



Since 1980

**VIETNAM VETERANS FEDERATION OF AUSTRALIA Inc.**

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**INCORPORATING**

Vietnam Veterans Peacekeepers & Peacemakers Association of Australia (NSW Branch) Inc.

Vietnam Veterans Federation Queensland Branch Inc.

Vietnam Veterans & Veterans Federation ACT Inc.

Vietnam Veterans Federation Victorian Branch Inc.

Vietnam Veterans Federation South Australian Branch Inc.

Vietnam Veterans Peacekeepers & Peacemakers Federation of Australia (WA Branch) Inc.

Vietnam Peacekeepers Peacemakers Federation of Tasmania Inc.

**National President: Jim Wain**

**National Secretary: Ray Colburn**

**Senator Chris Black**

**Chair**

**Foreign Affairs, Defence and Trade Legislation Committee**

**Canberra**

**Cc Senator Alex Gallacher, Deputy Chair**

**Senator Jacqui Lambie, Participating Member**

**Inquiry into the Veterans' Affairs Legislation Amendment (2015 Budget Measures) Bill 2015.**

This submission is made by the Vietnam Veterans Federation of Australia Inc. We represent some 6,200 Veterans, former and serving ADF Members and their families.

We strongly oppose the proposal in Schedule 2 of the Bill:

- a. to remove the option for internal reconsideration, by the Military Rehabilitation and Compensation Committee (MRCC), of a decision by the Department of Veterans Affairs (DVA) to refuse a Veterans claim for benefits under the Military Rehabilitation and Compensation Act (MRCA); and
- b. to allow only for a 'single pathway' review of that decision by the Veterans Review Board (VRB); and

This proposal is directly contrary to the recommendation by the recent Review of Military Compensation Arrangements (the Review), which recommended that the single pathway appeal process should involve internal reconsideration by the MRCC first, then the VRB process, and then the AAT, thus creating a faster and less costly process:

'The (Review Committee) believes that reconsideration by the MRCC should be the first step in the review process. This would help ensure the quality of decisions that are considered by the VRB and reduce VRB workloads and costs' and would align with the review process under the VEA.

The Government claims that the proposed changes give effect to the Review recommendations. However, while implementing Recommendation 17.1 for a single appeal path, the proposed amendments ignore Recommendation 17.2, i.e. for internal reconsideration by the MRCC to be the first step in this review process.

Instead, the proposed amendments will remove internal reconsideration by the MRCC from the appeals process altogether, so that VRB review becomes the first tier of the single appeal pathway.

The Government has provided no explanation for its failure to adopt the Review's Recommendation 17.2 in full. However it might be surmised that the underlying policy of the more restrictive proposal is intended to have a twofold effect-

1. first, without explanation, it will in effect abolish the present long-standing arrangement, by which a Veteran may appeal an unfavourable internal DVA 's349 decision' direct to the AAT; if successful there, the AAT is empowered to

award costs in the Veteran's favour; by contrast, the AAT cannot award costs if the Veteran has appealed an unfavourable VRB decision. Plainly, the Government is concerned about the 'open-ended' scope for the AAT to award costs against DVA if the Veteran wins. The new policy will potentially save DVA money, but to the detriment of Veterans<sup>1</sup>.

2. second, perhaps less obvious but equally feasible in the general context of the opaque official explanation of this proposal, it may be that the policy is intended to 'nudge' Veterans away from seeking any review of any kind of an unfavourable decision. The 'nudge' concept is by now well-known and frequently used by governments in the Western world.<sup>2</sup> It is therefore not fanciful to speculate that by depriving Veterans of the present relatively straightforward process of seeking an internal review and thereby 'nudging' them into the more complex process of the VRB, with no prospects of a favourable costs order on appeal to the AAT, the policy is intended to discourage appeals against DVA decisions. Once again, this is to the detriment of Veterans.

The Minister for Veterans' Affairs has stressed the support of the ESO Round Table (ESORT) members for the Government proposal. I have dissented from the ESORT decision to support the proposed amendment. I now suspect that the ESORT has also been influenced by 'nudge' tactics.

Our members are dismayed and in many cases, angry, about those proposed changes, and also about the opaque and disingenuous method of their presentation and explanation.

**It is our submission** that the Committee should-

1. recognise the disproportionate and seriously adverse impact of the present proposal upon Veterans, and
2. recommend that the Government abandon the proposal and instead implement the full recommendation by the recent Review of Military Compensation that the single pathway appeal process should involve internal reconsideration by the MRCC first, then the VRB process, and then the AAT, retaining the right to have costs awarded if successful at the AAT.

James Wain

President

Vietnam Veterans Federation of Australia Inc

13 September 2015

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<sup>1</sup> In theory, as mentioned in the Explanatory Memorandum, war veterans legal aid should be available, but there are limited legal aid funds and present indications are that state and territory legal aid offices will not place veterans ahead of others in need of legal aid.

<sup>2</sup> Richard H. **Thaler** Cass R. **Sunstein** Nudge Improving Decisions About Health, Wealth, and Happiness 2008 Yale University Press New Haven & London