

# Chapter 1

## Introduction

### Referral of inquiry

1.1 On 30 March 2017, the Veterans' Affairs Legislation Amendment (Omnibus) Bill 2017 (the bill) was introduced in the House of Representatives by the Minister for Veterans' Affairs, the Hon Dan Tehan MP.<sup>1</sup>

1.2 On 30 March 2017, 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 13 June 2017.<sup>2</sup> The key issues for consideration, as cited by the Selection of Bills Committee, are to 'consider and scrutinise the full detail and impact of the Omnibus bill'.<sup>3</sup>

### Conduct of inquiry

1.3 The committee advertised the inquiry on its website, calling for submissions by 8 May 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 eight submissions to the inquiry. These submissions are listed at Appendix 1 and are published on the committee's website.

1.5 The committee held one public hearing on 26 May 2017 in Canberra. The witnesses who appeared at the hearing are listed at Appendix 3 and the program and *Hansard* transcript are published on the committee's website.

### Purpose of the bill

1.6 The bill comprises eight Schedules that implement several amendments to veterans' legislation to clarify, improve, or streamline the operation of the law.

1.7 Schedule 1 amends the *Veterans' Entitlements Act 1986* (VEA) to modernise and align the Veterans' Review Board's (VRB) operations with those of the Administrative Appeals Tribunal following amendments made by the *Tribunals Amalgamation Act 2015*. The amendments are intended to support alternative dispute resolution processes and recent amendments to the *Military Rehabilitation and Compensation Act 2004* which provide for a single appeal path for reconsidering decisions.<sup>4</sup>

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1 The Hon Dan Tehan MP, Minister for Veterans' Affairs, *House of Representatives Hansard*, 30 March 2017, p. 12.

2 *Journals of the Senate*, No. 38, 30 March 2017, p. 1245.

3 Selection of Bills Committee, *Report No. 4 of 2017*, p. 9.

4 EM, *Veterans' Affairs Legislation Amendment (Omnibus) Bill 2017*, p. ii.

1.8 Schedule 2 amends Part XIB of the *Veterans' Entitlements Act 1986* to improve the operation of the Specialist Medical Review Council (SMRC) and streamline some of the SMRC's administrative arrangements. The proposed amendments aim to simplify the nomination and appointment process for councillors, progress whole-of-government requirements for digital transformation, enable online lodgement of claims, remove red tape in commencing reviews, and give the SMRC an ability to pay the travel costs of applicants who appear before an oral hearing of the SMRC.<sup>5</sup>

1.9 Schedule 3 repeals and replaces section 203 of the *Veterans' Entitlements Act 1986* to provide the Minister for Veterans' Affairs with the power to make agreements with foreign governments to cover the provision of benefits and payments, including rehabilitation, that are comparable to those provided by the Repatriation Commission or the Military Rehabilitation and Compensation Commission (MRCC) under the:

- *Veterans' Entitlements Act 1986*;
- *Military Rehabilitation and Compensation Act 2004*;
- *Australian Participants in British Nuclear Tests (Treatment) Act 2006*; and
- proposed *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*.<sup>6</sup>

1.10 Currently, the Minister for Veterans' Affairs can only enter into arrangements with the governments of countries that are, or have been, dominions of the Crown. These amendments would enable the Minister for Veterans' Affairs to enter into arrangements with a broader range of countries.<sup>7</sup>

1.11 Schedule 4 amends the *Veterans' Entitlements Act 1986*, the *Military Rehabilitation and Compensation Act 2004* and the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (if enacted) to strengthen the legislative foundation for providing certain rehabilitation assistance to eligible serving and former Defence Force members, reservists and cadets. The assistance essentially involves payments to employers under the Employer Incentive Scheme in the form of wage subsidies to encourage them to engage injured veterans who have found it difficult to compete in a tight labour market.

1.12 Schedule 5 amends subsection 409(2) of the *Military Rehabilitation and Compensation Act 2004* and subsection 151A(1) of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (if enacted) to facilitate information sharing between the MRCC and the Commonwealth Superannuation Corporation (CSC) with respect to certain service related compensation claims.

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5 EM, *Veterans' Affairs Legislation Amendment (Omnibus) Bill 2017*, p. ii.

6 EM, *Veterans' Affairs Legislation Amendment (Omnibus) Bill 2017*, p. ii.

7 The Hon Dan Tehan MP, Minister for Veterans' Affairs, *House of Representatives Hansard*, 30 March 2017, p. 12.

1.13 The proposed amendments are intended to improve the information sharing framework for incapacity and superannuation benefits between the MRCC and the CSC and reduce the time taken to process claims. Enabling the CSC to use medical information and reports held by the MRCC to determine superannuation claims would remove the need for ADF members to undergo further medical assessment where DVA already holds relevant medical evidence that could be used by the CSC to determine superannuation benefits. At present, all requests to the MRCC for information from CSC are undertaken in accordance with the *Freedom of Information Act 1982*. This process is cumbersome and time consuming, and accounts for approximately 20 per cent of all Freedom of Information requests received by the Department.<sup>8</sup>

1.14 Schedule 6 amends the *Military Rehabilitation and Compensation Act 2004* to provide for the delegation of the Minister for Veterans' Affairs' powers and functions.

1.15 Schedule 7 amends Veterans' Affairs portfolio legislation to exempt certain legislative instruments from subsection 14(2) of the *Legislation Act 2003*. The amendments would enable these legislative instruments to incorporate material contained in other non-disallowable legislative instruments or non-legislative documents as in force from time to time. The amendments would also update the language of some of the provisions under which legislative instruments are made to accord with a contemporary drafting style.<sup>9</sup>

1.16 According to the department's submission, this approach will eliminate the delay between when a legislative instrument incorporates a non-legislative written document and when new products are available to clients. For example, there is currently a delay of between three to six months for certain VEA and MRCA legislative instruments to incorporate the latest version of documents such as the Diagnostic and Statistical Manual of Mental Disorders by the American Psychiatric Association.<sup>10</sup>

1.17 Schedule 8 repeals redundant and spent provisions administered in the Veterans' Affairs portfolio concerning benefits that are no longer payable under the portfolio Acts, and makes amendments consequential to those repeals. The Schedule would also make minor corrections to clarify existing provisions of the *Veterans' Entitlements Act 1986* and includes consequential amendments to other Acts which result from amendments that repeal redundant and spent provisions of the *Veterans' Entitlements Act 1986* and the *Military Rehabilitation and Compensation Act 2004*. Removing these redundant elements is intended to make veterans' legislation easier to interpret.

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8 EM, *Veterans' Affairs Legislation Amendment (Omnibus) Bill 2017*, p. iii.

9 The Hon Dan Tehan MP, Minister for Veterans' Affairs, *House of Representatives Hansard*, 30 March 2017, p. 12.

10 Department of Veterans' Affairs, *Submission 7*, pp. 6–7.

## Scrutiny by other committees

### *Scrutiny of Bills Committee*

1.18 The Scrutiny of Bills Committee considered the bill according to its usual process and made a number of comments in relation to the scrutiny principles outlined in Senate Standing Order 24.

1.19 The committee identified that Schedule 6 of the bill enables the Minister to delegate all of his or her administrative powers and functions under the *Military Rehabilitation and Compensation Act 2004* to a large class of persons. The committee considered that where broad delegations are provided for, an explanation as to why these are necessary should be included in the explanatory memorandum. The explanation provided in the explanatory materials states that it is proposed that the delegation of powers is to be on the basis that only the Chief Operating Officer in the department can approve instruments, however nothing in the bill would limit it in this way.<sup>11</sup>

1.20 The Scrutiny of Bills Committee sought the Minister's advice as to why it is necessary to allow these powers to be delegated to any APS employee, and whether there is scope to amend the bill to provide guidance on the limit of powers that might be delegated.

1.21 On 24 May 2017, Minister Tehan responded to the committee and advised that, in light of the concerns identified, government amendments to the bill would be proposed, subject to approvals being obtained, to appropriately limit the delegation of certain functions and powers to certain senior staff in the department, such as SES officers or equivalent.<sup>12</sup>

1.22 The Scrutiny of Bills Committee also identified concerns with Schedule 7 of the bill which enables certain legislative instruments to incorporate matters contained in other instruments or written materials as in force from time to time. This is achieved by exempting the instruments from subsection 14(2) of the *Legislation Act 2003*.

1.23 However, the Scrutiny of Bills Committee argued this method raises the risk of changes being made to the law without appropriate Parliamentary scrutiny, and creates uncertainty and inaccessibility of the law.<sup>13</sup> As it was not clear which documents are envisaged to be incorporated if these legislative instruments are exempted from the restriction, the committee sought the Minister's advice as to

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11 Scrutiny of Bills Committee, *Scrutiny Digest No. 5 of 2017*, 10 May 2017, pp. 59–60.

12 The Hon Dan Tehan MP, Minister for Veterans' Affairs, *Preliminary comments to the Scrutiny of Bills Committee*, [http://www.aph.gov.au/~media/Committees/Senate/committee/scrutiny/ministerial\\_responsiveness/comment\\_and\\_response.pdf?la=en](http://www.aph.gov.au/~media/Committees/Senate/committee/scrutiny/ministerial_responsiveness/comment_and_response.pdf?la=en) (accessed 6 June 2016). Preliminary comments are likely to be included in *Scrutiny Digest No. 6 of 2017*, which is expected to be tabled on 14 June 2017.

13 Scrutiny of Bills Committee, *Scrutiny Digest No. 5 of 2017*, 10 May 2017, pp. 61–62.

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whether the bill could include a requirement that documents be made available on the Department's website, or otherwise made accessible to the public.

1.24 On 24 May 2017, Minister Tehan responded to the committee and advised that the department is currently producing a webpage that will include details about new legislation. The site will commence with details of the bill and be online within the week. Additionally, the website would provide links to legislative instruments, including the documents incorporated by reference into those legislative instruments, ensuring that such documents would be freely available to the public.

1.25 The Minister noted that currently there are no documents incorporated by reference into the remaining legislative instruments for which an exemption to subsection 14(2) of the *Legislation Act 2003* had been sought, however the bill would ensure that any future need would not be restricted.<sup>14</sup>

#### *Parliamentary Joint Committee on Human Rights*

1.26 The Parliamentary Joint Committee on Human Rights examined the bill and considered that it did not raise any human rights concerns.<sup>15</sup>

### **Structure of report**

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

### **Acknowledgements**

1.28 The committee thanks all contributors who assisted with the inquiry.

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14 The Hon Dan Tehan MP, Minister for Veterans' Affairs, *Preliminary comments to the Scrutiny of Bills Committee*, [http://www.aph.gov.au/~media/Committees/Senate/committee/scrutiny/ministerial\\_response/ness/comment\\_and\\_response.pdf?la=en](http://www.aph.gov.au/~media/Committees/Senate/committee/scrutiny/ministerial_response/ness/comment_and_response.pdf?la=en) (accessed 6 June 2016). Preliminary comments are likely to be included in Scrutiny Digest No. 6 of 2017, which is expected to be tabled on 14 June 2017.

15 Parliamentary Joint Committee on Human Rights, *Human Rights Scrutiny Report: Report 4 of 2017*, May 2017, p. 74.

