

The Committee Secretariat,

Re: ***Veteran's Affairs Legislation Amendment (2015 Budget Measures) Bill 2015***

I am pleased that the Committee has been given the opportunity to have a look at this Bill and more importantly, Schedule Two of it. Having become aware of this Bill and concerns re Schedule Two via sighting a news item online, we need to keep in mind that Australia has in place, a very "generous" compensation system for those who have served this country in time of War or Defence Service and spouses –etc.

However, from my own position, no-one should ignore what Senate **Edward Millen**, a former Minister of Repatriation stated in the Senate when he first introduced a Repatriation Bill back in 1920 - there's an obligation to look at our veterans and spouses – etc.

Since 1996, I have followed the operations of both the Department of Veterans Affairs and the Veterans' Entitlement Act VEA 1986 with much interest. In saying this, I'm fully aware of the pain & struggle when seeking a pension or even an increase from the Department but; is the administration of the Department of Veterans Affairs up to a standard which removes, both pain and discrimination???

Over this period, I've looked closely at Repatriation law dating back to 1920 and it could be widely supported where;

1. The time has approached where both the Military and Veterans compensation systems needs a major restructuring – especially the governing Commonwealth Acts.
2. Governments have allowed these Acts to become so complicated – where those wanting to access the compensation system, are unable to get a claim accepted or don't have the "appropriate" documentation to meet the various criteria in place;
3. Governments have also closely aligned the VEA 1986 with Social Security law and this comment could be expanded on;
4. Within the Department of Veterans' Affairs, the "Culture of Rejection" remains in place,
5. Where it's unwilling to do more for an "applicant" via the decision making process.
6. It would be widely supported – where some applicants are "just" giving up re seeking compensation resulting from some questionable clauses –contained within the MCRA and VEA Acts;
7. Decision- makers within the Department of Veterans' Affairs may need further training which ensures that a proper decision is made and based on all available documentation and not in part.
8. The Department of Veterans' Affairs is "un-willing" to undertake a Review of a Decision – if requested by an applicant and prior to possibly, lodgement of an Appeal before the Veterans Review Board VRB - under the Veterans Entitlements Act VEA 1986 – Section 31 provision.

Whilst working on my submission and from searching online, I came across the following extract which provides; *The Australian Soldiers' Repatriation Act 1920 (shortened in 1950 to the Repatriation Act 1920) was described by the Attorney General and Minister for External Affairs, the Right Hon Dr H V Evatt KC, in 1944 in these terms: The Australian Soldiers' Repatriation Act 1920-1943 is not based upon any well-known type of legislation. Though it may have something in common with Workers' Compensation, it is an instrument which is largely sui generis. It represents the desire of the Australian people, through their National Parliament, to ensure that members of Australia's gallant fighting forces who have become wounded or sick as the result of their service shall be properly cared for, and that they and their dependants, and the dependants of deceased members, shall be provided for by a war pension and otherwise assisted in the economic struggle of life. The bearing of these forces in the field commands the admiration of the world, and too much cannot be done in the way of repatriation to recompense them for the sacrifices they have made in the sacred cause of liberty. (O'Sullivan, 1944, Foreword)*

THE HISTORY OF MILITARY COMPENSATION LAW IN AUSTRALIA+ Peter Sutherland\*

<http://www.austlii.edu.au/au/journals/AIAdminLawF/2006/18.pdf>

This obligation (to a degree) has been and still is, being ignored by government where those who have returned to Australia from an overseas theatre of war – had overseas or active service – seek access to the compensation system – governed by some very complicated legislation.

Political parties too, must always remember that there's an obligation to ensure that the needs of our military - those within the ex-service community are heard and addressed fairly. It remains unacceptable that assistance is given out in one hand, and then (to a degree) is taken back by the other hand and from this, there's a great deal of anger, when governments undertake this course-of-action and even today, "barriers" remain in place.

Looking to the above mentioned amending Bill, the following extract, clearly shows - by having this Schedule in place, it's clearly another example of a cost-saving-measure which is clearly noticeable.

## **Schedule 2 - Reconsideration and review of determinations**

### ***Overview***

The amendments in Schedule 2 will create a single appeal path for the review of original determinations made under the Military Rehabilitation and Compensation Act.

### ***Background***

The *Military Rehabilitation and Compensation Act 2004* (Military Rehabilitation and Compensation Act) provides compensation and other benefits for current and former members of the Defence Force who suffer a service injury or disease. The Military Rehabilitation and Compensation Act also provides compensation and other benefits for the dependents of some deceased members.

Under the existing arrangements, the two pathways for a reconsideration or review of an "original determination" under Chapter 8 of the Military Rehabilitation and Compensation Act are:

- internal reconsideration by the MRCC under Part 3; or
- review by the VRB under Part 4.

If the claimant is dissatisfied with the reconsideration by the MRCC or the review by the VRB, Part 5 provides for the claimant to apply to the AAT for a review of what is referred to as a "reviewable determination".

In 2011, the Review of Military Compensation Arrangements recommended that the MRCA appeal process be refined to a single appeal path for clients. The amendments in this Schedule give effect to this recommendation.

The single appeal path will remove internal reconsideration by the MRCC for claimants and enable a claimant to appeal an original decision of the MRCC to the VRB with a second tier of appeal to the AAT.

Currently, applicants that choose reconsideration by the MRCC are not able to access legal aid at the AAT. While the removal of reconsideration by the MRCC will have the consequent effect of not being able to apply for award costs at the AAT, the single appeal path through the VRB will mean that all applicants will have access to legal aid at the AAT, subject to the usual legal aid eligibility criteria.

### ***Explanation of the Items***

#### ***Military Rehabilitation and Compensation Act 2004***

**Items 1 to 4** amend section 344, the simplified outline to Chapter 8 of Part 4 of the MRCA, to remove references to the right of a claimant to seek reconsideration of a determination by the MRCC and to outline the single path of appeal through the VRB to the AAT.

**Item 5** is a consequential amendment to section 345A, which modifies the application of Chapter 8 to decisions made by the MRCC concerning clean energy payments.

Paragraph 345A(2)(c) is repealed as it referenced subsections 349(2) and (3). Those sections are to be repealed by **Item 8**.

**Item 6** amends section 346 which sets out the requirements for the notification of original determinations by the MRCC and the Chief of the Defence Force.

Subsection 346(5) is amended to remove the requirement for a notice to include the option for a claimant dissatisfied with an original determination, to request a reconsideration by the MRCC.

**Items 7 and 8** amend section 349.

The heading to the section is repealed and substituted so that it refers to the power of the Chief of the Defence Force under subsection 349(4) to request the reconsideration by the MRCC of an original determination which relates to liability for a service injury, disease or death of a Defence Force member.

Subsections 349(1) to (3) are repealed to remove references to requests by the claimant for the MRCC to reconsider original determinations made by the MRCC or the Chief of the Defence Force.

**Item 9** amends section 352 which provides for the right of the claimant to make an application to the VRB for the review of an original determination.

Subsection 352(2) is repealed as it had stated that the claimant could not make an application to the VRB for the review of an original determination if the claimant had also requested reconsideration by the MRCC under section 349.

**Item 10** is an application provision. It provides that the amendments made by Schedule 2 apply in relation to original determinations made on or after the commencement of the amendments.

The effect of the provision is to ensure that original determinations made before the commencement of the amendments will continue to be subject to the provisions of

Chapter 8 as they existed before the amendments.

### **Commencement**

Clause 2 provides that the amendments commence on and from 1 January 2016.

From looking at the Schedule's content, the key reason is that, the Federal Government wants to save over a 4 year period, \$ 2.2 million. It's widely accepted by the Australian people that the Federal Government has to deal with a major debt bill that has to be repaid. Even for the ALP Federal Opposition, it too, can't escape criticism for creating the environment re the debt item but secondly, it needs to "reflect" on its performance when the Repatriation Act 1920 was repealed and in its place, the VEA 1986.

For the Opposition, it should also look at the Senate's debate when the VEA Bill 1985-6 spent 12 months – unable to get passage through that Chamber and one can acknowledge the work that the Australian Democrats did on that Bill.

Whilst the Military Rehabilitation and Compensation Act 2004 like that of the Veterans Entitlements Act 1986 have been amended numerous times since their creation, both will continue to be amended/alterd but more importantly, when it suits a political agenda.

From reading through the mentioned Commonwealth Acts- it's not hard to work out what the "objectives" are. The MRCA focuses on "Rehabilitation" first and compensation second when considering this extracted part.

### Part 3—Functions

#### 362 Functions

- (1) The functions of the Commission are as follows:
  - (a) to make determinations under this Act relating to:
    - (i) acceptance of liability; and
    - (ii) the payment or provision of compensation; and
    - (iii) the provision of services for treatment and rehabilitation;
  - (b) to minimise the duration and severity of service injuries and service diseases by arranging quickly under this Act for the rehabilitation of members and former members who suffered those injuries and diseases;**
  - (c) to promote the return to suitable work (defence or civilian) by persons who suffered a service injury or disease;**
  - (d) to promote research into:
    - (i) the health of members and former members; and
    - (ii) the prevention of injury and disease; and
    - (iii) the rehabilitation of persons from injury and/or disease;
  - (e) to provide advice and information relating to the operation of this Act to:
    - (i) the Minister; and
    - (ii) the Defence Minister; and
    - (iii) the Secretary of the Department; and
    - (iv) the Secretary of the Defence Department; and
    - (v) the Chief of the Defence Force; and
    - (vi) the service chief of each arm of the Defence Force;either on request or on the Commission's own initiative;
  - (f) such other functions as are conferred on the Commission by other provisions of this Act or by another Act.

This is worthy of being part of my Submission; **(b) to minimise the duration and severity of service injuries and service diseases by arranging quickly under this Act for the rehabilitation of members and former members who suffered those injuries and diseases; (c) to promote the return to suitable work (defence or civilian) by persons who suffered a service injury or disease etc**, the position is clear.

The Legislative history from when the 1<sup>st</sup> Bill was introduced into the Australian Parliament and up to the amending (mentioned) Bill to the Principle Act – has been very interesting to follow but unfortunately, if Schedule Two manages to be left within the amending Bill, then problems aren't going to go away.

Re this particular comment of mine, it's also worthy to draw attention to the Submission by the Commonwealth Ombudsman re the REVIEW OF MILITARY COMPENSATION ARRANGEMENTS

[http://www.ombudsman.gov.au/files/Review\\_of\\_Military\\_Compensation\\_Arrangements.pdf](http://www.ombudsman.gov.au/files/Review_of_Military_Compensation_Arrangements.pdf)

Delay Up until 2006, the main cause of complaint about MRCA, by a considerable margin, was delay. The complaints were about delay in making the original decision, delay in doing internal reconsiderations of decisions, and delay in processing claims and entitlements after liability for the injury had been accepted. In February 2007 our office wrote to the Deputy President of the Repatriation Commission advising that our office would undertake an investigation into the delays in the processing of MCRS claims.

Another interesting item via the DVA's website

### **Review of military compensation arrangements**

Last updated 18 September 2014

The Review of Military Compensation Arrangements commenced in 2009 and was completed in 2011. The Steering Committee's report was released by the then Minister for Veterans' Affairs on 18 March 2011.

- [Volume 1 - Overview](#)
- [Volume 2 - Detailed Analysis](#)

The then Government responded to the report of the Review on 8 May 2012, accepting 96 of the 108 recommendations and committing \$17.4 million over four years to implement the changes.

- [Government Response](#)

### **Implementation of recommendations**

The majority of the accepted recommendations have been implemented.

- Status report on the implementation of [recommendations \(DOC 133 KB\)](#)

Submission by the Commonwealth Ombudsman REVIEW OF MILITARY COMPENSATION ARRANGEMENTS

[http://www.ombudsman.gov.au/files/Review\\_of\\_Military\\_Compensation\\_Arrangements.pdf](http://www.ombudsman.gov.au/files/Review_of_Military_Compensation_Arrangements.pdf)

### **MILITARY REHABILITATION AND COMPENSATION AMENDMENT BILL 2014**

[http://www.austlii.edu.au/au/legis/cth/bill\\_em/mracab2014487/memo\\_0.html](http://www.austlii.edu.au/au/legis/cth/bill_em/mracab2014487/memo_0.html)

17.1 The MRCA determining system be refined to a single appeal path to the Veterans' Review Board (VRB) and then the Administrative Appeals Tribunal (AAT), as a means of a more timely review that is less complex and less costly. The RSL supports the single path to the VRB but has reservations with the report's view on Legal Aid. The RSL considers that Legal Aid must be available for claimants who have rendered Warlike and Non warlike service, as is currently the case in the VEA, and for members with only Peace time service, the AAT should retain the capacity to award costs if the application succeeds in whole or in part. 17.2 Internal reconsideration by the MRCC be the first step in the review process, and the process for section 31 reviews under the VEA be adopted, to help ensure the quality of decisions that are considered by the VRB and reduce VRB workloads and costs. The RSL supports an internal review system subject to the proper resourcing and staffing of the Review Teams.

[http://www.rsl.org.au/Portals/13/News/Submissions/RSL\\_CommentsOnTheReportOfTheReviewOfMilitaryCompensation.pdf](http://www.rsl.org.au/Portals/13/News/Submissions/RSL_CommentsOnTheReportOfTheReviewOfMilitaryCompensation.pdf)

ADDITIONAL INFORMATION>>>>>

### **Progress in implementing recommendations from the Review of Military Compensation Arrangements (as at 31 December 2014)**

**17.1** The MRCA determining system be refined to a single appeal path to the Veterans' Review Board (VRB) and then the Administrative Appeals Tribunal (AAT), as a means of a more timely review that is less complex and less costly.

**17.2** Internal reconsideration by the MRCC be the first step in the review process, and the process for section 31 reviews under the VEA be adopted, to help ensure the quality of decisions that are considered by the VRB and reduce VRB workloads and costs.

**17.3** There be access to a case conference process by the VRB so that, wherever possible, the key questions and relevant evidence are established as early as possible and the hearings can proceed without any unnecessary delay.

**17.4** In advance of the adoption of a single path, a formal service level agreement between the MRCC and the VRB be negotiated to define a comprehensive case conference process within current legislation.

The **Veterans' Review Board** (VRB) is an independent tribunal that exists to review:

1. decisions made by the [Repatriation Commission](#) under the [Veterans' Entitlements Act 1986](#) (Cth) on:
  - claims for acceptance of injury or disease as war-caused or defence-caused;
  - claims for war widows', war widowers' and orphans' pensions;
  - assessment of pension rate for incapacity from war-caused or defence-caused injury or disease; and
  - claims for the grant, or assessment of, attendant allowance; and
2. determinations under the [Military Rehabilitation and Compensation Act 2004](#) (Cth) made by:
  - the Military Rehabilitation & Compensation Commission; and
  - the Service Chiefs of the Australian Army, the Royal Australian Navy, and the Royal Australian Air Force

The VRB reviews decisions made by officers of the Department of Veterans' Affairs (**DVA**) who have been given power under the VEA by the Repatriation Commission to decide claims for pension and applications for increase in pension. These officers are called 'delegates' of the Repatriation Commission.

The VRB's role was extended in 2004 to review determinations under the *Military Rehabilitation and Compensation Act 2004* (**MRCA**). It is concerned with rehabilitation, and compensation for members of the Australian Defence Force (**ADF**) and their families for injury, disease or death related to service rendered on or after 1 July 2004.

In conducting a review, the VRB is not bound by the rules of evidence or any of the findings within the decision it is reviewing.

## News

Amendments to the Veterans' Entitlements Act 1986 and the Military Rehabilitation and Compensation Act 2004, which impact on the VRB came into effect on 28 July 2014. The amendments were contained in the Veterans' Affairs Legislation Amendment (Mental Health and other Measures) Bill 2014. The changes will allow the VRB to make significant improvements to service and will enhance the operation of the VRB. The changes include the use of modern and effective alternative dispute resolution (ADR) processes and improved case management powers, administrative and business procedures.

A trial using the new legislative framework for ADR will commence in NSW only, from 1 January 2015. The VRB will continue to offer ADR as outlined in the ADR guidelines for all states other than NSW. For more information about the trial and on ADR generally, please see [ADR trial](#).

The general practice direction and ADR guidelines have been updated to include the procedures for the ADR trial. Two new practice directions regarding oral reasons and the

composition of VRB panels have also been issued. Templates are also available on the [ADR trial](#) page.

[http://www.vrb.gov.au/pubs/adr\\_trial.htm](http://www.vrb.gov.au/pubs/adr_trial.htm)

## Alternate Dispute Resolution (ADR) Trial at the VRB

Members were provided an update on the implementation of recommendation 17.3 of the MRCA Review and noted that legislation was passed in June 2014 that enabled ADR. A 12 month trial will commence at the NSW VRB Registry from June 2015.

<http://www.dva.gov.au/consultation-and-grants/consultation-ex-service-community/eso-round-table-esort/eso-round-table-1>

Looking back through the information provided under the heading of Additional Information, again the picture is interesting where a change-of-procedure is being trailed in NSW and possibly in another State.

As this is an interesting development and the Trial due to be completed later this year, it could resolve the questionable procedure by the Department of Veterans Affairs to ignore the Section 31 Review.

However, we should also consider what procedures are in place for those who are in receipt of a Centrelink payment and may experience an adverse decision. Social Security law provides for a decision to be reviewed by a senior officer and then subject to that, onto the Social Security Appeals Tribunal which I understand is part of the AAT.

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### Section 31 Review

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The *Veterans Entitlement Act 1986 (VEA)* provides for review and appeal procedures for veterans, eligible Defence personnel and widow/ers who wish to appeal against decisions concerning:

- [Disability Pension](#);
- [War Widow/er's Pension](#)
- [Service Pension](#);
- [Income Support Supplement](#);
- Supplementary Benefits such as:
  - [Attendant Allowance](#);
  - [Clothing Allowance](#);
  - [Recreational Allowance](#)
  - [Decoration Allowance](#);
  - [Loss of Earnings Allowance](#);
  - [Recreation Transport Allowance](#);
  - [Temporary Incapacity Allowance](#);

For matters that fall into these categories, Section 31 of the VEA allows the [Repatriation Commission](#) to intervene at its discretion to vary initial decision where there are grounds for doing so. This is a relatively quick and informal review process. A review under Section 31 can be requested verbally but a written application is strongly recommended.

There are further appeal options that a veteran can undertake under the VEA as well as a Section 31 review. We strongly recommend that if you are going to make an appeal under Section 31 you should consult an ex-service organisation, (that you have confidence in), who have pension officers that have completed the [Training Information Program](#), (TIP).

For further information on appeals under Section 31, contact your nearest DVA office or visit their web site at [www.dva.gov.au](http://www.dva.gov.au) and look up fact sheet [DP 66](#).

<http://www.vvaa.org.au/s31.htm>

On providing this information re Section 31 Review, it's frustrating to some, that the Department may not or isn't interested in undertaking a Review when requested by a person who maybe considering an appeal to the VRB. Surely there's an obligation to ensure that the applicant is provided with all assistance, which doesn't create more pain and again, criticism can be levelled at the Department.

Recommendations;

1. That Schedule Two – in its present form be rejected;
2. The VEA Act 1986 Section 31 provision be amended thus requiring the Department of Veterans Affairs to undertake a internal review (if requested) of a Delegate's decision -like that available under Social Security law.
3. The ADR process being included (generally) as part of the appeal stage to the VRB.

David Tones.