



**Submission by the
Commonwealth Ombudsman**

**INQUIRY INTO THE PROVISIONS OF THE
VETERANS' AFFAIRS LEGISLATION
AMENDMENT (DIGITAL READINESS AND
OTHER MEASURES) BILL 2016.**

Submission by the Acting Commonwealth Ombudsman, Mr Richard Glenn

January 2017

The Commonwealth Ombudsman welcomes the opportunity to respond to the Senate Standing Committee on Foreign Affairs, Defence and Trade Inquiry into the provisions of the Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016.

BACKGROUND

The Office of the Commonwealth Ombudsman seeks to ensure that administrative action by Australian Government agencies is fair and accountable. It does this by handling complaints, conducting investigations, performing audits and inspections, encouraging good administration, and discharging other specialist oversight tasks. The Commonwealth Ombudsman is guided by the values of independence, integrity, accessibility and professionalism.

The Defence Force Ombudsman

The Commonwealth Ombudsman is also the Defence Force Ombudsman (DFO), a function conferred on the Ombudsman in 1983 to provide assurance of independence and integrity in the management of complaints about matters of administration within the Australian Defence Force (ADF). The DFO provides an external and independent complaints mechanism for serving and former members of the ADF for administrative and employment matters that have not been resolved by Defence.

Complaints made to the DFO specific to the ADF include decisions about promotion, demotion, discharge, postings, leave, housing, allowances and handling of Redress of Grievance processes. We can assess the handling of allegations of misconduct, harassment and abuse. We can also refer matters to the Inspector General ADF, where it is found to be a more appropriate investigation avenue.

Complaints made to the DFO specific to the Department of Veterans' Affairs (DVA) include adverse decisions about payment entitlements, payment rates and calculations, offsetting of pensions, delays in the processing of claims, access to support and ancillary services and decisions relating to compensation and debt waiver.

From 1 July 2016 to 31 December 2016 the DFO received 263 approaches about matters of administration in Defence agencies. We investigated 65 (25 percent) of these matters. Of the 263 approaches, 72 were about DVA. Of these, we investigated 10 matters (15 percent).

From 1 December 2016 the DFO's functions were expanded to provide an independent mechanism to accept reports of abuse in the ADF. We accept reports of serious abuse, defined as sexual abuse, serious physical abuse and/or serious bullying and harassment.

The DFO provides support for people who report incidents of serious abuse, taking a trauma-informed care model to support those making a report, based on the principle of 'do no further harm'. We assess available options, which can include a referral to counselling or assessment for participation in a Restorative Engagement conference, a facilitated meeting where the person making the report can meet with a member of Defence to have their report of abuse heard and acknowledged. We can also advise on whether the reported matter should be referred to the police, Defence or another agency for further consideration.

Since the commencement of this function the DFO has received 29 reports of abuse in the ADF¹.

RESPONSE TO TERMS OF REFERENCE

Introduction

The increased use of automated decision making technology has significantly improved the quality, efficiency and accountability of public administration and will continue to do so as long as agencies are prepared to design an agile and user centred process and invest ongoing financial and human resources.

In the context of DVA, our office has previously commented on DVA's use of automated decision making processes in its Compensation Claims Processing System². At the time of publication the system had streamlined all stages of its processing and included comprehensive legislative and policy rules that were triggered when certain events were met. The system change resulted in reducing the number of decision making officers and an increase in finalised claims in a reduced timeframe. Most importantly it improved the consistency of decision making.

Under the jurisdiction of the Commonwealth Ombudsman, our office has engaged with agencies within the Social Services portfolio about the issues of automated decision making and has made a number of observations. We are also currently undertaking an own motion investigation into the Centrelink Debt Recovery Scheme which involves data matching with the Australian Taxation Office and the automated identification and generation of debts to the Commonwealth. The findings of this investigation will be published in 2017.

Better practice principles in automated decision making

Taking into account our previous observations in the *Automated Assistance to Administrative Decision Making Better Practice Guide* and our more recent 2016 report about the Department of Human Services *Centrelink Administration of Income Management for Vulnerable Youth*³, our office makes the following suggestions to DVA in implementing automated decision making.

Accuracy

Data Entry

Data entry errors are unavoidable when requesting information in a free text form. However, limiting the range of data to defined options can also result in limiting the effectiveness of information obtained, especially where there is a discretionary component requiring greater data capture to progress the decision process.

¹ Reporting period 1 December 2016 - 23 January 2017

² http://www.ombudsman.gov.au/__data/assets/pdf_file/0017/34523/23-April-2007-Automated-assistance-to-administrative-decision-making-Launch-of-the-better-practice-guide.

³ http://www.ombudsman.gov.au/__data/assets/pdf_file/0032/36878/Centrelink_Admin_of_Income_Manag_for_Vulnerable_Youth_Final_Report.pdf

It would be beneficial to include links to additional information where customers can explore in more depth the type and scope of the information required. This also allows users to understand the legislative provision or business rules underpinning the required information, making the process more transparent and providing procedural fairness.

A robust quality assurance program is essential to any decision making process and is paramount to ensuring integrity through the identification of common error issues and integration of customer feedback.

System Errors

Programming errors in automated systems can result in a range of unintended outcomes, such as multiple mail outs of singular or conflicting correspondence, inaccurate calculations of financial data and the granting of entitlements where the criteria for the entitlement was not met.

In investigating these types of issues, we have noted that often an automated system does not accurately record the incorrect system actions, for example correspondence may have been generated and sent, but the system will not have recorded that correspondence was sent. When officers investigate, they find no evidence of the error and may be reluctant to accept the affected individual's version of events.

System errors are often difficult to explain to members of the public and can create a sense of suspicion around the motives of the agency and the Commonwealth. It is therefore imperative that agencies develop robust and expeditious risk management practices to identify any system errors at the earliest opportunity. It is also crucial to ensure system logs are incorporated in the design of the product.

Legality

Any automated system must follow the basic legal values of lawfulness, fairness, transparency and efficiency.

The system must also ensure the legality of the decision making process. This includes the legislative authority to delegate the decision making function, as well as ensuring that discretion is not fettered and legislative interpretation is not constrained.

Further, system developments need to incorporate flexibility to readily adjust to any legislative changes, including changes to the primary authoritative legislation, as well as complementary legislation within and outside of the DVA portfolio.

Usability and Accessibility

DVA needs to consider ongoing service provision for vulnerable clients. This includes providing a range of alternative data and information collection avenues, such as call centres, shopfronts and online options.

The use of system vulnerability indicators may be an avenue that assists with the identification of customers with specific accessibility needs, prompting officers to identify these customers as exempt from digital servicing.

Systems Integration and Testing

We understand that DVA systems will be integrated with a number of other agency systems, including the Department of Defence. DVA will need to ensure that its automated system can integrate any system changes that occur in other agencies.

To minimise disruption to service delivery and disadvantage to customers, any automated system should be developed in a way that allows simple updates where there are changes to legislation, policy or business rules.

Targeted user acceptance testing is also essential before any operational release. A sample representative population of users should be employed pre-production to test the usability and identify potential issues prior to any automated decision process going live.

Alternative Channels

DVA will need to consider other mechanisms for ensuring business processing when the automated process is unavailable. This may occur either as a result of scheduled outage/upgrade or as an unintended system outage.

Contingencies that include manual information collection should consider the need to immediately mobilise staff to ensure business continuity, as well as retaining staff following system recovery to ensure all data collected is uploaded and data integrity is assured.

Information dissemination

DVA must ensure that all staff involved in the delivery and support of automated programs are appropriately trained on use of the system, the business rules, related legislation and basic administrative principles. Regular ongoing training for staff should be factored in to allow for the dissemination of process improvement changes.

Publically available information about the process must be regularly reviewed and updated. This includes ensuring that linked or related information on other agency sites is reviewed at the same time. Information must also be available via a range of options, such as online help, telephone help or face to face to ensure accessibility needs are met.

Complaints and Review

The right to have decisions reviewed is integral to public confidence in the decision making process. It is also important that customers are afforded the opportunity to provide feedback about DVA's processes, whether positive or negative.

Our office is aware of the existing DVA complaints and review mechanisms and is satisfied that its current review and feedback policies and principles are reasonable. We are aware that standards of timeliness are generally met and that the majority of complaints received about reviews relate to the decision outcome rather than the process itself.

People who have a complaint about DVA's automated decision making that they have been unable to resolve with DVA can make a complaint to the DFO.