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11 September 2015

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Dear Sir/Madam

Veterans' Affairs Legislation Amendment (2015 Budget Measures) Bill 2015

Thank you for the opportunity to provide a submission on the very important issues raised by this Bill. Please find enclosed a submission prepared by Slater and Gordon Lawyers.

I am available to speak with the Committee at short notice.

My contact details are (07) 3331 9724 or brian.briggs@slatergordon.com.au.

Should you require any further information, please do not hesitate to contact me.

Yours faithfully

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Inquiry into the Veterans' Affairs Legislation Amendment (2015 Budget Measures) Bill 2015

*Submission to the Senate Standing Committee on
Foreign Affairs, Defence and Trade by Slater and
Gordon Lawyers*

11th September 2015

Submitted on behalf of Slater and Gordon Lawyers

Brian Briggs, Practice Group Leader, Military
Compensation

Veterans' Affairs Legislation Amendment (2015 Budget Measures) Bill 2015

Introduction

- 1.1 Slater and Gordon is a national consumer law firm and is recognised as a leading provider of legal advice and representation to injured Australian Defence Force (ADF) personnel, Veterans and their dependents in every State and Territory. We have a dedicated military compensation team that has assisted thousands of ADF personnel, Veterans and their families.
- 1.2 Slater and Gordon have a longstanding commitment to working with this Committee, the Department of Veterans' Affairs (DVA) and the ADF on improvements to repatriation and military and veterans' compensation schemes and administration of those schemes. Accordingly, we welcome the invitation to comment on the *Veterans' Affairs Legislation Amendment (2015 Budget Measures) Bill 2015* (the Bill) and we believe that the Senate Inquiry process presents an opportunity to address the problems with the Bill, in particular '*Schedule 2 – Reconsideration and review of determinations*' .
- 1.3 We support Schedule 1 and 3 of the Bill. However, Schedule 2 will create insurmountable hurdles for injured Veterans and their families in relation to access to justice. These hurdles do not exist for the civilian population injured in the course of employment.
- 1.4 Ironically, if the Bill passes in its current form, civilian employees of the Department of Veterans' Affairs who administer military and Veterans' compensation will, if they are injured at work, have greater access to justice and fairer appeal rights than Veterans.
- 1.5 We believe Schedule 2 will further weaken the DVA compensation decision making process and is likely to lengthen delays in processes that are already delay ridden. Given the concurrent ***Senate Inquiry into the Mental Health of ADF personnel***, and the evidence already before that inquiry which shows poor DVA claims decision making and chaotic processes are exacerbating mental health issues for injured and ill ADF personnel and Veterans, Schedule 2 and its obvious impacts are clearly ill-timed.
- 1.6 We believe that in preparing this Bill for consideration by the Senate, drafters of the legislation have given thought only to the headings in the Review Report of the 2011 *Review of Military Compensation Arrangements* and did not consider the content or detail of the recommendations, most of which are not implemented by this Bill.

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2. The Bill contains three Schedules:

- Schedule 1 – Veterans' Vocational Rehabilitation Scheme
- Schedule 2 – Reconsideration and review of determinations
- Schedule 3 – Graves of dependents of members of the Defence Force

Schedule 1 and 3 are not controversial and we support them. This submission will focus on the serious concerns we have about Schedule 2.

3. Inequity created by Schedule 2

3.1 Inequity is created by Schedule 2 because it results in demonstrably inferior appeal rights for injured Veterans compared to civilian injured workers, not just under Comcare, but across Australian States and Territories. We believe that the Federal Government at best may not have fully understood the implications of simply abolishing the Veterans right to request an internal reconsideration to the MRCC provided by Section 349 of the *Military, Rehabilitation and Compensation Act 2004*.

3.2 Civilian staff covered by Comcare, including staff of the Department of Veterans' Affairs (DVA), would have better protection and fairer appeal rights compared to Australian Defence Force Personnel, Veterans and their families if Schedule 2 is passed. Attachment 1 sets out certain appeal rights available under Comcare, especially relating to the award of costs to a successful claimant. Attachment 2 sets out the costs allowed.

3.3 The changes are proposed as part of a DVA savings measure, \$2.2m over 4 years, but the real savings are likely to accrue because DVA will be less accountable for its decisions and veterans will not be able to access their entitlements because they cannot afford the costs, including medical evidence and representation, associated with challenging the DVA.

4. Loss of access to an independent umpire

4.1 Schedule 2 means that except in rare cases, access to justice at the Administrative Appeals Tribunal – Veterans' Appeals Division, and the right to choose representation, although it will still partly exist on paper, will effectively be abolished.

4.2 Schedule 2 works in this way:

- Veterans would no longer have the right to request an internal reconsideration of a poor DVA decision through the S 349 MRCC pathway. This is the quicker of the two review pathways, has procedural and cost advantages for Veterans, and since the inception of the dual appeal pathway is preferred by Veterans more often;
- All appeals would be directed to the Veterans' Review Board (VRB). An injured Veteran is not allowed to be assisted by anyone with a legal qualification during the VRB process, although a law clerk or student might be permitted;
- An injured Veteran who has their case considered by the VRB and wishes to appeal to the Administrative Appeals Tribunal (AAT) loses the right to recover any costs for medical

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reports or legal representation which they require to prove their case because they have been through the VRB process. The VRB process results in the elimination of the possibility of a Veteran being awarded costs;

- Even Veterans with very strong cases will not be able to afford to appeal to the independent umpire as is currently their right. Win, lose or draw Veterans cannot be awarded their costs at the AAT if this Bill is passed;
- The single appeal path through the VRB means that Veterans and their dependents could appeal to the AAT and be unrepresented, be represented by an ESO or could apply for legal aid, which is subject to varying eligibility criteria and agreement with the State and Territory Governments;
- DVA's legal arrangements are not altered by the Bill i.e. DVA will continue to employ lawyers in-house and engage specialized lawyers from external firms to do the legal work to defeat the Veteran's appeal.

4.3 Injured civilian workers who come under Comcare, including DVA staff, will continue to be awarded costs at the AAT when they win, whilst no injured Veteran could be awarded costs against DVA under any circumstances.

5. David v Goliath – the imbalance in resources created by Schedule 2 is stark and obvious

5.1 DVA use private sector lawyers chosen from a panel as well as paying for in-house lawyers to assist them to defeat a Veteran's claim. There is no limit on the DVA's use of lawyers. The VRB process explicitly does not allow the Veteran to use a lawyer. If this Bill passes, Veterans who may wish to be represented by a legally qualified advocate at the AAT will not be able to afford this because no costs will be able to be awarded and access to legal aid is vastly inadequate. ESO's will be able to help in some cases, but the Government knows they can be out gunned by DVA lawyers, including the engagement of highly skilled private sector law firms.

5.2 Some lawyers, as a result, in the private profession have become specialized in assisting Veterans and provide legal services to Veterans on a 'no win, no fee' basis. Barristers provide representation at the AAT on a contingency fee basis (similar to 'no win, no fee'). This will be eradicated if Schedule 2 is enacted. Veterans who win their case ought not to be expected by the Government to pay for medical and legal costs of between \$5,000 and \$20,000 for an AAT appeal, especially in light of the legal resources the DVA has at its disposal.

5.3 It is also noted that the changes in the Bill impact the rights of dependents of some deceased ADF personnel.

6. The DVA's use of lawyers against the Veteran

6.1 The DVA is required to disclose the costs it incurs on the use of lawyers and barristers (internal and external) by the Attorney-General's Legal Services Directions 2005.

6.2 In 2013/14 the DVA spent \$6.244m on external legal services including \$0.586m on 'engaging counsel who advised on litigation' and other matters.

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Legal Services expenditure by DVA overall was \$9.429m in 2013/14 compared to \$9.01m in 2012/13.¹

6.3 DVA's use of lawyers is described in Para 17.41 of the Review Report as follows;

"DVA advocates representing the Repatriation Commission on VEA cases at the AAT are generally DVA employees at the EL 1 level or above. They are not required to be legally qualified but most are. Most SRCA and MRCA advocacy conducted by DVA at the AAT is contracted out to a panel of legal service providers at a cost of \$4.5 million per year."

7. Appeals and complexity

7.1 Appeals to the AAT in this jurisdiction are not high in number and even fewer cases continue to hearing. Typically they involve either complex issues or a challenge to a DVA policy or DVA legislative interpretation that disadvantages Veterans. In the past, many important challenges have been mounted, and legal precedents set in appeals to the AAT, Federal or High Court.

7.2 We believe these appeal routes provide a vital tool in ensuring fair interpretation and application of the MRCA, a piece of legislation which is complex and highly technical.

7.3 To remove the ability to access costs for a successful outcome will result in a significant limitation on legal challenges, a move which in our opinion could easily result in the development and continuation of unjust or incorrect interpretations of the Act and Departmental policies by the DVA, the MRCC and the VRB.

8. The importance of ESO's and adequate funding

8.1 We respect the work ESO's do and believe that ESO's need more funding to meet the demands already placed upon them. However funding has been cut in recent years and so it is unclear how the DVA expects ESO's to absorb the extra responsibility that will arise if Schedule 2 passes. ESO's will face a higher case load and along with injured Veterans, will have to face far more complex and daunting cases against DVA lawyers.

8.2 More funding and support is required for the ESO's in light of current workloads, let alone expectations the Government has of them in future.

Senior ESO advocates where experienced in this area are already under increasing pressure with their workloads. It is often difficult for veterans to see them and the level of experience and training varies around the country.

9. Selective quoting of the Review headings rather than implementation of recommendations

9.1 The Government is being selective in its quoting of the findings of the Review of Military Compensation Arrangements. This is what the Report has to say in Chapter 17 "Reconsideration and Review".

9.2 The Report says in relation to implementation of the 'single path';

¹ Legal Services Expenditure, DVA website.

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17.91 *"If no costs awards are available under the single path, members pursuing claims for (peacetime service) who do not have access to merits-based legal aid) are put at a disadvantage. Currently, the availability of the second path allows this to be taken into account"*

17.92 *"Implementation of a single path would therefore require rethinking the current position in relation to costs and legal aid." This is the responsibility of the Federal Attorney-General (17.93).*

17.94 *...the Committee's preference is to have a full costs jurisdiction for all MRCA applicants at AAT level. This would allow legal and other representatives to assess the merits of cases and pursue them on a 'no win, no fee' basis".²*

9.3 In Chapter 17, the *Review of Military Compensation Arrangements 2011 Report* (the Review Report) steps out the things that would need to be done, before a move to a single pathway could be fairly achieved. It is unclear whether any of the steps have been completed, and clear that some of the steps have not been commenced or been ignored. This is one of the reasons Schedule 2 has a particularly unfair set of outcomes.

10. Schedule 2 and its consequences discussed

10.1 The abolition of the right of a Veteran to request a S 349 internal reconsideration by the MRCC requires careful examination to ensure that the processes replacing it are an improvement. As currently proposed they are clearly not an improvement.

10.2 The system will be fairer, quicker and work better for injured Veterans if the Government keeps the right to request an internal reconsideration of DVA decisions under S349. It would be even fairer if the Government agrees that Veterans who appeal to the VRB and through internal reconsideration should equally have the right to be awarded costs, in line with recommendation 17.94 of the 2011 Review Report above.

10.3 The MRCC internal reconsideration process has been a faster way for Veterans to resolve their concerns and often leads to satisfactory results and according to statistics in the Review Report is preferred by most Veterans.

11. Some of the advantages of S 349 review

11.1 Under the internal reconsideration process an advocate can request DVA documents that may help the Veteran and may request DVA fund proper medical reports if needed. The Veterans' Review Board caps reimbursements at \$467, even though the medical reports needed, can cost far more – often many thousands of dollars.

12. S 347 Appeals disadvantages

12.1 The explanatory memorandum to the Bill on p8 clarifies that;

"The single appeal path will remove internal reconsiderations by the MRCC for claimants and enable a claimant to appeal an original decision of the MRCC to the VRB with a second tier of appeal to the AAT."

² Review Report of Military Compensation Arrangements 2011, Vol 2, Ch 17, pp238-239 (Review Report 2011)

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12.2 The Minister for Veterans' Affairs has subsequently re-confirmed that only the right of the injured Veteran to request an internal reconsideration is removed by Schedule 2. The MRCC can, if it wants to and has the resources to, conduct a Section 347 of the *Military, Rehabilitation and Compensation Act 2004* internal reconsideration, but will be under no legal obligation to involve the Veteran, adhere to any time frames or to assist the Veteran with the costs of medical reports.

12.3 It is noted that the MRCC ceased conducting Section 347 reviews around 5 years ago prior to VRB considerations³. If the Government wishes these reviews to re-commence it is our submission that they would need to identify the resources and provide training to the staff that will be deployed to this task and reverse reductions in public service staffing levels.

13. A double blow - loss of right to choose representation and loss of the right to be awarded costs at the AAT

13.1 As referred to above, Veterans are not allowed to be supported by an independent lawyer in the VRB process, despite DVA being able to hire as many lawyers as they want to defend a decision to deny the Veteran their benefits.

13.2 We set out some recent case studies below as a means to humanize the impact of these changes.

CASE STUDIES

1. Recent successful AAT appeal

Description:

- current serving member (Reserves)
- has rendered non-warlike service on Operations Astute (2012)

Age:

- 28

Injury:

- meniscal tear of the right knee

Current status:

- current reserve member, but has been advised that he is likely to be discharged soon as a result of his ongoing knee injury

Nature of dispute:

Liability rejected for injury to knee.

Length of time/description:

³ Review Report 2011, p228 Para 17.28

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Injured knee in early 2012 during pre-deployment physical training.

When he signed up in December 2013 liability had recently been rejected for his knee injury. It was rejected on a technicality- because it was not diagnosed by MRI until May 2013 the MRCC did not consider he satisfied the relevant 'Statement of Principles'. This became a legal argument about the 'date of clinical onset'.

We submitted a reconsideration. The MRCC affirmed the decision and we appealed to the AAT in July 2014. Our appeal was successful (January 2015) and liability has now been accepted for his knee injury, meaning he can now access benefits after discharge, including surgery, incapacity payments if unable to work and medical treatment in the future.

What would happen if legislation passed:

If legislation was in place when this client signed up we would not have been able to assist him in a VRB application (as no legal rep allowed). Unlikely client would have been able to afford to pay us to run appeal in AAT (party/party costs were in excess of \$4,000).

Client has said that he would have been unable to run an appeal via the VRB himself.

Client would now be in the position of facing medical discharge without access to benefits (incapacity, medical, permanent impairment, despite the fact he injured his knee during military training.

2. Client with current VRB appeal

Description:

- serving RAAF member- rank of CPL
- enlisted 2000

Age:

- 43

Injury:

- brain haemorrhage resulting in hemiplegia (in dispute)
- shoulder back and knee (accepted)

Current status:

- current serving member, suffering financial hardship as a result of injuries. Is on medical restrictions at work

Nature of dispute:

Liability rejected brain haemorrhage condition.

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Length of time/description:

Suffered a brain haemorrhage in January 2012. He believes this resulted from a venous abnormality identified in 2006 by Defence, but not treated or properly monitored. Haemorrhage in 2012 was a significant event, requiring surgery and months of rehabilitation. He spent some time in a wheelchair during this period.

Liability rejected by the MRCC January 2013.

Client applied for review by the VRB in January 2013. In excess of two and a half years have now passed.

As at the present time, his appeal remains undetermined, having been adjourned by the Board on numerous occasions.

Although we act in relation to his shoulder, back and knee, as he unfortunately selected the VRB appeal route before instructing us, we have not been able to assist him in the matter. If he had signed up before submitting that appeal, we would have advised him to submit a reconsideration.

The fact of his outstanding VRB appeal has caused delays in finalisation of permanent impairment for his accepted conditions.

What would happen if legislation passed:

This matter is an example of the difficulties members can face with the VRB process.

This client is suffering financial hardship and his appeal has been ongoing for more than 2 years. We cannot assist him with the appeal.

If he is unsuccessful, it is unlikely we will be able to assist with an AAT appeal - he will not be entitled to recover costs and outlays if successful because he has come via the VRB. Medical reports alone in a matter could be expected to cost in excess of \$5,000, given the nature of the injury.

Having an undetermined liability matter complicates impairment claims for his accepted conditions.

This is a position many members may find themselves in if the amendments pass.

3. Client with current AAT appeal

Description:

-discharged member (Army)

- enlisted 2007

- rendered peacetime service and warlike/non-warlike service on Operation Slipper 2009

Age:

- 36

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Injury:

- multiple: sustained significant injuries including shrapnel wounds, traumatic amputation of the right leg above the knee and PTSD as a result of an IED July 2009 Afghanistan

Current status:

- discharged from the Army. Suffers significant psychiatric and physical injury.

Nature of dispute:

Degree of permanent impairment.

Length of time/description:

Paid permanent impairment in several decisions.

Does not feel he has been properly compensated for his psychiatric impairment.

Decision in question was March 2015. We submitted a reconsideration. Decision affirmed in June 2015. We are now in the AAT.

What would happen if legislation passed:

Rather than having the option of an internal appeal, with legal assistance, client would have had to have applied to the VRB on his own.

If unsuccessful, he would have to decide whether to go on to AAT. He would not be able to recover costs and outlays if successful so our ability to assist would be limited. Additionally he may not be able to afford to go down this path as he has used compensation money to pay off his house and for necessary lifestyle adjustments. It is likely he is going to need a medical report in the amount of approx. \$2000. Under the present system he should be able to recover the cost of this if successful. Under the new system he would not.

13.3 The DVA can hire as many lawyers as it wants to defeat a Veteran's claim, but the Veteran who has little or no funds and is facing severe stress, will have to pay all of the medical report and legal costs if they wish to appeal to the AAT. This will mean most will not be able to appeal and the DVA win by default.

13.4 The inability of Veterans to recover costs and disbursements associated with appealing a decision means that most injured Veterans will not be able to appeal to the independent umpire, the AAT. Therefore they will not be able to challenge the DVA's decisions.

14. More delays probable if Schedule 2 is enacted

14.1 The removal of the right to request an internal reconsideration is likely to create more workload for the VRB and more delay. If the MRCC decide to conduct a S 347 internal reconsideration, presumably a Veteran will have to wait until this is completed before they can lodge and appeal with the VRB.

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14.2 We stress again that there are no legislated time frames or process to ensure the S 347 internal reconsideration will be faster, fair or effective.

14.3 The Review Report 2011 noted at paragraph 17.81 that VRB matters were taking 418 days, up from 327 days in 2007-08 (paragraph 17.35). MRCC internal reconsideration processes, which has fixed and quicker time frames, in contrast to the VRB, were taking around 127 days.

14.4 At the time of the Review, legal advocates such as Slater and Gordon recommended shorter time frames for the MRCC and the addition in the Act of enforceable time frames for the VRB. The Government has declined to require any time frames for VRB processes or for S 347 reviews and so it is aspirational at best, false hope at worst, to assert publicly that new processes arising from Schedule 2 will reduce time frames for Veterans appeals.

14.5 Despite the VRB's genuine efforts to speed things up in recent years, things are still taking too long. These delays will probably get worse because they will have more cases to deal with but no apparent extra resources.

15. Legal Aid - an inadequate response

15.1 Legal aid is administered by State Governments, with funding provided by the Federal Government and legal aid services are under enormous pressure due to lack of legal aid funds. Extracts from the Federal Government Budget papers in recent years state that funding for Legal Aid Commissions have declined significantly (see below).

Currently, legal aid is available for Veterans via the VRB route for warlike and non-warlike service on a merit basis. For peacetime services the means and merit tests apply. Legal aid commissions control the amount that is provided and eligibility requirements vary.

15.2 As the Review Report outlines at paragraph 17.51, legal aid commissions provide a service in each state and territory to people who meet means and merits test and relevant guidelines. The means test assesses income and assets and the likely cost of the proceeding. The merits test assesses whether there is a reasonable prospect of success.

15.3 We note that State and Territory legal aid commissions eligibility criteria are structured differently making it difficult to make any direct comparison between the legal aid assistance they offer veterans.

15.4 Legal Aid NSW state that they will provide legal advice and assistance to eligible Veterans on *Veterans' Entitlement Act* matters, including lodging claims, completing application forms and assisting with appeals to the VRB and AAT. Legal Aid QLD state that they are not able to provide assistance until all 'internal appeal processes have been exhausted', that is, not until a matter has reached the AAT or Federal Court.

15.5 Certain applications are subject to a merit test. On comparison, these also appear to differ between the two states. The criteria for means testing is complex, and there are also differences but for QLD Legal Aid a car as an asset worth over \$16,000 in equity may exclude you, whereas Legal Aid NSW has a cap of \$20,000 on a vehicle.

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15.6 This is an obvious financial burden on people who can ill afford these burdens and no Government should knowingly place Veterans in this position. The Federal Government cannot make good a promise that Legal Aid Commissions will assist Veterans without agreement from the States and Territories. States and Territories are likely to consider a request for additional funding to meet anticipated demand, in light of the fact that the Federal Government are seeking to eradicate the capacity of the private legal profession to assist Veterans on a 'no win no fee' basis.

15.7 Chapter 17 'Reconsideration and Review' of the 2011 Review points out at paragraph 17.93 "*for legal aid coverage to be extended to a broader group, the federal Attorney-General would need to take up this matter with his state counterparts*". It is unclear whether or not the Federal Attorney-General, the Hon George Brandis, has sought or gained the agreement of the States and Territories to these changes.

15.8 Without an agreement with the States and Territories, the Federal Government is making a promise it can't keep if it says Veterans no longer need access to representation from a private sector lawyer because they will have legal representation at the AAT as they may be eligible for legal aid.

16. Legal Aid Funding and arrangements (Budget Review 2014–15 extracts).

16.1 In light of the Government promise to extend the availability of legal aid to make up for the elimination of the capacity of the AAT to award costs, it may be useful for the Committee to inquire of the Attorney-General's Department whether any negotiations have commenced with the States and when they are likely to conclude. We ask the Committee to acknowledge the restrictive nature of legal aid and the competing priorities of legal aid commissions in the context of downward trends in Commonwealth legal aid funding. We cite the following extract from the Parliament website;

"The Government provides funding to the states and territories for the delivery of 'legal assistance services' for disadvantaged Australians. 'Legal assistance services means all of the sector-wide legal service providers, including legal aid commissions, community legal centres, Aboriginal and Torres Strait Islander legal services and family violence prevention legal service'."

16.2 Funding for legal assistance services is generally consistent with recent trends. Funding for legal aid commissions is about 25% below recent historical trends, after taking account of recent large (but temporary) additional funding provided in the 2011–12 to 2013–14 Budgets.

16.3 The Government provides funding to the States and Territories for the delivery of legal aid services for disadvantaged Australians through the "National Partnership Agreement on Legal Assistance Services" ... Funding for legal aid commissions (programme 1.3 – 'Justice Services') is below trend. The decrease in 2014–15 is primarily due to the budget measure 'Legal aid—withdrawal of additional funding', which provides savings of about \$15 million in 2014–15. This measure partially reduces the \$21 million of additional funding provided for 2014–15 in the 2013–14 Budget. Whilst a decrease, it is a return to a similar level of funding as that provided to legal aid prior to the revisions in the 2011–12 Budget to include 'additional funding for legal aid for people smuggling, national security and drug-related cases'. Changes to the prosecution policy in relation to people smuggling introduced in August 2012, together with a decrease in the number of unauthorized boat arrivals, has resulted in a reduction in the number of people being prosecuted for

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people smuggling offences, which has led to a parallel decrease in the legal aid funding required in this area.⁴

17. Does everyone agree with Schedule 2?

17.1 It is noted that the majority of injured Veterans having been choosing the S 349 MRCC internal reconsideration pathway over the VRB according to statistics available in the Review Report.⁵ These statistics are but one counter-point to the Government's assertion that everyone is on board with doing away with the S 349 process.

17.2 We refer also to the useful Bill Digest summary of the Bill notes as follows;

"Key issues and provisions"

The Explanatory Memorandum to the Bill claims that the amendments give effect to the *Review of Military Compensation Arrangements* recommendation for a single appeal process. However, while implementing Recommendation 17.1 of the Review for a single appeal path, the proposed amendments ignore Recommendation 17.2 for internal reconsideration by the MRCC to be the first step in this review process. Instead, the proposed amendments will remove internal reconsideration by the MRCC from the appeals process altogether so that review by the VRB becomes the first tier of the single appeal pathway.

17.3 While ex-service organisations are supportive of the move to a single pathway, many have previously stated their support for an internal reconsideration component to be included as part of this appeals process. In their response to the Review of Military Compensation Arrangements, the Returned & Services League stated that it supported an internal review system (subject to the proper resourcing and staffing of the Review Teams) as did the Australian Peacekeeper and Peacemaker Veterans' Association. In his second reading speech, Assistant Minister for Defence Stuart Robert stated that the changes had 'very strong support' from the veteran and ex-service community. It is unclear whether the ex-service organisations changed their position on internal reconsideration during the consultation process undertaken by DVA.

17.4 The main issue for the proposed single pathway will be ensuring the VRB review process is not as lengthy or daunting for claimants as the current process is perceived to be. Case management and conferencing may go some way to addressing these issues, as will adequate financial support for the VRB".⁶

18. Senate Inquiry into the mental health of ADF personnel and other important Issues

18.1 Delays, chaotic claims management and impacts on the mental health of Veterans are already very serious issues before the Senate. As the Committee is aware, injured veterans who claim for compensation or support are not protected by the type of time frames that typically exist in workers' compensation schemes around the country. By the time the Veteran receives a decision

⁴ Budget Review 2014-15. "Legal Aid and Legal Assistance Services"

⁵ Review of Military Compensation Arrangements 2011 Report 'Statistics' p 227

⁶ Parliamentary Library Bill Digest

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that may not be favourable to them they may already have waited many months without a source of income. Changes to appeals processes must not add to delays because of the serious mental health and financial hardship impacts on Veterans and their families.

18.2 The Senate Inquiry into the Mental Health of ADF Personnel has recently heard evidence on some of these issues, but is yet to have published its findings. Below is a short extract of evidence that has been placed before this Inquiry. We believe it is essential these matters also be taken into account when considering whether to enact Schedule 2.

18.3 The Australian Public Service Commission found that the Department of Veterans' Affairs has problems with its culture, leadership and equipment. The Department has itself admitted that it cannot deal with the complicated needs of many physically and mentally injured veterans. A link to review can be found here: <http://www.smh.com.au/national/public-service/veterans-affairs-failures-exposed-in-australian-public-service-commission-capability-review-20141208-122e15.html>.

18.4 To quote an extract from the review *"In the absence of a single client number or reference point, it is impossible for staff to see the full range of services that may be given to, or purchased for, an individual at any one point in time. This somewhat ironic given the commitment of individual staff to their clients...A siloed and rules-bound culture means that opportunities for improvement are lost, agility is forsaken, risks are exaggerated in the absence of a broader perspective and motivation to support Veterans and their families can be hard to sustain."*

18.5 The Secretary of the Department of Veterans' Affairs, Simon Lewis, has acknowledged this dire need for significant improvement within the Department. If DVA is taking a fresh look at the foundation of its business, operating and delivery model, then the best place to start is to follow other countries and introduce mandatory time periods to deal with claims.

The disjointed approach presently in place needs remedying, whilst talk and acknowledgment letters without follow up or timely claims resolution is failing the Veterans with illness and injuries.

19 Delays in DVA decision making compound disadvantage for the injured veteran

19.1 Doctors who treat ex-soldiers for mental illness report only 10% of patients have a smooth experience through the DVA compensation process. This has been a well-known phenomenon for years. We have previously raised issues with under-resourcing and blow-outs and in claims being accepted, more than 2 years ago. Things have only gotten worse, particularly in the last 9 months.

19.2 It is well-known that service personnel waiting in limbo while being discharged will often turn to drugs and alcohol to fill the void. This often becomes even worse following the discharge. Both the USA and UK experience confirms the linked issue of alcohol abuse being significantly associated with service in the Armed Forces. UK studies have provided specific evidence that this issue is more common among combat veterans. This issue often exacerbates the problems faced by Veterans waiting for claims to be processed and can lead to worsening mental and physical health.

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Conclusion

In conclusion, it is our submission that Schedule 2 of the Bill should not be passed by the Senate.

With the greatest respect to this Parliament, I suggest that the better way forward is for the Government to consider the full details of the 2011 Review Report.

To remove Veterans' access to the internal route of Appeal through the MRCC will deprive our military personnel of a fundamental right to seek independent legal advice, be represented in the AAT and to recover costs of medical reports.

Those who have chosen to serve in the Armed Forces will be in a much worse position than Commonwealth employees and the very people who will make determinations whether liability and compensation under the various schemes should be accepted.

Stripping appeal rights is not the answer to creating the single review pathway.

I thank you for the opportunity to comment.

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Veterans' Affairs Legislation Amendment (2015 Budget Measures) Bill 2015

Att 1 – the right of civilian injured workers under Comcare to seek an award of costs

The relevant Sections of Comcare's *Safety, Rehabilitation and Compensation Act 1988* are S 67(8), 67(8A), 67(8B) and section 67(9) of the SRCA 1988.

Safety, Rehabilitation and Compensation Act 1988 - SECT 67

(8) Where, in any proceedings instituted by the claimant, the Administrative Appeals Tribunal makes a decision:

(a) varying a reviewable decision in a manner favourable to the claimant; or

(b) setting aside a reviewable decision and making a decision in substitution for the reviewable decision that is more favourable to the claimant than the reviewable decision;

the Tribunal may, subject to this section, order that the costs of those proceedings incurred by the claimant, or a part of those costs, shall be paid by the responsible authority.

(8A) Subject to this section, the Administrative Appeals Tribunal may order that the costs incurred by the claimant of any proceedings instituted by the Commonwealth be paid by:

(a) if the Tribunal varies the relevant reviewable decision in a manner less favourable to the claimant, or sets aside the relevant reviewable decision and substitutes a decision that is less favourable to the claimant--Comcare; or

(b) in any other case--the Commonwealth.

(8B) Subject to this section, if in any proceedings instituted by a licensed authority or a licensed corporation, the Tribunal affirms the reviewable decision or varies that decision in a manner more favourable to the claimant, or sets aside the relevant reviewable decision and substitutes a decision that is more favourable to the claimant, the Administrative Appeals Tribunal may order that the costs of the proceedings incurred by the claimant be paid by the responsible authority.

(9) Where the Administrative Appeals Tribunal gives a decision setting aside a reviewable decision and remitting the case for re-determination by the determining authority, the Tribunal shall, subject to this section, order that the costs of the proceedings before it incurred by the claimant shall be paid by the responsible authority.

And

(13) Where the Administrative Appeals Tribunal orders a responsible authority to pay costs incurred by a claimant, the Tribunal may, in the absence of agreement between the parties as to the amount of the costs, tax or settle the amount of the costs or order that the costs be taxed by the Registrar or an officer of the Tribunal.

Veterans' Affairs Legislation Amendment (2015 Budget Measures) Bill 2015

Att 2

AAT Practice Direction on costs that may be allowed.

3.1 What costs will be allowed?

3.1 Subject to any legislative requirements and the order made by the AAT:

(a) costs will be assessed on a party and party basis;

(b) the costs payable may include:

(i) witness expenses at the prescribed rate;

(ii) all reasonable and proper disbursements, such as counsel's fees, fees for reports by doctors or other experts, and photocopying;

(iii) professional costs determined as follows in accordance with the scale of costs set out in the *Federal Court Rules 2011*:

(A) for items with non-discretionary amounts – 75 per cent of the costs which would be allowable under those items; and

(B) for discretionary items – the amount which would be allowable under those items having regard to any matters set out in those items.