



Foreign Affairs, Defence and Trade Committee Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Email - fadt.sen@aph.gov.au

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Dear Senators

Submission to the Inquiry into Schedule 2 of the *Veterans' Affairs Legislation Amendment (2015 Budget Measures) Bill 2015*

I make this submission on behalf of the Australian Lawyers Alliance, a longstanding national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

I also write to ask what price you put on the rights of our nation's service personnel?

The Alliance has specific concerns regarding the potential impact of Schedule 2 of the Bill, and both the symbolic and practical effect it will have.

Australians have a universal commitment to acknowledging the service and contribution of our service men and women, and ensuring they are appropriately supported and assisted when they face injury, injustice or make the transition to civilian life.

Fundamentally, this Bill diminishes the current right of legal representation for Veterans for disputed service injury claims.

Concerningly, the reason for undermining the rights of ADF personnel is defined as saving \$2.2m over 4 years; and to "simplify and streamline" the appeal process.

However, by removing the choice for Veterans between the Veterans Review Board (VRB) and for internal reconsideration by the Military Rehabilitation and Compensation Commission (MRCC), and forcing all into the former pathway, the Bill takes legal representation out of the question at the preliminary Board stages, and out of economic reach at the AAT level.

But at the same time the Department of Veterans Affairs will continue to pay for their own lawyers in the AAT to contest the appeals of Veterans. And where DVA gets a decision wrong, there are no costs awarded to the applicant that successfully fights the decision.

The statement that “other benefits include the provision of access to legal aid for all eligible claimants” is not realistic. Legal aid is not available throughout all the stages of review and appeal, the overall funds are limited, and the cost schedule for legal aid is so low that it does not adequately meet the costs of even the most basic representation at this stage.

Furthermore, many clients have PTSD and require a differential level of support and assistance that our members are trained to provide. While wishing not to reflect on the Government appointed advocates, we fear that many at-risk Veterans will not be supported appropriately in this proposed “one size fits all” pathway.

We offer this further analysis to the Committee.

The Bill

The *Military Rehabilitation and Compensation Act 2004* (the MRCA), which provides compensation and other benefits for current and former members of the Australian Defence Force (ADF) who suffer a post 1 July 2004 service injury or disease (and for the dependents of some deceased members of the ADF), allows claimants to seek a review of certain ‘original determinations’ made under the Act. Original determinations, defined at section 345 of the MRCA are determinations made by the Military Rehabilitation and Compensation Commission (MRCC) or the Chief of the Defence Force, usually in relation to eligibility for compensation or the level of compensation payable to a claimant.

Currently, there are two pathways open to a claimant for the review of original determinations: an internal reconsideration by another delegate of the MRCC or a review by the Veterans’ Review Board (VRB). Claimants who are dissatisfied with the reconsideration by the MRCC or the review by the VRB can apply to the Administrative Appeals Tribunal (AAT) for a further review. If a claimant chooses to seek reconsideration by the MRCC they are not able to then seek a review by the VRB.

Schedule 2 of the Bill will create a single review pathway for original determinations made under the MRCA, removing the option for internal reconsideration by the MRCC and allowing only for review by the VRB.

The concern

The two pathways provide different review processes: the Review of Military Compensation Arrangements suggested that the VRB path ‘can be seen as a lengthy and daunting process’ but the MRCC process does not offer legal aid at the AAT. The AAT can award costs to successful claimants who have chosen the MRCC reconsideration pathway but not to claimants who pursued the VRB pathway.

The one exception is that claimants who sought review by the VRB can access legal aid where it relates to operational service. Both pathways have different time limits for the lodgement of applications and for subsequent actions.

The proposed Schedule 2 of the *Veterans' Affairs Legislation Amendment (2015 Budget) Bill 2015* will mean that disputed claims will go down a single path, but means that claimants will only be able to seek legal aid for representation at the ultimate AAT stage.

This won't properly cover legal fees and will produce an outcome where it becomes uneconomic for firms to service those members and/or law firms will need to charge members a significantly higher amount for fees compared to the present position where firms can recover 75% of party/party costs from the Commonwealth where an AAT claim is successful.

A potential solution, other than not pursuing Schedule 2, is to also repeal s359 of the MRCA which presently states:

*359 - Certain provisions not to apply to review of determinations of the Board
Sections 356, 357 and 358 do not apply to a review by the Tribunal
of a determination of the Board.*

In conclusion

It is concerning that a Budget measure of such little significance to the overall Defence Budget can be the basis to remove the legal right of representation for our Veterans and to take away their choice in dispute mechanisms.

The savings represent not even half of one percent of one percent of the Future Submarine Project (ie \$50b). A literal drop in the ocean.

To conclude by repeating the earlier question, at what price do Senators and our Parliament put on the legal rights of Veterans?

Yours sincerely

Rod Hodgson
National Director and Qld President
Australian Lawyers Alliance