



VETERANS' SUPPORT CENTRE

Dedicated to your service

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11 September 2015

Committee Secretary
Senate Foreign Affairs, Defence and Trade Committee
PO Box 6100
Parliament House
Canberra ACT 2600

RE: Proposed amendment Reconsideration and Review MRC Act

Further to my submission 10 Sep 2015

I wish to bring to the attention of the committee the current and longer term situation as I know it of Advocates assisting ESOs.

I have been an Advocate for 13 years and at 58, I am one of the younger Advocates.

I have seen, particularly in the last 3 years, a significant reduction in my advocate network and at the same time where my work was once exclusive to the McPherson electorate on the Gold Coast, it has now expanded up and down the Eastern sea board.

I now work with Veterans to assist them to obtain compensation as far away as Darwin, Townsville, Rockhampton and also, the North Coast of NSW and as far south as Sydney and Adelaide.

Most of those Veterans where referred to me by DVA.

As I stated before, the take-up rates for Volunteer advocates have been reducing. Our Veterans' Support Centre has not had a new Pension Officer in three years.

Four years ago we had five pension officers/advocates today we have one pension officer and one advocate.

This trend is happening at all the Ex-Service Organisations (ESO's) I have talked to in the last few years and many no longer provide compensation services.

We have to keep options available for Veterans in choosing a path to pursue compensation.

Legislation is complex, compensation is not easily obtained and nor it should be. The average serviceman does not have the expertise to complete claim let alone contest a negative decision.

There is and should always be a place for Advocates and the Legal fraternity to assist Veterans with the claims process to obtain compensation.

Yours sincerely

Tony Hornby
Chairman/Senior Advocate





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10 Sept 2015

Hon Michael Ronaldson
Minister for Veterans' Affairs

Attention:
Karen Andrews MP
Federal Government Office
47 Watts Dr, Varsity Lakes QLD 4227
Phone: (07) 5580 9111

Dear Karen,

It has come to my Attention that the Federal Government wants to introduce an amendment to the Military Rehabilitation and Compensation Act 2004 (MRCA) regarding the appeals process that is currently available to Veterans.

Please find enclosed submissions by KCI Lawyers and Slater & Gordon Lawyers.

As a Senior Advocate at the Currumbin RSL Veteran Support Centre I fully support the statements provided by the above.

If the proposed amendment to the MRC Act to streamline the appeals process and remove the reconsideration process in favour of the Veterans Review Board (VRB) goes ahead, this can only lead to a disaster with extreme consequences to the Veteran community.

My reasons are as follows:

Representation for the Claimant (Veteran) at the VRB can only be made by an Advocate. Legal representation is not allowed at a VRB.

Under Reconsideration the Claimant can and usually has legal representation.

The bulk of advocates throughout Australia are Volunteers - it is a reducing work force for many reasons because people are working longer hours, working to a much older age, not having time to volunteer, there are greater demands on the individual, and of course, there are the demands related to learning advocacy.

It stands to reason that with Advocate take-up rates on the decline and then having only the VRB process, a greater demand would be placed on current Advocates so qualified - this in turn will lead to higher burnout rates and as stated before, it can only end in far fewer veterans having any representation when they require it the most.

I can't help but think that this amendment that the government wants to pursue is purely a cost cutting exercise.

This government has introduced a number of measures over the last 2 years which clearly have eroded Veteran's right. If this is not an exercise in cost reduction, please help me to understand the



purpose of this change. Erosion of Veterans' rights has already happened and to name one, is the loss of 3 months back pay under Veterans Entitlement Act (VEA) from the date a claim has been received by DVA once liability had been accepted.

I am reminded of a quote by American Senator Bernie Sanders;

"If you think it's too expensive to take care of veterans, then don't send them to war "

The Government not only has a moral obligation to ensure that veterans, their wives and families are looked after, but also to ensure that natural justice has to be seen and applied.

Your assistance with bringing this anomaly to the urgent attention of Hon Michael Ronaldson Minister for Veterans' Affairs would be greatly appreciated.

Yours faithfully

Anthony Hornby
Chairman / Senior Advocate
Currumbin RSL Sub-Branch
Veterans' Support Centre.



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Our Ref. GI:JR

8 September 2015

Letter to the Editor

"LABOR SNUBS VETERAN COMMUNITY AND SUPPORTS LAWYERS OVER VETERANS"

Minister for Veterans' Affairs – Hon. Michael Ronaldson

Background

The Minister responsible for Veterans' Affairs attempted to quietly bring in an amendment to the MRC Act on the 7th of September regarding the appeal process for Veterans who suffer injuries and families who experience the loss of their partners due to Defence service after 1 July 2004.

The amendment was blocked by Senator Lambie after having a limited opportunity to consider the implications of the proposal and its impact on Veterans' right to be legally represented to the same level they currently have. In particular, the amendment would strip Veterans' right to recover their legal costs, including barristers who appear in the AAT and Federal court on a 'contingency' (i.e. no –win – no fee) basis and to be reimbursed associated out of pocket expenses i.e. medical reports.

The Media release attempts to describe the position taken by Senator Lambie and the ALP as essentially taking a stand at the "*behest of compensation lawyers*". Given that I provided a response to the proposed amendment to Senator Lambie (**attached**) I am one of the "compensation lawyers" or to use the pejorative engaged buy a few ill informed, an "ambulance chaser".

Senate inquiry

The reality is that when the implication of the Schedule 2 amendment became apparent, Senator Lambie and other members of Parliament when faced with the proposed measure took a stand and the matter was referred to the *Foreign Affairs, Defence and Trade Legislation Committee for an Inquiry*. **Submissions from any interested parties can contribute to this enquiry are invited but must be made by 14 September 2015.** More information can be found at www.aph.gov.au/senate/fact. (Notification **attached**).

The inquiry will at least enable reasonable input and debate from all relevant parties i.e. not just so-called "compensation lawyers" but ESO's relied upon by the Minister to draw support for the proposal.

The Minister relies on this ESO support from the *Military Review of Military Compensation Arrangements in 2009* i.e. more than six years ago.

It will be interesting for the Minister to receive feedback as to the proposal and how it now currently fits within the ESO community, including what needs to be done in order to improve the proposed "single pathway of appeal" to the VRB rather than simply bring in an amendment of this nature, largely through stealth, that will have a profound impact on Veterans and their right to access justice.

Veterans, ESO's & Compensation Lawyers

It is disappointing to read and hear people who use the term "ambulance chasers" for firms and individual lawyers like myself who have devoted a substantial or in my case, my whole working life to assist Veterans, often at no cost or at substantially reduced 'legal aid' rates.

Yes, we 'compensation lawyers' do get paid, most times the majority of the money comes from DVA and only after we overturn the decision. Go to your accountant and ask them to do your tax return – then tell them you won't pay unless you get a refund and see what they say.

Additionally I wonder if some ESO's who complain about lawyers also complain when they get the benefit of Administrative Appeals Tribunal - AAT decisions, Federal court and High court appeals that set precedents and, in turn expand the entitlement for Veterans i.e. the case of *Fellows* who established the right to 2 separate lump sums for two separate knee injuries or *Robson*; two separate lump sums for two separate psychiatric conditions – one from peace keeping in Rwanda and the other from multiple fractures following a parachute accident.

The precedents would never have been possible if we could not take these cases on a "no win – no fee" basis. Again by winning it means that DVA pay the court costs and the barristers' fees– not the Veterans.

DVA know how to subtract and deny entitlements – as compensation lawyers we know how to enhance and add to their entitlements. No tricks, just using the beneficial nature of the legislation, getting the right evidence and legal argument together.

There are many more cases where there are no 'lump sums' for supposed, "greedy" lawyers to get their hands on. Cases involving, for example, the right to rehabilitation program to include tertiary education, to stop DVA "deeming" a Veteran capable of earning and having their benefits cut off. Or for a spouse, who more times than not, is the wife or partner of a Veteran to be recognised as an attendant carer so they are entitled to more than the Centrelink rate of pay to nurse their injured Veteran. What about the substantial number of cases to establish liability for claims that are rejected or fighting DVA to not 'apportion' non accepted conditions for injuries and the effects.

There's a lot more going on than just lump sums.

More than "Compensation"

As lawyers, we expose the failures of the system and not just a wrong decision to be reviewed. Things like, the lack of transitional management, poor or defective claims administration by DVA. Plus the collateral claims we identify, like the right to retrospective MSBS and DFRDB pensions, civil claims for negligence and so forth after talking to a Veteran about their problems, we can uncover a lot more.

I know that most "compensation lawyers" in the Veterans' jurisdiction consistently appear before the Senate and other Government reviews, make submissions about the rights, entitlements and issues facing Veterans. It is a real and 'no cost' demonstrated commitment that we, as lawyers take on when looking after Veterans.

No one pays for the preparation time and to be out of the office (at our own expense to appear before committees who may sit interstate) and to make submissions. I have been an "advocate" on important issues for longer than some ESO's have been around and detest having to somehow 'justify' my existence.

As a lawyer in this jurisdiction and helping Veterans for 23 years, I cannot and do not remain silent and let the injustices occur. To borrow a Veterans' saying – "*Not on my watch*".

Lack of Transparency

DVA must be loving this decisive proposal to finally reduce Veterans' ("compensation") lawyers from shining the spot light on how inequitable their policies and "lore's" are and taking matters on appeal to the AAT and Federal court.

Think of issues like offsetting different lump sums and pensions from the 3 schemes, widows claims that are denied under the MRCA - SoP regime that would otherwise be accepted under the SRC Act. The decisions generated by the appeal and reporting, even if we don't "win", may at least highlight the inequities built in to the prevailing Sop's or highlight the DVA "method of offsetting" which is not under the Act but their own creation.

DVA and Their Use of Lawyers

So, now DVA with the tactic 'support' from ESO's will get lawyers out of the review system - Will DVA stop using private lawyers? Not likely.

Look at the figures that Senator Lambie got out of DVA through Senate Estimates i.e. DVA spending \$300,000.00 on lawyers from private firms in the last 2 years alone to literally sit in DVA's National Office in Canberra to help THEM essentially defend decisions.

What about the extra \$4.5 million DVA spent in 2009 for external lawyers to go to the AAT on their behalf. I didn't read in the Media release about the general push by DVA to get 'their' lawyers out of the compensation system.

The DVA – Legal Aid Relationship

Yes, "go to legal Aid", DVA say as you will be assisted irrespective of your means and based on the merit of your case - But only if you have *operational service*. If you don't and for the majority of Veterans who are injured during their normal service i.e. non overseas service, you are highly unlikely to be eligible under the Legal Aid means test.

Access to Legal Aid is fine except someone forgot to tell DVA that NSW legal Aid decided, in December 2014 that they would NOT fund Veterans even with operational service to get legal representation.

After bringing this to the attention to the late Tim McCombe OAM (president of the VVF) and enlisting the assistance from other ESO's by reminding DVA how they spruik the VRB system as providing "beneficial support" to Veterans with operational service i.e. access to Legal Aid, NSW Legal Aid had to quickly reinstate this little slip up.

Can DVA give the same assurances about access to Legal Aid in future? No, they literally cannot. It is the States and Territories who disburse Legal Aid after the Commonwealth Attorney General make a grant – This relationship is constantly thrown in our face by DVA when we, "compensation lawyers" highlight how hard it is to run cases on a Legal Aid grant. The mantra from the DVA is that, *"it's not their problem or within their control – blame the State Government"*.

So, the right for Veteran's with operational service and having gone through the (only) appeal path open i.e. the VRB and expect access to Legal Aid is not enshrined. Clearly this is not a hypothetical question given what has happened in the recent past.

Essentially DVA cannot rely on the "good will" of State or Territory Legal Aid Commissions to fund Veterans, especially when they are subjected to the Commonwealth Attorney General reducing their annual grants. Who will miss out; Veterans or say those applying for Legal Aid for committing violent crimes and needing access to lawyers as their liberty is at stake.

Veterans' Access to Justice and the "Level Playing Field"

Look at the AAT website and the number of Veterans who run a case through the AAT unrepresented. Is this a result of going to the VRB and, after being unsuccessful want to go on to the AAT. They approach lawyers who inform them that they are ineligible for legal aid as it is a peace time injury, don't have the right to have their legal costs paid, or reimbursed for medical evidence, witness fees or to get barristers who can do it on a "no win – no fee" basis.

This scenario is real as a large number of Veterans in this situation come to me and ask for advice about appealing to the AAT following a VRB appeal. I ask, *"Did your advocate tell you that by going to the VRB you can NOT get your legal costs paid even though I think your case has merit and should be appealed?"* – The answer for most cases is, *"NO, I had no idea"*.

Do the advocates know of this consequence? Largely from my anecdotal discussions informally or at information sessions I have with advocates and pension's officer the answer is, "No" they don't. Perhaps ask advocates themselves about what advice they give and do they spell out the consequences of the advice i.e. opting for the VRB model?

I also read and know of cases where advocates appear at the AAT and go up against DVA's private law firm, who in turn engage their barrister. In one decision earlier this year, a level 4 advocate ran an AAT case – ask him how he felt running a 2 day case in the AAT i.e. cross examining, re-examining witnesses, doctors and the Veteran, dealing with complex SoP's, factual and medical arguments and making submissions. Plus he is not in the office assisting the other Veterans for at least 2 days plus the preparation time. What about the new (onerous) AAT Guide lines. When do advocates get trained in the small detail of running an AAT Application? Ask DVA as they fund the ESO' and provide advocate training through BEST grants and TIP training.

Compare this to DVA's approach to the AAT application when faced with an unrepresented Veteran or when being represented by an Advocate in the above case. DVA used a barrister with over 20 years experience and had his lawyer sitting opposite him to manage it. The barrister would get say \$2,500 per day to prepare and appear, say \$7,500.00 for 3 days in total (give or take). The private law firm gets at least \$15,000.00 to \$20,000 to run the case. All up DVA would spend \$25,000 – to \$30,000.00 for a two day case.

This is not an isolated example and it will become the norm in DVA's plan to reduce 'compensation lawyers' from being involved in the AAT review process. There are more AAT cases and a recent Federal court case as example of DVA versus the unrepresented Veteran. Better still, DVA should tell us how much they get charged (and we as tax payers pay) for their lawyers to appear in the AAT against unrepresented Veteran's or with advocates.

Veterans & Legal Representation – No more and No less Than DVA

Why is it that DVA have staff and unlimited resources as well needing in house lawyers from private law firms who are essentially doing their job at the tax payers' expense?

Odd isn't it if the system is so straight forward that DVA need private lawyers working in house and externally to help them, yet Veterans can make do with non lawyers i.e. advocates.

Remember DVA only pay the Veterans' lawyer **IF** the decision is set aside and the Veteran gets a more favourable outcome i.e. DVA got it wrong. Why are ESO's in general so against this concept and outcome yet remain mute at DVA's conduct and use of lawyers against Veterans?

Perhaps ESO's should be fighting for what DVA has – access to legal assistance from specialist lawyers who work both internally with them and then appear in the AAT.

I hope and believe that ESO's won't aid and abet DVA's attempt to strip away another safeguard that Veterans have under the pre 2004 compensation scheme – access to justice. It's nothing more than a DVA delegate or a commonwealth public servant is entitled to.

Then again, getting paid is ultimately limited by having to actually 'win' which means DVA have paid the Veteran's legal costs for getting a decision wrong.

No wonder they hate us so much.

Please do not hesitate to contact me if you have any queries.

Greg Isolani

KCI LAWYERS

8th of September 2015



MINISTER FOR VETERANS' AFFAIRS

SENATOR THE HON. MICHAEL RONALDSON
MINISTER FOR VETERANS' AFFAIRS
MINISTER ASSISTING THE PRIME MINISTER FOR THE CENTENARY OF ANZAC
SPECIAL MINISTER OF STATE

Monday, 7 September 2015

VA094

LABOR SNUBS VETERAN COMMUNITY AND SUPPORTS LAWYERS OVER VETERANS

The Opposition's stunning backflip on providing a streamlined single appeal pathway for appeals under veteran compensation claims is proof that Labor has abandoned the interests of Australia's veterans and is now completely at the beck and call of backroom puppeteers.

In 2011, under the former Labor government, the Review of Military Compensation Arrangements was completed.

During the review process the ex-service community made it very clear that it wanted the current dual appeal pathway scrapped in favour of a streamlined, fairer and simpler single appeal pathway for clients who are covered by the *Military Rehabilitation and Compensation Act 2004* (MRCA).

The Bill debated in the Senate today will give clients covered by the MRCA access to the **same** appeal pathway as those clients who are covered under the *Veterans Entitlement Act 1986*, no more and no less. This is exactly what the veteran and ex-service community demanded through the review process.

In May 2012, Labor announced it would adopt these recommendations, the ones it has today sought to oppose.

Under the current system, some MRCA clients do not have access to the Veterans' Review Board.

The new system will ensure that all MRCA clients have access to the Veterans' Review Board, an independent appeal mechanism that does not require veterans to retain the services of a lawyer. Instead, veterans could be represented by a veteran advocate who provides services free of charge.

This appeal process has stood the test of time and has the full support of the veteran and ex-service community. Importantly, the ex-service community has been constantly engaged in the development of these legislative changes since the former Labor government's acceptance of the recommendation more than three years ago.

Until just yesterday, Labor continued to support these changes:

"It makes sense to have a single appeal pathway via the Veterans Review Board"
(Shadow Minister for Veterans' Affairs David Feeney, 7 September 2015, News Corp article)

Schedule 2 of the bill will streamline the appeals process into a single pathway for reconsideration or review of an original determination under chapter 8 of the Military Rehabilitation and Compensation Act. This amendment has the support of ex-service organisations and I commend the government for putting it in. **(Former Labor Minister for Veterans' Affairs Warren Snowdon, 20 August 2015, House of Representatives)**

The changes to be made to the review process under this bill will streamline the process into a single pathway, and that is a good thing. This part of the amendment has the full support of the ex-service organisations. **(Shadow Parliamentary Secretary to the Attorney-General Graham Perrett, 20 August 2015, House of Representatives)**

It is extremely disappointing to see that the Labor Party has now joined Independent Senator Jacqui Lambie in turning their backs on the veteran community by opposing these changes at the behest of compensation lawyers.

Compensation lawyers are opposed to this reform because by ensuring that all veterans have access to the Veterans Review Board, fewer cases will proceed to the Administrative Appeals Tribunal, which in turn means fewer fees for lawyers.

The Government is united with the ex-service community in unanimously supporting the single appeal pathway – the only people who have spoken against its implementation are compensation lawyers and now the Labor Party and Senator Lambie.

The Abbott Government is putting the interest of veterans ahead of compensation lawyers. Jacqui Lambie and Labor ought to do the same.

Media enquiries: Minister Ronaldson: Mark Lee 02 6277 7820 or 0408 547 381

Veterans and Veterans Families Counselling Service (VVCS) and Veterans Line can be reached 24 hours a day across Australia for crisis support and free and confidential counselling.
Phone 1800 011 046 (international: +61 8 8241 4546).



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Our Ref. GI:lg:130094

7 September 2015

Sen Lambie
Via Email



E-MAILED

Dear Sen Lambie,

**RE Veteran's Affairs Amendment Bill –
Recommendation 17.1 of the Review of Military Compensation Arrangements
(2011) for a single appeal process.**

We refer to the above and confirm the basis why the proposed amendment should not proceed given.

Was there Broad Support for the Single Appeal Path i.e. Only VRB APPEALS?

1. Whilst the Review found "broad support" to simplify the appeals process by removing the MRCC pathway and directing all appeals to the VRB, as is proposed by Schedule 2 it was not accepted by all i.e. *Vietnam Veteran's Federation and Vietnam Veteran's Peace Keepers and Peacemakers Association* as it would remove an important appeal path that enabled Veterans to have legal representation throughout the appeal process and for legal costs and medical reports paid for by going to the AAT.

What is the position of ESO's now i.e. 5 years after submissions and their experiences with VRB, funding cuts by DVA through BEST grants to assist them with complex – 3 piece legislation.

2. Funding ESO's and Payment of reasonable disbursements

The ESO's who did support it also noted the need for more funding of advocates and DVA also investigated what additional resources should go with this model i.e. the Canadian model using a single Veteran's legal service but this has never been concluded.

Back in 2011 there was not the cuts to BEST funding for ESO's who struggle with an increasing work load and less funding to train advocates to go through the complex VRB process without the aid of lawyers.

Plus the VRB will only pay \$467 for a medical report that Veterans' commission, the real costs, as DVA knows, will exceed \$1,500.00 By going the reconsideration path and then to the AAT at least the Veteran can get a full refund for the report if successful.

3. **Denying Access to Justice – No Legal Costs to go to the AAT after the VRB appeal.**

The internal review and the administrative appeals tribunal – AAT appeal means a Veteran can have their legal costs reimbursed i.e. the Veteran can have most of their legal costs paid, barristers can undertake cases on a contingency basis, Veterans can have the cost of medical reports they may have paid for reimbursed to them.

However if, as proposed by Government and DVA, the Veteran can only go through the VRB and is dissatisfied with the decisions are **not eligible to have their legal costs reimbursed although they are eligible for a grant of legal aid which is substantially limited i.e. approximately \$1,500.00 for the lawyers to prepare their case and for a barrister to prepare and attend a hearing.**

Note: In December 2014 NSW legal Aid decided to cut legal aid to Veteran's with operational service (the decision was overturned after lobbying by ESO's and lawyers) which shows that DVA do not even control if Legal aid will continue to be paid for Veteran's. If there is legal aid a large number of former lawyers and barristers are now unable or unwilling to act due to the small amount for complex cases involving up to 2 days of hearings.

DVA use in house lawyers from their panel firms i.e. Note Sen Lambie's question on notice confirmed they have paid \$300,000.00 for a lawyer from Sparke Helmore to be in house plus over \$4.9 million to their lawyers in 2009 when the Mil Comp review was undertaken. Now they say go to the VRB with no lawyers and if you go to the AAT, we will always use lawyers but we know it is unlikely you will be able to afford the cost to appeal.

4. **VRB Delays and Ongoing reforms.**

The VRB will take up to **418 days to hear an appeal** as opposed to the internal review that will take up to **127 days to consider** the reasons for reconsideration (*See - Review of Military Compensation Arrangements – Vol 2 DVA February 2011 – Chap 17.35*)

There is a serious attempt by DVA to work with the VRB to make it more efficient – Why should Veteran's however have to wait and hope that the VRB does in fact become more economical, quick, informal since it has slowly come to a near grinding halt due to excess work load with the inception of the MRCA and less resources plus reduced advocates due to DVA reducing the level of funding for ESO's through BEST grants,

5. **Less Scrutiny of DVA decision -**

There will be less scrutiny by DVA have to decisions made by the AAT and in particular appeals that would go on to the Federal court and full Federal Court of which there have been many by the law firms such as my own and others.

Without appeals, lawyers cannot push the boundary of DVA's interpretation of the Acts and essentially their "policies" and what I have deemed **DVA's "LORE"** as opposed to how to apply or interpret the **"LAW"**.

6. Senate Cttee Review – Veterans with PTSD- DVA Administration.

There has been a lot of focus on the shortcomings of DVA for Veterans' with operational service and bad decision making.

By reducing access to the review system i.e. single path, limiting legal costs, and no right for legal representation, whilst DVA and the VRB are 'trying' to become more efficient can and does have serious impact on Veterans' lives.

If you have any quires please do not hesitate to contact Greg Isolani.

Yours faithfully,

Greg Isolani
KCI LAWYERS



THE SENATE

STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE

8 September 2015

Mr Gregory Isolani
Partner
KCI Lawyers

Email: reception@kcilawyers.com.au

Dear Mr Isolani

Veterans' Affairs Legislation Amendment (2015 Budget Measures) Bill 2015

On 7 September 2015, schedule 2 of the Veterans' Affairs Legislation Amendment (2015 Budget Measures) Bill 2015 was referred to the Foreign Affairs, Defence and Trade Legislation Committee for inquiry and report by 25 September 2015.

The purpose of this letter is to draw your attention to the committee's inquiry and to invite you to make a written submission. More information about the bill and the inquiry is available on the committee's website: www.aph.gov.au/senate_fadt.

The committee is seeking to publicise its work as widely as possible and would appreciate you referring this letter of invitation to any colleague, group or organisation that you think would like to contribute to the inquiry.

Information and notes to assist in preparing submissions are available from the website or the secretariat (ph: 02 6277 3535, fax: 02 6277 5818).

The closing date for submission is **14 September 2015**.

The committee would prefer to receive written submissions in electronic form submitted online via the committee's website or sent by email to fadt.sen@aph.gov.au as an attached Adobe PDF or MS Word format document. Alternatively, written submissions may be sent to:

Committee Secretary
Senate Foreign Affairs, Defence and Trade Committee
PO Box 6100
Parliament House
Canberra ACT 2600

At some stage during the inquiry, the committee normally makes submissions public. Please indicate if you would like your submission kept confidential.

The committee hopes to hear from you soon. If you would like further information, please do not hesitate to contact me.

Yours sincerely

Mr David Sullivan
Committee Secretary
Senate Foreign Affairs, Defence and Trade Legislation Committee

Veteran's Affairs Legislation Amendment (2015 Budget) Bill 2015

Information Bulletin

The Bill contains three Schedules:

- Schedule 1 – Veterans' Vocational Rehabilitation Scheme
- Schedule 2 – Reconsideration and review of determinations
- Schedule 3 – Graves of dependents of members of the Defence Force

Schedule 1 and 3 are not controversial and we support them. We have serious concerns about Schedule 2.

Inequity created by Schedule 2

We have publicly expressed concerns about Schedule 2 because it provides inferior appeal rights for injured Veterans compared to all other injured workers.

Civilian staff covered by Comcare, including staff of the Department of Veterans' Affairs (DVA), would have better protection and fairer appeal rights compared to Australian Defence Force Personnel and Veterans if Schedule 2 is passed.

Loss of access to an independent umpire

Schedule 2 means that except in rare cases, access to justice at the Administrative Appeals Tribunal and the right to choose representation will be effectively abolished.

- Veterans would no longer have the right to request an internal reconsideration of a poor DVA decision through the MRCC pathway which currently is the quicker review pathway with key advantages;
- All appeals would be directed to the Veterans' Review Board (VRB). An injured Veteran is not allowed to be assisted by anyone with a legal qualification during the VRB process;
- An injured Veteran who has their case considered by the VRB and wishes to appeal to the Administrative Appeals Tribunal (AAT) loses the right to recover any costs for medical reports or legal representation which they require to prove their case because they have been through the VRB process; and
- Even Veterans with very strong cases will not be able to afford to appeal to the independent umpire as is currently their right. Win, lose or draw Veterans cannot be awarded their costs at the AAT if this Bill is passed.

Injured civilian workers who come under Comcare, including DVA staff, will continue to be awarded costs at the AAT when they win.

David v Goliath – the imbalance in resources is made worse by Schedule 2

DVA use private sector lawyers chosen from a panel as well as paying for in-house lawyers to assist them to defeat a Veteran's claim. There is no limit on the DVA's use of lawyers. The VRB does not allow the Veteran to use a lawyer. If this Bill passes, Veterans who may wish to be represented by a legally qualified advocate at the AAT will not be able to afford this. This is David v Goliath.

The importance of ESO's

We respect the work ESO's do and believe that ESO's need more funding to meet the demands already placed upon them. However funding has been cut in recent years and so it is unclear how the DVA expects ESO's to absorb the extra responsibility that will arise if Schedule 2 passes.

ESO's will face a higher case load and along with injured Veterans, will have to face far more complex and daunting cases against DVA lawyers.

Schedule 2

Schedule 2 proposes to:

1. **Remove the option of a veteran being able to request the MRCC to conduct an internal reconsideration of DVA decisions.**

We support the concept of a single pathway, but not the abolition of the right of a Veteran to request an internal reconsideration by the MRCC. This would occur before the VRB. The system will be fairer, quicker and work better for injured Veterans if the Government keeps the right to request an internal reconsideration of DVA decisions.

The MRCC internal reconsideration process has been a faster way for Veterans to resolve their concerns and often leads to satisfactory results.

Under the internal reconsideration process an advocate can request DVA documents that may help the Veteran and may request DVA fund proper medical reports if needed. The Veterans' Review Board caps reimbursements at \$467, even though the medical reports needed can cost far more – often many thousands of dollars.

The abolition of the MRCC internal review process option results in removal of the right to be awarded costs at the AAT if a Veteran wins their case. This is because under the Act, the right to be awarded costs at the AAT is extinguished by the Veterans' Review Board (VRB) appeals process.

The Minister for Veterans' Affairs has correctly pointed out that only the right of the injured Veteran to request an internal reconsideration is removed by Schedule 2. The MRCC could still, if it wants to, have an internal reconsideration but will be under no obligation to involve the Veteran or adhere to any time frames.

2. **Right to representation**

Veterans are not allowed to be supported by an independent lawyer in the VRB process despite DVA being able to hire as many lawyers as they want to defend a decision to deny the Veteran their benefits.

The DVA can hire as many lawyers as it wants to defeat a Veteran's claim, but the Veteran who has little or no funds and is facing severe stress, will have to pay all of the medical report and legal costs if they wish to appeal to the AAT. This will mean most will not be able to appeal and the DVA win by default.

The inability of Veterans to recover costs and disbursements associated with appealing a decision means that most injured Veterans will not be able to appeal to the independent umpire, the AAT. Therefore they will not be able to challenge the DVA's decisions.

More delays and other issues

The removal of the right to request an internal reconsideration will create more delay and result in even less scrutiny of DVA decisions.

It can take around 18-24 months for the VRB to deal with a case despite the VRB's genuine efforts to speed things up in recent years. These delays are likely to get worse because they will have more cases to deal with but no extra resources.

The DVA will no longer have to deal with requests for internal reconsideration of their decision making and this means their decisions will face less quality assurance.

The fact that injured Veterans will not be able to afford to go to the AAT, even if they have a clear-cut case means the DVA will not have their decisions and processes scrutinized by the AAT. For an organization that already has enormous trouble with its decision making, we consider this removal of scrutiny to be a major problem for injured Veterans in the future.

Legal Aid

Legal aid is administered by State Governments and is under enormous pressure due to lack of legal aid funds. The Federal Government knows full well it is making a promise it can't keep when it says Veterans still have legal representation at the AAT because some may be eligible for legal aid.

The Government and DVA know that even if a veteran could access legal aid, the \$1,500 available is far short of the funds needed to challenge the DVA in the AAT. The medical reports required can alone amount to far more than \$1,500. In certain states, legal aid will not fund such appeals in any event.

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