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Dr Kathleen Dermody
Committee Secretary
Foreign Affairs, Defence and Trade Committee
Department of the Senate
PO Box 6100, Parliament House
CANBERRA ACT 2600

By email: fadt.sen@aph.gov.au

Dear Dr Dermody

Submission to the Senate Standing Committee on Foreign Affairs, Defence and Trade on the inquiry into the Veterans' Affairs Legislation Amendment (Military Compensation Review and other Measures) Bill 2013

I welcome the opportunity to comment on [the inquiry into the Veterans' Affairs Legislation Amendment \(Military Compensation Review and Other Measures\) Bill 2013](#) (the Bill).

In view of the broad range of matters covered by the amendments contained in the Bill, I have focussed my comments on the provisions of Schedule 11 that authorise the handling of personal information for the purposes of the *Privacy Act 1988* (Privacy Act).

I am mindful that Schedule 15 of the Bill also contains provisions authorising the use and disclosure of individuals' account details for the sole purpose of the payment of compensation entitlements or pension entitlements into a bank account. However, I consider that the handling of personal information permitted by the provisions in that schedule is more closely aligned with the protections afforded to that information by the Privacy Act.

In considering the proposed amendments in Schedule 11, I am concerned to ensure that any handling of personal information is limited to what is necessary to achieve the intention of the Bill. Further, where provisions authorise the handling of personal information that would not otherwise be permitted by the Privacy Act, that there are privacy protections in place that meet community expectations in relation to the handling of that information.

Office of the Australian Information Commissioner

The Office of the Australian Information Commissioner (the OAIC) was established by the Australian Information Commissioner Act 2010 and commenced operation on 1 November 2010. The OAIC is an independent statutory agency headed by the Australian Information Commissioner. The Information Commissioner is supported by two other statutory officers: the Freedom of Information Commissioner and the Privacy Commissioner. The OAIC brings

together the functions of information policy and independent oversight of privacy protection and freedom of information in one agency, to advance the development of consistent workable information policy across all Australian government agencies.

Background

The Bill amends the *Military Rehabilitation and Compensation Act 2004* (MRCA) and other legislation to give effect (in part) to the recommendations accepted by the Government in its response to the 2011 Review of Military Compensation Arrangements Report (the Report).¹

I understand that there are currently three Acts that provide arrangements for former Australian Defence Force (ADF) members to access treatment and/or compensation:

- *Safety, Rehabilitation and Compensation Act 1988* (SRCA)
- *Veterans Entitlements Act 1986* (VEA)
- *Military Rehabilitation and Compensation Act 2004* (MRCA).

I further understand that the MRCA only applies in relation to injuries, diseases or deaths that occur during service after 1 July 2004. Current and former ADF members that have conditions arising from service prior to 1 July 2004 are covered by the provisions of the SRCA and/or VEA.²

The amendments contained in Schedule 11 of the Bill are intended to achieve consistency in treatment arrangements for all former ADF members. Specifically, to enable those members entitled to treatment under the SRCA to access treatment under either the MRCA or the VEA in accordance with the arrangements established under those Acts.³

Item 15 of Schedule 11

Item 15 of Schedule 11 inserts a new s 151A into the SRCA. Under that provision, the Military Rehabilitation and Compensation Commission (MRCC) may provide any information obtained through the performance of their duties under the SRCA to the Secretary of specified Commonwealth Departments or to the Chief Executive of Centrelink or Medicare for the purpose of that body. Under that provision, such disclosures are taken to be authorised by law for the purposes of the Privacy Act. I note that the effect of this provision may be to authorise disclosures of personal information that would not otherwise be permitted under the Privacy Act.

¹ See Australian Government Department of Veteran's Affairs 2011, *Review of Military Compensation Arrangements*, Department of Veterans Affairs, available at http://www.dva.gov.au/pensions_and_compensation/Military%20Compensation%20Review/report/vol1/Pages/vol1.aspx; Australian Government 2012, *Government Response to the Review of Military Compensation Arrangements*, Department of Veterans Affairs, available at http://www.dva.gov.au/pensions_and_compensation/Military%20Compensation%20Review/Pages/ResponseReview.aspx.

² See Explanatory Memorandum, *Veterans' Affairs Legislation Amendment (Military Compensation Review and Other Measures) Bill 2013* (Explanatory Memorandum), p 47, available at <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr5006%22>.

³ See Explanatory Memorandum, pp 47-48.

I am concerned that the breadth of the proposed s 151A may limit the ability of current and former ADF members to control how their personal information is handled. It is not clear why the inclusion of such a broad discretion is necessary to give effect to the intention of the amendments. I note that the rationale for the breadth of the discretion is not discussed in the Report, the Government's Response to that Report or in the Explanatory Memorandum to the Bill.

More specifically, it is not clear what personal information the MRCC may obtain through the performance of their duties and, therefore, what personal information may be disclosed under the proposed s 151A. Further, although the proposed s 151A(2) prohibits the recipient Department, Centrelink or Medicare from using or disclosing the information for purposes other than the purposes of the relevant body, the broad range of functions undertaken by those bodies and the scope of their own disclosure powers mean the extent of those purposes is unclear. As a result, it is difficult to discern what impact such uses or disclosures might have on the privacy of current and former members of the ADF.

These circumstances could also lend themselves to increasing the risk of function creep - where information collected for one purpose is used for other unrelated purposes outside the individual's expectations.

Privacy impact assessment

Given the potential privacy impact that may result from the conferral of such broad powers, the OAIC would generally encourage the relevant Department to undertake a [privacy impact assessment](#) (PIA). A PIA is an assessment tool that describes the personal information flows in a project and analyses the possible privacy impacts that those flows, and the project as a whole, may have on the privacy of individuals. A PIA allows agencies and organisations to identify and analyse privacy impacts early on, during a project's design phase, thereby enabling any mitigation strategies to be built into the project.

In this situation, the PIA would have highlighted any privacy impacts associated with the handling of the personal information of current and former members of the ADF and provided an opportunity to take proactive steps to mitigate any impacts.

In particular, a PIA could have considered the types of personal information that are likely to be disclosed under this provision, the purposes for which that information may be disclosed and how that information is intended to be handled once it is disclosed by the MRCC.

Specific recommendations

In the absence of a PIA, I would suggest the Committee consider recommending, in its report, that s 151A be amended to confer a limited discretion on the MRCC to disclose personal information where it is necessary to achieve the intention of the Bill. The Committee may also wish to consider recommending that the Government outline, in the Explanatory Memorandum to the Bill, the purposes for which the MRCC can disclose personal information and limitations on the purposes for which a recipient Department, Centrelink or Medicare can use or disclose that information. This could, for example, be achieved through limiting the further use or disclosure of that information to purposes related to the original purpose of collection.

This additional transparency will provide current and former members of the ADF with greater certainty about how their personal information will be handled in connection with the provision of these services.

In saying this, I am mindful that the conferral of broad powers to disclose personal information, similar to those provided under the proposed s 151A, is increasingly being considered in the development of Commonwealth legislation. I am firmly of the view that the conferral of such broad powers should not be considered routine given that they remove a considerable degree of control from individuals over the handling of their personal information.

Yours sincerely

Timothy Pilgrim
Australian Privacy Commissioner

22 April 2013