

Veterans' Affairs Legislation Amendment (Mental Health and Other Measures) Bill 2014

Portfolio: Veterans' Affairs

Introduced: House of Representatives, 27 March 2014

Purpose

1.140 The Veterans' Affairs Legislation Amendment (Mental Health and Other Measures) Bill 2014 (the bill) seeks to enable the expansion of mental health services for veterans and members of the Defence Force and their families, and make changes to the operation of the Veterans' Review Board.

1.141 The bill will amend the *Veterans' Entitlements Act 1986* to:

- expand non-liability health care to include certain mental health conditions and alcohol and substance use disorders (Schedule 1);
- expand eligibility for the Veterans and Veterans Families Counselling Service from 1 July 2014 (Schedule 2);
- provide that the seniors supplement is paid automatically following short periods of overseas travel (Schedule 3); and
- make a technical amendment (Schedule 5).

1.142 The bill will amend the *Military Rehabilitation and Compensation Act 2004* to:

- expand the circumstances in which an eligible young person is taken to be wholly dependent on a Defence Force member (Schedule 6); and
- enable the Chief Executive Officer of Comcare to be nominated for appointment to the Military Rehabilitation and Compensation Commission (Schedule 7).

1.143 The bill will also amend both the *Veterans' Entitlements Act 1986* and the *Military Rehabilitation and Compensation Act 2004* (the Acts) in relation to the operation of the Veterans' Review Board (the Board), including changes to dispute resolution processes, case management powers, and administrative business procedures of the Board (Schedule 4).

Committee view on compatibility

Right to freedom of opinion and expression

1.144 The right to freedom of opinion and expression is guaranteed by article 19 of the International Covenant on Civil and Political Rights (ICCPR). The right to freedom of opinion is the right to hold opinions without interference and cannot be subject to

any exception or restriction. The right to freedom of expression extends to the communication of information or ideas through any medium, including written and oral communications, the media, public protest, broadcasting, artistic works and commercial advertising.

1.145 Under article 19(3), freedom of expression may be subject to limitations that are necessary to protect the rights or reputations of others, national security, public order (*ordre public*),¹ or public health or morals. Limitations must be prescribed by law, pursue a legitimate objective, be rationally connected to the achievement of that objective and a proportionate means of doing so.

Contempt of Board offences

1.146 The bill seeks to insert new section 170 into the *Veterans' Entitlements Act 1986* to define conduct which can be regarded as being in contempt of the Veterans' Review Board (the Board).² The section makes it an offence to:

- insult another person in, or in relation to, the exercise of their powers or functions under the Board;
- interrupt the proceedings of the Board;
- create a disturbance in or near a place where the Board is sitting;
- take part in or continue a disturbance in or near a place where the Board is sitting; and
- engage in conduct which, if the Board were a court of record, would constitute a contempt of that court.

1.147 The statement of compatibility states that, while new section 170 'clearly limits the right to freedom of expression',³ the limitation is justified for the purposes of public order (*ordre public*), understood to mean the rules which ensure the peaceful and effective functioning of society. It also states that this limitation is consistent with article 14(1) of the ICCPR (right to a fair trial and fair hearing), which provides for the exclusion of the press and the public from all or part of a trial for reasons of public order (amongst others).⁴

1 'The expression 'public order (*ordre public*)'...may be defined as the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded. Respect for human rights is part of public order (*ordre public*): Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights U.N. Doc. E/CN.4/1985/4, Annex (1985), clause 22.

2 Explanatory memorandum (EM), p. 38.

3 EM, p. 38.

4 EM, p. 39.

1.148 The committee's usual expectation where a right may be limited is that the statement of compatibility set out the legitimate objective being pursued, the rational connection between the measure and that objective, and the proportionality of the measure.

1.149 While the committee notes that the protection of the Board and its hearings would be a legitimate objective, it is not clear from the statement of compatibility whether the limitations of freedom of expression proposed in new section 170 are rationally connected and proportionate to achieving the protection of public order (which in this case is to ensure that the Board is able to conduct its business).

1.150 Further, the committee notes that it is unclear whether new section 170 may limit legitimate criticism of or objection to the Board and its activities, or indeed may limit expression not directed at and unrelated to the Board and its activities (but taking place near and having the effect of disturbing a Board hearing), and therefore whether the measures are proportionate to achieving their stated objective.

1.151 The committee notes that the nature of the penalties for the proposed offences is also relevant to an assessment of the proportionality of the measures, particularly as proposed section 170 does not appear to provide for the imposition of a financial penalty (as does section 63 of the *Administrative Appeals Tribunal Act 1975*, with which they are being aligned).

1.152 The committee notes its view that the existence of identical or similar provisions in other statutes is not determinative of the human rights compatibility of the provisions of a bill. In many cases, such provisions are drawn from Acts enacted prior to the commencement of the *Human Rights (Parliamentary Scrutiny) Act 2011*, and which therefore may not have undergone an assessment of their compatibility with human rights. Equally, that assessment must be conducted with reference to the particular context of a proposed law, as that context is critical to determining whether a measure is reasonable, necessary and proportionate to achieving a legitimate objective.

1.153 Accordingly, the committee's usual expectation is that, where a bill seeks to align or incorporate the provisions of another Act, the statement of compatibility identify the substantive elements of those provisions, and provide an assessment of their potential engagement and compatibility with human rights.

1.154 The committee therefore requests the advice of the Minister for Veterans' Affairs as to the compatibility of new section 170 with the right to freedom of opinion and expression, and particularly:

- **whether the measure is rationally connected to its stated objective; and**
- **whether the measure is proportionate to achieving that objective.**

Right to freedom of assembly

1.155 The right to freedom of assembly is guaranteed by article 21 of the ICCPR. The right protects the right of individuals and groups to meet and engage in peaceful protest and other forms of collective activity in public.

1.156 Under article 21 freedom of assembly may be subject only to restrictions imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Contempt of Board offences

1.157 The bill seeks to insert new subsections 170(3) and 170(4) into the *Veterans' Entitlements Act 1986*, expanding the range of conduct that may be in contempt of the Board to include conduct creating or continuing a disturbance in or near a place where the Board is sitting.

1.158 The committee notes that the offences created by subsections 170(3) and 170(4) may limit the right to freedom of assembly. However, the statement of compatibility provides no assessment of the potential impact of the measure on this right. As noted above, the committee's usual expectation where a right may be limited is that the statement of compatibility set out the legitimate objective being pursued, the rational connection between the measure and that objective, and the proportionality of the measure.

1.159 The committee notes that the objective of the proposed provisions would appear to be the protection of the Board and its hearings, and that this would be a legitimate objective. However, it is not clear whether the restrictions imposed by subsections 170(3) and 170(4) may have the effect of criminalising protected freedom of assembly rights, such as a peaceful protest.

1.160 Further, the committee notes that it is unclear whether subsections 170(3) and 170(4) may limit legitimate criticism of or objection to the Board and its activities, or indeed may limit assemblies not directed at and unrelated to the Board and its activities (but taking place near and having the effect of disturbing a Board hearing), and therefore whether the provisions are proportionate to achieving their apparent objective.

1.161 The committee notes that the nature of the penalties for the proposed offences is also relevant to an assessment of the proportionality of the measures, particularly as proposed subsections 170(3) and 170(4) do not appear to provide for the imposition of a financial penalty (as does section 63 of the *Administrative Appeals Tribunal Act 1975*, with which they are being aligned).

1.162 The committee therefore requests the advice of the Minister for Veterans' Affairs as to the compatibility of new subsections 170(3) and 170(4) with the right to freedom of assembly, and particularly:

- **whether the measures are rationally connected to their apparent objective; and**
- **whether the measures are proportionate to achieving that objective.**