considered to be equally relevant today.

TOR 5: (e) any related matters.

THE VRB

The case for retaining the VRB is considered to be made out.

The Canadian model of advocacy with their Review Hearing and VRAB is one that should not be considered by the Commonwealth.

The Canadian VRAB restrictions on attendance are disturbing and should not be considered on any level in the Australian veterans' jurisdiction.

The Canadian VRAB policy of restricting medical practitioners and specialists from attending in person is also a significant fetter to Canadian veterans achieving natural justice.

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

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

The above contention by the Productivity Commission recommending non-determinative powers is not supported on any level.

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

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

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

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

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

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

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

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

The funding for Legal Aid to assist veterans prosecuting their appeal from the VRB to the AAT or to a Court of superior jurisdiction are come within the budgetary purview of the Commonwealth Attorney General's Department. Veterans appeal funding is contained within that budget and is not quarantined from the main Legal Aid budget.

It follows that, the allocation of funding for a veteran's appeal is subject to the vagaries of competing Legal Aid interests. This is considered to be an unacceptable situation and an one which actually militates against veterans prosecuting an appeal to seek natural justice, with the risk of limited or no funding, causing a veteran to vacate their appeal; an action that is on any view, profoundly unsafe and unsound for veterans and veterans' widows.

The appearance before the VRB represented by a suitably qualified Lay Advocate, usually *pro bono*. The *pro bono* approach espoused by veterans' practitioners is essential in ensuring veterans do have a representative at the VRB. It is noted some entities now employ Advocates and charge a fee for their services.

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

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

ON 21/4/2025, the Single Path approach to the VRB was finally and belatedly extended to DRCA veterans.

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

The powers and functions of the Board in respect of Alternative Dispute Resolution (ADR) are enshrined in Division 4 of the VEA[49]. They will be grandfathered to Division 4 and will be enshrined in s.352V to 353A.

The retention of the ADR process and ensure its applicability to all classes of veterans affected by the grandfathering provisos is welcomed. In examining the ADR processes currently in place by the VRB, the RAAC Corporation notes their application and operation will enhance natural justice for veterans and their widows.

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

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

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

The Commission's recommendation in respect of requiring the VRB to clearly state its reasons for varying or setting aside or for that matter affirming a decision under review (the latter not addressed by the PC in the Draft Report), is unusual. The Board does in some cases, hand down an *ex tempore* decision once a hearing is concluded and will as required by law send a written copy of its reasons for decision to veterans and their ESO representatives. There is no *ex tempore* decision in the Canadian system which instead relies on a mandated six-week turnaround.

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

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

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

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

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

18.3 Informing the Wider Advocate Cohort of VRB Decisions

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

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

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

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

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

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

The RAAC Corporation agrees completely with this option.

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

RECOMMENDATION

That the Committee note the above and

1. Consider the matters discussed therein when making their findings and recommendation.

Submitted for your information and action.

Noel Mc Laughlin
Chairman
RAAC Corporation
Advocate TIP 4)
9/5/2025

ATTACHMENT A

From: [redacted] **On Behalf Of** REPATRIATIONCOMMISSIONER
Sent: Wednesday, 8 May 2024 8:24 AM
To: Noel Mclaughlin < >
Cc: REPATRIATIONCOMMISSIONER <REPATRIATIONCOMMISSIONER@dva.gov.au>
Subject: Presumptive Liability [SEC=OFFICIAL]

Good morning Noel

I have received the below advice from the department regarding your enquiry on presumptive liability.

It may be helpful to explain at the outset that, unlike the United States Department of Veterans' Affairs the Australian repatriation system does not currently use 'presumptive' arrangements that automatically enable benefits for certain conditions to be provided where service of a particular type has been rendered. However there are a number of approaches that are utilised under the Acts to simplify claim assessment or where a condition will be considered to be related to military service unless the contrary is demonstrated.

The most similar approach to 'presumption' is for declared occupational conditions (referred to as 'deemed conditions') specified under Sections 7(1), 7(2), 7(8) and 7(9) of the *Safety, Rehabilitation and Compensation (Defence-Related Claims) Act 1988* (DRCA). These provisions specify certain types of employment or exposure and conditions where employment of the defined type is taken to have caused the condition unless the contrary is proved. Where service of the relevant defined type, timeframe and/or exposure is rendered, under these provisions:
the employment in which the employee was so engaged shall, for the purposes of this Act, be taken to have contributed, to a significant degree, to the contraction of the disease, unless the contrary is established.

Deemed conditions under DRCA arising from employment involving a specified type of exposure are defined in the Federal Register of Legislation - Safety, Rehabilitation and Compensation (Specified Diseases and Employment) Instrument 2017.

Further, there are specific DRCA provisions for defined conditions covering ADF Firefighters who have performed that duty for a specified duration. Details of these conditions are at https://clik.dva.gov.au/military-compensation-srca-manuals-and-resources-library/liability-handbook/ch-22-declared-occupational-diseases/224-specific-types-service/2245-adf-firefighters

ADF Firefighters at Point Cook between 1957 and 1986 are also covered for a range of conditions via DRCA deeming arrangements. Details of these conditions are at https://clik.dva.gov.au/military-compensation-srca-manuals-and-resources-library/point-cook-firefighters-adf-firefighters-scheme

Finally there are provisions allowing for the deeming of conditions under DRCA relating to employment in the F-111 deseal-reseal program at https://clik.dva.gov.au/military-compensation-srca-manuals-and-resources-library/f1111-desealreseal/list-diseases-and-revised-icd-codes

Both the *Veterans' Entitlements Act 1986* and the *Military Rehabilitation and Compensation Act 2004* contain provisions that specifically state the Commissions are not entitled to presume a condition relates to military service. However, Commissions have authorised the use of streamlining or straight through

processing (collectively known as ‘decision-ready’) to simplify processing, reduce evidence required and enable acceptance of claims in circumstances where evidence available to DVA indicates that cohorts of ADF members will have experienced a relevant exposure and have rendered service of a relevant type and duration (which can vary according to types of service, rank and other factors) where exposures in service will meet a causal factor defined in the Repatriation Medical Authority Statements of Principles (SOP), and where the condition has onset within the relevant latency period required in the SOP. Conditions covered under decision-ready arrangements and the relevant causal SOP factor are attached.

DVA continues to explore opportunities and the evidence base to expand conditions covered under these arrangements and to simplify the claims process.

Importantly, neither deeming under DRCA nor decision-ready policies enable or require the ‘automatic’ acceptance of a claim. Should a veteran not meet the relevant parameters for a condition to be accepted under deeming or decision-ready arrangements, a claim would of course be able to be assessed under the normal liability processes to establish a connection to service.

It is worth noting that under the proposed reforms to veterans’ legislation it is planned to allow presumptive acceptance of liability for certain conditions under the MRCA, with the initial list of conditions being based on those conditions that are currently considered under the ‘decision-ready’ arrangements noted above.

These provisions will have the effect of enshrining into legislation the existing administrative practices that are aimed at reducing the evidentiary requirements for individual liability claims and the time taken to process those claims. The new legislation will allow liability for certain conditions to be accepted under the MRCA on presumed contribution by their employment, without the need to establish a causal link to service on a case-by-case basis.

Detailed information regarding the Australian Government’s proposed reforms to veterans’ legislation can be found here.

I hope this information is of assistance, let me know if you need anything further and I can put you in direct contact with the responsible business area.

Kind regards

[redacted] | Executive Officer to Kahlil Fegan DSC, AM
Repatriation Commissioner
Department of Veterans’ Affairs
[redacted]

ATTACHMENT B

***Atkins and Repatriation Commission* [2014] AATA 42 (30 January 2014)**

8. He referred me to paragraph 26 of the Respondent's submissions on jurisdiction which had been filed before the hearing and states as follows:
The applicant now seeks a further review of the same 1996 decisions of the Commission which have already been the subject of review by the Board and this Tribunal. Insofar as the present application seeks review by the Tribunal of decisions it has already reviewed in the past, this Tribunal is itself functus officio.

9, Mr Atkins strongly disagreed with the statement above, as he believes this Tribunal has jurisdiction to hear his application, and his grievances…

THE RESPONDENT'S SUBMISSIONS

1. Ms Buchanan relied on the Respondent's submissions on jurisdiction in which she provided a detailed history of Mr Atkins' claims as a basis for her oral submissions.
Ms Buchanan submitted that the VRB had recognised Mr Atkins was seeking review of the two 1996 decisions in his letter of 19 September 2012 to the Repatriation Commission.
As the applications had already been decided, the VRB could not re-open them, and had accordingly held that it had no jurisdiction to hear the applications, and was *functus officio.*

15. Ms Buchanan also referred to the jurisdiction of this Tribunal in this matter, citing section 25 of the AAT Act, and sections 135 and 175 of the VE Act

THE TRIBUNAL'S FINDINGS AND CONCLUSIONS
24. The final point I make is that the decision of the VRB of 3 June 2013, held that it had no jurisdiction to hear Mr Atkins' application for review of the 1996 claims, (which he asked for in a letter of 19 September 2012 at T26). Having made its decisions on the 1996 applications, the VRB recognised, correctly, that it was *functus officio.* Mr Atkins cannot obtain a pension at special rate by further appealing to the VRB.

2. Further, as the VRB has held that it has no jurisdiction, the AAT has no reviewable decision before it, and cannot review Mr Atkins' application, which must accordingly be dismissed.

DECISION

26. The Tribunal has no jurisdiction to review Mr Atkins' application and accordingly dismisses it.

***Garton and Repatriation Commission (Veterans' entitlements)* [2022] AATA 647 (18 January 2022)**

15. In a decision dated 19 May 2021, the Tribunal determined that it has no jurisdiction with respect to the PLS debt: *Garton and Repatriation Commission*.[1] The Tribunal noted that the Application for Review was finalised by an agreement reached between the parties which was incorporated in the Section 42C decision. Senior Member Illingworth stated:
[The Section 42C decision] brought to an end that application and the jurisdiction of the Tribunal. That application, on its face, cannot be reopened. The Respondent correctly submits that the Tribunal is, at the moment, functus officio in respect of that matter
and it cannot be reopened as an avenue to which the Applicant can seek review of the decision made pursuant to section 206 of the VEA.[2]

22. In *Commonwealth of Australia v Snell*,[6] ('*Snell*') the Full Court of the Federal Court made it very clear that the Tribunal is not a court and therefore is not bound by the same doctrines which apply to courts, such as estoppel, when the Tribunal is asked to reconsider a previous decision of its own in relation to the same parties and on the same facts.[7]
The same can be said about any supposed rule or principle that the Tribunal is *functus officio*. Clearly, if the Tribunal is not bound by the doctrine of issue estoppel and can review its own earlier decisions between the same parties, it is not *functus officio* either.[8]

Respondent's submissions
23. In his written submissions dated 30 June 2021 and 11 October 2021 the Applicant identified the 'unresolved' issue as the unrealisable asset. The Applicant has not made an application under the relevant hardship rules under s 52Y VEA to give rise to consideration of that issue. In any event, it was not an issue within the Tribunal's jurisdiction in the Application for Review which he seeks to have reinstated. Accordingly, for the purpose of the reinstatement application it is not an 'unresolved' issue warranting reinstatement.

24. Regarding the Application for Review, an Agreement was reached as to the terms of a decision of the Tribunal, and the Tribunal made the Section 42C decision on 3 May 2018 in accordance with those terms. The Tribunal is therefore *functus officio* with respect to the Section 42C decision and lacks the jurisdiction to review the decision.

25. The power granted under an Act to undertake a review of a particular decision can, as a general rule, be exercised only once. It is the power to review a specific reviewable decision; once it has reviewed that decision and decided to affirm it, overturn it or remit it for fresh assessment to the decision-maker, its statutory power to review is exhausted. At that point it is *functus officio* meaning that it no longer has any power to change or reconsider the decision it has made: *Kuchlmayr*[9] and *Goodricke*.[10]

26. The cases referred to by the Applicant such as *Snell, Wiegand,* and *Goodricke* are not authority upon which the Tribunal can rely to grant the applicant's request for reinstatement: *Goodricke*.[11]

34. On the basis of the evidence before it and the relevant authorities, the Tribunal finds that once exercised, the Tribunal's power to review a decision is exhausted and it is *functus officio*. The Tribunal is satisfied that the Section 42C decision is not affected by jurisdictional error and accordingly it is a decision to which the *functus officio* rule applies. Accordingly, the Section 42C decision that reflected the terms of the Agreement between the parties, and which determined the Application for Review, cannot be re-opened or reinstated. This is not a case in which there has been a new determination by the Respondent, giving rise to another entitlement to merits review: *Plumb v Comcare*.[20] Nor is the Tribunal considering an application for review of a reviewable decision which is an apparent attempt to relitigate the same issues that were determined in an earlier Tribunal decision: *Matusko and Australian Postal Corporation*.[21]

The Tribunal notes that the issue which the Applicant claims was 'unresolved' by the Section 42C decision, is that concerning the 'unrealisable asset'. As he stated in his email to the Respondent dated 12 April 2021, he believes that under the hardship provisions they are entitled to have the superfund property disregarded as an unrealisable asset under VEA s 52Y.

However, the Applicant had not then, nor has he since, made an application under this provision. Even if the Tribunal had determined that the Application for Review should be 'reinstated', the issue which the Applicant seeks to have resolved would not have been before the Tribunal for its consideration. The Tribunal's conclusion that it is *functus officio* with respect to the Application for Review is respectfully the same as that reached by Senior Member Illingworth in *Garton and Repatriation Commission*.[22]

DECISION

35. The application is dismissed.