

Chapter 2

Issues raised in evidence

Introduction

2.1 This chapter considers the main issues raised in evidence during the committee's inquiry into the provisions of the Veterans' Affairs Amendment (Digital Readiness) Bill 2016 (the bill). It summarises arguments opposed to the bill as well as those in favour of the amendments. The chapter concludes with the committee's view and recommendation.

Computerised decision making

Background

2.2 The first of the bill's proposed amendments will enable the Secretary of the Department of Veterans' Affairs (DVA) to authorise the use of computer programs to make determinations related to veteran entitlements under the following legislations: *Veterans' Entitlements Act 1986* (VEA), *Military Rehabilitation and Compensation Act 2004* (MRCA) and *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (DRCA). The amendments will ensure DVA is legally permitted to move some of its decision making to an automated system.

Expected potential benefits

2.3 Implementation of computerised decision making at DVA is expected to deliver a number of potential benefits. Automation is expected to streamline services, free up resources and prepare DVA for future ICT upgrades. The department argued that computerised decision making will leverage existing technology; provide enhanced services; reduce the length of time for some reimbursement transactions; and allow younger veterans to engage with DVA electronically.¹

2.4 DVA's submission argued that it is one of the few client-focused departments that does not have capacity for computerised decision making. It provided examples of Commonwealth agencies which currently use computer programs to make decisions. It cited automated systems at the Department of Immigration and Border Protection and the Therapeutic Goods Administration as examples of successful computerised decision making. DVA argued that it must continue to explore and leverage new technologies to improve its standard of service and be recognised as a modern service provider.²

2.5 The department acknowledged that delays in reimbursement transactions for clients are high priorities. It argued that computerisation of some decision making will not only improve accuracy of decisions but also enable routine reimbursements to be processed faster. DVA argued that automated systems will 'free up resources and

1 Department of Veteran's Affairs, *Submission 2*, p. 1.

2 Department of Veteran's Affairs, *Submission 2*, p. 5.

result in benefits such as short wait times and fast payments and services for DVA clients'.³

2.6 According to the department, automation of some decisions will not only improve wait times in the short term, but prepare it for additional ICT upgrades in the future.⁴

Which decisions will be automated?

2.7 The department's submission emphasised that the only decisions which will be suitable for computerised decision making are those that can be converted into an algorithm and generated based on information that is not subject to interpretation or discretion. It provided assurance that computerised decision making will not be used where fact finding or weighing of evidence is required and matters that require interpretation or evaluation of evidence will continue to be determined by a human decision maker.⁵

2.8 Examples of the types of computerised decisions identified as suitable for automation were provided by the department. It argued that computerisation will benefit clients by streamlining the process:

...a person could submit a travel reimbursement claim late at night for a medical appointment that occurred earlier in the day. Under computerised decision-making, the computer program could make the decision, send an automatically generated email advising the person of the outcome and deposit the reimbursement in the person's bank account – all outside of normal business hours and at the person's convenience.⁶

2.9 It argued that in some circumstances, computerised decision making can also remove the need for clients to supply additional information to the department:

There is evidence at the moment that some SoP factors can be met simply because an ADF member has performed their regular duties in the ADF. For example, lower back strain caused by carrying a heavy pack during training. Currently, if a person submits a claim for lower back strain injury, SoP factors are fully examined. However, where a SoP factor can be satisfied on the basis of a person's ADF training, this process could be automated and streamlined for the person, as long as there is a medical diagnosis of the condition. As noted above, a veteran could always provide additional information to support their claim if they choose to, they need not rely only on information provided by the Department of Defence.⁷

2.10 In light of concerns raised by the implementation of the Centrelink debt recovery scheme, the department expressly stated that it does not intend to use

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

4 Department of Veteran's Affairs, *Submission 2*, pp 1 and 5.

5 Department of Veteran's Affairs, *Submission 2*, pp 2 and 3.

6 Department of Veteran's Affairs, *Submission 2*, p. 4.

7 Department of Veteran's Affairs, *Submission 2*, p. 3.

computerised decision making for debt collection purposes. It noted that while debt calculations are already made with the assistance of computers, 'debt management and collection will remain a matter where the specific circumstances of the individual and the value of the debt are considered in what action is taken and how it is communicated'.⁸

2.11 The submission from DVA also provided assurance that following upgrades to its business and ICT systems, veterans would not require a computer to access DVA's services or be left to deal only with machines. It emphasised that although some aspects of the department's services will be automated, '[w]here veterans would prefer, they will always be able to speak to a DVA staff member'.⁹

2.12 According to DVA, the provision has been broadly worded intentionally. It argued that as technology continues to improve, it is difficult to predict which decisions may become suitable for computerised decision making. It argued that using unspecific language in the bill will prevent the need for legislation to be continuously amended as new decisions become suitable to add to the list.¹⁰

Safeguards

2.13 Evidence from DVA discussed safeguards that will accompany the computerised decision making provision of the bill. It argued there are controls around authorisation, options to correct decisions, and review pathways available to clients.

2.14 In terms of implementation, the bill includes safeguards that limit the power to authorise which computerised decisions can be implemented. The bill ensures that computerisation can only be implemented with the direct approval of the Secretary and that power cannot be delegated to any other person.¹¹ Under the VEA, the Secretary is specifically prevented from delegating the decision to authorise the use of a computer program to make decisions. This is not necessary for the MRCA or the DRCA as the Secretary does not have the power to delegate under those Acts.¹²

2.15 The department also discussed its options to correct an incorrect decision in the event of a computer malfunction. It argued that the Repatriation Committee and the Military Rehabilitation and Compensation Committee (MRCC) will have the power to substitute a decision or determination on its own motion, without the need to receive a formal request for review by a client.¹³ However, the department did not provide information on how the commissions intend to identify which decisions require review without having clients draw it to their attention first.

8 Department of Veteran's Affairs, *Submission 2*, p. 4.

9 Department of Veteran's Affairs, *Submission 2*, p. 6.

10 Department of Veteran's Affairs, *Submission 2*, p. 4.

11 Department of Veteran's Affairs, *Submission 2*, pp 3–4.

12 Explanatory Memorandum, *Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016*, pp 9–10.

13 Department of Veteran's Affairs, *Submission 2*, p. 5.

2.16 With regards to review and appeal pathways, the department advised that the bill's proposed changes will not affect clients' existing review rights or appeal pathways. It asserted that clients will continue to have the right to request reviews of decisions they are dissatisfied with and all normal appeals process will remain in operation.¹⁴

Arguments against the changes

2.17 Due to the complexity of entitlement claims and the need for human interpretation across many cases, submitters to the inquiry were sceptical that computerised decision making would improve claims processing times. Indeed, submitters were concerned that transferring decision making to computers could potentially cause negative consequences for clients. A number of concerns with the bill's proposed provision were raised in evidence, including that:

- computerised decisions will not be assessed by human delegates before they are finalised;
- a system that is able to make a decision as well as notify the client of the decision may cause distress if the decision is found to be incorrect;
- computerised decisions may cause a backlog of work in the event of computer error or malfunction;
- computerised decision making may lead to an increased number of errors in entitlement assessments; and
- there is ambiguity around the Repatriation Committee's and MRCC's 'own motion' powers.

2.18 The Veterans Advice & Social Centre Hervey Bay (VASC) submission sought clarification as to how the department's computerised decision making will be carried out in practice. It highlighted that the department's client base is particularly vulnerable and urged caution around computerisation of decisions:

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.¹⁵

2.19 The VASC expressed its concern that human oversight of some decisions would be removed and argued that any electronic decision making should still be subject to a delegate's review before it is finalised.¹⁶ It also argued that using a system which is able to make a decision and provide notification of the decision may cause further distress to already vulnerable clients if the decision is incorrect. The VASC submission indicated that human evaluation of decisions should occur prior to client notification.¹⁷

14 Department of Veteran's Affairs, *Submission 2*, p. 5.

15 Veterans Advice & Social Centre Hervey Bay, *Submission 6*, p. 4.

16 Veterans Advice & Social Centre Hervey Bay, *Submission 6*, p. 4.

17 Veterans Advice & Social Centre Hervey Bay, *Submission 6*, p. 3.

2.20 It should be noted that the department's submission did not provide information on whether automatic notifications will indicate if a decision is the result of a computer or human delegate.

2.21 The VASC also argued that in the event of computer error or malfunction, computerised decisions have the potential to cause a backlog of work, as seen at Centrelink, where clients experienced significant delays in having their matters resolved.¹⁸

2.22 The Victims of Abuse in the Australia Defence Force Association (VAADFA) expressed concern DVA may be proposing to use a system akin to Centrelink's automated debt recovery system.¹⁹ The Department of Human Services was recently criticised for removing human oversight of Centrelink's debt processing, with media reporting that the controversial automated debt recovery program had caused thousands of Australians to be incorrectly identified as owing debts. The issues prompted the Office of the Commonwealth Ombudsman to launch an independent investigation into the scheme.²⁰

2.23 According to VAADFA, computerisation of decisions could also potentially lead to an increase in errors and place greater pressure on the Veterans' Review Board.²¹ VAADFA noted that many of DVA's decisions and determinations are complex and rely on human assessment. It argued that computerised systems may overlook, for example, the nuances of Federal Court decisions if they are given responsibility for assessing veterans' eligibility for entitlements.²²

2.24 The VASC also sought clarification regarding the 'own motion' power of the Repatriation Commission and the MRCC to review decisions. It questioned why the commissions should have power to substitute a decision if the client had not requested review of a decision, and requested information on when the mechanism would be triggered.²³

Support for the changes

2.25 Other submitters to the inquiry supported the changes, arguing that improvements in technology have greatly improved public administration. Submitters argued that DVA currently lacks the resources and computer systems it needs to

18 Veterans Advice & Social Centre Hervey Bay, *Submission 6*, p. 4.

19 Victims of Abuse in the Australia Defence Force Association, *Submission 1*, p. 3.

20 ABC News, *Centrelink staff 'bearing the brunt' of debt recovery system backlash*, <http://www.abc.net.au/news/2017-01-10/centrelink-staff-facing-perfect-storm-amid-debt-recovery-trouble/8172208> (accessed 1 February 2017).

21 Victims of Abuse in the Australia Defence Force Association, *Submission 1*, pp 3–4.

22 Victims of Abuse in the Australia Defence Force Association, *Submission 1*, p. 3.

23 Veterans Advice & Social Centre Hervey Bay, *Submission 6*, p. 7.

function effectively, and that veterans, families and staff alike would benefit from ICT upgrades.²⁴

2.26 The Commonwealth Ombudsman's submission was in favour of an increased use of automated decision making technology. It drew attention to comments delivered by the Ombudsman's office at the 2007 launch of the Better Practice Guide on Automated Assistance in Administrative Decision Making, which were made in relation to DVA's Compensation Claims Processing System at the time. The submission argued that system change had resulted in reducing the number of decision making officers, delivered an increase in finalising claims in a reduced timeframe, and improved the consistency of DVA's decision making.²⁵ The Ombudsman argued that overall, automated decision technology has 'significantly improved the quality, efficiency and accountability of public administration and will continue to do so as long as agencies are prepared to design an agile and user centred process and invest ongoing financial and human resources'.²⁶

2.27 The Ombudsman confirmed that it is undertaking an investigation into the Centrelink debt recovery scheme and that the findings of the investigation will be published in 2017. It offered suggestions to DVA on the implementation of automated decision making which discussed better practice principles regarding accuracy, system errors, legality, usability, integration, staff training and review mechanisms.²⁷

2.28 The Ombudsman's submission also noted that DVA's systems will be integrated with a number of other agency systems, including the Department of Defence, and emphasised that any automated system will require flexibility to allow for changes to legislation, policy or business rules.²⁸

2.29 The War Widows' Guild of Australia was supportive of the intention of the bill and argued that DVA requires a comprehensive upgrade of its ICT systems. It stressed that veterans and families should be afforded the most up to date systems, and that streamlining claims processing would ultimately be of benefit to veterans. Furthermore, it argued that digitalisation of DVA's systems could potentially lead to a less stressful environment for staff, veterans and families.²⁹

2.30 The Vietnam Veterans Association agreed that delays in decision making by DVA delegates could be improved by the use of automated computer systems. It argued the department's current ICT systems are unable to manage the complexity of

24 For example: Department of Veteran's Affairs, *Submission 2*; Commonwealth Ombudsman, *Submission 3*; Vietnam Veterans Association of Australia, *Submission 4*; War Widows' Guild of Australia, *Submission 5*.

25 Commonwealth Ombudsman, *Submission 3*, p. 3.

26 Commonwealth Ombudsman, *Submission 3*, pp 3–5.

27 Commonwealth Ombudsman, *Submission 3*, pp 3–5.

28 Commonwealth Ombudsman, *Submission 3*, p. 3.

29 War Widows' Guild of Australia, *Submission 5*, p. 1.

multiple legislations, and noted that the 'good intent of management is hampered by lack of resources'.³⁰

2.31 The VASC also highlighted that electronic processes could potentially be used to clarify complex decisions, explain the methodology used for compensation, and clear some of the confusion around offset provisions which can be difficult for both applicants and decision makers.³¹

2.32 At the committee's hearing, the Privacy Commissioner recommended that the department consider conducting a privacy impact assessment to identify and minimise the privacy impacts of the bill:

The [Office of the Information Commissioner] OAIC acknowledges that automated decision making is likely to provide a number of advantages for DVA and for Australians accessing those services, particularly in regard to efficiencies. However, I would encourage consideration to be given at an early stage to ensuring that any privacy impacts are identified and minimised to the extent possible and that an integrated approach to privacy management is taken.

If it has not already done so, the Department of Veterans' Affairs could conduct a privacy impact assessment of the amendments proposed by the bill that have privacy implications, to identify and assess the privacy risks associated with the amendments. A privacy impact assessment is a written assessment which may assist in identifying the privacy impacts of the proposal and provides an opportunity to set out any recommendations for managing, minimising or eliminating those impacts.³²

Public interest disclosure

Background

2.33 The handling and disclosure of an individual's personal information is regulated under the *Privacy Act 1988* (Privacy Act). The Privacy Act includes thirteen Australian Privacy Principles which outline how Australian Government agencies must handle, use, and manage private personal information.³³

2.34 One of the purposes of the Privacy Act is to maintain Australia's obligations to the International Covenant on Civil and Political Rights (ICCPR). Of particular relevance here is article 17 which restricts arbitrary interference with a person's right

30 Vietnam Veterans Association of Australia, *Submission 4*, p. 1.

31 Veterans Advice & Social Centre Hervey Bay, *Submission 6*, p. 7.

32 Mr Timothy Pilgrim PSM, Privacy Commissioner, Office of the Australian Information Commissioner, *Proof Committee Hansard*, 16 February 2017, p. 3.

33 Office of the Australian Information Commissioner, *Privacy Act*, <https://www.oaic.gov.au/privacy-law/privacy-act/> (accessed 1 February 2017).

to privacy.³⁴ Schedule 2 of the bill raises human rights issues as it engages with article 17 of the ICCPR.

2.35 Schedule 2 contains two types of information sharing provisions which will enable the Secretary of DVA to share information under certain limited circumstances. The first of the two proposed provisions relates to public interest disclosures and will enable the Secretary to 'disclose information about a case or class of cases to such persons and for purposes the Secretary determines, if he or she certifies it is necessary in the public interest to do so'. This power is accompanied by a number of safeguards, including:

- the Secretary must act in accordance with rules that the Minister makes about how the power is to be exercised;
- the powers of the Minister and the Secretary cannot be delegated to anyone;
- before disclosing personal information about a person, the Secretary must notify the person in writing about his or her intention to disclose the information, give the person reasonable opportunity to make written comments on the proposed disclosure and consider any written comments made by the person; and
- unless the Secretary complies with these requirements before disclosing personal information, he or she commits an offence, punishable by 60 penalty units.³⁵

Examples of appropriate public interest disclosures

2.36 Legislative constraints on the release of information can potentially hinder a department's duty of care to its clients. In its submission, the department provided five examples to assist the committee understand the circumstances in which it might be necessary to release information about a veteran:

- threat to life;
- threat to health or welfare;
- provide inappropriate practices;
- misinformation in the community; and
- APS Code of Conduct investigations.³⁶

2.37 For example in the second scenario, if a client has chosen not to share significant health information with an external agency and withholding this information will place the client at risk of not receiving appropriate treatment, the department will be able to provide information about the client with the external agency. Or in the third scenario, if the department becomes aware that a contracted

34 *International Covenant on Civil and Political Rights*, New York, 16 December 1966, entry into force 13 November 1980, [1980] ATS 23, Part III, Article 17.

35 Veterans' Affairs Amendment Bill 2016, s. 409A, 151B, 131A.

36 Department of Veteran's Affairs, *Submission 2*, pp 7–9.

service provider is charging clients higher rates for treatment than the negotiated price, it will be able to advise clients of the inappropriate practices of the provider.³⁷

Arguments against the changes

2.38 During the inquiry concerns were raised regarding the bill's proposed public interest disclosure provision. These include that every individual has a right to privacy; no adequate reasons have been provided as to why it may be necessary for DVA to release personal details of veterans; the provision may deter personnel from providing complete medical information; and the existing safeguards contained in the bill are weak.

2.39 The VASC argued that the examples of the circumstances in which it might be appropriate for the Secretary to disclose information appear to be an 'open-ended statement' subject to interpretation. It argued that clinical information collected on its own clients are only released with the veteran's consent and the department's public interest disclosures should be subject to the same arrangement.³⁸

2.40 VAADFA argued that the proposed provision could potentially deter personnel from disclosing medical information to health care providers if they are apprehensive about future disclosures of their personal information.³⁹

2.41 It also expressed dissatisfaction with the safeguards incorporated in the bill which stipulate requirements the Secretary must meet in order to exercise the public interest disclosure power, and argued that:

- the Secretary is not adequately bound to respect objections received from the person about whom the disclosure is being made;
- the penalty prescribed in the bill is not an adequate deterrent; and
- there is ambiguity regarding who is required to pay the penalty.⁴⁰

Support for the changes

2.42 The department raised a number of issues in support of the bill, including that similar provisions are in operation at the Department of Human Services; it will enable DVA to fulfil duty of care obligations to clients; it is important to correct misinformation in the community; and there are adequate safeguards in place to prevent abuse of this power.⁴¹

2.43 The department also highlighted that public interest disclosure provisions have been in successful operation in the Department of Human Services for the past 17 years. It argued that DVA's proposed public interest disclosure provisions are modelled on those contained in the *Social Security Administration Act 1999*, and that

37 Department of Veteran's Affairs, *Submission 2*, p. 8.

38 Veterans Advice & Social Centre Hervey Bay, *Submission 6*, pp 5–6.

39 Victims of Abuse in the Australia Defence Force Association, *Submission 1*, p. 13.

40 Victims of Abuse in the Australia Defence Force Association, *Submission 1*, pp 12–14.

41 Department of Veteran's Affairs, *Submission 2*, pp 1–5.

those provisions have never been the subject of concern for the Privacy Commissioner.⁴²

2.44 According to the department, the public interest disclosure provision will enable DVA to fulfil its duty of care to clients. By allowing it to provide information to relevant authorities under appropriate circumstances, the department will be able to more effectively prevent harm or disadvantage to its clients.⁴³

2.45 The department acknowledged community concerns regarding the proposed power to correct misinformation but asserted that it is important to correct misconceptions about the department's services. It argued that misinformation about the department's services can cause clients unnecessary concern and potentially dissuade veterans from accessing the services they require. It pointed out that following the Parliamentary Joint Committee on Human Rights inquiry into the *Social Security (Public Interest Certificate Guidelines) (DSS) Determination 2015*, the committee concluded that 'public interest certificate determinations are likely to be compatible with the right to privacy'.⁴⁴

2.46 During the hearing, the Privacy Commissioner noted that the protection of an individual's privacy through the protection of personal information is not an absolute right but must be balanced with the broader interests of the community and allow government agencies to carry out their activities:

Our approach in that context is generally to advise agencies to ensure that any changes that authorise a disclosure of personal information by invoking an exception in the Privacy Act are reasonable, necessary and proportionate to the expected benefits.⁴⁵

2.47 The department's submission argued that the bill contains adequate safeguards which control how the public interest disclosure power will be exercised. In addition to the bill's specific safeguards, it pointed out that the Privacy Act and the Australian Public Service Code of Conduct provide additional protections. It argued that client information is handled in compliance with both the Privacy Act and the Code of Conduct and that staff may face sanctions and the department fined penalties if a client's information is mishandled.⁴⁶ Persons concerned about disclosures also have the option to lodge a complaint with the Privacy Commissioner or apply for judicial review under the *Administrative Decisions (Judicial Review) Act 1977*.⁴⁷

2.48 With regards to the Minister's rules on the exercise of the Secretary's power, the department advised that the final rules were not able to be provided to the

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

43 Department of Veteran's Affairs, *Submission 2*, p. 7.

44 Department of Veteran's Affairs, *Submission 2*, p. 9.

45 Mr Timothy Pilgrim PSM, Privacy Commissioner, Office of the Australian Information Commissioner, *Proof Committee Hansard*, 16 February 2017, pp 2–3.

46 Department of Veteran's Affairs, *Submission 2*, p. 10.

47 Department of Veteran's Affairs, *Submission 2*, pp 9–10.

committee within the inquiry's timeframe but that Parliament will have an opportunity to consider them once they are drafted as a disallowable instrument.⁴⁸ However, during the committee's hearing, DVA indicated that it could provide a draft copy of the rules to the committee to consider in camera.⁴⁹

2.49 During the hearing, the Privacy Commissioner suggested that the department consult with the Commonwealth Ombudsman and the Office of the Australian Information Commissioner on the content of the Minister's rules before they are finalised and introduced in the Parliament:

...my office, should the bill proceed as it currently is, would like the opportunity to be consulted on the draft rules to be made by the minister under the public interest disclosure provision. Those draft rules will go to many of the areas where the privacy principles currently apply, and if the bill proceeds and then the APP 6 does not apply to those disclosures then I think we could provide some useful guidance in tightening up those particular rules.⁵⁰

Information sharing

Background

2.50 The second of the two proposed provisions in Schedule 2 will enable information sharing between DVA and the Department of Defence.

2.51 The proposed provision will enable the Military Rehabilitation and Compensation Commission (MRCC) to share information with the Secretary of Defence and Chief of the Defence Force (CDF) under limited circumstances.

2.52 Currently, the MRCC is able to provide information about serving members to the Secretary of Defence and the CDF under the *Military Rehabilitation and Compensation Act 1988* (MRCA) and the *Veterans' Entitlements Act 1986* (VEA) but not under the *Safety Rehabilitation and Compensation Act 1988* (SRCA). The SRCA was re-enacted as the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (DRCA) and modified to only apply to members of the Defence Force and their dependents.

2.53 This bill will enable the MRCC to provide claims information to the Secretary of Defence and the CDF irrespective of which legislation the member's claim falls under.

2.54 Under the changes, the MRCC will only be able to provide information to the Secretary of Defence if it is related to litigation involving an injury, disease or death in relation to which a claim has been made under the DRCA; monitoring, or reporting on, the performance of the Defence Force in relation to occupational health and safety;

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

49 Ms Lisa Foreman, First Assistant Secretary, Rehabilitation and Support, Department of Veterans' Affairs, *Proof Committee Hansard*, p. 7.

50 Mr Timothy Pilgrim PSM, Privacy Commissioner, Office of the Australian Information Commissioner, *Proof Committee Hansard*, 16 February 2017, p. 3.

or monitoring the cost to the Commonwealth of injuries, diseases or deaths of employees, in relation to which claims have been made under the DRCA.⁵¹

2.55 Where a determination relates to liability or an injury, disease, death, or the impairment of a person, the MRCC will be required to provide a copy of the determination to the CDF. Currently the MRCC must provide a copy of a defence-related claim to the relevant service chief of the claimant; however there is no provision that enables the MRCC to provide a copy of the determination.⁵²

Arguments against the changes

2.56 A number of concerns were raised in opposition to the bill's proposed information sharing provision. In particular, that allowing DVA to provide personal information of current members to Defence may adversely affect a claimant's career, dissuade members from sharing medical information with health professionals, and potentially delay valid claims from being made to DVA.

2.57 The VASC argued that information sharing between the departments should be restricted and contained to protect the claimants' military careers. It argued that information sharing should be carried out in such a way that the claimant's opportunities for training courses, promotion or deployment would not be adversely affected, and suggested that data sharing should not stipulate the degree of impairment, or any amount of compensation paid to the claimant, but should only reflect whether liability is accepted or not accepted under the appropriate act.⁵³

2.58 VAADFA argued that the bill's proposed information sharing provision has the potential to prevent personnel from sharing medical information with health professionals. It argued that allowing the MRCC to share personal medical information of serving members with the CDF places increased pressure on members to withhold information from their health care provider in order to demonstrate sound health.⁵⁴

2.59 VAADFA argued that members can potentially face repercussions in their careers due to the continuing stigma around mental health in the Australian Defence Force. As a consequence, members may not receive appropriate treatment or be discouraged from making claims with DVA until after they discharge. VAADFA highlighted that due to the Statement of Principles, which requires that an injury be reported within a specified time, a valid claim could be rendered invalid if a member chooses to deliberately delay their claim.⁵⁵

51 Department of Veteran's Affairs, *Submission 2*, p. 13.

52 Department of Veteran's Affairs, *Submission 2*, pp 12–13.

53 Veterans Advice & Social Centre Hervey Bay, *Submission 6*, p. 6.

54 Victims of Abuse in the Australia Defence Force Association, *Submission 1*, p. 10.

55 Victims of Abuse in the Australia Defence Force Association, *Submission 1*, pp 10–11.

Support for the changes

2.60 The DVA submission argued that the provision will apply consistency across the various Acts; enhance the CDF's duty of care to members in deployment operations; promote healthier work practices and reduce compensation claims; and ensure health treatments outside of Defence arrangements are monitored.

2.61 According to DVA, the bill will apply consistency across the Acts by aligning the information sharing provisions in the DRCA with the existing provisions in the MRCA. It argued that the MRCC already uses this power in relation to claimants under the MRCA and argued that '[i]t is anomalous that crucial work health and safety information can only be provided on the basis of legislative coverage'.⁵⁶

2.62 DVA pointed out that the CDF has a duty of care to members, especially those deployed in an operational context. It argued that the proposed information sharing provision will enhance the CDF's ability to exercise appropriate duty of care, and explained that:

...it is important that the Chief of the Defence Force knows whether deployed members on overseas missions have any mental health conditions, such as PTSD. If these conditions are unknown, they could imperil the member and their unit. This could also provide information or a flag as to the mental health education, tools and support the individual and their family may require.⁵⁷

2.63 In his second reading speech, the Minister for Veterans' Affairs noted that '[i]t is important that the Secretary of the Department of Defence and the Chief of the Defence Force are able to receive the same sort of information about all serving members, particularly in the context of monitoring occupational health and safety or for monitoring the cost to the Commonwealth of a service injury or a service disease'.⁵⁸

2.64 DVA pointed out the bill's information sharing provision will help to reduce injuries by promoting healthier work practices. It argued that allowing the department to provide information to Defence will ensure that occupational health and safety is monitored, unsafe work practices are identified and corrective action taken if required. DVA argued that the information will help determine whether adjustments to equipment or training are required and in turn reduce future claims for compensation.⁵⁹

2.65 Information sharing will ensure that health treatments outside of Defence arrangements are also monitored. DVA argued that access to certain treatments may be limited for personnel on seagoing vessels and that providing information to

56 Department of Veteran's Affairs, *Submission 2*, p. 12.

57 Department of Veteran's Affairs, *Submission 2*, p. 12.

58 The Hon Dan Tehan MP, Minister for Veterans' Affairs, *House of Representatives Hansard*, 24 November 2016, p. 4317.

59 Department of Veteran's Affairs, *Submission 2*, p. 12.

Defence on treatments sought can lead to improved outcomes for both the individual and the ADF more broadly.⁶⁰

2.66 The department also argued that the proposed provisions in the DRCA achieve the same objective as the existing provisions in the MRCA. It noted there are pathways available to individuals who are concerned that information has been inappropriately shared such as lodging a free complaint with the Office of the Australian Information Commissioner or applying to the Federal Court of Australia or the Federal Circuit Court for review if the response from the commissioner is unsatisfactory.⁶¹

Committee view

2.67 The committee is of the view that the benefits of the bill's amendments to veterans and ADF personnel far outweigh the concerns raised in some submissions.

2.68 The committee acknowledges concerns regarding computerisation of decision making, in particular that similar issues from the Centrelink debt recovery program may arise. However, the committee notes the assurances provided by the department that the computerised system will not be used for debt recovery-related purposes. The committee is also satisfied that the department is aware of the limitations of technology and will undertake appropriate test and evaluation before launching ICT upgrades.

2.69 The committee anticipates that computerising some decisions will improve efficiency and free up considerable resources. The committee expects that the changes will benefit veterans and their families as well as reduce pressure on DVA staff. The committee supports the department's intention to improve services to veterans by incorporating modern technology and practices.

2.70 The committee supports the intent of the proposed public interest disclosure provision and notes that a similar power has been in operation at DHS for some time without cause for concern. The committee is assured that this amendment will help DVA fulfil its duty of care obligations to clients and ultimately prevent harm or disadvantage in the community.

2.71 The committee is reassured that the power of the Secretary will be exercised in accordance with appropriate safeguards, and that the Minister's rules will augment these protections. The committee anticipates that the Minister's rules will sufficiently limit the circumstances under which a public interest disclosure can be made but withholds further comment until a final instrument is available for consideration.

2.72 The committee notes Minister Tehan's correspondence informing the Scrutiny of Bills Committee of his proposal to move government amendments to revise the wording of the duty on the Minister to *make* rules regarding the exercise of the Secretary's public interest disclosures, as suggested by that committee.

60 Department of Veteran's Affairs, *Submission 2*, pp 11–12.

61 Department of Veteran's Affairs, *Submission 2*, p. 13.

2.73 The committee agrees with the Privacy Commissioner's suggestion that DVA consult with the OAIC and the Commonwealth Ombudsman to seek guidance on the drafting of the Minister's regulations before they are introduced into Parliament.

Recommendation 1

2.74 The committee recommends that the Department of Veterans' Affairs consult with the Commonwealth Ombudsman and the Office of the Australian Information Commissioner on the content of the Minister's regulations before they are finalised and introduced in the Parliament.

2.75 The committee agrees with the Privacy Commissioner's suggestion that DVA undertake a privacy impact assessment to identify and manage privacy risks associated with the bill, and that the completed assessment be published so the public can view potential impacts arising from the proposal.

Recommendation 2

2.76 The committee recommends that the Department of Veterans' Affairs undertake a privacy impact assessment of the regulations and that the completed assessment be made public.

2.77 The committee also accepts that, given the sensitivities around the public interest disclosure provisions included in the bill, the Minister consider amending the bill to include a mandatory review of the implementation of the legislation after two years.

Recommendation 3

2.78 The committee recommends that the bill be amended to include a mandatory review of the implementation of the legislation and accompanying regulations two years from the commencement date.

2.79 The committee acknowledges concerns regarding the bill's information sharing provisions; however, it is satisfied that the amendment will not have the unintended negative consequences raised in evidence. In particular, the committee notes that personal information has been shared between departments under the MRCA arrangements for some time with no cause for concern. The committee is supportive of improvements to work health and safety and expects the bill will assist the departments promote healthier work practices.

2.80 The committee commends the bill to the Senate.

Recommendation 4

2.81 The committee recommends that the bill be passed.

**Senator Chris Back
Chair**

