

Chapter 1

Introduction

Referral of inquiry

1.1 On 24 November 2016, the Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016 (the bill) was introduced in the House of Representatives by the Minister for Veterans' Affairs, the Hon Dan Tehan MP.¹

1.2 On 1 December 2016, the Senate referred the provisions of the bill to the Senate Foreign Affairs, Defence and Trade Legislation Committee (the committee) for inquiry and report by 14 February 2017.² On 13 February 2017, the Senate agreed to extend the reporting date to 20 February 2017. The key issues for consideration, as cited by the Selection of Bills Committee, are that:

- without the final guidelines for Schedule 2 of the bill it cannot be considered in detail;
- there needs to be wider examination of the effects of Schedule 2 and its requirements, and whether there are sufficient legislative protections for the veteran community to justify Schedule 2 of the bill;
- the circumstances in which the department would find it necessary to publically release the personal details of veterans; and
- concern that the government has not taken into consideration wider stakeholder engagement.³

Conduct of inquiry

1.3 The committee advertised the inquiry on its website, calling for submissions by 25 January 2017. The committee also wrote directly to a range of individuals and organisations likely to have an interest in the bill, drew their attention to the inquiry and invited them to make written submissions.

1.4 The committee received five submissions and three supplementary submissions to the inquiry. These submissions are listed at Appendix A and are published on the committee's website.

1.5 The committee held one public hearing on 16 February 2017 in Canberra. The witnesses who appeared at the hearing are listed at Appendix 2 and the program and *Hansard* transcript are published on the committee's website.

1 The Hon Dan Tehan MP, Minister for Veterans' Affairs, *House of Representatives Hansard*, 24 November 2016, p. 4316.

2 *Journals of the Senate*, No. 19, 24 November 2016, p. 590.

3 Selection of Bills Committee, *Report No. 10 of 2016*, p. 3.

Purpose of the bill

1.6 The Department of Veterans' Affairs is undertaking ICT and business reforms in order to improve its services, reduce claims processing times, and prepare for future upgrades. The bill will ensure the department is 'digitally ready' in a legal sense. The bill will also enable the Secretary of the Department to share information under limited circumstances.

1.7 The bill inserts a provision into each of the *Veterans' Entitlements Act 1986* (VEA), *Military Rehabilitation and Compensation Act 2004* (MRCA) and *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (DRCA). The changes will enable the Secretary to authorise the use of computer programs to make decisions and determinations, exercise powers or comply with obligations, and do anything else related to making decisions and determinations under those Acts and legislative instruments made under those Acts.

1.8 The bill also inserts a provision into each of the VEA, MRCA and DRCA to enable the Secretary to disclose information about a particular case or class of cases, to persons and for purposes that the Secretary determines, if he or she certifies that it is necessary and in the public interest to do so.⁴

1.9 Examples of the circumstances in which it might be appropriate for the Secretary to disclose information about a case or 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 or provider inappropriate practices.⁵

1.10 The bill also inserts provisions into the DRCA to correct an anomaly between the MRCA and the *Safety Rehabilitation and Compensation Act 1988* (SRCA). Currently, the Military Rehabilitation and Compensation Commission (MRCC) is unable to provide information to the Secretary of the Department of Defence and the Chief of the Defence Force under the SRCA that it is able to under the MRCA. The change will ensure that the obligation to provide claims information in relation to serving members is consistent under both Acts.⁶

1.11 Lastly, the bill makes two technical amendments to the VEA that were intended to be made as part of the *Statute Update Act 2016*, but which were overlooked. References to penalties expressed as a number of dollars will be updated with penalties expressed as a number of penalty units, and one change will amend the short title of the DRCA.⁷

4 Explanatory Memorandum, *Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016*, p. 1.

5 Explanatory Memorandum, *Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016*, p. 3.

6 Explanatory Memorandum, *Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016*, p. 1.

7 Explanatory Memorandum, *Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016*, p. 1.

Scrutiny by other committees

Scrutiny of Bills Committee

1.12 The Scrutiny of Bills Committee considered the bill according to its usual process and identified that the bill's provisions which relate to the Secretary's potential discretionary power to make disclosures in the public interest, may be in breach of scrutiny principle 1(a)(ii) of Senate Standing Order 24, which relates to the effect of proposed legislation on individual rights, liberties and obligations, the rule of law and on parliamentary scrutiny.⁸

1.13 It noted that while the Secretary must act in accordance with any rules the Minister makes about how the Secretary's power is to be exercised, there is no requirement for the Minister to make rules for this purpose.⁹

1.14 The Scrutiny of Bills Committee sought the Minister's advice as to:

- why rules or guidance about the exercise of the Secretary's disclosure power cannot be included in the primary legislation; and
- why there is no duty on the Minister to make rules regulating the exercise of the Secretary's power (i.e. the committee sought advice as to why the proposed subsections have been drafted to provide that the Minister *may* make these rules, rather than requiring that the Minister *must* make rules to guide the exercise of this significant power).¹⁰

1.15 The Minister for Veterans' Affairs, the Hon Dan Tehan MP, responded to the Scrutiny of Bills Committee on 12 December 2016. The Minister pointed out the bill's proposed public interest provision was modelled on the *Social Security Administration Act 1999* which has been in operation for 17 years and never been cause for concern. Minister Tehan noted that the Department of Human Services does not have rules of guidance in its primary legislation for public interest disclosures.

1.16 According to the Minister, if rules or guidance were located in the primary legislation, the Minister for Veterans' Affairs would be less able to quickly respond to changing circumstances. Minister Tehan indicated his intention to make rules that will limit the circumstances in which the Secretary will be able to exercise the proposed public interest disclosure power and noted that the Secretary cannot exercise the power until those rules are in place. The Minister advised that work on developing the content of the rules is underway in consultation with the Shadow Minister for Veterans' Affairs.¹¹

1.17 On 15 February 2017, Minister Tehan informed the Scrutiny of Bills Committee of his proposal to move government amendments which incorporate the committee's suggestion that the Minister '*must* make rules' in relation to how the

8 Scrutiny of Bills Committee, *Alert Digest No. 10 of 2016*, 30 November 2016, pp 29–30.

9 Scrutiny of Bills Committee, *Alert Digest No. 10 of 2016*, 30 November 2016, p. 30.

10 Scrutiny of Bills Committee, *Alert Digest No. 10 of 2016*, 30 November 2016, p. 30.

11 Department of Veteran's Affairs, *Submission 2*, p. 17.

Secretary may exercise the public interest disclosure power, rather than the current 'may make rules'.¹²

Parliamentary Joint Committee on Human Rights

1.18 The Parliamentary Joint Committee on Human Rights deferred its consideration of the bill in its first report for 2017.¹³ The committee's second report for 2017 was not available prior to this committee's inquiry reporting date.

Structure of report

1.19 Chapter 2 of this report provides an overview of issues raised in evidence and contains the committee's view and recommendation.

Acknowledgements

1.20 The committee acknowledges the short period of time available for those who made submissions. The committee thanks all those who assisted with the inquiry.

12 The Hon Dan Tehan MP, Minister for Veterans' Affairs, *Correspondence to the Scrutiny of Bills Committee*, tabled at public hearing on 16 February 2017.

13 Parliamentary Joint Committee on Human Rights, *Human Rights Scrutiny Report: Report 1 of 2017*, February 2017, p. 54.