SUBMISSION TO THE Senate Foreign Affairs, Defence and Trade Legislation Committee regarding its inquiry into schedule 2 of the Veterans' Affairs Legislation Amendment (2015 Budget Measures) Bill 2015.

10th September 2015

Senators,

My name is Rod Thompson I am a level 4 Advocate working under all 3 legislations MRCA, SRCA and the VEA. I have sat on a number of departmental committees regarding legislation and review. So I believe that I can give some insight into the matters before you.

The MRCA internal Review path has been an integral part of the MRCA Legislation since its inception in July 2004 the Department of Veterans' Affairs (DVA) stood by this and insisted that it was an important step forward providing an alternate path of review to the tried and tested Veterans' Review Board (VRB) utilised under the Veterans' Entitlement Act (VEA). This was in stark contrast to representations made by the bulk of the ex-service community. Now over 11 years later the DVA and the current minister see fit to accept the recommendations of the ex-service and veteran community. Unfortunately this issue pales into insignificance when you look at the bigger issues of the MRCA legislation a legislation that is so complex and adversarial it is, after 10 years not fully understood by the DVA or the wider veteran and ex-service community as very few legal precedents have been established allowing delegates and the department to interoperate MRCA as they choose with little or no repercussions. The system is so convoluted that it is standard practice for claims to take over 6 months to be assessed and then at least another 3 months for Permanent Impairment offers to be made.

The GARP M process is very complex and with many delegates operating outside their field of expertise, there are a significant amount of basic errors made. With this in mind removing any review path would be seriously detrimental to the veterans' who are covered by this legislation at this point in time.

From an advocates point of view the training that has been provided to us under the TIP program is very focused on the VRB pathway, which is not open to those who choose to be represented by lawyers, so removing the internal review pathway is, in fact removing the right of a veteran to choose who they may be represented by and subsequently discriminative.

Currently the VRB are trialling an Alternate Dispute Resolution (ADR) pathway similar to that of the Administrative Appeals Tribunal with some success increasing the number of cases set aside from 48.5% 2013/14 to approximately 52% (this figure is unconfirmed). If this ADR pathway was made available to the law firms representing after a successful trial period of at least two years the internal review process could then be amalgamated with the ADR. As the ADR process is still only a trial and has not been rolled out nationally it would be very premature to legislatively remove a similar review path before having a reliable replacement system up and running for those who wish to be represented legally.

Some of the arguments put forward are simplistic and show little understanding as to the differences between SRCA and MRCA, comparing the two is like comparing apples and oranges they are just not the same MRCA uses SOP's and has different burdens of proof for the different types of service. SRCA has a higher burden of proof and is not bound by SOP's. The only similarity is that they both have an internal review pathway but MRCA has a choice for the veteran they can currently choose the internal review (IR) pathway or the VRB pathway both if unsuccessful lead to the AAT.

I would like to address the facts in relation to this matter in dot point format with a brief explanation below;

- The first and most relevant point is that the Minister deliberately mislead the senate and the wider veteran and ex-service community in his press release dated 7th of September 2015 "***Under the current system, some MRCA clients do not have access to the Veterans' Review Board. The new system will ensure that all MRCA clients have access to the Veterans' Review Board, an independent appeal mechanism that does not require veterans to retain the services of a lawyer. Instead, veterans could be represented by a veteran advocate who provides services free of charge.***"
- This is a work of fiction and a deliberate attempt to mislead the senate and the Australian public. The fact is that all veterans under the MRCA have the choice to be represented at the VRB and in fact currently they have more choices than those under the VEA as to their representation.
- As stated above current statistics put the rate of cases set aside by the VRB at 48.5 % now rising to approximately 52 % no statistics exist to show the numbers or the rate of success of the MRCA internal review. Without those statistics it would be very unwise to just remove this pathway with no avenue for those who choose to legally represented except for the AAT as this this would not be cost effective for either the veteran or the DVA.
- DVA and successive governments have slowly eroded the funding for voluntary advocacy and this minister has stated that he is not interested in funding paid

advocates and his department is actively discouraging those veterans under the MRCA from engaging in volunteer advocacy as the MRCA sees any volunteer work as a capacity to undertake remunerative work and this places the veteran in a catch 22 predicament. The pool of competent volunteer advocates with knowledge under all 3 legislations who are capable of representing at the VRB are significantly declining due to departmental and government neglect. There is currently no national standard for advocacy and in no other field can someone have such an impact on a veterans' future with so little training and oversight. So the argument that there are plenty of advocates out there to represent the veterans' who will be unrepresented should this legislative amendment pass is also false.

- I am also concerned that should this legislation pass the review staff currently employed in the MRCA review section of the DVA will be offered redundancies and their expertise will be lost. If this amendment is to pass it would be imperative for the minister to make assurances that these staff would be retained and moved to cover the obvious influx of cases to the VRB, therefore also requiring further funding increases to the VRB.
- If this amendment is to pass it should be given an extensive period of time to ensure that firstly the ADR process is rolled out nationally and all who represent veterans' including lawyers are fully conversant with the process as currently it has only been trailed in 2 states for a period of 6 months. Not really enough time to assess any anomalies and iron out the flaws in the system.
- I am very suspicious as to the real intent of the DVA and government as I find that the method of bringing this matter before the senate raises some very serious questions, by attaching it to the very emotive issue of the repatriation of our war dead seems very insensitive and lacks insight and can only be seen as deliberately divisive. As the two issues are very separate and have no real legislative link. The minister has used this to push the government's position and this in my opinion shows that this minister has no understanding of his portfolio and little respect for the veterans' he is supposed to serve both living and dead.

In summary, this matter has been poorly handled by the Minister and the DVA there are no structures in place to ensure a smooth transition from the IR to the VRB, this should include extra funding and staffing for the VRB, opening the ADR process to legal practitioners, increased funding for volunteer and paid advocates, national standards and oversight for advocates similar to those in place for the legal fraternity. It is my recommendation that this matter as it currently stands should not pass the senate and it should be remitted back to the DVA through the minister to address the issues that have been raised above and should not be re-introduced into the senate for at least 2 years waiting on the national rollout and reviews of the ADR process. Then the IR and the ADR process could be smoothly and seamlessly amalgamated with no detriment to the veteran. Unfortunately the veteran community has been blindsided by successive

ministers and the DVA on matters such as the SRCA White Card in which when this matter passed the senate the DVA immediately removed the above the scheduled fee treatment that was previously available to SRCA clients which was not in keeping with the consultation process with the ESO community prior to our support for that particular amendment.

There is an issue of trust and unfortunately with all the dishonestly displayed by the Minister and the DVA on this matter already I would be unwilling to trust that this measure is not just a blatant cost cutting exercise that will result in more veterans being detrimentally effected and more staff redundancies at the DVA. I suggest, if the Minister and the Government are really interested in the welfare of veterans' that they support a Royal Commission into the DVA and the problems they are having administering 3 separate legislations that are mot mutually co-operative leading to an alarming rise in veteran and ex-service suicide and increased mental health issues.

Sincerely

Rod Thompson

Advocate Level 4

Attachments

Ministers Press Release

VRB Statistics 2013/14

SENATOR THE HON. MICHAEL RONALDSON
MINISTER FOR VETERANS' AFFAIRS
MINISTER ASSISTING THE PRIME MINISTER FOR THE CENTENARY OF ANZAC
SPECIAL MINISTER OF STATE

Monday, 7 September 2015 VA094

LABOR SNUBS VETERAN COMMUNITY AND SUPPORTS LAWYERS OVER VETERANS

The Opposition's stunning backflip on providing a streamlined single appeal pathway for appeals under veteran compensation claims is proof that Labor has abandoned the interests of Australia's veterans and is now completely at the beck and call of backroom puppeteers.

In 2011, under the former Labor government, the Review of Military Compensation Arrangements was completed.

During the review process the ex-service community made it very clear that it wanted the current dual appeal pathway scrapped in favour of a streamlined, fairer and simpler single appeal pathway for clients who are covered by the *Military Rehabilitation and Compensation Act 2004* (MRCA).

The Bill debated in the Senate today will give clients covered by the MRCA access to the **same** appeal pathway as those clients who are covered under the *Veterans Entitlement Act 1986*, no more and no less. This is exactly what the veteran and ex-service community demanded through the review process.

In May 2012, Labor announced it would adopt these recommendations, the ones it has today sought to oppose.

Under the current system, some MRCA clients do not have access to the Veterans' Review Board.

The new system will ensure that all MRCA clients have access to the Veterans' Review Board, an independent appeal mechanism that does not require veterans to retain the services of a lawyer. Instead, veterans could be represented by a veteran advocate who provides services free of charge.

This appeal process has stood the test of time and has the full support of the veteran and ex-service community. Importantly, the ex-service community has been constantly engaged

in the development of these legislative changes since the former Labor government's acceptance of the recommendation more than three years ago.
Until just yesterday, Labor continued to support these changes:

"It makes sense to have a single appeal pathway via the Veterans Review Board" **(Shadow Minister for Veterans' Affairs David Feeney, 7 September 2015, News Corp article)**

Schedule 2 of the bill will streamline the appeals process into a single pathway for reconsideration or review of an original determination under chapter 8 of the Military Rehabilitation and Compensation Act. This amendment has the support of ex-service organisations and I commend the government for putting it in. **(Former Labor Minister for Veterans' Affairs Warren Snowdon, 20 August 2015, House of Representatives)**

The changes to be made to the review process under this bill will streamline the process into a single pathway, and that is a good thing. This part of the amendment has the full support of the ex-service organisations. **(Shadow Parliamentary Secretary to the Attorney-General Graham Perrett, 20 August 2015, House of Representatives)**

It is extremely disappointing to see that the Labor Party has now joined Independent Senator Jacqui Lambie in turning their backs on the veteran community by opposing these changes at the behest of compensation lawyers.

Compensation lawyers are opposed to this reform because by ensuring that all veterans have access to the Veterans Review Board, fewer cases will proceed to the Administrative Appeals Tribunal, which in turn means fewer fees for lawyers.

The Government is united with the ex-service community in unanimously supporting the single appeal pathway – the only people who have spoken against its implementation are compensation lawyers and now the Labor Party and Senator Lambie.

The Abbott Government is putting the interest of veterans ahead of compensation lawyers. Jacqui Lambie and Labor ought to do the same.

Media enquiries: Minister Ronaldson: Mark Lee 02 6277 7820 or 0408 547 381

http://www.vrb.gov.au/pubs/vrbannrep2013-14.pdf

The VRB at a glance 2013-14

Applications lodged 3264

Applications decided 3388

Applications on hand 2843

% of matters set aside 48.5%

% of matters affirmed 51.5%

Average time taken to decide an application (weeks) 50

% of decided cases where applicant represented 87.8%

Hearings arranged 2276

% of decided cases where hearing held 57.2%

% of applications appealed to the AAT 11.2%

Members 36 Staff 22.2 Cost $5.65M