

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

**Submission provided by Thomas JEHN OAM JP(Qual) on behalf of the Veterans Advice & Social Centre Hervey Bay.**

Thank you for allowing input to this inquiry.

My experience as an advocate/pension officer dates back to 1987 in NSW and more recently in Queensland for the past 17 years. I have been the practicing advocate for Hervey Bay Veterans Advice & Social Centre for approximately 14 years.

The Veterans Advice & Social Centre is located at Freedom Park, Main St Pinalba and is manned by volunteers where you may drop in for a chat, a cup of coffee, or receive advice relating to pension and welfare matters from our experienced advocates, pensions and welfare officers, we also have 3 Qualified JP's.

The Centre is managed by the VVAA Hervey Bay City Sub Branch, a self-funding, non-profit association that uses only unpaid volunteers, (Our volunteers do not accept "Honorariums").

Our sole interest is the welfare of veterans and their families and assisting them, their dependents and descendants in all matters relating to their health, welfare and well-being with many younger veterans requesting our assistance with their dealings with DVA and becoming more involved in our activities.

The Hervey Bay Veterans Advice & Social Centre has provided advocacy, pension and welfare assistance to veterans from all conflicts and their dependents and descendants at our Drop-In-Centre since opening our doors in 2003.

Our committed pension/welfare team provide ongoing advice and assistance directly to Veterans and their families in relation to a wide range of welfare matters including emotional, social and emergency support as well as the preparation and submission of primary claims for disability pensions, and/or applications for increases to existing disability pensions under The Military, Rehabilitation and Compensation Act 2004, Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 and Veterans' Entitlements Act 1986. We also assist veterans with no Qualifying Service with their Centrelink applications.

Our Advocate represents veterans and family of veterans at the Veterans Review Board and Administrative Appeals Tribunal on a regular basis and we have a close working rapport with the Department of Veterans' Affairs, the Veterans Review Board and the AAT.

## Summery

The basis of this inquiry relates to authority under The Military, Rehabilitation and Compensation Act 2004, Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 and Veterans' Entitlements Act 1986 to enable the secretary to arrange for the use of computer programs to make decisions and determinations, exercise powers or comply with obligations and do anything else related to those actions; enable the secretary to disclose information about a particular case or class of cases where the secretary certifies that it is necessary in the public interest to do so; and enable information sharing between the Military Rehabilitation and Compensation Commission and the Secretary of the Department of Defence or the Chief of the Defence Force; Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 to amend the short title of the Act once it is enacted; and Veterans' Entitlements Act 1986 to make technical amendments.

It is submitted with the shift to new technology we must be mindful of the need for safeguards and internal auditing systems to maintain the security and integrity of automated electronic process and information sharing systems.

Legislation has included:-

- The Australian Soldiers' Repatriation Act 1920 (later renamed the Repatriation Act 1920),
- Veterans' Entitlements Act 1986 (VEA),
- Safety, Rehabilitation and Compensation Act 1988 (SRCA),
- Military Compensation Act 1994, and the current
- Military Rehabilitation and Compensation Act 2004 (MRCA).

During the 1980s and early 1990s, significant changes were made in the standard of proof, pension eligibility, and compensation arrangements for peacetime service. The MRCA covers defence service on or after 1 July 2004; the SRCA and VEA cover service before 1 July 2004.

The MRCA compensation legislation was said to be designed to cover the whole spectrum of military service.

This Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016 consists of two schedules –

- Computerised decision-making (schedule 1)
- Information sharing (schedule 2)

I refer in part to Minister Tehan's second reading of the Bill dated Thursday, 24 November 2016.

### **Computerised decision-making (schedule 1)**

In the context of veteran-centric reform, these provisions would enable the secretary of DVA to arrange for computer programs to:

- make decisions and determinations,
- exercise powers or comply with obligations, or
- do anything else related to making decisions and determinations, or exercising powers or complying with obligations.

The last point is very important with respect to automating parts of DVA's business and improving outcomes for clients. For example, where a particular provision requires notice of a decision to be given, this new computerised decision-making provision will enable the computer program to both make the decision and send the notice.

### **Information sharing (schedule 2)**

Schedule 2 contains two types of information-sharing provisions:

- public interest disclosures, and
- information sharing under the Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 1988, subject to it being enacted.

Examples given of the circumstances in which it might be appropriate for the secretary of DVA to disclose information about a case or class of cases include where there is a threat to life, health or welfare, for the enforcement of laws, in relation to proceeds of crime orders, mistakes of fact, research and statistical analysis, APS code of conduct investigations, misinformation in the community and provider inappropriate practices.

### **Submission Computerised decision making**

- 1) Firstly I have no problems with The Department of Veterans' Affairs (DVA) looking for ways to influence today's technology to provide a better service to veterans and clients, but am concerned with electronic information sharing and who has access to veterans personal information as set out in the Australian Privacy Principles. This aspect of the submission requires clarification of information sharing and access.
- 2) I am concerned with reading the example that a notice of a decision will be an automated process that would enable a computer program to both make the decision and send the notice, enabling faster decisions to be made and communicated.
- 3) This should be looked at with great care due to the vulnerability of many veterans if mistakes were made during any automated process relating to a veterans disability claims and this must not be acceptable and should not happen.

- 4) I agree with recent statements made by veterans relating to slow processing times relating to the Repatriation Commission's and Military Rehabilitation and Compensation Commission's decision-making processes.
- 5) I am hesitant without knowing the full submission details and prior discussions whether it would be beneficial to the veteran if their initial compensation claims and the obligatory application of relevant Statement of Principles were conducted by a computer process only rather than by DVA delegates to expedite existing processes.
- 6) I understand automated processes may free up resources and perhaps result in shorter wait times and faster payments for certain DVA clients, but this electronic decision making should be restricted to assessment processes and then only after the delegate has finalised the entitlement decision.
- 7) I am concerned the transferring of many DVA services to an electronic process would only result in an additional backlog of the workload such as what has happened within Centrelink, where clients may need to wait for extensive periods to have their matter resolved or attended to. Remember we are dealing with veterans, many with special needs and it is essential for many veterans to have a contact person within DVA as his/her case manager.
- 8) For some time many DVA clients have listed slow processes and long wait times as high priorities for the Department's attention. Comments made to me by members of the veteran community mainly address the lack of trust they have in DVA decision makers and often feel they are treated as the adversary.
- 9) It must again be stressed many veterans have special needs, such as those with psychiatric disorders and personality difficulties that are often enhanced by the claims process and their interaction with DVA.
- 10) With this in mind, I am more than a little concerned about the examples of the circumstances in which it might be appropriate for the secretary of DVA to disclose information about a case or class of cases where there is a threat to life, health or welfare, for the enforcement of laws, in relation to proceeds of crime orders, mistakes of fact, research and statistical analysis, APS code of conduct investigations, misinformation in the community and provider inappropriate practices.
- 11) This appears to be an open ended statement open to interpretation relating to the veterans right to privacy, especially if the amendments would align information-sharing provisions under the Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 1988 with those in the Military Rehabilitation and Compensation Act 2004. I do not feel this statement is correct as everyone has a right to privacy.

- 12) It has been stated there are no substantive changes to the law—this is a technical amendment only and that such changes will enhance readability, facilitate interpretation and promote consistency across the Commonwealth statute book.
- 13) It has been stated that because this is the first time DVA has been given these powers, five safeguards have been incorporated to ensure that they are exercised appropriately.

These safeguards include -

- the Minister for Veterans' Affairs sets the rules for how the secretary exercises the powers
  - only the Minister for Veterans' Affairs can set these rules
  - only the secretary can exercise the powers
  - before disclosing any information, the secretary must notify the person in writing, give the person a reasonable opportunity to make written comments on the proposed disclosure, and the secretary must consider these comments, and
  - if the secretary fails to comply with the requirements I before disclosing personal information, they will commit an offence that is punishable by a fine of 60 penalty units.
- 14) It is submitted for this direction to only apply under exceptional circumstances if in the opinion of the Secretary there fear of loss of life, property or personal injury, and then only to be used as a last resort.
  - 15) Transition management may be one area where these electronic provisions may address these issues, as the role of the case manager is to assist the person in the transition to civilian life, including advising the person about entitlements and services for which he/she may be eligible and about how to obtain access to such entitlements and services as a member or former member of the ADF.
  - 16) VVCS provides free and confidential, nationwide counselling and support for war and service-related mental health conditions, such as posttraumatic stress disorder (PTSD), anxiety, depression, sleep disturbance and anger. Support is also available for relationship and family matters that can arise due to the unique nature of the military lifestyle.
  - 17) VVCS Clinical information is not be released to the Department of Veterans' Affairs, other government agencies or external parties without the veterans consent, unless there are exceptional circumstances where information may have to be released in accordance with the law. This would only occur where the veterans safety or the safety of others is at serious risk, in serious criminal matters, or in response to a court direction. If the veteran is a member of the Australian Defence Force (ADF) and has been referred through the ADF Agreement for Services, VVCS is required to provide periodic reports regarding treatment to the ADF Referring Authority.

- 18) It is therefore recommended any reporting relating to public interest disclosures be similar to those already in place by the VVCS relating to public safety and the veteran placed under the supervision of a medical specialist if necessary.
- 19) I agree with comments stating the existing policies directing processing and assessing of service injuries or diseases are cumbersome. I have no problem with any streamlining of the process if there is evidence that some SoP factors can be met simply because an ADF member has performed their regular duties in the ADF, but surely this does not require any additional electronic process to assessing a causal link to the veterans relevant service.
- 20) Electronic policy functions in CLIK already exists for the DVA decision maker to access and utilise these tools.
- 21) It is presently Departmental policy that decision makers call for additional questionnaires from the veteran to verify factors of the SoP's have been met, this is even after the veteran has made full disclosure of his/her duties in the ADF in their initial application (hard copy or electronic)
- 22) Defence already provides supporting service and medical documents detailing the veterans duties to DVA. It is recommended for this reason, approval for restricted electronic information sharing with DVA and Defence to align quantified information sharing provisions. (subject to being passed by the Parliament)
- 23) Concerns have been expressed by many serving members that if the ADF is notified of 'serving members' who have submitted claims to DVA, it should be done in a way that the information is kept confidential on a need to know basis, and in such a manner to ensure the claimants military career, including training courses, promotion or deployment would not be adversely effected and the veteran would not be placed in any fear of denigration from co-workers.
- 24) Younger veterans have also stated their unease should the data sharing stipulate the degree of impairment, any amount of compensation paid to the claimant and that data to be shared should only reflect whether liability is accepted or not accepted under the appropriate act.
- 25) I refer to comments in the DVA submission relating to Qualifying Service. Surely this should be one of the first checks carried out by DVA when receiving a claim to ascertain under what type of service the veterans claimed disabilities were suffered - such as peacetime service and/or warlike or non-warlike service to apply the correct SoP.
- 26) This information can only be obtained from Defence and should be obligatory at time of application. At present the only time a veteran is required to apply for Qualifying Service is when making application for Service Pension.

- 27) I am extremely concerned to read that 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 that will enable the computer program to both make the decision and send the notice, enabling faster decisions to be made and communicated.
- 28) In this instance, safeguards must be put in place to ensure computerised decisions will not be used where fact finding and weighing of evidence is required, such as interpretation/evaluation of medical evidence and application of SoP's.
- 29) It is contended this extensive policy information is already included and available in the DVA CLIK advice and the veterans service records to assist DVA decision makers when fact finding and weighing of evidence is required.
- 30) I agree that computerised decision making may be used in a simple element of a larger and more complex decision, but it must include a human decision-maker in the final analysis, and again submit should not be used where fact finding and weighing of evidence is required, such as interpretation/evaluation of medical evidence.
- 31) The electronic process may be used to clarify decisions relating to veterans having disabilities determined under both warlike service and non-warlike service requiring application of different SoP's for clinical onset and/or aggravation.
- 32) Also electronic process may be used to clarify decisions relating to veterans having multiple defence service to explain the methodology used for determining the compensation payable, including offset provisions that often are confusing both to the applicant and at times the decision maker.
- 33) I agree in principle with the submission provided by the Department of Veterans' Affairs that 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.
- 34) I cannot see how future computerised decision-making in appropriate circumstances as part of the Government's commitment will reduce compensation claims processing times for veterans due to the complexities involved when the decision maker needs to assess the many types of service, and in fairness to the veteran read the veterans service and medical documents to ascertain the appropriate legislation is applied and apply the correct SoP.

- 35) It is also current policy for the decision maker to call for specialist medical reports and to require many claimant reports and questionnaires to be completed by the veteran even though supporting information had previously been submitted to the decision maker supporting the veterans contentions.
- 36) I am concerned with statements relating to “own motion” review power described in the DVA submission that 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.”
- 37) This requires extensive clarification as 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. Further explanation is needed to clarify when and why this “own motion” review power will be enacted.
- 38) The “own motion” review power is said to be designed to correct computerised decisions that are incorrect, but that will be of no help to the veteran effected by incorrect computer decisions and may result in extreme distress to the veteran.
- 39) I understand if veterans believe a computer has made an incorrect decision, they would be able to contact a DVA staff member to discuss the issue and that all normal processes for appeal and recourse would be still available to the veteran, but I am extremely concerned about the veterans welfare and wellbeing if computer errors do occur and the time factors involved to rectify these errors and the possible impact these errors may have on veterans.
- 40) Clarification is also required relating to application for initial liability, permanent impairment compensation and how to conduct a needs assessment electronically.
- 41) To determine a claim the claims assessor needs to form an opinion on liability under the relevant Statement of Principle (SoP), or provide evidence where there is no applicable SoP.
- 42) The decision maker then carries out the preparation of the needs assessment (identifying priorities, needs and means of providing rehabilitation, treatment and incapacity payments); and determination of impairment points and lifestyle, and whether the condition has stabilised. This is the area mostly causing undue and unnecessary delays in determining veterans claims.
- 43) Medical expert opinion is often sought for determination of initial liability, clinical onset and causal link to service.



- 44) Other expert opinion (for example, from medical rehabilitation specialists) may be needed for assessing ability to work (rehabilitation and incapacity payments) and the stabilisation and scale of impairment (for permanent impairment compensation).
- 45) The MRCA introduced the requirement for the MRCC to provide the ADF with the outcome of claims from serving members. This is regarded as good policy for workforce and safety management. Defence has advised that current serving members are given greater encouragement to report incidents and to lodge claims for compensation during their career, rather than at discharge. This is better practice for workplace safety management purposes and may also result in more timely provision of evidence supporting a compensation claims and strengthens the argument for approval of restricted electronic information sharing with DVA and Defence to align quantified information sharing provisions. (subject to being passed by the Parliament)

Thank you for the opportunity to contribute to this submission on behalf of the Hervey Bay Veterans Advice & Social Centre.

Kind regards.

Tom Jehn OAM JP(Qual)  
Pension Advocate  
Veterans Advice & Social Centre

12 February 2017

.