Australian Government
Department of Veterans' Affairs
OFFICE OF THE SECRETARY

Mr David Sullivan
Committee Secretary
Senate Foreign Affairs, Defence and Trade Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Mr Sullivan

I refer to your 6 December 2016 letter to me, enclosing a copy of a letter from Senator Back, Chair of the Senate Foreign Affairs, Defence and Trade Committee (the Committee), in which he invited the Minister, Department of Veterans' Affairs or relevant agencies to make a written submission in relation to the Committee's inquiry into the *Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016* (Digital Readiness Bill.)

I would like to thank the Committee for the opportunity to make a written submission and I am pleased to provide the Committee with general information about the Digital Readiness Bill, as well as specific information that addresses the reasons for referral/principal issues for consideration, contained in Senator Urquhart's referral request.

Should issues about other aspects of the Digital Readiness Bill be raised during the submission stage, and the Committee would like further information about those issues, I would be very happy to provide the Committee with that further information.

My submission follows as an attachment to this letter.

Yours sincerely

S. Lewis PSM
Secretary

25 January 2017

Encl.

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Senate Foreign Affairs, Defence and Trade Committee inquiry into the *Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016*

Submission provided by the Department of Veterans' Affairs

Computerised decision making

The Department of Veterans' Affairs (DVA) is currently looking for several ways to leverage available technology to provide a better service to veterans and clients. Computerised decision-making would enable some elements of the Repatriation Commission's and Military Rehabilitation and Compensation Commission's decision-making processes to be conducted by computer processes rather than by delegates. Automating these processes will free up resources and result in benefits such as shorter wait times and faster payments and services for DVA clients.

For some time, members of the veteran community have listed slow processes and long wait times as high priorities for the Department's attention. These provisions would address these issues in two ways: in enabling further routine process automation in the short term and preparing the Department for an upgrade of its ICT systems in the medium term.

The Department of Veterans' Affairs (DVA) is undertaking veteran-centric reform to significantly improve services for veterans and their families by re-engineering DVA business processes and ICT systems.

To realise the full potential of these reforms and provide veterans with the quickest and most accurate decisions possible, it is important that, in addition to existing processes being simplified and streamlined, some decision-making is also automated. In anticipation of planned business and ICT reforms to achieve this, legislative amendment is required to provide a sound legal basis for computerised decision-making.

Younger veterans consistently inform the Department of Veterans' Affairs that they would like to engage with DVA electronically. To enable such online services, the use of expert computer systems to make formal determinations must be legislatively sanctioned to ensure that it is compatible with the legal principles of authorised decision making.

Similarly, older veterans provide feedback to the Department on the length of time for some reimbursement processes and transactions. The computerised decision-making powers would enable many of these routine reimbursements to be processed faster.

The Department has seen the potential benefits that online and automated services can bring to veterans. As part of DVA's veteran centric reform, a model project ("Lighthouse Project") was developed in 2016 in conjunction with the Department of Human Services.

Lighthouse initially focused on how DVA could reduce the length of time it takes to process a claim.

The use of computer and computer-assisted decision making will not only improve the timeliness and accuracy of decision making but it will enable staff to deal in person with more complicated claims or clients with unique needs.

Claims under the *Military Rehabilitation and Compensation Act 2004* (MRCA) were examined. Changes to DVA's policies and processes, combined with an easy to access online service and an automated decision process, aim to ideally reduce the average time taken to process a MRCA claim from about 120 days, to some claims being processed in significantly less time, by expediting information gathering about the link between service and a condition. As mentioned, these provisions seek to extend the lessons learnt in this process and prepare for an upgrade to the Department's ICT systems.

Examples of the sorts of decisions that could be suitable for computerised decision-making include where the decision-making can be converted into an algorithm, automatic granting of benefits in certain circumstances and where the decision can be generated based on information that is not subject to interpretation or discretion.

For example, travel reimbursement decisions are currently calculated by a delegate on the basis of the mode of transport and the number of kilometres travelled at a particular rate of reimbursement. Under the proposed computerised decision-making provisions, a computer program could make the calculation and decision, and issue the reimbursement and advice about the decision. In addition, it could provide the capacity for the Department to allow clients to submit these claims online and have the reimbursement transferred outside of normal office hours, in a shorter time frame, and allow the client to have access to online tracking of reimbursement requests.

There are some benefits under veterans' legislation that automatically ensue, based on the existence of a certain set of circumstances. For example, where a veteran with 80 or more impairment points dies, DVA accepts the death as "service related" for both the dependent partner pension and payments to the children. In this instance, the Department's process for claims and payments could be automated to reduce the need for these partners and dependants to contact the Department and allow a streamlined provision of their entitlements and immediate access to funds.

Computerised decision-making could also be used to automatically extend incapacity payments where a person is on the correct payment amount, and it is just their medical certificate or the period of the payment that is being updated. Currently, to have incapacity payments extended in these circumstances, a veteran has to provide their medical certificate and a delegate scans it to the file and updates the new payment date in DVA's system. This process could be simplified and streamlined for the person if they were able to tick a few boxes online and a computer program automatically generated a decision to extend the veteran's incapacity payments.

The Department may also be able to automate some decisions on the basis of information supplied by the Department of Defence. For example, currently a veteran has to provide information on their service that is corroborated by information provided by the Department of Defence. However, under an automated system information provided by the Department of Defence could provide an early determination about whether a person has qualifying service. This would provide the person with certainty that, should they need to make a claim in the future for income support payments, either because they have retired or are unable to work, they will be eligible. A veteran could always provide additional information to support their claim if they choose to, they need not rely only on information held by the Department of Defence.

Another example of this sort of information based automation is a determination about whether a particular Statement of Principles (SoP) factor has been met. Currently, this requires a delegate to make a determination. However, under the proposed computerised decision making powers and based on information supplied by the Department of Defence about particular types of service, a computer program could calculate automatically whether particular SoP factor has been met.

There is evidence at the moment that some SoP factors can be met simply because an ADF member has performed their regular duties in the ADF. For example, lower back strain caused by carrying a heavy pack during training. Currently, if a person submits a claim for lower back strain injury, SoP factors are fully examined. However, where a SoP factor can be satisfied on the basis of a person's ADF training, this process could be automated and streamlined for the person, as long as there is a medical diagnosis of the condition. As noted above, a veteran could always provide additional information to support their claim if they choose to, they need not rely only on information provided by the Department of Defence.

Computerised decision making may be used in a simple element of a larger and more complex decision that requires a human decision-maker in the final analysis, but will not be used where fact finding and weighing of evidence is required, such as interpretation/evaluation of medical evidence. As mentioned above, these are matters for a human decision maker to determine based on all of the evidence provided. An example of a simple element of a larger and more complex decision could be a determination about whether a particular SoP factor has been met, as described above, which then reduces the overall time for a delegate to determine a larger decision.

In terms of the implementation and safeguards around this power, computerised decision-making would only be implemented for a decision or determination with the direct approval of the Secretary of the Department of Veterans' Affairs. It is the intention of the Department that, in the short term, computerised decision-making would be gradually implemented only in relation to those decisions and determinations suitable for electronic decision making and where no subjectivity for a decision would play a role. In all cases, it would be the Secretary of DVA who would decide whether a computer program could be

used to make decisions and the Secretary would not be able to delegate that power to anyone else in DVA.

In regards to automated debt collection, the Department does not intend this provision for this purpose. While debt calculations are already made with the assistance of computers, debt management and collection will remain a matter where the specific circumstances of the individual and the value of the debt are considered in what action is taken and how it is communicated.

The language of the provisions in the Bill that would enable computerised decision-making under veterans' legislation is deliberately broad. This is for two reasons.

Firstly, it is important that the Secretary of DVA has flexibility to apply computerised decision-making in appropriate circumstances as part of the Government's commitment to improve services and reduce claims processing times for veterans.

As electronic capabilities and functions continue to exponentially improve, it is difficult to predict precisely which of the numerous decisions under veterans' legislation might be suitable for computerised decision-making. If the Government were to specifically list in the legislation those decisions to which computerised decision-making could be applied, it is likely that the legislation would need to be continuously amended as capabilities improve and either existing, or new types of, decisions need to be added to the list.

Importantly, where the Secretary authorises the use of a computer program to make decisions or determinations, that decision/determination made by a computer program must comply with all of the requirements of particular legislative provisions, in the same way that a delegate's decision would. For example, under subsection 284(1) of the MRCA, there are three matters about which a delegate must be satisfied before certain wholly dependent partners are eligible for treatment. Should the Digital Readiness Bill be enacted and the Secretary authorises the use of a computer program to make determinations under subsection 284(1) of the MRCA, the decision coming from the computer program would also have to be satisfy those same three matters.

Secondly, to gain maximum benefit from computerised decision-making the enabling powers need to permit a computer program to undertake actions related to making decisions or determinations, exercising powers, and complying with obligations under veterans' affairs legislation. A practical example of this is where notice of a decision is required to be given. Automating this process would enable the computer program to both make the decision and send the notice, enabling faster decisions to be made and communicated.

For example, a person could submit a travel reimbursement claim late at night for a medical appointment that occurred earlier in the day. Under computerised decision-making, the computer program could make the decision, send an automatically generated email advising the person of the outcome and deposit the reimbursement in the person's bank account – all outside of normal business hours and at the person's convenience.

In addition to these requirements, should a computer program malfunction or make an incorrect decision, the Repatriation Commission or the Military Rehabilitation and Compensation Commission (MRCC) (depending on which Act the decision/determination is made under) can substitute that decision or determination.

In these circumstances, a veteran would not need to request a review of an incorrect decision or determination made by a computer program because the Commissions would be able to exercise this substitution power on "own motion." An "own motion" review power enables the Repatriation Commission and the Military Rehabilitation and Compensation Commission to look at a decision or determination and consider whether it should be varied or revoked, without a person having to formally ask either of the Commissions to review the decision. The "own motion" review power is designed to correct computerised decisions that are incorrect.

Importantly, the proposed "own motion" review power would be in addition to a person's existing statutory review rights and would not affect their right to request review of a decision with which they are dissatisfied.

In regards to appeals of decisions more generally, if a person were dissatisfied with a correctly made computer generated decision, they could exercise their existing statutory rights of review under veterans' legislation. If a veteran believes a computer has made an incorrect decision, they would be able to contact a DVA staff member to discuss the issue. All normal processes for appeal and recourse would be still available to the veteran.

The Department of Veterans' Affairs is one of the few client-focused departments that does not have the capacity for computerised decision-making. Other Commonwealth agencies already use computer programs to make decisions and seen benefits for their clients in terms of reduced wait times on decisions and faster processing for claims. For example, the:

- Department of Social Services and the Department of Human Services to make decisions about people's social security benefits and calculations (section 6A of the *Social Security Administration Act 1999*)
- Department of Immigration in relation to citizenship applications (section 48 of the *Australian Citizenship Act 2007*)
- Therapeutic Goods Administration about medicines and other therapeutic goods to be placed on the Register (section 7C of the *Therapeutic Goods Act 1989)*
- Clean Energy Regulator about carbon credit units and Kyoto units under the Registry of Emissions Units (section 87 of the *Australian National Registry of Emissions Units Act 2011*), and
- Australian Fisheries Management Authority in relation to fishing permits, fishing rights and management plans (section *163B* of the *Fisheries Management Act 1991*)

In addition, the *National Health Amendment (Pharmaceutical Benefits) Bill 2016* (the Bill), which was introduced into the House of Representatives on 24 November 2016, seeks to insert

similar computerised decision-making powers into the *National Health Act 1953* (see Schedule 1 amendments.)

In the Explanatory Memorandum to the Bill it is noted that the amendments in Part 1 of Schedule 1 of the Bill provide that the Minister, the Secretary of the Department of Health and the Chief Executive Medicare can arrange for a computer program to be used to take administrative actions on their behalf including making decisions, exercising any powers or complying with any obligations under Part VII of the *National Health Act 1953* or any legislative instruments made under that Part, or doing anything else related to those actions.

An example of the sort of computerised decision-making envisaged under these amendments is to streamline processes such as fully automated online processing of PBS claims and prescribing approvals. Use of real-time prescription data for claims processing reduces payment times for approved pharmacists and removes the need for hardcopy prescriptions to be submitted to the Department of Human Services for reconciliation. Online prescribing approvals for certain prescriptions will reduce administrative workload for prescribers and save time for prescribers during consultations by removing the need to request approvals for individual patients by telephone or in writing.

The ability to automate some aspects of DVA's business does not mean that veterans would be left dealing with a machine rather than a person. Similarly, it will not mean that veterans would have to have a computer in order to be able to access DVA services. Where veterans would prefer, they will always be able to speak to a DVA staff member. The challenge for DVA is to remain responsive to the needs of all veterans while also repositioning its services and programmes to accommodate changes in client demographics.

DVA has a deep connection and commitment to our clients and this will continue. Computerised decision-making, which is an aspect of the Department's broader veteran centric reform, is about putting the client at the centre and re-engineering DVA's systems and processes to revolve around clients. The Department must continue to explore and use new technologies to deliver a higher standard of service, which will be achieved by enabling simple, non-subjective decisions to be made by computers. These powers are necessary to maintain the Department as a modern functioning service provider.

Public Interest Disclosures

The Department of Veterans' Affairs has a duty of care in providing its services to veterans and clients. However, often there are privacy and legislative restraints on providing information that might be necessary in fulfilling that duty of care. In instances of preventing harm to others or self-harm, addressing concerns for health provision, maintaining the integrity of programmes, and preventing abuse of programmes by providers, the Department is not able in some instances to provide timely information to prevent detrimental outcomes to veterans.

Public Interest Disclosures are currently used in other areas of government in a careful and judicious manner that allows these issues to be addressed. It is important that measures that are in place and working in other areas of government are afforded to the Department of Veterans' Affairs in order to fulfil its duty of care to veterans and clients and provide the best outcome for them.

In this context, the *Privacy Act 1988* legitimately limits the circumstances for the handling and disclosure of a person's personal information, as set out in the Australian Privacy Principles. However, as outlined above, there are certain limited circumstances where it would be appropriate for the Secretary of DVA to disclose information about a person outside of the Privacy Act.

Such circumstances include where there is a threat to life, health or welfare (either to self or to others), for enforcing laws, mistakes of fact or misinformation in the community and provider inappropriate practices.

The purpose of the public interest disclosure provisions is to ensure that the Secretary of the Department has an ability to release information about a particular case or class of cases where it is appropriate to do so.

To assist the Committee to understand the circumstances in which DVA might need to release information about a veteran, four such examples are outlined below.

Threat to life

- Where DVA considers that a client may be planning to harm either themselves or another person, albeit at an unspecified time in the future, and where it is not unreasonable or impracticable to obtain the person's consent to disclose their personal information (ie, the threat may not materialise until some weeks into the future), DVA is unable to provide that information to the appropriate authorities because the person's consent could, in theory, be obtained given the time frames involved. Under the proposed public interest disclosure provisions, however, the Secretary would be able to share that information if he or she considered that it were in the public interest to do so, putting beyond doubt that such information can be shared to ensure public safety.

Threat to health or welfare

- Under the current system, the Department is not able to provide certain information to a third party even where the health and welfare of a client is at risk. For example, where a local council community advisor might become aware that a person has significant health issues and is a DVA client, if the person chooses not to reveal the nature of their health problems the local council advisor is unable to assist them, ultimately to the detriment of their health. If appropriate under the proposed public interest disclosure provision, the Department could share this form of information with external agencies to ensure the person receives proper treatment for their condition.

Provider inappropriate practices

- Currently, the Department is unable to advise veterans of instances of provider abuse or inappropriate practices if it meant that the information used would reveal circumstances of a provider contract with the Department. For example, where DVA becomes aware that a contracted treatment provider, was inappropriately asking DVA clients to pay more than the negotiated price to receive treatment, it might be appropriate for DVA to advise these clients that under DVA health treatment card arrangements eligible clients do not make co-payments. If the Secretary of DVA considered it to be in the public interest, however, the public interest disclosure provisions would enable him or her to take out notices in local newspapers or similar action to notify clients more generally.

Mistake/misinformation in the community

- The Department is aware of instances where misinformation or claims that are not factual have damaged the integrity of programmes or prevented veterans from taking up assistance from the Department, often leading to wider spread distress among veterans. In these instances, the Department has not got the ability to correct the misinformation or mistake of fact as it may include the disclosure of information about a veteran or class of veterans. Often in these circumstances, the misinformation or mistake of fact can often have consequences which are detrimental to some veterans' mental health conditions or lead to some veterans cancelling their contact with the Department. These outcomes may have been prevented were DVA able to provide limited information to the public regarding circumstances where mistake of fact or misinformation has caused distress in the veteran community.

Australian Public Service (APS) Code of Conduct investigations

- In circumstances where the Department suspects that a staff member may have inappropriately accessed or released a client's personal information, and would like a third party investigation firm to undertake an investigation, there is doubt about whether a client's personal information (as opposed to the staff member being investigated) could be released to the third party investigation firm under the Australian Privacy Principles. An investigation firm may need a client's information to verify whether a staff member had access to certain information about a client,

particularly where there is an allegation that information was inappropriately released. If the Secretary considered it in the public interest to do so, he or she could provide this information to assist with APS Code of Conduct investigations.

The Department understands that there are concerns around the proposed power to release information regarding individual cases or classes of cases. In particular, concern has been raised over the provision of information to correct mistakes of fact or misinformation. However, misinformation in the public arena about DVA policies, processes and procedures can have a detrimental effect on veterans' wellbeing.

When there are misconceptions and misinformation about DVA's services or programmes, this can lead to veterans lacking confidence in DVA and becoming unnecessarily concerned about their cases. It may even dissuade veterans from accessing the essential services that they require. Misinformation in the community can also exacerbate underlying mental health conditions for some veterans, damaging rehabilitative progress that may have been made under DVA programmes.

Just as computerised decision-making is not new within Government, neither are public interest disclosure provisions. The proposed provisions are modelled on paragraph 208(1)(a) of the *Social Security Administration Act 1999*. That public interest disclosure provision has been in operation for 17 years and has operated successfully with the approval of Parliament. The Privacy Commissioner has not raised any concern about the Department of Social Services/Department of Human Services' provision. If a person is concerned that their information has been inappropriately shared, they may lodge a complaint with the Privacy Commissioner. There is no cost involved and a person does not need a lawyer to represent them.

When the Minister for Social Services revoked and remade the *Social Security (Public Interest Certificate Guidelines) (DSS) Determination 2015*, the Parliamentary Committee for Human Rights conducted an inquiry and report into the guidelines and concluded that the public interest certificate determinations are likely to be compatible with the right to privacy.

In recognition, however, that DVA has not previously had this public interest disclosure power, and that disclosure of a person's information is not to be undertaken lightly, five specific safeguards are built into these proposed provisions, in addition to general safeguards already available.

<u>Specific safeguards</u>

- the Secretary of DVA must act in accordance with rules[1] that the Minister makes about how the power is to be exercised and the rules will be a disallowable instrument

[1] See below for further information about the rules.

- the Minister cannot delegate his or her power to make rules about how the power is to be exercised by the Secretary of DVA
- the Secretary of DVA cannot delegate the public interest disclosure power to anyone else
- before disclosing personal information about a person, the Secretary of DVA must notify the person in writing about his or her intention to disclose the information, give the person a reasonable opportunity to make written comments on the proposed disclosure of the information and consider any written comments made by the person (natural justice requirements), and
- unless the Secretary of DVA complies with the above natural justice requirements before disclosing personal information, he or she will commit an offence, punishable by a fine of 60 penalty units (approximately $10,800[2].)

General safeguards

In addition to the above safeguards, the Department (on behalf of the MRCC and the Repatriation Commission) manages clients' personal information in compliance with the *Privacy Act 1988*, and the Department can be required to pay compensation for breaches of the *Privacy Act 1988*. In addition, departmental staff may face sanctions under the Australian Public Service Code of Conduct if they handle a client's personal information in an unauthorised manner.

If a person is dissatisfied with the Secretary's decision to disclose information about them, they can apply for judicial review under the *Administrative Decisions (Judicial Review) Act 1977*. Merits review will not be available because the kinds of remedies available under merits review are unlikely to be of benefit and also because of the time frames involved.

Where the Secretary has publically released information about a person, merits review, which examines the correctness of the decision, is unlikely to be of benefit to the person because their information would already be in the public arena. The timeframe within which information will be released will depend on the individual circumstances of each case. However, it is very unlikely that, between becoming aware that the Secretary intends to disclose information and the release of that information, a person would be able to obtain merits review.

As stated in the Explanatory Memorandum to the Digital Readiness Bill, it is intended that, should this Bill be enacted, the Minister for Veterans' Affairs would make rules setting out the circumstances in which the Secretary of DVA may make a public interest disclosure, before he or she exercises that power.

The Department notes that the Minister is currently in consultation with the shadow minister, the Hon Amanda Rishworth MP, to develop the precise rules that the Minister would need to determine for the use of the Public Interest Disclosure powers.

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[2] When the Digital Readiness Bill was introduced, one penalty unit was $180 under section 4AA of the *Crimes Act 1914*. However, the Government announced at the 2016-17 Mid-Year Economic and Fiscal Outlook that it intended to increase the penalty unit amount from $180 to $210, effective 1 July 2017. If that change is approved by the Parliament, the fine will be approximately $12,600.

In responding to a request for information from the Senate Scrutiny of Bills Committee, the Minister advised that Committee that he intended to make rules that would appropriately limit the circumstances in which the Secretary would be able to exercise the proposed public interest disclosure power and that he or she would not exercise that power until the rules are in place. **Attached** is a copy of the Minister's letter, for the information of this Committee.

Unfortunately, the final rules/guidelines[3] are not able to be provided to the Committee at this time, primarily because they cannot be made until after the Digital Readiness Bill receives Royal Assent, should the Parliament pass the Digital Readiness Bill. In relation to the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (DRCA) rules/guidelines, the DRCA also needs to have been passed by the Parliament before they can be made.

In anticipation that the Digital Readiness Bill will be enacted, the Department is aware that the Minister has been consulting his Parliamentary colleagues, and in particular the shadow minister, about the content of the rules/guidelines and that he will instruct officers in DVA about how he wants the rules/guidelines drafted. The Parliament will have an appropriate opportunity to consider the rules/guidelines once they are drafted, as they will be a disallowable instrument, ensuring Parliamentary scrutiny and oversight.

Information Sharing

Timely information sharing between DVA and the Department of Defence is crucial to the veteran experience. It is important that the Chief of the Defence Force is aware if a currently serving member submits an application for compensation for incapacity payments, permanent impairment or is in receipt of medical treatment, or has claimed liability for a condition. The Chief of the Defence Force owes a duty of care to members, especially those members deployed in an operational context.

Information sharing can also promote healthier work practices in the military. For example the MRCC may notice a common pattern of injuries arising out of certain duties.
This information should be shared appropriately so that fewer people become injured, and fewer compensation claims are made.

Providing information at the macro level to Defence about claims can lead to improved outcomes for both the individual member concerned, and the ADF more broadly.
For example:

- Mental health conditions – it is important that the Chief of the Defence Force knows whether deployed members on overseas missions have any mental health conditions, such as PTSD. If these conditions are unknown, they could imperil the member and their unit. This could also provide information or a flag as to the

[3] Rules/guidelines will be made under each of the *Veterans' Entitlements Act 1986*, *Military Rehabilitation and Compensation Act 2004* and the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988.*

mental health education, tools and support the individual and their family may require.

- Hearing loss trends in veterans – the incidence of hearing loss in current and ex-ADF members is important occupational health and safety information as so many jobs in the ADF require top hearing ability for personal protection, intelligibility of signals and discerning speech against background noise.
- Treatment sought outside of Defence health arrangements – this is particularly important for personnel on seagoing vessels, where access to certain treatment may be limited at sea.

Providing claims information to the ADF about injuries, diseases and deaths of members will enable the ADF to monitor the occupational health and safety of its workforce and determine whether adjustments are needed to training or equipment, for example, to reduce incidences of injuries. It could also provide an opportunity for more targeted promotion of health and wellbeing education, tools and support.

The MRCC and the Repatriation Commission are able to share the above sort of information with the Department of Defence or the Chief of the Defence Force under the MRCA and the *Veterans' Entitlements Act 1986* (VEA) respectively, but the MRCC is unable to share such information under the *Safety, Rehabilitation and Compensation Act 1988* (SRCA), and, should the DRCA be passed by the Parliament, also would not be able to under the DRCA. The proposed amendments would be made to the DRCA to align it with the MRCA, subject to the DRCA being enacted.

The SRCA predominantly applies to Commonwealth public servants, with Comcare able to share information with agencies such as the Departments of Health and Human Services, as well as Centrelink and Medicare. However, there is not a power under the SRCA/DRCA to share information with the Department of Defence, in the way that there is under the MRCA, which is a military-specific compensation Act.

It is anomalous that crucial work health and safety information can only be provided on the basis of legislative coverage. It is appropriate that the Repatriation Commission and the MRCC would be able to provide consistent information about members, irrespective of whether their claim falls under the DRCA or MRCA. For this reason, these information sharing amendments would align the information sharing provisions in the DRCA (subject to it being passed by the Parliament), with the existing information sharing provisions in the MRCA.

The information would only be able to be provided to specified persons and for specified purposes. In relation to the Chief of the Defence Force, the amendments would enable the MRCC to provide a copy of a determination if it related to liability for an injury, disease or death, or the permanent impairment of a member.

Under section 143 of the SRCA, the MRCC must give a copy of a defence-related claim to the relevant service chief of the person making a claim, if the person was a member of the Defence Force at the relevant time of the injury or accident or when the disease was

contracted. However, there is currently no provision in the SRCA, as there is in the MRCA, that specifically enables the MRCC to provide a copy of a *determination* made in relation to a claim. The amendment to the DRCA would create greater certainty about the MRCC's ability to do so.

In relation to the Secretary of the Department of Defence, the information that could be provided must relate to one of the following purposes:

- litigation involving an injury, disease or death of an employee, in relation to which a claim has been made under the DRCA; or
- monitoring, or reporting on, the performance of the Defence Force in relation to occupational health and safety; or
- monitoring the cost to the Commonwealth of injuries, diseases or deaths of employees, in relation to which claims have been made under the DRCA.

To assist in comparing the proposed DRCA information sharing provisions with the existing MRCA ones, a table is **attached** to this submission for ease of reference. While the provisions in the table may look a little different, they achieve the same objective and were drafted to conform to existing provisions in the SRCA/DRCA.

If a person is concerned that their information has been inappropriately shared, they may lodge a complaint with the Office of the Australian Information Commissioner (OAIC.) There is no cost involved and the person does not need a lawyer to represent them. If the person is dissatisfied with a decision of the OAIC, in certain circumstances they may be able to apply to the Federal Court of Australia or the Federal Circuit Court for review of a decision. Further, the Privacy Act states that information gathered for a particular purpose may generally only be used for that purpose. Agencies that use information inappropriately face sanction under the Privacy Act.

Technical Amendments

The Digital Readiness Bill contains three minor and technical amendments. Two of the technical amendments were intended to be made as part of the *Statute Update Act 2016*, but were overlooked. The purpose of that Act is to update provisions in Acts to take account of changes to drafting precedents and practices. In particular, that Act updates references to penalties expressed as a number of dollars with penalties expressed as a number of penalty units. Such changes enhance readability, facilitate interpretation and promote consistency across the Commonwealth statute book.

Current Commonwealth drafting practice is to express penalties for criminal offences as a number of penalty units. The current value of a penalty unit is $180[4] (see section 4AA of the *Crimes Act 1914*). However, many older Commonwealth Acts contain references to penalties that are expressed as an amount in dollars. Section 4AB of the *Crimes Act 1914* has the effect that if a provision refers to a penalty in dollars, this is converted into a reference to a penalty of a certain number of penalty units (by dividing the number of dollars by 100, and rounding up to the next whole number if necessary), which leads to a higher penalty than is stated in the provision.

Converting references to dollar penalties under section 4AB of the *Crimes Act 1914* is time consuming for the community and the appearance of dollar amounts on the face of the statute book that are less than the actual legal penalty can be misleading.

Consistent with the intent of the *Statute Update Act* 2016, these two amendments convert existing references in the VEA to penalties expressed as a number of dollars into references to penalties expressed as a number of penalty units to remove the need to convert the amounts and reduce the potential for confusion.

The other technical amendment would amend the short title of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (DRCA), subject to it being enacted. When the *Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Bill 2016* was introduced into the Parliament, it amended the long title of the DRCA, but not the short title. This amendment would rectify that situation and ensure that the short title of the DRCA is consistent with the long title.

Stakeholder engagement/consultation on the Digital Readiness Bill

The Department has undertaken consultation with the Ex-Service Organisation Roundtable (ESORT) on the Digital Readiness Bill. The ESORT is the primary forum for consulting with the ex-service and defence communities and comprises the National Presidents of 14 Ex-Service Organisations, and members of the Repatriation Commission and the Military Rehabilitation and Compensation Commission.

There have been several productive meetings between DVA representatives and ESORT members to discuss the content of the Digital Readiness Bill. Consultation with a smaller working group of ESORT members occurred on 24 November 2016 and then full ESORT meetings occurred on 2 and 16 December 2016. A further workshop with ESORT members is planned for early February 2017. Some ESORT members have indicated that they found those information sessions very valuable, and they thanked DVA for the briefing provided on the Digital Readiness Bill.

[4] When the Digital Readiness Bill was introduced, one penalty unit was $180 under section 4AA of the *Crimes Act 1914*. However, the Government announced at the 2016-17 Mid-Year Economic and Fiscal Outlook that it intended to increase the penalty unit amount from $180 to $210, effective 1 July 2017

The Government is actively listening to the views of stakeholders and working to allay any concerns they may have. The Department is considering suggestions made by ESORT members about the amendments proposed in the Digital Readiness Bill and these matters are under active deliberation.

List of Attachments

	Minister's letter to the Senate Scrutiny of Bills Committee, dated 12 December 2016.
	Table comparing proposed DRCA information sharing powers with existing MRCA information sharing powers.

COPY

The Hon Dan Tehan MP
Minister for Veterans' Affairs
Minister for Defence Personnel
Minister Assisting the Prime Minister for Cyber Security
Minister Assisting the Prime Minister for the Centenary of ANZAC

Parliament House
CANBERRA ACT 2600

Telephone: 02 6277 7820

MS16-001006

12 DEC 2016

Senator Helen Polley
Chair
Senate Scrutiny of Bills Committee
Suite 1.111
Parliament House
Canberra ACT 2600

Dear Senator ~~Polley~~ Helen,

Thank you for the letter from your Committee Secretary, dated 1 December 2016, requesting information about issues identified with the *Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016* (Digital Readiness Bill.)

I am pleased to provide my advice in relation to the two issues identified by the Standing Committee for the Scrutiny of Bills and thank the Committee for the opportunity to provide this further information.

I would like to advise the Committee that I intend to make rules that will appropriately limit the circumstances in which the Secretary of the Department of Veterans' Affairs (the Secretary) will be able to exercise the proposed public interest disclosure power and that the Secretary will not be able to exercise the proposed public interest disclosure power until those rules are in place.

I would also like to advise the Committee that my Office has been working very closely with the Office of the Hon Amanda Rishworth MP, the Shadow Minister for Veterans' Affairs, to develop the content of these rules.

As noted in the Explanatory Memorandum, items 1, 7 and 10 of Schedule 2 of the Digital Readiness Bill are modelled on paragraph 208(1)(a) of the *Social Security Administration Act 1999*. That public interest disclosure provision has been in operation for 17 years and has

not, as far as I am aware, been the cause of any concern or Parliamentary inquiry, nor has the Privacy Commissioner raised any concern about the operation of the provision.

The Department of Human Services and the Department of Social Service make public interest disclosures without having rules or guidance in the primary legislation.

When the Committee examined the Social Security (Administration) Bill 1999 (as it then was) in its fourteenth report of 1999 and in the Scrutiny of Bills Alert Digest No 9 of 1999, it did not raise similar concerns about why rules or guidance about the exercise of the Secretary's disclosure power cannot be included in the primary legislation and why there is no duty on the Minister to make rules regulating the exercise of the Secretary's power.

At least thirteen versions of the Social Security Public Interest Certificate Guidelines have been made. I understand that more versions have been made but that, earlier (revoked) versions are not available on the Federal Register of Legislation. Most recently, the Guidelines were amended in 2015 (from a 2014 version) to ensure that information can be disclosed to assist Commonwealth, State and Territory law enforcement agencies with the making, or proposed or possible making, of a proceeds of crime order or supporting or enforcing a proceeds of crime order.

It is important that, where new circumstances arise necessitating the disclosure of information (such as in relation to proceeds of crime orders), the Minister for Veterans' Affairs is able to respond quickly and flexibly to deal with changing circumstances.

Were the rules or guidance located in the primary legislation, the Minister for Veterans' Affairs would be less able to quickly respond to evolving circumstances, owing to the length of time required for the Parliament to pass legislation and also due to the competing relative priorities of the Parliament.

Equivalent rules made under legislative instrument have been effectively operating in relation to public interest disclosures for the Department of Social Services and the Department of Human Services. The rules would take the form of a disallowable instrument, thus ensuring appropriate Parliamentary scrutiny of the rules.

As I noted above, I intend to make rules that will limit the circumstances in which the Secretary will be able to exercise the proposed public interest disclosure power and the Secretary will not be able to exercise the proposed public interest disclosure power until those rules are in place. Work on developing the content of the rules is well underway in consultation with the Shadow Minister and I thank Ms Rishworth for her continued constructive engagement on veterans' affairs issues.

The Social Security rules are also discretionary, but, as can be seen from the frequent amendment history, Ministers have ensured that appropriate rules are in place to limit the circumstances in which a proposed public interest disclosure may be made.

Thank you again for raising these issues in relation to the Digital Readiness Bill with me. I trust that my advice addresses the Committee's concerns and would be happy to provide any further information the Committee considers useful.

Yours sincerely

DAN TEHAN

Comparison of information sharing provisions under the MRCA with proposed information sharing provisions under the DRCA/SRCA

MRCA	DRCA
346 Notifying original determinations (1) As soon as practicable after the Commission makes an original determination in relation to a claim, the Commission must give the claimant a written notice setting out: (a) the terms of the original determination; and (b) the reasons for the original determination. (2) The Commission must also give a copy of the notice to the Chief of the Defence Force if the original determination relates to liability for a service injury, disease or death, or the permanent impairment, of a person who was a member of the Defence Force: (a) for a service injury or disease or permanent impairment—at the time when the original determination was made; or (b) for a service death—at the time of death. (3) As soon as practicable after the Chief of the Defence Force makes an original determination in relation to a claim, the Chief of the Defence Force must give the claimant a written notice setting out: (a) the terms of the original determination; and (b) the reasons for the original determination. (4) The Chief of the Defence Force must also give a copy of the notice to the Commission. (5) A notice under subsection (1) or (3) must include a statement	**Item 3 of Schedule 2 (page 9 of the Bill)** **147 References to Comcare etc.** (1) ……. (2) In addition, this Act applies to defence-related claims and matters arising out of those claims with the modifications specified in this table: **Modifications of this Act** **Item** | **Provision** | **Modification** 1 | Paragraph 48(8)(a) | The paragraph does not apply 2 | Section 52A | The section does not apply 2A | Section 61 | The section applies as if it requires the determining authority to give a copy of the notice to the Chief of the Defence Force if the determination relates to liability for an injury, disease or death, or the permanent impairment, of a person who was a member of the Defence Force: (a) for an injury or disease or permanent impairment—at the time when the determination was made; or (b) for a death—at the time of death.

to the effect that the claimant may, if dissatisfied with the original determination, request a reconsideration of the determination under section 349 or make an application to the Board under Part 4 for review of the determination. (6) A failure to comply with this section does not affect the validity of the determination.	3	Subsection 111(2)	The reference to a relevant authority has effect as a reference to the Commonwealth
	4	Subsections 111(2A), (3) and (4)	The subsections do not apply
	5	Sections 112 and 113	References to a relevant authority have effect as references to the Commonwealth
	6	Paragraph 114B(1)(c)	The paragraph applies as if it read: (c) the MRCC is of the opinion that the retired employee may have been paid, or might be paid, amounts of compensation under this Act in excess of the amounts that he or she was entitled to receive because of section 20, 21 or 21A;
	7	Paragraph 114B(2)(a)	The paragraph applies as if it read: (a) stating that the retired employee may receive, or may have received, an overpayment of compensation; and
	8	Section 121A	The section does not apply

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406 Commission may obtain information etc.

(1) The Commission may give a written notice to any person requiring the person, for the purposes of this Act:

(a) to provide the Commission (or a specified staff member assisting the Commission) such information as the Commission requires; or

(b) to produce to the Commission (or a specified staff member assisting the Commission) any documents in the custody or under the control of the person; or

(c) to appear before a specified staff member assisting the Commission to answer questions.

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Item 4 of Schedule 2 (page 10 of the Bill)

151 Obtaining information

(1) The MRCC may, by notice in writing, require:

(a) the Secretary of the Defence Department; or

(b) the Secretary of the Veterans' Affairs Department; or

(ba) the Chief of the Defence Force; or

(c) a service chief;

to give the MRCC, within the period specified in the notice, the documents or information (or both) specified in the notice, being documents or information in the possession, custody or control of that person that are ~~relevant to a defence-related claim~~ required for the purposes of this Act.

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409 Giving information

(1) Nothing in a law of a State or of a Territory may operate to prevent a person from giving information, producing documents or giving evidence for the purposes of this Act.

(2) The Commission (or a staff member assisting the Commission) may provide any information obtained in the performance of his or her duties under this Act to a person or agency specified in this table for the purpose specified in the table:

Giving information

Item	Person or agency	Purpose
1	An employee of the Defence Department	A purpose relating to litigation involving a service injury, disease or death in relation to which a claim has been made under section 319

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Item 5 of Schedule 2 (page 10 of the Bill)

151A Giving information

(1) The MRCC (or a staff member assisting the MRCC) may provide any information obtained in the performance of duties under this Act to any of the following persons for the purposes of the relevant Department or of Centrelink or Medicare (as the case requires):

(a) the Secretary of the Department administered by the Minister who administers the *National Health Act 1953*;

(b) the Secretary of the Department administered by the Minister who administers the *Aged Care Act 1997*;

(c) the Secretary of the Department administered by the Minister who administers the *Human Services (Centrelink) Act 1997*;

(d) the Chief Executive Centrelink (within the meaning of

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2	The Chief of the Defence Force	A purpose relating to reconsideration or review under Chapter 8 of a determination made under Chapter 2 about acceptance of liability for a service injury, disease or death
3	A person or agency specified in the regulations	A purpose specified in the regulations in relation to that person or agency

the *Human Services (Centrelink) Act 1997*);

(e) the Chief Executive Medicare (within the meaning of the *Human Services (Medicare) Act 1973*).

(1A)The MRCC (or a staff member assisting the MRCC) may provide any information obtained in the performance of duties under this Act to the Secretary of the Defence Department for any purposes relating to:

(a) litigation involving an injury, disease or death of an employee in relation to which a claim has been made under this Act; or

(b) monitoring, or reporting on, the performance of the Defence Force in relation to occupational health and safety; or

(c) monitoring the cost to the Commonwealth of injuries, diseases or deaths of employees, in relation to which claims have been made under this Act.