

To: Foreign Affairs, Defence and Trade Committee  
Department of the Senate  
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## Submission

Re: Australian Veterans' Recognition (Putting Veterans and their Families First) Bill 2019 [Provisions]

Item: *Beneficial Nature of the Acts* – The Veteran' Evidence Standard

Issue: No Definition at Clause 7 - '*The Beneficial Nature of Acts*'

Objective of submission:

To request:

1. 'The Committee' becomes aware of a long standing fact i.e. **(a)** '*The Beneficial Nature of the Acts*' has a definition comprised of **(b)** four (4) evidentiary tests which equate to **(c)** the Veteran' Evidence Standard which **(d)** is intended to be an 'evidence standard' embedded within all Veteran' claim' management systems and administration.
2. 'The Committee' takes time to comprehend how fundamentally important the 'Veteran' Evidence Standard' is and in particular contrasts the 'Veteran Evidence Standard' to that of higher evidence standards e.g. the Administrative Evidence Standard or Criminal Evidence Standards – I.e. two evidence standards that over time and by cherry-picked means, were by stealth exported into Department of Veterans' Affairs (DVA) processes, practice and culture by stealth.
3. 'The Committee' directly contemplate this new 'Bills' title and ask if they would be '*Putting Veterans and their Families First*' if they exclude the four limbs of the 'Veteran Evidence Test' - I.e. an 'evidence standard' intended to prevent techno-legal and confected adversarial practice and predation.
4. 'The Committee' take time to **(a)** research, contemplate and comprehend the profound nature and impact of the Veteran' Evidence Standard and **(b)** its role in preventing bureaucratic predation through claim exhaustion methodologies. I.e. methodologies constructed upon adversarial gatekeeper group-think that gave rise to systems development and altered 'evidence standards' aggravating Veteran' isolation, home loss, family breakdowns, homelessness, attempted suicide and completed suicide.
5. 'The Committee' upon reflection, move to recommend one definition exist In respect of '*The Beneficial Nature of The Acts*' (inclusive of the four limb evidence standard) and in so doing ratify into law one uniformed definition.

## Beneficial Nature of The Acts: The Veteran' Evidence Standard

1. For the sake of economy this submission lists below a general definition of the Veteran evidence standard otherwise termed '*The Beneficial Nature of The Acts*'.
2. The purpose of detailing the veteran evidence standard and its four limbs is intended to assist 'The Committee' contrast the veteran' evidence standard alongside 'The Bills' own words as noted in the explanatory memorandum at Clause 7, Page 5 and in that regard I ask 'The Committee' to contemplate and reflect on the following.

### General Definition '*The Beneficial Nature of The Acts*': An Evidence Standard

3. From readings of primary source information over the years' '*The Beneficial Nature of the Acts*' (i.e. a veteran claim evidence standard) was constructed upon the following four limbs:-

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1. **Was/Is the claimant an ADF member?**
  2. **Did the claimant' sustain injury while on Duty?**
  3. **Is there a medical report/diagnoses?**
  4. **Is the injury (a) wholly due to ADF service and (b) permanent.**
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4. As can be discerned from the above four (4) limbs, these fundamental questions establish **(A)** the first steps in any claim process and **(B)** provide currency for the life of a veterans' claim upon 'the relevant authority' i.e. once resolved the veteran evidence standard aka '*The Beneficial Nature of the Acts*' remains in force for the life of a veteran' and family, and in large part should prevent adversarial and hyper-adversarial (long chain) exhaustion schemes constructed out of technicalities.
5. These four (4) limbs establish the veteran evidence standard which must be understood to be an standard situated **below** that of **(i)** an administrative standard and **(ii)** a criminal standard ---- both of which over the past two decades have by stealth and by small increments been stitched into claims management processes, systems, practice and indeed culture ---- the quantum of which not only orient bureaucrats to generate single process exhausting contests but long-chain sequential adversarial 'contests' that can and have consumed many years' to resolve and destroy lives.
6. It has become apparent to many veterans', advocates and veteran family members' that techno-legal exhaustion systems have two primary objectives: **(i)** to defeat claimants' and **(ii)** to defeat claims' in the hope veterans' become so damaged from their engagement they abandon often basic entitlements ---- disengagement that all too often involves some veterans' in their most desperate hour resorting to suicide as a means of escape from a torturous and often tortious exhaustion strategy that targets and exploits imploded health, minds, lives and situations. Many of us with firsthand experience of these systems eventually reach a point where we recognise the intent of these systems, are couched in predation and exploitation methodologies cooked up by contracted so-called Tier One law firms, actuaries and executive level bureaucrats focused on engineering barriers in order to save money for government and achieve KPI's.

### **'Beneficial Legislation': Removal of Subjective Reinterpretations**

7. Just about every person I have spoken to on this topic over the years' has their own understanding of *'The Beneficial Nature of the Acts'*.
8. Therefore the opportunity attached to this Bill is significant as it stands to remove any and all subjective meanings, interpretations, reinterpretations, reinterpretations-of-reinterpretations and erase many dozens of misunderstandings that infect this topic e.g. *'The Beneficial Nature of The Acts'* equals *'the Acts provide benefits'*.
9. The opportunity in my mind is both enormous and profound as it reinforces the term and brings it back to its original intention i.e. the veteran evidence standard' - an 'evidence standard' that if enacted could silently serve as a legal touchstone, a permanent sentinel and re-usable instrument to prevent downstream techno-legal predations infecting the veteran compensation space.
10. More importantly, the proper construction and definition of *'The Beneficial Nature of The Acts'* once prescribed has a genuine opportunity to provide remedy and redress for veterans' and their families undermined by *Win At All Cost* and often opaque technical arguments, and force the focus within a claim back onto the nub of a claim, the veterans' wellbeing and in so doing serve in disrupting practice and culture within an unwitting workforce shaped and conditioned by adversarial evidence standards where the creation of technicalities and contests became the norm ---- sufficed to say, with the proper clarification *'The Beneficial Nature of The Acts'* offers a supporting platform to a host of current change management interventions currently underway and has the potential to be a vital ingredient in disinfecting practice, process, policy and culture over the longer term, becoming in effect its own agent in supporting a genuine veteran centric model.

### **Gummy Bear: The *Bill* has no Teeth, not even False Teeth!**

11. Before concluding I believe it is important to introduce an observation in respect of (i) *'The Military Covenant'* and (2) *'The Beneficial Nature of the Acts'*.
12. In my view a direct relationship exists between the two and currently, each individually and as a duo, won't provide anything meaningful other than nice sounding sentiments to be employed within political speech's and media releases. However, should 'The Committee' form the view that *'The Beneficial Nature of The Acts'* can be better articulated and defined properly as our veteran evidence standard, then it is my opinion the Bill once enacted can be relied upon in numerous scenarios yet to reveal themselves and in so doing have teeth.

### **In Support of DVA's New Senior Management Team**

13. Since July 2018 DVA's new leadership group have bravely waded into a hot mess not of their making. Even more rare in this space the current DVA Minister rather than burying his head in the sand has engaged deeply behind the scenes to take a closer look at DVA's legacy-leadership "issues" and how engineered-dysfunction crafted the DVA that now sits at the center of a wide ranging intervention programme.
14. In short the efforts currently underway are profound in their vision and potential reach - These last eight months have turned many of us around to the extent where we no longer advocate and/or support calls for the abolishment of the DVA and nor do many of

us support the Productivity Commissions four point actuary devised plan to (i) obliterate the entire veteran support model, (ii) related support bodies (iii) undermine veteran entitlements and (iv) target existing statutes for removal in order to avoid High Court case law connected with non-economic loss (NEL) compensation entitlements [See page 506 of the P.C. interim report – key word search 'High Court'].

15. In conclusion I ask 'The Committee' to support the DVA Minister and DVA Secretary in respect of this proposed Bill and take steps in assisting the DVA to properly and fully describe and define *'The Beneficial Nature of The Acts'* and to make absolutely clear in law, that this term constitutes our veteran evidence standard by reference to the four limbs generally described above.

Yours sincerely

## Clause 7 - Beneficial interpretation of legislation

This clause provides a clear statement that Veterans' Affairs portfolio legislation **will be interpreted with a beneficial intention** as it **benefits a select group of people** within the Australian community.

Subclause 7(1) will provide that the Commonwealth is committed to decision-makers **interpreting legislation in a way that benefits veterans and their families where that interpretation is consistent** with the purpose of the provision.

For this subclause the legislation specified is the *Veterans' Entitlements Act 1986*, the *Military Rehabilitation and Compensation Act 2004* and the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* and instruments made under these Acts. The Acts specified are the principal Acts that provide for entitlements to compensation, treatment, rehabilitation and payments to injured veterans.

The intent of this subclause is to state that where a provision in any of the above Acts and instruments under these Acts **can be interpreted beneficially it should be so interpreted**. However, not all provisions in these Acts and instruments is intended to be beneficial in nature, for example the recovery of debts to the Commonwealth and provisions **protecting the Commonwealth from fraud**.

**Note:** The one side reference to '*Fraud*' that constructively avoids 'DVA Fraud' and makes no mention of 'protecting veterans' from DVA Fraud'.

Paragraph 7(2)(a) will provide that the Commonwealth is committed to decision-makers deciding claims under the legislation, above, in a manner that is fair, just and consistent. Departmental training to ensure decision-makers understand and appropriately apply the **beneficial interpretation** will be developed to support the intent of this Clause.

Paragraph 7(2)(b) will provide that claims will be decided within a time that is proportionate to the complexity of the matter.

This paragraph acknowledges the variety of complexity client claims and that there will be differences in timeliness.

Paragraph 7(2)(c) will provide that the Commonwealth is committed to decision-makers making decisions in a manner that promotes public trust and confidence.

This paragraph acknowledges that the role of each decision-maker **is one of responsibility and in a trusted position to be ethical, honest, objective and acts with integrity**. Where a decision-maker enshrines these values it reflects positively in public perception of the Department and themselves – this instils trust and confidence in public officials and the important work they undertake on behalf of the Secretary, Minister and the Commissions established under the *Veterans' Entitlements Act 1986* and the *Military Rehabilitation and Compensation Act 2004*.

Paragraph 7(2)(d) will provide that the Commonwealth is committed to decision-makers making decisions under the legislation on the basis of **only requiring evidence that is sufficient to meet the relevant standard of proof for the claims**.

This paragraph acknowledges that decision-makers operate within a complex legislative environment and often have a large degree of discretion to exercise when determining an outcome. It also provides a reminder that there are varying standards of proof depending on the circumstances of each case and that the applicable standard is **the legal threshold** in which a decision is to be made.

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