

## **Additional Comments from the Nick Xenophon Team**

### **Minister's rules**

1.1 The Nick Xenophon Team (NXT) are concerned that the Minister's rules on the exercise of the Secretary's public interest disclosure power will not be made public before they are finalised and introduced in parliament. This will not allow interested third parties to consider the rules, and raise any concerns they might have. NXT are aware that as the rules are a legislative instrument they cannot be disallowed in part. If any aspect of the rules has to be altered after they have been introduced, the whole instrument has to be disallowed. This process does not appear to be best practice, particularly given the nature of the information that could be the subject of public disclosure by the Secretary.

### **Recommendation**

**1.2 The NXT recommends that the Minister's rules be made publically available prior to senators voting on them.**

### **Consulting with stakeholders**

1.3 During the public hearing Senator Kakoschke-Moore questioned Mr Timothy Pilgrim, Australian Information Commissioner and Australian Privacy Commissioner from the Office of the Australian Information Commissioner, about the Office's input in the design of the rules.

**Senator KAKOSCHKE-MOORE:** Have you had the opportunity to provide even just some broad guidance to DVA and the Department of Defence about what should be in these rules?

**Mr Pilgrim:** Not at this stage. We have only recently become aware of the detail of this bill and, as I was saying earlier, in particular through the submission put in by the Department of Veterans Affairs, the rationale behind some of the areas they want to disclose, which is why I was offering our services up to see if we cannot help write those rules.<sup>1</sup>

1.4 Senator Kakoschke-Moore put the same question to the Office of the Commonwealth Ombudsman during the public hearing.

**Senator KAKOSCHKE-MOORE:** If you were given the opportunity would your office also appreciate the chance to review the rules before they were put in place?

**Ms Gibb:** I think that would be good. We all in Commonwealth roles deal with vulnerable clients, and I think in this case we would be interested to at

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1 *Proof Committee Hansard*, 16 February 2017, p. 5.

least put forward some suggestions on how those clients could be handled. So, yes, if we were asked we would be happy to provide some assistance.<sup>2</sup>

1.5 The NXT are concerned that relevant stakeholders have not been consulted during the drafting process for the rules, and support the Chair's recommendation 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 rules.

1.6 The NXT also strongly supports the recommendation in the majority report that a privacy impact assessment be conducted to identify and manage privacy risks associated with the bill.

### **Automated decision making**

1.7 NXT acknowledges that that automated decision making is a useful process designed to speed up the claims process, but notes the importance of the system working correctly. NXT have concerns about the automated process and the impact incorrect decisions may have on vulnerable veterans. As confirmed by DVA at the public hearing, DVA do not have a usable computer system at this time.<sup>3</sup>

1.8 NXT wish to note the importance of a fully functioning automated decision process, as supported by a high quality computer system, if DVA is to achieve reductions in claims processing times.

1.9 It is also unclear how DVA's 'own motion' review of claims subject to automated decision making will work in practice. Given the serious concerns that have been raised around Centrelink's debt recovery system, it is critical that the automated decision making proposed by DVA is subject to robust review.

### **Senator Skye Kakoschke-Moore**

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2 *Proof Committee Hansard*, 16 February 2017, p. 5.

3 *Proof Committee Hansard*, 16 February 2017, p. 8.