

The Senate

Foreign Affairs, Defence and Trade
Legislation Committee

Veterans' Affairs Legislation Amendment
(Veteran-centric Reforms No. 2) Bill 2018
[Provisions]

June 2018

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Chapter 1

Referral

1.1 On 24 May 2018, the Veterans' Affairs Legislation Amendment (Veteran-centric Reforms No. 2) Bill 2018 (the bill) was introduced to the House of Representatives by the Minister for Veterans' Affairs, the Hon Darren Chester MP.¹

1.2 As a time critical bill, the provisions of the bill were referred on the same day to the Senate Foreign Affairs, Defence and Trade Legislation Committee (the committee) for inquiry and report by 18 June 2018.²

Conduct of inquiry

1.3 The committee advertised the inquiry on its website, calling for submissions by 8 June 2018. The committee also wrote directly to a range of organisations to invite them to make written submissions. Submissions received are listed at Appendix 1.

1.4 The committee decided to prepare its report on the basis of submissions received and available information. The committee thanks those who made submissions.

Background to the bill

1.5 The wellbeing of veterans and their families has been a focus of parliamentary concern over recent years, as indicated in a number of inquiry reports.³ The National Mental Health Commission also reported to government in March 2017 on the suicide and self harm prevention services available to current and former serving Australian Defence Force (ADF) members and their families.⁴

1.6 These reports made recommendations for how to improve support provided to veterans and their families, including updating the Department of Veterans' Affairs (DVA) IT systems.⁵

1.7 The Australian Government responded to the committee's 2017 report, *The Constant Battle: Suicide by Veterans*, by acknowledging the committee's finding that

1 The Hon Darren Chester MP, Minister for Veterans' Affairs, Minister Assisting the Prime Minister for the Centenary of ANZAC and Minister for Defence Personnel, *House of Representatives Hansard*, 24 May 2018, p. 14.

2 *Journals of the Senate*, No. 96, 9 May 2018, p. 3069.

3 See, for example, Senate Foreign Affairs, Defence and Trade References Committee, *The Constant Battle: Suicide by Veterans*, August 2017; Senate Foreign Affairs, Defence and Trade References Committee, *Mental health of Australian Defence Force members and veterans*, March 2016; Joint Standing Committee on Foreign Affairs, Defence and Trade, *Care of ADF Personnel Wounded and Injured on Operations*, June 2013.

4 National Mental Health Commission, [Review into the Suicide and Self Harm Prevention Services available to current and former serving ADF members and their families](#), March 2017.

5 Michael Klapdor, [Veterans' Affairs Legislation Amendment \(Veteran-centric Reforms No. 1\) Bill 2018](#), *Bills Digest No. 91*, 2017–18, Parliamentary Library, Canberra, 2018, p. 5.

'many veterans have reported negative experiences with the Department, and that there is a pressing need to streamline administrative practices'.⁶

Veteran Centric Reform program

1.8 DVA is undertaking a program of Veteran Centric Reform (VCR), which it described as important because:

DVA operations and infrastructure are no longer fit for purpose as current business systems are claims based, requiring the veteran to approach the Department, and lack the information sharing and data analysis necessary to meet veterans' expectations of a quality service. Without change, some veterans may continue to be disengaged from DVA services, which can inhibit a successful transition from the Australian Defence Force and lead to poor health and life outcomes.⁷

1.9 DVA confirmed that the reforms will 'provide the veteran community with a greater standard of service through reform of DVA's culture, operating model, business processes and systems'.⁸

1.10 Funding has been allocated for the VCR program in the three most recent Australian Government budgets, starting with \$24.8 million for the development of a business case in the 2016–17 budget.⁹ The 2017–18 budget allocated \$166.6 million over four years to the VCR program to 'commence transforming and improving veterans' services to more effectively and efficiently meet the current and future needs of veterans and their dependants'.¹⁰ Measures included:

- the targeted redevelopment of the Department of Veterans' Affairs' (DVA) ICT systems, including improvements to cyber security;
- reform of DVA's business processes; and
- piloting improved services to veterans and their dependants to ensure the long-term financial sustainability of military compensation schemes administered by DVA.¹¹

1.11 The 2018–19 budget allocated a further \$111.9 million over four years for the VCR program to 'continue to transform and improve veterans' services to more effectively and efficiently meet the current and future needs of veterans and their dependants'.¹²

6 [Australian Government Response](#) to the Senate Foreign Affairs, Defence and Trade Committee report, *The constant battle: suicide by veterans*, The Senate, Canberra, October 2017, p. 5.

7 Department of Veterans' Affairs (DVA), [Budget 2017–18: veteran centric reform](#), DVA, Canberra, 2017, p. 1.

8 *Submission 2*, p. 2.

9 Commonwealth of Australia, [Budget measures: Budget Paper No. 2 2016–17](#), p. 154.

10 Commonwealth of Australia, [Budget measures: Budget Paper No. 2 2017–18](#), p. 178.

11 Commonwealth of Australia, [Budget measures: Budget Paper No. 2 2017–18](#), pp. 178–9.

12 Commonwealth of Australia, [Budget measures: Budget Paper No. 2 2018–19](#), p. 190.

Previous legislation

1.12 Prior to the introduction of the bill, the *Veterans' Affairs Legislation Amendment (Veteran-centric Reforms No. 1) Act 2018* passed both Houses and received Royal Assent in March 2018. The Parliamentary Library summarised the purpose of that Act as follows:

- provide additional childcare, counselling, household services and attendant care for current and former members of the Australian Defence Force (ADF) with warlike service, and their families;
- provide a new Veteran Payment to veterans with little or no financial support until their compensation claims for liability for a mental health condition are determined;
- commence the Coordinated Veterans' Care Mental Health Pilot, a two-year pilot in rural and regional areas targeting those with mild to moderate mental health conditions such as anxiety or depression who also have a physical condition requiring pain management;
- make it quicker to provide financial assistance with household and attendant care services to certain veterans with catastrophic injuries or diseases;
- allow for the automated determination an individual's qualifying service under the *VEA [Veterans' Entitlements Act 1986]* removing the need for all veterans to manually apply for a determination of their defence service as qualifying service;
- make a large number of changes to the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (the *DRCA*) replacing redundant references and repealing provisions unrelated to the operation of this Act;
- makes technical amendments to the *VEA* to ensure consistent references to the Special Medical Review Council; and
- a range of minor amendments including extending Gold Card eligibility under the *Australian Participants in British Commonwealth Occupation Force (Treatment) Act 2006* to ADF members who served in Japan prior to the British Commonwealth Occupation Force and technical amendments to the *VEA*.¹³

1.13 Some of these measures were announced in response to the committee's 2017 report *The Constant Battle*, namely the household and care services and Veteran Payment.¹⁴ However, the *Veterans' Affairs Legislation Amendment (Veteran-centric Reforms No. 1) Bill 2018* was not referred to this committee for inquiry.

13 Michael Klapdor, [Veterans' Affairs Legislation Amendment \(Veteran-centric Reforms No. 1\) Bill 2018](#), *Bills Digest No. 91*, 2017–18, Parliamentary Library, Canberra, 2018, p. 3.

14 Michael Klapdor, [Veterans' Affairs Legislation Amendment \(Veteran-centric Reforms No. 1\) Bill 2018](#), p. 3; Senate Foreign Affairs, Defence and Trade References Committee, *The Constant Battle: Suicide by Veterans*, August 2017.

Purpose of the bill

1.14 According to the second reading speech this government bill:

...has six schedules and would implement several new initiatives to deliver a range of services to veterans and their families to give them the support and services they need...This bill demonstrates the commitment this government made in 2016 to put veterans first and continues on from the eight measures we introduced earlier this year under the Veterans' Affairs Legislation Amendment (Veteran-centric Reforms No. 1) Act 2018.¹⁵

Financial implications

1.15 The Explanatory Memorandum (EM) stated that the financial implications of the bill total \$17 million, comprising:

- \$10.8 million: Schedule 1—Compensation for incapacity for work for former members; and
- \$6.2 million: Schedule 2—Veteran Suicide Prevention Pilot.¹⁶

1.16 The EM noted that there is no financial impact for Schedules 3—6.¹⁷

Discussion of the schedules

1.17 The bill amends the Acts that legislate support and compensation for veterans and their families, particularly the *Veterans' Entitlements Act 1986* (VEA), the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (DRCA) and the *Military and Compensation Act 2004* (MRCA).¹⁸

Schedule 1—Compensation for incapacity for work for former members

1.18 Schedule 1 amends the DRCA and MRCA. These amendments allow eligible former members to continue to receive incapacity payments at 100 per cent of their normal earnings for the week after 45 weeks of incapacity if they are undertaking full time study as part of their rehabilitation program as determined by the Military Rehabilitation and Compensation Commission (MRCC) through a legislative instrument.¹⁹

1.19 Currently, incapacity payments 'stepdown' to 75 per cent (or a higher percentage depending on weekly hours worked) of normal earnings after 45 weeks.²⁰ DVA noted:

15 The Hon Darren Chester MP, Minister for Veterans' Affairs, *House of Representatives Hansard*, 24 May 2018, p. 14.

16 Explanatory Memorandum (EM), p. 2.

17 EM, p. 2.

18 The VEA and the SRCA may apply to those with service before 1 July 2004. The MRCA was enacted to provide rehabilitation and compensation for a range of persons who served on or after 1 July 2004.

19 EM, p. 3.

20 DVA, *Submission 2*, p. 2.

Veterans are naturally concerned about their ongoing financial security. To ensure that veterans can focus on their study and not be concerned about financial matters, the amendments would allow those veterans studying full time as part of their rehabilitation plan to receive payments based on their pre-injury earnings while they continue to study.²¹

1.20 The amendments made by Schedule 1 would have effect from the later of 1 November 2018 or the seventh day after Royal Assent is received until 1 July 2022.²²

Discussion of Schedule 1

1.21 In the 2017 report *The Constant Battle*, the committee recommended addressing 'disincentives for veterans to undertake work or study resulting from the legislative or policy frameworks of the Department of Veterans' Affairs'.²³ The amendments made by Schedule 1 appear to address this recommendation.

Schedule 2—Veteran Suicide

1.22 Schedule 2 amends the VEA to enable people to receive services under the Veteran Suicide Prevention pilot (the pilot) from 1 July 2018 or a week after Royal Assent is received.²⁴

1.23 The amendments permit the Repatriation Commission to determine the class of people eligible to participate in the pilot through a legislative instrument.²⁵

1.24 As a measure to support the mental health of veterans, the Veteran Suicide Prevention Pilot was supported by the Royal Australian & New Zealand College of Psychiatrists.²⁶

1.25 However, the Partners of Veterans Association of Australia indicated:

We are disappointed (Schedule 2) that the mental health of the Partner has not also been considered as the mental well being of the Veteran is in so many ways dependent upon the strength of the Partner.²⁷

Discussion of Schedule 2

1.26 The pilot, also known as the Mental Health Clinical Management Pilot, was allocated funding over two years in the 2017-18 Australian Government budget to

21 *Submission 2*, p. 2.

22 See Veterans' Affairs Legislation Amendment (Veteran-centric Reforms No. 2) Bill 2018, proposed commencement information; EM, p. 3.

23 Senate Foreign Affairs, Defence and Trade References Committee (the committee), *The Constant Battle: Suicide by Veterans*, August 2017, Recommendation 14.

24 EM, pp. 13-14.

25 EM, pp. 13-14.

26 *Submission 3*, p. 2.

27 *Submission 1*, p. 1.

deliver services to up to 100 people with complex mental health needs on discharge from a mental health hospital.²⁸ The EM states that the pilot:

...will provide intensive and assertive management services to support a veteran's mental health outcomes after they have been discharged from a hospital following an attempted suicide, suicide crisis, or for those who may be at increased risk of suicide because of their mental health or other factors. This will include support to access other relevant government and non-government treatment and services that will help reduce the risk of suicide and enhance their quality of life.²⁹

1.27 The government indicated that the evaluation of this pilot will 'inform future policy direction for veterans' mental health services'.³⁰ DVA also explained that the amendments are required because 'for the purposes of the pilot, the services will only be available in certain locations'.³¹

1.28 The EM implies that the pilot addresses recommendations made by the National Mental Health Commission to provide:

...coordinated care options for very vulnerable and ill clients and enhancing stepped care options available for those with mental health conditions... that take into account factors that may lead to suicide, such as primary health, financial stress, housing and employment.³²

1.29 This schedule also may be seen to partially address recommendation 1 from *The Constant Battle* report, part of which encouraged government to 'develop and implement specific suicide prevention programs targeted at those veterans identified in at-risk groups'.³³ This was acknowledged by DVA.³⁴

1.30 The other mental health pilot funded in the 2017-18 budget (the Coordinated Veterans' Care Mental Health Pilot) was legislated in the *Veterans' Affairs Legislation Amendment (Veteran-centric Reforms No. 1) Act 2018*.³⁵

28 Senate Foreign Affairs, Defence and Trade References Committee (the committee), *The Constant Battle: Suicide by Veterans*, August 2017, p. 32; Commonwealth of Australia, [Budget measures: Budget Paper No. 2 2017-18](#), p. 177.

29 EM, p. 1.

30 The Hon Darren Chester MP, Minister for Veterans' Affairs, *House of Representatives Hansard*, 24 May 2018, p. 14.

31 *Submission 2*, p. 3.

32 EM, p.13. See National Mental Health Commission, [Review into the Suicide and Self Harm Prevention Services available to current and former serving ADF members and their families](#), March 2017.

33 Senate Foreign Affairs, Defence and Trade References Committee (the committee), *The Constant Battle: Suicide by Veterans*, August 2017, recommendation 1.

34 *Submission 2*, p. 3.

35 *Veterans' Affairs Legislation Amendment (Veteran-centric Reforms No. 1) Act 2018*, [Schedule 3](#).

Schedule 3—Compensation for member's death for wholly dependent partners

1.31 Under the MRCA, compensation may be provided to the partners of deceased members who died from a service death or who suffered a serious impairment from a service injury or disease. Partners who were wholly dependent on the member prior to their death can choose to receive their compensation as a weekly amount, or receive some or all of it as a lump sum. A partner who makes a choice under the MRCA cannot change it.³⁶

1.32 Schedule 3 amends the MRCA to extend the time from six months to two years for wholly dependent partners to make a decision about whether to receive their compensation as a weekly payment or convert it, wholly or partly, into a lump sum payment.³⁷ The MRCC can currently extend the period specified in the MRCA under special circumstances, and Schedule 3 does not affect this ability.

1.33 The application provisions establish that the amendment applies to partners who received notice before commencement and have not yet informed the MRCC of their choice, as well as those who receive notice on or after commencement (the 28th day after Royal Assent is received).

Discussion of Schedule 3

1.34 DVA indicated that Schedule 3 responds to community concerns, stating:

This issue was raised at the Department's inaugural legislation workshop, held on 9 November 2017, and has also arisen during other consultations with Ex-Service Organisations. These amendments would address concerns raised by Ex Service Organisations that six months is not a long enough period of time in which to make the important decision about how to receive compensation, particularly during a difficult period.³⁸

Schedule 4—Veterans' Children Education Scheme

1.35 Under the VEA, the Veterans' Children Education Scheme (VCES) provides 'special assistance, student support services, guidance and counselling for eligible children to help them achieve their full potential in full-time education or career training'.³⁹ The amendments under Schedule 4 create a new cohort of people potentially eligible for the VCES—the grandchildren of Vietnam veterans.

1.36 Item 1 adds new definitions for 'eligible grandchild of a Vietnam veteran', 'grandchild' and 'Vietnam service' to apply to the VCES under Part VII of the VEA.

1.37 Items 2 and 3 reword the headings of sections 116B and 116C to make it clear they refer to the eligible children of veterans.

36 *Military and Compensation Act 2004*, ss. 236(2).

37 EM, p. 15.

38 DVA, *Schedule 3 – Compensation for member's death for wholly dependent partners*, <https://www.dva.gov.au/about-dva/legislation/veterans-affairs-legislation-amendment-budget-measures-act-2017/schedule-3> (accessed 5 June 2018).

39 DVA, *Factsheet MRC47—Education Scheme*, 12 October 2017.

1.38 Item 4 inserts three sections following 116C (proposed 116CA, 116CB and 116CC). These enable the grandchildren of Vietnam veterans (or someone on their behalf) to apply in writing to test whether they meet the definition of eligible grandchildren as determined by the Repatriation Commission in a legislative instrument. The three proposed sections replicate similar sections applying to the children of Vietnam veterans (sections 116A, 116B and 116C).

1.39 Items 7, 8 and 9 add to sections 117 and 118 to enable the Repatriation Commission to provide benefits under the VCES to the grandchildren of Vietnam veterans including the provision of scholarships, education and training.

1.40 Items 5 and 10 provide for the review of Repatriation Commission decisions for children of Vietnam veterans under 116C(1) and grandchildren under 116CC(1).

1.41 The amendments made by Schedule 4 commence on 1 July 2019.

1.42 These amendments were welcomed by the Partners of Veterans Association of Australia who stated:

...we are pleased to note the inclusion of the grandchildren of Vietnam Veterans in the Long Tan Bursary scheme. (Schedule 4) Thank you for this inclusion which is very meaningful to our members and demonstrates the continued recognition of the service of the Vietnam Veteran and the family.⁴⁰

Discussion of Schedule 4

1.43 An aspect of the VCES is the Long Tan Bursary, which is established by an instrument made under subsection 116A(1).⁴¹ The government indicated that the amendments under Schedule 4 extend the Long Tan Bursary to the grandchildren of Australian Vietnam veterans who undertook operational service in Vietnam.⁴² Eligible grandchildren would be provided with support to undertake post-secondary education.⁴³

1.44 The EM described that grandchildren will be assessed according to similar eligibility criteria as children of Vietnam veterans, and will include:

...a requirement that a grandchild is considered by an appropriately qualified professional as vulnerable. The factors taken into account for this assessment will include social demographics, disadvantage due to socioeconomic status and family stability. In addition, consideration will be given to applicants who are both deserving and have the aptitude and potential to achieve solid educational outcomes.⁴⁴

40 *Submission 1*, p. 1.

41 EM, p. 17.

42 The Hon Darren Chester MP, Minister for Veterans' Affairs, *House of Representatives Hansard*, 24 May 2018, p. 15.

43 The Hon Darren Chester MP, Minister for Veterans' Affairs, *House of Representatives Hansard*, 24 May 2018, p. 15.

44 EM, p. 17.

1.45 The eligibility of the children of Vietnam veterans is not affected by the amendments under Schedule 4, and their applications 'will be given first priority during the assessment process'.⁴⁵

1.46 The Military Rehabilitation and Compensation Act Education and Training Scheme under the MRCA is not affected by these amendments.

Schedule 5—Service on submarine special operations

1.47 The EM noted:

In 2010 the Government reclassified any service on a submarine on Submarine Special Operation (SSO) during the period 1 January 1978 – 31 December 1992 (relevant period) as operational and qualifying service for the purposes of the VEA. Due to the continuing high level of secrecy around these clandestine operations, the eligibility test implemented for this service was almost unique in the history of veterans' entitlements.⁴⁶

1.48 The government identified 'difficulties in determining whether an injury sustained or disease contracted by a submariner is related to service on a secret operation'.⁴⁷ The EM indicated that this included establishing members' eligibility to receive a disability pension.⁴⁸

1.49 Schedule 5 amends the VEA to repeal section 6DB and substitute proposed section 6DB. This ensures submariners are deemed to have been rendering operational service for *all* continuous full-time service on a submarine they undertook during the relevant period, if they undertook *any* continuous full-time service on SSO during the relevant period.

1.50 The criteria for determining whether the member was on SSO during the relevant period remain the same in proposed section 6DB as the current MRCA. Specifically, if the member:

- (i) has been awarded the Australian Service Medal with Clasp "SPECIAL OPS" for the special service; or
- (ii) has become eligible for that award for the special service; or
- (iii) would have been eligible for that award for the special service if the member had not already been awarded it for other service.

1.51 The amendment takes effect the day after Royal Assent is received.

45 The Hon Darren Chester MP, Minister for Veterans' Affairs, *House of Representatives Hansard*, 24 May 2018, p. 15.

46 EM, p. 21.

47 The Hon Darren Chester MP, Minister for Veterans' Affairs, *House of Representatives Hansard*, 24 May 2018, p. 15.

48 EM, p. 22.

Discussion of Schedule 5

1.52 The government noted that the amendment 'means submariners who are deemed to have operational service will have their claims assessed against the more generous provisions than those that apply to peacetime service'.⁴⁹ The Minister for Veterans' Affairs stated it 'will benefit those veterans and their widowers to be able to access the benefits to which they are entitled'.⁵⁰

1.53 DVA noted that this measure would:

...give full effect to the intent of the Clarke Review and will benefit those veterans and their widowers to be able to access the benefits to which they are entitled. The amendments would ensure that the classified nature of information about SSO does not hinder access by these personnel to the benefits and entitlements available to those with operational service.⁵¹

Schedule 6—Claims for compensation

1.54 To receive benefits under the MRCA, a person is generally required to make a claim under section 319 for one or more of the following:

- (a) acceptance of liability by the Commission for a service injury sustained by a person or a service disease contracted by a person;
- (b) acceptance of liability by the Commission for the service death of a person;
- (c) acceptance of liability by the Commission for the loss of, or damage to, a member's medical aid;
- (d) compensation.

1.55 Items 1 and 2 of Schedule 6 amend subsection 319(2) to specify that a claim for compensation must be made to the MRCC either in writing or orally. Claims of acceptance of liability by the MRCC are not affected by Items 1 and 2, and will continue to be required to be made in writing.

1.56 Item 4 repeals subsection 319(4) and replaces it with proposed subsection 319(4), which allows for the MRCC to advise the Chief of the Defence Force of a claim for compensation for permanent impairment, rather than specifying that the MRCC must 'give a copy' of the claim.

1.57 Item 7 adds subsection 323(5A) which regulates the lodgement of oral claims under the Act, establishing that they are taken to have been given to the MRCC on the day on which the claim was made. Items 5 and 6 clarify that subsections 323(2) or (3) are not relevant to the lodgement of oral claims.

49 The Hon Darren Chester MP, Minister for Veterans' Affairs, *House of Representatives Hansard*, 24 May 2018, p. 15.

50 The Hon Darren Chester MP, *House of Representatives Hansard*, 24 May 2018, p. 15.

51 DVA, *Submission 2*, p. 5. See Commonwealth of Australia, [Report of the Review of Veterans' Entitlements](#), January 2003.

1.58 Schedule 6 commences on the 28th day after Royal Assent is received, and the amendments made under this schedule apply to claims made on or after that date.

Discussion of Schedule 6

1.59 The government described how the amendments in Schedule 6 would make it easier for veterans to make claims as:

...a client will be asked during a needs assessment telephone call whether they want to make a claim for compensation and their oral statement will be treated as a valid claim under the act. This means a client will have the option to make a claim for compensation in writing or orally.⁵²

1.60 The EM also noted that requiring claims for compensation to be in writing 'creates administrative inefficiencies for the MRCC'.⁵³

Scrutiny by other committees

1.61 The Scrutiny of Bills Committee and the Parliamentary Joint Committee on Human Rights had not reported on the bill at the time of tabling this report.

Conclusion

1.62 The government is committed to putting veterans first and delivering a range of services to veterans and their families to ensure they are well looked after, long after their service ends.

1.63 The committee recognises that the measures introduced in this bill continue on from the eight measures introduced through the *Veterans' Affairs Legislation Amendment (Veteran-centric Reforms No.1) Act 2018*.

1.64 The committee notes the observations of the Partners of Veterans Association of Australia in relation to Schedule 2, the new Veteran Suicide Prevention Pilot. The committee acknowledges the important role of partners in veterans' wellbeing. The committee notes this is a pilot program and encourages the government to take these concerns into consideration in the development, implementation and evaluation of the pilot.

Recommendation 1

1.65 The committee recommends that the bill be passed.

**Senator Linda Reynolds CSC
Chair**

52 The Hon Darren Chester MP, Minister for Veterans' Affairs, *House of Representatives Hansard*, 24 May 2018, p. 16.

53 EM, p. 23.

Appendix 1

Submissions

1. Partners of Veterans Association of Australia
2. Department of Veterans' Affairs
3. Royal Australian and New Zealand College of Psychiatrists

