

Department of Veterans' Affairs Submission to the Independent Review of the National Legal Assistance Partnership

The Department of Veterans' Affairs (DVA) continues to simplify and improve the veterans' entitlements system so that the majority of veterans and families are able to access their entitlements without needing to seek external support or assistance.

However, DVA acknowledges that there will always be a proportion of the veteran community who will seek external support and assistance, including legal representation, to assist them to access their entitlements. DVA supports equitable and easy access to these services wherever a veteran or their family chooses to engage them.

The benefit of legal assistance through National Legal Assistance Partnership (NLAP)

DVA notes that matters relating to military entitlements and military compensation claims are Commonwealth civil law priorities under the NLAP. DVA suggests that Australian veterans and their families should also be identified as a National Priority Client Group under the NLAP to help facilitate their access to legal assistance should they require it.

DVA acknowledges assistance provided through the NLAP helps facilitate improved outcomes for veterans' and families who are able to access it, especially those in vulnerable circumstances. However, approaches to providing legal support to veterans under the NLAP varies across jurisdictions. For example, NSW has a specialised Veterans' Advocacy Service (VAS) which provides assistance across a wide range of DVA entitlement and ancillary legal matters, whereas other jurisdictions have a subject matter test which provides access to legal services for Administrative Appeals Tribunal (AAT) and judicial review matters for some, but not all, DVA entitlements.

Similarly, DVA notes that access to legal support in some jurisdictions is conditional on the basis of the veterans' service type/history, including that legal aid is only available if the veteran has rendered warlike or operational service. A brief outline of DVA's understanding of the various legal aid services provided by each jurisdiction is at **Attachment A**.

DVA recognises the unique nature of military service and the sacrifice demanded of all who have served in the defence force no matter their service history. This is also acknowledged in the *Australian Veterans' Recognition (Putting Veterans and their Families First) Act 2019*, which outlines that support for all veterans should be provided in a way that respects their dignity and enhances their lives. In line with this, DVA's legislation and programs generally allow for all veterans who served in the Australian Defence Force (ADF) to apply for support and entitlements.

For example, DVA's non-liability health care initiative provides fully funded treatment of all mental health conditions for current and former full-time members of the ADF (and some Reservists), irrespective of whether their service was warlike or operational.

In line with this, DVA considers the NSW Veterans' Advocacy Service (VAS) model, which provides assistance to all veterans on a range of entitlement and legal matters, to be the most equitable and beneficial for supporting veterans and their families. We suggest it be mirrored across all jurisdictions to ensure veterans and their families are able to access legal assistance when they require it.

Current use of third party representatives and ongoing access to legal assistance

DVA acknowledges that there is a proportion of the veteran community who will seek external support and assistance to access their entitlements, including from legal assistance providers through the NLAP, veteran advocacy providers such as ex-service organisations (ESOs) and other 'fee-for-service' advocacy providers.

Veterans and their families often seek advice and support through advocacy services, which are predominantly provided by volunteer advocates engaged through ESOs (Ex-Service Organisations). These services are provided for free or at a low cost, and advocates providing these services have access to specific training through the Advocacy Training and Development Program (ATDP). DVA provides financial support for the provision of ESO advocacy services to veterans through grant funding, and partners with ESOs in the management the ATDP.

In addition to these free or low cost services there appears to be a growing number of 'fee-for-service' advocacy providers, who charge a fee to assist veterans' and their families to access their DVA entitlements. DVA is aware of concerns raised about some of these service providers. In particular cases, unscrupulous operators provide services to veterans in exchange for a share of their entitlements. DVA is currently exploring options to address this issue, including ways to better inform veterans and their families of the options available to them should they choose to seek third party advice and/or representation which would include through the NLAP.

DVA supports continued funding through the NLAP. Matters involving serving and former ADF members should continue to be identified as Commonwealth civil law priorities, in order to assist veterans and their families with legal advice and assistance when they seek it.

It is worth pointing out that previous reviews into veteran advocacy and support, most notably the 2018 Veterans' Advocacy and Support Services Scoping Study and the Productivity Commission report, 'A Better Way to Support Veterans', have also examined the issue of funding veteran legal assistance and advice through various mechanisms. DVA notes that the Government has not responded to recommendations made by these reviews.

Conclusion

DVA is actively working to simplify and improve the system so that the majority of veterans and families are able to access their entitlements without needing to seek external support or assistance. However, DVA acknowledges that there will always be a proportion of the veteran community who will seek external support and assistance, including legal representation, to assist them to access their entitlements.

In line with this, DVA considers that legal assistance provided through the NLAP provides valuable support to these veterans and their families, including veterans in vulnerable circumstances.

DVA supports legal assistance that is equitable for all veterans across Australia, and provides access to legal assistance for those who need it based on circumstance, not service or claim type. In particular, DVA would welcome the NSW VAS model being mirrored across all Australian jurisdictions.

DVA also suggests that Australian veterans and their families be identified as a National Priority Client Group under the NLAP to help facilitate their access to legal assistance should they require it.

Attachment A

State / Territory Legal Aid Commission	Description of assistance
Legal Aid New South Wales (Veterans' Advocacy Service (VAS))	<p>VAS assists war veterans, former and current serving members of the Defence Forces and their dependants to obtain pensions, compensation and other entitlements administered by the Department of Veterans' Affairs (DVA), including advice on the merit of lodging claims and assistance in appealing to the Veterans' Review Board, the Administrative Appeals Tribunal (AAT) and the Federal Court.</p> <p>This service is available for all veterans and is <u>not</u> subject to a means test¹.</p>
Legal Aid Queensland	<p>Veterans or war widows who are claiming for war-caused disability benefits can get assistance with their cases from Legal Aid Queensland. Veterans or war widows can access free legal help to appeal decisions made about disability entitlements to the AAT. The veteran must have performed the relevant service in war times or other operations overseas.</p> <p>This assistance is <u>not</u> subject to a means test, although it is subject to a merits test².</p>
Victoria Legal Aid	<p>Victoria Legal Aid (VLA) may make a grant of legal assistance to a war veteran or to a dependant of a war veteran for an appeal to the AAT from certain decisions of the Veterans' Review Board (see below link for more details).</p> <p>This assistance is <u>not</u> subject to a means test, although it is subject to a merits test³.</p>
Legal Aid ACT	<p>The Legal Aid Commission may make a Grant of Legal Assistance to an applicant for assistance who is a war veteran or a dependent of a war veteran in relation to appeals to the AAT from certain decisions of the Veterans' Review Board (see below link for more details) if any of the below apply to the case:</p> <ul style="list-style-type: none"> • the veteran may incriminate themselves, • complexity, • requires significant medical evidence, • the veteran is unable to represent themselves due to a list of vulnerabilities or disadvantage, or • the Commission decides it involves an important or complex questions of law. <p>This assistance is <u>not</u> subject to a means test, although it is subject to a merits test⁴.</p>
Tasmania Legal Aid	<p>The Legal Aid Commission may make a grant of legal assistance to an applicant for assistance who is currently serving or ex-service personnel or a dependant of currently serving or ex-service personnel in relation to appeals to the AAT from certain decisions of the Veterans' Review Board (see below link for more details).</p> <p>This assistance is not subject to a means test, although it is subject to a merits test⁵.</p>

¹ Legal Aid NSW, <https://www.legalaid.nsw.gov.au/what-we-do/civil-law/veterans-advocacy>

² Legal Aid Qld, <https://www.legalaid.qld.gov.au/Find-legal-information/Factsheets-and-guides/Brochures/Free-legal-help-for-war-veterans-the-war-veterans-legal-aid-scheme>

³ Legal Aid, Victoria, <https://www.handbook.via.vic.gov.au/guideline-5-war-veterans-matters>

⁴ Legal Aid ACT, https://www.legalaidact.org.au/sites/default/files/files/publications/la_act_guidelines_aug_2017.pdf, Guideline 5, p. 35

⁵ Legal Aid Tasmania, <https://www.legalaid.tas.gov.au/wp-content/uploads/2022/10/Guidelines-22-NLAP-2020-2025-v3.pdf>, p. 42

<p>Legal Services Commission South Australia</p>	<p>The Legal Services Commission may make a grant of legal assistance to an applicant for assistance who is a war veteran or a dependant of a war veteran in relation to appeals to the AAT from certain decisions of the Veterans' Review Board (that must be war caused) (see below link for more details) if any of the below apply to the case:</p> <ul style="list-style-type: none"> • the veteran may incriminate themselves, • complexity, • requires significant medical evidence, • the veteran is unable to represent themselves due to a list of vulnerabilities or disadvantage, or • the Commission decides it involves an important or complex questions of law. <p>This assistance is <u>not</u> subject to a means test, although it is subject to a merits test⁶.</p>
<p>Legal Aid Western Australia</p>	<p>The Legal Aid Commission <u>may</u> make a Grant of Legal Assistance to an applicant for assistance who is a war veteran or a dependant of a war veteran in relation to appeals to the AAT from certain decisions of the Veterans' Review Board (see below link for more details) if any of the below apply to the case:</p> <ul style="list-style-type: none"> • the veteran may incriminate themselves, • complexity, • requires significant medical evidence, • the veteran is unable to represent themselves due to a list of vulnerabilities or disadvantage, or • the Commission decides it involves an important or complex questions of law. <p>This assistance is <u>not</u> subject to a means test, although it is subject to a merits test⁷.</p>
<p>Northern Territory Legal Aid Commission</p>	<p>The Commission may make a Grant of Legal Assistance to an applicant for assistance who is a war veteran or a dependant of a war veteran in relation to appeals to the AAT from certain decisions of the Veterans' Review Board (see below link for more details), if any of the below apply to the case:</p> <ul style="list-style-type: none"> • the veteran may incriminate themselves, • complexity, • requires significant medical evidence, • the veteran is unable to represent themselves due to a list of vulnerabilities or disadvantage, or • the Commission decides it involves an important or complex questions of law. <p>This assistance is <u>not</u> subject to a means test, although it is subject to a merits test⁸.</p>

⁶ Legal Aid SA, https://lsc.sa.gov.au/cb_pages/commonwealth_guidelines_civil_law.php, Guideline 5

⁷ Legal Aid WA, https://www.legalaid.wa.gov.au/sites/default/files/National_Commonwealth_Guidelines.pdf, Guideline 5, p. 21

⁸ Legal Aid NT, <https://www.legalaid.nt.gov.au/wp-content/uploads/Chapter-4-Guidelines.pdf>, Guideline 5, p. 41