



RSL AUSTRALIA

**SUBMISSION FOR THE REVIEW OF THE
NATIONAL LEGAL ASSISTANCE PROGRAM**

Submitted 27th October 2023

Submission details

This submission is made on behalf of the Returned & Services League of Australia, the nation's largest Ex-Service Organisation. RSL Australia is a federation of its independent State Branches who in turn are comprised by their Sub-branches, representing 147,000+ members. State Branches and their Sub-Branches deliver a diverse range of services which are tailored to reflect the priorities and needs of veterans in each State.

RSL Australia has never received Commonwealth funding under the NLAP.

RSL Australia consents to its submission being published on the Review website, being identified in the report as having made a submission and being quoted with attribution in the report of the Review.

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Introduction

The RSL welcomes this opportunity to make a submission to the National Legal Assistance Partnership (NLAP) Review.

The Review provides an opportunity for the Federation Funding Agreements (FFA) Framework and the NLAP to recognise the need for the inclusion of veterans as a vulnerable group facing disadvantage.

It also represents an opportunity for Australian Government funded legal assistance to capitalise on the important work of the Royal Commission into Defence and Veteran Suicide and the Defence and Veterans' Legal Service by offering uniform, nationwide provision of legal assistance to all veterans and their families.

There is a demonstrated need for both this recognition, and the provision of legal assistance, for veterans and their families. Whether this be to access the veterans' entitlements system, military superannuation, the provision of advocacy, law reform, or in other areas of the law, the expansion of services for veterans would have a tangible and lasting impact.

Our organisation believes strong consideration should be given to transitioning the Defence and Veterans' Legal Service to become a permanent legal service provider for veterans and their families.

The RSL looks forward to working with the Federal Government to improve the provision of legal assistance to veterans and their families.

Yours faithfully

A handwritten signature in dark red ink that reads "Phil Winter". The signature is written in a cursive, slightly slanted style.

Phil Winter
CEO
Returned & Services League Australia

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Submission

Scale and Legal Need

To what extent does current legal assistance meet the overall scale and breadth of the legal needs of disadvantaged Australians?

The RSL suggests that the current legal assistance available to veterans and their families across the country is inadequate and does not meet the urgent needs of this vulnerable group. These needs are driven by the acknowledged complexity of both the veterans' entitlements scheme¹ and military superannuation², and the specific legal needs of veterans.

In a 2018 report, the *Veterans' Advocacy and Support Services Scoping Study*, Robert Cornall AO recommended that, 'the Australian Government establish, fund and promote a free Veterans' National Legal Service and a Veterans' National Legal Helpline', principally to assist veterans with representation for claims appeals at the Administrative Affairs Tribunal (AAT)³. While this is a positive recommendation, the RSL does not believe it goes far enough in addressing the need for legal assistance of the nation's veterans.

Cornall's report also outlined the declining number of community-based advocates available to assist veterans and their families to access the veterans' entitlements scheme⁴. Evidence suggests free community advocate numbers have only declined since 2018⁵, with a growing number of fee-for-service, non-legal advocates advertising their services to veterans. While the quality of the work of these fee-for-service advocates can be questionable, the fees they charge are often excessive to the point of predatory. Additionally, there is an inherent conflict between the advice provided by fee-for-service advocates, and their financial motives.

Beyond entitlements and military superannuation, the unique needs of veterans when accessing the civilian legal system may also not be being met.

The Defence and Veterans' Legal Service's (DAVLS) submission to the Royal Commission into Defence and Veterans Suicide outlined the vast array of legal issues, beyond veterans' entitlements and compensation, for which veterans consistently request assistance:

'Often, our clients are experiencing a range of health, social and family problems that result in complex, interwoven legal issues, involving poor mental health, substance dependency, homelessness, debts, fines, financial hardship and family breakdown.'

This demonstrates the need for assistance for veterans and their families with other legal issues, including family law, employment law, human rights torts/discrimination and criminal law.

¹ Australian Government, Department of Veterans' Affairs, (Web Page, 2023) < https://www.dva.gov.au/sites/default/files/2023-02/Veterans_Legislation_Reform_Consultation_Pathway_2023.pdf >.

² Parliament of Australia, Department of Parliamentary Services, Leslie Nielson 'Military Superannuation – Myths and Reality' (Web Page, 10 January 2008) <https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/03JP6/upload_binary/03JP6.pdf;fileType=application%2Fpdf#search=%22library/prspub/03JP6%22 >.

³ Australian Government, 'Veterans' Advocacy and Support Services Scoping Study', (Web Page, December 2018) [69] < <https://www.dva.gov.au/get-support/advocacy-representation-advice/what-advocate> >.

⁴ Ibid [37].

⁵ S Bates, M Bedford, I Katz, 'Baseline Study of Current and Future Availability of Ex-Service Organisation Advocacy Services – Final Report' (Web Page, July 2021) [70] < [unsw_advocacy_capacity_research\(2\).pdf](https://www.unsw.edu.au/advocacy-capacity-research(2).pdf) >.

The scale of need among the veteran population is demonstrated by both the number of clients serviced by the Department of Veterans' Affairs (more than 320,000 in 2019⁶), and Veteran Population data from the 2021 Census, which shows more than 580,000 veterans living in Australia (and that close to 400,000 of these are not, or not yet, DVA clients)⁷.

As such, the RSL recommends that legal assistance is provided to all veterans and their dependants, with clear, consistent guidelines on the support provided.

The RSL recommends this is based on the Veterans' Advocacy Service, Legal Aid NSW model, which helps anyone who has ever served in the Australian Defence Force (ADF) including those who are still serving, and their dependants, and provides:

'free independent advice about your rights and entitlements under the veterans' entitlements legislation (Veterans' Entitlements Act 1986, Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 and the Military Rehabilitation and Compensation Act 2004). We also give advice on the merits of lodging claims and appeals and your chances of success, and can represent you in these matters at the Veterans' Review Board, Administrative Appeals Tribunal and Federal Court.

We also provide assistance with claims for retrospective invalidity pensions with the Commonwealth Superannuation Corporation (CSC) and applications to the Commonwealth Ombudsman.

We also provide advice on a range of other legal issues in civil law, family law and crime⁸.

The RSL **recommends** that:

- Legal assistance is provided to all veterans and their dependants, with clear, consistent guidelines on the support provided.
- This support is based on the model utilised by the Veterans' Advocacy Service, Legal Aid NSW.

⁶ Australian Government, Department of Veterans' Affairs, *Veteran Numbers – Backgrounder*' (Web Page, 21 December 2019) < <https://www.dva.gov.au/newsroom/media-centre/record/veteran-numbers-backgrounder#:~:text=DVA%20currently%20provides%20services%20and,and%20including%20Reservists%20%E2%80%93%20is%20641%2C000> >.

⁷ Australian Bureau of Statistics, Australian Defence Force Service, *'Service with the Australian Defence Force: Census 2021'* < <https://www.abs.gov.au/articles/australian-defence-force-service>

⁸ <https://www.legalaid.nsw.gov.au/my-problem-is-about/my-right-as-a/veteran/veterans-advocacy-service#accordion-7cdca75ff-item-87bbc6394e> >.

Funding Distribution

What roles should the Commonwealth and the jurisdictions play in determining or administering funding distribution between legal assistance service providers?

While the Department of Veterans' Affairs (DVA) is a Federal Government Department, as is the Administrative Affairs Tribunal (AAT), the approach to providing legal assistance to veterans differs on a State-by-State basis, depending on the funding model in each State.

The RSL believes the Commonwealth should be responsible for determining and administering funding for legal assistance provided to veterans and their families. The RSL suggests that this role could best be accomplished by managing the funding of legal assistance nationally, through the establishment of a national legal service for veterans and their families.

The RSL further suggests this could best be done by transitioning the role of the Defence and Veterans' Legal Service (DAVLS), the Federally funded legal aid service supporting veterans engaging with the Royal Commission into Defence and Veteran Suicide, to become a permanent legal service provider for veterans and their families.

DAVLS staff have extensive knowledge of the veterans space, a positive and growing reputation among veterans, established referral networks and relationships with veteran-focused service providers, and experience dealing with veterans' claims matters. The service will be transitioning away from support for veterans engaging with the Royal Commission following the end of private hearings and represents a ready-made legal assistance service for veterans.

The RSL suggests that a transitioned DAVLS' service model could be based on the model used by the Veterans' Advocacy Service, Legal Aid NSW.

The RSL **recommends** that:

- The legal assistance available to veterans and their families be uniform across the country.
- There is a consistent approach in terms of distribution of funding, coordinated and administered by the Commonwealth.

Disadvantaged Groups

Are there other systemically disadvantaged groups, either existing or emerging, who are not supported adequately?

As acknowledged in the NLAP issues paper, veterans are not included as a National Priority Client Group under the NLAP. The paper also acknowledged that the Productivity Commission inquiry report, a *Better Way to Support Veterans (2019)*, identified veterans as a priority group, in particular for funding for AAT appeals.

While the final report of the Royal Commission into Defence and Veteran Suicide is not due to be published until 17 June 2024, evidence from the Interim Report of the Royal Commission and public hearings clearly indicates that veterans should be considered a systemically disadvantaged group.

Examples of this disadvantage and need for additional support include:

- Many veterans transitioning out of the ADF have had no contact with the civilian legal system, only the military justice system
- The Australian Institute of Health and Welfare (AIHW) estimates that while most veterans transition from the ADF to a socioeconomic status at or above the average of the general population, a significant cohort, particularly those who transition involuntarily, are at significant wellbeing risk⁹
- The significant mental health and wellbeing challenges of engaging with the veterans' entitlements and civilian legal systems¹⁰
- The lack of specialised or veteran-informed legal assistance available, catering for the potentially different needs of veterans¹¹
- The shortage of appropriately trained and paid and volunteer 'veterans' advocates' trained to assist veterans to engage with the veterans' entitlements system¹²

The RSL **recommends** that veterans and their families are included in the list of systematically disadvantaged groups under the NLAP.

⁹ Australian Government, Australian Institute of Health and Welfare, 'Understanding the Wellbeing Characteristics of Ex-Serving ADF Members' (Web Page, 01 September 2022) [02] < <https://www.aihw.gov.au/getmedia/2545ce40-ea0d-45c7-8e93-5e934b5053ae/wellbeing-characteristics-of-ex-serving-adf-members.pdf?v=20220818121805&inline=true> >.

¹⁰ Law Council of Australia, Department of Veterans' Affairs, 'Veterans' Advocacy and Support Services Scoping Study' (Web Page, 05 September 2018) [09] < <https://lawcouncil.au/publicassets/61b6e425-bad5-e811-93fc-005056be13b5/3502%20-%20VASS%20Scoping%20Study.pdf> >.

¹¹ Above n.9.

¹² Australian Government, 'Veterans' Advocacy and Support Services Scoping Study' (Web Page, December 2018) [36] < <https://www.dva.gov.au/sites/default/files/veterans-advocacy-support-services-scoping-study-report.pdf> >.

Rural, Regional and Remote Service Delivery

How should the challenges of service delivery in regional, rural and remote locations be addressed through future agreements?

The RSL recommends consideration be given to increasing the provision of online legal assistance to veterans and their families located in regional, rural and remote locations.

The RSL also recommends, where possible, leveraging the existing network of physical locations utilised by Legal Aid Commissions and Community Legal Centres across the country to provide accessible spaces for veterans and their families to access legal assistance.

Any legal aid assistance funded by the NLAP should emulate the rural, regional and remote service delivery model of DAVLS. DAVLS staff work in every state and territory, regularly using local facilities at LAC offices, within local veteran support services, and Veterans' and Families' Hubs. Additionally, DAVLS can meet clients in locations requested by the client to ensure feelings of safety during appointments.

The RSL **recommends:**

- Consideration is given to funding the expansion of online legal assistance services
- Leveraging the existing network of physical locations utilised by Legal Aid Commissions and Community Legal Centres across the country to provide accessible spaces for veterans and their families to access legal assistance

Holistic Service Provision

How should holistic service provision improve outcomes and reduce the demand for legal assistance services?

DVA is currently reviewing its 'advocacy' model, used to support veterans accessing the veterans' entitlements system. Any certainty regarding the provision of legal aid funding for appeals could be built into that reformed 'advocacy' model. This should include a two-way referral pathway, between ex-service organisation advocates and legal aid practitioners, as well as an effective referral process between States. Where claims assistance could be provided by a qualified, free, and independent advocate, rather than a legal practitioner, this would reduce the demand for legal assistance services.

Additionally, veterans may have several unique needs as clients, requiring referrals to services outside legal or veterans' entitlements system services. Where possible, legal assistance providers should be aware of, and facilitate referrals to, service providers to offer a best-practice, trauma-informed and holistic model of care to their clients.

The RSL believes the model used by DAVLS is a good example of how this would operate in practice. The warm referral pathways utilised by DAVLS to refer clients to appropriate services and staff within Legal Aid Commissions (LACs) and private law firms, result in appropriate, timely referrals to subject matters experts. DAVLS also employs a social worker, who responds to immediate concerns for client safety and more general wellbeing needs, and facilitates referrals to other service providers.

The RSL **recommends** that the model of care utilised by the Defence and Veterans Legal Service is used by whichever bodies are funded under NLAP to provide legal assistance to

Advocacy and Law Reform

How should legal assistance funding be provided to legal assistance providers for advocacy and law reform activities?

Advocacy

While using the term 'advocacy' in a different sense than the NLAP Issues Paper, the provision of advocacy to veterans is an important legal assistance funding consideration. In the veterans' space, 'advocates' are:

'people who are trained to help veterans access DVA services and payments. They are generally volunteers and work for one of more ex-service organisations (ESOs). They tend to be members of the veteran community, such as veterans and partners of veterans. They are not DVA staff members.'^{13'}

Multiple studies have demonstrated the ongoing and urgent need for veteran advocates in Australia¹⁴. In 2018, the DVA commissioned UNSW *Baseline study of current and future availability of ex-service organisation advocacy services* report that³ outlined¹⁵:

- *'There is an ongoing need for advocacy services for veterans and their families, given the complexity of the legislation and claims process, and the diversity of needs in accessing advocacy services;*
- *The existing advocate workforce is currently just meeting demand; and*
- *The workforce is expected to decline 30 per cent in the next five years.'*

While the RSL supports the ongoing involvement of paid and volunteer advocates to aid veterans in Veterans Review Board (VRB) and Reconsideration appeal processes, it is also of the view that advocates should have access to quality legal advice, where required. This could be achieved through funding 'advocacy' support via the NLAP.

The RSL recommends that the Federal Government provides long-term, and sustainable needs-based funding for legal assistance, to enable the delivery of advocacy services, and support the continuous improvement and delivery of advocate training and mentoring. This includes at the Administrative Review level, where practising lawyers may provide representation to a veteran.

Legislative Reform

Veterans' legislation is widely acknowledged as being complex and difficult to navigate. While ESOs, such as the RSL, hold much institutional knowledge of the policies and processes involved in the veterans' entitlements system, this is not the case for legislative reform.

This is pertinent when considering the reform of veterans' entitlements legislation by the current Federal Government, proposing to move to a single ongoing veterans'

¹³ Australian Government, Department of Veterans' Affairs, 'What is an Advocate?' (Web Page, 23 May 2023) < <https://www.dva.gov.au/get-support/advocacy-representation-advice/what-advocate> >.

¹⁴ Above n.3.

¹⁵ Above n.5, [16].

entitlement scheme. While the consolidation of the legislation will hopefully simplify claims going forward, existing entitlements will be grandfathered. This means that, in the medium term at least, there may be an increase in the complexity of the system. The outcome of this reform is likely to have unforeseen consequences and lead to a significant

The RSL **recommends:**

- That the Federal Government provides long-term, and sustainable needs-based funding for legal assistance, to enable the delivery of advocacy services, and support the continuous improvement and delivery of advocate training and mentoring. This includes at the Administrative Review level, where practising lawyers may provide representation to a veteran.
- Funding legal aid assistance to handle the additional case law load potentially created by reform of veterans' entitlements legislation, and any required future amendments to the single act that arise following implementation.

body of case law.

Administrative Processes

How might Commonwealth administrative processes, including appeals, be reformed to reduce the demand for legal assistance services and improve outcomes for legal assistance service clients?

- The Australian Government will introduce legislation this year to establish a new, fit-for-purpose federal administrative review body, to be named the Administrative Review Tribunal (ART), which will replace the Administrative Appeals Tribunal (AAT).
- While the final form of this body is to be confirmed, the NLAP Review should take these changes into account, and consider establishing a permanent, trained cohort of legal representatives to represent veterans appealing DVA claims decisions.
- The use of Alternative Dispute Resolution mechanisms provided through the Veterans Review Board (VRB) is a positive development in the appeals process of the veterans' entitlements system. The VRB has demonstrably reduced the number of veterans requiring legal assistance, while improving outcomes for veterans through a less adversarial process.
- Statistics taken from the Veterans Review Board Annual Report 2021 - 2022 show that 2781 appeals were lodged in that year and 2785 were finalised (page 22). Of these appeals, 956 were under the VEA and 1829 under the MRCA. 82.8% of these appeals were resolved via Alternate Dispute Resolution process and 17.2% went to hearing (page 23). In 28.1% of the cases that went to hearing the VRB was able to make a new and favourable decision. In 2021 - 2022, 67 cases proceeded to the AAT, which represented 2.4% of the total VRB decisions (page 24). The VRB reported at page 21 that *'All applications, including those that proceeded to hearing, were resolved on average in 4.6 months.'*^{16'}

The RSL **recommends:**

- Consideration be given to establishing a permanent, trained cohort of legal practitioners to represent veterans appealing DVA claims decisions through administrative processes.
- Greater use of the Veterans Review Board.

¹⁶ Australian Government, Veterans' Review Board, 'Annual Report 2021-22' (Web Page, 2021-2022) <https://www.vrb.gov.au/vrb-publications/annual-report-2021-22> >.

Reporting Processes

To what extent are the current reporting processes sufficient to support monitoring, continuous improvement and achievement of objectives?

While evidence suggests that former and returned service personnel are over-represented in criminal justice institutions, insufficient attention has been paid to the desirability and feasibility of a veterans' court or list in Australia¹⁷.

Australian police, courts and prisons have not systematically collected data on military status, and so it has never been possible to determine the numbers of ex-service men and women who are in prison, or if they are over-represented compared to the general population¹⁸.

It is unclear the number of veterans and their families who have contact with the legal system, and who have received support. It is also unclear if veterans and families who do have this contact are able to afford legal assistance.

The RSL believes that reporting processes should be updated to identify when and where veterans come into contact with police, courts and prisons. This will not only aid in better understanding the need for veterans' assistance through the NLAP but could form the basis for interventions and support for veterans within the legal, justice or corrective services systems.

The RSL **recommends** that reporting processes be updated to identify when and where veterans come into contact with police, courts and prisons.

¹⁷ Clare Davidson et al, 'Serving those who Serve?: A Critical Assessment of the need for a Veterans' Court or Veterans' List in Australia, *Current Issues in Criminal Justice*, (Web Page [119-135]).

¹⁸ K Toole, E Waddell, 'Concerns about Veterans and the Criminal Justice System' (Web Page, 18 December 2019) <<https://www.lawyersweekly.com.au/the-bar/27141-concerns-about-veterans-and-the-criminal-justice-system>>.