

Returned and Services League of Australia (RSL)



SUBMISSION TO SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE COMMITTEE INQUIRY INTO DRAFT VETERANS' AFFAIRS LEGISLATION AMENDMENT (OMNIBUS) BILL 2017



1. INTRODUCTION

The Returned and Service League of Australia (RSL) appreciates the opportunity to provide a formal submission to the Senate Committee's Inquiry into the Draft Veterans' Affairs Legislation Amendment (Omnibus) Bill 2017. The following submission has been compiled with input from the RSL State Offices.

This submission addresses some issues pertaining to Schedules 1-8 in both the draft Bill and the Explanatory Memorandum. As instructed the Schedules in the attached submission will be treated as the Terms of Reference.

1.1 TERMS OF REFERENCE 1 – Schedule 1 - Veterans' Review Board:

Schedule 1. of the Bill amends the provisions of the Veterans' Entitlements Act 1986 under which the Veterans' Review Board (VRB) operates. The amendments made by Schedule 1 will modernise and improve those operations by aligning certain provisions with similar provisions of the Administrative Appeals Tribunal Act 1975.

Response:

1.1 - These amendments bring the Review Board are more in line with the functioning of the AAT. In particular, it is legislating to provide for alternate dispute resolution. Anecdotally this process is working very effectively and ensures the claimant can explore issues and options with a view to arriving at a consent outcome.

The RSL sees this as a further cost cutting measure to clear the backlog of cases. It has always been the approach of the RSL that there is no withdrawal unless it is the wish of the veteran based on a merits assessment by his/her advocate.

1.2 - The Veteran's Review Board has always been the first level appeal and the veteran should always have his/her say and should remain as such.

- S1374 - It should be noted that there should be no issues with the implementation of these changes.
- SS155 (8A) - It is noted that there is no requirement for the Principle Member to provide reasons for the dismissal of an application. In our view, conferring the right of dismissal on the Principal Member will reduce the perception of veterans that they have access to justice and also has the real potential for those veterans whose behaviour is in question to be denied access to a fair and public hearing by competent, independent and impartial tribunal and we oppose this change.

There should be a requirement to provide reasons and rationale for the decision. The additional powers conferred on the Principal Member to dismiss an application for the review of decisions if he or she is satisfied that the application is:

- Frivolous, vexatious, misconceived or lacking in substance;
- Has no reasonable prospect of success; or
- Is otherwise an abuse of the process of the Board.



1.3 - We understand that at present the current dismissal powers ensure matters are processed in a timely manner to benefit both the VRB and the Veteran. Current legislation does not appear to provide authority for the Principle Member to make an assessment on the validity of the case.

In relation to the exchange of all relevant documents – this is appropriate and will assist the VRB to arrive at a correct or preferable decision.

It is our view that increasing the dismissal powers of the Principal Member negates the fair and equitable basis of the current three-member board and could have the potential to deny some veterans access to justice and a fair review of a decision.

Specifically, the Statement of Compatibility with Human Rights in the Explanatory Memorandum, the Overview of Legislative Amendments states that the amendments in Schedule 1 among other things, will “promote public trust and confidence in the decision-making of the Board”.

“Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR) provides that: ‘All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by competent, independent and impartial tribunal established by law’.”

It further contends that “none of the proposed amendments will have an adverse impact on access to justice by applicants for a review of a decision”.

We believe that the amendments have the potential in this instance of having an adverse impact on some veterans’ access to justice and as a result, we oppose this change.

Veteran law is complex and there are many ‘grey areas’ with injuries and illnesses and their connection to service.

The injuries and illnesses sustained by some veterans because of their service are extensive and can have a significant impact on their understanding and expectations of the claims and appeals processes of the Department of Veterans’ Affairs (DVA).

Illnesses such as depression, anxiety and chronic pain can alter behaviour, emotional reactions and the ability to reasonably and calmly converse with others, including Advocates, representatives from the DVA and medical professionals.

In many cases, veterans lodging claims are affected by more than the injury or illness. They are often dealing with emotions associated with the loss of their military career, their inability or reduced ability to provide for their family, difficulty in obtaining employment post-service if they are injured or ill and strained relationships with family and friends.



They are often disconnected from their mates suddenly as they leave the military and move out of Defence housing and away from friends. Financial pressures associated with the loss of their career can place significant strain on the family as a whole.

These circumstances that are well documented in recent submissions to Senate enquiries, can lead to severe emotional reactions to the claims and appeals processes.

In our view, these factors lead to increased potential for a perception to be made by an individual that a veteran is pursuing a frivolous claim or their approach is vexatious. This could especially occur when a veteran seeks to represent his or herself at the VRB, rather than utilise an Advocate.

A panel review by three members of the VRB is more likely to be perceived as independent and impartial than the Principal Member alone.

Whilst we understand some veterans may lodge claims with fraudulent or other intent, in our experience, these are few and far between.

Almost all veterans who approach RSL DefenceCare for assistance want to lodge a claim with the DVA as they believe that an injury or illness they have *is* or *maybe* connected to their military service.

A few openly admit they are not sure if their injury or illness is connected to service or that the connection is tenuous at best, but most of these accept the DVA or VRB's decision if it is in the negative. Many are grateful for the opportunity to see if they qualify for assistance from the DVA.

Of the veterans, we represent at the VRB, many ask us to appeal a decision to the VRB because they want the opportunity to be heard and have their case reviewed by a panel. The panel affords them the chance to be heard by three individuals in contrast to the one delegate at the DVA.

In our experience, members of a panel often make comments during a hearing that indicate they are not in agreement about various aspects of the case. There are numerous instances of Appeals being upheld, when according to the legislation, the link to service was tenuous.

To allow one member to decide on the prospect of success of an Appeal is likely to reduce the belief of veterans that they have access to justice in the way they do now. When we posted this proposed change in a forum for veterans and Advocates, the comments received agreed with our position and against this amendment.

1.4 - The RSL supports the new section 133A

1.5 - The RSL supports the new section 137A



1.6 - The RSL supports the new section 142(2) (h)

1.7 - The RSL supports the insertion of the new sub section 145C (4)

1.8 - The RSL supports the amendment to section 148

2. Terms of Reference – Schedule 2 – Specialist Medical Review Council

Schedule 2 amends the Veterans' Entitlements Act 1986 to modernise Part XIB, which establishes the Specialists Medical Review Council (the SMRC). The amendments proposed would improve the SMRC's operations by: simplifying the appointment process for councillors; progressing Whole of government requirements for digital transformation; removing red tape in commencing reviews; and providing for reimbursement of certain travel expenses. Related miscellaneous amendments are also proposed.

Response:

2.1 - The RSL supports the payment of approved travel expenses.

2.2 - The RSL does not see any issue with Schedule 2 as it appears to be aimed at improving the current process.

3. Terms of Reference – International Agreements.

Schedule 3 of the Bill repeals and replaces section 203 of the Veterans' Entitlements Act 1986 to provide the Minister for Veterans' Affairs with the power to make agreements with foreign governments to cover the provision of benefits and payments including rehabilitation that are comparable to those provided by the Repatriation Commission or the Military Rehabilitation and Compensation Commission under the:

- *Veterans' Entitlement Act 1986*
- *Military Rehabilitation and Compensation Act 2004*
- *Australian Participants in British Nuclear Tests (Treatment) Act 2006:*
- *Proposed Safety, Rehabilitation and Compensation (Defence- related Claims) Act 1988.*

Response:

3.1 - The RSL considers this legislation to be very confusing and suggests this needs further exploration. It is the RSL's understanding that DVA does not provide payments to persons from other countries (this is confirmed in s203). DVA currently provides treatment and acts as an agent in relation to the investigation for the payment of pensions by the relevant Government.



There needs to be further information providing regarding the extent of the rehabilitation which will be provided and how it could be arranged. Would DVA simply be the agent acting on behalf of another Government, or would DVA enter into a full rehabilitation plan without input from the other Government.

The proposed changes to the legislation provide little or no information regarding the parameters around the provisions of rehabilitation. There also needs to be more clarity offered regarding what payments could be made under this legislation.

3.2 - Given that Australians now serve as part of Coalition Forces it appears that no consideration has been given to similar agreements being struck with foreign countries outside of the Dominions of the Crown for those members who now call Australia their home.

3.3 - This has been historically a reciprocal agreement with Governments of other Dominions. We require more information regarding arrangements to provide rehabilitation to Australian Citizens.

3.4 - From an advocate prospective, the work involved in dealing with Governments from other countries could be complex.

4. Terms of Reference – Schedule 4 – Employer Incentive Scheme payments.

The purpose of Schedule 4 is to amend the Veterans' Entitlements Act 1986, the Military Rehabilitation and Compensation (Defence-related Claims) Act 1988 (if enacted) to strengthen the legislative foundation for providing certain rehabilitation assistance to eligible serving and former Defence Force Members, reservists and cadets.

This assistance involves payments to employers under the Employer Incentive Scheme in the form of wage subsidies to encourage them to engage injured veterans who have found it difficult to compete in a tight labour market.

Response:

4.1 - The RSL supports incentivised schemes to encourage injured veterans into employment for their own well-being and that of their families. The RSL considers this to be an excellent initiative which clarifies existing legislation and policy guidance if administered correctly.

But like any government payments they can be open to abuse. The amendment must ensure that the payment of wage subsidies is to those employers who are genuinely willing and able to offer injured veterans suitable, sustainable, productive and long term employment.



5. Terms of Reference – Schedule 5 – Disclosure of Information

The purpose of this Schedule is to amend the Military Rehabilitation and Compensation Act 2004 and make contingent amendments to the proposed Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 to facilitate information sharing between the Military Rehabilitation and Compensation Commission and the Commonwealth Superannuation Corporation (CSC) with respect to certain service related compensation claims.

The proposed amendments would implement a recommendation by the Review of Military Compensation Arrangements (2011) (the MRCA Review) intended to improve the information sharing framework for incapacity and superannuation benefits between the Military Rehabilitation and Compensation Commission and the CSC.

While the Department is authorised to request information from the CSC to assist with the calculation of incapacity payments, there is no express provision to allow the Military Rehabilitation and Compensation Commission to provide information to CSC to assist with the CSC's assessment of superannuation benefits. At present, all requests to the Military Rehabilitation and Compensation Commission for information from CSC are undertaken in accordance with the Freedom of Information Act 1982. This process is cumbersome and time consuming, and accounts for approximately 20 per cent of all Freedom of Information requests received by the Department.

Response:

5.1 - As there is an independent PIA currently being conducted as part of Schedule 2 of the Digital Readiness Bill 2017 there should be provision for DVA to review and assess the Disclosure of information for all existing Veterans entitlement and compensation Acts and provide a singular approach to the disclosure of information.

5.2 - As the various Schedules within each Bill are intended are considered as the machinery of Government underpinning all of the current legislation the disclosures should be incorporated for assessment into the Digital Readiness independent PIA assessment.

5.3 - CSC already accesses DVA information via The Freedom of Information Act. These amendments will streamline the process and may make it timelier. It is understood that information required by CSC in relation to invalidity payments is somewhat different from that required by DVA for Incapacity or Above General Rate VEA payments.

5.4 - It is suggested that DVA and CSC should agree on a common format for the medical information they request. This would ensure we achieve more effective and timely process, that results in reducing the processing times for veterans.



6. Terms of Reference – Schedule 6 – Delegation

Schedule 6 of the Bill would amend the Military Rehabilitation and Compensation Act 2004 to provide for the delegation of the Minister for Veterans' Affairs power and functions.

Response:

6.1 - The RSL supports the new section 437A

6.2 - This appears to be another amendment to simply streamline the process and bring SRCA and MRCA in line with the VEA. This will have no overall effect on advocates.

7. Terms of Reference – Schedule 7 – Legislative Instruments.

Schedule 7 of the Bill would amend Veterans' Affairs portfolio legislation to exempt certain legislative instruments from subsection 14(2) of the Legislation Act 2003. The amendments would enable these legislative instruments to incorporate material contained in another non-disallowable legislative instrument or other non-legislative writings as in force from time to time.

Response:

7.1 - This is a very complex matter and requires additional legal advice.

7.2 - The RSL suggests an opinion be obtained from Bruce Topperwein regarding the exemption of certain legislative instruments.

8. Terms of Reference – Minor Amendments

Schedule 8 of the Bill would repeal redundant and spent provisions administered in the Veterans' Affairs portfolio concerning benefits that are no longer payable under the portfolio Acts, and make amendments consequential to those repeals. The Schedule will also make some minor corrections to clarify existing provisions of the Veterans' Entitlements Act 1986.

The Schedule also includes the consequential amendments to other Acts which result from the amendments that repeal the redundant and spent provisions of the Veterans' Entitlements Act 1986 and the Military Rehabilitation and Compensation Act 2004.

The removal of these redundant provisions and the clarification of other provisions will simplify veterans' affairs legislation and make it more accessible for individuals wishing to interpret the current provisions.

2nd reading speech - The amendments in schedule 8 of the omnibus bill were included as part of the lapsed Repeal Day (Spring 2015) Bill 2015. They repeal redundant and spent provisions concerning benefits that are no longer made and cannot be made again. Removing these redundant elements will make veterans legislation easier to interpret.



Response:

8.1 - This looks to remove the legislative capacity to make Clean Energy Payments – if the grand fathering rules do not apply.

8.2 - The RSL is quite concerned about having the three Acts in play that could cover a veteran's service and the impact accepted disabilities have on a veteran who wants to claim Special Rate (VEA) or a Special Rate Disability Pension (MRCA).

8.3 - Currently, veterans can be excluded from claiming those rates of pension because a service related condition had it occurred under another Act.

8.4 - For a veteran who cannot work as a result of his service related disabilities and his family, have to survive on Special Rate and Special Rate Disability Pension for the remainder of their lives.

8.5 - To be excluded because of an injury resulting from the same service that has been accepted under another Act causes the family great distress. We would like to see this anomaly corrected.