

Thank you for the opportunity to comment on the Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016 (the Bill). Please find our officer level comments below.

We understand the Bill will make a number of amendments to the *Military Rehabilitation and Compensation Act 2004* (MRCA), the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (SRCA) and the *Veterans' Entitlements Act 1986* (VEA). Our comments below relate to Schedule 2 of the Bill, which will amend the three Acts to enable the disclosure of information in certain circumstances.

Schedule 2 of the Bill will insert a 'public interest disclosure' provision in the MRCA, SRCA and VEA. This provision provides that the Secretary may, if the Secretary certifies that it is necessary in the public interest to do so in a particular case or class of cases, disclose any information obtained by any person in the performance of that person's duties under the relevant Act to such persons or for such purposes as the Secretary determines.

The Bill will also insert a provision in each Act that states that the disclosure is authorised by law for the purposes of the Australian Privacy Principles (APPs). Specifically, the disclosure of personal information under the new provisions will be permitted by the 'required or authorised by or under law' exception in APP 6.2(b). This authorisation means that the privacy protections in APP 6, which limit the circumstances in which personal information can be used and disclosed, will not apply to any disclosures made in accordance with the new provisions.

Where legislation proposes to authorise the disclosure of personal information, the OAIC generally suggests that consideration should be given to whether those measures are reasonable, proportionate and necessary. That is, whether they appropriately balance the intrusion on individuals' privacy with the overall public policy objectives of the proposal. This is consistent with the approach taken in applying Article 17 of the International Covenant on Civil and Political Rights and are matters which the Department will likely need to address in its Statement of Compatibility with Human Rights. Further, any such provisions should be drafted in a manner that is consistent with the spirit and intent of the Privacy Act. This includes ensuring that any authorisation is drafted narrowly, and, to the extent possible, clearly describes:

- the types of personal information that may be disclosed
- who may disclose the information, and who may receive the information
- the purpose for which the personal information may be disclosed, and, once received, for which the information may be subsequently disclosed by the recipient.

The current drafting of the disclosure provisions in the Bill is broad, and authorises the Secretary to disclose any information to any persons and for any purposes that the Secretary certifies is in the public interest. Greater certainty and transparency about the scope of the disclosures

allowed under the provisions could be achieved by specifying some of the detail in the Bill (such as the types of information that may be disclosed and the main purposes for which information may be disclosed). Alternatively, limitations on the operation of the disclosure provision could be prescribed by regulations. The provisions in the Bill enable the Minister to, by legislative instrument, make rules in relation to the exercise of the Secretary's power to give certificates under the provision. We note that existing legislation (such as the *Social Security (Administration) Act 1999* and the *Paid Parental Leave Act 2010*) includes similar disclosure provisions. Rules issued under that legislation set out the matters to which the Secretary must have regard in giving a public interest certificate and the circumstances in which a public interest certificate may be given, which include: to prevent, or lessen, a threat to the life, health or welfare of a person; for the enforcement of laws; to correct a mistake of fact; to brief a Minister or to locate missing persons etc. For example, see the [Paid Parental Leave Rules 2010](#), [Social Security \(Administration\) \(Public Interest Certificate Guidelines\) \(DEEWR\) Determination 2013](#), [Social Security \(Public Interest Certificate Guidelines\) \(DSS\) Determination 2015](#).

We note that the Bill does contain some privacy protections, including the requirement for the Secretary to notify an individual of the Secretary's intention to disclose their personal information. This provision also states that the individual must be provided with the opportunity to make comments on the proposed disclosure and that these comments must be considered by the Secretary. The Bill also makes it an offence if the Secretary fails to comply with the provision in relation to any disclosures made under that provision. The protections in the Bill could be further enhanced by, for example, addressing the issues raised above in terms of limiting the purposes for which disclosures can be made and by making it clear, either in the Bill or in regulations, that the privacy of individuals is a relevant matter for the Secretary to consider before disclosing personal information.

Office of the Australian Information Commissioner