



Vigil Australia

23 September 2025

Submission to the Senate Foreign Affairs, Defence and Trade Committee

Re: Defence Legislation Amendment (Review of Decisions) Bill 2025

From: Paul Scanlan — Founder, Vigil Australia

1) About the Author / Vigil Australia

I served 27 years in the Australian Army, predominantly in Infantry and Special Forces. I founded Vigil Australia, an unfunded, independent initiative focused on brain health in warfighters, veterans and families (the brain as the human weapon system).

Whilst the integrity of honours and awards is not my primary focus, I am committed to addressing past injustices and advancing the integrity of honours and awards. To my knowledge, I remain the only serving officer to have taken the ADF to the DHAAT, which informs my perspective.

2) Executive summary

The Defence Legislation Amendment (Review of Decisions) Bill 2025 would remove or severely curtail the only independent merits-review pathway (DHAAT) for most future honours/awards decisions, often with retrospective effect. Passing the Bill as drafted would entrench long-observed failures:

- Theatre-endorsed nominations downgraded in Canberra without reasons or records;
- Definitional drift from “in action” to “warlike operations” (2012) that advantaged senior non-contact roles over those at the point of risk;
- Opaque decision-making, missing minutes, and FOI gaps; and
- A culture of reprisal that chills participation.

Australia has corrected similar problems before—after Vietnam—through independent review and an End of War List (EOWL). This Bill risks ending that tradition and silencing future corrections for Afghanistan, Iraq and beyond.

Requested outcome:

- Do not pass clauses that abolish/curtail independent merits review by DHAAT or that apply retrospectively to close cases;
- Legislate an End of War List for Afghanistan and Iraq;
- Restore “in action” for DSC/DSM and create a Meritorious Service class for warlike/not-in-action leadership;
- Mandate records, reasons, notice, panel expertise, and anti-reprisal protections.

3) Lived experience (why this matters)

- While in uniform, I initiated two DHAAT reviews for men I had commanded:
 - one for distinguished leadership in action;
 - one for acts of gallantry in hazardous conditions.
- One was accepted; the gallantry case was not, decided by a panel with no “in action” combat experience at the time. I accepted that outcome because an independent process was in place, and the men were heard on the merits of their case.
- During that period, I was also surprised to discover my own DSC nomination (endorsed in theatre) had been downgraded in Canberra. Adding to the irony, the officer who nominated

me did not fight the downgrade; as he ascended to one-star rank, he did not buck the system—underscoring the politics at play.

- After leaving Defence, I sought a review last year; it was rejected automatically without investigation (as FOI records noted). I had intended to lodge with DHAAT, but my priority of late has been advocacy for warfighters, veterans, and their families. If this Bill passes, the six-month window would close my access entirely.

These are not isolated cases; they mirror patterns raised by veterans, families and former commanders who often cannot engage publicly due to fear of reprisals.

4) Systemic patterns the Bill would lock in

- From “in action” to “warlike operations” (2011–12)
 - For decades, DSC/DSM were anchored to leadership in action—under enemy threat in a two-way fight. In 2012, practice shifted to “warlike operations”, broadening eligibility in ways that favoured senior roles away from contact, while diluting recognition for those in contact. Result: visible rank-based inflation and Canberra downgrades of frontline nominations.
- Downgrades, edits, weak audit trails
 - Theatre-endorsed nominations have been downgraded at the HQ level with no minutes, no reasons, and no auditable chain. FOI often returns missing or incomplete records.
- Quotas and informal ranking persisted post-2008
 - An early review said quotas should go; yet ranking practices persisted that function like quotas, disadvantaging the coalface.
- Panel expertise and independence
 - “In action” awards decided by panels with no combat experience erode trust and accuracy. DHAAT’s independence is essential; throttling it risks marking one’s own homework.
- Reprisal and silence
 - Submitters—including senior veterans—declined to appear due to reprisal risk (career/industry). Removing DHAAT access further chills participation.

5) Historical precedent: Vietnam End of War List

The Vietnam End of War List (announced 3 June 1998) corrected 81 cases—many downgraded in Canberra despite in-theatre endorsement. It arrived ~25 years after Australia’s combat operations ended, but restored confidence by aligning recognition with what actually happened in action. Afghanistan and Iraq deserve the same—now, not in 25 years.

6) What the Defence Legislation Amendment (Review of Decisions) Bill 2025 would do in practice

- For anyone who has not already lodged with DHAAT or submitted a request to Defence, rights are extinguished after short limitation periods, including a six-month window, without guaranteed notice.
- It removes/curtails independent merits review, converting disputed outcomes into unreviewable administrative finality.
- The very cases an EOWL would correct become incapable of reaching an independent merits forum.

6A) Clause-level concerns and requested changes

Issue 1 — Retrospectivity that closes DHAAT access

- Concern: The Bill applies retrospectively, abolishing/limiting access to DHAAT unless a DHAAT application or a Defence request already exists; a six-month window then extinguishes rights.
- Why it matters: Many veterans/families were never notified of downgrades; discoveries often occur years later. Retrospectivity rewards opacity and penalises diligence.
- Requested change: Remove any retrospective effect for honours/awards matters, or provide a grandfathered right to apply to DHAAT for at least 24 months from commencement, with tribunal discretion to extend for exceptional circumstances.

Issue 2 — Curtailment of independent merits review (Part VIIC)

- Concern: The Bill narrows DHAAT's merits-review pathway under the Defence Act 1903, placing determinative control back with Defence.
- Why it matters: DHAAT is the only independent body that has corrected systemic failures (cf. Vietnam precedents). Removing it locks in errors.
- Requested change: Preserve DHAAT's complete merits-review jurisdiction for honours/awards and explicitly empower reviews of cancellations (not just refusals).

Issue 3 — Notice, reasons, and records

- Concern: The Bill does not require Defence to notify nominees/families of changes, provide reasons, or preserve immutable records of edits and board minutes.
- Why it matters: Without notice/reasons, new time limits become a trap. Missing minutes and edit trails make review illusory.
- Requested change: Mandate written notice with reasons and DHAAT rights; require immutable originals, redlined edit histories (with authorship), and board minutes; make tampering or failing to keep minutes a disciplinary offence.

Issue 4 — Definitions left broken ("in action" vs "warlike")

- Concern: The Bill leaves unaddressed the 2012 shift from "in action" to "warlike operations", which diluted the criteria and advantaged senior staff roles.
- Why it matters: The legal framework encourages rank-based inflation and Canberra downgrades of frontline nominations.
- Requested change (companion reform): Restore "in action" as the anchor for DSC/DSM; create a Meritorious Service Cross/Medal (as per 2008 review) for warlike but not in-action leadership.

Issue 5 — End of War List (EOWL) not safeguarded

- Concern: The Bill proceeds without a statutory pathway for an Afghanistan/Iraq EOWL, or indeed any future conflict, despite Senate recommendation.
- Why it matters: Vietnam's EOWL corrected 81 downgrades/omissions ~25 years late. Curtailing DHAAT now will freeze out similar corrections.
- Requested change: Insert a clause directing/authorising a time-bound, independent EOWL (DHAAT or equivalent), with access to records and publication of determinations (redacted as necessary).

Issue 6 — Anti-reprisal and panel expertise

- Concern: The Bill is silent on protections against reprisal and on panel composition for "in action" matters.

- Why it matters: Witnesses already fear consequences; in-action cases assessed by panels without combat experience undermine confidence.
- Requested change: Add explicit anti-reprisal protections; require at least one member with combat (“in action”) experience on panels assessing in-action awards, plus one independent lay member.
- Also require conflict-of-interest safeguards: any panellist whose own decoration turns on the “in action” definition (or who has a career stake in the outcome) must disclose and recuse, and at least one member must have documented combat experience plus one independent lay member.

7) Recommendations (consolidated)

1. Retain DHAAT’s independent merits review (no retrospective shut-off) and empower reviews of cancellations.
2. Legislate a time-bound End of War List for Afghanistan & Iraq (independent, resourced, transparent) and ALL future conflicts, for example: no less than five years post conclusion.
3. Restore “in action” for DSC/DSM; create a Meritorious Service class for warlike/not-in-action leadership.
4. Mandate transparency: immutable originals, redlined edits with authorship, minutes, reasoned decisions; make tampering/omissions a disciplinary offence.
5. Require notification to nominees/families on any change/refusal, with reasons and DHAAT rights/time limits.
6. Panel composition: require combat experience for in-action determinations and include an independent lay member.
7. Anti-reprisal protections for applicants, witnesses, serving members and contractors engaging in good-faith evidence.

8) Alignment with prior reviews

The submission aligns with the 1994 CIDA, 1997, 1998 (EOWL/Vietnam), and 2008 reviews—each of which identified the following key points: abolishing quotas, anchoring “in action”, introducing Meritorious Service for warlike/not-in-action roles, and ensuring an independent review and transparent process.

9) Conclusion

If Parliament passes the Defence Legislation Amendment (Review of Decisions) Bill 2025 in its current form, independent merits review will be removed or curtailed, and today’s errors will be locked in for future generations. DHAAT is not a loophole; it is a safeguard. The Vietnam EOWL showed truth can survive bureaucratic failure—only if we preserve the means to revisit it.

Please: retain DHAAT access (no retrospective closure); mandate an EOWL for Afghanistan/Iraq; restore “in action” and create Meritorious Service decorations; and legislate records, reasons, notice, expertise and anti-reprisal protections. This isn’t about medals. It’s about trust—in leadership, process, and the nation’s memory.

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